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OF THE

PHILIPPINES

FROM

SEPTEMBER 10, 2018 TO OCTOBER 2, 2018

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MANILA
2020

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 229940. September 10, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JIMBOY SUICO *y* ACOPE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; A QUESTION ON THE LEGALITY OF AN ARREST SHOULD BE RAISED IN A MOTION TO QUASH THE INFORMATION FILED PRIOR TO ARRAIGNMENT.— [I]t should be emphasized that appellant can no longer question the legality of his arrest which should have been raised in a motion to quash the Information filed prior to his arraignment. When he failed to file such motion, appellant was deemed to have submitted himself to the jurisdiction of the trial court which precluded him from questioning the legality of his arrest.

2. ID.; ID.; SEARCH AND SEIZURE; SEARCHES INCIDENTAL TO LAWFUL ARRESTS ARE ALLOWED EVEN WITHOUT A WARRANT.— Normally, "searches and seizures are x x x unreasonable unless authorized by a validly issued search warrant or warrant of arrest." However, searches incidental to lawful arrests, as in this case, are allowed even without a warrant. As correctly ruled by both the lower courts, the police officers had probable cause to justify the belief that appellant was an offender of the law and that the contents of the backpack and sack he was carrying were instruments of an offense not only in light of the confidential tip they received

from an informant but also because of appellant's peculiar acts of making a sudden u-turn before reaching the checkpoint and attempting to run when the motorcycle he was driving crashed. Indeed, the arresting officers were impelled to effect the arrest and seizure because of a probable cause. Given that the search was valid, the arrest was likewise lawful because it was made upon the discovery of the prohibited drug in appellant's possession.

3. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL TRANSPORTATION OF DANGEROUS DRUGS; THE ESSENTIAL ELEMENT OF THE CRIME IS THE MOVEMENT OF THE DANGEROUS DRUG FROM ONE PLACE TO ANOTHER.— "The essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another." As used under the Dangerous Drugs Act, "transport" means "to carry or convey from one place to another." The fact of an actual conveyance or transportation itself is sufficient to support a finding that the criminal act was committed. Here, it was well established during trial that appellant was caught carrying a backpack and sack with bundles of *marijuana* when he was flagged down on board his motorcycle. The prosecution had proven in the trial the fact of transportation of dangerous drugs.

4. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; PHYSICAL INVENTORY AND PHOTOGRAPH OF SEIZED ITEMS; PROCEDURE; DULY COMPLIED WITH IN CASE AT BAR.— [T]here was compliance with the provision of Section 21, Article II of RA 9165, as amended by RA 10640 x x x. Here, the physical inventory was made at the police station by the apprehending officers/arresting team as shown by their signatures in the Receipt/Inventory of Property Seized. As the law now stands, the apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately at the place where the drugs were seized, or at the nearest police station, or at the nearest office of the apprehending officer, whichever is the most practicable or suitable for the purpose. In this case, the apprehending officers found it more practicable to mark, inventory, and photograph the seized drugs at the police station. As aptly noted by the

CA, the marking at the place of confiscation which was a checkpoint was rather difficult considering that it was in the middle of a public road. Other than appellant's bare assertion, there appears nothing in the record to prove that appellant was absent during the inventory, marking, and taking of photographs. On the other hand, the evidence extant in the record shows that the appellant himself, together with the seized items, were turned over at the police station and that photographs were taken of the illegal drugs and appellant. There is no doubt that the seized illegal drugs were marked, inventoried, and photographed in the presence of appellant.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY; TESTIMONIES OF WITNESSES NEED ONLY TO CORROBORATE EACH OTHER ON IMPORTANT AND RELEVANT DETAILS CONCERNING THE PRINCIPAL OCCURRENCE.— We find no apparent inconsistencies in the testimonies that will dent the case of the prosecution. PO3 Paciente testified that the seized items were turned over to the police station by the five police officers of the apprehending team which was led by PINSP Naelga. This was corroborated by PO1 Berdon when he stated that it was he who held the backpack and sack upon confiscation and handed them over to PINSP Naelga who in turn brought the items to the police station. It has been held that "[t]estimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence." The identity of the person who actually held the backpack and sack is immaterial. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized drugs. In this case, there was no evidence that the four bundles of *marijuana* found inside the backpack and sack were altered, tampered with, contaminated, substituted, exchanged, or planted.

6. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY; THE NON-PRESENTATION AS WITNESS OF THE OFFICER WHO RECEIVED THE SPECIMEN IN THE CRIME LABORATORY IS NOT FATAL AND DOES NOT CONSTITUTE A GLARING GAP IN THE CHAIN OF CUSTODY; CASE AT BAR.— Appellant finally argues that the absence of testimony of PO1 Romeo

> Adlaon, Jr. (PO1 Adlaon), the officer who received the specimen in the crime laboratory, was fatal and constituted a glaring gap in the chain of custody. We are not swayed by appellant's argument that the non-presentation of PO1 Adlaon as witness was fatal to the prosecution's case. x x x The testimony of forensic chemist, PCI Avanzado, categorically demonstrated that the items he tested/examined at the crime laboratory were the same ones seized from appellant as specified in the inventory prepared by the apprehending team. Hence, we find the integrity of the drugs seized intact and entertain no doubt that the drugs seized from appellant were the same ones submitted for examination.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal filed by appellant Jimboy Suico *y* Acope from the October 21, 2016 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 01329- MIN, affirming the July 25, 2014 Decision[2] of the Regional Trial Court (RTC) of Malaybalay City, Branch 8, in Criminal Case No. 22228-11, finding appellant guilty beyond reasonable doubt of illegal transportation of dangerous drugs under Section 5, Article II of Republic Act (RA) No. 9165,[3] otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] CA *rollo*, pp. 110-127; penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Oscar V. Badelles and Perpetua T. Atal-Paño.

[2] Records, pp. 63-98; penned by Presiding Judge Isobel G. Barroso.

[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.

Appellant was charged with violation of Section 5, Article II of RA 9165 in an Information[4] which reads:

> That on or about the 4th day of September 2011, in the morning, at Purok 12, Poblacion, municipality of Cabanglasan, province of Bukidnon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously keep, hold and possess and transport marijuana leaves with fruiting tops with the use of a motorcycle – motor star color red with a combination of black and gray without plate number, with an aggregate weight of 2,400 grams, [per] Chemistry Report No. D-101-2011BUK, without authority nor permit from the government to possess the same.
>
> CONTRARY to and in violation of Article II Section 5, R.A. 9165.[5]

During arraignment, appellant pleaded not guilty. Thereafter, trial on the merits ensued.

The prosecution's evidence, consisting of the testimonies of Police Chief Inspector Ellen Variacion-Avanzado (PCI Avanzado), PO3 Joevin Paciente (PO3 Paciente), PO1 Nelber Berdon (PO1 Berdon), and PO3 Glenn Agpalza (PO3 Agpalza), as summarized by the appellate court, is as follows:

> [In] the morning of 4 September 2011, at around 8:30 x x x an Alert Team composed of five police officers, namely: the Chief of Police of Cabanglasan, Bukidnon, Police Inspector Erwin R. Naelga (PINSP Naelga), PO3 Joevin Paciente (PO3 Paciente), PO2 Rowland Linaban, PO1 Nelber Berdon (PO1 Berdon), and PO1 Christopher Sibayan were at Purok 12, Brgy. Poblacion, Cabangsalan, Bukidnon to set-up and man a checkpoint to implement a 'no plate, no travel' policy.
>
> At around 9:00 in the morning, while the Team was manning the checkpoint, PINSP Nealga received a text message from an informant saying that there is an approaching red Motorstar motorcycle with a black and gray color combination driven by a person carrying a backpack and a yellow sack containing *marijuana*.

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[4] Records, pp. 2-3.

[5] *Id*. at 2.

At around 9:30 in the morning, the members of the team saw a motorcycle approaching the checkpoint. Upon seeing the checkpoint, the motorcycle immediately made a u-turn, however, the driver of the motorcycle fell down. The driver then disembarked from the motorcycle and then attempted to run. However, one of the members of the team was able to hold the backpack of the driver after he fell down and the other members of the team requested him to open it. Subsequently, the driver admitted that he was carrying *marijuana*. He thereafter opened the backpack, which contained 2 bundles of fresh *marijuana*, and the yellow sack, which also contained two bundles of fresh *marijuana*.

After confiscating the backpack and the sack containing *marijuana*, the driver of the motorcycle was apprised of his Constitutional rights and thereafter taken to the police station where an inventory of the seized items was made. The preparation of the said inventory was witnessed by the Municipal Mayor of Cabanglasan, Bukidnon. Photographs were taken after the inventory of the confiscated items.

After making the inventory, the members of the Team turned over the confiscated items to the duty investigator at that time, [PO3 Agpalza], who after marking them, brought the items to the Provincial Crime Laboratory together with the members of the apprehending team.

At around 3:30 in the afternoon, [PCI Avanzado] received a request for a crime laboratory examination signed by PINSP Naelga together with specimens contained in the backpack and yellow sack brought by PO3 Agpalza. After conducting a qualitative examination on the specimens, all four gave a positive result for being *marijuana*.[6]

The evidence for the defense, meanwhile, consisted of the lone testimony of the appellant himself. Appellant denied liability and claimed that he was framed-up. His testimony, as summarized by the appellate court, is as follows:

On September 4, 2011, [appellant] was at Sitio Luringan, Caban[g]lasan, Bukidnon peddling generic medicines. While driving his motorcycle on his way home, an armed group of 15 indigenous peoples known as the Lumads blocked his way, held his shoulders, and took the key of his motorcycle.

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[6] CA *rollo*, pp. 111-113.

The Lumads then made [appellant] go down from his motorcycle and took his backpack containing money and the medicines that he was selling. The Lumads then scattered the contents of the backpack on the ground and divided it among themselves.

[Appellant's] hands were then tied behind his back with a rope by the Lumads. He was then made to ride his motorcycle together with two Lumads who took him to a two-storey house in the town center of Cabanglasan, Bukidnon.

After about 15 minutes, two motorcycles driven by the companions of the Lumads who brought [appellant] to the house, arrived. They brought with them the backpack that they took from [appellant] and a sack that contained *marijuana*.

[Appellant] then overheard the owner of the house where he was brought calling the Mayor of Cabanglasan, Bukidnon. After twenty minutes, two people arrived in the house, one introducing himself to the owner of the house as the Mayor. [Appellant] then narrated to the Mayor what happened but he did not listen to him.

The Mayor then called the police, who arrived after ten minutes. The police officers then untied [appellant] to replace the rope with a handcuff. They then forced [appellant] to point to the backpack and the bag containing *marijuana* while they took pictures of him. He was then brought to the police station.[7]

Ruling of the Regional Trial Court

In a Decision[8] dated July 25, 2014, the RTC held that the prosecution had established beyond reasonable doubt the culpability of appellant for illegal transportation of *marijuana* through the positive and credible testimonies of witnesses who were law enforcers. The RTC did not give credence to appellant's defense of frame-up, denial and alibi as they were inherently weak and could not prevail over the positive assertions of police witnesses. The RTC found that the warrantless search and seizure made by the apprehending officers was valid and that the chain of custody requirements were substantially complied with. The RTC thus ruled:

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[7] *Id*. at 113-114.

[8] Records, pp. 63-98.

WHEREFORE, in view of all the foregoing, accused Jimboy Suico y Acope is hereby found GUILTY beyond reasonable doubt of [v]iolation of Section 5, Article II of RA 9165 and is hereby sentenced, as mandated under the said provision, to LIFE IMPRISONMENT and for him to PAY A FINE of Five Hundred Thousand Pesos.

The dangerous drugs submitted as evidence in this case are ordered transmitted to the PDEA for destruction and/or disposition in conformity with pertinent laws, rules and regulations.

SO ORDERED.[9]

Aggrieved, appellant appealed to the CA.

Ruling of the Court of Appeals

Appellant argued that there was failure to preserve the integrity of the seized *marijuana* because of the serious lapses committed by the arresting team in complying with the procedure in the custody and disposition of seized drugs. He claimed that the prosecution failed to sufficiently establish by proof beyond reasonable doubt the *corpus delicti* of the offense charged.

In a Decision[10] dated October 21, 2016, the CA sustained the conviction of appellant. It held that the warrantless search and seizure was validly conducted and that the illegal transportation of dangerous drugs by appellant was adequately established. It affirmed the RTC's disquisition that appellant's lone testimony could not prevail over the positive testimony of the police authorities who were presumed to have regularly performed their official duties in the absence of any ill motive.

The CA likewise ruled that the totality of the evidence adduced by the prosecution pointed to an unbroken chain of custody from the moment the four bundles of *marijuana* were seized from appellant up to the time these were presented in court. The CA explained that the prosecution was able to "categorically demonstrate that the items seized from [appellant] at the

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[9] *Id.* at 97-98.

[10] CA *rollo*, pp. 110-127.

checkpoint were the same ones marked by the police, tested at the crime laboratory, and introduced, identified, testified to and offered in open court."[11] The CA held that the chain of custody rule was substantially complied with as the identity and integrity of the seized drugs had not been compromised.

Hence, appellant instituted this present appeal, arguing in his Appellant's Brief[12] that the failure of the prosecution to prove compliance with the mandatory requirements of Section 21 of RA 9165 regarding the preservation of the seized item's evidentiary integrity must necessarily lead to his acquittal. Appellant maintains that the arresting officers' failure to immediately mark the items upon seizure raised a reasonable doubt on the authenticity of the *corpus delicti* of the offense charged. He likewise argues that the prosecution failed to establish the identity of the seized items because the evidence merely showed that the marking was done in the presence of the arresting team and not in his presence. Appellant also mentions a glaring gap in the chain of custody of the confiscated item since the officer who received the specimen in the crime laboratory did not testify. Appellant further doubts the veracity of his arrest.

Our Ruling

The appeal is unmeritorious.

Appelant's arrest was valid. The warrantless search and seizure was valid.

At the outset, it should be emphasized that appellant can no longer question the legality of his arrest which should have been raised in a motion to quash the Information filed prior to his arraignment. When he failed to file such motion, appellant was deemed to have submitted himself to the jurisdiction of the trial court which precluded him from questioning the legality of his arrest.[13]

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[11] *Id.* at 125.

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

[13] *People v. Lara*, 692 Phil. 469, 483 (2012).

In any event, the arrest of appellant and the incidental search and seizure of appellant's backpack and sack containing *marijuana* were both valid. The arresting team in this case was tasked to man a checkpoint in *Purok* 12, *Poblacion*, Cabanglasan, Bukidnon in the implementation of a "no plate, no travel" policy. PINSP Naelga received information that a person carrying a backpack and yellow sack suspected of containing *marijuana* was riding a red with black and gray combination Motorstar motorcycle and was bound for *Poblacion*.[14] When the motorcycle approached the checkpoint, the driver (appellant) immediately made a u-turn and fell down from the motorcycle.[15] Appellant then attempted to run but one of the police officers, PO1 Berdon, managed to grab and get a hold of the backpack and yellow sack of appellant.[16] Upon the request of the arresting officers, appellant opened the backpack while admitting that what was inside was dried *marijuana*.[17] The arresting officers saw two bundles of dried *marijuana* inside the backpack and another two bundles of dried *marijuana* in the yellow sack.[18] The arresting officers thereafter apprised appellant of his legal rights and brought appellant and the illegal drugs to the police station.[19]

Normally, "searches and seizures are x x x unreasonable unless authorized by a validly issued search warrant or warrant of arrest."[20] However, searches incidental to lawful arrests, as in this case, are allowed even without a warrant.[21] As correctly ruled by both the lower courts, the police officers had probable cause to justify the belief that appellant was an offender of the

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[14] TSN, September 10, 2013, pp. 6-8; TSN, February 4, 2014, pp. 6-8.

[15] *Id*. at 9; *id*. at 9.

[16] TSN, February 4, 2014, p. 10.

[17] TSN, September 10, 2013, pp. 9-10.

[18] *Id*.; TSN, February 4, 2014, pp. 12-13.

[19] *Id*. at 16; *Id*. at 14.

[20] *Veridiano v. People*, G.R. No. 200370, June 7, 2017, 826 SCRA 382, 397-398.

[21] *People v. Cogaed*, 740 Phil. 212, 227-228 (2014).

law and that the contents of the backpack and sack he was carrying were instruments of an offense not only in light of the confidential tip they received from an informant but also because of appellant's peculiar acts of making a sudden u-turn before reaching the checkpoint and attempting to run when the motorcycle he was driving crashed. Indeed, the arresting officers were impelled to effect the arrest and seizure because of a probable cause. Given that the search was valid, the arrest was likewise lawful because it was made upon the discovery of the prohibited drug in appellant's possession.

Illegal transportation of dangerous drugs was established.

"The essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another."[22] As used under the Dangerous Drugs Act, "transport" means "to carry or convey from one place to another."[23] The fact of an actual conveyance or transportation itself is sufficient to support a finding that the criminal act was committed.[24]

Here, it was well established during trial that appellant was caught carrying a backpack and sack with bundles of *marijuana* when he was flagged down on board his motorcycle. The prosecution had proven in the trial the fact of transportation of dangerous drugs. Appellant's denial and defense of frame-up cannot be given credence. The Court has ruled that "[these] defenses x x x, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted x x x."[25] We agree with the lower courts that appellant's unsubstantiated lone testimony cannot prevail over the positive testimonies of the police officers in view of the presumption of regularity in

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[22] *People v. Asislo*, 778 Phil. 509, 522 (2016).

[23] *People v. Morilla*, 726 Phil. 244, 252 (2014).

[24] *People v. Mariacos*, 635 Phil. 315, 333-334 (2010).

[25] *People v. Ygot*, 790 Phil. 236, 241 (2016).

the performance of their duty and in the absence of any improper motive.[26]

The integrity and evidentiary value of seized drugs were preserved. There was an unbroken chain of custody.

Appellant's contention that the prosecution failed to establish the chain of custody of evidence fails to sway. The testimonies of PO3 Paciente and PO1 Berdon revealed that, after the confiscation of the black backpack and yellow sack with four bundles of *marijuana* at the checkpoint, the members of the apprehending team led by PINSP Naelga brought appellant and the confiscated items to the police station and turned them over to PO3 Agpalza who was the duty investigator at that time. The prosecution's documentary and testimonial evidence showed that the marking, physical inventory, and taking of photographs of the seized items were all done at the police station and witnessed by Rogelio C. Castillanes, the Municipal Mayor of Cabanglasan, Bukidnon. PO3 Agpalza then testified that, after marking the items, he personally brought the same to the Bukidnon Provincial Crime Laboratory for examination of the forensic chemist, PCI Avanzado. PCI Avanzado in turn categorically testified that he received the illegal drugs and that the examination yielded a positive result for *marijuana*.

Contrary to the assertion of appellant, there was compliance with the provision of Section 21, Article II of RA 9165, as amended by RA 10640[27] which provides:

Section 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment*. - The PDEA shall take

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[26] *People v. Pasion*, 752 Phil. 359, 369-370 (2015).

[27] AN ACT TO FURTHER STRENGTHEN THE ANTI-DRUG CAMPAIGN OF THE GOVERNMENT, AMENDING FOR THE PURPOSE SECTION 21 OF REPUBLIC ACT NO. 9I65, OTHERWISE KNOWN AS THE "COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002". Approved July 15, 2014.

charge and have custody of all dangerous drugs x x x so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) The apprehending team having initial custody and control of the dangerous drugs, x x x shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the persons from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

Here, the physical inventory was made at the police station by the apprehending officers/arresting team as shown by their signatures in the Receipt/Inventory of Property Seized.[28] As the law now stands, the apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately at the place where the drugs were seized, or at the nearest police station, or at the nearest office of the apprehending officer, whichever is the most practicable or suitable for the purpose. In this case, the apprehending officers found it more practicable to mark, inventory, and photograph the seized drugs at the police station. As aptly noted by the CA, the marking at the place of confiscation which was a checkpoint was rather difficult considering that it was in the middle of a public road.

Other than appellant's bare assertion, there appears nothing in the record to prove that appellant was absent during the inventory, marking, and taking of photographs. On the other

[28] Records, p. 8.

hand, the evidence extant in the record shows that the appellant himself, together with the seized items, were turned over at the police station and that photographs were taken of the illegal drugs and appellant. There is no doubt that the seized illegal drugs were marked, inventoried, and photographed in the presence of appellant.

Appellant argues that the inconsistencies in the testimony of prosecution witnesses as to who was in possession of the seized items from the place of arrest to the police station cast doubt on the prosecution evidence, warranting acquittal on reasonable doubt. We find no apparent inconsistencies in the testimonies that will dent the case of the prosecution. PO3 Paciente testified that the seized items were turned over to the police station by the five police officers of the apprehending team which was led by PINSP Naelga.[29] This was corroborated by PO1 Berdon when he stated that it was he who held the backpack and sack upon confiscation and handed them over to PINSP Naelga who in turn brought the items to the police station.[30] It has been held that "[t]estimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence."[31] The identity of the person who actually held the backpack and sack is immaterial. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized drugs. In this case, there was no evidence that the four bundles of *marijuana* found inside the backpack and sack were altered, tampered with, contaminated, substituted, exchanged, or planted.

Appellant finally argues that the absence of testimony of PO1 Romeo Adlaon, Jr. (PO1 Adlaon), the officer who received the specimen in the crime laboratory, was fatal and constituted a glaring gap in the chain of custody. We are not swayed by appellant's argument that the non-presentation of PO1 Adlaon

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[29] TSN, September 10, 2013, p. 34.

[30] TSN, February 4, 2014, p. 27.

[31] *People v. Libnao*, 443 Phil. 506, 519 (2003).

as witness was fatal to the prosecution's case. As the Court held in *People v. Padua*:[32]

> [N]ot all [the] people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand. x x x

The testimony of forensic chemist, PCI Avanzado, categorically demonstrated that the items he tested/examined at the crime laboratory were the same ones seized from appellant as specified in the inventory prepared by the apprehending team. Hence, we find the integrity of the drugs seized intact and entertain no doubt that the drugs seized from appellant were the same ones submitted for examination.

In fine, we sustain the trial court and the CA's finding that the requirements under RA 9165 have been sufficiently complied with. In light of the prosecution's evidence, both testimonial and documentary, the lower courts correctly concluded that the identity, integrity and probative value of the seized *marijuana* were adequately preserved. The prosecution has sufficiently established an unbroken chain of custody over the seized *marijuana*, from the time the apprehending officers seized the drugs to the time it was brought to the police station, then to the crime laboratory for testing until the same was offered in evidence before the court.

The Court, therefore, sustains the conviction of appellant. As to the penalty, Article II, Section 5 of RA 9165 prescribes that the penalties for illegal transportation of dangerous drugs shall be life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00. Thus, we find the penalty of life imprisonment and a fine of ₱500,000.00 imposed by the trial court and affirmed by the CA in order and proper.

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[32] 639 Phil. 235, 251 (2010).

WHEREFORE, the appeal is **DISMISSED**. The assailed October 21, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01329-MIN, affirming the July 25, 2014 Decision of the Regional Trial Court of Malaybalay City, Branch 8, in Criminal Case No. 22228-11, finding appellant Jimboy Suico *y* Acope **GUILTY** beyond reasonable doubt of illegal transportation of dangerous drugs under Section 5, Article II of Republic Act No. 9165 is **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro, C.J., Bersamin, and *Jardeleza, JJ.*, concur.

Tijam, J., on official leave.

EN BANC

[A.C. No. 10962. September 11, 2018]
(Formerly CBD Case No. 10-2763)

AKIRA YOSHIMURA, *complainant, vs.* **ATTY. BERNIE PANAGSAGAN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT; AN ADMINISTRATIVE PROCEEDING FOR DISBARMENT CONTINUES DESPITE THE DESISTANCE OF A COMPLAINANT, OR FAILURE OF THE COMPLAINANT TO PROSECUTE THE SAME, OR THE FAILURE OF RESPONDENT TO ANSWER THE CHARGES AGAINST HIM DESPITE NUMEROUS NOTICES.— A disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of its officers. The issue to be determined is whether Atty.

Panagsagan is still fit to continue to be an officer of the court in the dispensation of justice. Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or as in this case, the failure of respondent to answer the charges against him despite numerous notices. Here, Atty. Panagsagan was given several opportunities to answer the complaint against him, yet no answer came. The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Silence in such cases is almost, always construed as implied admission of the truth thereof. Consequently, we are left with no choice but to deduce his implicit admission of the charges levelled against him. *Qui tacet consentire videtur*. Silence gives consent. This instant disbarment case will, thus, proceed despite Atty. Panagsagan's unwillingness to cooperate in the proceedings.

2. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY, CANON 16 THEREOF; THE FAILURE OF THE COUNSEL TO RENDER AN ACCOUNTING OR TO RETURN THE MONEY IF THE INTENDED PURPOSE OF THE MONEY DOES NOT MATERIALIZE CONSTITUTES A BLATANT DISREGARD OF RULE 16.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— The rule on the accounting of monies and properties received by lawyers from clients as well as their return upon demand is explicit. Canon 16, Rules 16.01, 16.02 and 16.03 of the Code of Professional Responsibility (*CPR*) provides: The fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client. When a lawyer collects or receives money from his client for a particular purpose, he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to return the money if the intended purpose of the money does not materialize constitutes a blatant disregard of Rule 16.01of the Code of Professional Responsibility. Thus, Atty. Panagsagan's failure to return Yoshimura's money despite repeated demands

gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of, the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment.

3. ID.; ID.; ID.; THE ACT OF DEMANDING A SUM OF MONEY FROM THE CLIENT, PURPORTEDLY TO BE USED AS A BRIBE TO EXPEDITE A TRANSACTION IS NOT ONLY AN ABUSE OF HIS CLIENT'S TRUST BUT AN OVERT ACT OF UNDERMINING THE TRUST AND FAITH OF THE PUBLIC IN THE LEGAL PROFESSION.— We likewise cannot overlook Atty. Panagsagan's reprehensible conduct when he asked Yoshimura for the amount of ₱40,000.00 as "under the table" allegedly to expedite the release of the yellow plates of the bus units with plate numbers PHP-559 and RHP 568. Atty. Panagsagan himself signed a receipt showing that he took money in the amount of ₱40,000.00 for the said purpose. Undoubtedly, this act of Atty. Panagsagan is tantamount to grave misconduct. The act of demanding a sum of money from his client, purportedly to be used as a bribe to expedite a transaction, is not only an abuse of his client's trust but an overt act of undermining the trust and faith of the public in the legal profession. As officers of the court, lawyers owe their utmost fidelity to public service and the administration of justice. In no way should a lawyer indulge in any act that would damage the public's perception of the dispensation of justice.

4. ID.; ID.; NOTARIAL LAW; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSONS WHO SIGNED THE SAME ARE THE VERY SAME PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND TRUTH OF WHAT ARE STATED THEREIN; VIOLATED.— Adding to Atty. Panagsagan's list of infractions was his violation of the notarial law. He notarized on June 10, 2009 the management contract between Yoshimura and Bernadette and Sta. Monica without all the affiant's personal appearance. To reiterate, Yoshimura and Bernadette maintained that they have never met Rhoel Correa, which is consistent with the latter's statement in his affidavit that he has never met Yoshimura and Bernadette prior to their meeting at the Prosecutor's Office on June 2, 2010. Thus, considering that

both Yoshimura and Bernadette, and Rhoel Correa have never met each other prior to June 2, 2010, it can be surmised that at the time of the notarization of the contract on June 10, 2009, both or one of them did not appear before Atty. Panagsagan. In *Agbulos v. Atty. Viray,* this Court, citing *Dela Cruz-Sillano v. Atty. Pangan* reiterated anew the necessity of personal appearance of the affiants, to wit: The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

5. ID.; ID.; AS AN OFFICER OF THE COURT, IT IS A LAWYER'S DUTY TO UPHOLD THE DIGNITY AND AUTHORITY OF THE COURT AND THE HIGHEST FORM OF RESPECT FOR JUDICIAL AUTHORITY IS SHOWN BY A LAWYER'S OBEDIENCE TO COURT ORDERS AND PROCESSES.— Aside from Atty. Panagsagan's violation of his duty as a lawyer and a notary public, we also find deplorable his defiant stance against the IBP as demonstrated by his repetitive disregard of the IBP's directives to file his comment on the complaint. He also has missed all scheduled hearings set by the IBP. Due to his non-chalant attitude on the proceedings before the IBP, this case has dragged on for an unnecessary length of time. There is, thus, no question that his failure or obstinate refusal without justification or valid reason to comply with the IBP's indicates a lack of respect for the IBP's rules and procedures. As an officer of the Court, Atty. Panagsagan is expected to know that said directives of the IBP, as the investigating arm of the Court in administrative cases against lawyers, is not a mere request

but an order which should be complied with promptly and completely. As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. Considering Atty. Panagsagan's propensity to disregard not only the laws of the land but also the lawful orders of the Court, it only shows him to be wanting in moral character, honesty, probity and good demeanor. He proved himself unworthy of membership in the Philippine Bar. Indeed, Atty. Panagsagan is unfit to discharge the duties of an officer of the court and deserves the ultimate penalty of disbarment.

6. ID.; ID.; THE LAWYER'S ACTS OF TAKING ADVANTAGE OF THE TRUST AND CONFIDENCE OF HIS CLIENTS, DISHONEST AND DECEITFUL CONDUCT AND FRAUDULENT ACTS FOR PERSONAL GAIN, VIOLATION OF THE NOTARIAL LAW AND DISRESPECT OF THE IBP DUE TO NON-COMPLIANCE OF ITS DIRECTIVE TO FILE COMMENT, CONSTITUTE MALPRACTICE AND GROSS MISCONDUCT IN HIS OFFICE AS ATTORNEY.— Jurisprudence reveals that in similar cases where lawyers abused the trust and confidence reposed in them by their clients, as well as committed unlawful, dishonest, and immoral or deceitful conduct, as in this case, the Court found them guilty of gross misconduct and disbarred them. In the instant case, it is, thus, beyond dispute that Atty. Panagsagan manifested not just disregard of his duties as a lawyer but a wanton betrayal of the trust of his client and, in general, the public. For taking advantage of the trust and confidence of his clients, for his dishonest and deceitful conduct and fraudulent acts for personal gain, for his violation of the notarial law and disrespecting the IBP due to non-compliance of its directive to file comment, his acts constitute malpractice and gross misconduct in his office as attorney. His propensity to defraud his client, and the public in general, render him unfit to continue discharging the trust reposed in him as a member of the Bar. Atty. Panagsagan deserves no less than the penalty of disbarment.

7. ID.; ID.; IN DISCIPLINARY PROCEEDINGS AGAINST LAWYERS, THE COURT'S ONLY CONCERN IS

THE DETERMINATION OF RESPONDENT'S ADMINISTRATIVE LIABILITY AND SHOULD NOT INVOLVE HIS CIVIL LIABILITY FOR MONEY RECEIVED FROM HIS CLIENT IN A TRANSACTION SEPARATE, DISTINCT, AND NOT INTRINSICALLY LINKED TO HIS PROFESSIONAL ENGAGEMENT; EXCEPTION.— We also deem it appropriate to order the return of the monies which Atty. Panagsagan received as attorney. True, in disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. In such cases, the Court's only concern is the determination of respondent's administrative liability; it should not involve his civil liability for money received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement. However, in this case, it appeared that Yoshimura and Bernadette gave monies to Atty. Panagsagan to assist them in the documentation of their business operation by virtue of the latter's legal expertise, and was not by virtue of a personal transaction. Thus, insofar as the money received by Atty. Panagsagan from Yoshimura and Bernadette, in his professional capacity, to wit: ₱5,000.00 representing the amount which Atty. Panagsagan received for the preparation of documents for the registration of two units of buses; ₱24,000.00, representing the amount which Atty. Panagsagan received for the apprehension tickets; ₱40,000.00, representing the amount which Atty. Panagsagan received as "under the table" to expedite the processing of the yellow plates of the bus units; ₱5,000.00, representing the amount which Atty. Panagsagan received for expediting the dropping and substitution order; ₱30,000.00 and ₱50,000.00, representing the amount which Atty. Panagsagan received for the processing of the registration of two units of buses, ₱50,000.00, representing the amount which Atty. Panagsagan received purportedly for the filing of an estafa case; and ₱50,000.00 and ₱150,000.00, representing the amount which Atty. Panagsagan received for the processing of the Angat-Divisoria bus franchise for their two units of buses, these amounts should be returned as it was borne out of their professional relationship.

D E C I S I O N

***PER CURIAM*:**

Before us is a Complaint-Affidavit[1] filed by Akira Yoshimura (*Yoshimura*) against respondent Atty. Bernie Panagsagan (*Atty. Panagsagan*), docketed as A.C. No. 10962 for Grave Misconduct.

The facts are as follows:

Sometime in 2009, Yoshimura and his common-law wife Bernadette Tugadi (*Bernadette*) went to Tierra, Panagsagan and Associates, Atty. Panagsagan's office, at 8C Cris Eden Building, Magalang Street, Pinyahan, Diliman, Quezon City, to seek legal assistance because Bernadette decided to become a member of the Lesambah Transport Cooperative.

During said meeting, Yoshimura gave Atty. Panagsagan the amount of ₱5,000.00 for the preparation of documents needed for his two (2) units of buses with plate numbers PHP-559 and RHP-568. Atty. Panagsagan received and acknowledged said amount on April 21, 2009.[2] On May 15, 2009, Bernadette gave Atty. Panagsagan the amount of ₱24,000.00 as payment for the Land Transportation Office (*LTO*) apprehension tickets of the four buses of Yoshimura and Bernadette.[3] However, up until the filing of the instant complaint, the license plates of the four buses have not been given to them.

Yoshimura also claimed that Atty. Panagsagan convinced him to give "under the table" money in the amount of ₱40,000.00 to expedite the registration of the two buses (with plate numbers PHP-559 and RHP-568) under the name of Lesambah Cooperative. On May 31, 2009, Yoshimura conceded and gave the amount of ₱40,000.00 to Atty. Panagsagan which the latter received and acknowledged.[4] In December 2009, Yoshimura

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

[2] *Id.* at 5.

[3] *Id.* at 7.

[4] *Id.* at 9.

received the registration of the two units of buses. However, upon inquiry with the LTO, they were disappointed to find out that the approval of the registration could be easily done legally.

Later, Yoshimura alleged that Atty. Panagsagan again asked and received from him the amount of ₱5,000.00 for the purpose of securing a Dropping and Substitution Order from the LTO.[5] Then, on December 2, 2009, Yoshimura averred that Atty. Panagsagan told him that another two buses can be included in the Lesambah Cooperative franchise and the expenses for processing of yellow plates was ₱80,000.00. On the same date, a total of ₱80,000.00 was again given to and received by Atty. Panagsagan.[6] However, despite the release of said amount of money to Atty. Panagsagan, Yoshimura lamented that no yellow plates were released for the buses. He then demanded the return of his money, but Atty. Panagsagan refused to return the same.

Instead, Atty. Panagsagan convinced Yoshimura that their buses should join another cooperative, the Sta. Monica Transport Cooperative (*Sta. Monica*), which operates on a different route — Divisoria-Angat, while the processing of their Lesambah documents are still ongoing. Convinced, Yoshimura gave Atty. Panagsagan the amount of ₱50,000.00 and ₱150,000.00 on June 5, 2009 and June 19, 2009, respectively.[7] Several temporary receipts were also issued for several amounts received totalling to ₱380,000.00 purportedly for "stock membership and bus membership.[8]

Subsequently, as part of the documentation of their membership with Sta. Monica, Yoshimura alleged that a Management Agreement was executed between him and Bernadette and Sta. Monica Transport. The said agreement was signed by Rhoe E. Correa, as Chairman of the Cooperative, whom Yoshimura alleged to have never met. However, Yoshimura later discovered that the office of Sta. Monica in Quezon City was already closed. Upon inquiry with the LTO,

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[5] *Id.* at 10.

[6] *Id.* at 11-12.

[7] *Id.* at 15.

[8] *Id.* at 16.

they were also told that Sta. Monica Cooperative was no longer operating buses. Frustrated, Yoshimura demanded the return of their money, but again, Atty. Panagsagan failed and refused to return the same.

Significantly, in an Affidavit dated June 2, 2010, Rhoel Correa stated that he has never met Yoshimura and Bernadette prior to their meeting at the Prosecutor's Office in view of the estafa case which the latter filed against him. He also stated therein that he never received any money from them and that Sta. Monica issued no receipt to them.[9]

Furthermore, Yoshimura claimed that he employed the professional services of Atty. Panagsagan purportedly to file an estafa case against a certain individual. He gave the amount of ₱50,000.00 to Atty. Panagsagan, who took five months to prepare the complaint.[10] However, Yoshimura changed his mind and decided not to pursue the complaint anymore. Instead, he demanded the refund of the ₱50,000.00 he paid to Atty. Panagsagan, considering that he did not pursue the filing of the case. Atty. Panagsagan, again, did not return the money.

Thus, from the foregoing actuations of Atty. Panagsagan, Yoshimura filed the instant complaint for disciplinary action due to grave misconduct against the former.

On September 20, 2010, the Integrated Bar of the Philippines-Commission on Bar Discipline (*IBP-CBD*) ordered Atty. Panagsagan to submit his Answer on the complaint against him.[11]

However, despite receipt of several notices to file his Answer, Atty. Panagsagan failed to submit his Answer. He was eventually declared in default.[12] He, likewise, failed to attend the hearings despite receipt of notices. Thus, the instant case was submitted for report and recommendation.[13]

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[9] *Id.* at 22.

[10] *Id.* at 6.

[11] *Id.* at 29.

[12] *Id.* at 31.

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

In its Report and Recommendation[14] dated October 10, 2013, the IBP-CBD recommended that Atty. Panagsagan be suspended from the practice of law for a period of three (3) years. However, in Resolution No. XXI-2014-724,[15] the IBP-Board of Governors adopted and approved with modification the IBP-CBD's report but instead recommended that Atty. Panagsagan be disbarred from the practice of law.

After a review of the records of the case, We resolved to sustain the findings and recommendation of the IBP-Board of Governors.

A disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of its officers.[16] The issue to be determined is whether Atty. Panagsagan is still fit to continue to be an officer of the court in the dispensation of justice. Hence, an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or as in this case, the failure of respondent to answer the charges against him despite numerous notices.

Here, Atty. Panagsagan was given several opportunities to answer the complaint against him, yet no answer came. The natural instinct of man impels him to resist an unfounded claim or imputation and defend himself. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. Silence in such cases is almost, always construed as implied admission of the truth thereof. Consequently, we are left with no choice but to deduce his implicit admission of the charges levelled against him. *Qui tacet consentire videtur*. Silence gives consent.[17] This instant disbarment case will, thus, proceed despite Atty. Panagsagan's unwillingness to cooperate in the proceedings.

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[14] *Id.* at 45-49.

[15] *Id.* at 44.

[16] *In Re Almacen*, No. L-27654, February 18, 1970, 31 SCRA 562.

[17] *Judge Noel-Bertulfo v. Nuez*, 625 Phil. 111, 121 (2010), citing *Grefaldeo v. Judge Lacson*, 355 Phil. 266, 271 (1998).

In the instant case, Atty. Panagsagan's conduct in handling the monies given to him by his client is undisputably condemnable. Records show that Yoshimura engaged the services of Atty. Panagsagan for specific purposes to wit:

1. On April 21, 2009, Atty. Panagsagan issued a receipt for the amount of Php5,000.00 which he received as professional fees, representing the amount for the preparation of documents for the registration of two units of buses;[18]
2. On May 15, 2009, Atty. Panagsagan issued a receipt for the amount of Php24,000.00 which he received as payment for the apprehension tickets;[19]
3. On May 31, 2009, Atty. Panagsagan issued a receipt for the amount of Php40,000.00 which he received as "under the table" to expedite the processing of the yellow plates of the bus units;[20]
4. On December 2, 2009, Atty. Panagsagan issued a receipt for the amount of ₱5,000.00 which he received for expediting the dropping and substitution order;[21]
5. On December 2, 2009, Atty. Panagsagan issued a receipt for the amount of ₱30,000.00 and ₱50,000.00 which he received as professional fees, for the processing of the registration of several units of buses;[22]
6. On April 28, 2009, Atty. Panagsagan issued a receipt for the amount of ₱50,000.00 which he received as professional fees, purportedly for the filing of an estafa case;[23] and
7. On June 5, 2009 and June 19, 2009, Atty. Panagsagan issued a receipt for the amounts of ₱50,000.00 and ₱150,000.00,

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[18] *Rollo*, p. 5.

[19] *Id.* at 7.

[20] *Id.* at 9.

[21] *Id.* at 10.

[22] *Id.* at 11-12.

[23] *Id.* at 6.

> respectively, which he received for the processing of the Angat-Divisoria bus franchise for their two units of buses.[24]

However, despite receipt of the above-mentioned amounts, Yoshimura lamented that Atty. Panagsagan failed to comply with his undertakings without giving any valid reason. Atty. Panagsagan also failed to account all the monies he has received from Yoshimura and Bernadette. Worse, when Yoshimura demanded the return of their monies, Atty. Panagsagan failed to return the same.

The rule on the accounting of monies and properties received by lawyers from clients as well as their return upon demand is explicit. Canon 16, Rules 16.01, 16.02 and 16.03 of the Code of Professional Responsibility (*CPR*) provides:

CANON 16 — A LAWYER SHALL HOLD IN TRUST ALL MONEYS AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 — A lawyer shall keep the funds of each client separate and apart from his own and those others kept by him.

Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand.

The fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client. When a lawyer collects or receives money from his client for a particular purpose, he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. His failure either to render an accounting or to return the money if the intended purpose of the money does not materialize constitutes a blatant disregard of Rule 16.01of the Code of Professional Responsibility.[25]

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[24] *Id.* at 15.

[25] See *Treñas v. People*, 680 Phil. 368, 387 (2012).

Thus, Atty. Panagsagan's failure to return Yoshimura's money despite repeated demands gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of, the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics; it impairs public confidence in the legal profession and deserves punishment.[26]

We likewise cannot overlook Atty. Panagsagan's reprehensible conduct when he asked Yoshimura for the amount of ₱40,000.00 as "under the table" allegedly to expedite the release of the yellow plates of the bus units with plate numbers PHP-559 and RHP 568. Atty. Panagsagan himself signed a receipt showing that he took money in the amount of ₱40,000.00 for the said purpose.[27]

Undoubtedly, this act of Atty. Panagsagan is tantamount to grave misconduct. The act of demanding a sum of money from his client, purportedly to be used as a bribe to expedite a transaction, is not only an abuse of his client's trust but an overt act of undermining the trust and faith of the public in the legal profession. As officers of the court, lawyers owe their utmost fidelity to public service and the administration of justice. In no way should a lawyer indulge in any act that would damage the public's perception of the dispensation of justice.[28]

Equally reprehensible was Atty. Panagsagan's act of convincing Yoshimura and Bernadette to instead join another cooperative, Sta. Monica, when in fact Sta. Monica was no longer in the business of operating transport buses. It can be presumed that it was through Atty. Panagsagan's misrepresentation which prompted Yoshimura to pay the total amount of ₱200,000.00 for the processing of documents to be able to join said cooperative.[29] Several temporary receipts were

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[26] *Id.*

[27] *Rollo*, p. 9.

[28] See *Foster v. Atty. Agtang*, 749 Phil. 576, 591 (2014).

[29] *Rollo*, p. 15.

also issued for several amounts of monies received totaling to ₱380,000.00 purportedly for "stock membership and bus membership, albeit, it was unclear who actually received said amounts of monies and issued the receipts therefor.[30]

To give semblance of truth, Atty. Panagsagan also prepared and notarized a management contract between Yoshimura and Bernadette and Rhoel F. Correa, the chairman/authorized representative of Sta. Monica. However, Yoshimura and Bernadette insisted that they have never met Rhoel Correa. In an affidavit, Rhoel Correa also stated that he has never met Yoshimura and Bernadette and that he neither received any money from them nor issued any receipts to them.[31] Clearly, Atty. Panagsagan's act in convincing Yoshimura and Bernadette to join a cooperative which no longer operate, in order to obtain money from them, speaks of his dishonest and deceitful character. This actuations of Atty. Panagsagan constitute grave violations of the CPR which mandates lawyers not to do any falsehood.[32]

Adding to Atty. Panagsagan's list of infractions was his violation of the notarial law. He notarized on June 10, 2009 the management contract between Yoshimura and Bernadette and Sta. Monica without all the affiant's personal appearance. To reiterate, Yoshimura and Bernadette maintained that they have never met Rhoel Correa, which is consistent with the latter's statement in his affidavit that he has never met Yoshimura and Bernadette prior to their meeting at the Prosecutor's Office on June 2, 2010. Thus, considering that both Yoshimura and Bernadette, and Rhoel Correa have never met each other prior to June 2, 2010, it can be surmised that at the time of the notarization of the contract on June 10, 2009, both or one of them did not appear before Atty. Panagsagan.

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[30] *Id.* at 16.

[31] *Id.* at 22.

[32] 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 *Agbulos v. Atty. Viray*[33] this Court, citing *Dela Cruz-Sillano v. Atty. Pangan*[34] reiterated anew the necessity of personal appearance of the affiants, to wit:

> The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

Aside from Atty. Panagsagan's violation of his duty as a lawyer and a notary public, we also find deplorable his defiant stance against the IBP as demonstrated by his repetitive disregard of the IBP's directives to file his comment on the complaint. He also has missed all scheduled hearings set by the IBP. Due to his non-chalant attitude on the proceedings before the IBP, this case has dragged on for an unnecessary length of time. There is, thus, no question that his failure or obstinate refusal without justification or valid reason to comply with the IBP's indicates a lack of respect for the IBP's rules and procedures. As an officer of the Court, Atty. Panagsagan is expected to know that said directives of the IBP, as the investigating arm of the Court in administrative cases against lawyers, is not a mere request but an order which should be complied with promptly and completely.[35]

As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court. The highest form of respect

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[33] 704 Phil. 1, 7-8 (2013).

[34] 592 Phil. 219, 227 (2008).

[35] *PO1 Caspe v. Atty. Mejica*, 755 Phil. 312, 321 (2015).

for judicial authority is shown by a lawyer's obedience to court orders and processes. Considering Atty. Panagsagan's propensity to disregard not only the laws of the land but also the lawful orders of the Court, it only shows him to be wanting in moral character, honesty, probity and good demeanor. He proved himself unworthy of membership in the Philippine Bar. Indeed, Atty. Panagsagan is unfit to discharge the duties of an officer of the court and deserves the ultimate penalty of disbarment.

PENALTY

Jurisprudence reveals that in similar cases[36] where lawyers abused the trust and confidence reposed in them by their clients, as well as committed unlawful, dishonest, and immoral or deceitful conduct, as in this case, the Court found them guilty of gross misconduct and disbarred them.

In the instant case, it is, thus, beyond dispute that Atty. Panagsagan manifested not just disregard of his duties as a lawyer but a wanton betrayal of the trust of his client and, in general, the public. For taking advantage of the trust and confidence of his clients, for his dishonest and deceitful conduct and fraudulent acts for personal gain, for his violation of the notarial law and disrespecting the IBP due to non-compliance of its directive to file comment, his acts constitute malpractice and gross misconduct in his office as attorney. His propensity to defraud his client, and the public in general, render him unfit to continue discharging the trust reposed in him as a member of the Bar. Atty. Panagsagan deserves no less than the penalty of disbarment.

We also deem it appropriate to order the return of the monies which Atty. Panagsagan received as attorney. True, in disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar. In such cases, the Court's only concern is the determination of respondent's administrative liability; it should not involve his civil liability for money received from

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[36] *Tabang, et al. v. Atty. Gacott*, 713 Phil. 578 (2013); *Brennisen v. Atty. Contawi*, 686 Phil. 342 (2012); *Sabayle v. Tandayag*, 242 Phil. 224 (1988); *Daroy v. Legaspi*, 160 Phil. 306 (1975).

his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement.[37] However, in this case, it appeared that Yoshimura and Bernadette gave monies to Atty. Panagsagan to assist them in the documentation of their business operation by virtue of the latter's legal expertise, and was not by virtue of a personal transaction.

Thus, insofar as the money received by Atty. Panagsagan from Yoshimura and Bernadette, in his professional capacity, to wit: ₱5,000.00 representing the amount which Atty. Panagsagan received for the preparation of documents for the registration of two units of buses;[38] ₱24,000.00, representing the amount which Atty. Panagsagan received for the apprehension tickets;[39] ₱40,000.00, representing the amount which Atty. Panagsagan received as "under the table" to expedite the processing of the yellow plates of the bus units; ₱5,000.00, representing the amount which Atty. Panagsagan received for expediting the dropping and substitution order;[40] ₱30,000.00 and ₱50,000.00, representing the amount which Atty. Panagsagan received for the processing of the registration of two units of buses,[41] ₱50,000.00, representing the amount which Atty. Panagsagan received purportedly for the filing of an estafa case;[42] and ₱50,000.00 and ₱150,000.00, representing the amount which Atty. Panagsagan received for the processing of the Angat-Divisoria bus franchise for their two units of buses,[43] these amounts should be returned as it was borne out of their professional relationship.

IN VIEW OF ALL THE FOREGOING, We find respondent **ATTY. BERNIE PANAGSAGAN, GUILTY** of gross misconduct, violation of the notarial law and willful disobedience

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[37] See *Padilla v. Atty. Samson*, A.C. No. 10253, August 22, 2017.

[38] *Rollo*, p. 5.

[39] *Id.* at 7.

[40] *Id.* at 10.

[41] *Id.* at 11-12.

[42] *Id.* at 6.

[43] *Id.* at 15.

of lawful orders, rendering him unworthy of continuing membership in the legal profession. He is, thus, **ORDERED DISBARRED** from the practice of law and his name stricken-off of the Roll of Attorneys, effective immediately. We, likewise, **REVOKE** his incumbent notarial commission, if any, and **PERPETUALLY DISQUALIFIES** him from being commissioned as a notary public.

Furthermore, Atty. Panagsagan is **ORDERED** to **RETURN** to Akira Yoshimura the total amount of ₱404,000.00, with legal interest of six percent (6%) *per annum* if it is still unpaid, within ninety (90) days from the finality of this Decision.

Let copies of this Decision be furnished the Office of the Bar Confidant, which shall forthwith record it in the personal file of respondent; all the courts of the Philippines; the Integrated Bar of the Philippines, which shall disseminate copies thereof to all its Chapters; and all administrative and *quasi*-judicial agencies of the Republic of the Philippines.

SO ORDERED.

Leonardo-de Castro, C.J., Peralta, Bersamin, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Reyes, A. Jr., and *Reyes, J. Jr., JJ.*, concur.

Carpio, J., on official leave.

Leonen, Tijam, and *Gesmundo, JJ.*, on official business.

FIRST DIVISION

[G.R. No. 196510. September 12, 2018]

SOFIA TABUADA, NOVEE YAP, MA. LORETA NADAL, and GLADYS EVIDENTE, *petitioners, vs.* **ELEANOR TABUADA, JULIETA TRABUCO, LAURETA REDONDO, and SPS. BERNAN CERTEZA & ELEANOR D. CERTEZA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE AND PROBATIVE VALUE OF EVIDENCE, DISTINGUISHED.— Under the *Rules of Court*, evidence – as the means of ascertaining in a judicial proceeding the truth respecting a matter of fact – may be object, documentary, and testimonial. It is required that evidence, to be admissible, must be relevant and competent. But the admissibility of evidence should not be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.

2. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; APPLICABLE IN CIVIL CASES, AND IT IS PRESENT WHEN THE TRIER OF FACTS IS LED TO FIND THAT THE EXISTENCE OF THE CONTESTED FACT IS MORE PROBABLE THAN ITS NON-EXISTENCE.— Although documentary evidence may be preferable as proof of a legal relationship, other evidence of the relationship that are competent and relevant may not be excluded. The preponderance of evidence, the rule that is applicable in civil cases, is also known as the *greater weight* of evidence. There is a preponderance of evidence when the trier of facts is led to find that the existence of the contested fact is more probable than its nonexistence. In short, the rule requires the consideration of all the facts and circumstances of the cases, regardless of whether they are object, documentary, or testimonial.

3. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; MORTGAGES; WHEN VALID.— Under Article 2085 of the *Civil Code*, a mortgage, to be valid, must have the following requisites, namely: (a) that it be constituted to secure the fulfillment of a principal obligation; (b) that the mortgagor be the absolute owner of the thing mortgaged; and (c) that the person constituting the mortgage has free disposal of the property, and in the absence of the right of free disposal, that the person be legally authorized for the purpose.

4. ID.; ID.; ID.; ID.; REAL ESTATE MORTGAGE; MORTGAGEE IN GOOD FAITH; THE STATUS OF A MORTGAGEE IN GOOD FAITH DOES NOT APPLY WHERE THE TITLE IS STILL IN THE NAME OF THE RIGHTFUL OWNER AND THE MORTGAGOR IS A DIFFERENT PERSON PRETENDING TO BE THE OWNER.— The Spouses Certeza admitted that the petitioners were the relatives by blood or affinity of their co-defendants Eleanor Tabuada, *et al*.; and that Sofia Tabuada, *et al*. and the petitioners had been living in their respective residences built on the property subject of the mortgage. Such admissions belied the Spouses Certeza's contention of being mortgagees in good faith. At the very least, they should have been prudent and cautious enough as to have inquired about Eleanor Tabuada's assertion of her capacity and authority to mortgage in view of the actual presence of other persons like the petitioners herein on the property. Such prudence and caution were demanded of persons like them who are about to deal with realty; they should not close their eyes to facts that should put a reasonable man on his guard and still claim he acted in good faith. Indeed, the status of a mortgagee in good faith does not apply where the title is still in the name of the rightful owner and the mortgagor is a different person pretending to be the owner. In such a case, the mortgagee is not an innocent mortgagee for value and the registered owner will generally not lose his title.

5. ID.; ID.; PERSONS AND FAMILY RELATIONS; FUNERALS; DISRESPECT TO THE DEAD; AS A GROUND FOR THE FAMILY OF THE DECEASED TO RECOVER MORAL AND MATERIAL DAMAGES, IT ENVISIONS THE COMMISSION OF THE DISRESPECT DURING THE PERIOD OF MOURNING OVER THE DEMISE OF THE DECEASED OR ON THE OCCASION OF THE FUNERAL OF THE MORTAL REMAINS OF THE DECEASED.— The petitioners cannot recover moral damages from Eleanor Tabuada on the ground of "disrespect to the dead." The *Civil Code* provision under Article 309 on showing "disrespect to the dead" as a ground for the family of the deceased to recover moral and material damages, being under the title of *Funerals*, obviously envisions the commission of the disrespect during the period of mourning over the demise of the deceased or on the occasion of the funeral of the mortal remains of the deceased. Neither was true herein. Hence, the act of Eleanor Tabuada of

fraudulently representing the late Loreta Tabuada did not amount to disrespect to the dead as basis for the recovery of moral damages.

APPEARANCES OF COUNSEL

Reyes and Reyes Law Office for petitioners.
Esteban Angeles B. Contreras for respondents spouses Bernan & Eleanor Certeza.

D E C I S I O N

BERSAMIN, *J.*:

Competent proof of a legal relationship is not limited to documentary evidence. Object and testimonial evidence may be admitted for the same purpose. Indeed, the relationship may be established by all the relevant facts and circumstances that constitute a preponderance of evidence.

A person constituting a mortgage should be the owner of the property, or should have the right of free disposal of it, or, in the absence of the right of free disposal, such person should be legally authorized for the purpose. Otherwise, the mortgage is null and void.

The Case

This appeal seeks to undo the decision promulgated on September 30, 2009,[1] whereby the Court of Appeals (CA) reversed and set aside the judgment rendered in favor of the petitioners in Civil Case No. 05-2842 on January 18, 2006 by the Regional Trial Court (RTC), Branch 28, in Iloilo City; and dismissed the complaint in Civil Case No. 05-2842, an action commenced to declare the nullity of a mortgage and damages.[2]

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[1] *Rollo*, pp. 47-58; penned by Associate Justice Samuel H. Gaerlan, with Associate Justice Franchito N. Diamante and Associate Justice Edgardo L. Delos Santos concurring.

[2] *Id*. at 73-77, penned by Presiding Judge Loida J. Diestro-Maputol.

Antecedents

On January 27, 2005, the petitioners commenced Civil Case No. 05- 28420 in the RTC against respondents Spouses Bernan and Eleanor Certeza (Spouses Certeza), Eleanor Tabuada, Julieta Trabuco and Laureta Redondo. The complainant included a prayer for a temporary restraining order (TRO) and for the issuance of the writ of preliminary injunction.[3]

Summons and the copy of the complaint and its annexes, along with the notice of raffle, were served by personal and substituted service on the respondents on January 31, 2005 at their respective stated addresses. According to the returns of service, respondent Eleanor Tabuada personally received the summons and notice of raffle but refused to acknowledge receipt thereof; Redondo received her summons through her husband, Emilio, who also refused to acknowledge receipt thereof; Trabuco was served with summons through her neighbor Grace Miguel, who also did not acknowledge receipt; and the Spouses Certeza received their summons personally and acknowledged receipt thereof.[4]

For failure of the respondents to file their answers within the reglementary period, the petitioners filed a *Motion to Declare Defendants in Default and for Judgment Based on Complaint* on February 28, 2005.[5]

On March 3, 2005, the Spouses Certeza wrote the Presiding Judge of the RTC to manifest that they had been informed by their secretary who had attended in their behalf the February 3, 2005 hearing of the application for the TRO that there was an on-going negotiation for settlement between the petitioners and respondents Eleanor Tabuada, Trabuco and Redondo; and that in view of the pendency of the *Motion to Declare Defendants in Default and for Judgment Based on Complaint*, the Spouses Certeza were thereby merely expressing the intention to file their answer.[6]

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

[4] *Id*.

[5] *Id*.

[6] *Id*.

On March 21, 2005, Eleanor Tabuada, Trabuco and Redondo submitted their *Motion to Admit Answer* (with their *Answer with Counter-claim and Cross-claim* attached). The petitioners opposed the Motion to Admit Answer on March 29, 2005.[7]

On May 11, 2005, the RTC denied the *Motion to Admit Answer*, and declared Eleanor Tabuada, Trabuco and Redondo in default. It likewise declared the Spouses Certeza in default for failure to file their answer.[8]

On June 7, 2005, the respondents submitted their *Motion to Set Aside Order of Default*, which the petitioners opposed on June 14, 2005.[9]

On June 30, 2005, the RTC denied the *Motion to Set Aside Order of Default*,[10] the material portion of the order of denial stating:

> Records show that defendants-spouses Certeza were served summons on January 31, 2005. They filed their answer on March 21, 2005 only AFTER plaintiffs have already filed a motion to declare them in default. The belated filing of the answer could not be countenanced by this Court considering that defendants were aware of the pendency of this case as evidenced by the presence of their representative during the hearing on February 3, 2005 on the incident for the issuance of a temporary restraining order.[11]

At the *ex parte* hearing held on September 9, 2005 to receive their evidence, the petitioners presented Sofia Tabuada, who testified that her late husband was Simeon Tabuada, the son of Loreta Tabuada and the brother-in- law of defendant Eleanor Tabuada; that her co-plaintiffs were her daughters; that defendant Julieta Trabuco was the daughter of Eleanor Tabuada while Laureta Redondo was the latter's neighbor; that Loreta Tabuada had died on April 16, 1990 while her husband had died on July

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[7] *Id*.

[8] *Id*.

[9] *Id*. at 48-49.

[10] *Id*. at 49.

[11] *Id*.

18, 1997; that she received the notice sent by the Spouses Certeza regarding their land, known as Lot 4272-B-2, located at Barangay Tacas, Jaro, Iloilo City that her husband had inherited from his mother, Loreta Tabuada, and where they were residing, informing them that the land had been mortgaged to them (Spouses Certeza); that she immediately inquired from Eleanor Tabuada and Trabuco about the mortgage, and both admitted that they had mortgaged the property to the Spouses Certeza; that she was puzzled to see the signature purportedly of Loreta Tabuada on top of the name Loreta Tabuada printed on the *Mortgage of Real Rights* dated July 1, 1994 and the *Promissory Note* dated July 4, 1994 despite Loreta Tabuada having died on April 16, 1990; that the property under mortgage was where she and her daughters were residing; that the notice caused her to lose her appetite and sleepless nights, and she suffered hypertension, which entitled her to moral damages of ₱100,000.00; that she engaged her counsel to pursue the case against the defendants, paying counsel ₱40,000.00; and that she further incurred litigation expenses of ₱5,000.00.[12]

The petitioners offered for admission the following exhibits, namely: (a) the death certificate of Loreta Yulo Tabuada that indicated April 16, 1990 as the date of death; (b) Transfer Certificate of Title (TCT) No. T-82868 of the Register of Deeds of Iloilo City covering Lot No. 4272-B-2 situated in Jaro, Iloilo City and registered in the name of Loreta Tabuada; (c) the *Promissory Note* dated July 4, 1994 for ₱68,000.00 executed by Loreta Tabuada; (d) the *Mortgage of Real Rights* dated July 1, 1994 involving Lot No. 4272-B-2 under TCT No. T-82868 executed by Loreta Tabuada as the mortgagor; (e) the list of payments of the principal obligation subject of the real estate mortgage and the interests; and (f) the demand letter dated August 12, 2004 from the Spouses Certeza addressed to Loreta Tabuada demanding the payment of the total obligation of ₱415, 452.94.[13]

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[12] *Id.*

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

Judgment of the RTC

On January 18, 2006, the RTC rendered judgment in favor of the petitioners,[14] decreeing thusly:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiffs Sofia Tabuada, Novee Yap, Ma. Loreta Nadal, and Gladys Evidente, and against defendants Eleanor Tabuada, Julieta Trabuco, Laureta Redondo and Spouses Bernan and Eleanor Certeza. The Mortgage of Real Rights dated July 1, 1994 and the Promissory Note dated July 4, 1994, are hereby declared null and void. Defendants are further ordered to pay plaintiffs, jointly and severally, the following:
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> a. moral damages amounting to Php 50,000.00;
>
> b. attorney's fees amounting to P10,000.00; and
>
> c. costs of suit.
>
> SO ORDERED.[15]

The RTC declared the *Mortgage of Real Rights* dated July 1, 1994 null and void for not complying with the essential requisites of a real estate mortgage. It opined that based on the complaint and the testimony of Sofia Tabuada "Eleanor Tabuada, who [was] not the absolute owner of Lot No. 4272-B-2, and without having the legal authority to mortgage said property [had] misrepresented herself as the deceased Loreta Tabuada and mortgaged the property without the knowledge of herein plaintiffs, and benefited from said mortgage to the detriment of the rights and interests of plaintiffs."[16] It ruled that moral damages were proper under Article 309, of the *Civil Code* based on the showing of disrespect to the dead.[17]

The respondents appealed.

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[14] *Supra* note 2.

[15] *Rollo*, pp. 76-77.

[16] *Id*. at 76.

[17] *Id.*

Decision of the CA

On September 30, 2009, the CA promulgated its decision,[18] reversing and setting aside the judgment of the RTC, and dismissing Civil Case No. 05-28420 instead,[19] ruling:

> **WHEREFORE**, the instant appeal is **GRANTED**. The Decision dated January 18, 2006 of the Regional Trial Court, Branch 28, Iloilo City in Civil Case No. 05-2842 for Declaration of Nullity of Mortgage and Damages with Prayer for Issuance of Preliminary Injunction and Temporary Restraining Order is **REVERSED** and **SET ASIDE**. Accordingly, the complaint docketed as Civil Case No. 05-2842 is hereby **DISMISSED**.
>
> **SO ORDERED**.

The petitioners moved for reconsideration,[20] but the CA denied their motion for reconsideration on March 7, 2011.[21]

Issues

Did the CA seriously err in reversing the RTC considering that there was ample evidence competently establishing the relationship of plaintiff Sofia Tabuada to the late Loreta Tabuada?

In addition, there is need to resolve whether or not the award of moral damages based on disrespect to the dead was legally proper.

Ruling of the Court

We reverse the CA, and reinstate the judgment of the RTC, but we delete the award of moral damages based on disrespect to the dead for being legally improper.

1.
The legal relationship of Sofia Tabuada with

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[18] *Id*. at 58.

[19] *Supra* note 1.

[20] *Id*. at 26-27; penned by Associate Justice Delos Santos, with Associate Justice Agnes Reyes-Carpio and Associate Justice Eduardo B. Peralta, Jr. concurring.

[21] *Id.* at 29-41.

deceased Loreta Tabuada was established by preponderance of evidence

The CA found merit in the contention that the petitioners were not able to prove by preponderance of evidence that they were the legal heirs of the late Loreta Tabuada, the registered holder of the title over the mortgaged real property. The CA noted that the death certificate the petitioners presented was not an authenticated copy on security paper issued by the National Statistics Office (now Philippine Statistics Authority); and that the name of the deceased on the death certificate (Loreta Yulo Tabuada) did not match the name of the registered title holder (Loreta H. Tabuada). It pointed out that the "discrepancy is material as it puts in issue the real identity of the Loreta H. Tabuada who the plaintiffs claim is their predecessor-in-interest and the person whose name appears in the death certificate as Loreta Yulo Tabuada. Consequently this inconsistency puts in doubt the plaintiffs-appellees' ownership over Lot No. 4272-B-2."[22]

The CA thereby underscored that the petitioners did not prove Sofia Tabuada's legal relationship with the late Loreta Tabuada because she did not present documentary evidence thereof.[23]

The CA grossly erred.

Under the *Rules of Court*, evidence – as the means of ascertaining in a judicial proceeding the truth respecting a matter of fact[24] – may be object,[25] documentary,[26] and testimonial.[27] It is required that evidence, to be admissible, must be relevant and competent.[28] But the admissibility of evidence should not

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[22] *Supra* note 1, at 50-57.

[23] *Id*. at 57.

[24] Section 1, Rule 128 of the *Rules of Court*.

[25] Section 1, Rule 130 of the *Rules of Court*.

[26] Section 2, Rule 130 of the *Rules of Court*.

[27] Section 20, Rule 130 of the *Rules of Court*.

[28] Section 3, Rule 128 of the *Rules of Court*.

be confused with its probative value. Admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue. Thus, a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence.[29]

Although documentary evidence may be preferable as proof of a legal relationship, other evidence of the relationship that are competent and relevant may not be excluded. The preponderance of evidence, the rule that is applicable in civil cases, is also known as the *greater weight* of evidence. There is a preponderance of evidence when the trier of facts is led to find that the existence of the contested fact is more probable than its nonexistence.[30] In short, the rule requires the consideration of all the facts and circumstances of the cases, regardless of whether they are object, documentary, or testimonial.[31]

The mere discrepancy – as perceived by the CA – between the name of the deceased entered in the death certificate (Loreta Yulo Tabuada) and the name of the titleholder (Loreta H. Tabuada) did not necessarily belie or disprove the legal relationship between Sofia Tabuada and the late Loreta Tabuada.

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[29] *Heirs of Lourdes Saez Sabanpan v. Comorposa*, G.R. No. 152807, August 12, 2003, 408 SCRA 692, 700.

[30] *Far East Bank & Trust Company v. Chante*, G.R. No. 170598, October 9, 2013, 707 SCRA 149, 163.

[31] Section 1, Rule 133 of the *Rules of Court* states that preponderance of evidence in civil cases is determined by considering "**all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.**"

To establish filiation, the courts — like the RTC herein — should consider and analyze not only the relevant testimonies of witnesses who are competent but other relevant evidence as well.[32] There was on record herein Sofia Tabuada's unchallenged declaration of her being the daughter-in-law of the registered titleholder.[33] Also on record was the petitioners' being in the actual possession of Lot No. 4272-B-2, which they had been using as the site for their family residence.[34] Such established circumstances indicated that the deceased Loreta Yulo Tabuada and titleholder Loreta H. Tabuada could only be one and the same person. Moreover, even the Spouses Certeza were aware that respondents Eleanor Tabuada and Trabuco were the relatives of Sofia Tabuada; and that the respective families of Eleanor Tabuada, Trabuco and Sofia Tabuada actually resided on the same lot.[35] Verily, the facts and circumstances sufficiently and competently affirmed the legal relationship between Sofia Tabuada and the late titleholder Loreta H. Tabuada.

2.
Real estate mortgage was null and void

Under Article 2085 of the *Civil Code*, a mortgage, to be valid, must have the following requisites, namely: (a) that it be constituted to secure the fulfillment of a principal obligation; (b) that the mortgagor be the absolute owner of the thing mortgaged; and (c) that the person constituting the mortgage has free disposal of the property, and in the absence of the right of free disposal, that the person be legally authorized for the purpose.[36]

It is uncontested that the late Loreta Tabuada had died in 1990, or four years before the mortgage was constituted; and

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[32] *People v. Sales*, G.R. No. 177218, October 3, 2011, 658 SCRA 367.

[33] *Rollo*, p. 76.

[34] *Id*. at 49.

[35] *Id.* at 114.

[36] *Philippine National Bank v. Reblando*, G.R. No. 194014, September 12, 2012, 680 SCRA 531, 544.

that Eleanor Tabuada and Trabuco admitted to petitioner Sofia Tabuada that they had mortgaged the property to the Spouses Certezas. Accordingly, the RTC was fully justified in declaring the nullity of the mortgage based on its finding that Eleanor Tabuada had fraudulently represented herself to the Spouses Certeza as the late Loreta Tabuada, the titleholder.[37] That the titleholder had been dead when the mortgage was constituted on the property by Eleanor Tabuada was not even contested by Eleanor Tabuada and Trabuco. In any event, Eleanor Tabuada had not been legally authorized to mortgage the lot to the Spouses Certeza.

3.
Respondents Spouses Certeza were not mortgagees in good faith

The Spouses Certeza contend that they were mortgagees in good faith considering that they had no notice prior to the filing of Civil Case No. 05- 28420 that the real owner of the property had died several years before the execution of the mortgage; and that they had believed in good faith in the representations made by Eleanor Tabuada that she had been Loreta Tabuada, the titleholder.[38]

The contentions of the Spouses Certeza lack persuasion.

The Spouses Certeza admitted that the petitioners were the relatives by blood or affinity of their co-defendants Eleanor Tabuada, *et al.*;[39] and that Sofia Tabuada, *et al.* and the petitioners had been living in their respective residences built on the property subject of the mortgage.[40] Such admissions belied the Spouses Certeza's contention of being mortgagees in good faith. At the very least, they should have been prudent and cautious enough as to have inquired about Eleanor Tabuada's assertion of her

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[37] *Rollo*, p. 51.

[38] *Id.* at 51.

[39] *Id.* at 114.

[40] *Id.*

capacity and authority to mortgage in view of the actual presence of other persons like the petitioners herein on the property. Such prudence and caution were demanded of persons like them who are about to deal with realty; they should not close their eyes to facts that should put a reasonable man on his guard and still claim he acted in good faith.[41] Indeed, the status of a mortgagee in good faith does not apply where the title is still in the name of the rightful owner and the mortgagor is a different person pretending to be the owner. In such a case, the mortgagee is not an innocent mortgagee for value and the registered owner will generally not lose his title.[42]

4.

Award of moral damages reversed because action was not an instance of disrespect to the dead

The RTC awarded moral damages to the petitioners based on disrespect to the dead on the part of Eleanor Tabuada for fraudulently signing and executing the mortgage by impersonating the late Loreta Tabuada.

We hold that the RTC thereby fell into a legal error that the Court should correct. The petitioners cannot recover moral damages from Eleanor Tabuada on the ground of "disrespect to the dead."[43] The *Civil Code* provision under

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[41] *Embrado v. Court of Appeals*, G.R. No. 51457, June 27, 1994, 233 SCRA 335.

[42] *Ereña v. Querrer-Kauffman*, G.R. No. 165853, June 22, 2006, 492 SCRA 298, 320.

[43] Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;

(2) Quasi-delicts causing physical injuries;

(3) Seduction, abduction, rape, or other lascivious acts;

(4) Adultery or concubinage;

(5) Illegal or arbitrary detention or arrest;

(6) Illegal search;

(7) Libel, slander or any other form of defamation;

Article 309[44] on showing "disrespect to the dead" as a ground for the family of the deceased to recover moral and material damages, being under the title of *Funerals*, obviously envisions the commission of the disrespect during the period of mourning over the demise of the deceased or on the occasion of the funeral of the mortal remains of the deceased. Neither was true herein. Hence, the act of Eleanor Tabuada of fraudulently representing the late Loreta Tabuada did not amount to disrespect to the dead as basis for the recovery of moral damages.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on September 30, 2009; **REINSTATES** the judgment rendered on January 18, 2006 by the Regional Trial Court, Branch 28, in Iloilo City in Civil Case No. 05-28420 subject to the deletion of the award of moral damages; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

Leonardo-de Castro, C.J. (*Chairperson*), *del Castillo*, and *Jardeleza, JJ.*, concur.

Tijam, J., on official leave.

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(8) Malicious prosecution;

(9) **Acts mentioned in Article 309;**

(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35. xxx

[44] Art. 309. Any person who shows disrespect to the dead, or wrongfully interferes with the funeral shall be liable to the family of the deceased for damages, material and moral.

FIRST DIVISION

[G.R. No. 197074. September 12, 2018]

CITIBANK, N. A., *petitioner, vs.* **PRISCILA B. ANDRES and PEDRO S. CABUSAY, JR.,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT; ONCE A FINAL JUDGMENT IS EXECUTORY, IT BECOMES IMMUTABLE AND UNALTERABLE, AND IT CANNOT BE MODIFIED IN ANY RESPECT BY ANY COURT; EXCEPTIONS.— The doctrine of immutability of judgment provides that once a final judgment is executory, it becomes immutable and unalterable. It cannot be modified in any respect by any court. The purpose of the doctrine is *first*,to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business, and *second*, to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. Nonetheless, there are exceptions to the foregoing doctrine. These are: *first*, the correction of clerical errors; *second*, *nunc pro tunc* entries which cause no prejudice to any party; *third*, void judgments; and *fourth*, whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioner.

Lara Law Office for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] assailing the Decision[2] dated January 12, 2011 and Resolution[3] dated May 16, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 110524 which annulled and set aside the Decision[4] dated March 31, 2009 and Resolution[5] dated June 30, 2009 of the National Labor Relations Commission (NLRC) Second Division in NLRC NCR CASE 04-04447-03. The NLRC Second Division set aside the finality of the Resolution[6] dated December 28, 2007 and Entry of Judgment[7] dated April 18, 2008 issued by the NLRC First Division in NLRC NCR CA No. 039174-04 (NLRC NCR CASE 04-04447-2003).

Respondents Priscila B. Andres (Andres) and Pedro S. Cabusay, Jr. (Cabusay) [collectively, respondents] were employed as Reconciliation Officer and SpeedCollect Officer, respectively, of the SpeedCollect Unit of petitioner Citibank, N.A. (petitioner). The SpeedCollect Unit is in charge of implementing, monitoring, and documenting the collection and crediting of payments made by petitioner's clients. On November

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[1] Under Rule 45, *rollo* (G.R. No. 197074), pp. 27-57.

[2] *Id.* at 11-20. Penned by Associate Justice Magdangal M. De Leon, with the concurrence of Associate Justices Manuel V. Lopez and Manuel M. Barrios of the Special Fifteenth Division.

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

[4] *Id*. at 194-200. Penned by Commissioner Raul T. Aquino, with the concurrence of Commissioner Angelita A. Gacutan of the NLRC Second Division.

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

[6] *Id*. at 179-180. Penned by Commissioner Romeo L. Go, with the concurrence of Commissioners Gerardo C. Nograles and Perlita B. Velasco of the NLRC First Division.

[7] *Id.* at 189.

5, 2002, one of petitioner's clients complained that the check payments from its customers were not credited to their account. This prompted petitioner to launch an internal investigation where respondents voluntarily submitted themselves to a fact-finding interview. After the interview, petitioner referred the matter to its Internal Investigation Unit, the Citigroup Security Investigative Services (CSIS).[8]

The CSIS conducted an investigation and submitted a report detailing the alleged misdeeds committed by respondents. Eulalia M. Herrera (Herrera), Vice-President of petitioner's Human Resources Department, then met with respondents separately. She informed respondents that full-blown administrative proceedings will be conducted to determine the appropriate actions against them, if any, based on the CSIS report. Herrera also informed respondents that if they are found guilty of misconduct, their employment may be terminated, and the termination will be reported to the *Bangko Sentral ng Pilipinas.* In order to avoid such a result, Cabusay and Andres opted to file their respective resignation letters effective April 2 and 3, 2003, respectively.[9]

Respondents thereafter filed a complaint for constructive dismissal with claims for moral and exemplary damages, and attorney's fees against petitioner before the Labor Arbiter (LA). The LA, however, dismissed respondents' complaint in its Decision[10] dated December 29, 2003. Consequently, respondents filed an appeal with the NLRC. On October 20, 2005, the NLRC First Division issued its Decision[11] (October Decision) reversing the LA Decision and ruling in respondents' favor. Petitioner filed a motion for reconsideration, but it was denied by the

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[8] *Id.* at 512-513.

[9] *Id.* at 513.

[10] *Id.* at 150-161. Penned by Labor Arbiter Pablo C. Espiritu, Jr.

[11] *Id.* at 163-177. Penned by Commissioner Romeo L. Go, with the concurrence of Commissioners Benedicto Ernesto R. Bitonio, Jr. and Perlita B. Velasco of the NLRC First Division.

NLRC First Division in its Resolution[12] dated December 28, 2007 (December Resolution).[13] On February 15, 2008, the NLRC First Division mailed a copy of its December Resolution to petitioner through Herrera and its counsel of record, the Ponce Enrile Reyes & Manalastas Law Offices (PECABAR).[14]

Meanwhile, on January 25, 2008, the Romulo Mabanta Buenaventura Sayoc & De Los Angeles Law Offices (RMBSA) entered its appearance as collaborating counsel for petitioner. PECABAR subsequently withdrew its appearance as counsel for petitioner, with the latter's consent, on February 19, 2008.[15]

In due course, the NLRC First Division issued an Entry of Judgment on April 18, 2008.[16] Respondents promptly moved for the execution of the NLRC ruling on May 12, 2008.[17]

On June 25, 2008, petitioner filed an urgent motion to set aside finality of judgment. The following day, it also filed an urgent motion to elevate *expediente* to the NLRC First Division.[18] Due to the inhibition from the case of Commissioner Romeo L. Go of the NLRC First Division, the re-raffle of the case was indorsed.[19] The Chairman of the NLRC later issued Administrative Order No. 11-16, series of 2008, endorsing the case to the NLRC Second Division.[20]

Petitioner alleged in its urgent motion to set aside finality of judgment that while a copy of the December Resolution was sent to PECABAR, its present counsel, RMBSA, did not similarly

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[12] *Id.* at 179-180.

[13] *Id.* at 513-515.

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

[15] *Id.* at 13.

[16] *Id.* at 12-13.

[17] *Id.* at 36.

[18] *Id.* at 37.

[19] Records, p. 335.

[20] *Rollo* (G.R. No. 197074), p. 196.

receive a copy. Moreover, the copy sent to petitioner (in the name of Eulalia Herrera) was returned unserved due to Herrera's resignation. Aside from the December Resolution, petitioner also denied having received copies of the Entry of Judgment and Notice of Hearing issued by the NLRC First Division. Thus, it claimed that it had been denied of its right to due process. Consequently, the October Decision did not attain finality and cannot be executed.[21]

Acting on petitioner's motion, the NLRC Second Division issued its Decision[22] dated March 31, 2009, the dispositive portion of which states:

> WHEREFORE, premises considered, the finality of the Resolution and the corresponding Entry of Judgment, dated April 18, 2008, are hereby ordered SET ASIDE.
>
> SO ORDERED.[23]

The NLRC Second Division accepted RMBSA's claim that it did not receive copies of the December Resolution, Entry of Judgment, and Notice of Hearing of the NLRC First Division. Hence, Section 6,[24] Rule III of the 2005 Revised Rules of

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[21] *Id.* at 201-207.

[22] *Supra* note 4.

[23] *Rollo* (G.R. No. 197074), p. 200.

[24] Sec. 6. *Service of Notices and Resolutions.* – a) Notices or summons and copies of orders, shall be served on the parties to the case personally by the Bailiff or duly authorized public officer within three (3) days from receipt thereof or by registered mail; Provided, that in special circumstances, service of summons may be effected in accordance with the pertinent provisions of the Rules of Court; Provided further, that in cases of decisions and final awards, copies thereof shall be served on both parties and their counsel or representative by registered mail; Provided further that in cases where a party to a case or his counsel on record personally seeks service of the decision upon inquiry thereon, service to said party shall be deemed effected upon actual receipt thereof; Provided finally, that where parties are so numerous, service shall be made on counsel and upon such number of complainants, as may be practicable, which shall be considered substantial compliance with Article 224 (a) of the Labor Code, as amended.

Procedure of the NLRC was not complied with. According to the NLRC, since petitioner was deprived of its right to due process, it should now be given sufficient opportunity to present its position.[25]

Respondents filed a motion for reconsideration, but this was denied. Thus, they filed a petition for *certiorari* before the CA to assail the ruling of the NLRC Second Division (the First CA Petition; CA-G.R. SP No. 110524).[26]

A few days after respondents filed the First CA Petition,[27] petitioner also filed a petition for *certiorari* assailing the October Decision and December Resolution of the NLRC First Division before the CA (the Second CA Petition; CA-G.R. SP No. 110376).[28] The First CA Petition was raffled to the Special Fifteenth Division of the CA, while the Second CA Petition was raffled to its Special Eleventh Division.

On January 12, 2011, the Special Fifteenth Division of the CA rendered its Decision[29] granting the First CA Petition. Thus:

WHEREFORE, the instant petition is hereby **GRANTED**. The challenged *Decision* and *Resolution* of respondent NLRC are **ANNULLED** and **SET ASIDE**.

SO ORDERED.[30]

According to the CA, PECABAR failed to give proper and adequate notice of its withdrawal as petitioner's counsel to the NLRC First Division. It noted that a copy of the December

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For purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record.

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[25] *Rollo* (G.R. No. 197074), pp. 197-199.

[26] *Id.* at 11.

[27] The First CA Petition was dated September 7, 2009. *Id.* at 39 & 251.

[28] The Second CA Petition was filed on September 9, 2009. *Id.* at 630.

[29] *Supra* note 2.

[30] *Rollo* (G.R. No. 197074), p. 19.

Resolution was mailed to PECABAR on February 15, 2008, while PECABAR filed its motion to withdraw as counsel four days later. After receiving a copy of the December Resolution, PECABAR did not notify the NLRC First Division that it had already withdrawn its appearance or that it had forwarded the copy to petitioner. Therefore, the CA ruled that petitioner was not deprived of due process. It reminded petitioner that the review of the decision of the NLRC is a mere statutory privilege. Moreover, considering that it took RMBSA four months after PECABAR's withdrawal as counsel to inquire into the records of the case, it may be said that RMBSA was guilty of negligence.[31]

Petitioner moved for the reconsideration of the First CA Decision, but this was denied by the CA, prompting petitioner to file the present petition before us.

Meanwhile, on July 12, 2011, the Special Eleventh Division of the CA granted the Second CA Petition.[32] It set aside the ruling of the NLRC First Division and reinstated that of the LA.[33] Respondents filed a petition for review on *certiorari* before us to question this ruling. This was docketed as G.R. No. 201344.[34] However, in our Resolution[35] dated June 27, 2012, we denied G.R. No. 201344 for being filed out of time, late payment of docket and other fees and deposit for costs, as well as failure to comply with the requirements under Rule 45 and other related provisions of the Rules of Procedure. Our resolution became final and executory on August 28, 2012, and was recorded in the Book of Entries of Judgment.[36]

The issue presented before us now is whether the December Resolution and the Entry of Judgment issued by the NLRC First Division should be set aside.

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

[32] *Id.* at 511-524.

[33] *Id.* at 523.

[34] *Andes v. Citibank, N.A.*, June 27, 2012.

[35] *Rollo* (G.R. No. 201344), pp. 71A-71B.

[36] *Id.* at 85-86.

We grant the petition.

Ideally, the CA should have consolidated the respective petitions filed before it by petitioner and respondents. As we opined in *Serrano v. Ambassador Hotel, Inc.*:[37]

> Rather than rely on the interested party to register a motion to consolidate or the Justice to whom the case is assigned, it is best that it should be the Clerk of Court and the Division Clerks of Court of the CA who should be responsible for the review and consolidation of similarly intertwined cases. x x x[38]

This, unfortunately, was not done. Indeed, the First and Second CA Petitions questioned different rulings of the NLRC that were issued by different NLRC divisions. Nonetheless, they involved the same parties and closely-related subjects.[39] A ruling in this case should have rendered G.R. No. 201344 moot. We are now presented with a dilemma. If we grant the petition before us, then all is well for petitioner because it would mean that the Second CA Petition was rightfully acted upon by the Special Eleventh Division of the CA. However, if we deny this petition and uphold the ruling of the Special Fifteenth Division of the CA, then petitioner could not have appealed the October Decision and December Resolution of the NLRC, and the Special Eleventh Division of the CA could not have reversed and set aside the same. In effect, we would be disregarding a final and executory decision, which is what the Decision of the CA is, as upheld in G.R. No. 201344 with respect to the Second CA Petition. This we are loath to do.

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[37] G.R. No. 197003, February 11, 2013, 690 SCRA 226.

[38] *Id.* at 240.

[39] See RULES OF COURT, Rule 31, Sec. 1. *Consolidation.* – When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

See also *Unicapital, Inc. v. Consing, Jr.*, G.R. Nos. 175277 & 175285, September 11, 2013, 705 SCRA 511, 534.

The doctrine of immutability of judgment provides that once a final judgment is executory, it becomes immutable and unalterable.[40] It cannot be modified in any respect by any court. The purpose of the doctrine is *first,* to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business, and *second,* to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist.[41]

Nonetheless, there are exceptions to the foregoing doctrine. These are: *first,* the correction of clerical errors; *second, nunc pro tunc* entries which cause no prejudice to any party; *third,* void judgments; and *fourth,* whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.[42]

None of the exceptions obtain in this case. *First,* if we uphold the Decision of the CA on the First Petition, then it will effectively set aside the Decision of the CA on the Second Petition which has already been affirmed with finality by this Court in G.R. No. 201344. Clearly, that is not a mere correction of a clerical error. *Second,* the objective of *nunc pro tunc* entries is to place in proper form on the record the judgment that had been previously rendered to make it speak the truth, so as to make it show what the judicial action really was.[43] Here, there is no ambiguity or confusion as to the ruling of the CA on the Second Petition. *Third,* the Decision of the CA regarding the Second Petition is not void as it was issued by a court having jurisdiction

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[40] *Pinewood Marine (Phils.), Inc. v. EMCO Plywood Corporation,* G.R. No. 179789, June 17, 2015, 759 SCRA 22, 40, citing *PCI Leasing and Finance, Inc. v. Milan,* G.R. No. 151215, April 5, 2010, 617 SCRA 258.

[41] *Id.*

[42] *Tomas v. Criminal Investigation and Detection Group-Anti-Organized Crime Division (CIDG-AOCD),* G.R. No. 208090, November 9, 2016, 808 SCRA 334, 345, citing *FGU Insurance Corporation v. Regional Trial Court of Makati City, Branch 66,* G.R. No. 161282, February 23, 2011, 644 SCRA 50, 56.

[43] *Sofio v. Valenzuela* , G.R. No. 157810, February 15, 2012, 666 SCRA 55, 66. Citation omitted.

over the case. *Fourth,*no circumstance has transpired that would render the execution of the Decision of the CA concerning the Second Petition unjust and inequitable.

Given the foregoing, we are constrained to respect the final and executory Decision of the CA on the Second CA Petition, which we upheld in G.R. No. 201344. While we dismissed the petition there based on a procedural ground, namely, the petition of herein respondents was time-barred, it was still a decision on the merits.[44] Accordingly, we must finally put this issue to rest.

WHEREFORE, the petition is **GRANTED**. The January 12, 2011 Decision and May 16, 2011 Resolution of the Court of Appeals in CA-G.R. SP No. 110524 are hereby **SET ASIDE**. The March 31, 2009 Decision and June 30, 2009 Resolution of the National Labor Relations Commission Second Division are **REINSTATED**.

SO ORDERED.

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

Tijam, J., on official business.

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[44] *Magat, Sr. v. Tantrade Corporation*, G.R. No. 205483, August 23, 2017, citing *Videogram Regulatory Board v. Court of Appeals*, G.R. No. 106564, November 28, 1996, 265 SCRA 50.

FIRST DIVISION

[G.R. No. 198124. September 12, 2018]

JOHN CARY TUMAGAN, ALAM HALIL, and BOT PADILLA, *petitioners, vs.* **MARIAM K. KAIRUZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTIES; THE JOINDER OF INDISPENSABLE PARTIES IS MANDATORY BECAUSE THE PRESENCE OF INDISPENSABLE PARTIES IS NECESSARY TO VEST THE COURT WITH JURISDICTION, AND THE RESPONSIBILITY OF IMPLEADING ALL THE INDISPENSABLE PARTIES RESTS ON THE PLAINTIFF.— An indispensable party is a party in interest without whom no final determination can be had of an action and who shall be joined either as plaintiffs or defendants. The presence of indispensable parties is necessary to vest the court with jurisdiction. x x x [T]he joinder of indispensable parties is not a mere technicality. We have ruled that the joinder of indispensable parties is **mandatory** and **the responsibility of impleading all the indispensable parties rests on the plaintiff**. In *Domingo v. Scheer,* we ruled that without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality. Otherwise stated, the absence of an indispensable party renders all subsequent actions of the court **null and void for want of authority to act not only as to the absent party but even as to those present**.

2. MERCANTILE LAW; CORPORATION LAW; CORPORATION CODE; INTRA-CORPORATE CONTROVERSY; HOW DETERMINED.— In *Matling Industrial and Commercial Corporation v. Coros,* the Court summarized the guidelines for determining whether a dispute constitutes an intra-corporate controversy or not. There, we held that in order that the SEC (now the RTC) can take cognizance of a case, the controversy must pertain to any of

the following relationships: (a) between the corporation, partnership, or association and the public; (b) between the corporation, partnership, or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership, or association and the State as far as its franchise, permit, or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves. However, not every conflict between a corporation and its stockholders involves corporate matters. Concurrent factors, such as the status or relationship of the parties, or the nature of the question that is the subject of their controversy, must be considered in determining whether the SEC (now the RTC) has jurisdiction over the controversy.

3. ID.; ID.; ID.; CORPORATE PROPERTIES; SHAREHOLDERS ARE IN NO LEGAL SENSE THE OWNERS OF CORPORATE PROPERTY, WHICH IS OWNED BY THE CORPORATION AS A DISTINCT LEGAL PERSON.— Here, it is undisputed that the property has already been transferred to BIRI and registered in its name. It is likewise undisputed that based on the MOA, the Kairuzes own 30% of the outstanding capital stock of BIRI. This, however, does not make Mariam a co-owner of the property of BIRI, including the property subject of this case. Shareholders are in no legal sense the owners of corporate property, which is owned by the corporation as a distinct legal person. At most, Mariam's interest as a shareholder is purely inchoate, or in sheer expectancy of a right, in the management of the corporation and to share in its profits, and in its properties and assets on dissolution after payment of the corporate debts and obligations.

APPEARANCES OF COUNSEL

Romeo F. Buslayan, Jr. for petitioners.

Agranzamendez Liceralde Gallardo & Associates for respondent.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] seeking to set aside the Decision[2] dated December 21, 2010 and Resolution[3] dated July 22, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 112613. The CA granted respondent's petition and reversed the Decision[4] dated December 11, 2009 of Branch 10 of the Regional Trial Court (RTC), La Trinidad, Benguet, which affirmed the dismissal of the complaint for ejectment on the ground of failure to implead an indispensable party rendered by the 5th Municipal Circuit Trial Court (MCTC), Tuba-Sablan, Benguet.[5]

I.

In her complaint for ejectment filed before the MCTC, respondent Mariam K. Kairuz (Mariam) alleged that she had been in actual and physical possession of a 5.2-hectare property located at Tadiangan, Tuba, Benguet (property) until May 28, 2007. She alleged that in the afternoon of May 28, 2007, petitioners John Cary Tumagan (John), Alam Halil (Alam), and Bot Padilla (Bot) conspired with each other and took possession of the property by means of force, intimidation, strategy, threat, and stealth with the aid of armed men. After forcibly gaining entry into the property, petitioners then padlocked its three gates, posted armed men, and excluded Mariam from the property.[6] Mariam likewise sought the issuance of a temporary restraining

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[1] *Rollo,* pp. 9-28.

[2] *Id.* at 29-41. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Mario V. Lopez and Michael P. Elbinias concurring.

[3] *Id.* at 42-43.

[4] *Id.* at 57-63. Rendered by Judge Edgardo B. Diaz De Rivera, Jr.

[5] *Id.* at 44-56.

[6] CA *rollo,* p. 45.

order (TRO) and/or a writ of preliminary injunction (WPI) against petitioners.[7]

In their answer, petitioners averred that Mariam could not bring the present action for forcible entry because she was never the sole owner or possessor of the property.[8] They alleged that Mariam is the spouse of the late Laurence Ramzy Kairuz (Laurence), who co-owned the property with his sisters, Vivien Kairuz (Vivien) and Elizabeth D' Alessandri (Elizabeth). Petitioners claimed that the property is a good source of potable water and is publicly known as Kairuz Spring. During his lifetime, Laurence, in his own capacity and as attorney-in-fact for his sisters, entered into a Memorandum of Agreement[9] (MOA) with Balibago Waterworks System Incorporated (BWSI) and its affiliate company, PASUDECO, to establish a new corporation, Bali Irisan Resources, Inc. (BIRI). As stipulated in the MOA, Laurence and his two sisters will sell the property containing Kairuz Spring and other improvements to BIRI for ₱115,000,000.00. Eventually, the Kairuz family sold the property, including the bottling building, Kairuz Spring, machineries, equipment, and other facilities following the terms of the MOA. BIRI took full possession over the property and caused new certificates of title[10] to be issued. BIRI is 30% owned by the Kairuz family and 70% owned by BWSI and its allied company, PASUDECO. Its Board of Directors is composed of seven members, with a three-person Management Committee (ManCom) handling its day-to-day operations. The one seat accorded to the Kairuz family in the ManCom was initially occupied by Laurence, while the two other seats in the ManCom were occupied by John and one Victor Hontiveros. Petitioners alleged that Mariam was aware of the MOA, the ManCom, and of the operations of the BIRI properties precisely because she

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[7] *Id.* at 46-48.

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

[9] *Id.* at 64-77.

[10] TCT No. T-59325 and TCT No. T-59331.

succeeded Laurence's seat in the Board of Directors and ManCom after his death.[11]

Petitioners also asserted that under the MOA, the Kairuz family assigned their Baguio Spring Mineral Water Corporation (BSMWC) shares and water rights through the BSMWC water permit. The MOA also stipulated the continued operation of the truck water business by the Kairuzes and this was honored by BIRI. However, this privilege enjoyed by the Kairuzes is contingent on their compliance with their own obligations and conditions as set forth in the MOA. Unfortunately, upon Mariam's assumption of the truck water business as well as Lexber Subdivision water service, she started to commit actions in conflict with the best interest of BIRI, such as: (a) she opposed the required transfer of the BSMWC water permit to BIRI before the National Water Resources Board; (b) she intervened in the case filed by Baguio Water District against BIRI, weakening BIRI's position; (c) she filed a complaint before the RTC of Angeles City questioning the Deed of Assignment of the BSMWC shares executed by the Kairuz family in favor of BIRI; and (d) she asked the barangay officials at Tadiangan, Tuba and *Sangguniang Bayan* Members of Tuba to deny BIRI's offer to service the water requirements of Tuba residents.[12] This prompted BIRI's shareholders to write Mariam regarding her default on the provisions of the MOA, warning her that unless appropriate remedies are fulfilled, the MOA will be terminated.[13] Mariam refused to receive the registered mail sent by BIRI[14] and ignored their official communications, choosing instead to file the present ejectment complaint against petitioners.[15]

Furthermore, petitioners claimed that contrary to Mariam's allegations, on May 28, 2007, BIRI, as a corporation and owner

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[11] CA *rollo*, pp. 56-57.

[12] *Id.* at 58.

[13] Letters dated March 23 and May 28, 2007, *id.* at 81-82 and 78-79, respectively.

[14] *Id.* at 80.

[15] *Id.* 58-59.

of the spring property, merely exercised its legal right to prevent unauthorized persons from entering its property. The deployment of licensed security guards was intended to secure its property and prevent forcible entry into the area, specifically by people who are *"persona non-grata"* to the company.[16]

Petitioners claim that the MCTC has no jurisdiction over the action filed by Mariam because the same is an intra-corporate dispute which falls under the jurisdiction of the appropriate RTC. They further assert that BIRI's actions in terminating the MOA, disallowing entry of unauthorized persons, and the continuance of Mariam's truck water business are all pursuant to the MOA, which is the law between the parties. Thus, petitioners prayed for the dismissal of the complaint.[17]

On March 9, 2009, the MCTC dismissed the case due to Mariam's failure to implead BIRI, an indispensable party.[18] It ruled that the joinder of all indispensable parties must be made under any and all conditions, their presence being *sine qua non* to the exercise of judicial power. Thus, although it made a finding on Mariam's prior physical possession of the property, ultimately, the MCTC ruled that if an indispensable party is not impleaded, as in this case, there can be no final determination of the action.[19]

On appeal, the RTC upheld the MCTC's dismissal of the case. It ruled that since petitioners were able to establish that they acted as mere employees or agents of BIRI, the issue of possession cannot be resolved without the court first acquiring jurisdiction over BIRI. The defendants in the complaint for ejectment are John, the branch manager of BIRI who carried out BIRI 's order to secure the property with the assistance of security guards, Alam, and Bot, who are both licensed geodetic engineers hired by BIRI to conduct a location survey of the

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[16] *Id.* at 60.

[17] *Id.* at 60-61.

[18] *Rollo,* p. 55.

[19] *Id.* at 53-55.

property. The facts clearly show that they all acted in behalf of BIRI which was, in turn, allegedly exercising its right of possession as the owner of the property that would be benefited or injured by the judgment.[20]

Aggrieved, Mariam filed a petition for review before the CA.

On December 21, 2010, the CA granted the petition and reversed the RTC Decision. It ruled that the MCTC and the RTC should have limited the issue to who had prior physical possession of the disputed land. It ruled that the MCTC erred in dismissing Mariam's complaint because of a technical rule of failure to implead an indispensable party, BIRI. It pointed out that Rule 3, Section 11 of the Rules of Court provides that neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable either by order of the court on motion of the party or on its own initiative at any stage of the action. If the party refuses to implead the indispensable party despite order of the court, then the latter may dismiss the complaint/petition for the plaintiffs failure to comply therewith. Here, the CA held that the records do not disclose that there was such an order for petitioners to implead the supposed indispensable party, thus, dismissal of the case for failure to implead BIRI is improper.[21] Furthermore, since BIRI owns the property and pursuant to the MOA, the Kairuzes own 30% of BIRI, then Mariam, who was unlawfully ousted from the property by mere employees of BIRI, may file the case for ejectment. Furthermore, under Article 487 of the Civil Code, any one of the co-owners may bring an action for ejectment without necessarily joining all other co-owners. The CA, thus, upheld Mariam's right to possess the property concurrently with her co-owners.[22] The dispositive portion of the CA Decision reads:

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[20] *Id.* at 60-63.

[21] *Id.* at 35-38.

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

WHEREFORE, the *Decision* of the Regional Tr[ia]l Court dated December 11, 2009 is **REVERSED** and **SET ASIDE**. In lieu thereof, judgment is hereby rendered, ordering:

a) Respondents, their agents, deputies and employees and all persons under them, to allow petitioner's entry to the subject premises; and

b) Respondents to pay petitioner the amount of ₱25,000.00 as attorney's fees.

SO ORDERED.[23]

Hence, this petition for review where petitioners argue that the CA gravely erred in: (1) reversing the Decisions of the MCTC and the RTC dismissing the complaint for failure to implead BIRI, an indispensable party; (2) agreeing with Mariam's baseless claim of possession; and (3) not finding that the issues are intra-corporate in nature which should be best resolved before the RTC in Angeles City.[24]

The petition is meritorious.

An indispensable party is a party in interest without whom no final determination can be had of an action and who shall be joined either as plaintiffs or defendants. The presence of indispensable parties is necessary to vest the court with jurisdiction.[25]

Here, as correctly held by the MCTC and the RTC, it is indisputable that BIRI is an indispensable party, being the registered owner of the property and at whose behest the petitioner-employees acted.[26] Thus, without the participation of BIRI, there could be no full determination of the issues in this case considering that it was sufficiently established that

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[23] *Id.* at 41.

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

[25] *Lotte Phil. Co., Inc. v. Dela Cruz,* G.R. No. 166302, July 28, 2005, 464 SCRA 591, 595-596.

[26] See *Quilatan v. Heirs of Lorenzo Quilatan,* G.R. No. 183059, August 28, 2009, 597 SCRA 519.

petitioners did not take possession of the property for their own use but for that of BIRI's. Contrary to the CA's opinion, the joinder of indispensable parties is not a mere technicality. We have ruled that the joinder of indispensable parties is **mandatory** and **the responsibility of impleading all the indispensable parties rests on the plaintiff.**[27] In *Domingo v. Scheer*,[28] we ruled that without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality. Otherwise stated, the absence of an indispensable party renders all subsequent actions of the court **null and void for want of authority to act not only as to the absent party but even as to those present.**[29]

In this case, while the CA correctly pointed out that under Rule 3, Section 11 of the Rules of Court, failure to implead an indispensable party is not a ground for the dismissal of an action, it failed to take into account that it remains essential that any indispensable party be impleaded in the proceedings *before the court renders judgment.*[30] Here, the CA simply proceeded to discuss the merits of the case and rule in Mariam's favor, recognizing her prior physical possession of the subject property. This is not correct. The Decision and Resolution of the CA in this case is, therefore, null and void for want of jurisdiction, having been rendered in the absence of an indispensable party, BIRI.[31]

Nonetheless, while a remand of the case to the MCTC for the inclusion of BIRI, the non-party claimed to be indispensable, seems to be a possible solution, a review of the records reveals that the remand to the MCTC is not warranted considering that

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[27] *Domingo v. Scheer*, G.R. No. 154745, January 29, 2004, 421 SCRA 468, 483; *Quilatan v. Heirs of Lorenzo Quilatan, supra* at 524 (citation omitted).

[28] G.R. No. 154745, January 29, 2004, 421 SCRA 468, 483.

[29] *Lotte Phil. Co., Inc. v. Dela Cruz, supra* note 25 at 596.

[30] *People v. Go*, G.R. No. 201644, September 24, 2014, 736 SCRA 501, 506.

[31] See *Lotte Phil. Co., Inc. v. Dela Cruz, supra* note 25 at 595-597.

the MCTC itself did not acquire jurisdiction over Mariam's complaint for forcible entry.

From the beginning, petitioners were consistent in their position that the MCTC has no jurisdiction over the action filed by Mariam. They claim that Mariam is not only a shareholder of BIRI, she is also the successor of her late husband, Laurence, and the case involves management of corporate property, an intra-corporate dispute which falls under the jurisdiction of the appropriate commercial court. Thus, pursuant to Article XII of the MOA,[32] Mariam should have brought the case before the RTC of Angeles, Pampanga.[33] Petitioners also argue that Mariam has already filed a case earlier against BIRI for annulment of the Deed of Assignment before the RTC of Angeles City, that this case is merely an attempt to split causes of action, and that Mariam purposely did not mention material facts in order to obtain a favorable judgment. Petitioners likewise point out that Mariam cannot feign ignorance that petitioners were merely acting on the orders of BIRI considering that both Mariam and John are members of the same ManCom which oversaw the day-to-day business operations of BIRI.[34]

In *Matling Industrial and Commercial Corporation v. Coros,*[35] the Court summarized the guidelines for determining whether a dispute constitutes an intra-corporate controversy or not. There, we held that in order that the SEC (now the RTC)[36] can take cognizance of a case, the controversy must pertain to any of the following relationships: (a) between the corporation, partnership, or association and the public; (b) between the corporation, partnership, or association and its stockholders, partners, members, or officers; (c) between the corporation,

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[32] CA *rollo*, p. 76.

[33] *Id.* at 120-121.

[34] *Id.* at 121-122.

[35] G.R. No. 157802, October 13, 2010, 633 SCRA 12.

[36] See Interim Rules of Procedure for Intra-Corporate Controversies, A.M. No. 01-2-04-SC, March 13, 2001.

partnership, or association and the State as far as its franchise, permit, or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves. However, not every conflict between a corporation and its stockholders involves corporate matters. Concurrent factors, such as the status or relationship of the parties, or the nature of the question that is the subject of their controversy, must be considered in determining whether the SEC (now the RTC) has jurisdiction over the controversy.[37]

Here, the Court considers two elements in determining the existence of an intra-corporate controversy, namely: (a) the status or relationship of the parties; and (b) the nature of the question that is the subject of their controversy.[38]

As discussed earlier, the parties involved in the controversy are respondent Mariam (a shareholder of BIRI and successor to her late husband's position on the ManCom), petitioner John (then the branch manager, shareholder, and part of the BIRI ManCom), and petitioners Bot and Alam (licensed geodetic engineers engaged by BIRI for a contract to survey the property subject of the dispute). The controversy also involves BIRI itself, the corporation of which Mariam is a shareholder, and which through Board Resolutions No. 2006-0001,[39] 2007-0004[40] and 2007-0005[41] authorized John, its branch manager, to do all acts fit and necessary to enforce its corporate rights against the Kairuz family, including the posting of guards to secure the property. The controversy is thus one between corporation and one of its shareholders.

Moreover, the CA erred in characterizing the action as an ejectment case filed by a co-owner who was illegally deprived

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[37] *Matling Industrial and Commercial Corporation v. Coros, supra* note 35 at 30-31, citing *Mainland Construction Co., Inc. v. Movilla*, G.R. No. 118088, November 23, 1995, 250 SCRA 290, 294-295.

[38] *Id.*

[39] Records, p. 393.

[40] *Id.* at 395.

[41] *Id.* at 394.

of her right to possess the property by the presence of armed men.

The CA ruled that since the Kairuzes own 30% of the shares of stocks of BIRI, Mariam, as a co-owner who was unlawfully ousted from BIRI property by its employees, may bring an action for ejectment against the employees. This is not correct.

Here, it is undisputed that the property has already been transferred to BIRI and registered in its name.[42] It is likewise undisputed that based on the MOA, the Kairuzes own 30% of the outstanding capital stock of BIRI. This, however, does not make Mariam a co-owner of the property of BIRI, including the property subject of this case. Shareholders are in no legal sense the owners of corporate property, which is owned by the corporation as a distinct legal person.[43] At most, Mariam's interest as a shareholder is purely inchoate, or in sheer expectancy of a right, in the management of the corporation and to share in its profits, and in its properties and assets on dissolution after payment of the corporate debts and obligations.[44]

While Mariam insists that the case is one for forcible entry where the only issue is the physical possession and not ownership of the property, her prior physical possession has not been established in the courts below. In fact, the MCTC found that prior to the events of May 28, 2007, both petitioners and respondent were in actual possession of the property: petitioners, on behalf of BIRI as the owner of the property, and respondent Mariam, by virtue of the accommodation granted to her by BIRI under the MOA allowing her to continue her water reloading business on the property even after the transfer of its ownership to BIRI.[45]

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[42] TSN, May 31, 2007, *id* at 25.

[43] *Asia's Emerging Dragon Corporation v. Department of Transportation and Communications*, G.R. Nos. 169914 & 174166, March 24, 2008, 549 SCRA 44, 50, citing *Magsaysay-Labrador v. Court of Appeals*, G.R. No. 58168, December 19, 1989, 180 SCRA 266, 271-272.

[44] *Id.*

[45] *Rollo*, pp. 50-51.

In sum, what appears on record as the true nature of the controversy is that of a shareholder seeking relief from the court to contest the management's decision to: (1) post guards to secure the premises of the corporate property; (2) padlock the premises; and (3) deny her access to the same on May 28, 2007 due to her alleged default on the provisions of the MOA.

Thus, we agree with petitioners that while the case purports to be one for forcible entry filed by Mariam against BIRI's employees and contractors in their individual capacities, the true nature of the controversy is an intra-corporate dispute between BIRI and its shareholder, Mariam, regarding the management of, and access to, the corporate property subject of the MOA. We therefore find that the MCTC never acquired jurisdiction over the ejectment case filed by Mariam.

WHEREFORE, the petition is **GRANTED.** The Decision dated December 21, 2010 and Resolution dated July 22, 2011 of the Court of Appeals in CA-G.R. SP No. 112613 are **REVERSED** and **SET ASIDE.** The complaint for ejectment in Civil Case No. 272 filed before the 5th Municipal Circuit Trial Court, Tuba-Sablan, Benguet, is **DISMISSED** for lack of jurisdiction.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), Bersamin, and *del Castillo, JJ.,* concur.

Tijam, J., on official business.

FIRST DIVISION

[G.R. No. 204803. September 12, 2018]

SALVADOR P. ALMAGRO, BASILIO M. CRUZ, FRANCISCO M. JULIANO, ARTURO L. NOVENARIO and the HEIRS OF DEMOSTHENES V. CAÑETE, *petitioners, vs.* **PHILIPPINE AIRLINES, INC., LUCIO TAN and JOSE ANTONIO GARCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; IN A RULE 45 REVIEW OF THE COURT OF APPEALS' DECISIONS ON LABOR CASES, THE SUPREME COURT'S POWER OF REVIEW IS LIMITED TO THE DETERMINATION OF WHETHER THE COURT OF APPEALS CORRECTLY RESOLVED THE PRESENCE OR ABSENCE OF GRAVE ABUSE OF DISCRETION ON THE PART OF THE NATIONAL LABOR RELATIONS COMMISSION.— In labor cases brought up *via* a Rule 45 petition challenging the CA's decision in a special civil action under Rule 65, this Court's power of review is limited to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion on the part of the NLRC. x x x We thus go back to the basic precepts governing a Rule 65 petition. A special civil action for *certiorari* under Rule 65 does not concern errors of judgment; its province is confined to issues of jurisdiction or grave abuse of discretion. Grave abuse of discretion, as distinguished from mere errors of judgment, connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a 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.

2. ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION; WHEN PRESENT IN LABOR

DISPUTES.— In labor disputes, grave abuse of discretion may be ascribed to the NLRC when: (1) its findings and conclusions are not supported by substantial evidence or in total disregard of evidence material to, or even decisive of, the controversy; (2) it is necessary to prevent a substantial wrong or to do substantial justice; (3) the findings of the NLRC contradict those of the Labor Arbiter; and (4) it is necessary to arrive at a just decision of the case.

3. ID.; ID.; JUDGMENTS; *RES JUDICATA*; DOCTRINE OF CONCLUSIVENESS OF JUDGMENT; BARS THE RELITIGATION OF PARTICULAR FACTS OR ISSUES IN ANOTHER LITIGATION BETWEEN THE SAME PARTIES ON A DIFFERENT CLAIM OR CAUSE OF ACTION.— *Res judicata* under the concept of conclusiveness of judgment is embodied in the third paragraph of Section 47, Rule 39 of the Rules of Civil Procedure. Otherwise known as "preclusion of issues" or "collateral estoppel," the doctrine of conclusiveness of judgment bars the relitigation of any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits and conclusively settled by the judgment therein. This applies to the parties and their privies regardless of whether the claim, demand, purpose, or subject matter of the two actions is the same. Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second *if that same point or question was in issue and adjudicated in the first suit.* Conclusiveness of judgment applies where there is identity of parties in the first and second cases, but there is no identity of causes of action. Simply put, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

4. ID.; ID.; ID.; ID.; ID.; DOES NOT REQUIRE ABSOLUTE IDENTITY BUT ONLY SUBSTANTIAL IDENTITY OF PARTIES.— [A]lthough the parties are not exactly the same, the concept of conclusiveness of judgment still applies because jurisprudence does not dictate absolute identity but only substantial identity of parties. There is substantial identity of parties when there is a community of interest between a party

in the first case and a party in the second case, even if the latter was not impleaded in the first case.

5. CIVIL LAW; CIVIL CODE; EFFECT AND APPLICATION OF LAWS; PRINCIPLE OF *STARE DECISIS*; BARS ANY ATTEMPT TO RELITIGATE THE SAME ISSUE WHERE THE SAME QUESTIONS RELATING TO THE SAME EVENT HAVE BEEN PUT FORWARD BY THE PARTIES SIMILARLY SITUATED AS IN A PREVIOUS CASE LITIGATED AND DECIDED BY A COMPETENT COURT.— The time-honored principle of *stare decisis et non quieta movere* literally means "to adhere to precedents, and not to unsettle things which are established." The rule of *stare decisis* is a bar to any attempt to relitigate the same issue 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. It is one of policy grounded on the necessity for securing certainty and stability of judicial decisions x x x.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose Law Office for petitioners.

PAL Legal Affairs Department for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by petitioners Salvador P. Almagro (Almagro), Basilio M. Cruz (Cruz), Francisco M. Juliano (Juliano), Arturo L. Novenario (Novenario) and the heirs of Demosthenes V. Cañete (Cañete) (collectively, petitioners), seeking to nullify the Court of Appeals' (CA) December 7, 2012 Amended Decision[2] in CA-G.R. SP No. 111466. The CA

[1] *Rollo,* pp. 55-93.

[2] *Id.* at 99-114; penned by Associate Justice Danton Q. Bueser, and concurred in by Associate Justices Rosmari D. Carandang and Ricardo R. Rosario.

reversed its earlier Decision[3] dated January 31, 2012 where it issued *certiorari* in favor of petitioners against the May 15, 2009[4] Decision and August 7, 2009[5] Resolution of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-003508-08. In its Amended Decision, the CA found no grave abuse of discretion on the part of the NLRC in affirming the July 16, 2008[6] Decision of Labor Arbiter Donato G. Quinto, Jr. (Labor Arbiter) dismissing petitioners' complaint for illegal dismissal and monetary claims against Philippine Airlines, Inc. (PAL).

This case arose out of the labor dispute in the 1990's between PAL, a domestic corporation organized under the laws of the Republic of the Philippines operating as a common carrier transporting passengers and cargo through aircraft, and Airline Pilots Association of the Philippines (ALPAP), the legitimate labor organization and exclusive bargaining agent of all PAL's commercial pilots.[7]

On December 9, 1997, ALPAP filed a notice of strike before the National Conciliation and Mediation Board on grounds of unfair labor practice and union-busting by PAL (strike case). The Department of Labor and Employment (DOLE) Secretary (Secretary) assumed jurisdiction over the labor dispute on December 23, 1997.[8] Despite the assumption of jurisdiction

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[3] *Id.* at 198-231.

[4] *Id.* at 232-242.

[5] *Id.* at 244-245.

[6] *Id.* at 247-268.

[7] *Id.* at 1122.

[8] *Id.* at 1074-1076. The dispositive portion of the DOLE Secretary Order states:

WHEREFORE, this Office hereby assumes jurisdiction over the labor dispute at the Philippine Airlines, Inc., pursuant to Article 263(g) of the Labor Code, as amended.

Accordingly, all strikes and lockouts at the Philippine Airlines, Inc., whether actual or impending are hereby strictly prohibited. The parties are also enjoined from committing any act that may exacerbate the situation.

x x x (*Id.* at 1076).

by the Secretary, ALPAP declared and commenced a strike on June 5, 1998. After failed conciliation efforts, the Secretary issued a return-to-work order[9] (return-to-work order) on June 7, 1998 addressed to all striking officers and members of ALPAP. The strike, however, continued until June 26, 1998 when ALPAP's officers and members attempted to report for work.[10] The employees who attempted to return to work signed PAL's logbook for "Return to Work Returnees/Compliance" (PAL security logbook) on June 26, 1998.[11] PAL, however, refused to accept these returning employees on the ground that the deadline imposed by the return-to-work order on June 9, 1998 had already lapsed.[12]

This refusal of PAL to accept ALPAP's officers and members back to work prompted ALPAP to file an illegal lockout case against PAL with the NLRC on June 29, 1998.[13] With the Secretary still exercising jurisdiction over the dispute, the illegal lockout case was consolidated with the strike case in the DOLE. In a Resolution[14] dated June 1, 1999, the Secretary: (1) declared the loss of employment status of all officers and members who participated in the strike in defiance of the return-to-work order; and (2) dismissed the illegal lockout case against PAL. This Resolution was questioned by ALPAP but eventually upheld by this Court in G.R. No. 152306, in a Resolution[15] dated April 10, 2002.

On January 13, 2003, ALPAP filed a motion with the Secretary to determine who among its officers and members should be reinstated or deemed to have lost their employment with PAL

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[9] *Id.* at 1087-1088.

[10] *Id*. at 1123-1124.

[11] *Id.* at 1108-1121.

[12] *Id.* at 255, 1124.

[13] *Id*. at 1122-1125.

[14] *Id*. at 1172-1178.

[15] *Id.* at 1198.

for their actual participation in the strike.[16] ALPAP claimed that PAL dismissed all its members indiscriminately, including those who did not participate in the strike. The Secretary denied the motion on the ground that G.R. No. 152306 has determined with finality that "the erring pilots have lost their employment status" and "because these pilots have filed cases to contest such loss before another forum."[17] When the case was brought up before the CA via Rule 65, the CA found no grave abuse of discretion on the part of the Secretary. In G.R. No. 168382 titled *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc.*[18] *(Airline Pilots),* this Court affirmed the CA's finding and further declared that there is no necessity to conduct a proceeding to identify the participants in the illegal strike. The records of the case reveal the names of the pilots who returned only after June 9, 1998 or the deadline imposed in the return-to-work order.[19]

Both Decisions in G.R. No. 152306 and *Airline Pilots* attained finality.

Petitioners, who were former senior pilots of PAL, were among those refused by PAL to return on June 26, 1998. They instituted the consolidated complaints of illegal dismissal and monetary claims against PAL, Lucio Tan, and Jose Antonio Garcia, subject of this controversy: (1) NLRC-NCR Case No. 00-07-05400-98 filed by Almagro on July 3, 1998; and (2) NLRC-NCR Case No. 00-11-08918-98 filed by Cruz, Juliano, Novenario, and Cañete on November 4, 1998.[20]

On August 25, 2000, the Labor Arbiter rendered a Decision[21] in petitioners' favor. However, on January 10, 2002, the NLRC

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[16] *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc.*, G.R. No. 168382, June 6, 2011, 650 SCRA 545, 551.

[17] *Id.* at 553.

[18] *Supra.*

[19] *Id.* at 558-560.

[20] *Rollo,* pp. 57, 61.

[21] *Id.* at 628-671.

set aside the Decision of the Labor Arbiter for want of jurisdiction, declaring that the rehabilitation of PAL is a supervening event that divested the Labor Arbiter and the NLRC of jurisdiction over the case. The NLRC also issued an order staying all claims against PAL. This Court upheld the NLRC's ruling owing to the pendency of PAL's rehabilitation and the stay order issued in its favor.[22]

After PAL's rehabilitation was declared a success by the Securities and Exchange Commission on September 28, 2007, petitioners moved for the resumption of the consolidated cases before the Labor Arbiter. Subsequently, proceedings ensued and both parties submitted the same evidence previously submitted before the same Labor Arbiter.[23]

In his July 16, 2008 Decision, the Labor Arbiter dismissed the consolidated complaints. The Labor Arbiter stressed that petitioners were among the hundreds of ALPAP members who signified their intention to return to work by signing the PAL security logbook only on June 26, 1998; this is an admission that they, indeed, participated in the illegal strike staged by ALPAP. Further, despite the opportunity given to them, petitioners did not dispute that they were the persons depicted in the photographs submitted by PAL. He thus gave credence to the affidavit of Candido Tamayo, the Senior Field Agent of PAL's Security and Fraud Prevention Department at that time, who testified that he took the photographs that captured some of the petitioners participating in the strike.[24] Because of petitioners' participation in the illegal strike and their willful defiance of the return-to-work order, petitioners lost their employment status in PAL.[25]

The NLRC affirmed the Labor Arbiter's Decision. It ruled that petitioners acted in a concerted effort with the union, despite

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[22] *Id.* at 19-20, 771.

[23] *Id.* at 20.

[24] *Id.* at 260-261.

[25] *Id.* at 263.

being on official leave. The NLRC also gave probative value to the photographs taken by Candido Tamayo.[26] The declaration of the illegality of the strike involved "the consequence of loss of employment [of] all members, who in one way or another supported the strike."[27]

When the case was brought up before the CA via petition for *certiorari* under Rule 65 of the Rules of Court, the CA initially issued *certiorari* in favor of petitioners. The CA found that petitioners proved that they were on official leave of absence when (1) ALPAP staged the strike on June 5, 1998; and (2) when the strikers were ordered to return to work.[28] On the other hand, PAL failed to adduce evidence that petitioners were among the strikers on that date. Their signatures on the logbook cannot be deemed to be admissions of their involvement in the strike because these are not clear and unequivocal statements. The CA also noted that the return-to-work order partakes of a penal law as it imposes the ultimate penalty of dismissal. As such, the return-to-work order should be interpreted as to include only those who participated in the June 5, 1998 strike.[29] For want of substantial basis in fact and in law, the CA set aside the NLRC's Decision and awarded full backwages and monetary claims to petitioners.[30]

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[26] *Id.* at 236-237.

[27] *Id.* at 239.

[28] *Id.* at 215.

[29] *Id.* at 215-220.

[30] *Id.* at 229-230. The dispositive portion of which states:

WHEREFORE, in view of the foregoing, the May 15, 2009 Decision rendered by the National Labor Relations Commission is hereby **REVERSED** and **SET ASIDE**. Petitioners' dismissal from service is declared **ILLEGAL.** Accordingly, Philippine Airlines is ordered, in lieu of reinstatement, to **PAY** petitioners their full backwages computed, without loss of seniority rights and other privileges, inclusive of allowances and other benefits or their monetary equivalent, from the time their compensation was withheld from them up to the time of their retirement, in the case of Basilio M. Cruz until April 15, 2007; Demosthenes V. Cañete up to November 29, 2000; Francisco M. Juliano till June 9, 2001; Arturo L. Novenario to May 30, 2002; and Salvador P. Almagro up till September 8, 1999, as well as the retirement benefits due upon them.

Upon PAL's motion for reconsideration,[31] the CA promulgated its Amended Decision[32] reversing its earlier ruling.[33] It took judicial notice of this Court's ruling in G.R. No. 152306 and *Airline Pilots,* and declared that the signatures in the PAL security logbook of the pilots who attempted to belatedly comply with the Secretary's return-to-work order on June 26, 1998 sufficiently established that they are the strikers who defied the return-to-work order.[34] In addition to the incident on June 26, 1998, petitioners' common actions and behavior before and during the strike revealed their intent to paralyze the operations of PAL.[35] As early as December 1997, the Secretary already assumed jurisdiction over the dispute and proscribed any activity that would exacerbate the situation, yet petitioners still opted to take their respective leaves prior to the brewing strike.[36] Noteworthy also was the fact that some of the petitioners were seen at the strike area even after the return-to-work order was issued.[37] Thus, the CA found that the Labor Arbiter and the NLRC did not commit grave abuse of discretion in dismissing the case.

In this petition, petitioners assail the findings of the administrative agencies and the CA. They posit that this Court may review the factual findings of the administrative agencies and the appellate court when: (1) the findings are grounded on speculation, surmises, and conjectures; (2) the inference made is manifestly mistaken, absurd, or impossible; (3) there is grave

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[31] *Id* . at 157-197.

[32] *Supra* note 2.

[33] *Rollo,* p. 113. The dispositive portion of the Amended Decision reads:

WHEREFORE, the motion for reconsideration is **GRANTED.** Our decision dated January 31, 2012 is hereby **REVERSED** and **SET ASIDE**. The decision of the NLRC, dismissing petitioners' appeal and affirming the Labor Arbiter's decision, is hereby **AFFIRMED**.

[34] *Id.* at 102.

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

[36] *Id.* at 110.

[37] *Id.* at 111.

abuse of discretion; and (4) the judgment is based on a misapprehension of facts.[38]

First, petitioners question the CA's conclusion that they participated in the illegal strike based on their signatures on the logbook.[39] They claim that their signatures are not admissions that they were strikers because they only signed the logbook along with the ALPAP striking pilots in the hopes that they would be allowed to regain their employment.[40] Moreover, they signed the logbook at the time they were already dismissed by PAL on June 9, 1998.[41]

Second, petitioners argue that the CA erred in finding that they defied the return-to-work order. According to petitioners, the return-to-work order was addressed only to striking officers and members of ALPAP, and was not even served on petitioners.[42] They further argue that they are not strikers because it was "legally impossible for [them] to have engaged in a strike considering the established and admitted fact that they were all on approved official leaves during the material period."[43] They were not expected or suffered to work during the period of their vacation leaves, and this kind of stoppage of work was with PAL's consent.[44] In fact, the records establish that each of the petitioners reported for duty immediately after the expiration of their respective leaves.[45]

Third, petitioners maintain that the conclusions reached by the NLRC and the Labor Arbiter (that petitioners acted collectively with ALPAP) are based on mere conjectures and

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[38] *Id.* at 68-69.

[39] *Id.* at 69.

[40] *Id.* at 85.

[41] *Id.* at 89.

[42] *Id.* at 74-75.

[43] *Id.* at 70. Emphasis omitted.

[44] *Id.* at 73.

[45] *Id.* at 76.

surmises bereft of any evidentiary support. Petitioners did not sign the logbook to signify that they were strikers.[46] Both tribunals gave undue importance to the photographs presented by PAL, the integrity of which is not only highly suspect,[47] but some did not contain a time stamp as opposed to the photograph of strikers holding placards.[48] Meanwhile, petitioners Cañete and Juliano were not even shown to be at the strike at any time.[49]

Fourth, petitioners claim they are not bound by the ruling in *Airline Pilots* whether by *res judicata* or *stare decisis*.[50] They were not parties thereto because ALPAP initiated the case. In the absence of a special authority issued by petitioners, ALPAP has no legal standing whatsoever to prosecute petitioners' illegal dismissal complaint. The ruling in *Airline Pilots* therefore finds no application to petitioners who neither took part in the strike nor agreed to be represented by ALPAP.[51] Further, in *Airline Pilots*, the defense of being on official leave at the time of the strike was not appreciated because it was belatedly raised.[52] Moreover, the difference between the evidence presented in this case and in *Airline Pilots* constitutes a "powerful countervailing consideration" that bars the application of the doctrine *stare decisis*.[53] The tribunals glossed over the fact that petitioners immediately reported for work upon the expiration of their leaves, only to be informed that they had already been dismissed on June 9, 1998.[54]

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[46] *Id.* at 85.

[47] *Id.* at 82.

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

[49] *Id.* at 84.

[50] *Id.* at 86.

[51] *Id.* at 87.

[52] *Id.* at 88.

[53] *Id.*

[54] *Rollo*, p. 89.

In its comment,[55] PAL opposes the petition on the following grounds: (1) the petition is defective in form as to petitioner Almagro since it lacks a valid certification of non-forum shopping—the verification and certification was not executed by Almagro but by his supposed attorney-in-fact;[56] (2) the petition raises factual issues beyond the province of a Rule 45 petition;[57] (3) the CA's Amended Decision, in affirming the rulings of both the NLRC and the Labor Arbiter, is supported by facts established by evidence and by law and jurisprudence;[58] and (4) in refusing to accept those who offered to return to work only on June 26, 1998, PAL acted in accordance with law.[59]

In resolving the issue of whether the CA committed error in finding that the NLRC committed no grave abuse of discretion, we find that the determinative issue is whether petitioners are bound by the findings in *Airline Pilots* that the signatories in the PAL security logbook on June 26, 1998 participated in the strike and defied the Secretary's return-to-work order.

We deny the petition.

I

We first identify the boundaries by which we decide this case. In labor cases brought up *via* a Rule 45 petition challenging the CA's decision in a special civil action under Rule 65, this Court's power of review is limited to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion on the part of the NLRC. We said in *Montoya v. Transmed Manila Corporation*:[60]

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[55] *Id.* at 972-1012.

[56] *Id.* at 984-986.

[57] *Id.* at 986-988.

[58] *Id.* at 988-1002.

[59] *Id.* at 1002-1008.

[60] *Montoya v. Transmed Manila Corporation*, G.R. No. 183329, August 27, 2009, 597 SCRA 334.

In a Rule 45 review, we consider the **correctness of the assailed CA decision**, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of **questions of law** raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; **we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct.** In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. **In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?**[61] (Citations omitted; emphasis in the original.)

We thus go back to the basic precepts governing a Rule 65 petition. A special civil action for *certiorari* under Rule 65 does not concern errors of judgment; its province is confined to issues of jurisdiction or grave abuse of discretion. Grave abuse of discretion, as distinguished from mere errors of judgment, connotes judgment exercised in a capricious and whimsical manner that is tantamount to lack of jurisdiction. To be considered "grave," discretion must be exercised in a 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.[62]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when: (1) its findings and conclusions are not supported by substantial evidence or in total disregard of evidence material to, or even decisive of, the controversy; (2) it is necessary to prevent a substantial wrong or to do substantial justice; (3)

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[61] *Id.* at 342-343.

[62] *E. Ganzon, Inc. (EGI) v. Ando, Jr.*, G.R. No. 214183, February 20, 2017, 818 SCRA 165, 173-174. Citation omitted.

the findings of the NLRC contradict those of the Labor Arbiter; and (4) it is necessary to arrive at a just decision of the case.[63]

Measured by these standards, we find that the CA, in its Amended Decision, did not err when it found no grave abuse of discretion on the part of the NLRC.

II

The CA concluded that no grave abuse of discretion can be attributed to the findings of both the Labor Arbiter and the NLRC as the same were in accord with *Airline Pilots*.

The Court in *Airline Pilots* ruled on two points. *First*, there was no grave abuse of discretion on the part of the Secretary in merely noting ALPAP's twin motions in due deference to a final and immutable judgment rendered by this Court in G.R. No. 152306. *Second*, there is no necessity to conduct a proceeding to determine the participants in the illegal strike or those who refused to heed the return-to-work order because the ambiguity can be cured by reference to the body of the decision and the pleadings filed. Explaining the second point, this Court referred to the PAL security logbook signed by members and officers of ALPAP on June 26, 1998:

> A review of the records reveals that in [the strike case], the DOLE Secretary declared the ALPAP officers and members to have lost their employment status based on either of two grounds, *viz.*: their participation in the illegal strike on June 5, 1998 or their defiance of the return-to-work order of the DOLE Secretary. The records of the case unveil the names of each of these returning pilots. The logbook with the heading "Return to Work Compliance/Returnees" bears their individual signature signifying their conformity that they were among those workers who returned to work only on June 26, 1998 or after the deadline imposed by DOLE. From this crucial and vital piece of evidence, it is apparent that each of these pilots is bound by the judgment. Besides, the complaint for illegal lockout was filed on behalf of all these returnees. Thus, a finding that there was no illegal lockout would be enforceable against them. In fine, only those returning pilots, irrespective of whether they comprise the entire membership of ALPAP, are bound by the June 1, 1999 DOLE Resolution.

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[63] *Id.* at 174. Citation omitted.

ALPAP harps on the inequity of PAL's termination of its officers and members considering that some of them were on leave or were abroad at the time of the strike. Some were even merely barred from returning to their work which excused them for not complying immediately with the return-to-work order. Again, a scrutiny of the records of the case discloses that these allegations were raised at a very late stage, that is, after the judgment has finally decreed that the returning pilots' termination was legal. Interestingly, these defenses were not raised and discussed when the case was still pending before the DOLE Secretary, the CA or even before this Court. We agree with the position taken by Sto. Tomas and Imson that from the time the return-to-work order was issued until this Court rendered its April 10, 2002 resolution dismissing ALPAP's petition, no ALPAP member has claimed that he was unable to comply with the return-to-work directive because he was either on leave, abroad or unable to report for some reason. These defenses were raised in ALPAP's twin motions only after the Resolution in G.R. No. 152306 reached finality in its last ditch effort to obtain a favorable ruling. It has been held that a proceeding may not be reopened upon grounds already available to the parties during the pendency of such proceedings; otherwise, it may give way to vicious and vexatious proceedings. ALPAP was given all the opportunities to present its evidence and arguments. It cannot now complain that it was denied due process.

Relevant to mention at this point is that when NCMB NCR NS 12-514-97 (strike/illegal lockout case) was still pending, several complaints for illegal dismissal were filed before the Labor Arbiters of the NLRC by individual members of ALPAP, questioning their termination following the strike staged in June 1998. PAL likewise manifests that there is a pending case involving a complaint for the recovery of accrued and earned benefits belonging to ALPAP members. Nonetheless, the pendency of the foregoing cases should not and could not affect the character of our disposition over the instant case. Rather, these cases should be resolved in a manner consistent and in accord with our present disposition for effective enforcement and execution of a final judgment.[64] (Citations omitted.)

The impact of *Airline Pilots* in illegal dismissal cases filed by officers and members of ALPAP involved in the June 1998

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[64] *Airline Pilots Association of the Philippines v. Philippine Airlines, Inc., supra* note 16 at 558-560.

strike has also been settled by this Court in *Rodriguez v. Philippine Airlines, Inc.*[65] (*Rodriguez*).

The complainants in *Rodriguez* were 24 pilots who filed an action for illegal dismissal, non-payment of salaries, and damages against PAL citing the same reasons as petitioners—that some of them were on official and/or medical leaves at the time of the strike. The Labor Arbiter found for the complainants, but was reversed by the NLRC. The CA reinstated the Labor Arbiter's decision. When it was brought up before this Court, we declared that *Airline Pilots* is *res judicata*, under the concept of conclusiveness of judgment, as to the issue of who among the members and officers of ALPAP participated in the illegal strike and defied the return-to-work order:

> Bearing in mind the final and executory judgments in the *1st* and *2nd ALPAP cases*, the Court denies the Petition of Rodriguez, *et al.*, in G.R. No. 178501 and partly grants that of PAL in G.R. No. 178510.
>
> The Court, in the *2nd ALPAP case*, acknowledged the illegal dismissal cases instituted by the individual ALPAP members before the NLRC following their termination for the strike in June 1998 (which were apart from the Strike and Illegal Lockout Cases of ALPAP before the DOLE Secretary) and affirmed the jurisdiction of the NLRC over said illegal dismissal cases. The Court, though, also expressly pronounced in the *2nd ALPAP case* that "the pendency of the foregoing cases should not and could not affect the character of our disposition over the instant case. Rather, these cases should be resolved in a manner consistent and in accord with our present disposition for effective enforcement and execution of a final judgment."
>
> The Petitions at bar began with the Illegal Dismissal Case of Rodriguez, *et al.* and eight other former pilots of PAL before the NLRC. Among the Decisions rendered by Labor Arbiter Robles, the NLRC, and the Court of Appeals herein, it is the one by the NLRC which is consistent and in accord with the disposition for effective enforcement and execution of the final judgments in the *1st and 2nd ALPAP cases.*

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[65] G.R. Nos. 178501 & 178510, January 11, 2016, 778 SCRA 334.

The *1st and 2nd ALPAP cases* which became final and executory on August 29, 2002 and September 9, 2011, respectively, constitute *res judicata* on the issue of who participated in the illegal strike in June 1998 and whose services were validly terminated.

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The elements for *res judicata* in the second concept, *i.e.*, conclusiveness of judgment, are extant in these cases.

There is **identity of parties** in the *1st and 2nd ALPAP cases*, on one hand, and the Petitions at bar. While the *1st and 2nd ALPAP cases* concerned ALPAP and the present Petitions involved several individual members of ALPAP, the union acted in the *1st and 2nd ALPAP cases* in representation of its members. In fact, in the *2nd ALPAP case*, the Court explicitly recognized that the complaint for illegal lockout was filed by ALPAP on behalf of all its members who were returning to work. Also in the said case, ALPAP raised, albeit belatedly, exactly the same arguments as Rodriguez, *et al.* herein. Granting that there is no absolute identity of parties, what is required, however, for the application of the principle of *res judicata* is not absolute, but only substantial identity of parties. ALPAP and Rodriguez, *et al.* share an identity of interest from which flowed an identity of relief sought, namely, the reinstatement of the terminated ALPAP members to their former positions. Such identity of interest is sufficient to make them privy-in-law, one to the other, and meets the requisite of substantial identity of parties.

There is likewise an **identity of issues** between the *1st and 2nd ALPAP cases* and these cases. Rodriguez, *et al.*, insist that they did not participate in the June 1998 strike, being on official leave or scheduled off-duty. Nonetheless, on the matter of determining the identities of the ALPAP members who lost their employment status because of their participation in the illegal strike in June 1998, the Court is now conclusively bound by its factual and legal findings in the *1st and 2nd ALPAP cases*.

In the *1st ALPAP case*, the Court upheld the DOLE Secretary's Resolution dated June 1, 1999 declaring that the strike of June 5, 1998 was illegal and all ALPAP officers and members who participated therein had lost their employment status. The Court in the *2nd ALPAP case* ruled that even though the dispositive portion of the DOLE Secretary's Resolution did not specifically enumerate the names of those who actually participated in the illegal strike, such omission

cannot prevent the effective execution of the decision in the *1st ALPAP case.* The Court referred to the records of the Strike and Illegal Lockout Cases, particularly, the logbook, which it unequivocally pronounced as a "crucial and vital piece of evidence." **In the words of the Court in the *2nd ALPAP case,* "[t]he logbook with the heading 'Return-to-Work Compliance/Returnees' bears their individual signature signifying their conformity that they were among those workers who returned to work only on June 26, 1998 or after the deadline imposed by DOLE.** x x x In fine, only those returning pilots, irrespective of whether they comprise the entire membership of ALPAP, are bound by the June 1, 1999 DOLE Resolution."[66] (Citations omitted; emphasis supplied.)

Res judicata under the concept of conclusiveness of judgment is embodied in the third paragraph of Section 47, Rule 39 of the Rules of Civil Procedure.[67] Otherwise known as "preclusion of issues" or "collateral estoppel," the doctrine of conclusiveness of judgment bars the relitigation of any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits and conclusively settled by the judgment therein. This applies to the parties and their privies regardless of whether the claim, demand, purpose, or subject matter of the two actions is the same. Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second *if that same point or question was in issue and adjudicated in the first suit.*[68]

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[66] *Id.* at 373-380.

[67] Sec. 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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(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.

[68] *Tala Realty Services Corp., Inc. v. Banco Filipino Savings & Mortgage Bank,* G.R. No. 181369, June 22, 2016, 794 SCRA 252, 262-263.

Conclusiveness of judgment applies where there is identity of parties in the first and second cases, but there is no identity of causes of action. Simply put, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.[69]

Here, the rule on conclusiveness of judgment also applies because the determination of who participated in the illegal strike subject of the return-to-work order, and who defied the return-to-work order has long been declared settled in *Airline Pilots.* In this case, it is undisputed that all petitioners signed PAL's logbook for return to work returnees/return to work compliance.[70] They are thus covered by the Court's finding that those who participated in the strike had lost their employment. Hence, this question cannot be raised again here.

Furthermore, although the parties are not exactly the same, the concept of conclusiveness of judgment still applies because jurisprudence does not dictate absolute identity but only substantial identity of parties.[71] There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case.[72] As this Court explained in *Rodriguez,* ALPAP and petitioners "share an identity of interest from which flowed an identity of relief sought, namely, the reinstatement of the terminated ALPAP members to their former positions."[73]

III

In addition to the doctrine of conclusiveness of judgment, we find that the principle of *stare decisis* equally applies to this case.

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[69] *Id.* at 265.

[70] *Rollo,* pp. 1109, 1116 & 1121.

[71] See *Rodriguez v. Philippine Airlines, Inc., supra* note 65.

[72] *Social Security Commission v. Rizal Poultry and Livestock Association, Inc.,* G.R. No. 167050, June 1, 2011, 650 SCRA 50, 58-59.

[73] *Rodriguez v. Philippine Airlines, Inc., supra* note 65 at 379.

The time-honored principle of *stare decisis et non quieta movere* literally means "to adhere to precedents, and not to unsettle things which are established." The rule of *stare decisis* is a bar to any attempt to relitigate the same issue 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.[74] It is one of policy grounded on the necessity for securing certainty and stability of judicial decisions:

> Time and again, the Court has held that it is a very desirable and necessary judicial practice that when 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 in which the facts are substantially the same. *Stare decisis et non quieta movere.* Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if 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 the 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.[75] (Italics in the original.)

In this case, not only are the factual circumstances of the two cases similar, the petitioners in *Rodriguez* and in this case also raise the same arguments and defenses against their dismissals from PAL. In fact, there was another illegal dismissal case filed by former pilots raising the same arguments as petitioners here and in *Rodriguez* which this Court eventually reviewed in G.R. No. 180152, titled *Romeo N. Ahmee, et al. v.*

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[74] *Light Rail Transit Authority v. Pili,* G.R. No. 202047, June 8, 2016, 792 SCRA 534, 552. Citation omitted.

[75] *Alfonso v. Land Bank of the Philippines,* G.R. Nos. 181912 & 183347, November 29, 2016, 811 SCRA 27, 121, citing *Commissioner of Internal Revenue v. The Insular Life Assurance, Co., Ltd.*, G.R. No.197192, June 4, 2014, 725 SCRA 94, 96-97.

PAL (Ahmee, et al.). In our Resolution[76] dated February 4, 2008, we likewise affirmed the findings of the CA in that case that the signatures on the same logbook establish *Ahmee, et al.*'s participation in the strike and defiance of the return-to-work order.[77] Collectively, these cases serve as strong precedents in this case which this Court is duty-bound to follow.

We do not agree with petitioners that the difference between the evidence presented in this case and in *Airline Pilots* constitutes a powerful countervailing consideration that would bar the application of the doctrine of *stare decisis.* In both cases, PAL presented the same PAL security logbook containing signatures of former PAL employees who attempted to report for work on June 26, 1998.

In sum, the doctrines of conclusiveness of judgment and *stare decisis* warrant the denial of the petition. The CA correctly determined that the NLRC did not commit grave abuse of discretion in affirming the Labor Arbiter's Decision. Both the Labor Arbiter's and the NLRC's Decisions were based on substantial evidence. The logbook presented by PAL in this case, having the weight accorded to it by this Court in *Airline Pilots* and *Rodriguez,* serves as substantial evidence in proving that petitioners defied the return-to-work order. Thus, it cannot be said that grave abuse of discretion attended the administrative agencies' disposition of the consolidated complaints.

WHEREFORE, the petition is **DENIED**. The Court of Appeals' Amended Decision dated December 7, 2012 in CA-G.R. SP No. 111466 is **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), Bersamin, and *del Castillo, JJ.,* concur.

Tijam, J., on official business.

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[76] *Rollo,* pp. 1398-1399.

[77] *Id.* at 1394.

FIRST DIVISION

[G.R. No. 210894. September 12, 2018]

NOEMI S. CRUZ and HEIRS OF HERMENEGILDO T. CRUZ, represented by NOEMI S. CRUZ, *petitioners, vs.* **CITY OF MAKATI, CITY TREASURER OF MAKATI, THE REGISTER OF DEEDS OF MAKATI, LAVERNE REALTY AND DEVELOPMENT CORPORATION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNITS; LEVY AND SALE OF PROPERTIES FOR NON-PAYMENT OF REAL PROPERTY TAX; A BUYER OF REAL PROPERTY AT A REAL PROPERTY TAX DELINQUENCY SALE DOES NOT ACQUIRE ANY VALID RIGHT OVER THE SUBJECT PROPERTY WHEN THERE IS AN IRREGULARITY IN THE CONDUCT OF PROCEEDINGS RELATIVE TO THE LEVY AND SALE OF THE PROPERTY; CASE AT BAR.— [T]here is ground to believe that the levy by the City of Makati and subsequent auction sale to Laverne should be annulled. Petitioners are in danger of losing their property without benefit of due process of law owing to the apparently irregular conduct by the City of Makati of proceedings relative to the levy and sale of their property. In *Genato Investments, Inc. v. Barrientos*, a case which involved the very same respondent (Laverne) in this case, this Court held that a buyer of real property, herein respondent Laverne, at a real property tax delinquency sale conducted by the City of Caloocan did not acquire any valid right to petition the trial court for the cancellation of the owner's title and take possession of the latter's property, on the ground, among others, that the notice and warrant of levy were sent by the city to the wrong address and the owner was thus never made aware of the levy and delinquency sale of its property by the city. x x x The Court must protect private property owners from undue application of the law authorizing the levy and sale of their properties for non-payment of the real property tax. This power

of local government units is prone to great abuse, in that owners of valuable real property are liable to lose them on account of irregularities committed by these local government units or officials, done intentionally with the collusion of third parties and with the deliberate unscrupulous intent to appropriate these valuable properties for themselves and profit therefrom. These unscrupulous parties can commit a simple, seemingly irrelevant technicality such as deliberately sending billing statements, notices of delinquency and levy to wrong addresses under the guise of typographical lapses, as what happened here and in the *Genato Investments* case, and then proceed with the levy and auction sale of these valuable properties without the knowledge and consent of the owners. Before the owners realize it, their precious properties have already been confiscated and sold by the local government units or officials to so-called "innocent third parties" who are in fact their cohorts in the unscrupulous scheme. This is barefaced robbery that the Court cannot sanction.

2. **ID.; ID.; ID.; ID.; ID.; DUE PROCESS MUST BE FOLLOWED IN TAX PROCEEDINGS BECAUSE A SALE OF LAND FOR TAX DELINQUENCY IS IN DEROGATION OF PRIVATE PROPERTY AND THE REGISTERED OWNER'S CONSTITUTIONAL RIGHTS.—** The Court constantly warns of the possible abuse of this taxing power. The premise is that no presumption of regularity exists in any administrative action which results in depriving a taxpayer of his property; due process of law must be followed in tax proceedings, because a sale of land for tax delinquency is in derogation of private property and the registered owner's constitutional rights.

3. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; VOID OR INEXISTENT CONTRACTS; CANNOT BE VALIDATED EITHER BY RATIFICATION OR PRESCRIPTION, FOR THEY ARE ABSOLUTELY WANTING IN CIVIL EFFECTS.—** A fundamental characteristic of void or inexistent contracts is that the action for the declaration of their inexistence does not prescribe; nor may the right to set up the defense of their inexistence or absolute nullity be waived or renounced. Void contracts are equivalent to nothing and are absolutely wanting in civil effects; they cannot be validated either by ratification or prescription.

APPEARANCES OF COUNSEL

Josue L. Jorvina, Jr., for petitioners.

Gabriel and Mendoza Law Offices for private respondent Laverne Realty and Development Corp.

Office of the City Attorney, Makati City for public respondent City of Makati/Treasurer of Makati.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the July 22, 2013 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 128390 affirming the March 29, 2012 and December 27, 2012 Orders[3] of the Regional Trial Court of Makati City, Branch 62 (Makati RTC Branch 62) in Civil Case No. 07-1155, and the CA's subsequent January 15, 2014 Resolution[4] denying herein petitioners' Motion for Reconsideration.

Factual Antecedents

Petitioner Noemi Cruz and her husband, Hermenegildo T. Cruz, were the registered owners of a 124.38-square meter condominium unit, Unit 407, Cityland Condominium 10, Tower II, 146 H.V. Dela Costa Street, Makati City (subject property) which was levied upon by the respondent City of Makati for non-payment of real property taxes thereon after their designated employee-representative failed to remit the entrusted tax payments amounting to ₱201,231.17 to the city and appeared to have absconded with the money instead. Eventually, the subject property was auctioned off and sold to respondent Laverne Realty

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[1] *Rollo*, pp. 16-37.

[2] *Id*. at 39-48; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.

[3] *Id*. at 94-95 and 97-98.

[4] *Id*. at 50-53.

and Development Corporation (Laverne) as the highest bidder for ₱370,000.00.

Petitioners failed to redeem the subject property, prompting Laverne to file in 2009, before the Makati RTC Branch 148, LRC Case No. M-5237 a petition to surrender the owner's duplicate copy of the title to the subject property (Condominium Certificate of Title No. 44793).

Previously, or in 2007, petitioners filed before Makati RTC Branch 62 Civil Case No. 07-1155, a Complaint[5] for annulment of the Laverne sale with prayer for injunctive relief and damages and costs. Petitioners alleged that the levy and sale by the respondent city to Laverne were null and void because the notice of billing statements for real property were mistakenly sent to Unit 1407 instead of Unit 407; no warrant of levy was ever received by them; the notice of delinquency sale was not posted as required by the Local Government Code (LGC); the Makati Treasurer's Office did not notify petitioners of the warrant of levy as required by the LGC; and respondents did not remit the excess of the proceeds of the sale to petitioners as required by the LGC.

The Makati City government and the City Treasurer filed their answer, and petitioners filed their reply. Petitioners sought to declare Laverne and the Makati Registrar of Deeds in default for failure to file their respective responsive pleadings.

On August 26, 2009, the Makati RTC Branch 62 granted petitioners' application for injunctive relief but denied their motion to declare Laverne in default.

On November 18, 2011, petitioners filed an Omnibus Motion to consolidate Civil Case No. 07-1155 with LRC Case No. M-5237 and to declare Laverne in default. Laverne opposed the motion.

On November 25, 2011, the Makati RTC Branch 62 issued an Order,[6] stating as follows:

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[5] *Id*. at 69-75.

[6] *Id*. at 93.

Before this Court is an omnibus motion to approve the consolidation of a case pending in Branch 148 with this case pending in this Court. Before the court rules on this motion, the court awaits the resolution of Branch 148 regarding the motion filed with this court.

On the other hand, before the Court rules on the motion to declare defendant in default, the court awaits the return on the summons sent by registered mail. The Court takes note of the service by publication attached to the omnibus motion of the plaintiff in compliance with the order of publication to form part of the case. Set this incident for hearing on December 15, 2011 at 8:30a.m.

The petitioner is given the opportunity to inform the court if there are any developments prior to the same.

SO ORDERED.

The Assailed Orders of the Makati RTC Branch 62

On March 29, 2012, the Makati RTC Branch 62 issued an Order[7] denying petitioners' motion to consolidate and to declare Laverne in default. It held:

The Court noted that the answer for Laverne was filed without any motion asking leave for its belated admission contrary to Section 11, Rule 11 Revised Rules of Court. x x x

x x x x x x x x x

Under this provision, the Court cannot simply admit an answer belatedly filed without any motion [for admission] accompanying the same x x x as evident from the wordings '**upon like terms**' which explicitly means '**upon motion and on such terms as may be just**'. x x x [S]ince it is within the discretion of the court to permit the filing of defendant's answer even beyond the reglementary period, the Court should be provided with justification for the belated action, and x x x the defendant must show that it intended no delay x x x. In fine, to admit or to reject an answer filed after the prescribed period is addressed to the sound discretion of the court. Admittedly, since the filing of the Answer was done [beyond the reglementary period, its filing cannot be considered as] a matter of right.

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[7] *Id*. at 94-95.

However, plaintiffs are not faultless either, [since] they have not complied with the order for them to inform this Court of the developments in their motion for consolidation [despite lapse of more than three (3) months]. The foregoing is more than sufficient reason for the Court to take severe sanction against the plaintiffs pursuant to Section 3 Rule 17 Revised Rules of Court, i.e., failure to prosecute for unreasonable length of time and comply with an order of the court. However, in the interest of justice, plaintiffs are afforded one last opportunity to continue prosecuting their case.

Anent the motion to Consolidate and Declare the defendant in default, the Court is constrained to deny the same for failure to comply with Section 6 Rule 15 in relation to Section 13 Rule 13 of the Revised Rules of Court. The instant motion failed to show any affidavit of personal service attesting the personal delivery of the motion to the adverse parties and of the affidavit of mailing to the other party which was served through registered mail service. Likewise, the Motion to Declare in Default Laverne Realty is denied on the basis of non-compliance with Section 19 Rule 14 Revised Rules of Court.

Anent the previous orders of this Court requiring the sheriff or process server of the Court to send a copy of the alias summons as well as a copy of the order granting leave to serve summons for publication, the same must be recalled pursuant to the declaration of the Supreme Court in *Santos v. PNOC Exploration*, that 'the rules, however, do not require that the affidavit of complementary service be executed by the clerk of court. While the trial court ordinarily does the mailing of copies of its orders and processes, the duty to make the complementary service by registered mail' under Section 19, Rule 14 of the Rules of Court 'is imposed on the party who resorts to service by publication.' The reason is plain, the affidavit referred to in the rules must be executed by the person who mailed the required documents in Section 19 Rule 14, Revised Rules of Court.

WHEREFORE, the Court hereby Orders that:

1) Laverne Realty's Answer with Compulsory [C]ounterclaim be **EXPUNGED** from the record pursuant to Section 12 Rule 8 Revised Rules of Court;

2) Plaintiffs' Motions to Consolidate and to Declare the Defendant in Default are both **DENIED**;

3) Any orders inconsistent with this, particularly [the] order dated September 19, 2011 are hereby recalled and/or modified accordingly;

4) No setting shall be given in the meantime, but the Court shall await further action to be taken by the concerned parties and shall act accordingly.

Furnish copies of this Order all the parties concerned, including defendant Laverne, through its retained counsel, Atty. De Belen who has voluntarily appeared in court.

SO ORDERED.[8] (Emphasis in the original; citations omitted)

On June 26, 2012, the Makati RTC Branch 62 issued another Order[9] dismissing Civil Case No. 07-1155 for petitioners' failure to comply with the Order of November 25, 2011, and pursuant to Section 3, Rule 17 of the 1997 Rules of Civil Procedure.[10]

Petitioners filed an omnibus motion for reconsideration and to declare Laverne in default. However, the Makati RTC Branch 62 denied the same in its Order[11] of December 27, 2012, ruling thus:

Plaintiff plead[ed] liberality but strongly asserted that their failure to comply with the orders of this Court was due to excusable negligence. They claim[ed] that 'non-compliance' with the Court's orders 'was brought about by mere mistake and excusable negligence of awaiting for the finality of the resolution of Branch 148 of the Regional Trial Court of Makati City regarding the approval of consolidation before informing this Court.'

The Court is not persuaded.

First. [P]laintiffs were afforded more than the required opportunity and were even guided through the Court's orders for their prompt compliance. [They failed to comply] not only once but multiple [times].

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[8] *Id*.

[9] *Id*. at 96.

[10] Sec. 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[11] *Rollo*, pp. 97-98.

Second. The Court finds it hard to understand why the 'developments' before the RTC Branch 148 would depend on the outcome of the motion for consolidation before this Court. Plainly, if plaintiffs would want the case before another branch consolidated with the pending case before this Court, all that they have to do is to ask such relief from the court trying the other case, x x x. This Court would only be confronted to rule (to refuse or grant consolidation) if and when the other case before another court [is] already ordered consolidated and transmitted in this Court. It would be premature for this Court to act on something that has not yet happened. This is how things [are] properly done.

Yet again, for failure of the plaintiff spouses Cruz's Omnibus Motion to comply with Section 13 Rule 13[12] in relation to Section 6 Rule 15[13] of the Revised Rules of Court, the same is hereby **DENIED**. It must be observed that these lapses (along with failure to comply with Section 19 Rule 14[14] [were] the same grounds [relied upon by this Court] in its denial of the previous motion to default per its order dated March 29, 2012. Sadly, plaintiffs did not learn their lesson.

Plaintiffs also lament[ed] that the non-filing of defendant's answer should have prompted the Court to declare it in default. True, if the

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[12] Sec. 13. *Proof of service*. — Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

[13] Sec. 6. *Proof of service necessary*. — No written motion set for hearing shall be acted upon by the court without proof of service thereof.

[14] Sec. 19. *Proof of service by publication.* — If the service has been made by publication, service may be proved by the affidavit of the printer, his foreman or principal clerk, or of the editor, business or advertising manager, to which affidavit a copy of the publication shall be attached, and by an affidavit showing the deposit of a copy of the summons and order for publication in the post office, postage prepaid, directed to the defendant by registered mail to his last known address.

Court was provided by plaintiff with full compliance on proof of service by publication pursuant to Section 19 Rule 14 of the Revised Rules. Even in the present motion, the plaintiffs again have been oblivious of their duty under the rules. How can the Court declare the defendant in default?

x x x x x x x x x

WHEREFORE, the Omnibus Motion: (i) For Reconsideration and (ii) Declare Defendant Laverne Realty and Development Corporation in Default is **DENIED** for utter lack of merit.

SO ORDERED.[15] (Emphasis in the original; citations omitted)

Proceedings in LRC Case No. M-5237

Meanwhile, in LRC Case No. M-5237 or Laverne's petition to surrender the owner's copy of the title to the subject property, petitioners filed a demurrer to evidence, which the Makati RTC Branch 148 granted in an Order[16] dated May 26, 2015, where it was stated that –

x x x In the instant demurrer, respondents move for the dismissal of the present petition based on the following grounds:

a) Billing Statements were not received by respondents Sps. Cruz[;]

b) Notice of Tax Delinquency was defective or non-compliant[;]

c) Warrant of Levy was likewise defective or non-compliant[;]

d) The public auction was defective and non-compliant[.]

x x x x x x x x x

Sections 254 and 260 of the Code[17] [require] that the Notice of Tax Delinquency and Notice or Advertisement of Sale respectively be posted in the main entrance of the provincial, city or municipal building, and in publicly accessible and conspicuous place in the barangay where the real property is located. Proof of compliance with the said requirement is wanting in the evidence presented.

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[15] *Id.*

[16] *Rollo*, pp. 130-133; penned by Judge Andres Bartolome Soriano.

[17] LGC, the Local Government Code or Republic Act No. 7160.

The actual notice of tax delinquency and the advertisement of public sale or public auction posted in the City of Makati and in a conspicuous place in the barangay where the property is located was not presented. There [was] no evidence presented that the Notice of Tax Delinquency was posted in the City Hall of Makati and in the barangay where the property is located in compliance with Section 254 of the Code. On the other hand, Exhibit "F" states that the City of Makati requested the Barangay where the property was located to issue a Certification indicating that the list of properties for public auction were posted in the said Barangay, but the Barangay Certification itself was not presented in court. Mere request for a Certification is not sufficient compliance with the law. Also, what was presented is the Certification issued by the City of Makati that the list of properties for public auction was posted in the bulletin Board of the City Hall. There [was] no showing that a notice of tax delinquency was posted. The Notice of Tax Delinquency under Section 254 is different from the Notice or Advertisement of Sale under Section 260 of R.A. 7160.

The law provides that the Notice of Tax Delinquency must be published twice in a newspaper of general circulation; the evidence presented shows that the Notice of Tax Delinquency was published only once on March 25, 2006. While the Notice of Public Auction was published thrice, it must be again remembered that the Notice of Public Auction is different from the Notice of Tax Delinquency.

The law provides that the advertisement for the public sale of the delinquent property must be made at least thirty days from the service of warrant of levy to the delinquent taxpayer. In the case at bar, the warrant of levy was mailed to the delinquent taxpayer, Noemi Cruz, as shown in the registry receipt attached to the warrant of levy. However, there [was] no showing that the same [was] actually served or received by the said taxpayer. The law requires service of the warrant of levy to the taxpayers. The registry receipt merely proves that the same was mailed but the actual service or receipt of the same by the delinquent taxpayer cannot be deduced therefrom. Likewise, there is also doubt as to whether the billings were sent to the correct address of the respondents as the notations in the upper portion of the billings pertain to a Unit "1407" instead of Unit "407".

Verily, the evidence presented [was] insufficient to establish compliance with the requirements laid out in Sections 254, 258 and 260 of the R.A. 7160. Be it noted, that the aforesaid sections [use]

the word 'shall' which [means] that compliance with the same is mandatory in character. x x x

x x x x x x x x x

Further, considering that what is at stake here is a possible loss of private property, compliance with the above said requirements must be strictly complied with in order to ensure that petitioner is not deprived of property without due process of law.

In view thereof, the Court is of the view that petitioner failed to sufficiently establish the basis for the granting of the present petition.

Meanwhile, the records show that there is an action for Annulment of Sale pending before another Court relating to the same subject property. Hence, it should be clarified that the present resolution is only for the purpose of resolving the present Petition to surrender and/or cancellation of an owner's duplicate copy with prayer for a writ of possession.

WHEREFORE, premises considered, the Demurrer to Evidence is **GRANTED**.

Accordingly, the instant case is dismissed.

No costs.

SO ORDERED.[18] (Emphasis in the original; citations omitted)

Laverne moved to reconsider, but the trial court denied the motion in a July 30, 2015 Order.[19]

Laverne filed an appeal before the CA which was docketed as CA-G.R. CV No. 105623. In a July 21, 2016 Resolution,[20] the appellate court dismissed the same for non-filing of the required brief. Laverne filed a motion for reconsideration but the CA denied the same in a January 27, 2017 Resolution.[21]

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[18] *Rollo*, pp. 130-133.

[19] *Id.* at 134-135.

[20] *Id.* at 213-214; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Rosmari D. Carandang and Myra V. Garcia-Fernandez.

[21] *Id.* at 241-242.

Ruling of the Court of Appeals

Reverting to the instant case, Civil Case No. 07-1155, petitioners filed an original petition for *certiorari* before the CA questioning the March 29, 2012 and December 27, 2012 Orders of the Makati RTC Branch 62. On July 22, 2013, the CA rendered the assailed Decision containing the following pronouncement:

> In view of the foregoing, herein petitioners come before this Court contending that the lower court gravely abused its discretion in denying their Omnibus Motion.
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> We are not persuaded.
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> x x x x x x x x x
>
> [T]he trial court acted in the exercise of its sound judicial discretion in denying the motion of the petitioners for the consolidation of LRC Case No. M-5237 with Civil Case No. 07-1155. The proceedings in LRC Case No. M-5237 is not, strictly speaking, a judicial process and is a non-litigious proceeding; it is summary in nature. In contrast, the action in Civil Case No. 07-1155 is an ordinary civil action and adversarial in character. The rights of the respondent Laverne in LRC Case No. M-5237 would be prejudiced if the said case were to be consolidated with Civil Case No. 07-1155, especially since it had already adduced its evidence.
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> x x x x x x x x x
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> In the same manner, it is the Court's opinion that it was within the sound discretion of the trial court when it denied petitioners' motion to declare respondent Laverne in default. It is a hornbook rule that default judgments are generally disfavored as long as no prejudice was caused to plaintiff.
>
> x x x x x x x x x
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> Clearly, there are three requirements which must be complied with by the claiming party before the court may declare the defending party in default, to wit: (1) the claiming party must file a motion asking the court to declare the defending party in default; (2) the defending party must be notified of the motion to declare him in default; and (3) the claiming party must prove that the defending party has failed to answer within the period provided by the Rule.

x x x x x x x x x

Prior to the present rule on default introduced by the 1997 Rules of Civil Procedure, as amended, Section 1 of the former Rule 18 on default is silent on whether or not there is need for a notice of a motion to declare defendant in default. The Supreme Court then ruled that there is no need. However, ***the present rule expressly requires that the motion of the claiming party should be with notice to the defending party***. The purpose of a notice of a motion is to avoid surprises on the opposite party and to give him time to study and meet the arguments. The notice of a motion is required when the party has the right to resist the relief sought by the motion and principles of natural justice demand that his right be not affected without an opportunity to be heard. Therefore, as the present rule on default requires the filing of a motion and notice of such motion to the defending party, it is not enough that the defendant failed to answer the complaint within the reglementary period to be a sufficient ground for declaration in default. The motion must also be heard.

In the case at bench, it was precisely because of petitioners' failure to show any proof or affidavit of personal service attesting the personal delivery to respondent Laverne of such Omnibus Motion to Declare in Default x x x.

x x x x x x x x x

WHEREFORE, premises considered, the instant petition is **DENIED**. Accordingly, the Orders dated March 29, 2012 and December 27, 2012 of the Makati City Regional Trial Court, Branch 62 in Civil Case No. 07-1155 are hereby ***AFFIRMED***.

Costs against petitioners.

SO ORDERED.[22] (Emphasis in the original; citations omitted)

Petitioners filed their motion for reconsideration, which was denied by the CA *via* its January 15, 2014 Resolution. Hence, the instant Petition.

Issues

The issues for resolution are:

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[22] *Id.* at 43-47.

1) Whether the CA committed reversible error in affirming the March 29, 2012, and December 27, 2012 Orders of the trial court, dismissing the complaint for annulment of sale in Civil Case No. 07-1155 considering the gross and inexcusable negligence of their erstwhile counsel which led to the dismissal of their case and consequent deprivation of their property without due process of law.

2) Whether the CA erred in dismissing their petition for *certiorari* in CA-G.R. SP No. 128390 on the ground of erroneous mode of appeal, despite the fact that their case for annulment of sale is meritorious and thus should be decided on its merits rather than on technicalities.

Petitioners' Arguments

Praying that the assailed CA dispositions be set aside and that the case be remanded to the trial court for consideration on its merits, petitioners essentially contend that their case deserves the Court's attention, considering that the delinquency sale of their property was null and void for failure to observe the procedure outlined in the LGC; that is, for lack of compliance with the LGC relative to the sending, publication, and posting of the notice of tax delinquency, the service of the warrant of levy, and the sending of billing statements; that the trial court dismissed Civil Case No. 07-1155 for their failure to comply with the order for them to inform the trial court of the developments in their pending motion for consolidation in LRC Case No. M-5237, for which they may not be faulted, as it was the result of gross and inexcusable negligence on the part of their counsel which could not bind them; that if the incompetence, ignorance or inexperience of counsel is so great and the error committed is so serious that the client, who otherwise has a good cause, is prejudiced and denied his day in court, the litigation may be reopened to give the client another chance to present his case;[23] that their case should be decided on its merits rather than on technicalities, as they have been deprived of their property without due process of law on account

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[23] Citing *Apex Mining, Inc. v. Court of Appeals*, 377 Phil. 482 (1999).

of the illegal sale of the same to Laverne; that the illegal sale of their property amounts to an injustice; and that the dismissal of their petition before the CA due to an erroneous mode of appeal and the gross negligence of their counsel is not commensurate with the illegal deprivation of their property.

Respondents' Arguments

In its Comment,[24] the City of Makati and Makati City Treasurer maintain that the mistake of petitioners' counsel binds the latter, and that the CA committed no reversible error in affirming the trial court's questioned orders, which were not arrived at with grave abuse of discretion.

On the other hand, Laverne argued in its Comment[25] that petitioners availed of the wrong remedy in filing an original petition for *certiorari* instead of taking an ordinary appeal; that as stated in Section 3, Rule 17 of the 1997 Rules, dismissal of the case shall have the effect of an adjudication on the merits, which thus merits the remedy of an appeal; that since petitioners failed to appeal, the questioned orders of the trial court attained finality; that Civil Case No. 07-1155 was dismissed not because of an invalidated claim, a misdiagnosed argument, or a mistaken appreciation of fact, but due to petitioners' repeated failure to comply with lawful orders of the trial court; that the right to appeal is not a natural right but one allowed by statute and the exercise of which must be in accordance with the requisites of law; and that for the foregoing reasons, the instant petition has no leg to stand on.

Our Ruling

The Petition must be granted.

The trial court's sole reason for dismissing Civil Case No. 07-1155 was petitioners' repeated failure to comply with the trial court's orders for them to inform it of the developments in their motion for consolidation filed before the Makati RTC Branch 148, in LRC Case No. M-5237. The trial court, per its

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[24] *Rollo*, pp. 116-121.

[25] *Id.* at 172-192.

June 26, 2012 Order of dismissal, relied upon Section 3, Rule 17 of the 1997 Rules using as ground for dismissal petitioners' repeated failure to comply with its directives to apprise it of the developments in LRC Case No. M-5237.

However, with the developments in LRC Case No. M-5237, that is, its dismissal by the Makati RTC Branch 148 for lack of compliance with the LGC relative to the sending, publication, and posting of the notice of tax delinquency, the service of the warrant of levy, and the sending of billing statements, and the corresponding dismissal of respondent's appeal before the CA, it has become obvious that there is nothing to consolidate with the case before Makati RTC Branch 62, or Civil Case No. 07-1155. There is no more ground to compel petitioners to comply with the Makati RTC Branch 62's orders; they have been overtaken by events. In other words, the mandate contained in those orders have lost relevance and petitioners' repeated failure to comply could no longer be used as ground for dismissal of the case.

More importantly, with the disposition of the court in LRC Case No. M-5237, there is ground to believe that the levy by the City of Makati and subsequent auction sale to Laverne should be annulled. Petitioners are in danger of losing their property without benefit of due process of law owing to the apparently irregular conduct by the City of Makati of proceedings relative to the levy and sale of their property. In *Genato Investments, Inc. v. Barrientos*,[26] a case which involved the very same respondent (Laverne) in this case, this Court held that a buyer of real property, herein respondent Laverne, at a real property tax delinquency sale conducted by the City of Caloocan did not acquire any valid right to petition the trial court for the cancellation of the owner's title and take possession of the latter's property, on the ground, among others, that the notice and warrant of levy were sent by the city to the wrong address and the owner was thus never made aware of the levy and delinquency sale of its property by the city. Thus, the Court held therein that –

[26] 739 Phil. 642 (2014).

Petitioner not only puts in question the complete lack of due process in the conduct of the auction sale and the proceedings before the RTC Caloocan, but the absolute lack of basis for the declaration by the Office of the City Treasurer that it had been delinquent in the payment of real property taxes due on its property, particularly Lot 13-B-1.

Technicalities aside, we are particularly alarmed by the material allegations and serious charges brought up by petitioner in its pleadings, which go into the very core of the action for annulment of judgment and, more importantly, which none of the respondents dispute.

x x x x x x x x x

It certainly is unallowable that petitioner be deprived of his property, or a portion thereof, without any lawful court order or process. x x x

x x x x x x x x x

As mentioned above, the Notice of Levy and Warrant of Levy, were sent to an inexistent office of petitioner at Tondo, Manila and were, thus, returned unserved. Further, the Order dated 13 June 2011, setting the initial hearing on the petition, was neither posted nor properly served upon petitioner. Clearly, petitioner was deprived of its property without due process of law. Inasmuch as it had sufficiently shown that it fully paid its real estate taxes up to 2011, there was no basis to collect any tax liability, and no obligation arose on the part of petitioner to pay the amount of real property taxes sought to be collected. Consequently, petitioner should not have been declared delinquent in the payment of the said taxes to Caloocan City, and the latter did not acquire any right to sell Lot 13-B-1 in a public auction. Besides, it appears that private respondent acted hastily in filing LRC-Case No. C-5748 by failing to ascertain the actual principal office of petitioner to enable the RTC Caloocan to properly acquire jurisdiction over the person of petitioner.

Considering the foregoing, private respondent did not acquire any valid right to petition the RTC Caloocan for the cancellation of TCT No. 33341 and, more importantly, take possession of Lot 13-B-1, much less Lot 1-A. **We reiterate the principle that strict adherence to the statutes governing tax sales is imperative, not only for the protection of the taxpayers, but also to allay any possible suspicion**

of collusion between the buyer and the public officials called upon to enforce the laws.[27] (Emphasis supplied; citations omitted)

The Court must protect private property owners from undue application of the law authorizing the levy and sale of their properties for non-payment of the real property tax. This power of local government units is prone to great abuse, in that owners of valuable real property are liable to lose them on account of irregularities committed by these local government units or officials, done intentionally with the collusion of third parties and with the deliberate unscrupulous intent to appropriate these valuable properties for themselves and profit therefrom. These unscrupulous parties can commit a simple, seemingly irrelevant technicality such as deliberately sending billing statements, notices of delinquency and levy to wrong addresses under the guise of typographical lapses, as what happened here and in the *Genato Investments* case, and then proceed with the levy and auction sale of these valuable properties without the knowledge and consent of the owners. Before the owners realize it, their precious properties have already been confiscated and sold by the local government units or officials to so-called "innocent third parties" who are in fact their cohorts in the unscrupulous scheme. This is barefaced robbery that the Court cannot sanction.

Having disposed of the case in the foregoing manner, the Court finds unnecessary to tackle the procedural issues and the lapses committed by petitioners in the prosecution of their case. The public interest involved here mandates that technicalities should take a backseat to the substantive issues. There is a grave danger that taxpayers may unwittingly lose their real properties to unscrupulous local government units, officials, or private individuals or entities as a result of an irregular application of the LGC provisions authorizing the levy and delinquency sale of real property for non-payment of the real property tax. This is a reality that cannot be ignored. For this reason, the Court must excuse petitioners for their procedural

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[27] *Id.* at 652-657.

lapses, as it must address instead the issue of irregular conduct of levies and delinquency sales of real properties for non-payment of the real property tax, which is alarming considering that of the two cases that this Court is made aware of, there appears to be one common denominator, and that is the respondent herein, Laverne Realty and Development Corporation. Needless to state, petitioners are liable to lose their property without due process of law to Laverne which was previously involved in an irregular sale conducted under similar circumstances.

The Court constantly warns of the possible abuse of this taxing power. The premise is that no presumption of regularity exists in any administrative action which results in depriving a taxpayer of his property; due process of law must be followed in tax proceedings, because a sale of land for tax delinquency is in derogation of private property and the registered owner's constitutional rights.

> The public auction of land to satisfy delinquency in the payment of real estate tax derogates or impinges on property rights and due process. Thus, the steps prescribed by law are mandatory and must be strictly followed; if not, the sale of the real property is invalid and does not make its purchaser the new owner. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws.[28]

> Under Section 254 of the LGC, it is required that the notice of delinquency must be posted at the main hall and in a publicly accessible and conspicuous place in each barangay of the local government unit concerned. It shall also be published once a week for two (2) consecutive weeks, in a newspaper of general circulation in the province, city, or municipality.

> Section 258 of the LGC further requires that should the treasurer issue a warrant of levy, the same shall be mailed to or served upon the delinquent owner of the real property or person having legal interest therein, or in case he is out of the country or cannot be located, the administrator or occupant of the property. At the same time, the

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[28] *Salva v. Magpile*, G.R. No. 220440, November 8, 2017.

written notice of the levy with the attached warrant shall be mailed to or served upon the assessor and the Registrar of Deeds of the province, city or municipality within the Metropolitan Manila Area where the property is located, who shall annotate the levy on the tax declaration and certificate of title of the property, respectively.

Section 260 of the LGC also mandates that within thirty (30) days after service of the warrant of levy, the local treasurer shall proceed to publicly advertise for sale or auction the property or a usable portion thereof as may be necessary to satisfy the tax delinquency and expenses of sale. Such advertisement shall be effected by posting a notice at the main entrance of the provincial, city or municipal building, and in a publicly accessible and conspicuous place in the barangay where the real property is located, and by publication once a week for two (2) weeks in a newspaper of general circulation in the province, city or municipality where the property is located.

Respondent utterly failed to show compliance with the aforestated requirements. First, no evidence was adduced to prove that the notice of levy was ever received by the CSDC. There was no proof either that such notice was served on the occupant of the property. It is essential that there be an actual notice to the delinquent taxpayer, otherwise, the sale is null and void although preceded by proper advertisement or publication. This proceeds from the principle of administrative proceedings for the sale of private lands for non-payment of taxes being in personam.

Second, the notice of tax delinquency was not proven to have been posted at the Makati City Hall and in Barangay Dasmariñas, Makati City, where the property is located. It was not proven either that the required advertisements were effected in accordance with law. x x x

x x x x x x x x x

Respondent must be reminded that the requirements for a tax delinquency sale under the LGC are mandatory. Strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. Particularly, the notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfilment of which vitiates the sale. Thus, the holding of a tax sale despite the absence of the requisite

notice, as in this case, is tantamount to a violation of the delinquent taxpayer's substantial right to due process.[29]

We cannot overemphasize that strict adherence to the statutes governing tax sales is imperative not only for the protection of the taxpayers, but also to allay any possible suspicion of collusion between the buyer and the public officials called upon to enforce the laws. Notice of sale to the delinquent land owners and to the public in general is an essential and indispensable requirement of law, the non-fulfillment of which vitiates the sale. Thus, the holding of a tax sale despite the absence of the requisite notice is tantamount to a violation of delinquent taxpayer's substantial right to due process. Administrative proceedings for the sale of private lands for nonpayment of taxes being *in personam*, it is essential that there be actual notice to the delinquent taxpayer, otherwise the sale is null and void although preceded by proper advertisement or publication.

x x x x x x x x x

There can be no presumption of the regularity of any administrative action which results in depriving a taxpayer of his property through a tax sale. This is an exception to the rule that administrative proceedings are presumed to be regular. x x x

x x x x x x x x x

As the tax sale was null and void, the title of the buyer therein (Mr. Puzon) was also null and void x x x.[30]

The procedural faults committed by petitioners no longer deserve consideration. Their choice of remedy is irrelevant given the spectre of patent illegality that surrounds the levy and sale of petitioners' property by the City of Makati to Laverne. A fundamental characteristic of void or inexistent contracts is that the action for the declaration of their inexistence does not prescribe;[31] nor may the right to set up the defense of their inexistence or absolute nullity be waived or renounced. Void contracts are equivalent to nothing and are absolutely wanting

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[29] *Corporate Strategies Development Corporation v. Agojo*, 747 Phil. 607, 620-625 (2014).

[30] *Sarmiento v. Court of Appeals*, 501 Phil. 101, 121-124 (2005).

[31] CIVIL CODE, Article 1410.

in civil effects; they cannot be validated either by ratification or prescription.

On the other hand, the court trying Civil Case No. 07-1155 is admonished to tread carefully and choose its actions with deliberate thought and consideration in light of the above disquisition. It would not have arrived at the conclusion it did if it placed petitioners' substantive rights ahead of the convenience of procedural rules. It is not beholden to the City of Makati, where its court sits; justice and truth are its only masters.

WHEREFORE, the Petition is **GRANTED**. The July 22, 2013 Decision and January 15, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 128390 are **REVERSED AND SET ASIDE**. The June 26, 2012 and December 27, 2012 Orders of the Regional Trial Court of Makati City, Branch 62 in Civil Case No. 07-1155 are likewise **REVERSED AND SET ASIDE**, except for its ruling denying petitioners' motion to declare Laverne in default, which remains.

Civil Case No. 07-1155 is hereby **REINSTATED** and the Regional Trial Court of Makati City, Branch 62 is ordered to continue with the proceedings therein with dispatch.

SO ORDERED.

Leonardo-de Castro, C.J., Bersamin, and *Jardeleza JJ.*, concur.

Tijam, J., on official leave.

SPECIAL FIRST DIVISION

[G.R. No. 213500, September 12, 2018]

OFFICE OF THE OMBUDSMAN and THE FACT-FINDING INVESTIGATION BUREAU (FFIB), OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES (MOLEO), *petitioners, vs.* **PS/SUPT. RAINIER A. ESPINA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; IMPOSABLE PENALTIES; THE DISCIPLINARY AUTHORITY IS GRANTED THE DISCRETION TO CONSIDER MITIGATING CIRCUMSTANCES IN THE IMPOSITION OF THE PROPER PENALTY.— [T]he presence of mitigating circumstances should be appreciated in favor of Espina, meriting the reduction of the penalty to be imposed on him. Section 48, Rule X of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Hence, in several cases, the Court has reduced the imposable penalty of dismissal from service for humanitarian reasons in view, among others of respondent's length of service, unblemished record in the past, and numerous awards. x x x Considering that it is Espina's first offense in his 29 straight years of active service in the Armed Forces of the Philippines and the PNP which were attended with numerous awards or service commendations, and untainted reputation in his career as a police officer that was not disputed, the Court is equally impelled to remove him from the severe consequences of the penalty of dismissal from service, following jurisprudential precedents and pursuant to the discretion granted by the RRACCS. While the Court does not condone the wrongdoing of public officers and employees, neither will it negate any move to recognize their length of service in the government. Consequently, the Court

hereby reduces the penalty imposed on him to one (1)-year suspension from service without pay, reckoned from the time that the Office of the Ombudsman's (Ombudsman) Joint Resolution dated December 19, 2012 in OMB-P-A-12-0532-G was implemented.

2. ID.; ID.; ID.; PREVENTIVE SUSPENSION; WHILE THE ADMINISTRATIVE CASE IS ON APPEAL, A PUBLIC OFFICIAL IS CONSIDERED TO BE ON PREVENTIVE SUSPENSION, AND THE PERIOD OF SUSPENSION BECOMES PART OF THE FINAL PENALTY OF SUSPENSION OR DISMISSAL EVENTUALLY ADJUDGED.— [A] public official is considered to be on preventive suspension while the administrative case is on appeal. Such preventive suspension is punitive in nature and the period of suspension becomes part of the final penalty of suspension or dismissal eventually adjudged. Thus, the period within which Espina was preventively suspended prior to the promulgation of this Decision shall be credited in his favor, and he may now be reinstated to his former rank as Police Senior Superintendent without loss of seniority rights and all rights appurtenant thereto. Nonetheless, Espina's permanent employment record must reflect the modified penalty.

3. ID.; ID.; ID.; THE MERE REDUCTION OF THE PENALTY ON APPEAL DOES NOT ENTITLE A GOVERNMENT EMPLOYEE TO BACK SALARIES IF HE IS NOT EXONERATED OF THE CHARGES.— [I]t must be clarified that Espina shall not be entitled to back salaries, considering that he was not exonerated of the charges but was, instead, found culpable for another offense emanating from the same acts that were the basis of the original charges against him, and merely removed from the severe consequences of the penalty of dismissal from service. The mere reduction of the penalty on appeal does not entitle a government employee to back salaries if he was not exonerated of the charges.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Kapunan and Castillo Law Offices for respondent.

R E S O L U T I O N

***PER CURIAM*:**

For resolution is respondent Rainier A. Espina's (Espina) Motion for Reconsideration[1] dated May 10, 2017, seeking to reverse and set aside the Court's Decision[2] dated March 15, 2017 finding him guilty of Gross Neglect of Duty, and dismissing him from government service with all the accessory penalties.

At the outset, it is observed that except for Espina's plea to reduce the imposable penalty[3] by considering the averred mitigating circumstances of:

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[1] *Rollo,* pp. 598-635.

[2] *Id.* at 581-592. See also *Office of the Ombudsman v. Espina,* G.R. No. 213500, March 15, 2017, 820 SCRA 541.

[3] *I.e.*, to mere suspension from office for a period ranging from sixty (60) days to six (6) months in accordance with Sections 2 and 5 (b), Rule 22 of the National Police Commission Memorandum Circular No. 2007-001, entitled the "UNIFORM RULES OF PROCEDURE BEFORE THE ADMINISTRATIVE DISCIPLINARY AUTHORITIES AND THE INTERNAL AFFAIRS SERVICE OF THE PHILIPPINE NATIONAL POLICE (PNP)," issued on March 6, 2007 which provide:

Section 2. *Range of Penalties.* – The penalties for light, less grave and grave offenses shall be made in accordance with the following ranges:

x x x x x x x x x

For Grave Offenses:

1) Sixty (60) days to Six (6) months suspension (minimum period);
2) One (1) rank demotion (medium period);
3) Dismissal from the service (maximum period).

Section 5. *Guidelines in the Application of Penalties.* – The imposition of the penalty shall be made in accordance with the manner herein below provided:

x x x x x x x x x

b) The minimum period of the penalty shall be imposed where only mitigating and no aggravating circumstances are present. (Emphasis supplied)

(a) first offense; *(b)* length of service; and *(c)* awards/commendations,[4] the arguments propounded in his motion had been adequately passed upon by the Court in its March 15, 2017 Decision. In his motion, Espina essentially denies having failed to exercise due diligence when he signed the Inspection Report Forms (IRFs) covering the "ghost deliveries" subject of the case, maintaining that it was not his duty to inspect or accept the deliveries when the IRFs do not bear any irregularities on their face.[5]

As the Court explained in its Decision, while SOP No. XX4[6] dated November 17, 1993 cited by Espina did not expressly require him, as Acting Chief and Head of the Philippine National Police (PNP) Management Division, to physically re-inspect, re-check, and verify the deliveries to the PNP as reported by the property inspectors under him, he had the duty "to reasonably ensure that [the IRFs] were prepared in accordance with law, keeping in mind the basic requirement that the goods allegedly delivered to and services allegedly performed for the government have actually been delivered and performed."[7]

Contrary to his claim,[8] his notation-signature on the IRFs just below the statement "NOTED" did not simply indicate that he took cognizance of the existence of the IRFs, but that he confirmed: *(a)* the PNP's receipt of the tires and other supplies when there were actually no such items delivered; and *(b)*the performance of repair and refurbishment works on the V-150 Light Armored Vehicles when the works procured have not actually been rendered when such IRFs were signed. To reiterate, given the amounts involved and the timing of the alleged deliveries, the circumstances reasonably imposed on Espina a

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[4] See *rollo,* pp. 631-632.

[5] See *id*. at 605-613.

[6] *Id*. at 648-651.

[7] *Id*. at 588. See also *Office of the Ombudsman v. Espina, supra* note 2, at 555-556.

[8] See *id*. at 607-608.

higher degree of care and vigilance in the discharge of his duties. However, he failed to employ the degree of diligence expected of him considering the high position he occupied and the responsibilities it carried.

Be that as it may, the presence of mitigating circumstances should be appreciated in favor of Espina, meriting the reduction of the penalty to be imposed on him.

Section 48, Rule X of the Revised Rules on Administrative Cases in the Civil Service[9] (RRACCS) grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. Hence, in several cases,[10] the Court has reduced the imposable penalty of dismissal from service for humanitarian reasons in view, among others of respondent's length of service, unblemished record in the past, and numerous awards.[11]

In *Office of the Court Administrator v. Egipto, Jr.*,[12] the Court imposed the penalty of one (1)-year suspension without pay instead of dismissal from service to respondent who was found guilty of gross neglect of duty, considering his length of service, among others. In *Fact-finding and Intelligence Bureau v. Campaña*,[13] a similar penalty was imposed on respondent who was found guilty of a grave offense meriting dismissal, in view

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[9] As prescribed in Civil Service Commission (CSC) Resolution No. 11-01502, promulgated on November 8, 2011. While the RRACCS has been repealed by the 2017 RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2017 RACCS) which took effect on August 17, 2017, the RRACCS remains applicable to pending cases filed before its effectivity, provided it will not unduly prejudice substantive rights (see Section 124, Rule 23 of the 2017 RACCS).

[10] See *Cabauatan v. Uvero*, A.M. No. P-15-3329, November 6, 2017; *Fact-finding and Intelligence Bureau v. Campaña*, 584 Phil. 654, 668 (2008); *Buntag v. Paña*, 520 Phil. 175, 180 (2006); and *De Guzman, Jr. v. Mendoza*, 493 Phil. 690, 699 (2005).

[11] See *CSC v. Belagan*, 483 Phil. 601, 625 (2004).

[12] See Unsigned Resolution in A.M. No. P-05-1938, January 30, 2018.

[13] See *supra* note 10, at 668.

of his length of service, his unblemished record in the past, and the fact that it was his first offense. In *Civil Service Commission v. Belagan*,[14] the Court also imposed a one (1)-year suspension on respondent who was found guilty of a grave offense warranting dismissal, taking into account his numerous awards, and the fact that it was his first time to be administratively charged.

Considering that it is Espina's first offense in his 29 straight years of active service in the Armed Forces of the Philippines and the PNP which were attended with numerous awards or service commendations,[15] and untainted reputation in his career as a police officer[16] that was not disputed,[17] the Court is equally impelled to remove him from the severe consequences of the penalty of dismissal from service,[18] following jurisprudential precedents and pursuant to the discretion granted by the RRACCS. While the Court does not condone the wrongdoing of public officers and employees, neither will it negate any move to recognize their length of service in the government.[19] Consequently, the Court hereby reduces the penalty imposed on him to one (1)-year suspension from service without pay, reckoned from the time that the Office of the Ombudsman's (Ombudsman) Joint Resolution[20] dated December 19, 2012 in OMB-P-A-12-0532-G was implemented.

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[14] *Supra* note 11, at 625.

[15] *Rollo*, pp. 598, 631-632, and 639-647.

[16] *Id.* at 598.

[17] Despite the opportunity given by the Court, the OSG merely filed a Manifestation and Motion dated November 16, 2017, stating that it will dispense with the filing of a Comment to Espina's Motion for Reconsideration. See *id.* at 761-763.

[18] See Unsigned Resolution in *Office of the Court Administrator v. Chavez*, A.M. Nos. RTJ-10-2219 and 12-7-130-RTC, August 1, 2017.

[19] See *CSC v. Belagan, supra* note 11, at 625.

[20] Records, Vol. 65, pp. 07529-07636. Signed by the Investigating Panel created Pursuant to Office No. 248, Series of 2012 and approved by Ombudsman Conchita Carpio Morales.

However, it is well to point out that a public official is considered to be on preventive suspension while the administrative case is on appeal.[21] Such preventive suspension is punitive in nature and the period of suspension becomes part of the final penalty of suspension or dismissal eventually adjudged.[22] Thus, the period within which Espina was preventively suspended prior to the promulgation of this Decision[23] shall be credited in his favor, and he may now be reinstated to his former rank as Police Senior Superintendent without loss of seniority rights and all rights appurtenant thereto.[24] Nonetheless, Espina's permanent employment record must reflect the modified penalty.[25] Further, it must be clarified that Espina shall not be entitled to back salaries, considering that he was not exonerated of the charges but was, instead, found culpable for another offense emanating from the same acts that were the basis of the original charges against him, and merely removed from the severe consequences of the penalty of dismissal from service.[26] The mere reduction of the penalty on appeal does

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[21] Section 47, Chapter 7, Subtitle A, Title I, Book V of Executive Order No. 292 or the "ADMINISTRATIVE CODE OF 1987," approved on July 25, 1987, provides, among others, that in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal. See also Section 7, Rule III of Ombudsman Administrative Order No. 07 or the "RULES OF PROCEDURE OF THE OMBUDSMAN," approved on April 10, 1990, as amended by Office of the Ombudsman Administrative Order No. 17-03, entitled "AMENDMENT OF RULE III ADMINISTRATIVE ORDER NO. 07" dated September 15, 2003.

[22] See *Yamson v. Castro,* 790 Phil. 667, 712 (2016), citing *Gloria v. CA,* 365 Phil. 744, 764 (1999).

[23] Unlike the Ombudsman's Decision, the Court of Appeals Decision and Resolution reinstating respondent in his position is not immediately executory, and is subject to appeal to this court *via* Rule 45 of the Rules of Court. See *Ombudsman v. Delos Reyes,* 781 Phil. 297, 316 (2016).

[24] See Section 53 (d) of the RRACCS.

[25] See *Yamson v. Castro, supra* note 22.

[26] A government employee may only be entitled to back salaries when: (*i*) he is found innocent of the charges which caused the suspension, *i.e.*,

not entitle a government employee to back salaries if he was not exonerated of the charge.[27]

WHEREFORE, the motion for reconsideration filed by respondent Rainier A. Espina (Espina) is **PARTLY GRANTED.** The Decision dated March 15, 2017 is hereby **MODIFIED.** Accordingly, he is **SUSPENDED** for a period of one (1) year without pay, reckoned from the time that the Office of the Ombudsman's Joint Resolution dated December 19, 2012 in OMB-P-A-12-0532-G was implemented.

Considering that the period within which Espina was preventively suspended pending appeal is creditable in the implementation of the penalty of one (1)-year suspension herein imposed, he is hereby **REINSTATED** to his former rank as Police Senior Superintendent without loss of seniority rights and all rights appurtenant thereto, but without back salaries.

Let a copy of this Resolution be reflected in the permanent employment record of respondent

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), del Castillo, Perlas-Bernabe, Jardeleza,[*] and *Caguioa, JJ.,* concur.

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completely exonerated of the charges, or found guilty of a lesser offense which does not carry the penalty of more than one (1) month suspension; or (*ii*) his suspension was unjustified because there was no cause for suspension or dismissal, *e.g.*, where the employee did not commit the offense charged, or he is found guilty of another offense for an act different from that for which he is charged (see *Yamson v. Castro, id*. at 712-713, citing *CSC v. Cruz,* 670 Phil. 638, 659-661 [2011]). Likewise, it is settled that public officers are entitled to payment of salaries only if they render service. See *Ombudsman v. Delos Reyes, supra* note 23, at 317.

[27] *CSC v. Cruz, id*. at 657.

[*] Designated Additional Member per Raffle dated September 5, 2018.

SPECIAL FIRST DIVISION

[G.R. No. 213582. September 12, 2018]

NYMPHA S. ODIAMAR,[*] *petitioner, vs.* **LINDA ODIAMAR VALENCIA,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; INTEREST; TYPES; MONETARY INTEREST AND COMPENSATORY INTEREST, DISTINGUISHED.—** [T]here are two (2) types of interest, namely, monetary interest and compensatory interest. Monetary interest is the compensation fixed by the parties for the use or forbearance of money. On the other hand, compensatory interest is that imposed by law or by the courts as penalty or indemnity for damages. In other words, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for the delay or failure to pay the principal loan on which the interest is demanded (compensatory interest).

2. **ID.; ID.; ID.; ID.; MONETARY INTEREST; MAY NOT BE IMPOSED ON A LOAN OBLIGATION IF IT IS NOT EXPRESSLY STIPULATED IN WRITING, BUT SUCH LOAN OBLIGATION MAY STILL BE SUBJECTED TO COMPENSATORY INTEREST; CASE AT BAR.—** Anent monetary interest, it is an elementary rule that no interest shall be due unless it has been expressly stipulated in writing. In this case, no monetary interest may be imposed on the loan obligation, considering that there was no written agreement expressly providing for such. This notwithstanding, such loan obligation may still be subjected to compensatory interest, following the guidelines laid down in *Nacar v. Gallery Frames* x x x. [P]etitioner's loan obligation to respondent shall be subjected to compensatory interest at the legal rate of twelve percent (12%) per annum from the date of judicial demand, *i.e.*, August 20, 2003, until June 30, 2013, and thereafter at the legal rate of six percent (6%) per annum from July 1, 2013

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[*] "Nympha Odiamar-Buencamino" and "Nimfa Odiamar-Buencamino" in some parts of the records.

until finality of this ruling. Moreover, all monetary awards due to respondent shall earn legal interest of six percent (6%) per annum from finality of this ruling until fully paid.

APPEARANCES OF COUNSEL

Antonio M. Ursua, Jr. for petitioner.
Rosario Airene R. Hinanay-Pasa for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Motion for Reconsideration[1] filed by respondent Linda Odiamar Valencia (respondent) assailing the Decision[2] dated June 28, 2016 of the Court which affirmed the Decision[3] dated March 16, 2012 and the Resolution[4] dated July 14, 2014 of the Court of Appeals (CA) in C.A. G.R. CV No. 93624, with modification ordering petitioner Nympha S. Odiamar (petitioner) to pay respondent the amount of ₱1,010,049.00 representing the remaining balance of petitioner's debt to the latter in the original amount of ₱1,400,000.00.

In said motion, respondent prays for the imposition of legal interest on the monetary award due her.[5] She likewise insists that petitioner's loan obligation to her is not just ₱1,400,000.00 but ₱2,100,000.00 and, as such, she should be made to pay the latter amount.[6]

Respondent's contentions are partly meritorious.

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[1] Dated September 1, 2016. *Rollo*, pp. 105-116.

[2] *Id.* at 94-103.

[3] *Id.* at 22-36. Penned by Associate Justice Noel G. Tijam (now a member of the Court) with Associate Justices Romeo F. Barza and Edwin D. Sorongon concurring.

[4] *Id.* at 38-40.

[5] See *id.* at 105-106.

[6] See *id.* at 107-112.

At the outset, the Court notes that there are two (2) types of interest, namely, monetary interest and compensatory interest. Monetary interest is the compensation fixed by the parties for the use or forbearance of money. On the other hand, compensatory interest is that imposed by law or by the courts as penalty or indemnity for damages. In other words, the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for the delay or failure to pay the principal loan on which the interest is demanded (compensatory interest).[7]

Anent monetary interest, it is an elementary rule that no interest shall be due unless it has been expressly stipulated in writing.[8] In this case, no monetary interest may be imposed on the loan obligation, considering that there was no written agreement expressly providing for such.[9]

This notwithstanding, such loan obligation may still be subjected to compensatory interest, following the guidelines laid down in *Nacar v. Gallery Frames*,[10] as follows:

> Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) per annum — as reflected in the case of [*Eastern Shipping Lines, Inc. v. CA (Eastern Shipping Lines)*[11]] and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be six percent (6%) per annum effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. **Consequently, the twelve percent (12%) per annum legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) per annum shall be the prevailing rate of interest *when applicable.***

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[7] See *Pen v. Santos*, 776 Phil. 50, 62 (2016).

[8] See Article 1956 of the Civil Code.

[9] See *rollo*, pp. 101-102. See also TSN dated April 28, 2005, pp. 7-8.

[10] 716 Phil. 267 (2013).

[11] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

x x x x x x x x x

To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi- contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. **When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money**, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. **In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand** under and subject to the provisions of Article 1169 of the Civil Code.

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

3. **When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2,**

> **above, shall be 6% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit**.[12] (Emphases and underscoring supplied)

Applying the foregoing parameters to this case, petitioner's loan obligation to respondent shall be subjected to compensatory interest at the legal rate of twelve percent (12%) per annum from the date of judicial demand, *i.e.*, August 20, 2003,[13] until June 30, 2013, and thereafter at the legal rate of six percent (6%) per annum from July 1, 2013 until finality of this ruling. Moreover, all monetary awards[14] due to respondent shall earn legal interest of six percent (6%) per annum from finality of this ruling until fully paid.

However, as to respondent's other contentions, suffice it to say that the same are mere reiterations of the grounds already evaluated and passed upon in the Assailed Decision. Therefore, there is no cogent reason to warrant a modification or reversal of the same.

WHEREFORE, the motion for reconsideration is **PARTLY GRANTED**. The Decision dated June 28, 2016 of the Court is hereby **AFFIRMED** with **MODIFICATION**, imposing on petitioner Nympha S. Odiamar's liability to respondent Linda Odiamar Valencia in the amount of ₱1,010,049.00 legal interest at the rate of twelve percent (12%) per annum from the date of judicial demand, *i.e.*, August 20, 2003, until June 30, 2013, and thereafter at the legal rate of six percent (6%) per annum from July 1, 2013 until finality of this ruling. Moreover, all monetary awards due to respondent shall earn legal interest at the rate of six percent (6%) per annum from finality of this ruling until fully paid.

SO ORDERED.

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[12] *Id.* at 280-283; citations omitted.

[13] See *rollo*, p. 95.

[14] It must be noted that aside from the loan obligation, the Regional Trial Court of San Jose, Camarines Sur, Branch 58 also awarded respondent the amounts of ₱10,000.00 as attorney's fees, ₱19,662.78 as litigation expenses, and the costs of suit. See *id.* at 25-26, 45-46, and 96.

Leonardo-de Castro, C.J. (Chairperson), Bersamin, and *Caguioa, JJ.,* concur.

Gesmundo,[**] *J.,* on official business.

THIRD DIVISION

[G.R. No. 193236. September 17, 2018]

FLORENCIA GARCIA-DIAZ *petitioner, vs.* **SANDIGANBAYAN,** *respondent.*

[G.R. Nos. 193248-49. September 17, 2018]

JOSE G. SOLIS, *petitioner, vs.* **SANDIGANBAYAN and the PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 3019 (THE ANTI-GRAFT AND CORRUPT PRACTICES ACT); SECTION 3 (g); ELEMENTS.— The elements of Section 3(g) [of the Anti-Graft and Corrupt Practices Act] are: first, the accused is a public officer; second, that he or she entered into a contract or transaction on behalf of the government; and third, that the contract or transaction is grossly and manifestly disadvantageous to the government.

2. ID.; ID.; CORRUPT PRACTICES OF PUBLIC OFFICERS; A PRIVATE PERSON MAY BE HELD LIABLE TOGETHER WITH THE PUBLIC OFFICER IF THERE IS AN ALLEGATION OF CONSPIRACY.— It is true that Section 3 of the Anti-Graft and Corrupt Practices Act speaks of corrupt practices of public officers. "However, if there is an

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[**] Designated Additional Member per Raffle dated September 10, 2018.

allegation of conspiracy, a private person may be held liable together with the public officer." This is consistent with the policy behind the statute, which, as provided in its first section, is "to repress certain acts of public officers and *private persons alike* which may constitute graft or corrupt practices or which may lead thereto." The reason that private persons may be charged with public officers under the Anti-Graft and Corrupt Practices Act is "to avoid repeated and unnecessary presentation of witnesses and exhibits against conspirators in different venues, especially if the issues involved are the same. It follows, therefore, that if a private person may be tried jointly with public officers, he or she may also be convicted jointly with them." Thus, when an information alleges that a public officer "conspires," "confederates," "connives," or "colludes" with a private person, or when the "allegation of basic facts constituting conspiracy [between the public officer and the private person is made] in a manner that a person of common understanding would know what is intended," then a private person may be convicted under Section 3 of the Anti-Graft and Corrupt Practices Act.

3. ID.; REVISED PENAL CODE; CONSPIRACY; CO-CONSPIRATORS ARE ANSWERABLE COLLECTIVELY AND EQUALLY, REGARDLESS OF THE DEGREE OF THEIR PARTICIPATION IN THE CRIME.— A finding of conspiracy means that all the accused are deemed to have "consented to and adopted as their own, the offense [of the other accused]." Co-conspirators are answerable collectively *and equally*, regardless of the degree of their participation in the crime, because it is *the common scheme, purpose, or objective* that is punished, not the individual acts of each of the accused.

4. ID.; ID.; FALSIFICATION BY A PUBLIC OFFICER; ELEMENTS.— Article 171 of the Revised Penal Code defines and penalizes the felony of falsification by a public officer x x x. In general, the elements of Article 171 are: first, "the offender is a public officer, employee, or notary public"; second, he or she takes advantage of his or her official position; and third, he or she falsifies a document by committing any of the acts enumerated in Article 171.

5. ID.; ID.; ID.; MAKING UNTRUTHFUL STATEMENTS IN A NARRATION OF FACTS; ELEMENTS.— Specific to the

fourth mode in Article 171, i.e., making untruthful statements in a narration of facts, the elements are: first, "the offender makes in a [public] document untruthful statements in a narration of facts"; second, the offender "has a legal obligation to disclose the truth of the facts narrated by him [or her]"; and, third, the facts that he or she narrated are absolutely false. Further, to be convicted under Article 171, the public officer must have taken advantage of his or her official position to commit the falsification either because "he [or she] has the duty to make or prepare or otherwise to intervene in the preparation of a document," or because he or she has the official custody of the falsified document.

APPEARANCES OF COUNSEL

Hector Reuben F. Feliciano for petitioner Florencia L. Garcia-Diaz.

Redentor G. Guyala, collaborating counsel for petitioners.

Raul A. Bo for petitioner Jose G. Solis.

The Solicitor General for respondents.

D E C I S I O N

LEONEN, *J.*:

Co-conspirators are liable collectively and equally for the common design of their criminal acts. When a contract that is grossly and manifestly disadvantageous to the government is entered into, the persons involved—whether public officers or private persons—may be charged for violating the Anti-Graft and Corrupt Practices Act and suffer the same penalty if found guilty beyond reasonable doubt.

This resolves two (2) Petitions for Review on Certiorari filed separately by Florencia L. Garcia-Diaz[1] (Garcia-Diaz) and Jose G. Solis[2] (Solis) assailing the Sandiganbayan March 3, 2010

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[1] *Rollo* (G.R. No. 193236), pp. 9-33.

[2] *Rollo* (G.R. Nos. 193248-49), pp. 8-28.

Decision[3] and July 29, 2010 Resolution[4] that declared them guilty beyond reasonable doubt of violation of Section 3(g)[5] of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act. Additionally, Solis was found guilty of falsification of public documents punished under Article 171, paragraph 4[6] of the Revised Penal Code. The criminal cases were filed in connection with the execution of a Compromise Agreement involving 4,689 hectares of land located within Fort Magsaysay Military Reservation (Fort Magsaysay), a land of the public domain, but was almost registered under the name of Garcia-Diaz, a private person.

In 1976, Garcia-Diaz's predecessor-in-interest, Flora L. Garcia (Garcia), filed an application for registration of a 16,589.84-

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[3] *Id*. at 29-95 and *rollo* (G.R. No. 193236), pp. 33-A-99. The Decision, docketed as Crim. Cases Nos. 27974-75, was penned by Associate Justice Efren N. De La Cruz and concurred in by Associate Justices Francisco H. Villaruz, Jr. and Alex L. Quiroz of the Third Division, Sandiganbayan, Quezon City.

[4] *Rollo* (G.R. Nos. 193248-49), pp. 115-132 and *rollo* (G.R. No. 193236), pp. 175-192. The Resolution was penned by Associate Justice Efren N. De La Cruz and concurred by Associate Justices Francisco H. Villaruz, Jr. and Alex L. Quiroz of the Special Third Division, Sandiganbayan, Quezon City.

[5] Rep. Act No. 3019, Sec. 3(g) provides:

Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . . . .

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

[6] REV. PEN. CODE, Art. 171(4) provides:

Article 171. *Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister.* — The penalty of *prision mayor* and a fine not to exceed ₱5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

. . . . . .

4. Making untruthful statements in a narration of facts[.]

hectare property located in Laur and Palayan City, Nueva Ecija before the Court of First Instance of Nueva Ecija. Garcia based her application on the supposed title of her predecessor, Melecio Padilla (Padilla), as evidenced by Possessory Information Title No. 216 issued during the Spanish regime. The property was surveyed and its technical description provided in Bureau of Lands (BL) Plan II-6752.[7] Garcia further alleged that she had been in possession of the property for 26 years, as of the filing of her application, in addition to the possession and enjoyment of her predecessors, which had lasted for more than 80 years.[8]

The case was docketed as Land Registration Case No. 853, LRC-Record No. N-51127.[9]

The Republic of the Philippines (the Republic) opposed Garcia's application mainly on the ground that the property sought to be registered formed part of Fort Magsaysay per Presidential Proclamation No. 237 dated December 19, 1955.[10] The property, the Republic claimed, formed part of the public domain and was inalienable.[11]

Despite the Republic's opposition, the Court of First Instance of Nueva Ecija granted Garcia's application for registration.[12] This led to the Republic's filing of an appeal before the Court of Appeals, which was docketed as CA-G.R. CV No. 22217.[13]

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[7] See *Director of Lands v. Reyes*, 160-A Phil. 832, 840 (1975) [Per *J.* Antonio, *En Banc*].

[8] *Rollo* (G.R. No. 193236), p. 36 and *rollo* (G.R. Nos. 193248-49), p. 32.

[9] *Id*.

[10] Entitled "Reserving for Military Purposes a Portion of the Public Domain Situated in the Municipalities of Papaya, Sta. Rosa, and Laur, Province of Nueva Ecija and Portion of Quezon Province, Philippines."

[11] *Rollo* (G.R. No. 193236), p. 36 and *rollo* (G.R. Nos. 193248-49), p. 32.

[12] *Rollo* (G.R. No. 193236), pp. 36-37 and *rollo* (G.R. Nos. 193248-49), pp. 32-33.

[13] *Rollo* (G.R. No. 193236), p. 37 and *rollo* (G.R. Nos. 193248-49), p. 33.

During the pendency of the appeal, Garcia died. She was substituted by her heirs, among them being Garcia-Diaz.[14]

Meanwhile, in its February 26, 1992 Decision, the Court of Appeals reversed the decision of the Court of First Instance and dismissed Garcia's application for registration.[15] It cited as basis the 1975 case of *Director of Lands v. Reyes*,[16] which likewise involved an application for registration of the property covered by BL Plan II-6752, the same property Garcia was seeking to register. In *Director of Lands*, this Court found that no "Melecio Padilla" appeared in the list of holders of *información posesoria* titles in then Santos, now Laur, Nueva Ecija.[17] The name "Melecio Padilla" appeared in the list for Peñaranda, Nueva Ecija but it only involved a land of smaller area.[18] This Court in *Director of Lands* concluded that the possessory information title under the name of Padilla was unreliable; hence, it ordered the application for registration dismissed.[19]

Garcia-Diaz's co-heirs then filed a motion for reconsideration, which was likewise denied by the Court of Appeals. They went on to file a Petition for Review on Certiorari before this Court, entitled *Flora L. Garcia v. Court of Appeals, et al.* and docketed as G.R. No. 104561, but it was likewise denied in this Court's April 8, 1992 Resolution for lack of reversible error in the challenged decision. The Motion for Reconsideration of the April 8, 1992 Resolution was denied with finality on June 15, 1992.[20]

As for Garcia-Diaz, she did not join her co-heirs in appealing before this Court. Instead, during the pendency of her own motion

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[14] *Rollo* (G.R. No. 193236), p. 38 and *rollo* (G.R. Nos. 193248-49), p. 34.

[15] *Id.*

[16] 160-A Phil. 832 (1975) [Per *J.* Antonio, *En Banc*].

[17] *Id.* at 848.

[18] *Id.*

[19] *Id.* at 854.

[20] *Rollo* (G.R. No. 193236), p. 38 and *rollo* (G.R. Nos. 193248-49), p. 34.

for reconsideration before the Court of Appeals, she chose to amicably settle with the Republic. Through her counsel, then Atty. Fernando A. Santiago (Atty. Santiago), who later retired as a Court of Appeals Justice, Garcia-Diaz submitted a draft Compromise Agreement dated May 16, 1997 to then Solicitor General Silvestre H. Bello III (Solicitor General Bello).[21]

In relation to the compromise being negotiated, representatives from the Department of Environment and Natural Resources, and Armed Forces of the Philippines on the one hand; and Garcia-Diaz and then Atty. Santiago as her counsel on the other, entered into an Agreement dated October 22, 1997.[22] Under the Compromise Agreement, the National Mapping and Resource Information Authority (NAMRIA)[23] was authorized to conduct the final preliminary evaluation survey and to clarify the technical description of the reservation in Proclamation No. 237, specifically, to determine which portion of the property described in BL Plan II-6752 coincided with the actual ground location of Fort Magsaysay.[24] Salvador V. Bonnevie (Bonnevie), Executive Assistant to then NAMRIA Administrator Solis, chaired the meeting with Virgilio I. Fabian, Jr. (Fabian), Assistant Director of NAMRIA's Remote Sensing and Resource Data Analysis Department, serving as co-chair.[25]

Solis then issued a Travel Order dated January 29, 2018, directing Senior Remote Sensing Technologists Ireneo T. Valencia (Valencia) and Arthur J. Viernes (Viernes) to proceed to Laur, Nueva Ecija and "relocate the tie points and corners

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[21] *Id.*

[22] *Rollo* (G.R. No. 193236), p. 72 and *rollo* (G.R. Nos. 193248-49), p. 68.

[23] DENR Adm. O. No. 1 (1988), par. 4.2.6.3 states that NAMRIA, an attached agency of the Department of Environment and Natural Resources, is responsible for conducting geophysical surveys and management of resource information needed by both the public and private sectors.

[24] *Rollo* (G.R. No. 193236), p. 72 and *rollo* (G.R. Nos. 193248-49), p. 68.

[25] *Rollo* (G.R. No. 193236), pp. 62-63 and *rollo* (G.R. Nos. 193248-49), pp. 58-59.

6 and 7 of Fort Magsaysay Military Reservation."[26] Valencia and Viernes were to survey the area from January 30 to February 3, 1998 and were given transportation allowance and per diems. They were likewise allowed to hire emergency laborers for the survey.[27]

As directed by Solis and with the assistance of some personnel from the City Environment and Natural Resources Office of Cabanatuan City, Nueva Ecija, Valencia and Viernes proceeded to Laur and conducted the survey. In their Summary Report, they confirmed that they were able to relocate the actual ground positions of corners 6 and 7 of Fort Magsaysay. They found that the Bureau of Lands Location Monuments remained in the position as earlier computed and plotted in the topographic map referred to in Presidential Proclamation No. 237. Attached to the Summary Report were the sketch map of Fort Magsaysay, and Valencia and Viernes' Field Notes or Traverse Computations.[28]

Solis then wrote Solicitor General Ricardo P. Galvez (Solicitor General Galvez), who by then had replaced Solicitor General Bello. In his February 12, 1998 Letter, Solis essentially stated that the actual ground location of Fort Magsaysay did not match with the technical description as provided in Presidential Proclamation No. 237. Specifically, the team that surveyed the military reservation, headed by Valencia and Viernes, supposedly found corner points 6 and 7 in the technical description "misleading" and that "the [tie point] cannot be located, hence comparison with BL Plan II-6752 cannot be effected." Solis then recommended that Presidential Proclamation No. 237 be amended accordingly. The February 12, 1998 Letter more comprehensively stated:

This refers to CA-G.R. No. 22217 (LRC Case No. 853, LRC Rec. 511-27) regarding evaluation of the technical description of

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[26] *Rollo* (G.R. No. 193236), p. 72 and *rollo* (G.R. Nos. 193248-49), p. 68.

[27] *Id.*

[28] *Rollo* (G.R. No. 193236), pp. 72-73 and *rollo* (G.R. Nos. 193248-49), pp. 68-69.

Proclamation No. 237 establishing Fort Magsaysay Military Reservation containing an approximate area of 73,000 hectares more or less.

In an agreement signed among the parties concerned (AFP, LMB, Applicant and NAMRIA), this office was tasked and authorized to replot and check the technical description of Proclamation No. 237 in reference to BL Plan II-6752, (Possessory Title Reg. No. 216).

Finding[s] disclose that the military reservation is not located in the topographic map sheets referred to in the technical description in Proclamation No. 237, that the description of corner points 6 and 7 are misleading and that the [tie point] cannot be located, hence comparison with BL Plan II-6752 cannot be effected.

The existence of the tie point of BL Plan II-6752 was verified by a team dispatched to relocate BLLM No. 1 and 2 and BBM 41 and 42 of Laur and Barangay San Isidro. It confirmed that the plottings made by this Office is geographically and accurately located in the ground.

The technical description of the portion of BL Plan II-6752 located outside the Fort Magsaysay Military Reservation is hereto attached as Annex "A". Points 6 and 7 of the Military Reservation were plotted in relation to BL Plan II-6752 in the survey plan attached hereto as Annex "B".

It is the recommendation of this authority to amend Proclamation No. 237 and to complete and finalize the plotting of the Military Reservation with corner points 6 and 7, which were located in relation to land monuments in Laur and Barangay San Isidro, N.E. in the attached plan, as the bases for the amendments.[29]

However, it appears that three (3) drafts of the February 12, 1998 Letter were prepared. Two (2) of the drafts, both signed by Solis, explicitly provided that "the military reservation is not located in the topographic map sheets referred to in the technical description in Proclamation No. 237." Attached to the drafts was a survey plan, which plotted corner points 6 and 7 bounding Fort Magsaysay and showed the technical description

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[29] *Rollo* (G.R. No. 193236), pp. 90 and 39, and *rollo* (G.R. Nos. 193248-49), pp. 86 and 35.

of a portion of the property covered by BL Plan II-6752 that was located outside the military reservation. Thus, Solis recommended in those two (2) drafts that Presidential Proclamation No. 237 be amended and that the plotting of the military reservation with corner points 6 and 7 be completed and finalized. The third draft was not signed by Solis but was initialed by Fabian. It did not state that the existence of the tie point was verified by a survey team. This draft had no attachments.[30]

The draft that reached Solicitor General Galvez was one of the two drafts declaring that the actual ground location of Fort Magsaysay did not conform with the technical description in Presidential Proclamation No. 237. This draft was signed by Solis but did not reflect Fabian's initials.[31]

Based on the findings stated in the February 12, 1998 Letter, the Republic, through Solicitor General Galvez, and Garcia-Diaz, through her counsel, then Atty. Santiago, signed and jointly filed a Motion for Approval of Amicable Settlement dated May 18, 1999. In the Compromise Agreement, Garcia-Diaz agreed to withdraw her application for registration of the property covered by BL Plan II-6752 that was within Fort Magsaysay in exchange for the Republic's withdrawal of its opposition to the registration of the portion outside the reservation, a portion which was supposedly comprised of 4,689 hectares. Gaudencio A. Mendoza, Assistant Executive for Legal Affairs, and Bonnevie served as witnesses.[32] The Compromise Agreement particularly provided:

> 1. The First Party [Garcia-Diaz] hereby withdraws her application for registration of title for the portion of the land described in BL Plan II-6752 which is situated within the military reservation described under Presidential Proclamation No. 237;

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[30] *Rollo* (G.R. No. 193236), pp. 73-74 and *rollo* (G.R. Nos. 193248-49), pp. 69-70.

[31] *Id.*

[32] *Rollo* (G.R. No. 193236), p. 74 and *rollo* (G.R. Nos. 193248-49), p. 70.

2. The First Party [Garcia-Diaz] undertakes to set aside and donate to the government five hundred (500) hectares for development as housing project;

3. The Second Party [the Republic] hereby withdraws its opposition to the registration in the name of the First Party FLORENCIA GARCIA DIAZ, Filipino, of legal age, widow, of the portion of BL Plan II[-] 6752 with an area of 4,689 hectares more or less (Annex "B") which is situated outside the Fort Magsaysay military reservation;

4. Both parties agree to submit this Compromise Agreement for approval and for judgment in accordance therewith by the Court of Appeals.[33]

In its June 30, 1999 Resolution, the Court of Appeals granted the Motion for Approval of Amicable Settlement and rendered judgment based on the compromise.[34]

On January 12, 2000, Solicitor General Galvez filed a Manifestation and Motion before the Court of Appeals. Thereafter, in its March 9, 2000 Resolution, the Court of Appeals *motu proprio* ordered and directed the Land Registration Authority to hold in abeyance the processing and issuance of the registration decree and certificate of title covering the 4,689-hectare property until Garcia-Diaz commented on the January 12, 2000 Manifestation and Motion filed by the Office of the Solicitor General.[35]

In the meantime, Secretary of Environment and Natural Resources Antonio Cerilles directed the new NAMRIA Administrator, Isidro S. Fajardo, to form a team to investigate the alleged anomaly involving the Compromise Agreement.[36] The Investigating Committee then submitted a Memorandum to the Administrator dated April 12, 2000, where they declared inaccurate the statement of then Administrator Solis in his February 12, 1998 Letter that a portion of the property described

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[33] *Rollo* (G.R. No. 193236), p. 40 and *rollo* (G.R. Nos. 193248-49), p. 36.

[34] *Rollo* (G.R. No. 193236), p. 74 and *rollo* (G.R. Nos. 193248-49), p. 70.

[35] *Rollo* (G.R. No. 193236), p. 40 and *rollo* (G.R. Nos. 193248-49), p. 36.

[36] *Rollo* (G.R. No. 193236), p. 43 and *rollo* (G.R. Nos. 193248-49), p. 39.

in BL Plan II-6752 was outside the technical description of Fort Magsaysay as provided in Presidential Proclamation No. 237.[37] The Investigating Committee based its findings, among others, on Map SP 203, a plotting of technical description provided in Presidential Proclamation No. 237, which showed that the entire property described in BL Plan II-6752 was within the actual ground location of Fort Magsaysay.[38]

A Motion to Set Aside Compromise Settlement dated June 5, 2001 was then filed before the Court of Appeals.[39]

In the Information dated March 17, 2004,[40] public officers Solicitor General Galvez, NAMRIA officials Solis, Fabian, Bonnevie, Valencia, and Viernes, and private person Garcia-Diaz were charged for violating Section 3(g)[41] of the Anti-Graft and Corrupt Practices Act before the Sandiganbayan. The accusatory portion of the Information in Criminal Case No. 27974 read:

That on or about May 18, 1999 or sometime prior (or) subsequent thereto, in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, accused **Ricardo P. Galvez,** a high-ranking public officer, being then the Solicitor General, with accused **Jose G. Solis, Salvador V. Bonnevie, Virgilio I. Fabian, Jr., Ireneo T.**

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[37] *Rollo* (G.R. No. 193236), pp. 44-45 and *rollo* (G.R. Nos. 193248-49), pp. 40-41.

[38] *Rollo* (G.R. No. 193236), p. 46 and *rollo* (G.R. Nos. 193248-49), p. 42.

[39] *Rollo* (G.R. No. 193236), p. 41 and *rollo* (G.R. Nos. 193248-49), p. 37.

[40] *Rollo* (G.R. No. 193236), p. 13.

[41] Rep. Act No. 3019, Sec. 3(g) provides:

Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . . . .

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

Valencia and **Arthur J. Viernes,** being then the Administrator, Officer-in-Charge, HGSD Assistant Director, Remote Sensing and Resource Data Analysis Department (RSRDAD), and Senior Remote Sensing Technologists, respectively, of the National Mapping and Resource Information Administration (NAMRIA), while in the performance of their official functions and committing the offense in relation to office, conspiring, confederating and mutually helping one another, together with **Florencia Garcia-Diaz,** a private person, did then and there willfully, unlawfully and criminally enter into a Compromise Agreement dated May 18, 1999 with the said **Florencia Garcia-Diaz,** wherein the Republic of the Philippines, as represented by accused Solicitor General **Ricardo P. Galvez**, withdrew opposition to the registration in the name of accused **Florencia Garcia-Diaz** a portion of BL Plan II-6752, with an area of 4,689 hectares, which contract was grossly disadvantageous to the government, considering that the parcel of land, subject of the compromise agreement, is not alienable or registerable as the same falls within the Fort Magsaysay Military Reservation, the probative value of purported *titulo de informacion possesoria* issued in the name of **Melecio Padilla,** from whom the title applicant **Flora Garcia** and now her heiress claimant **Florencia Garcia-Diaz**(herein accused), derived their claim, had been declared by the Supreme Court in the case of Director of Lands v. Reyes, 68 SCRA 177 (1975) as seriously flawed, and the decision of the Court of Appeals dated February 26, 1992 in CA-GR CV No. 22217 (Flora L. Garcia vs. Republic of the Philippines) denying the application for registration of Flora Garcia relative to the parcels of land stated in the said agreement.

CONTRARY TO LAW.[42] (Emphasis in the original)

In another Information of the same date, Solis, Fabian, Bonnevie, Valencia, and Viernes were further charged with falsification of public documents under Article 171, paragraph 4[43]

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[42] *Rollo* (G.R. No. 193236), pp. 33-A-34 and *rollo* (G.R. Nos. 193248-49), pp. 29-30.

[43] REV. PEN. CODE, Art. 171(4) provides:

Article 171. *Falsification by Public Officer, Employee or Notary or Ecclesiastic Minister.* — The penalty of *prision mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

of the Revised Penal Code. The accusatory portion of the Information in Criminal Case No. 27975 read:

That on or about February 12, 1998 in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, accused **Jose G. Solis, Salvador V. Bonnevie, Virgilio I. Fabian, Jr., lreneo T. Valencia** and **Arthur J. Viernes,** being then the Administrator, with Salary Grade 27, Officer-in-Charge, HGSD, Assistant Director, Remote Sensing and Resource Data Analysis Department (RSRDAD), and Senior Remote Sensing Technologists, respectively, of the National Mapping and Resource Information Administration (NAMRIA), conspiring, confederating and mutually helping one another, and committing the offense in relation to office, did then and there willfully, unlawfully and feloniously make it appear in an official letter dated February 12, 1998, addressed to the Solicitor General, which form part of the public record, that Fort Magsaysay Military Reservation is not located in the topographic map sheets referred to in the technical description in Proclamation No. 237 (Reserving for Military Purpose a portion of the public domain situated in the Municipalities of Papaya, Sta. Rosa and Laur, Province of Nueva Ecija and portion of Quezon Province, Philippines), the description of corner points 6 and 7 are misleading, the tie point cannot be located, hence comparison with BL Plan [II]-6752 cannot be effected, and for submitting a relocation of points 6 and 7 of proclamation and the survey plan of portion BL [Plan] II-6752 indicating that an area of 4,689 hectares is located outside the military reservation, when in truth and in fact, as the accused knew fully well and are legally bound to disclose, that said substantial portion of Fort Magsaysay Military Reservation being claimed by one Florencia Garcia-Diaz, a private person, is inside the Army Map Sheet (AMS) topographic map as referred to in the technical description of Proclamation [No.] 237, thereby making untruthful statements in the narration of facts.

CONTRARY TO LAW.[44]

Garcia-Diaz filed a Motion to Dismiss/Quash[45] Information, contending that private persons cannot be charged under the

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4. Making untruthful statements in a narration of facts[.]

[44] *Rollo* (G.R. No. 193236), pp. 34-35 and *rollo* (G.R. Nos. 193248-49), pp. 30-31.

[45] *Rollo* (G.R. No. 193236), pp. 197-205.

Anti-Graft and Corrupt Practices Act. This Motion was denied by the Sandiganbayan in its August 2, 2006 Resolution.[46]

As for Solicitor General Galvez, he died during the pendency of the case. Thus, the charge against him was dismissed.[47]

The case then proceeded to arraignment during which all the accused, except Fabian, who was and still remains at large, pleaded not guilty to the charges.[48]

After trial, the Sandiganbayan found Garcia-Diaz and Solis guilty beyond reasonable doubt of violating Section 3(g) of the Anti-Graft and Corrupt Practices Act. According to the Sandiganbayan, the prosecution established the following elements of the crime: first, that the accused is a public officer; second, that he or she entered into a contract or transaction on behalf of the government; and, third, that such contract or transaction is grossly and manifestly disadvantageous to the government.[49]

With respect to the first issue, it was undisputed that accused Solis, Bonnevie, Valencia, and Viernes were public officers as they were officials of the NAMRIA, an agency attached to the Department of Environment and Natural Resources. While it is true that Garcia-Diaz was a private person, the Sandiganbayan nevertheless held that a private person may be held liable under the Anti-Graft and Corrupt Practices Act if he or she acts in conspiracy with a public officer. It cited as basis *Go v. Sandiganbayan*[50] as well as the "avowed policy" of the Anti-

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[46] *Id*. at 230-233. The Resolution was penned by Associate Justice Efren N. De La Cruz and concurred in by Associate Justices Godofredo L. Legaspi and Norberto Y. Geraldez of the Third Division, Sandiganbayan, Quezon City.

[47] *Id*. at 41 and *rollo* (G.R. Nos. 193248-49), p. 37.

[48] *Rollo* (G.R. No. 193236), p. 35 and *rollo* (G.R. Nos. 193248-49), p. 31.

[49] *Rollo* (G.R. No. 193236), p. 75 and *rollo* (G.R. Nos. 193248-49), p. 71, citing *Morales v. People*, 434 Phil. 471, 488 (2002) [Per *J*. Panganiban, Third Division].

[50] 603 Phil. 393 (2009) [Per *J*. Ynares-Santiago, Special Third Division].

Graft and Corrupt Practices Act "to repress certain acts of public officers and *private persons alike* which may constitute graft or corrupt practices or which may lead thereto."[51]

As for the second element, the Sandiganbayan found that Solicitor General Galvez, in conspiracy with Solis and Garcia-Diaz, entered into the Compromise Agreement on behalf of the government. Garcia-Diaz was the first party in the Compromise Agreement,[52] while Solis' statement in his February 12, 1998 Letter "completed the conspiracy and complemented the whole scheme"[53] by making it appear that 4,689 hectares of the land covered by BL Plan II-6752 was alienable, disposable, and may be the subject of a compromise.

On the third element, the Sandiganbayan discussed how entering into the Compromise Agreement was grossly and manifestly disadvantageous to the government. Like the Court of Appeals, the Sandiganbayan cited *Director of Lands v. Reyes*,[54] where this Court found that Padilla's purported possessory information title, from which Garcia-Diaz ultimately derived her title to the property described in BL Plan II-6752, was an unreliable evidence of title. In addition, the Court of Appeals in CA-G.R. CV No. 22217 found that the entire property covered by BL Plan II-6752 was within Fort Magsaysay. The execution of the Compromise Agreement would have led to the loss of 4,689 hectares in public land, to the disadvantage of the government.[55]

For the Sandiganbayan, Garcia-Diaz could not claim good faith in entering into the Compromise Agreement. It held that

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[51] *Rollo* (G.R. No. 193236), p. 76 and *rollo* (G.R. Nos. 193248-49), p. 72, citing *Go v. Sandiganbayan*, 603 Phil. 393, 395 (2009) [Per J. Ynares-Santiago, Special Third Division].

[52] *Rollo* (G.R. No. 193236), p. 76 and *rollo* (G.R. Nos. 193248-49), p. 72.

[53] *Rollo* (G.R. No. 193236), p. 81 and *rollo* (G.R. Nos. 193248-49), p. 77.

[54] 160-A Phil. 832 (1975) [Per *J.* Antonio, *En Banc*].

[55] *Rollo* (G.R. No. 193236), p. 78 and *rollo* (G.R. Nos. 193248-49), p. 74.

violation of the Anti-Graft and Corrupt Practices Act is *malum prohibitum* where good faith is not a defense.[56]

The Sandiganbayan noted that the execution of the Compromise Agreement would not have been possible if not for Solis' false representation in his February 12, 1998 Letter that 4,689 hectares of the property described in BL Plan II-6752 was located outside Fort Magsaysay.[57] Solis could not dispute his liability, according to the Sandiganbayan, for even assuming that Fabian prepared the letter, Solis admitted on direct examination that he had examined it and its attachments. Further, the Sandiganbayan disbelieved Solis' claim that he only perfunctorily signed the letter because it was a product of several negotiations. Solis knew the purpose and importance of his recommendation to Solicitor General Galvez: the Republic's withdrawal of opposition to the registration in favor of Garcia-Diaz of a portion of Fort Magsaysay.[58]

The Sandiganbayan, however, acquitted Bonnevie, Valencia, and Viernes. It found that Bonnevie, who was then the executive assistant of Solis, only followed the orders of his superior, Solis, when he presided over the meeting where the Department of Environment and Natural Resources, the Armed Forces of the Philippines, and Garcia-Diaz agreed to a re-survey of Fort Magsaysay. It ruled that Bonnevie's signing as witness to the Compromise Agreement did not prove that he had a hand in its execution.[59]

As for Valencia and Viernes, the Sandiganbayan found no evidence that they were part of the conspiracy to register in Garcia-Diaz's name 4,689 hectares of land within Fort

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[56] *Id.*

[57] *Rollo* (G.R. No. 193236), pp. 80-81 and *rollo* (G.R. Nos. 193248-49), pp. 77-78.

[58] *Rollo* (G.R. No. 193236), pp. 82-83 and *rollo* (G.R. Nos. 193248-49), pp. 78-79.

[59] *Rollo* (G.R. No. 193236), pp. 85-86 and *rollo* (G.R. Nos. 193248-49), pp. 81-82.

Magsaysay. Valencia and Viernes re-surveyed the property only in compliance with the Travel Order issued by their superior, Solis. Further, in their Summary Report, they never represented that a portion of the property described in BL Plan II-6752 was located outside Fort Magsaysay. All they said was that they conducted a survey and they were able to retrieve the tie points and relocate the actual ground positions of corners 6 and 7 referred to in Presidential Proclamation No. 237.[60]

Aside from the graft charge, Solis was found guilty of falsification by a public officer punished under Article 171, paragraph 4 of the Revised Penal Code. The Sandiganbayan found that the February 12, 1998 Letter of Solis to Solicitor General Galvez was a public document, having been written and transmitted in Solis' official capacity.[61] Solis had a legal obligation to disclose the truth of the facts narrated in the letter. Not only did he head the country's central mapping agency, he also knew that his letter would be the basis for approval of the Compromise Agreement.[62] Lastly, the statement that 4,689 hectares of the property described in BL Plan II-6752 were outside Fort Magsaysay described in Presidential Proclamation No. 237 was absolutely false. The contention that corners 6 and 7 were misleading was likewise false and was contrary to Valencia and Viernes' findings in their Summary Report that they were able to relocate corners 6 and 7 as computed and positioned based on the topographic map of the reservation. Further, superimposing BL Plan II-6752 on the already available topographic map of Fort Magsaysay easily revealed that the whole property claimed by Garcia-Diaz was within the military reservation.[63]

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[60] *Rollo* (G.R. No. 193236), pp. 86-87 and *rollo* (G.R. Nos. 193248-49), pp. 82-83.

[61] *Rollo* (G.R. No. 193236), pp. 90-91 and *rollo* (G.R. Nos. 193248-49), pp. 86-87.

[62] *Rollo* (G.R. No. 193236), p. 96 and *rollo* (G.R. Nos. 193248-49), p. 92.

[63] *Rollo* (G.R. No. 193236), pp. 91-95 and *rollo* (G.R. Nos. 193248-49), pp. 87-91.

As for Bonnevie, Valencia, and Viernes, the Sandiganbayan said that "[t]here is a dearth of evidence as to [their] participation . . . in the falsification."[64] They were, therefore, acquitted.

The dispositive portion of the Sandiganbayan March 3, 2010 Decision[65] read:

IN LIGHT OF ALL THE FOREGOING, judgment is hereby rendered as follows:

1. In **Criminal Case No. 27974,** accused Jose G. Solis and Florencia Garcia-Diaz are found **GUILTY** beyond reasonable doubt of violation of Section 3 (g) of [Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act], and each is hereby sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month to ten (10) years, with perpetual disqualification from public office.

2. In **Criminal Case No. 27975,** accused Solis is found **GUILTY**beyond reasonable doubt of falsification, defined and penalized under Article 171, paragraph 4 of the Revised Penal Code, and is sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional* medium to six (6) years and one (1) day of *prision mayor* medium.

3. Accused Bonnevie, Valencia and Viernes are **ACQUITTED** in both cases, for failure of the prosecution to prove their guilt beyond reasonable doubt.

SO ORDERED.[66]

Garcia-Diaz[67] and Solis[68] filed their respective Motions for Reconsideration. Garcia-Diaz reiterated her argument that she could not be convicted under the Anti-Graft and Corrupt Practices Act because she was a private person. She added that she could

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[64] *Rollo* (G.R. No. 193236), p. 95 and *rollo* (G.R. Nos. 193248-49), p. 91.

[65] *Rollo* (G.R. No. 193236), p. 33-A-99 and *rollo* (G.R. Nos. 193248-49), pp. 29-95.

[66] *Rollo* (G.R. No. 193236), p. 97 and *rollo* (G.R. Nos. 193248-49), p. 93.

[67] *Rollo* (G.R. No. 193236), pp. 100-115.

[68] *Rollo* (G.R. Nos. 193248-49), pp. 96-114.

not be faulted for entering into a compromise with the Republic considering that its alleged ownership of Fort Magsaysay was not yet finally decided. Lastly, she pointed out that then Court of Appeals Justice Vicente V. Mendoza (Justice Mendoza), the ponente of the Court of Appeals February 26, 1992 Decision that reversed the Decision of the land registration court on Garcia's application for registration, was the solicitor general who represented the Republic before the land registration court. Thus, he had no authority to render the Court of Appeals February 26, 1992 Decision.[69]

As for Solis, he maintained that the prosecution failed to prove his part in the conspiracy to execute the Compromise Agreement. First, he was not a party to it. Second, he had never met Solicitor General Galvez, the solicitor general who entered into the Compromise Agreement. He only dealt with Solicitor General Bello, who requested for his opinion. Lastly, there was nothing on record to prove that he knew Garcia-Diaz so as to establish conspiracy.[70]

With respect to his conviction of falsification, Solis argued that the prosecution failed to prove the second element. He allegedly had no legal obligation to disclose the truth in his February 12, 1998 Letter for he merely expressed an opinion there.[71]

In its July 29, 2010 Resolution,[72] the Sandiganbayan denied Garcia-Diaz's and Solis' Motions for Reconsideration. It reiterated that a private person may be convicted under the Anti-Graft and Corrupt Practices Act if he or she is found to have committed the crime in conspiracy with a public official.[73] It

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[69] *Rollo* (G.R. No. 193236), pp. 109-113.

[70] *Rollo* (G.R. Nos. 193248-49), pp. 97-100.

[71] *Id.* at 100-102.

[72] *Rollo* (G.R. No. 193236), pp. 175-192 and *rollo* (G.R. Nos. 193248-49), pp. 115-132.

[73] *Rollo* (G.R. No. 193236), pp. 186-187 and *rollo* (G.R. Nos. 193248-49), pp. 126-127.

added that Garcia-Diaz could not claim that the Republic's ownership of Fort Magsaysay was not yet final given that this Court had already ruled as early as 1975 in *Director of Lands v. Reyes*[74] that Padilla, Garcia-Diaz's alleged predecessor, had no title to the property covered by BL Plan II-6752 despite the existence of Possessory Information Title No. 216. Finally, it was never proven that then Court of Appeals Justice Mendoza was the solicitor general before the land registration court that initially granted Garcia's application for registration. Further, this issue was raised for the first time on motion for reconsideration and this Court had ultimately upheld the Decision of the Court of Appeals in *Flora L. Garcia v. Court of Appeals, et al.*, G.R. No. 104561. Thus, the Sandiganbayan disregarded Garcia-Diaz's arguments.[75]

Addressing the arguments of Solis involving the graft charge, the Sandiganbayan held that there can be conspiracy even if all the conspirators do not know each other personally. What is important is that the conspirator knowingly contributed to the criminal design. According to the Sandiganbayan, the most indispensable part of the conspiracy was the February 12, 1998 Letter issued by Solis to then Solicitor General Galvez as this served as the technical basis to conclude that 4,689 hectares of the property described in BL Plan II-6752 were outside the reservation described in Presidential Proclamation No. 237, and hence, alienable and disposable.[76]

The Sandiganbayan affirmed Solis' conviction of falsification of documents. He could not claim that his recommendation to amend Presidential Proclamation No. 237 was a mere opinion to escape liability. Valencia and Viernes, the foresters who resurveyed Fort Magsaysay, never claimed that corners 6 and 7 were "misleading" as Solis had said in his February 12, 1998

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[74] 160-A Phil. 832 (1975) [Per *J.* Antonio, *En Banc*].

[75] *Rollo* (G.R. No. 193236), p. 189 and *rollo* (G.R. Nos. 193248-49), p. 129.

[76] *Rollo* (G.R. No. 193236), pp. 179-180 and *rollo* (G.R. Nos. 193248-49), pp. 119-120.

Letter. Valencia and Viernes even said in their Summary Report that they found the actual ground positions of corners 6 and 7. As the head of the central mapping agency of the government, Solis had the legal obligation to disclose the truth as found by foresters Valencia and Viernes, yet, he distorted his subordinates' findings.[77]

The dispositive portion of the Sandiganbayan July 29, 2010 Resolution read:

> **WHEREFORE,** in light of the foregoing:
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> . . . .
>
> 2. The separate motions for reconsideration, dated March 8, 2010, and March 17, 2010, of accused Jose G. Solis and Florencia Garcia-Diaz, respectfully, are **DENIED** for lack of merit.
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> SO ORDERED.[78]

Garcia-Diaz[79] and Solis[80] filed their respective Petitions for Review on Certiorari before this Court. The Office of the Special Prosecutor, on behalf of the Sandiganbayan and the People of the Philippines, filed separate Comments[81] to which Garcia-Diaz[82] and Solis[83] filed their respective Replies. Considering that the Petitions assail the same Sandiganbayan Decision and Resolution, the Petitions were consolidated pursuant to this Court's November 15, 2010 Resolution.[84]

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[77] *Rollo* (G.R. No. 193236), pp. 180-185 and *rollo* (G.R. Nos. 193248-49), pp. 120-125.

[78] *Rollo* (G.R. No. 193236), p. 192 and *rollo* (G.R. Nos. 193248-49), p. 132.

[79] *Rollo* (G.R. No. 193236), pp. 9-33.

[80] *Rollo* (G.R. Nos. 193248-49), pp. 8-28.

[81] *Rollo* (G.R. No. 193236), pp. 289-306 and *rollo* (G.R. Nos. 193248-49), pp. 210-235.

[82] *Rollo* (G.R. No. 193236), pp. 321-327.

[83] *Rollo* (G.R. Nos. 193248-49), pp. 246-259 and 273-293.

[84] *Rollo* (G.R. No. 193236), p. 276 and *rollo* (G.R. Nos. 193248-49), p. 149.

Based on the pleadings, the issues for this Court's resolution are the following:

First, whether or not a private person may be charged and convicted of violating the provisions of the Anti-Graft and Corrupt Practices Act;

Second, whether or not conspiracy exists even if the public officer is not a party to the contract or transaction that caused a gross and manifest disadvantage to the government; and

Finally, whether or not petitioner Jose G. Solis violated a legal obligation to disclose the truth when he executed his February 12, 1998 Letter.

Petitioner Garcia-Diaz insists that she cannot be charged and convicted under Section 3(g) of the Anti-Graft and Corrupt Practices Act because Section 3 refers to "corrupt practices of public officers" and she is not a public officer. According to her, a private person may be penalized under the statute only under Section 4(b)[85] of which she was not charged.[86]

For his part, petitioner Solis maintains that he cannot be charged of violation of Section 3(g) of the Anti-Graft and Corrupt Practices Act because he was not even a party to the Compromise Agreement. He had already resigned from his position as NAMRIA Administrator at the time of its execution. He argues that "it is unfair that [he] be presumed to be involved in the execution and signing of the . . . compromise agreement."[87] He maintains that his February 12, 1998 Letter was drafted by his subordinate, Fabian, and that he merely signed it on the assumption that everything was in order. The "[a]bsence of

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[85] Rep. Act No. 3019, Sec. 4(b) provides:

Section 4. *Prohibition on private individuals.* —

. . . . . .

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in Section 3 hereof.

[86] *Rollo* (G.R. No. 193236), pp. 20-31.

[87] *Rollo* (G.R. Nos. 193248-49), p. 16.

[his participation in the] conspiracy is, [therefore], very evident."[88]

Additionally, Solis argues that he should not have been convicted of falsification under Article 171, paragraph 4 of the Revised Penal Code because the second element of the felony is allegedly absent in this case. He claims that he had no legal obligation to disclose the truth of the narration of facts in his February 12, 1998 Letter. At best, what he said was an "inexact, inaccurate or erroneous"[89] interpretation of the Summary Report of Remote Sensing Technologists Valencia and Viernes.[90]

Proceeding first with a procedural matter, respondent People of the Philippines argues that Garcia-Diaz's appeal should have been dismissed outright because she solely impleaded the Sandiganbayan as respondent. It claims that this is contrary to Rule 45, Section 4[91] of the Rules of Court, which states that the lower court that rendered the assailed decision should not be impleaded as respondent in the Petition.[92]

On the merits, respondent People of the Philippines counters that it has long been settled that a private person may be convicted under the Anti-Graft and Corrupt Practices Act if he or she acted in conspiracy with a public officer. It cites as legal bases *Go v. Sandiganbayan*,[93] *Meneses v. People*,[94] *Balmadrid v.*

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[88] *Id*. at 18.

[89] *Id.* at 23.

[90] *Id*. at 22-24.

[91] RULES OF COURT, Rule 45, Sec. 4(a) provides:

Section 4. *Contents of petition.* — The petition shall be filed in eighteen (18) copies, with the original copy intended for the court being indicated as such by the petitioner, and shall (a) state the full name of the appealing party as the petitioner and the adverse party as respondent, without impleading the lower courts or judges thereof either as petitioners or respondents[.]

[92] *Rollo* (G.R. No. 193236), pp. 288-289.

[93] 603 Phil. 393 (2009) [Per *J*. Ynares-Santiago, Special Third Division].

[94] 237 Phil. 292 (1987) [Per *J*. Narvasa, *En Banc*].

Sandiganbayan,[95] *Domingo v. Sandiganbayan*,[96] *Singian, Jr. v. Sandiganbayan*,[97] and *United States v. Ponte*.[98] Considering that petitioner Garcia-Diaz was found to have conspired with Solicitor General Galvez and petitioner Solis in entering into the Compromise Agreement that caused gross and manifest disadvantage to the government, she was validly convicted of violating Section 3(g) of the Anti-Graft and Corrupt Practices Act.[99]

As regards petitioner Solis, respondent People of the Philippines maintains that he was correctly convicted of violating Section 3(g) of the Anti-Graft and Corrupt Practices Act. Petitioner Solis cannot hide behind the fact that he was not a signatory to the Compromise Agreement because he issued the very basis for its execution: his February 12, 1998 Letter where he declared that "the military reservation is not located in the topographic map sheets referred to in the technical description in Proclamation No. 237."[100] For respondent People of the Philippines, it does not matter that petitioner Solis did not know personally Solicitor General Galvez or petitioner Garcia-Diaz. All that is required is unity of purpose for there to be conspiracy. Here, the purpose is to "give the proposed compromise settlement a semblance of propriety and legitimacy."[101]

On the falsification charge against him, respondent People of the Philippines argues that petitioner Solis cannot put the blame on Fabian, who allegedly prepared the February 12, 1998 Letter. During his direct examination, petitioner Solis testified that he did not name the person who allegedly prepared this

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[95] 272-A Phil. 486 (1991) [Per *J.* Paras, *En Banc*].

[96] 510 Phil. 691 (2005) [Per *J.* Azcuna, First Division].

[97] 514 Phil. 536 (2005) [Per *J.* Chico-Nazario, Second Division].

[98] 20 Phil. 379 (1911) [Per *J.* Carson, *En Banc*].

[99] *Rollo* (G.R. No. 193236), pp. 295-303.

[100] *Rollo* (G.R. Nos. 193248-49), p. 220.

[101] *Id*.

Letter but that he nevertheless reviewed its contents. It did not even pass through the usual procedure as it did not bear the signatures of the Director and Assistant Director of NAMRIA's Remote Sensing Resources Data Analysis Department, and that of the Deputy Administrator.[102] Finally, contrary to Solis' argument, he had the legal obligation to disclose the truth that the property described in BL Plan II-6752 was within Fort Magsaysay because of the functions of NAMRIA, of which he was the Administrator.[103]

The Petitions for Review on Certiorari must be denied.

I

Petitioners Garcia-Diaz and Solis were convicted of violating Section 3(g) of the Anti-Graft and Corrupt Practices Act, which provides:

> Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> . . . . . .
>
> (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.

The elements of Section 3(g) are: first, the accused is a public officer; second, that he or she entered into a contract or transaction on behalf of the government; and third, that the contract or transaction is grossly and manifestly disadvantageous to the government.[104]

Given the above elements, petitioner Garcia-Diaz claims that she cannot be convicted under Section 3(g) because the first element is absent. She is not a public officer but a private person.

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[102] *Id.* at 228.

[103] *Id.* at 229.

[104] *Go v. Sandiganbayan*, 603 Phil. 393, 395 (2009) [Per J. Ynares-Santiago, Special Third Division].

Petitioner Garcia-Diaz's argument is not new. It is true that Section 3 of the Anti-Graft and Corrupt Practices Act speaks of corrupt practices of public officers. "However, if there is an allegation of conspiracy, a private person may be held liable together with the public officer."[105] This is consistent with the policy behind the statute, which, as provided in its first section, is "to repress certain acts of public officers and *private persons alike* which may constitute graft or corrupt practices or which may lead thereto."[106]

The reason that private persons may be charged with public officers under the Anti-Graft and Corrupt Practices Act is "to avoid repeated and unnecessary presentation of witnesses and exhibits against conspirators in different venues, especially if the issues involved are the same. It follows, therefore, that if a private person may be tried jointly with public officers, he or she may also be convicted jointly with them."[107]

Thus, when an information alleges that a public officer "conspires," "confederates," "connives," or "colludes" with a private person, or when the "allegation of basic facts constituting conspiracy [between the public officer and the private person is made] in a manner that a person of common understanding would know what is intended,"[108] then a private person may be convicted under Section 3 of the Anti-Graft and Corrupt Practices Act. The information against the private person will be sufficient in form and substance and, contrary to Garcia-Diaz's argument, there is no "impossible crime"[109] against the private person.

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[105] *Id*.

[106] *Id*.

[107] *Balmadrid v. Sandiganbayan*, 272-A Phil. 486, 492 (1991) [Per *J*. Paras, *En Banc*].

[108] *Go v. Sandiganbayan*, 603 Phil. 393, 396 (2009) [Per *J*. Ynares-Santiago, Special Third Division], citing *Estrada v. Sandiganbayan*, 427 Phil. 820 (2002) [Per *J*. Puno, *En Banc*].

[109] *Rollo* (G.R. No. 193236), p. 20.

The Information filed in Criminal Case No. 27974 provides that Solicitor General Galvez, NAMRIA Administrator Solis, Officer-in-Charge Bonnevie, Assistant Director Fabian, and Remote Sensing Technologists Valencia and Viernes, all public officers, "conspiring, confederating and mutually helping one another, together with Florencia Garcia-Diaz, a private person,"[110] executed the Compromise Agreement that declared a part of Fort Magsaysay as outside the technical description provided in Presidential Proclamation No. 237. It obviously contains an allegation of conspiracy against petitioner Garcia-Diaz.

Having been charged and tried under a valid Information, petitioner Garcia-Diaz was validly convicted of Section 3(g) of the Anti-Graft and Corrupt Practices Act. This is despite her being a private person.

II

For his part, petitioner Solis mainly contends that he was erroneously convicted because of the absence of the second and third elements. He was not a party to the Compromise Agreement. Thus, he never entered into a contract or transaction on behalf of the government as provided in Section 3(g) of Republic Act No. 3019. Furthermore, he points out that the registration of the 4,689 hectares in the name of petitioner Garcia-Diaz did not push through; hence, there was no gross and manifest disadvantage to the government.

In so arguing, petitioner Solis disregards the essence of conspiracy where the act of one is the act of all.[111] A finding of conspiracy means that all the accused are deemed to have "consented to and adopted as their own, the offense [of the

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[110] *Id*. at 34 and *rollo* (G.R. Nos. 193248-49), p. 30.

[111] *Meneses v. People*, 237 Phil. 292, 306 (1987) [Per *J*. Narvasa, *En Banc*], citing *People v. Damaso*, 176 Phil. 1 (1978) [*Per Curiam, En Banc*], *U.S. v. Ponte*, 20 Phil. 379 (1911) [Per *J*. Carson, *En Banc*], *U.S. v. Dato*, 37 Phil. 359 (1917) [Per *J*. Johnson, First Division], *People v. Caluag, et al.*, 94 Phil. 457 (1954) [Per *J*. Diokno, Second Division], and *Halili v. CIR*, 220 Phil. 507 (1985) [Per *J*. Makasiar, *En Banc*].

other accused]."[112] Co-conspirators are answerable collectively *and equally*, regardless of the degree of their participation in the crime,[113] because it is *the common scheme, purpose, or objective* that is punished, not the individual acts of each of the accused.[114]

Here, the common scheme was to make it appear that part of the property described in BL Plan II-6752 is outside Fort Magsaysay as described in Presidential Proclamation No. 237, and hence, alienable, disposable, and can be the subject of a compromise. So while it is true that petitioner Solis was not the party who entered into the Compromise Agreement on behalf of the government, it was his recommendation in his February 12, 1998 Letter that served as the basis for its execution. In the words of petitioner Solis, "finding[s] disclose that the military reservation is not located in the topographic map sheets referred to in the technical description in Proclamation No. 237."[115] Without this recommendation, there would be nothing to compromise on in the first place. Petitioner Solis' recommendation was indispensable for the existence of the second element.

It was also the recommendation of petitioner Solis that caused the existence of the third element. The segregation of 4,689 hectares of land of the public domain, to be registered in the name of a private person, was grossly and manifestly disadvantageous to the government. It is immaterial that the registration in the name of petitioner Garcia-Diaz did not push through. Petitioner Solis remains liable because "the core element" of Section 3(g) is that the "engagement in a transaction or contract . . . is grossly and manifestly disadvantageous to

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[112] *Id*. at 305-306.

[113] *Domingo v. Sandiganbayan,* 510 Phil. 691, 706-707 (2005) [Per *J*. Azcuna, First Division].

[114] *Balmadrid v. Sandiganbayan,* 272-A Phil. 486, 493 (1991) [Per *J*. Paras, *En Banc*].

[115] *Rollo* (G.R. No. 193236), pp. 90 and 39, and *rollo* (G.R. Nos. 193248-49), pp. 86 and 35.

the government."[116] Section 3(g) is unlike Section 3(e)[117] of the Anti-Graft and Corrupt Practices Act, which requires actual injury to the government.[118] Surely, surrendering 4,689 hectares of public domain is grossly and manifestly disadvantageous to the government.

Petitioner Solis' other arguments, i.e., that Fabian prepared his February 12, 1998 Letter and that petitioner Solis routinely affixed his signature in it, and that he did not personally know Solicitor General Galvez and petitioner Garcia-Diaz, are factual in nature and cannot be raised in the present Petition.[119] In any case, it was never established that Fabian or any other of petitioner Solis' subordinates prepared his February 12, 1998 Letter. This Court agrees with the following findings of the Sandiganbayan:

To exonerate himself, accused Solis contended that he only relied on his subordinates when he signed the said February 12, 1998 letter, because it had already passed the 5 offices of the NAMRIA, as shown

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[116] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 585 Phil. 1, 16 (2008) [Per *J.* Tinga, Second Division].

[117] Rep. Act No. 3019, Sec. 3(e) provides:

Section 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

. . . .

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[118] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 664 Phil. 16, 33 (2011) [Per *J.* Perez, First Division].

[119] RULES OF COURT, Rule 45, Sec. 1. *See also* Section 7 of Pres. Decree No. 1606, as amended by Rep. Act No. 8249, which states that "decisions and final orders of the Sandiganbayan shall be appealable to the Supreme Court by petition for review on *certiorari* raising pure questions of law in accordance with Rule 45 of the Rules of Court."

by the routing slip. He did not thoroughly examine the attachments to the letter but relied on his technical people. However, the conformity to the contents of these offices to the letter, dated February 12, 1998, could not be ascertained on the face of the routing slip. In fact, in item no. 4, Basa merely requested accused Fabian of the Land Classification Division a briefing before the records would be forwarded to accused Solis. Nonetheless, the said briefing did not happen, as could be gleaned from Basa's testimony that the papers directly went to accused Bonnevie. Moreover, Basa testified, which accused Solis failed to rebut, that the February 12, 1998 letter did not pass through the usual procedure. Except for the initial of accused Fabian under accused Solis' name, the letter did not bear the signatures of the Assistant Director and Deputy Administrator Vinia. In fact, the letter appears to have been drafted even before the routing slip reached Basa on February 16, 1998. As to accused Solis' testimony that he did not examine the attachments to the letter but depended on his technical people, the same is inconsistent with his statement on direct examination. He claimed that he studied the letter the first time he saw it, because of the map and several documents attached thereto. This simply means that he also scrutinized the attachments because these were the very reason why he studied the letter. He was also the one who ordered the relocation survey, thus, it is impossible that he did not peruse the survey report or the field notes. Moreover, to represent that 4,689 hectares of BL Plan II-6752 are outside the military reservation is certainly a decision of great importance, as it would decide the fate of the compromise settlement. Accused Solis knew this, having been told by the Office of the Solicitor General of the purpose of the relocation survey. Thus, we find it incredible that he only signified his conformity without bothering to examine the attachments, unless, such decision had been a foregone conclusion.[120]

Therefore, petitioner Solis cannot put the blame on any of his subordinates as to the contents of his February 12, 1998 Letter.

Further, it is immaterial that petitioner Solis knew Solicitor General Galvez and petitioner Garcia-Diaz personally. Their collective acts nevertheless show the common purpose of giving

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[120] *Rollo* (G.R. No. 193236), pp. 82-83 and *rollo* (G.R. Nos. 193248-49), pp. 78-79.

the Compromise Agreement a semblance of legitimacy. Petitioners Garcia-Diaz and Solis remain equally liable as co-conspirators.

In sum, the prosecution established beyond reasonable doubt the guilt of petitioners Garcia-Diaz and Solis. They conspired to make it appear that a 4,689-hectare portion of the property described in BL Plan II-6752 is outside the reservation described in Presidential Proclamation No. 237. Garcia-Diaz cannot claim good faith because as early as 1975, this Court held in *Director of Lands v. Reyes*[121] that the source of her supposed ownership—Possessory Information Title No. 216—does not exist. As for petitioner Solis, he issued his February 12, 1998 Letter as basis to claim that the 4,689 hectares of land described in BL Plan II-6752 are located outside Fort Magsaysay, knowing fully well that this statement is false. Petitioners Garcia-Diaz and Solis are liable for violation of Section 3(g) of the Anti-Graft and Corrupt Practices Act, and the sentence of six (6) years and one (1) month to 10 years, with perpetual disqualification from office, conforms with the penal provision of the statute[122] and with the Indeterminate Sentence Law.[123]

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[121] 160-A Phil. 832 (1975) [Per *J.* Antonio, *En Banc*].

[122] Rep. Act No. 3019, Sec. 9(a) partly provides:

Section 9. *Penalties for violations.* —(a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

. . . . . .

[123] Act No. 4103, as amended, Sec. 1 provides:

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 to a minimum 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

III

Article 171 of the Revised Penal Code defines and penalizes the felony of falsification by a public officer, thus:

> Article 171. *Falsification by public officer, employee or notary or ecclesiastic minister.* — The penalty of *prisión mayor* and a fine not to exceed 5,000 pesos shall be imposed upon any public officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:
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> 1. Counterfeiting or imitating any handwriting, signature or rubric;
> 2. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
> 3. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
> 4. Making untruthful statements in a narration of facts;
> 5. Altering true dates;
> 6. Making any alteration or intercalation in a genuine document which changes its meaning;
> 7. Issuing in authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine original; or
> 8. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.
>
> The same penalty shall be imposed upon any ecclesiastical minister who shall commit any of the offenses enumerated in the preceding paragraphs of this article, with respect to any record or document of such character that its falsification may affect the civil status of persons.

In general, the elements of Article 171 are: first, "the offender is a public officer, employee, or notary public"; second, he or she takes advantage of his or her official position; and third,

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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.

he or she falsifies a document by committing any of the acts enumerated in Article 171.[124]

Specific to the fourth mode in Article 171, i.e., making untruthful statements in a narration of facts, the elements are: first, "the offender makes in a [public] document untruthful statements in a narration of facts"; second, the offender "has a legal obligation to disclose the truth of the facts narrated by him [or her]"; and, third, the facts that he or she narrated are absolutely false.[125] Further, to be convicted under Article 171, the public officer must have taken advantage of his or her official position to commit the falsification either because "he [or she] has the duty to make or prepare or otherwise to intervene in the preparation of a document," or because he or she has the official custody of the falsified document.[126]

Petitioner Solis contends that the second element is absent because he had no legal obligation to disclose the truth of the facts that he narrated in his February 12, 1998 Letter to Solicitor General Galvez. At best, what he made was an inaccurate opinion on whether a portion of the property described in BL Plan II-6752 is outside Fort Magsaysay as described in Presidential Proclamation No. 237.

At any rate, the February 12, 1998 Letter was allegedly prepared by Fabian, and that petitioner Solis signed it on the assumption that Fabian properly performed his duty. Therefore, based on *Arias v. Sandiganbayan*,[127] where this Court said that "all heads of offices have to rely to a reasonable extent on their subordinates,"[128] petitioner Solis contends that he should be exonerated from the falsification charge.

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[124] *Regidor v. People*, 598 Phil. 714, 732 (2009) [Per *J*. Nachura, Third Division].

[125] *Santos v. Sandiganbayan*, 400 Phil. 1175, 1216-1217 (2000) [Per *J*. Buena, *En Banc*].

[126] *Fullero v. People*, 559 Phil. 524, 539 (2007) [Per *J*. Chico-Nazario, Special Third Division].

[127] 259 Phil. 794 (1989) [Per *J*. Gutierrez, Jr., *En Banc*].

[128] *Id*. at 801.

Contrary to petitioner Solis' argument, he did not make a mere opinion but deliberately made an untruthful statement in his February 12, 1998 Letter. To recall, he wrote that "*finding[s] disclose* that the military reservation is not located in the topographic map sheets referred to in the technical description in Proclamation No. 237,"[129] referring to the findings of Remote Sensing Technologists Valencia and Viernes in their Summary Report. Nothing in the Summary Report, however, indicates that the property described in BL Plan II-6752 is outside the military reservation as described in Presidential Proclamation No. 237. After re-surveying Fort Magsaysay, Valencia and Viernes actually confirmed that they were able to relocate the actual ground positions of corners 6 and 7 of Fort Magsaysay. They found that the Bureau of Lands Location Monuments remained in the position as earlier computed and plotted in the topographic map referred to in Presidential Proclamation No. 237, indicating that the actual ground location of Fort Magsaysay conformed with the technical description in Presidential Proclamation No. 237.

It is ridiculous to say that petitioner Solis had no legal obligation to disclose the truth of the facts as he narrated in his February 12, 1998 Letter. On the contrary, inherent in the very nature and purpose of the document was petitioner Solis' obligation, as NAMRIA Administrator, to disclose the truth of the facts as he narrated.[130] NAMRIA is the government agency responsible for conducting geophysical surveys as well as managing resource information needed by both the public and private sectors.[131] Because of the agency's special competence, petitioner Solis was requested by the Republic, through the Solicitor General, to conduct a re-survey of Fort Magsaysay. He was informed at the outset that his agency's findings would

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[129] *Rollo* (G.R. No. 193236), p. 90 and *rollo* (G.R. Nos. 193248-49), p. 86.

[130] *People v. Po Giok To*, 96 Phil. 913, 916 (1955) [Per *J.* J.B.L. Reyes, *En Banc*].

[131] DENR Adm. O. No. 1 (1998), par. 4.2.6.3.

determine whether or not the government would enter into a compromise with petitioner Garcia-Diaz. To allow petitioner Solis to claim that he had no legal obligation to disclose the truth in his letter will be contrary to NAMRIA's functions. It will erode the public's confidence in NAMRIA and all its issuances and research findings.

It is true that this Court said in *Arias*[132] that "all heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who . . . enter into negotiations."[133] However, as earlier found, it was never established that a subordinate prepared the February 12, 1998 Letter and that petitioner Solis merely signed it perfunctorily. The Sandiganbayan even found that it did not pass the usual procedure, not being signed by an assistant director, a director, and a deputy administrator. Furthermore, petitioner Solis testified on direct examination that he examined it and its attachments. It must be presumed that petitioner Solis prepared it, not a subordinate. *Arias,* therefore, does not apply.

All told, petitioner Solis is guilty of falsification of public document. Petitioner Solis, then NAMRIA Administrator, wrote the February 12, 1998 Letter, an official correspondence to the Solicitor General, and therefore, a public document. He had the legal obligation to disclose the truth of the facts narrated in it for he was fully aware that his findings would determine whether 4,689 hectares of the property covered by BL Plan II-6752, claimed to be located outside Fort Magsaysay, may be the subject of a compromise. Lastly, as established, the narration of facts was absolutely false and contrary to the findings of the foresters who re-surveyed Fort Magsaysay. There being no modifying circumstance in this case, the indeterminate penalty of two (2) years, four (4) months, and one (1) day of *prisión correccional* medium as minimum to six (6) years and one (1) day of *prisión mayor* medium as maximum is in order.[134]

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[132] 259 Phil. 794 (1989) [Per *J*. Gutierrez, Jr., *En Banc*].

[133] *Id*. at 801.

[134] REV. PEN. CODE, Art. 171 in relation to the INDETERMINATE SENTENCE LAW, as amended, Sec. 1 of which provides:

This Court notes that from the Office of the Solicitor General, only the late Solicitor General Galvez was charged before the Sandiganbayan. Other officials of the Office of the Solicitor General who participated in the proceedings leading to the compromise, specifically those who drafted the letters of Solicitor General Galvez to Administrator Solis requesting for a re-survey, were not investigated. As such, copies of this Decision must be forwarded to the Office of the Ombudsman to determine the individuals who should likewise be investigated for their possible liabilities.

WHEREFORE, the Petitions for Review on Certiorari are **DENIED.** The Sandiganbayan March 3, 2010 Decision and July 29, 2010 Resolution in Criminal Cases Nos. 27974-75 are **AFFIRMED.**

SO ORDERED.

Peralta (Chairperson), Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr, JJ.,* concur.

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 to a minimum 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.

The penalty next lower to that prescribed by the Revised Penal Code for falsification under Article 171 is *prisión correccional.*

FIRST DIVISION

[G.R. No. 217716. September 17, 2018]

LIFESTYLE REDEFINED REALTY CORPORATION and EVELYN S. BARTE, *petitioners, vs.* **HEIRS OF DENNIS A. UVAS,** *respondents.*

[G.R. No. 217857. September 17, 2018]

RIZAL COMMERCIAL BANKING CORPORATION, *petitioner, vs.* **HEIRS OF DENNIS A. UVAS, LIFESTYLE REDEFINED REALTY CORPORATION and EVELYN BARTE,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; ACT NO. 3135 (REAL ESTATE MORTGAGE LAW); EXTRAJUDICIAL FORECLOSURE SALE; NOTICE OF SALE; REPUBLICATION THEREOF IN THE MANNER PRESCRIBED BY LAW IS NECESSARY FOR THE VALIDITY OF A POSTPONED EXTRAJUDICIAL FORECLOSURE SALE; EXCEPTION.— [T]his Court is cognizant of the rule that republication of the notice of sale in the manner prescribed by Act No. 3135 is necessary for the validity of a postponed extrajudicial foreclosure sale. A foreclosure sale which deviates from the statutory requirements constitutes a jurisdictional defect invalidating the sale. The Court is mindful of the purpose of publication of the notice of auction sale, which is to give the foreclosure sale a reasonably wide publicity such that those interested might attend the public sale. Otherwise, the sale might be converted into a private one. However, jurisprudence is also replete with cases which relaxes the aforesaid rule in case of a purchaser in a foreclosure sale who is in good faith and bought the property for value.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; BUYER IN GOOD FAITH; TO BE CONSIDERED A BUYER IN GOOD FAITH, A PERSON

MUST BUY THE PROPERTY WITHOUT NOTICE OF A RIGHT OR INTEREST OF ANOTHER PARTY, AND PAY THE PURCHASE PRICE AT THE TIME OF SALE OR BEFORE NOTICE OF A CLAIM ON THE PROPERTY.— As a rule, an ordinary buyer may rely on the certificate of title issued in the name of the seller, and need not investigate beyond what the title of the subject property states. In order to be considered a buyer in good faith, a person must buy the property without notice of a right or interest of another party, and pay the purchase price at the time of sale or before notice of a claim on the property. "The protection of innocent purchasers in good faith for value grounds on the social interest embedded in the legal concept granting indefeasibility of titles. Between the third party and the owner, the latter would be more familiar with the history and status of the titled property." The honesty of intention that constitutes good faith implies freedom from knowledge of circumstances that ought to put a prudent person on inquiry. Good faith consists in the belief of the possessors that the persons from whom they received the thing are its rightful owners who could convey their title. "Good faith, while always presumed in the absence of proof to the contrary, requires this well-founded belief."

3. ID.; LAND REGISTRATION; TORRENS SYSTEM; ONE WHO DEALS WITH PROPERTY REGISTERED UNDER THE TORRENS SYSTEM IS CHARGED WITH NOTICE ONLY OF SUCH BURDENS AND CLAIMS AS ARE ANNOTATED ON THE TITLE.— In this case, the annotation of *lis pendens,* per se, does not automatically equate to the conclusion that Lifestyle Corporation and Evelyn intentionally bought the property with knowledge, or to defeat respondent Heirs' claims on the subject property. In the first place, the title of the subject property, at the time of the negotiations and payment of the sale was in the name of RCBC. At that time, the title of the subject property did not contain any indication that respondent Heirs have a claim thereon, or that the foreclosure sale from which RCBC bought the subject property was void. Plainly, it can be said that Lifestyle Corporation and Evelyn were not expected to make further investigations on the property. The rule is settled that "one who deals with property registered

under the Torrens System is charged with notice only of such burdens and claims as are annotated on the title." "The law protects to a greater degree a purchaser who buys from the registered owner himself."

4. ID.; CIVIL CODE; OBLIGATIONS AND CONTRACTS; SALES; DELIVERY OF THE THING SOLD; OWNERSHIP OF THE THING SOLD IS ACQUIRED BY THE VENDEE FROM THE MOMENT IT IS DELIVERED TO HIM, AND SUCH DELIVERY MAY EITHER BE ACTUAL OR CONSTRUCTIVE.— [A]t the time of the annotation of *lis pendens,* the sale was already consummated. It must be emphasized that Lifestyle Corporation and/or Evelyn was already finished paying for the subject property as early as August 24, 2006. This was not controverted by respondent Heirs. Hence, Lifestyle Corporation and Evelyn already acquired ownership of the subject property as of that time. The law provides that the ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Article 1497 to 1501. Delivery may either be actual or constructive. x x x In this case, considering that Lifestyle Corporation and Evelyn were already in possession of the subject property, being former lessees of respondent Heirs' mother, her full payment of the property consummated the transfer of ownership in her favor on August 24, 2006. Evidently, such consummation of the sale between RCBC and Lifestyle Corporation and Evelyn was way before the annotation of the *lis pendens,* on September 6, 2006.

APPEARANCES OF COUNSEL

Conde and Associates for Lifestyles Redefined Realty Corporation & Evelyn S. Barte.

Ma. Neriza C. San Juan for Rizal Commercial Banking Corporation.

Bermudez Law Office for Heirs of Dennis A. Uvas.

D E C I S I O N

TIJAM, *J.*:

These are consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated January 12, 2015 of the Court of Appeals (CA) in CA-G.R. CV No. 101972, which denied petitioners Lifestyle Redefined Realty Corporation (Lifestyle Corporation) and Evelyn S. Barte (Evelyn), and Rizal Banking Corporation's (RCBC) appeal, and affirmed the Decision[3] dated October 20, 2013 of the Regional Trial Court (RTC) of City of Manila, Branch 17, in Civil Case No. 06-115798.

Antecedent Facts

U-Bex Integrated Resources, Inc. (U-Bex), controlled by Spouses Dennis (Dennis) and Nimfa Uvas (Nimfa) (Spouses Uvas), obtained various amounts of loans from RCBC in the amounts of ₱1 Million and ₱2 Million. To secure the said loans, Spouses Uvas executed a Real Estate Mortgage dated October 25, 1993 over a parcel of land covered by Transfer Certificate of Title (TCT) No. 190706 pertaining to a property located at 1928 Leon Guinto Street, Malate, which also consists of a building and apartment units (subject property).[4]

It appears that on November 24, 2003, an auction sale was conducted where the subject property was sold to RCBC as the highest bidder. On September 26, 2005, RCBC consolidated its title on the subject property. TCT No. 269709 was issued in its name.[5]

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[1] *Rollo* (G.R. No. 217716), pp. 51-62; *rollo* (G.R. No. 217857), pp. 14-36.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, concurred in by Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles; *rollo* (G.R. No. 217716), pp. 9-39.

[3] Rendered by Presiding Judge Felicitas O. Laron-Cacanindin; *rollo* (G.R. No. 217857), pp. 94-107.

[4] *Rollo* (G.R. No. 217716), p. 11.

[5] *Id.* at 13.

Subsequently, the subject property was sold to Lifestyle Corporation and Evelyn[6]. Lifestyle Corporation and/or Evelyn was a lessee of Spouses Uvas in the subject property during the time of the loan up to the time RCBC sold the same to her.[7]

Proceedings before the RTC

On September 6, 2006, Heirs of Dennis Uvas (respondent Heirs) filed a Complaint[8] for annulment of foreclosure sale, certificate of sale, and cancellation of TCT No. 269709 with damages against RCBC, Jennifer Dela Cruz-Buendia, Ex-Officio Sheriff of the RTC of Manila, Benjamin Del Rosario, Jr. as Sheriff of Branch 9, RTC Manila, and the Registry of Deeds of Manila. The case was docketed as Civil Case No. 06-115798.

Respondent Heirs questioned the foreclosure stating that they were never informed of the foreclosure, and that they were surprised that RCBC was already the registered owner of the subject property. They claimed that the foreclosure sale is void for lack of publication and notice to them. They pointed out that the date of auction indicated in the Notice of Extrajudicial Sale was October 8, 2003. Hence, the implementing officers of the court should not have allowed the auction sale to be conducted on November 24, 2003 without republication of the notice of sale. They claimed that RCBC was in bad faith since it sent the notices of auction sale to their former address at 9345 Dongon Street, San Antonio Village, Makati City despite knowledge that they are actually residing at 1928 Leon Guinto Street, Malate, Manila.[9]

RCBC, in its Answer, defended the validity of the foreclosure sale. The bank alleged that ever since Dennis died in April of 1995, all communications were made to Dennis' wife, Nimfa, regarding the loans obtained by U-Bex. It claimed that after

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[6] *Id*. at 14.

[7] *Rollo* (G.R. No. 217857), pp. 101-102.

[8] *Id*. at 81-87.

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

August 1998, U-Bex started defaulting, and that per Letter dated June 25, 1999, it reminded U-Bex/Nimfa that their account has been past due and as of June 21, 1999, they owed the bank ₱3,137,494.00. Despite efforts to forge a repayment scheme for the loan, and after Ubex/Nimfa's failure to pay upon demand, RCBC filed a petition for extrajudicial foreclosure with the Office of the Clerk of Court of the RTC Manila. RCBC admitted that the notice of the foreclosure stated that it would be conducted on October 8, 2003, but it was postponed to November 24, 2003, upon the request of Nimfa, who represented that they were in the process of finding a buyer of the subject property. RCBC alleged that Nimfa's request for postponement of the auction was made "without the need for republication." RCBC agreed to the postponement without republication of notice of sale on the condition that Ubex/Nimfa would not later on question the sale for such reason. On the scheduled date of auction, there were no other buyers, hence RCBC was declared as the winning bidder. RCBC then proceeded to consolidate the title to the property.[10]

RCBC purportedly intended to auction the subject property on August 3, 2006. However, before the said auction, Nimfa, and her daughter Clarice Uvas (Clarice) introduced Evelyn to RCBC. Evelyn was a prospective buyer of the property. RCBC then proceeded to negotiate with Evelyn, and after Evelyn completed her payments, they executed a Deed of Absolute Sale covering the subject property.[11]

RCBC alleged that respondent Heirs merely filed the complaint against it because they want to be paid their referral fee, and that they are estopped from questioning the foreclosure since it was their mother who requested for the resetting of the auction sale.[12]

In a Supplemental Complaint[13] dated April 20, 2007, respondent Heirs alleged that after the filing of their initial

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[10] *Id*. at 48-49.

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

[12] *Id*. at 50.

[13] *Id*. at 88-92.

complaint in 2006, and the annotation of *lis pendens* in TCT No. 269709 in the name of RCBC, the latter sold the property to Lifestyle Corporation and Evelyn, thus resulting in the issuance of TCT No. 276003 in favor of the latter. They claimed that such sale is void for it was derived from a void title. They alleged that Lifestyle Corporation and Evelyn and RCBC conspired against them and are in bad faith.[14]

Lifestyle Corporation and Evelyn, in their defense, claimed that they planned to use the subject property for constructing condominium units. They alleged that they had no prior knowledge of the purported defects in RCBC's ownership. Nimfa and Clarice knew their plan of constructing a condominium building after the former introduced Evelyn to RCBC. In consideration of the same, Evelyn and Lifestyle Corporation agreed to give respondent Heirs a unit in the condominium building. They alleged that they are merely caught in the crossfire between respondent Heirs and RCBC, after the respondent Heirs failed to collect referral fee from RCBC. Thus, they claimed ₱100,000.00 from respondent Heirs as way of actual damages, ₱1,000,000.00 as moral damages and ₱200,000.00 as attorneys fees. On the other hand, Lifestyle Corporation and Evelyn prayed that RCBC be compelled to comply and answer for its express warranty, as stated in the Deed of Absolute sale.[15]

RCBC, in its Answer to Lifestyle Corporation and Evelyn's Cross-claim, alleged that it had no knowledge of the filing of the complaint when it executed the Deed of Absolute Sale on September 18, 2006, or when the Deed was notarized on October 2, 2006, as it merely received summons pertaining to Civil Case No. 06-115798 on October 3, 2006. RCBC further alleged that it did not have knowledge of the annotation of the *lis pendens* until it was informed by co-defendants Lifestyle Corporation and Evelyn. It claimed that the transfer of the subject property to Lifestyle Corporation and Evelyn was made in good faith.[16]

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[14] *Id.* at 51.

[15] *Id.* at 51-52.

[16] *Id.* at 52.

On October 20, 2013, the RTC rendered a Decision,[17] the dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of [respondent Heirs] and against [RCBC], [Lifestyle Corporation and Evelyn]:

1. Declaring as null and void the foreclosure and auction sale of the subject property covered by [TCT] No. 190706 held on November 24, 2003 as well as the corresponding Certificate of Sale dated December 23, 2003;

2. Declaring the Deed of Absolute Sale entered into between [RCBC] and [Lifestyle Redefined Corporation/Evelyn] as null and void;

3. Ordering the Register of Deeds of the City of Manila to cancel the annotations of the Sheriffs Certificate of Sale dated December 23, 2004 on [TCT] No. 190706 as null and void and without any legal effect;

4. Ordering the Register of Deeds of the City of Manila to cancel [TCT] No. 276003 as a consequence of the nullity of the Deed of Absolute Sale entered into by the parties and restore the validity of the original [TCT] No. 190706 in the name of [Dennis], married to [Nimfa] as well as the [TCT] No. 269709 in the name of [RCBC] as the foreclosure sale conducted on November 24, 2003 is a complete nullity;

5. Ordering the [RCBC] to restructure the [respondent Heirs'] loan obligation retroactively as though the foreclosure had not taken place in the interest of justice and equity in order to give another chance for the [respondent Heirs] to satisfy their loan obligation **without prejudice** to the conduct of extra-judicial foreclosure of the proceedings in compliance with the rules in case of failure of [respondent Heirs] to satisfy their loan obligations;

6. Ordering the [RCBC] to return to [Lifestyle Corporation and Evelyn] the amount of TWENTY MILLION FIVE HUNDRED THOUSAND PESOS (Php20,500,000.00) with interest of 12% *per annum* from time of filing of the instant Complaint on September 6, 2006;

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[17] *Id*. at 94-107.

7. Ordering the [RCBC] to pay attorney's fees in the amount of FIFTY THOUSAND PESOS (₱50,000.00);

8. Costs against [RCBC] and [Lifestyle Corporation/Evelyn].

SO ORDERED.[18]

Proceedings before the CA

Dissatisfied, Lifestyle Corporation and Evelyn, and RCBC filed their respective Appellant's Briefs.

After the filing of the parties' respective pleadings, the CA rendered the assailed Decision[19] on January 12, 2015, the dispositive portion of the Decision reads:

WHEREFORE, premises considered, the appeals are **DENIED.** The Decision dated 20 October 2013 of the [RTC], National Capital Judicial Region, Branch 17, Manila in *Civil Case No. 06-115798* is **AFFIRMED.**

SO ORDERED.[20]

Hence, the instant petitions.

Arguments of the Parties

Lifestyle Corporation and Evelyn claim that they are buyers in good faith considering that the sale between them and RCBC was already perfected on August 24, 2006, way before the inscription of *lis pendens* in TCT No. 269709, on September 6, 2006.[21] Meanwhile, RCBC insists that the lower courts erred in ordering it to restructure the loan, considering that this was not expressly prayed for by the respondent Heirs in their complaint before the trial court.[22]

Verily, in these consolidated petitions, this Court is called upon to determine the correctness of the CA's ruling which

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[18] *Id*. at 105-106.

[19] *Rollo* (G.R. No. 217716), pp. 9-39.

[20] *Id*. at 35.

[21] *Id*. at 58.

[22] *Rollo* (G.R. No. 217857), pp. 27-28.

effectively restored the situation of the parties prior to the controversy. In order to properly resolve the same, this Court should necessarily make a determination of whether Lifestyle Corporation and Evelyn acted in good faith when they purchased the subject property from RCBC. If this Court rules in the affirmative, the order restoring the parties to their *status quo ante* would have no legal basis. If this Court finds the buyers in bad faith, then the CA's ruling stands.

Ruling of the Court

The petition has merit.

At the outset, this Court is cognizant of the rule that republication of the notice of sale in the manner prescribed by Act No. 3135 is necessary for the validity of a postponed extrajudicial foreclosure sale.[23] A foreclosure sale which deviates from the statutory requirements constitutes a jurisdictional defect invalidating the sale.[24] The Court is mindful of the purpose of publication of the notice of auction sale, which is to give the foreclosure sale a reasonably wide publicity such that those interested might attend the public sale. Otherwise, the sale might be converted into a private one.[25]

However, jurisprudence is also replete with cases which relaxes the aforesaid rule in case of a purchaser in a foreclosure sale who is in good faith and bought the property for value.[26] As aforesaid, it is thus relevant for this Court to make a determination on the purported good faith of Petitioners Lifestyle Corporation and Evelyn in purchasing the subject property.

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[23] *Ouano v. Court of Appeals,* 446 Phil. 690, 703 (2003) citing *Tambunting v. Court of Appeals,* 249 Phil. 16 (1988).

[24] *Ouano v. Court of Appeals, supra* at 703.

[25] *Development Bank of the Phils. v. Court of Appeals,* 451 Phil. 563, 575 (2003).

[26] See *Bank of Commerce v. Sps. San Pablo, Jr.,* 550 Phil. 805 (2007); *Vda. De Toledo v. Toledo,* 462 Phil. 738, 749-749 (2003).

Lifestyle Corporation and Evelyn had a right to rely on the clean title of the subject property at the time of the sale

The CA in this case opined that the annotation of *lis pendens* on RCBC's title on September 6, 2006, prior to the notarization of the sale between Lifestyle Corporation and Evelyn, and RCBC on October 2, 2006, is sufficient notice of the respondent Heirs' claim over the subject property.

Examination of the factual circumstances of the case in its entirety leads this Court to a different conclusion.

As a rule, an ordinary buyer may rely on the certificate of title issued in the name of the seller, and need not investigate beyond what the title of the subject property states.[27] In order to be considered a buyer in good faith, a person must buy the property without notice of a right or interest of another party, and pay the purchase price at the time of sale or before notice of a claim on the property.[28] "The protection of innocent purchasers in good faith for value grounds on the social interest embedded in the legal concept granting indefeasibility of titles. Between the third party and the owner, the latter would be more familiar with the history and status of the titled property."[29]

The honesty of intention that constitutes good faith implies freedom from knowledge of circumstances that ought to put a prudent person on inquiry.[30] Good faith consists in the belief of the possessors that the persons from whom they received the thing are its rightful owners who could convey their title.[31]

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[27] See *Heirs of Gregorio Lopez v. Development Bank of the Phils.*, 747 Phil. 427, 439 (2014).

[28] *Uy v. Fule, et al.*, 737 Phil. 290, 293 (2014).

[29] *Leong, et al. v. See*, 749 Phil. 314, 325 (2014).

[30] *Sigaya v. Mayuga*, 504 Phil. 591, 613 (2005).

[31] *Spouses Salera v. Spouses Rodaje*, 557 Phil. 207, 214 (2007).

"Good faith, while always presumed in the absence of proof to the contrary, requires this well-founded belief."[32]

In this case, the annotation of *lis pendens,* per se, does not automatically equate to the conclusion that Lifestyle Corporation and Evelyn intentionally bought the property with knowledge, or to defeat respondent Heirs' claims on the subject property. In the first place, the title of the subject property, at the time of the negotiations and payment of the sale was in the name of RCBC. At that time, the title of the subject property did not contain any indication that respondent Heirs have a claim thereon, or that the foreclosure sale from which RCBC bought the subject property was void. Plainly, it can be said that Lifestyle Corporation and Evelyn were not expected to make further investigations on the property. The rule is settled that "one who deals with property registered under the Torrens System is charged with notice only of such burdens and claims as are annotated on the title."[33] "The law protects to a greater degree a purchaser who buys from the registered owner himself."[34]

We also note that at the time of the annotation of *lis pendens,* the sale was already consummated. It must be emphasized that Lifestyle Corporation and/or Evelyn was already finished paying for the subject property as early as August 24, 2006. This was not controverted by respondent Heirs. Hence, Lifestyle Corporation and Evelyn already acquired ownership of the subject property as of that time. The law provides that the ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Article 1497 to 1501.[35] Delivery may either be actual or constructive.

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[32] *Sps. Villamil, et al. v. Villarosa,* 602 Phil. 932, 941 (2009).

[33] *Raul Saberon, et al. v. Ventanilla, Jr., et al.,* 733 Phil. 275, 296-297 (2014).

[34] *Heirs of Nicolas Cabigas v. Limbaco, et al.,* 570 Phil. 274, 291 (2011) citing *Abad v. Sps. Guimba,* 503 Phil. 321, 331 (2005).

[35] Art. 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.

The different modes of transfer of ownership upon consummation of a contract of sale was explained by this Court in *San Lorenzo Dev't. Corp. v. Court Of Appeals*,[36] as follows:

> Actual delivery consists in placing the thing sold in the control and possession of the vendee. Legal or constructive delivery, on the other hand, may be had through any of the following ways: the execution of a public instrument evidencing the sale; symbolical tradition such as the delivery of the keys of the place where the movable sold is being kept; *traditio longa manu* or by mere consent or agreement if the movable sold cannot yet be transferred to the possession of the buyer at the time of the sale; *traditio brevi manu* if the buyer already had possession of the object even before the sale; and *traditio constitutum possessorium*, where the seller remains in possession of the property in a different capacity.[37]

In this case, considering that Lifestyle Corporation and Evelyn were already in possession of the subject property, being former lessees of respondent Heirs' mother, her full payment of the property consummated the transfer of ownership in her favor on August 24, 2006. Evidently, such consummation of the sale

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Art. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred.

With regard to movable property, its delivery may also be made by the delivery of the keys of the place or depository where it is stored or kept.

Art. 1499. The delivery of movable property may likewise be made by the mere consent or agreement of the contracting parties, if the thing sold cannot be transferred to the possession of the vendee at the time of the sale, or if the latter already had it in his possession for any other reason.

Art. 1500. There may also be tradition *constitutum possessorium.*

Art. 1501. With respect to incorporeal property, the provisions of the first paragraph of Article 1498 shall govern. In any other case wherein said provisions are not applicable, the placing of the titles of ownership in the possession of the vendee or the use by the vendee of his rights, with the vendor's consent, shall be understood as a delivery.

[36] 490 Phil. 7 (2005).

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

between RCBC and Lifestyle Corporation and Evelyn was way before the annotation of the *lis pendens,* on September 6, 2006.

Further, Lifestyle Corporation and Evelyn, at the time of the sale, had no reason to believe that respondent Heirs would eventually dispute the auction sale. It bears to emphasize that respondent Heirs' mother, Nimfa, brokered the sale between Lifestyle Corporation and Evelyn, and RCBC. Carl James Uvas (Carl James), in his testimony before the trial court, stated that his mother negotiated for Evelyn to buy the subject property. The trial court summarized Carl James' testimony as follows:

> With the manifestation of [respondent Heirs'] counsel to present rebuttal evidence, [Carl James] took the witness stand aided with his Judicial Affidavit and stated that x x x he knew that the Leon Guinto property was mortgaged to RCBC as told to him by his parents; that, he has no knowledge that his mother was having a hard time paying off the loan from RCBC; that his understanding of the transaction of his mother and [Evelyn] was that, there is still an opportunity for them to get a certain amount from the sale; that, he knew that his mother is endorsing [Evelyn] as the one who will purchase the property from RCBC considering that she is already renting the place at that time; that he also knew that as consideration of said endorsement, [Evelyn] will give them condominium unit. x x x.[38]

Verily, considering that the purchase would not have materialized had it not been for the prodding of respondent Heirs' mother, it is safe to conclude that at the time of the sale, Lifestyle Corporation and Evelyn were in honest belief that it was entering into a *bona fide* transaction, free from any adverse interests, especially from respondent Heirs or their predecessors in interest.

With the aforesaid finding of good faith on the part of Lifestyle Corporation and Evelyn, this Court sees no reason to discuss the propriety of the lower court's order for restructuring.

In any case, this Court fails to see the legality nor practicality in restoring the parties to the *status quo* prior to the controversy,

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[38] *Rollo* (G.R. No. 217716), pp. 20-21.

in allowing respondent Heirs to satisfy their loan obligations "*in the interest of justice and equity.*" Extant from the records is respondent Heirs and their predecessors' failure or refusal to satisfy their loan obligation to RCBC. Indeed, Lifestyle Corporation and Evelyn came into the picture as buyer of the subject property, with Nimfa as middleman. Carl James himself, in his testimony, declared that the goal was for them to have a commission on the sale, either in cash, or through a unit in the condominium building which will be constructed by Lifestyle Corporation and Evelyn. No proof or testimony was presented to support respondent Heirs' alleged intent to satisfy their debt since their default in 1998, and despite their and RCBC's negotiations to forge a repayment scheme. Neither was it shown that respondent Heirs questioned the sale immediately after the auction in 2003, or after registration of the sale under RCBC's name in 2004.

Also, this Court is not prepared to apply the principles of equity to justify the lower courts' order giving respondent Heirs "another chance" to pay their obligations as though no foreclosure has been made. This Court cannot turn a blind eye to the fact that the entire controversy would not have arisen had respondent Heirs' predecessors not requested for postponement of the originally scheduled auction sale of the subject property. We note that their letter-request to the sheriff, with RCBC's conformity, to postpone the sale from October 8, 2003 to November 24, 2003 was "without need of republication," and that RCBC relied on such request based on the condition that respondent heirs would not later on question the sale for lack of republication of the notice of the sale.[39] Further, it was respondent Heirs' predecessor, their mother Nimfa, who introduced the buyer to RCBC believing that she would be given commission from the subsequent sale of the subject property to Lifestyle Corporation and Evelyn. Verily, this Court cannot mindlessly apply the rule on publication of notice of foreclosure sale without considering the unique factual circumstances of the case. It is certainly at the height of inequity to allow the

[39] *Id*. at 13.

debtor to benefit from a controversy which he himself started, and unjustly deprive the creditor use of his money for a considerable length of time.

In sum, considering Lifestyle Corporation and Evelyn's good faith in purchasing the subject property, there appears no reason to set aside the transfers of the subject property. The foreclosure, as well as the subsequent sale of the property to Lifestyle Corporation and Evelyn must be upheld. Further, considering the validity of the sale of the subject property, the foreclosure of the property results in the satisfaction of respondent Heirs' loan liabilities.[40] Hence, this Court sees no necessity to rule on RCBC's issue on restructuring of the loan.

WHEREFORE, the petitions are hereby **GRANTED.** The Decision dated January 12, 2015 of the Court of Appeals in CA-G.R. CV No. 101972 is hereby **REVERSED and SET ASIDE.**

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), Bersamin, del Castillo, and *Jardeleza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 218534. September 17, 2018]

POLICE DIRECTOR GENERAL RICARDO C. MARQUEZ, in his capacity as THE CHIEF OF THE PHILIPPINE NATIONAL POLICE (PNP) (IN LIEU OF FORMER PNP OFFICER-IN-CHARGE, POLICE DEPUTY DIRECTOR GENERAL LEONARDO A.

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[40] See *Ramos, et al. v. Philippine National Bank, et al.,* 678 Phil. 727, 751 (2011).

ESPINA), *petitioner, vs.* **PO2 ARNOLD P. MAYO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6975 (THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT ACT OF 1990); FINALITY OF DISCIPLINARY ACTION; A DISCIPLINARY ACTION IMPOSED BY THE CHIEF OF THE PHILIPPINE NATIONAL POLICE (PNP) INVOLVING DEMOTION OR DISMISSAL IS NOT IMMEDIATELY FINAL AND EXECUTORY.— The provision of law governing the finality of disciplinary actions against police officers is Sec. 45 of R.A. No. 6975, as amended, also known as the Department of Interior and Local Government Act of 1990 x x x. The same provision is reproduced in Rule 17, Section 22 of NAPOLCOM MC No. 2007-001 x x x. In the *National Appellate Board (NAB) of the National Police Commission (NAPOLCOM) v. P/Inp. John A. Mamauag*, this Court held that Section 45 of R.A. No. 6975, as amended, provides that a disciplinary action imposed upon a member of the PNP shall be final and executory, and disciplinary actions are appealable only if it involves either a demotion or dismissal from the service. The second proviso which renders disciplinary actions involving demotion or dismissal from the service imposed by the Chief of the PNP qualifies the general statement that disciplinary actions imposed upon a member of the PNP is final and executory. x x x [T]he wording of Rule 17, Section 23 of NAPOLCOM MC No. 2007-001 that "the filing of a motion for reconsideration shall stay the execution of the disciplinary action sought to be reconsidered", does not foreclose other modes of staying the execution of a disciplinary action. As a general rule, only judgments which have become final can be executed. Executions pending appeal are exceptions to the general rule, and as such, must be strictly construed. While these principles are applicable to execution of judgments under the Rules of Court, this Court finds the same applicable to the present case considering that the Rules of Court are suppletorily applicable by express provision of NAPOLCOM MC No. 2007-001. Thus, the fact that disciplinary actions imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the NAB,

which only renders the same not immediately final, but also not immediately executory when an appeal has been seasonably filed with the NAB.

2. ID.; ID.; ID.; SUMMARY DISMISSAL POWERS OF THE PNP CHIEF AND REGIONAL DIRECTORS; THE IMMEDIATELY EXECUTORY NATURE OF THE DECISIONS OF THE PNP SUMMARY DISMISSAL AUTHORITIES IS NO LONGER EXPRESSLY PROVIDED IN THE SUBSEQUENT NATIONAL POLICE COMMISSION MEMORANDUM CIRCULAR.— This Court is aware of its pronouncement in *Jenny Zacarias v. National Police Commission* that summary dismissals from the service imposed by the Chief of the PNP under Section 42 of R.A. 6975, as amended, are immediately executory. The ruling in *Zacarias*, however, was based on NAPOLCOM MC No. 92-006, which expressly provided for the immediately executory nature of the decisions of the PNP summary dismissal authorities which includes the Chief of the PNP. NAPOLCOM MC No. 92-006 was amended by NAPOLCOM MC No. 94-021, and both MCs were repealed by NAPOLCOM MC No. 96-010. NAPOLCOM MC No. 96-010 was, in turn, repealed by NAPOLCOM MC No. 2007-001. Unlike the previous MCs, NAPOLCOM MC No. 2007-001 and the subsequent NAPOLCOM MC No. 2016-002 do not expressly provide for immediately executory nature of the decisions of the PNP summary dismissal authorities.

3. ID.; ID.; EXECUTIVE ORDER NO. 292 (ADMINISTRATIVE CODE OF 1987); DISCIPLINARY JURISDICTION OF SECRETARIES AND HEADS OF AGENCIES; WHEN THE PENALTY OF DISMISSAL FROM THE SERVICE IMPOSED AGAINST A POLICE OFFICER IS CONFIRMED ON APPEAL BY THE SECRETARY OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT, SUCH DISMISSAL FROM THE SERVICE IS EXECUTORY.— By dismissing respondent's PO2 Mayo's appeal, the Secretary of the DILG, in effect, confirmed respondent's PO2 Mayo's dismissal from the service. Such dismissal from the service is executory, pursuant to Section 47 of Book V, Executive Order (E.O.) No. 292, or the Administrative Code of 1987. This provision of the Civil Service laws is also applicable to the PNP x x x.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

TIJAM, *J.*:

The pivotal question to be resolved in this case is, whether the penalty of dismissal from the service against a police officer imposed by the Chief of the PNP is immediately executory, even when an appeal has been seasonably filed.

Before Us is a Petition for Review on *Certiorari*[1] (With Prayer for the Issuance of a Writ of Preliminary Injunction and/or Temporary Restraining Order), under Rule 45 of the Rules of Court filed by Police Director General Ricardo C. Marquez, as the Chief of the Philippine National Police (PNP), assailing the Decision[2] dated March 18, 2015 and the Order[3] dated June 1, 2015 of the Regional Trial Court (RTC), Branch 32 of the City of Manila, in Civil Case No. 15-132998. The said Decision granted herein respondent PO2 Arnold P. Mayo's (PO2 Mayo) petition for injunction and declared as void Special Order (S.O.) No. 9999 of the PNP dismissing him from the service, effective October 11, 2013 for grave misconduct.

Factual Antecedents

The present controversy stemmed from a complaint filed by Annaliza F. Daguio (Annaliza) before the Office of the Chief, PNP, against the respondent for grave misconduct, docketed as NHQ-AC-363-011413 (DIDM-ADM-13-04). The complaint alleged that on January 25, 2012, at about 9:00 a.m., respondent PO2 Mayo, together with SPO3 Menalyn Turalba (SPO3 Turalba)

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[1] *Rollo*, pp. 12-31.

[2] Penned by Presiding Judge Thelma Bunyi-Medina; *id*. at 35-43.

[3] *Id*. at 44.

who was in civilian attire, PO3 Jose Turalba (PO3 Jose), SPO3 Turalba's husband, and PO1 Elizalde Visaya (PO1 Visaya),went to Annaliza's iron workshop at No. 4 Daisy Street, Purok 6-C, Lower Bicutan, Taguig City, where they tried to dismantle a bomb wrapped in red cloth with the use of a pipe wrench, but failed to do so. SPO3 Turalba and Annaliza told respondent PO2 Mayo and the other officers to discontinue as it could cause the bomb to explode. The police officers then left but came back around 2:00 p.m. At this juncture, the police officers requested Cruzaldo Daguio (Cruzaldo), Annaliza's husband, to spot the bomb with a welding torch. Cruzaldo refused, saying that the bomb might explode, but the police officers persuaded him stating that it will not explode considering they are bomb experts. While Cruzaldo was spotting the tip of the bomb, it suddenly exploded, killing Cruzaldo and PO1 Visaya on the spot and wounding nine (9) civilians.[4] Respondent PO2 Mayo, PO3 Jose, and Liza Q. Grimaldo (Grimaldo) were rushed to the hospital but PO3 Jose and Grimaldo were pronounced dead on arrival. Furthermore, various properties were destroyed.[5]

Respondent PO2 Mayo failed to file his answer or counter-affidavit despite having been served with summons and Notices of Pre-Hearing Conference at his office at the PNP Special Action Force (SAF).

In a Decision[6] dated October 11, 2013, Police Director General Alan La Madrid Purisima, then Chief of the PNP, found respondent PO2 Mayo guilty of grave misconduct and imposed the extreme penalty of dismissal from the PNP service, aggravated by taking advantage of his official position as a member of the Explosive Ordnance Disposal of the SAF, and that the incident happened during office hours.

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[4] May F. Mendizabal, Angelica Leah Paz M. Coven, Jorelle Lance B. Lariosa, Olive R. Birion, Annalyn D. Aquino, Ronalyn N. Ben-Ben, Aaron N. Aquino, Romeo P. Tagono, Jr., and Keniefielda Mabilog. As stated in the Decision dated October 11, 2013 of the Office of the Chief, PNP; *id* at 45.

[5] *Id*. at 14-15 and 45-46.

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

Respondent PO2 Mayo filed a Motion for Reconsideration on January 2, 2014, arguing that: he was denied due process and was not given an opportunity to present his evidence; he was not given a chance to answer the accusations hurled against him; and to have a fair trial. He also argued that the Chief of the PNP had no jurisdiction over the case under the "Principle of Exclusivity", as the first disciplinary authority to acquire jurisdiction was the Internal Affairs Service (IAS) of the SAF.[7]

In a Resolution[8] dated November 26, 2014, respondent's motion for reconsideration was denied. The Office of the Chief, PNP, found no merit in the allegation of denial of due process, stating that respondent was duly notified of the proceedings as he was served with summons and notices, but still failed to file his answer or counter-affidavit. Furthermore, the "Principle of Exclusivity" does not apply in this case as the IAS is not a disciplinary authority.[9] Undaunted, respondent lodged an appeal before the National Police Commission (NAPOLCOM) National Appellate Board on January 27, 2015, seeking the reversal of the Decision and the Resolution of the Office of the Chief, PNP.[10]

Meanwhile, pursuant to the Decision dated October 11, 2013 and the Resolution dated November 26, 2014, the PNP issued S.O. No. 9999[11] dated December 29, 2014, dismissing respondent PO2 Mayo from the service effective October 11, 2013. Respondent PO2 Mayo alleged that he only became aware of the said SO on January 30, 2015 when he was not allowed to have his PNP identification card renewed, due to problems with the administrative case against him.[12] As the said SO was about

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[7] *Id*. at 47.

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

[9] *Id*. at 47.

[10] *Id*. at 50-62.

[11] *Id*. at 49.

[12] As alleged by respondent PO2 Mayo in his Petition for Injunction with Prayer for the Issuance of Temporary Restraining Order and Writ of

to be implemented, respondent PO2 Mayo filed a Petition[13] for Injunction with Prayer for the Issuance of Temporary Restraining Order and Writ of Preliminary Injunction before the RTC of the City of Manila. The case was raffled to Branch 32 and was docketed as Civil Case No. 15-132998.

Respondent PO2 Mayo argued that the SO was void as the Decision dated October 11, 2013 was not yet final and executory and he has still a pending appeal before the NAPOLCOM National Appellate Board. He further argued that it was in violation of the provisions of NAPOLCOM Memorandum Circular No. 2007-001 (NMC No. 2007-001) which provides that the filing of a motion for reconsideration or an appeal shall stay the execution of the disciplinary action sought to be reconsidered.[14]

The RTC issued an Order[15] dated February 9, 2015, granting respondent PO2 Mayo's application for the issuance of a temporary restraining order (TRO) pending resolution of the main action for injunction. The PNP, through the Office of the Solicitor General (OSG), then filed a Motion for Reconsideration of the RTC Order, which was denied by the RTC in its Order[16] dated March 3, 2015. Subsequently, the RTC rendered its Decision in the main case dated March 18, 2015, granting respondent's petition for injunction and declaring S.O. No. 9999 void. The dispositive portion of the said Decision reads:

WHEREFORE, judgment is hereby rendered granting the instant petition for injunction and declaring Special Order No. 9999 as void.

SO ORDERED.[17]

Preliminary Injunction filed before the Regional Trial Court of City of Manila, *Id*. at 65.

[13] *Id*. at 63-69.

[14] *Rollo*, p. 66.

[15] *Id*. at 70-76.

[16] *Id*. at 100.

[17] *Id*. at 43.

In its Decision in favor of herein respondent, the RTC ruled in this wise:

At this juncture, this court finds it apt to quote Section 45 of the Republic Act No. 6975 cited by the respondents to bolster their claims, thus:

> *Section 45. Finality of Disciplinary Action. — The disciplinary action imposed upon a member of the PNP shall be final and executory; Provided, That a disciplinary action imposed by the regional director or by the PLEB involving demotion or dismissal from the service may be appealed to the Regional Appellate Board within ten (10) days from receipt of the copy of the notice of decision; Provided, further, That the disciplinary action imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof; Provided, furthermore, That the Regional or National Appellate Board, as the case may be, shall decide the appeal within sixty days from receipt of the notice of appeal: Provided, finally,* ***That failure of the Regional Appellate Board to act on the appeal within the said period shall render the decision final and executory, without prejudice****, however, to the filing of an appeal by either party with the Secretary. (underscoring and emphasis supplied)*

It is true that the initial provision of the foregoing rule indicates that disciplinary action involving demotion or dismissal imposed upon a member of the PNP shall be final and executory. However, it is crystal clear from its provisos that the final and executory nature of the decision/order/resolution assumes a different character when an appeal is filed with the appellate board. This interpretation can reasonably be inferred from the provision that failure of the appellate board to act on the appeal within the period sixty (60) days from receipt of the notice of appeal shall render the decision final and executory.

If the meaning ascribed by the respondents to the rules is to be taken, this question begs answer [sic]: why is there a need for a declaration in the law that the disciplinary action shall become final and executory if the appellate board failed to act on the appeal within the given period if, in the first place, the same (decision) is already final and executory [sic].

Palpably, the disciplinary action involving demotion or dismissal embodied in the decision/order/resolution shall not be immediately executory by the mere fact of its rendition because it shall only be so if no motion for reconsideration or appeal is filed AND if appeal was taken and it was not acted upon within the given period.

Thus, an appeal with the appellate board, under the foregoing rule, should stay execution of the assailed decision/order/resolution unless it was not acted upon by the appellate board within the period of sixty (60) days.

Further, while it is also true that under the provision of Section 23, Rule 17, Part II of Napolcom Memorandum Circular (NMC) 2007-001 it is provided that "the filing of a motion for reconsideration shall stay the execution of the disciplinary action sought to be reconsidered", this provision, by its very wordings and taken in the light of the other provisions of this law, does not give exclusivity to the filing of motion for reconsideration as the only mode by which the assailed decision could be stayed.

To give emphasis, it is apropos to quote Section 23, Rule 17, Part II of NMC 2007-001, viz:

> Section 23. Motion for Reconsideration. — The party adversely affected may file a motion for reconsideration from the decision rendered by the disciplinary authority within ten (10) days from receipt of a copy of the decision on the following grounds:
>
> x x x x x x x x x
>
> The filing of a motion for reconsideration shall stay the execution of disciplinary action sought to be reconsidered. Only one (1) motion for reconsideration shall be allowed and the same shall be considered and decided by the disciplinary authority within fifteen (15) days from receipt thereof.

Notable in the aforementioned rule is the absence of limiting words or terms which would consider the filing of a motion for reconsideration as the only remedy which could stay the execution of the disciplinary action.

It is also important to give emphasis to the following provisions of NMC 2007-001 to unearth the real intendment of the rules:

1. Section 1 (e) — There is finality of Decision when upon the lapse of ten (10) days from receipt, or notice of such decision, no

motion for reconsideration or APPEAL has been filed in accordance with these Rules;

II. Section 24, Certificate of Finality. — The disciplinary authority or appellate body shall issue a certificate of finality of the decision or resolution finally disposing of the case when no motion for reconsideration or APPEAL is filed within the prescribed period.

Verily, to ascribe merit to respondents' contention that the disciplinary action involving demotion or dismissal to a member of the PNP is final and executory will definitely run counter to the aforementioned rules which emphatically declare that the decision shall only become final and, thus, executory, when upon the lapse of the ten (10) days from receipt, or notice of such decision, no motion for reconsideration or APPEAL has been filed.

Thus, it is fitting to enunciate, at this point, the doctrinal principle that "a law must be read in its entirety and no single provision should be interpreted in isolation with respect to the other provisions of the law."

To reiterate, this court, guided by the existing rules and jurisprudence on the matter, finds that the appeal interposed by the petitioner with the National Appellate Board stayed the decision and resolution rendered by the Chief of the PNP dismissing him from the service.

Perforce, the Special order No. 9999 issued by Police Deputy Director General Marcelo Poyaoan Garbo, Jr., PNP, dismissing the petitioner from the PNP service effective October 11, 2013 should be declared void considering that the decision of even date rendered by the Chief PNP is not yet final and executory.[18]

The PNP sought reconsideration of the said Decision but its Motion for Reconsideration dated April 16, 2015 was denied in an Order dated June 1, 2015, finding no cogent reason for the Court to disturb or set aside its findings in its Decision.[19] Hence, the PNP interposed the present Petition for Review on *Certiorari* before this Court raising a pure question of law.

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[18] *Id.* at 39-42.

[19] *Id.* at 44.

Ruling of the Court

As aptly raised by herein petitioner, the sole issue to be resolved by this Court is, whether S.O. No. 9999, which imposes upon herein respondent the penalty of dismissal from the service, pursuant to the Decision dated October 11, 2013 and the Resolution dated November 26, 2014 of the Office of the Chief, PNP, is immediately executory, pending respondent's appeal with the NAPOLCOM National Appellate Board.

Preliminarily, the Court notes that NAPOLCOM Memorandum Circular (M.C.) No. 2007-001 has been repealed by NAPOLCOM M.C. No. 2016-002.[20] Nevertheless, We shall continue to apply the provisions of NMC No. 2007-001, as this was the prevailing rule during the pendency and resolution of the present case.

Petitioner argues that the RTC erred in holding that S.O. No. 9999 is void, for the following reasons: (1) there is nothing in Section 45, Republic Act (R.A.) No. 6975, as amended, that states that the failure of the National Appellate Board to act on the appeal within 60 days shall render the decision final and executory; (2) NAPOLCOM MC No. 2007-001 is clear that only the filing of a motion for reconsideration shall stay the execution of the disciplinary action sought to be reconsidered; (3) PNP Circular No. 2008-013 allows execution of S.O. No. 9999, dismissing PO2 Mayo from the police service pending the latter's appeal with the National Appellate Board.

Respondent PO2 Mayo, in his Comment/Opposition,[21] argued that the instant petition has been rendered moot and academic by the subsequent issuance of S.O. No. 2158 which cancelled S.O. No. 9999. Moreover, by the issuance of said S.O. No. 2158, respondent argues that petitioner is estopped from arguing

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[20] Rule 24, Section 1. Repealing Clause. — Memorandum Circular Numbers 93-024, 96-010, 98-014, 99-006, 99-014, 2002-010, 2002-013 and 2007-001 are repealed. All other NAPOLCOM issuances or portions thereof inconsistent with this Memorandum Circular are hereby superseded or modified accordingly.

[21] *Rollo*, pp. 109-120.

for the validity and implementation of S.O. No. 9999 considering that, it was also the one who caused its cancellation. Furthermore, he reiterates his argument that under NMC Circular No. 2007-001 in relation to PNP Circular No. 2008-013, decisions, orders or resolutions of PNP disciplinary authorities may only be implemented upon issuance of a certificate of finality, finally disposing of the case when there is no motion for reconsideration or appeal filed within the prescribed period.

The Court finds no merit in respondent PO2 Mayo's assertion that the case has been rendered moot, and that the petitioner is estopped from asserting the validity of S.O. No. 9999, by the subsequent issuance of S.O. No. 2158 dated March 23, 2015, which cancelled his dismissal from the service. A reading of S.O. No. 2158 reveals that the cancellation of respondent's dismissal from the service, was primarily because of the injunction issued by the RTC. Petitioner cannot be faulted for doing so, considering that judgments in actions for injunction are executory even pending appeal[22] and implementing respondent's dismissal which was enjoined by the court could have made them liable for indirect contempt.

Before We discuss the main issue at hand, this Court also takes the opportunity to correct the pronouncement made by the RTC that an appeal with the appellate board shall stay execution of the decision, order, or resolution, unless it was not acted upon within a period of sixty (60) days. Under Section 45 of R.A. No. 6975, the last proviso only pertains to the Regional Appellate Board (RAB). It is not applicable in the present case

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[22] Rule 39, Sec. 4. Judgments not stayed by appeal. **Judgments in actions for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court.** On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party. (Emphasis supplied)

considering that respondent filed his appeal of the Decision and Resolution of the Chief of the PNP before the NAPOLCOM National Appellate Board (NAB), and not the RAB.

The Decision and Resolution of the Chief of the PNP is not immediately executory

This Court rejects the position of the petitioner that the Decision and the Resolution of the Chief of the PNP is immediately executory, pending respondent's PO2 Mayo's appeal before the NAB. Nevertheless, supervening events compels this Court to reverse the judgment of the RTC, and dissolve the writ of injunction it issued as will be explained below.

The provision of law governing the finality of disciplinary actions against police officers is Sec. 45 of R.A. No. 6975, as amended, also known as the Department of Interior and Local Government Act of 1990, to wit:

> Section. 45. *Finality of Disciplinary Action*. — The disciplinary action imposed upon a member of the PNP shall be final and executory: *Provided*, That a disciplinary action imposed by the regional director or by the PLEB involving demotion or dismissal from the service may be appealed to the regional appellate board within ten (10) days from receipt of the copy of the notice of decision: *Provided, further*, That the disciplinary action imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof: *Provided, furthermore*, The regional or National Appellate Board, as the case may be, shall decide the appeal within sixty (60) days from receipt of the notice of appeal: *Provided, finally*, That failure of the regional appellate board to act on the appeal within said period shall render the decision final and executory without prejudice, however, to the filing of an appeal by either party with the Secretary.

The same provision is reproduced in Rule 17, Section 22 of NAPOLCOM MC No. 2007-001:

> Section 22. *Finality of Decision*. — The disciplinary action imposed upon a member of the PNP shall be final and executory: Provided, that a disciplinary action imposed by the regional director or by the

PLEB involving demotion or dismissal from the service may be appealed to the regional appellate board within ten (10) days from receipt of the copy of the notice of decision: Provided, further, that the disciplinary action imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the National Appellate Board within ten (10) days from receipt thereof: Provided, furthermore, that the Regional or National Appellate Board, as the case may be, shall decide the appeal within sixty (60) days from receipt of the notice of appeal: Provided, finally, that the decisions of the National Appellate Board and Regional Appellate Board may be appealed to the Secretary of the Interior and Local Government.

In the *National Appellate Board (NAB) of the National Police Commission (NAPOLCOM) v. P/Inp. John A. Mamauag*,[23] this Court held that Section 45 of R.A. No. 6975, as amended, provides that a disciplinary action imposed upon a member of the PNP shall be final and executory, and disciplinary actions are appealable only if it involves either a demotion or dismissal from the service. The second proviso which renders disciplinary actions involving demotion or dismissal from the service imposed by the Chief of the PNP qualifies the general statement that disciplinary actions imposed upon a member of the PNP is final and executory. Petitioner's contention that only a motion for reconsideration can stay the execution of a disciplinary action is misplaced. As correctly held by the RTC, the wording of Rule 17, Section 23[24] of NAPOLCOM MC No. 2007-001 that

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[23] 504 Phil. 186 (2005).

[24] Rule 17, Sec. 23. Motion for Reconsideration. — The party adversely affected may file a motion for reconsideration from the decision rendered by the disciplinary authority within ten (10) days from receipt of a copy of the decision on the following grounds:

a) Newly discovered evidence which, if presented, would materially affect the decision rendered; or

b) Errors of law or irregularities have been committed prejudicial to the substantial rights and interest of the movant.

The filing of a motion for reconsideration shall stay the execution of the disciplinary action sought to be reconsidered. Only one (1) motion for reconsideration shall be allowed and the same shall be considered and decided by the disciplinary authority within fifteen (15) days from receipt thereof.

"the filing of a motion for reconsideration shall stay the execution of the disciplinary action sought to be reconsidered," does not foreclose other modes of staying the execution of a disciplinary action. As a general rule, only judgments which have become final can be executed. Executions pending appeal are exceptions to the general rule, and as such, must be strictly construed.[25] While these principles are applicable to execution of judgments under the Rules of Court, this Court finds the same applicable to the present case considering that the Rules of Court are suppletorily applicable by express provision of NAPOLCOM MC No. 2007-001.[26] Thus, the fact that disciplinary actions imposed by the Chief of the PNP involving demotion or dismissal may be appealed to the NAB, which only renders the same not immediately final, but also not immediately executory when an appeal has been seasonably filed with the NAB.

This Court is aware of its pronouncement in *Jenny Zacarias v. National Police Commission*[27] that summary dismissals from the service imposed by the Chief of the PNP under Section 42[28] of R.A. 6975, as amended, are immediately executory. The

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[25] *Planters Products, Inc. v. Court of Appeals*, 375 Phil. 615 (1999), citing *City of Manila v. Court of Appeals*, 281 Phil. 408 (1991).

[26] Rule 1, Sec 4. *Nature of Proceedings*. — The investigation and hearing before the administrative disciplinary authorities and the IAS shall be summary in nature and shall not strictly adhere to the technical rules of procedure and evidence applicable in judicial proceedings. **The provisions of the Civil Service Law, Rules and Regulations as well as the Revised Rules of Court shall be suppletorily applicable.** (Emphasis supplied)

[27] 460 Phil. 555 (2003).

[28] Section 42. *Summary Dismissal Powers of the PNP Chief and Regional Directors*. — The National Police Commission, the Chief of the PNP and regional directors, after due notice and summary hearings, may immediately remove or dismiss any respondent PNP member in any of the following cases:

(a) When the charge is serious and the evidence of guilt is strong;

(b) When the respondent is a recidivist or has been repeatedly charged and there are reasonable grounds to believe that he is guilty of the charges; and

ruling in *Zacarias*, however, was based on NAPOLCOM MC No. 92-006, which expressly provided for the immediately executory nature of the decisions of the PNP summary dismissal authorities which includes the Chief of the PNP.[29] NAPOLCOM MC No. 92-006 was amended by NAPOLCOM MC No. 94-021,[30] and both MCs were repealed by NAPOLCOM MC No. 96-010.[31] NAPOLCOM MC No. 96-010 was, in turn, repealed by NAPOLCOM MC No. 2007-001.[32] Unlike the previous MCs, NAPOLCOM MC No. 2007-001 and the subsequent NAPOLCOM MC No. 2016-002 do not expressly provide for immediately executory nature of the decisions of the PNP summary dismissal authorities.

(c) When the respondent is guilty of conduct unbecoming of a police officer.

Any member or officer of the PNP who shall go on absence without official leave (AWOL) for a continuous period of thirty (30) days or more shall be dismissed immediately from the service. His activities and whereabouts during the period shall be investigated and if found to have committed a crime, he shall be prosecuted accordingly.

[29] Rule II, Section 8 of NAPOLCOM MC No. 92-006 provides: Finality of Decision/Resolution. — The decision of the PNP Summary Dismissal Authorities imposing upon respondent a penalty of dismissal from the service shall be immediately executory. However, in the event that the respondent is exonerated on appeal, he shall be considered as having been under suspension during the pendency of the appeal, with entitlement to back salaries and allowances.

[30] Rule IV, Section 1 Repealing Clause. — Memorandum Circular No. 92-006 series of 1992 and amended Circular No. 94-021 series of 1994 and all rules and regulations and other issuances, or portions thereof, inconsistent with this Memorandum Circular are hereby repealed or modified accordingly.

[31] Part H, Section 1 Repealing Clause. — Memorandum Circular No. 92-006 series of 1992 as amended by Memorandum Circular No. 94-021 and Circular No. 94-022 series of 1994 and all rules and regulations and other issuances, or portions thereof, inconsistent with this Memorandum Circular are hereby repealed or modified accordingly.

[32] Rule 24, Section 1 Repealing Clause. — Memorandum Circular Numbers 93-024, 96-010, 98-014, 99-006, 99-014, 2002-010, 2002-013 are repealed. All other NAPOLCOM issuances or portions thereof inconsistent with this Memorandum Circular are hereby superseded or modified accordingly.

Dismissal of Respondent's Appeal before the Secretary of the Department of Interior and Local Government is executory pending appeal

The Court notes the petitioner's Manifestation and Motion[33] dated August 11, 2017, stating that, in an Order dated February 10, 2017, the Office of the Secretary of the Department of Interior and Local Government (DILG) has dismissed respondent's PO2 Mayo's Appeal Memorandum. Said DILG Order assailed the Decision dated November 5, 2015 and the Resolution dated June 17, 2016 of the NAPOLCOM National Appellate Board which **affirmed the Decision dated October 11, 2013 and the Resolution dated November 26, 2014 of the Office of the Chief, PNP**.[34] DILG Secretary Ismael D. Sueno denied herein respondent's PO2 Mayo's appeal for the latter's failure to file a Notice of Appeal before the NAPOLCOM National Appellate Board.[35] Furthermore, in another Manifestation and Motion[36] dated February 5, 2018, herein petitioner stated that DILG Officer-in-Charge Catalino S. Cuy has denied respondent PO2 Mayo's Motion for Reconsideration of the Order dated February 10, 2017, in an Order dated October 30, 2017.[37]

By dismissing respondent's PO2 Mayo's appeal, the Secretary of the DILG, in effect, confirmed respondent's PO2 Mayo's dismissal from the service. Such dismissal from the service is executory, pursuant to Section 47 of Book V, Executive Order (E.O.) No. 292, or the Administrative Code of 1987. This provision of the Civil Service laws is also applicable to the PNP,[38] which states:

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[33] *Rollo*, pp. 168-169.

[34] *Id.*

[35] *Id.* at 174-175.

[36] *Id.* at 177-178.

[37] *Id.* at 183-185.

[38] Section 91 of R.A. No. 6975 provides: *Application of Civil Service Laws*. The Civil Service Law and its implementing rules and regulations shall apply to all personnel of the Department.

Sec. 47. Disciplinary Jurisdiction. –

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(2) The Secretaries and heads of agencies and instrumentalities, provinces, cities and municipalities shall have jurisdiction to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. Their decisions shall be final in case the penalty imposed is suspension for not more than thirty days or fine in an amount not exceeding thirty days' salary. **In case the decision rendered by a bureau or office head is appealable to the Commission, the same may be initially appealed to the department and finally to the Commission and pending appeal, the same shall be executory except when the penalty is removal, in which case the same shall be executory only after confirmation by the Secretary concerned.**

x x x x x x x x x

(4) An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins an appeal. (Emphasis supplied)

With respondent PO2 Mayo's appeal already resolved unfavorably, and such resolution being executory, this Court finds no impediment in reversing the Decision and the Resolution of the RTC and lifting the injunction that it issued.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 18, 2015 and the Order dated June 1, 2015 of the Regional Trial Court, Branch 32 of the City of Manila are hereby **REVERSED** and **SET ASIDE**.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), Bersamin, del Castillo, and *Jardeleza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 228680. September 17, 2018]

SPOUSES FRANCISCO and DELMA SANCHEZ, represented by HILARIO LOMBOY, *petitioners, vs.* **ESTHER DIVINAGRACIA *VDA. DE* AGUILAR, TERESITA AGUILAR, ZENAIDA AGUILAR, JUANITO AGUILAR, JR., AMALIA AGUILAR, AND SUSAN AGUILAR, THE MUNICIPALITY OF LAKE SEBU, represented by its Mayor, BASILIO SALIF, NOEMI DUTA D. DALIPE in her capacity as ZONING OFFICER II, ZALDY B. ARTACHO, in his capacity as CHAIRMAN AD HOC COMMITTEE ON LAND CONFLICT, HON. RENATO TAMPAC, in his capacity as PRESIDING JUDGE OF THE 6TH MUNICIPAL CIRCUIT TRIAL COURT OF SURALLA-LAKE SEBU,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT; A REMEDY IN EQUITY SO EXCEPTIONAL IN NATURE THAT IT MAY BE AVAILED OF ONLY WHEN OTHER REMEDIES ARE WANTING, AND ONLY IF THE JUDGMENT SOUGHT TO BE ANNULLED WAS RENDERED BY A COURT LACKING JURISDICTION OR THROUGH EXTRINSIC FRAUD.— [A] petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Its objective is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. Being exceptional in character, it is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. Thus, the Court has instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction

and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. In this regard, if the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without prejudice to the original action being refiled in the proper court. If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.

2. ID.; ID.; JURISDICTION; JURISDICTION OVER THE PERSON OF THE DEFENDANT OR RESPONDENT AND JURISDICTION OVER THE SUBJECT MATTER OF THE CLAIM, HOW ACQUIRED.— Jurisdiction is the power and authority of the tribunal to hear, try and decide a case and the lack thereof refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the action. Lack of jurisdiction or absence of jurisdiction presupposes that the court should not have taken cognizance of the complaint because the law or the Constitution does not vest it with jurisdiction over the subject matter. On the one hand, jurisdiction over the person of the defendant or respondent is acquired by voluntary appearance or submission by the defendant/respondent to the court, or by coercive process issued by the court to such party through service of summons. On the other hand, jurisdiction over the subject matter of the claim is conferred by law and is determined by the allegations of the complaint and the relief prayed for. Thus, whether the plaintiff is entitled to recovery upon all or some of the claims prayed therein is not essential. Jurisdiction over the subject matter is conferred by the Constitution or by law and not by agreement or consent of the parties. Neither does it depend upon the defenses of the defendant in his/her answer or in a motion to dismiss.

3. ID.; ID.; ID.; JURISDICTION AND EXERCISE OF JURISDICTION, DISTINGUISHED.— [T]he Spouses Sanchez explicitly brought the subject matter to the jurisdiction of the MCTC. They cannot now deny such jurisdiction simply because said court did not rule in their favor. The Court has consistently ruled that *jurisdiction* is not the same as the *exercise of jurisdiction.* As distinguished from the exercise of jurisdiction,

jurisdiction is the authority to decide a cause, and not the decision rendered therein. Where there is jurisdiction over the person and the subject matter, the decision on all other questions arising in the case is but an exercise of the jurisdiction. And the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.

4. ID.; ID.; ANNULMENT OF JUDGMENT; LACK OF JURISDICTION; AN ACTION FOR ANNULMENT OF JUDGMENT BASED ON LACK OF JURISDICTION MUST BE BROUGHT BEFORE THE SAME IS BARRED BY LACHES OR ESTOPPEL; LACHES AND ESTOPPEL, DISTINGUISHED.— [A]n action for annulment of judgment based on lack of jurisdiction must be brought before the same is barred by laches or estoppel. On the one hand, laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could nor should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. On the other hand, estoppel precludes a person who has admitted or made a representation about something as true from denying or disproving it against anyone else relying on his admission or representation. To the Court, the failure on the part of the Spouses Sanchez to file either an appeal of the MCTC Decision or the instant complaint for annulment of judgment for an unreasonable and unexplained length of time, four (4) years to be exact, despite receiving notice and knowledge of the said decision, constitutes laches that necessarily barred their cause.

5. ID.; ID.; JUDGMENTS; DOCTRINE OF IMMUTABILITY AND UNALTERABILITY OF FINAL JUDGMENTS; TWO-FOLD PURPOSE.— Indeed, the attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid cornerstone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and, thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial

controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

6. ID.; ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; THE SOLE QUESTION FOR RESOLUTION IN THE CASE IS PHYSICAL OR MATERIAL POSSESSION OF THE PROPERTY IN QUESTION, AND NEITHER A CLAIM OF JURIDICAL POSSESSION NOR AN AVERMENT OF OWNERSHIP BY THE DEFENDANT CAN OUTRIGHTLY DEPRIVE THE TRIAL COURT FROM TAKING DUE COGNIZANCE OF THE CASE.— [A]n ejectment case, such as the forcible entry complaint filed before the MCTC below, is a summary proceeding designed to provide expeditious means to protect the actual possession or the right to possession of the property involved. The sole question for resolution in the case is the physical or material possession (possession *de facto)* of the property in question, and neither a claim of juridical possession (possession *de jure)* nor an averment of ownership by the defendant can outrightly deprive the trial court from taking due cognizance of the case. Hence, even if the question of ownership is raised in the pleadings, the court may pass upon the issue but only to determine the question of possession especially if the question of ownership is inseparably linked with the question of possession. The adjudication of ownership in that instance, however, is merely provisional, and will not bar or prejudice an action between the same parties involving the title to the property.

APPEARANCES OF COUNSEL

Armada & Hilario Law Offices for petitioners.
Benjie G. Espinosa for respondents.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated July 28, 2016 and the Resolution[2] dated October 10, 2016 of the Court of Appeals *(CA)* in CA-G.R. CV No. 03481-MIN, which reversed and set aside the Decision[3] dated July 8, 2013 of the Regional Trial Court *(RTC)* of Surallah, South Cotabato, in Civil Case No. 1029-LS.

The antecedent facts are as follows:

On July 11, 2000, Juanito Aguilar sold to petitioner spouses Francisco and Delma Sanchez *(Spouses Sanchez)* a 600-square-meter portion of his 33,600-square meter lot identified as Lot No. 71, Pls 870, located in the Municipality of Lake Sebu, South Cotabato. On October 23, 2004, the heirs of Juanito Aguilar, namely, respondents Esther Divinagracia Vda. de Aguilar, Juanito's spouse, and their children, fenced the boundary line between the 600-square-meter lot of the spouses and the alleged alluvium on the northwest portion of the land by the lake Sebu. The Spouses Sanchez protested the act of fencing by Esther before the *barangay*, but since no settlement was reached, they filed a Complaint for Forcible Entry against the heirs of Aguilar before the Municipal Circuit Trial Court *(MCTC)* of Surallah-Lake Sebu, Province of South Cotabato. They claimed that under the law, they are the owners of the alluvium which enlarged their 600-square-meter lot. It cannot, therefore, be fenced by the heirs of Aguilar. For their part, the heirs refute the existence of the alluvium. They assert that the "alluvium" referred to is the 800-square-meter area beyond the 600-square-meter lot of

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[1] Penned by Associate Justice Maria Filomena D. Singh, with Associate Justices Edgardo A. Camello and Perpetua T. Atal-Paño, concurring; *rollo*, pp. 22-34.

[2] *Id.* at 40-42.

[3] Penned by Judge Roberto L. Ayco; *id.* at 43-53.

the spouses which has been in their actual possession but was used, with their tolerance, by the spouses in connection with their operation of fish cages in that portion of Lake Sebu abutting their lot.[4]

On June 7, 2006, the MCTC rendered a Decision dismissing the complaint of the Spouses Sanchez. It held that the spouses failed to controvert the prior actual physical possession of the heirs which was manifested by the improvements found in the subject lot area consisting of 4 mahogany trees of about 12 to 26 years old, 1 lanzones tree of the same age, 2 coconut trees of about 30 years old, and other unidentified trees of about the same age. But since the spouses purchased the 600-meter land adjacent to the land in question only on July 11, 2000, they could not have been in possession thereof ahead of the heirs of Aguilar. Thus, the heirs are the ones in actual possession of the subject property and cannot be held liable for forcible entry by stealth as alleged by the Spouses Sanchez. They merely protected their interests in manifesting the metes and bounds of the area purchased from them by placing the bamboo fence. In addition, the MCTC was unconvinced with the spouses' contention that the subject land is an alluvium. An alluvium is an area formed by running water like a river or a creek. But in a lake like the subject Lake Sebu, the water is stagnant. Thus, the land in question is a natural surrounding of the lake which existed at the same time with the lake itself. Moreover, the MCTC pointed out that the subject land is 800 square meters in size which is greater than the area purchased by the spouses so if there could be a legal claimant, it is the government of Lake Sebu as foreshore or salvage zone for public use. Finally, on the conflicting description of the deed of sale which states that the property is 600 square meters or 20 x 30 meters, on the one hand, and boundary on the SW by the lake, on the other, the court held that the former should prevail as the same is the clearer intention of the spouses.[5]

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[4] *Rollo,* pp. 23-24.

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

On May 27, 2008, the MCTC issued a Writ of Execution ordering the Sheriff to execute its June 7, 2006 Decision by setting, defining, and/or fixing the boundaries of the respective properties of the parties according to the following description in the Deed of Sale: "A 600-square-meter portion of Lot 21, Pls 870 in Lake Sebu, South Cotabato with dimension of 20 meters along the national highway and depth of 30 meters in rectangular shape. Bounded on the SE by national highway; on the NW by Lake Sebu; on the NE by Lot 71, Pls 870 port; on the SW by Lot 71, Pls 870 port."[6] In implementing the same, the MCTC authorized the Sheriff to engage the services of professional surveyors, if necessary. In his Report dated August 26, 2008, however, the Sheriff stated that he discontinued the execution because when the surveyor measured the national highway at 60 meters wide, Esther objected and claimed that the width of said highway is only 30 meters. Said disagreement as to the width of the highway was submitted to the MCTC, which adopted the findings of the District Engineer's Office that the width thereof is 58.53 meters. Based on said measurement, monuments were set on both sides of the highway to determine the area of the spouses' 600-square-meter property. Thus, using the national highway as reference point, the Sheriff adopted the plan prepared by the geodetic engineer showing that the edge or boundary line of the 600-square-meter lot of the spouses in the northwest direction is the 20-square-meter wide public easement abutting Lake Sebu.

Nevertheless, the spouses received a Notice dated February 17, 2009 from the Zoning Section of the Municipality of Lake Sebu informing them that based on the findings of its own survey team, the "150-square-meter" lot along Lake Sebu is owned by the heirs of Aguilar. Thus, in accordance with Section 5(g) of the Zoning Ordinance of the Municipality of Lake Sebu, the privilege on the utilization of the municipal waters shall be given first priority to the legal owner of the land alongside the lake unless otherwise waived by him to others.[7] In another Notice

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[6] *Id.* at 25.

[7] *Id.* at 26.

dated March 10, 2009, the Municipality directed the spouses to demolish their fish cages or refer the case to the *Ad Hoc* Committee on Lake Sebu Water Dispute. But after the referral, said Committee ruled in its Decision dated June 19, 2009 that the land area in excess of the 600-square-meter property purchased by the spouses belongs to the heirs of Aguilar. As such, said heirs have priority to utilize the lake waters abutting the land.[8]

On May 22, 2010, the spouses filed a Complaint for Annulment of Judgment with Prayer for the Issuance of a Temporary Restraining Order and Preliminary Injunction and Damages before the RTC seeking to annul the June 7, 2006 Decision of the MCTC for lack of jurisdiction over the subject matter or for rendering judgment over a non-existent parcel of land since there is no excess of the 600-square-meter portion to speak of.[9]

On July 8, 2013, the RTC granted the spouses' complaint and annulled the June 7, 2006 MCTC Decision. It rendered erroneous and without legal basis the findings of the MCTC that there is a portion of land between the 600-square-meter lot and the lake in the following manner:

> The record of this case shows that when the writ of execution of the decision rendered by the court *a quo* in the forcible entry case filed thereat by plaintiffs (spouses Sanchez) was implemented, the parties did not agree as to the point of reference when the survey was conducted in order to establish the 600-square-meter area bought by plaintiffs (spouses Sanchez) from the defendants (heirs of Aguilar). Thus, the court *a quo* directed the District Engineer's Office of South Cotabato to fix the width of the national highway in order to serve as the point of reference in locating the 600-square- meter area. The said Office of the District Engineer found that the width of the national highway is 58.53. **It must be remembered that when the implementing sheriff had the area surveyed, the surveyor told them that the width of the national highway is sixty meters, while**

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[8] *Id.*

[9] *Id.* at 27.

the defendants (heirs of Aguilar) insisted that it is only thirty (30) meters. As explained in his Report, the implementing sheriff informed the court that if the sixty-meters width of the national highway is made as a point of reference, the lot of the plaintiffs will go downwards to the lake. Considering then that the width of the national highway was found by the District Engineer's Office to have measured 58.53 meters, or almost sixty (60) meters, the length of the lot in question therefore must have reached the edge of the lake. Except however for the easement that the landowner has the obligation to follow, the lot allegedly claimed by the defendants (heirs of Aguilar) as alluvium has no basis because the 600-square-meter area purchased by the plaintiffs (spouses Sanchez) from them went downwards to the lake by reason of the 58.53 width of the national highway. The defendants (heirs of Aguilar) could not include the area which is part of the national highway in the 600-square-meter lot they sold to the plaintiffs (spouses Sanchez), thus, inevitably, if there is any alluvium that was formed at the back portion of the lot abutting the lake, it is part or accessory of the lot sold to the plaintiffs (spouses Sanchez) by them.

The notice, therefore, sent by the Zoning Office of the Municipality of Lake Sebu for the plaintiffs (spouses Sanchez) to demolish the fish cages built by them and to remove any improvement put up by them in the area abutting their lot, is not proper and no basis in view of the findings of this court that it is the plaintiffs (spouses Sanchez) who are the legitimate owners of the alleged lot formed by said alluvium, if there is any. **Considering likewise the findings of this court that there is no more lot abutting the lake waters except that of the plaintiffs (spouses Sanchez) by reason of the findings of the width of the national highway by the District Engineer's Office, which is and should be the point of reference, plaintiffs are declared the legal owners of the said lot in question as it is part of the 600 square meters bought by them from the defendants (heirs of Aguilar).**[10]

On July 28, 2016, however, the CA reversed and set aside the RTC Decision. *First,* the appellate court ruled that the MCTC Decision cannot be annulled on the ground of lack of jurisdiction

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[10] *Id.* at 50-51. (Emphasis supplied)

over the subject matter of the case. It is clear that the MCTC acquired jurisdiction over the persons of the Spouses Sanchez as they are the ones who filed the forcible entry complaint before said court. As to the nature of the action, the MCTC likewise had jurisdiction since under the law, it exercises exclusive original jurisdiction over ejectment suits.[11] And, *second*, the CA held that the spouses' complaint is already barred by laches since it was only on May 22, 2010, or 4 years after the issuance of the June 7, 2006 MCTC Decision that the spouses filed their complaint for annulment. In fact, the challenged decision had already been executed more than a year prior to the filing of the complaint. Thus, the spouses' action must necessarily be dismissed.[12]

Furthermore, in a Resolution dated October 10, 2016, the CA rejected the contention of the Spouses Sanchez that the appeal of the heirs of Aguilar must be denied since their counsel failed to comply with the MCLE requirements. Under *En Banc* Resolution dated January 14, 2014, the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case and expunction of the pleadings from the records. Nonetheless, failure will subject the lawyer to disciplinary action.[13]

On January 26, 2017, the Spouses Sanchez filed the instant petition essentially insisting that the ruling of the RTC must be upheld in view of the findings of the Sheriff that since the width of the national highway is almost 60 meters wide, the lot of the spouses must have gone downwards towards the lake, and thus any portion of land beside said lake must be considered as part of the land purchased by the spouses from Aguilar.

The petition is bereft of merit.

Time and again, the Court has ruled that a petition for annulment of judgment is a remedy in equity so exceptional in

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[11] *Id.* at 31.

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

[13] *Id.* at 41.

nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud.[14] Its objective is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. Being exceptional in character, it is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. Thus, the Court has instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the Rules of Court that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.[15] In this regard, if the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without prejudice to the original action being refiled in the proper court. If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.[16]

In the instant case, the Spouses Sanchez anchored their Complaint for Annulment of Judgment on the alleged lack of jurisdiction of the MCTC. Jurisdiction is the power and authority of the tribunal to hear, try and decide a case[17] and the lack thereof refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the action. Lack of jurisdiction or absence of jurisdiction presupposes that the court should not have taken cognizance of the complaint because the law or the Constitution does not vest it with

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[14] *Pinausukan Seafood House, Roxas Blvd., Inc. v. Far East Bank & Trust Company (now Bank of the Philippine Islands), et al.,* 725 Phil. 19, 31 (2014).

[15] *Id.* at 32.

[16] *Id.*

[17] *Veneracion v. Mancilla, et al.,* 528 Phil. 309, 325 (2006).

jurisdiction over the subject matter. On the one hand, jurisdiction over the person of the defendant or respondent is acquired by voluntary appearance or submission by the defendant/respondent to the court, or by coercive process issued by the court to such party through service of summons. On the other hand, jurisdiction over the subject matter of the claim is conferred by law and is determined by the allegations of the complaint and the relief prayed for. Thus, whether the plaintiff is entitled to recovery upon all or some of the claims prayed therein is not essential. Jurisdiction over the subject matter is conferred by the Constitution or by law and not by agreement or consent of the parties. Neither does it depend upon the defenses of the defendant in his/her answer or in a motion to dismiss.[18]

Here, the Court agrees with the appellate court that the MCTC had both jurisdictions over the person of the defendant or respondent and over the subject matter of the claim. On the former, it is undisputed that the MCTC duly acquired jurisdiction over the persons of the spouses Sanchez as they are the ones who filed the Forcible Entry suit before it. On the latter, Republic Act No. 7691 *(R.A. No. 7691)* clearly provides that the proper Metropolitan Trial Court (MeTC), MTC, or Municipal Circuit Trial Court (MCTC) has exclusive original jurisdiction over ejectment cases, which includes unlawful detainer and forcible entry.[19]

Despite this, the Spouses Sanchez insist that the MCTC could not have had jurisdiction over the disputed land area in excess of their 600-square-meter lot. This is because since the District Engineer's Office found that the width of the national highway is almost 60 meters wide, the edge of their 600-square-meter lot must have gone downwards and necessarily reached the edge of the 20-meter wide public easement abutting the Lake Sebu. Thus, the heirs of Aguilar could not have been in "actual physical possession" of a non-existent lot for the disputed area belongs to them. The Court, however, is not convinced. As duly noted

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[18] *Id.*

[19] *Regalado v. De La Pena, et al.*, G.R. No. 202448, December 13, 2017.

by the CA, the area beyond the 600-square-meter lot abutting Lake Sebu, whether it is a lot claimed to be in "actual physical possession" of the heirs of Aguilar or a public easement, refers to the "alluvium" lot area claimed by the Spouses Sanchez as their own in their forcible entry complaint. It is clear, therefore, that the MCTC had jurisdiction over the subject matter, which, in this case, is the 600-square-meter lot and its alleged alluvium.

It bears stressing, moreover, that the Spouses Sanchez explicitly brought the subject matter to the jurisdiction of the MCTC. They cannot now deny such jurisdiction simply because said court did not rule in their favor. The Court has consistently ruled that *jurisdiction* is not the same as the *exercise of jurisdiction.* As distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein. Where there is jurisdiction over the person and the subject matter, the decision on all other questions arising in the case is but an exercise of the jurisdiction. And the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal.[20]

Thus, the issue of whether the MCTC erred in dismissing the forcible entry complaint, ruling that the heirs of Aguilar were in actual physical possession over the subject property should have been raised by the Spouses Sanchez in an appeal before the RTC. But as the records reveal, the spouses did not do anything to question the decision of the MCTC, merely allowing the same to attain finality. In fact, the sheriff had already started its execution. Moreover, without even providing any explanation for their delay, it was only on May 22, 2010, or four (4) years after the issuance of the MCTC ruling on June 7, 2006, that the spouses filed the instant Complaint for Annulment of Judgment. On this matter, the Court must emphasize that an action for annulment of judgment based on lack of jurisdiction must be brought before the same is barred

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[20] *Antonino v. Register of Deeds of Makati City,* 688 Phil. 527, 540 (2012), citing *Tolentino v. Judge Leviste,* 485 Phil. 661, 674 (2004).

by laches or estoppel.[21] On the one hand, laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could nor should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. On the other hand, estoppel precludes a person who has admitted or made a representation about something as true from denying or disproving it against anyone else relying on his admission or representation.[22] To the Court, the failure on the part of the Spouses Sanchez to file either an appeal of the MCTC Decision or the instant complaint for annulment of judgment for an unreasonable and unexplained length of time, four (4) years to be exact, despite receiving notice and knowledge of the said decision, constitutes laches that necessarily barred their cause.

Indeed, the attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid cornerstone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and, thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and

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[21] *Pinausukan Seafood House, Roxas Blvd., Inc. v. Far East Bank & Trust Company (now Bank of the Philippine Islands), supra* note 14, at 33.

[22] *Id.* at 37.

obligations of every litigant must not hang in suspense for an indefinite period of time.[23]

In the end, the Court deems it proper to note that an ejectment case, such as the forcible entry complaint filed before the MCTC below, is a summary proceeding designed to provide expeditious means to protect the actual possession or the right to possession of the property involved. The sole question for resolution in the case is the physical or material possession (possession *de facto)* of the property in question, and neither a claim of juridical possession (possession *de jure)* nor an averment of ownership by the defendant can outrightly deprive the trial court from taking due cognizance of the case. Hence, even if the question of ownership is raised in the pleadings, the court may pass upon the issue but only to determine the question of possession especially if the question of ownership is inseparably linked with the question of possession. The adjudication of ownership in that instance, however, is merely provisional, and will not bar or prejudice an action between the same parties involving the title to the property.[24]

WHEREFORE, premises considered, the instant petition is **DENIED.** The assailed Decision dated July 28, 2016 and the Resolution dated October 10, 2016 of the Court of Appeals in CA-G.R. CV No. 03481- MIN are **AFFIRMED.**

SO ORDERED.

Leonen, Reyes, A. Jr.,[*] *Gesmundo,* and *Reyes, J. Jr., JJ.,* concur.

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[23] *Id.*

[24] *Quijano v. Atty. Amante,* 745 Phil. 40, 48-49 (2014).

[*] Designated additional member per Special Order No. 2588 dated August 28, 2018.

EN BANC

[A.C. No. 10021. September 18, 2018]

AAA,[1] *complainant, vs.* **ATTY. ANTONIO N. DE LOS REYES,** *respondent.*

[A.C. No. 10022. September 18, 2018]

AAA, *complainant, vs.* **ATTY. ANTONIO N. DE LOS REYES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; LAWYERS; POSSESSION OF GOOD MORAL CHARACTER IS BOTH A CONDITION PRECEDENT AND A CONTINUING REQUIREMENT TO WARRANT ADMISSION TO THE BAR AND TO RETAIN MEMBERSHIP IN THE LEGAL PROFESSION.— In *Valdez v. Dabon,* we explained that the possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the bar and to retain membership in the legal profession. x x x Thus, lawyers are duty-bound to observe the highest degree of morality and integrity not only upon admission to the Bar but also throughout their career in order to safeguard the reputation of the legal profession. Any errant behavior, be it in their public or private life, may subject them to suspension or disbarment. Section 27, Rule 138 of the Rules of Court expressly states that members of the Bar may be disbarred or suspended for any deceit, grossly immoral conduct, or violation of their oath.

2. ID.; ID.; ID.; GROSS IMMORALITY IN THE CONDUCT OF A LAWYER'S PERSONAL AFFAIRS IS A

[1] The real names of the private complainant and those of her immediate family members are withheld per Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act); Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004); and A.M. No. 04-10-11-SC effective November 15, 2004 (Rule on Violence Against Women and Their Children). See *People v. Cabalquinto,* 533 Phil. 703 (2006).

DISREGARD OF THE LAWYER'S OATH AND OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— In *Ventura v. Samson,* we explained that immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community. It is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency. Here, x x x respondent Atty. De Los Reyes committed acts of gross immorality in the conduct of his personal affairs with AAA that show his disregard of the lawyer's oath and of the Code of Professional Responsibility. x x x Atty. De Los Reyes is guilty of "sextortion" which is the abuse of his position or authority to obtain sexual favors from his subordinate, the complainant, his unwilling victim who was not in a position to resist respondent's demands for fear of losing her means of livelihood. The sexual exploitation of his subordinate done over a period of time amounts to gross misbehavior on the part of respondent Atty. De Los Reyes that affects his standing and character as a member of the Bar and as an officer of the Court.

3. **ID.; ID.; ADMINISTRATIVE CASE FOR DISBARMENT IS *SUI GENERIS*; DISBARMENT PROPER FOR GROSS MISBEHAVIOR, EVEN IF IT PERTAINS TO PRIVATE ACTIVITIES, AS LONG AS IT SHOWS WANT IN MORAL CHARACTER, HONESTY, PROBITY OR GOOD DEMEANOR.—** It bears emphasizing that an administrative case for disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case but is intended to cleanse the ranks of the legal profession of its undesirable members for the protection of the public and of the courts. It is an investigation on the conduct of the respondent as an officer of the Court and his fitness to continue as a member of the Bar. x x x In *Ventura v. Samson,* this Court has reminded that the power to disbar must be exercised with great caution, and only in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court and as a member of the bar. Disbarment should not be imposed where a lesser penalty may accomplish the desired goal of disciplining an erring lawyer. In the present case, however, respondent Atty.

De Los Reyes's actions show that he lacks the degree of morality required of him as a member of the legal profession, thus warranting the penalty of disbarment. Respondent Atty. De Los Reyes is disbarred for his gross misbehavior, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor.

APPEARANCES OF COUNSEL

Minerva Ambrosio for complainant.
Angelito C. Lo for respondent.

D E C I S I O N

***PER CURIAM*:**

Before the Court are two administrative complaints filed by complainant AAA seeking the disbarment of respondent Atty. Antonio De Los Reyes (respondent Atty. De Los Reyes) on the grounds of sexual harassment and gross immoral conduct. AAA claims that respondent Atty. De Los Reyes violated the Code of Professional Responsibility when he committed acts which are unlawful, dishonest, immoral and deceitful which warrant his disbarment.

The Factual Antecedents

In her undated Complainant's Position Paper, AAA narrated the following:

Sometime in February 1997, [AAA] was hired as secretary to [respondent Atty. De Los Reyes], then Vice-President of the Legal and Administrative Group of [National Home Mortgage Finance Corporation] NHMFC.

[AAA] became a permanent employee with a plantilla position of private secretary 1, pay grade 11, on a co-terminus status with [respondent Atty. De Los Reyes]. She later learned that it was [respondent Atty. De Los Reyes] who facilitated her rapid promotion to her position soon after becoming his secretary.

Sometime in the last quarter of 1997, [respondent Atty. De Los Reyes] offered to take [AAA] home in his NHMFC issued service

vehicle telling her that her residence on J.P. Rizal Street, Makati was along his route. From then on it became a daily routine between them, which continued even after [AAA] moved to Mandaluyong City.

Sometime in the last quarter of 1998, [AAA] began to feel very uncomfortable with the situation when she realized that [respondent Atty. De Los Reyes] was becoming overly possessive and demanding to the extent that she could not refuse his offer to bring her home; her telephone calls were being monitored by [respondent Atty. De Los Reyes] who constantly asked her who she was talking with on the telephone and would get mad if she told him that it was a male person; she would be called to his office during office hours just to listen to his stories about his life, how he was raised by a very strict father, a former NBI director, how unhappy he was with his wife who treated him like a mere boarder in their house and sometimes just to sit there doing nothing in particular, simply because he wanted to see her. He also sent or left her love notes.

[AAA] tried to avoid [respondent Atty. De Los Reyes] who vacillated between being verbally abusive toward her, cursing and shouting invectives at her whenever she did, and overly solicitous the next moment, apparently to placate her.

On 11 December 1998, when she refused his offer to take her home, he got angry with her and shouted *"putangina mo."* She tried to get away from him but he blocked her path, grabbed her arm and dragged her to the parking area and pushed her inside his service vehicle. He drove off, ignoring her cries and pleas to stop and let her get off. He slapped her twice and she became hysterical. She opened the car door and attempted to jump but he was able to grab her jacket and dropped her off somewhere in Makati. She reported the incident to the police.

[AAA] did not file a formal report or complaint against [respondent Atty. De Los Reyes] as she thought that it would be futile. She told Atty. Fermin Arzaga [then Senior Vice-President for Finance at NHMFC] what happened and showed him her bruises on her wrists. She told him of her plan to resign and he asked her not to resign and instead to request for a transfer. Despite his advice, she sent a resignation letter that was received by the Personnel Department on 22 December 1998.

On the same date, both the manager and the assistant manager talked to [AAA] and persuaded her to reconsider her resignation by promising her that she would be re-assigned to the Office of the President, as stated in an Office Order dated 21 January 1999.

On 22 January 1999, [AAA] reported to the Office of the President. But even before she could start working in her new assignment, she was told to return to her former post as private secretary of [respondent Atty. De Los Reyes].

[AAA] later learned from [respondent Atty. De Los Reyes] that he had called up Atty. Arzaga and told him not to interfere *("huwag kang makialam").* He told her that her position was co-terminus with his, being his private secretary.

Much as she wanted to pursue her plan to resign, [AAA's] financial position at that time left her with no choice but to continue working as [respondent Atty. De Los Reyes'] secretary. [Respondent Atty. De Los Reyes] knew that [AAA] was the sole breadwinner of her family, as her father had deserted them when she was but 8 years old, leaving her to care for her sick mother, a two-year-old niece and two sisters who were still in school.

[Respondent Atty. De Los Reyes] exploited his knowledge to force [AAA] to continue working for him as his secretary. He moved in on her steadily, making it plain to all that she was his property, isolating her from the other people in the office who did not want to cross him, dominating and humiliating her. He eventually made it clear to her that he was determined to make her his mistress and overpowered her resistance by leaving her no choice but to succumb to his advances or lose her job.

From then on, she became his sex slave who was at his beck and call at all times for all kinds of sexual services ranging from hand-jobs in his vehicle to sexual intercourse in his office. She could not even refuse him without risking physical, verbal and emotional abuse.

[AAA] become despondent with her situation, knowing that she was the object of gossip and ridicule among her officemates. She felt so helpless and frustrated that she thought of committing suicide on countless occasions. Coming to the office was such an ordeal that she often suffered from all sorts of illnesses such as fever, stomachaches, sore throat, and migraine which gave her a convenient

reason to absent herself, but did not deter [respondent Atty. De Los Reyes] from calling and texting her or even coming to her house to personally check on her.

[AAA] attempted to put a stop to [respondent Atty. De Los Reyes's] obsession with her by flaunting an American as her boyfriend. [Respondent Atty. De Los Reyes] went into a jealous rage when he learned about it.

x x x x x x x x x

It seemed that [AAA] could never escape from the clutches of [respondent Atty. De Los Reyes] who always found a way to ensure that she would always end up being re-assigned to his office, even after she was assigned to other units. He continued to bring her home, no matter that her residence was now in Canlubang, Laguna. He also continued to see her [in] his office at least twice a day, even sending an assistant to fetch her when she refused to go.

In January 2003, [respondent Atty. De Los Reyes] continued to keep a tight watch over her even when [AAA] went on official study leave to attend her CGFNS review classes. He insisted on personally bringing [AAA] to and from her classes or he made sure that his official driver took her there using his official vehicle when he could not personally accompany her.

[AAA] failed to take her exam in March 2003 and requested a leave of absence to take the July 2003 exam. She stopped seeing [respondent Atty. De Los Reyes] and refused to see or talk to him completely.

[Respondent Atty. De Los Reyes] kept sending [AAA] text messages that she ignored and even requested for a change of number of her cell phone. After a month of not receiving anything from him, she thought he had already given up on her but she was wrong.

He now trained his sight on [Ma. Victoria] Marivic Alpajaro, a good friend and officemate of [AAA], who had now become the object of his ire and jealousy because of her apparent closeness to [AAA].

His threats to fire Marivic compelled [AAA] to seek him out and plead with him to spare her friends. On 10 July 2003, they met outside the office and he insisted that they go back together to the office to

show everyone that everything was still the same between them. She refused and ran out of the restaurant. He followed and wrapped his arms around her but she evaded him. He was shouting *"mahal kita"* in public, to her great embarrassment. He attempted to stop her but she threatened that she will throw herself in the path of oncoming vehicles if he persisted.[2]

AAA filed another Complaint-Affidavit dated November 19, 2004, with the Commission on Bar Discipline (CBD) of the Integrated Bar of the Philippines (IBP), alleging that respondent Atty. De Los Reyes still continued to harass her and her colleagues (Ma. Victoria Alpajaro and Mercedita Lorenzana) who agreed to be her witnesses in her earlier complaint. According to AAA, respondent Atty. De Los Reyes filed baseless charges against her and her sympathetic officemates before the Office of the Ombudsman, and sought their preventive suspension without affording them due process through an initial administrative investigation at the National Home Mortgage Finance Corporation (NHMFC). She added that because of what respondent Atty. De Los Reyes did to her, she suffered from various illnesses, insomnia, listlessness, suicidal feelings, and was diagnosed as suffering from Major Depressive Disorder with manifested symptoms of Post-Traumatic Stress Disorder by Dr. Norietta Calma-Balderama, a psychiatrist at the Department of Psychiatry and Behavioral Medicine at the University of the Philippines-Philippine General Hospital (UP-PGH).

In his defense, respondent Atty. De Los Reyes denied AAA's allegations relating to the alleged sexual harassment and gross immorality for lack of factual and legal bases. In his Consolidated Position Paper for the Respondent dated May 16, 2005, respondent Atty. De Los Reyes contended that AAA's complaint-affidavits were not sufficient in form and substance as required under the Rules of Court and should be dismissed for being mere scraps of paper. According to respondent Atty. De Los Reyes, the complaints failed to state the ultimate facts or particulars, approximate dates, and other details of the sexual

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[2] *Rollo* (Vol. III), pp. 24-29.

acts or advances that he allegedly committed, in violation of his right to be informed of the nature and cause of the accusations against him. He averred that AAA's lame excuse for her omission allegedly due to her fear that she would be exposing herself to shame and humiliation after her colleagues would know of the details of her complaint is unbelievable.

Respondent Atty. De Los Reyes further stated that AAA's affidavits were replete with inconsistencies and unrealistic statements that are contrary to human nature. Respondent Atty. De Los Reyes denied her allegations and explained the following points:

(a) He offered his service vehicle not only to AAA but also to other employees of NHMFC who lived along his route; and it was AAA herself who requested that she be brought home together with other employees;

(b) NHMFC has corporate policies prohibiting the long use of telephones by the employees for personal purposes;

(c) The incident reported by AAA that she was grabbed and dragged into his service vehicle is highly incredible as it would have been readily noticed by many employees because it was immediately after office hours;

(d) He did not ask for any sexual favors in his office or in his service vehicle considering the location of the office which was very accessible to other employees including the security guard by the door that is always open; and respondent Atty. De Los Reyes always sat on the front passenger side of his service vehicle with his driver;

(e) The requests for transfer of assignment made by AAA did not mention that it was because of respondent Atty. De Los Reyes or of any sexual harassment that she suffered at his hands; and

(f) The complaints for disbarment filed by AAA against respondent Atty. De Los Reyes were purely in retaliation since he was conducting investigations against AAA and her two friends at the NHMFC.

Respondent Atty. De Los Reyes also countered the Certification issued by Dr. Calma-Balderama of the UP-PGH Department of Psychiatry and Behavioral Medicine as a mere scrap of paper and without any probative value since said certification was not made under oath or subscribed to, and was not supported by any clinical or psychological report.

Finally, respondent Atty. De Los Reyes asserted that assuming the alleged grounds for disbarment regarding the claim for sexual harassment were true, the same had already prescribed since they occurred in 1999 or more than three years prior to the institution of the complaints.

The Findings of the IBP

In the Report and Recommendation dated June 6, 2011, the CBD-IBP Commissioner found respondent Atty. De Los Reyes guilty of violating Rule 1.01 of the Code of Professional Responsibility and recommended the penalty of one (1) year suspension. The Investigating Commissioner opined that there was no indication that AAA was not telling the truth, and that she acceded to the numerous incidents of sexual intercourse because of fear of reprisals or consequences if she refused. The Commissioner explained thus:

> We also take note that there is an apparent ambivalence or hesitancy in the use of the word "rape" by herein complainant. This is because the numerous sexual intercourse occurred with the complainant's seeming consent. However, such cannot be characterized as voluntary. Complainant acceded to the sexual intercourse because of fear of reprisals or consequences if she did not. Whether there is actual rape, as it is defined in the Revised Penal Code, would not be relevant in this disbarment case since the sexual intercourse coupled with unspoken threats of dire consequences would nonetheless constitute grave misconduct.
>
> Respondent has also raised the argument of prescription. While there could be a prescriptive period under the Anti-Sexual Harassment Law, there is no prescriptive period for grave misconduct in disbarment proceedings and the Code of Professional Responsibility. Disbarment proceedings are *sui generis*.[3]

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[3] *Rollo* (A.C. No. 10022), pp. 344-345.

In Resolution No. XX-2012-254 dated July 21, 2012, the IBP Board of Governors adopted and approved with modification the Report and Recommendation of the Investigating Commissioner, to wit:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED with modification, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A," and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and finding Respondent guilty of violating Rule 1.01 of the Code of Professional Responsibility, Atty. Antonio De Los Reyes is hereby SUSPENDED [INDEFINITELY].[4]

Respondent Atty. De Los Reyes filed a motion for reconsideration which was denied by the IBP Board of Governors in Resolution No. XX-2013-311 dated March 21, 2013, thus:

> RESOLVED to unanimously DENY [respondent Atty. De Los Reyes'] Motion for Reconsideration, there being no cogent reason to reverse the Resolution and it being a mere reiteration of the matters which had already been threshed out and taken into consideration. Thus, Resolution No. XX-2012-254 dated July 21, 2012 is hereby AFFIRMED.[5]

The Issue

The issue in this case is whether or not respondent Atty. De Los Reyes committed acts amounting to sexual harassment and gross immoral conduct in violation of the Code of Professional Responsibility which would warrant his disbarment.

The Court's Ruling

After due consideration, we adopt the findings and conclusions of the Investigating Commissioner, as sustained by the IBP Board of Governors.

The pertinent provisions of the Code of Professional Responsibility read:

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[4] *Id*. at 336.

[5] *Id*. at 334.

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.

x x x x x x x x x

> Rule 7.03. – A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

In *Valdez v. Dabon*,[6] we explained that the possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the bar and to retain membership in the legal profession, to wit:

> Lawyers have been repeatedly reminded by the Court that possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the Bar and to retain membership in the legal profession. This proceeds from the lawyer's bounden duty to observe the highest degree of morality in order to safeguard the Bar's integrity, and the legal profession exacts from its members nothing less. Lawyers are called upon to safeguard the integrity of the Bar, free from misdeeds and acts constitutive of malpractice. Their exalted positions as officers of the court demand no less than the highest degree of morality.
>
> The Court explained in *Arnobit v. Atty. Arnobit* that "as officers of the court, lawyers must not only in fact be of good moral character but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. A member of the bar and an officer of the court is not only required to refrain from adulterous relationships or keeping a mistress but must also behave himself as to avoid scandalizing the public by creating the impression that he is flouting those moral standards." Consequently, any errant behavior of the lawyer, be it in his public or private activities,

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[6] 773 Phil. 109, 121-122 (2015).

which tends to show deficiency in moral character, honesty, probity or good demeanor, is sufficient to warrant suspension or disbarment.

Thus, lawyers are duty-bound to observe the highest degree of morality and integrity not only upon admission to the Bar but also throughout their career in order to safeguard the reputation of the legal profession. Any errant behavior, be it in their public or private life, may subject them to suspension or disbarment. Section 27, Rule 138 of the Rules of Court expressly states that members of the Bar may be disbarred or suspended for any deceit, grossly immoral conduct, or violation of their oath.

In *Ventura v. Samson*,[7] we explained that immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community. It is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency.

Here, we rule that the records of this administrative case sufficiently substantiate the findings of the CBD-IBP Investigating Commissioner, as well as the IBP Board of Governors, that indeed respondent Atty. De Los Reyes committed acts of gross immorality in the conduct of his personal affairs with AAA that show his disregard of the lawyer's oath and of the Code of Professional Responsibility.

A perusal of the Transcript of Stenographic Notes (TSN) taken during the June 30, 2006 hearing of the instant case shows AAA's straightforward testimony of her ordeal at the hands of respondent Atty. De Los Reyes:

> Atty. [Angelito] Lo [Counsel for respondent Atty. De Los Reyes]:
>
> Q. You said that you were being raped twice a week by the respondent?

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[7] 699 Phil. 404, 415 (2012).

AAA:

A. Yes, sir.

COMM. FUNA:

Twice a week for how many weeks?

AAA:

I guess it's from 1999 to more or less 2000.

COMM. FUNA:

For clarification, what do you mean by rape?

AAA:

I was forced...he forced me to have sex with him.

COMM. FUNA:

In what sense? Conversation?

AAA:

Other than that, sir. Most of the time, I was not allowed...from the very start, I was not allowed to use the C.R.

COMM. FUNA:

No, no, no. Do you know what rape is?

AAA:

Yes. I was forced to have sex with him. There [were] some instances that he would go inside the C.R. while I'm still inside. He would push me and force me to have sex with him. *Tinutulak nya ako pababa.*

COMM. FUNA:

I have to clarify this *kasi* it's vague. We need to know exactly what happened. *Nagtinginan lang kayo sa mata,* what happened?

AAA:

I was inside the C.R. I'm using the *restroom, pumasok sya.*

COMM. FUNA:

Did he touch any part of your body?

AAA:

Yes.

COMM. FUNA:

Was there a sexual intercourse between you and the respondent?

AAA:

Yes.

COMM. FUNA:

There was?

AAA:

Yes.

COMM. FUNA:

How many times?

AAA:

At most is twice a week.

COMM. FUNA:

Now, you will be raped and yet you did not report to the police?

AAA:

I'm so scared and I don't know *kung may maniniwala sa akin.*

COMM. FUNA:

You will be raped and yet you continue to work.

AAA:

As I have mentioned in my Affidavit, I am the sole breadwinner in my family. I tried to leave the office, I tried to look for a job.

COMM. FUNA:

So when you go to work, you know that you will be raped...

AAA:

Because I have to fend [for] my whole family. My mother is sick. I don't have a father. I have my other siblings to support, I have my niece. It's really hard for me but...(Witness crying)

COMM. FUNA:

So, *iyong* subsequent rapes were done with your consent? Would you say that?

AAA:

It's an exchange to maintain my job.

COMM. FUNA:

So you consented because you believe that you will lose your job?

AAA:

That's what... *kasi* my position is co-terminus with him. It's permanent but still co-terminus with him. *Sabi nya nga*, I'm working [at] his pleasure. It's up to him anytime if he wants to fire me. He can do that.

COMM. FUNA:

Atty. Ambrosio, how would you characterize that?

ATTY. [MINERVA] AMBROSIO [Counsel for AAA]:

Which one, sir? She's raped, plain and simple, sir, sexual harassment.

COMM. FUNA:

Would you go to this office...(interrupted)

ATTY. AMBROSIO:

Sir, why are you laughing?

COMM. FUNA:

... if you know that you will be raped?

ATTY. AMBROSIO:

Sir...(unintelligible) to understand.

COMM. FUNA:

Tomorrow, you know that you will be raped ... (Comm. Funa and Atty. Ambrosio talking at the same time)

ATTY. AMBROSIO:

[She's] telling you *wala siyang* choice. That's the whole essence of sexual harassment because a woman is forced to continue working or to continue in this particular position because she has no choice. If she doesn't consent to his sexual advances, she gets fired or she gets demoted or she will get a deduction in her pay. See, that's plain and simple sexual harassment. This is...(unintelligible) I do not understand. You're all laughing here. This is a woman crying telling you... there's injustice being done to this woman.[8]

Clearly, the above-quoted excerpt from the TSN dated June 30, 2006, shows that respondent Atty. De Los Reyes is guilty of "sextortion" which is the abuse of his position or authority to obtain sexual favors from his subordinate, the complainant, his unwilling victim who was not in a position to resist respondent's demands for fear of losing her means of livelihood. The sexual exploitation of his subordinate done over a period of time amounts to gross misbehavior on the part of respondent Atty. De Los Reyes that affects his standing and character as

[8] TSN, June 30, 2006. pp. 49-57.

a member of the Bar and as an officer of the Court. All these deplorable acts of respondent Atty. De Los Reyes puts the legal profession in disrepute and places the integrity of the administration of justice in peril, thus warranting disciplinary action from the Court.[9]

It bears emphasizing that an administrative case for disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case but is intended to cleanse the ranks of the legal profession of its undesirable members for the protection of the public and of the courts. It is an investigation on the conduct of the respondent as an officer of the Court and his fitness to continue as a member of the Bar.[10]

This Court held in *Pena v. Aparicio*[11] that:

> Disciplinary proceedings against lawyers are *sui generis*. Neither purely civil nor purely criminal, they do not involve a trial of an action or a suit, but is rather an investigation by the Court into the conduct of one of its officers. Not being intended to inflict punishment, it is in no sense a criminal prosecution. x x x 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. x x x.

While we agree with the findings of the IBP, we, however, consider the recommended penalty of indefinite suspension from the practice of law not commensurate with the gravity of the acts committed by respondent Atty. De Los Reyes.

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[9] *Tapucar v. Tapucar*, 355 Phil. 66, 74 (1998).

[10] *Tiong v. Florendo*, 678 Phil. 195, 201 (2011).

[11] 552 Phil. 512, 521 (2007).

In a number of administrative cases involving illicit sexual relations and gross immorality, this Court imposed upon the erring lawyers various penalties ranging from suspension to disbarment, depending on the circumstances. In *De Leon v. Pedreña,*[12] we suspended the respondent from the practice of law for two years for rubbing complainant's leg with his hand, putting complainant's hand on his crotch area, and pressing his finger on complainant's private part. In *Tumbaga v. Teoxon,*[13] the respondent was suspended for three years from the practice of law for committing gross immorality by maintaining an extramarital affair with complainant. This Court, in *Zaguirre v. Castillo,*[14] meted the penalty of indefinite suspension on Atty. Castillo when he had an illicit relationship with a woman not his wife and sired a child with her, whom he later on refused to recognize and support. In *Dantes v. Dantes,*[15] the respondent was disbarred when he engaged in illicit relationships with two different women during the subsistence of his marriage to complainant. We also ruled in *Arnobit v. Arnobit,*[16] that respondent's act of leaving his wife and 12 children to cohabit and have children with another woman constitutes grossly immoral conduct, for which respondent was disbarred. Likewise, in *Delos Reyes v. Aznar,*[17] we disbarred respondent, Chairman of the College of Medicine, for his acts of enticing the complainant, who was then a student in the said college, to have carnal knowledge with him under the threat that she would fail in all of her subjects if she refused respondent.

In *Ventura v. Samson,*[18] this Court has reminded that the power to disbar must be exercised with great caution, and only

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[12] 720 Phil. 12 (2013).

[13] A.C. No. 5573, November 21, 2017.

[14] 446 Phil. 861 (2003).

[15] 482 Phil. 64 (2004).

[16] 590 Phil. 270 (2008).

[17] 259 Phil. 231 (1989).

[18] *Supra* note 6 at 418.

in a clear case of misconduct that seriously affects the standing and character of the lawyer as an officer of the Court and as a member of the bar. Disbarment should not be imposed where a lesser penalty may accomplish the desired goal of disciplining an erring lawyer. In the present case, however, respondent Atty. De Los Reyes's actions show that he lacks the degree of morality required of him as a member of the legal profession, thus warranting the penalty of disbarment. Respondent Atty. De Los Reyes is disbarred for his gross misbehavior, even if it pertains to his private activities, as long as it shows him to be wanting in moral character, honesty, probity or good demeanor. Possession of good moral character is not only a prerequisite to admission to the bar but also a continuing requirement to the practice of law.[19]

WHEREFORE, the Court finds respondent Atty. Antonio N. De Los Reyes **GUILTY** of gross immoral conduct and violation of Rule 1.01, Canon 1, and Rule 7.03, Canon 7 of the Code of Professional Responsibility, and is hereby **DISBARRED** from the practice of law.

Let a copy of this Decision be made part of the records of respondent Atty. De Los Reyes in the Office of the Bar Confidant, and his name is **ORDERED STRICKEN** from the Roll of Attorneys. Likewise, let copies of this Decision be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Leonardo-de Castro, C.J., Bersamin, del Castillo, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.,* concur.

Carpio, J., on official leave.

Peralta, J., on official business.

Perlas-Bernabe, J., no part.

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[19] *Nakpil v. Valdes,* 350 Phil. 412, 430 (1998).

EN BANC

[A.M. No. P-18-3841. September 18, 2018]
(Formerly A.M. No. 01-12-323-MTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **DAHLIA E. BORROMEO, CLERK OF COURT II, MUNICIPAL TRIAL COURT IN CITIES [MTCC], BIÑAN, LAGUNA,** *respondent.*

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; CLERK OF COURT; FAILURE TO REMIT CASH COLLECTIONS AND TO SUBMIT MONTHLY FINANCIAL REPORTS CONSTITUTE GROSS DISHONESTY AND GRAVE MISCONDUCT; PENALTY OF DISMISSAL.— [R]espondent did not faithfully perform and discharge her duty and responsibility as the Clerk of Court of the MTCC of being the custodian of the funds, revenues, properties and premises of the court she served. Her attempt to explain herself by claiming that she had been confronted with various circumstances that had rendered her unable to faithfully comply with her duties, such as the absence of a permanent judge in her court that had led to the piling up of her workload, a series of office transfers that had caused the loss of some receipts, and the financial difficulties that her family had experience was vain and futile. Compounding her situation was that despite committing to submit her reports and the receipts for the cashbonds withdrawn from the Fiduciary Fund, she did not submit anything to the OCA in direct disobedience to the directives of the Court issued through the resolution promulgated on February 18, 2002, and did not also restitute the shortage of her cash collections. The respondent's failure to remit her cash collections and to submit her monthly financial reports constituted gross dishonesty and grave misconduct. She was also administratively liable for gross neglect of duty. x x x Under Section 52 of the *Revised Uniform Rules on Administrative Cases in the Civil Service*, dishonesty, grave misconduct and gross neglect of duty are classified as grave offenses, and any of said offenses can merit dismissal from the service even upon

the first commission. For her failure to live up to the high ethical standards expected of her as a court employee and accountable officer, the respondent's dismissal from the service with forfeiture of all retirement benefits, excluding accrued leave credits, with prejudice to re-employment in any government office, including government-owned and government-controlled corporations is in order and fully warranted.

D E C I S I O N

***PER CURIAM*:**

A clerk of court is the designated custodian of the funds, revenues, properties and premises of the court she serves. She must faithfully perform her duties and responsibilities as such; otherwise, she may be dismissed from the service for gross dishonesty, or grave misconduct, or gross neglect of duty.

This administrative matter stemmed from findings of shortages and unexplained missing funds resulting from the financial audit conducted on the books and accounts of the Municipal Trial Court in Cities (MTCC) of Biñan City in Laguna to determine the final accountabilities of respondent Clerk of Court II Dahlia E. Borromeo.

The relevant antecedents follow.

Pursuant to the resolution promulgated on July 26, 2001 in A.M. No. 01-4-134-MTC, the Court Administrator organized an audit team, and directed the Financial Management Office (FMO) to withhold all the salaries and allowances of the respondent following her failure, despite repeated demands, to submit the records required for the examination of her books of accounts to the Fiscal Monitoring Division of the Court Management Office (FMD-CMO) in the Office of the Court Administrator (OCA).[1]

The initial audit conducted on the cash and accounts of the MTCC during the period from August 10, 2001 to August 14,

[1] *Rollo,* p. 175.

2001 resulted in the following observations and findings, to wit:

A. JUDICIARY DEVELOPMENT FUND
Period Covered: 1 April 1995 to 31 August 2001

Total Collections	₱719,450.20
Less: Total Deposits/Remittances	381,935.90
Balance of Accountabilities/Shortages	₱ 337,514.30

B. CLERK OF COURT GENERAL FUND
Period Covered: 1 August 1994 to 31 August 2001

Total Collections	₱ 625,776.65
Less: Total Deposits/Remittances	360,258.15
Balance of Accountabilities/Shortages	₱ 265,518.50

The general observations of the team who conducted the financial audit were as follows:

1. Records and accounting control are in disarray. Ms. Borromeo has no procedure at all in the manner of filing system, accounting system and delegation of work;

2. Official Receipts requisitioned from the Supreme Court are properly issued on legal fees collections. However, two (2) booklets of Official Receipts with Serial Nos. 5710301-350 and 5710351-400 issued for Fiduciary Collections are missing. Collections on Judiciary Development Fund, Clerk of Court General Fund and Fiduciary Fund for the period 21 June 2001 to the present, 30 June 2001 to the present and 1 May 2001 to the present, respectively are not recorded in their respective Official cashbooks;

3. The last Monthly Report of Collections and Deposits/Withdrawals submitted by Ms. Borromeo to the Accounting Division, this Office, on Judiciary Development Fund, Clerk of Court General Fund and Fiduciary Fund was for the months of August 1999, June 1999 and May 1999 only;

4. Ms. Borromeo failed to remit her collections on Judiciary Development Fund for the period covering October 1999 to August 2001 (collections for a period of 1 year and 11 months) amounting to Three Hundred Thirty Seven Thousand Five Hundred Fourteen Pesos and 30/100 Centavos (₱337,514.30). Furthermore, most of the collections prior to October 1999 were not remitted on time in violation of Administrative Circular No. 3-2000 dated 15 June 2001;

5. Ms. Borromeo in like manner failed to remit her collections on Clerk of Court General Fund for the period covering November 1999 to August 2001 (collections for a period of 1 year and 10 months) amounting to Two Hundred Sixty Five Thousand Five Hundred Eighteen Pesos and 50/100 Centavos (₱265,518.50). Furthermore, most of the collections prior to November 1999 were also not remitted on time in violation of the Commission on Audit (COA) and Department of Finance (DOF) Joint Circular 1-81;

6. Collections on Fiduciary Fund were not deposited for safekeeping in the Land Bank of the Philippines (LBP) pursuant to the guidelines set forth in Administrative Circular No. 50-95 dated 11 October 1995. On 5 July 2000, she made a deposit under LBP Savings Account No. 2381-0002-25 in the amount of Twenty Six Thousand Pesos (₱26,000.00). All subsequent fiduciary fund collections were held on hand except for the last deposit made on 9 August 2001 in the amount of Five Thousand Pesos (₱5,000.00) but withdrawals from the bank continued until August 2001, showing irregular transactions conducted under this account; and

7. Ms. Borromeo allowed Ms. Cecil Reyes, her purported private secretary, to perform the duties and responsibilities of a regular court employee.[2]

As a result, the Court resolved on February 18, 2002 to:

(a) ***DIRECT*** Clerk of Court Dahlia E. Borromeo to: (1) ***EXPLAIN*** within ten (10) days from notice why no administrative sanction shall be imposed upon her for her failure to: (aa) remit all collection for the period covering October 1999 to August 2001 on the Judiciary Development Fund and on CoC General Fund for the period covering November 1999 to August 2001; (bb) record daily transactions in the official cashbooks; (cc) submit the monthly reports of collections and deposits/withdrawals for all funds to the Accounting Division, Office of the Court Administrator from the mid of 1999 to present; (dd) deposit all fiduciary fund collections with the Land Bank of the Philippines; and (ee) follow the circulars issued by the Court in the manner of handling judiciary funds; (2) ***RESTITUTE*** within ten (10) days from notice, the shortages on JDF and CoC General Fund in the amount of Three Hundred Thirty Seven Thousand Five Hundred Fourteen Pesos and 30/100 Centavos (₱337,514.30) and Two Hundred

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[2] *Id*. at 175-177.

Sixty Five Thousand Five Hundred Eighteen Pesos and 50/100 Centavos (₱265,518.50), respectively; (3) ***EXPLAIN*** why she is allowing Ms. Cecil Reyes, who is not an employee of the court to have access to the records of the court and to perform the regular functions of a court employee; and (4) ***PRODUCE*** all Fiduciary Fund records from July 1995 to present, i.e., Monthly Reports of Collections and Deposits/Withdrawals, Cashbooks, all Bank Passbooks [PNB, LBP or Rural Bank] and two (2) unaccounted booklets of OR No. 5710301-350 and 5710351-400;

(b) ***SUSPEND*** Ms. Dahlia E. Borromeo from office until she has complied with all the above directives; and

(c) ***DIRECT*** Judge Alden V. Cervantes, Presiding Judge, MTC, Biñan, Laguna to: (1) ***DESIGNATE*** an Acting Clerk of Court during the period of suspension of Mrs. Borromeo; and (2) ***MONITOR*** the designated Officer-in-Charge to safeguard the judiciary funds to avoid similar infractions in the future.

x x x x x x x x x[3]

Following her preventive suspension as directed via the February 18, 2002 resolution, the respondent submitted her explanation through her letter dated February 25, 2002.[4] On March 5, 2002, she also presented her *Supplemental Motion for Reconsideration* dated March 4, 2002[5] asking for the lifting of her suspension.

On April 1, 2002, the Court referred the matter to the OCA for evaluation, report and recommendation.[6]

On June 17, 2002, the Court promulgated its resolution to:

(a) HOLD in ABEYANCE the final resolution of this administrative matter pending compliance of Ms. Dahlia E. Borromeo, Clerk of Court, MTC, Biñan, Laguna, of all the directives in this administrative matter;

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

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

[5] *Id*. at 152.

[6] *Id*. at 153.

(b) DIRECT Judge Alden V. Cervantes, Presiding Judge, MTC, Biñan, Laguna, to ALLOW Ms. Dahlia E. Borromeo to have access to all records and relevant papers pertaining to all collections on Judiciary Development Fund, CoC General Fund and Fiduciary Fund during her incumbency as CoC/ Accountable Officer, provided that she be accompanied by a trusted court employee to avoid suspicion of tampering of court records;

(c) GRANT Ms. Borromeo a period of thirty (30) days from notice hereof to fully comply with the resolution of February 18, 2002; and

(d) DENY the request of Ms. Borromeo for the lifting of her suspension order and the release of her salaries and other benefits.[7]

On July 29, 2002, the respondent manifested her partial compliance with the resolution of February 18, 2002 directing her, among others, "to submit monthly reports of collections and deposits/withdrawals for all funds to the Accounting Division, from the middle of 1999 to present." She also requested an extension of 60 days to comply with all the other directives.[8]

On January 15, 2003, the Court noted the respondent's letter of July 29, 2002, and granted her request for an additional 60 days within which to comply with the resolution of February 18, 2002 in view of the reasons she had stated therein.[9]

However, the respondent's continued non-compliance with the directives of the Court in the February 18, 2002 resolution prompted the Court to order the conduct of the financial audit subject of this administrative matter.

The results of the financial audit showed that the respondent had incurred the following accountabilities and shortages,[10] to wit:

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

[8] *Id*.

[9] *Id.*

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

FUND/ACCOUNT NAME	PERIOD/S AUDITED	BALANCE OF ACCOUNTABILITY-SHORTAGE/ (OVERAGE)
Fiduciary Fund	5 July 1995 to 31 January 2002	₱2,869,873.49
Judiciary Development Fund	1 April 1995 to 31 August 2001	337,514.30
General Fund (Old)	1 August 1994 to 31 August 2001	265,518.50
Judiciary Development Fund	1 September 2001 to 31 January 2002	Not established due to unavailability of vital documents
General Fund (Old)	1 September 2001 to 31 January 2002	Not established due to unavailability of vital documents

On February 3, 2015, the OCA issued a memorandum,[11] recommending therein the following:

1. This report be **RE-DOCKETED** as a regular administrative complaint against Ms. Dahlia E. Borromeo, Clerk of Court II, MTCC, Biñan, Laguna and that Ms. Dahlia E. Borromeo be found **GUILTY** of violation of Administrative Circular No. 32-93 (Re: Collection of Legal Fees and Submission of Monthly Report of Collections) as amended by Administrative Circular No. 3-2000 and Administrative Circular 50-95, gross dishonesty and malversation of public funds (*Articles 217, Revised Penal Code*) and be **DISMISSED** from the service effective immediately, with forfeiture of all retirement benefits except her accrued leave credits, and with prejudice to re-employment in any branch or service of the government, including government-owned or controlled corporations;
2. The position of Ms. Dahlia E. Borromeo as Clerk of Court II, MTCC, Biñan, Laguna be **DECLARED VACANT**;

[11] *Id.* at 175-194.

3. The OAS, OCA be **DIRECTED** to provide the FMO, OCA with the following documents pertaining to Ms. Dahlia E. Borromeo:

   [3.1] Official Service Record;
   [3.2] Certification of Leave Credits; and
   [3.3] Notice of Salary Adjustment (NOSA) if any;

4. The FMO, OCA be **DIRECTED** to:

   4.1) **PROCESS** the money value of the terminal leave benefits of Ms. Dahlia E. Borromeo and that of her withheld salaries, bonuses and other benefits, if any, dispensing with the usual documentary requirements, and apply the same to the shortages in the following order:

Name of Fund	***Period Covered***	***Amount***
Fiduciary Fund	*5 July 1995 to 31 January 2002*	*2,869,873.49*
Judiciary Development Fund	*1 April 1995 to 31 August 2001*	*337,514.30*
General Fund	*1 August 1994 to 31 August 2001*	*265,518.50*
Total		***₱3,472,906.29***

   4.2) **COORDINATE** with the FMD, CMO, OCA, before the processing of the checks to be issued in favor of the Fiduciary Fund account of the MTCC, Biñan, Laguna, and for the preparation of the necessary communication with the incumbent Clerk of Court/ Officer-in-Charge thereat;

5. **ORDER** Ms. Borromeo to restitute the remaining shortages, the monetary value of her earned leave credits and withheld salaries, bonuses and other benefits being insufficient to cover the aforementioned shortages;

6. x x x x x x x x x

7. Hon. Maria Conception M. Serrano-Altea, Presiding Judge, MTCC, Biñan, Laguna be **DIRECTED** to assign a court personnel to assist Ms. Mercidita Yncierto-Wahid in handling

financial transactions, particularly the recording in the cashbook and/or preparation of Monthly Report of Collections and Deposits/Withdrawals, of which personnel can also be entrusted in the issuance of receipts and proper assessment of filing fees. This is to foster better and effective accounting control and check and balance; and

8. The Legal Office, OCA, be **DIRECTED** to file the appropriate criminal charges against Ms. Dahlia E. Borromeo.[12]

Ruling of the Court

After a judicious review of the records of the case, the Court adopts and approves the recommendations of the OCA.

The respondent was the Clerk of Court of the MTCC in Biñan City in Laguna. She was the custodian and officer responsible for the safekeeping and custody of the funds, revenues, properties and premises of the court she served. She was clearly bound to perform the duty and responsibility to the utmost of her abilities. In *Re: Report on the Financial Audit Conducted at the Municipal Trial Court, Baliuag, Bulacan*,[13] the Court stressed the vitality of the role and office of the Clerk of Court in the discharge by the Judiciary of its primary responsibility in the administration of justice, to wit:

Clerks of Court perform a delicate function as designated custodians of the court's funds, revenues, records, properties, and premises. As such, they are generally regarded as treasurer, accountant, guard, and physical plant manager thereof. It is the duty of the Clerks of Court to faithfully perform their duties and responsibilities. They are the chief administrative officers of their respective courts. It is also their duty to ensure that the proper procedures are followed in the collection of cash bonds. Clerks of Court are officers of the law who perform vital functions in the prompt and sound administration of justice. Thus, an unwarranted failure to fulfil these responsibilities deserves administrative sanctions and not even the full payment of the collection shortages will exempt the accountable officer from liability.

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[12] *Id.* at 193-194.

[13] A.M. No. P-15-3298, February 4, 2015, 749 SCRA 495, 501.

But the respondent did not faithfully perform and discharge her duty and responsibility as the Clerk of Court of the MTCC of being the custodian of the funds, revenues, properties and premises of the court she served. Her attempt to explain herself by claiming that she had been confronted with various circumstances that had rendered her unable to faithfully comply with her duties, such as the absence of a permanent judge in her court that had led to the piling up of her workload, a series of office transfers that had caused the loss of some receipts, and the financial difficulties that her family had experience was vain and futile. Compounding her situation was that despite committing to submit her reports and the receipts for the cashbonds withdrawn from the Fiduciary Fund, she did not submit anything to the OCA in direct disobedience to the directives of the Court issued through the resolution promulgated on February 18, 2002, and did not also restitute the shortage of her cash collections.

The respondent's failure to remit her cash collections and to submit her monthly financial reports constituted gross dishonesty and grave misconduct. She was also administratively liable for gross neglect of duty. As the Court made clear in *Office of the Court Administrator v. Dequito*,[14] *viz.*:

> Gross neglect of duty refers to negligence characterized by the glaring want of care; by acting or omitting to act in a situation where there is a duty to act, not inadvertently, but willfully and intentionally; or by acting with a conscious indifference to consequences with respect to other persons who may be affected. In contrast, simple neglect of duty only refers to the failure to give proper attention to a required task or a disregard of duty due to carelessness or indifference.
>
> The safeguarding of funds and collection, and the submission of monthly collection reports are essential to the orderly administration of justice. In this light, Supreme Court (SC) Circular No. 13-92 mandates clerks of courts to immediately deposit fiduciary funds with the authorized government depository banks, specifically the Land Bank of the Philippines (LBP). Moreover, SC Circular No. 32-93 requires all clerks of court or accountable officers to submit

[14] A.M. No. P-15-3386, November 15, 2016, 809 SCRA 1, 11-12.

a monthly report of collections for all funds not later than the tenth (10th) day of each succeeding month.

A clerk of court is the custodian of court funds. Hence, he is liable for any loss, shortage, destruction or impairment of these funds. Any shortage in the amounts to be remitted, as well as the delay in the actual remittance of these funds constitutes Gross Neglect of Duty of a clerk of court. The Court has also ruled that a clerk of court who fails to timely deposit judiciary collections, as well as to submit monthly financial reports, is administratively liable for Gross Neglect of Duty.

Under Section 52 of the *Revised Uniform Rules on Administrative Cases in the Civil Service*, dishonesty, grave misconduct and gross neglect of duty are classified as grave offenses, and any of said offenses can merit dismissal from the service even upon the first commission.[15]

For her failure to live up to the high ethical standards expected of her as a court employee and accountable officer, the respondent's dismissal from the service with forfeiture of all retirement benefits, excluding accrued leave credits, with prejudice to re-employment in any government office, including government-owned and government-controlled corporations is in order and fully warranted.

WHEREFORE, the Court **RESOLVES** to:

1. **DISMISS** respondent **DAHLIA E. BORROMEO** from the service with forfeiture of all retirement benefits, excluding accrued leave credits, with prejudice to re-employment in any government office, including government-owned and government-controlled corporations;

2. **DIRECT** the Leave Division, Office of the Administrative Services, Office of the Court Administrator to compute the accrued leave credits of respondent **DAHLIA E. BORROMEO**, and forward the computation to the Financial Management Office, Office of the Court Administrator, for disposition in accordance with this decision;

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[15] *Office of the Court Administrator v. Leal*, A.M. No. P-12-3047, October 1, 2013, 706 SCRA 487, 498.

3. **ORDER** the Financial Management Office, Office of the Court Administrator, to apply the monetary value of the accrued leave credits of respondent **DAHLIA E. BORROMEO**, and the salaries withheld from her to the cash shortage incurred, as follows:

Name of Fund	**Period Covered**	**Amount**
Fiduciary Fund	5 July 1995 to 31 January 2002	₱2,869,873.49
Judiciary Development Fund	1 April 1995 to 31 August 2001	337,514.30
General Fund	1 August 1994 to 31 August 2001	265,518.50
Total		**P3,472,906.29**

Should any balance remain unpaid despite the application of the monetary value of her accrued leave credits and withheld salaries respondent **DAHLIA E. BORROMEO** shall remain personally liable therefor; and

4. **INSTRUCT** the Office of the Court Administrator to initiate, if warranted, the appropriate criminal charges against respondent **DAHLIA E. BORROMEO**.

SO ORDERED.

Leonardo-de Castro C.J., Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.,* concur.

Carpio, J., on wellness leave.

EN BANC

[G.R. Nos. 219771 & 219773. September 18, 2018]

PHILIPPINE NATIONAL POLICE-CRIMINAL INVESTIGATION AND DETECTION GROUP (PNP-CIDG), *petitioner, vs.* **P/SUPT.* ERMILANDO O. VILLAFUERTE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS UNDER RULE 45; QUESTIONS OF FACT CANNOT BE RAISED THEREIN; EXCEPTIONS; WHERE THERE ARE CONFLICTING FINDINGS AMONG TRIBUNALS ON CERTAIN QUESTIONS OF FACT.— As a rule, questions of fact are proscribed in Rule 45 petitions. A question of fact exists when doubt or difference arises as to the truth or falsehood of facts or when the resolution of the issue raised requires a calibration of the whole evidence. As a trier of laws, the Court is not duty-bound to analyze and weigh again the evidence already considered in the proceedings below. As an exception, however, the Court may resort to a factual inquiry in case there are conflicting findings between or among the tribunals' ruling on certain questions of fact.

2. POLITICAL LAW; ADMINISTRATIVE LAW; IN ADMINISTRATIVE CASES, SUBSTANTIAL EVIDENCE IS REQUIRED TO SUSTAIN A FINDING OF CULPABILITY; CASE AT BAR.— In administrative cases, substantial evidence is required to sustain a finding of culpability, that is, such amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion. x x x [Here,] while the OMB's factual findings in their entirety tend to demonstrate a sequence of irregularities in the procurement of the LPOHs, **this does not *ipso facto* translate into a conspiracy between each and every person involved in the procurement process.** For conspiracy to be appreciated, it must be clearly shown that there was a conscious design to commit an offense;

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* Also spelled as PSupt. in some parts of the *rollo*.

conspiracy is not the product of negligence but of intentionality on the part of cohorts. Conspiracy is never presumed. x x x **[P]etitioner miserably failed to establish a nexus between the ministerial act of drafting the said documents and a scheme to defraud the Government.** Petitioner cannot satisfy the threshold of substantial evidence using only conjectures and suppositions; the mere fact that an irregular procurement process was uncovered does not mean that all persons involved, regardless of rank or functions, were acting together in conspiracy. Moreover, as already discussed above, neither does proof of criminal conspiracy automatically impute administrative liability on all those concerned.

LEONEN, *J.*, *dissenting opinion*:

POLITICAL LAW; ADMINISTRATIVE LAW; ACCUSED PUBLIC OFFICER, BEING A LAWYER, IS GUILTY OF DISHONESTY IN DRAFTING PROCUREMENT DOCUMENTS WITH MANIFEST INFIRMITIES.— I refuse to believe that the accused in this case was a mere unthinking bureaucrat who had no duty except to draft documents. I believe that as a lawyer, he had the competence to know when there was a defect in the procedure. As a public officer, he was duty bound to exercise utmost responsibility to ensure that powerful individuals did not abuse their positions. x x x The duties of a lawyer, as embodied in the Code of Professional Responsibility, are not ministerial. I cannot agree with the *ponencia's* view that respondent's act of drafting the procurement documents was administrative and ministerial. x x x As a member of the legal profession, respondent performs duties impressed with public interest. Having administrative and ministerial functions does not strip a lawyer of his ethical duties embodied in the Code of Professional Responsibility.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jonievie P. Ramos-Gabriel for respondent.

D E C I S I O N

CAGUIOA, *J.*:

The Case

Before the Court is an appeal by *certiorari* under Rule 45 of the Rules of Court (Petition) questioning the Decision[1] dated January 28, 2015 and Resolution[2] dated August 3, 2015 of the Court of Appeals (CA) in CA-G.R. SP. Nos. 127757 and 127801. The CA Decision reversed and set aside the Joint Resolution[3] dated May 30, 2012 (OMB Resolution) of the Office of the Ombudsman (OMB), which found herein respondent P/Supt. Ermilando O. Villafuerte (respondent Villafuerte) administratively liable with several others for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

This case arose from the infamous "chopper scam" that involved the procurement of second-hand light police operational helicopters (LPOHs) for use of the Philippine National Police (PNP). During the procurement process, respondent Villafuerte was the Legal Officer of the National Headquarters Bids and Awards Committee (NHQ-BAC), Secretariat Division (BAC Secretariat).

The Facts

The events precipitating the instant controversy were summarized in the CA Decision, as follows:

Sometime in 2009, the Philippine National Police programed *(sic)* to purchase three (3) fully equipped helicopters with an approved budget of Php105,000,000.00. After two (2) scheduled public bidding

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[1] *Rollo*, pp. 59-68. Rendered by the Tenth Division and penned by Associate Justice Elihu A. Ybañez, with Associate Justices Isaias P. Dicdican and Carmelita S. Manahan concurring.

[2] *Id*. at 69-73. Rendered by the Special Former Tenth Division and penned by Associate Justice Elihu A. Ybañez, with Associate Justices Edwin D. Sorongon and Socorro B. Inting concurring.

[3] *Id*. at 74-215.

(sic) failed, another bidding was conducted with two proponents participated *(sic)* namely: MAPTRA and BEELINE. The third bidding was again declared a failure since the proponents failed to meet the requirements. Later on, the requirement was modified from three (3) fully equipped helicopters to One (1) fully equipped and two (2) standard helicopters.

On 15 June 2009, the negotiation committee convened and again, MAPTRA and BEELINE participated. BEELINE submitted price quotation of Php104,987,000.00 for the requirement but manifested that the helicopters do not have xenon light, down link transmission and aircondition with only 2-3 sitting *(sic)* capacity as the inclusion of said accessories cost Php12,000,000.00. On the other hand, MAPTRA quoted Php104,985,000.00 for the requirement but all helicopters are 4-sitter *(sic)*.

The Bids and Awards Committee of the PNP resolved to award the contract to MAPTRA. The head of BAC Secretariat PSSUPT Detran instructed petitioner Villafuerte to prepare the necessary documents pertaining to the award of the contract to the winning bidder MAPTRA. Hence, petitioner Villafuerte prepared the Supply Contract and the Notice to Proceed was signed by then PNP Chief Jesus Versoza.

After securing a performance bond from the AFP General Insurance Corporation in favor of the PNP, two light operational helicopters were delivered on 24 September 2009 at the PNP Air Unit Hangar, Domestic Airport in Pasay City. After inspection, the PNP released 50% of the contract price to MAPTRA.

On 10 February 2010, a fully equipped Robinson R44 Helicopter was delivered to PNP. A certification of inspection was issued on 22 February 2010. Thus, the PNP released to MAPTRA the remaining 50% balance.

Later on, an investigation was conducted regarding the procurement of the said helicopters and the investigating body allegedly found that the helicopters that were subject of the procurement were not brand new contrary to the requirement of the PNP procurement. x x x[4]

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[4] *Id*. at 60-62.

As a result of the investigation, a Complaint dated November 25, 2011[5] (Complaint) was filed by the OMB-Field Investigation Office, charging several public and private respondents,[6] including respondent Villafuerte, with various criminal and administrative offenses, which included *inter alia:* (i) violation of paragraphs (e) and (g), Section 3,[7] Republic Act No. (RA)

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[5] Supplemented by a Verified Manifestation and Motion dated March 23, 2012. *Id.* at 76.

[6] Ronaldo V. Puno, Former Secretary, Department of Interior and Local Government (DILG); Oscar F. Valenzuela, Former Assistant Secretary, DILG; Conrado L. Sumanga, Jr., NAPOLCOM Director, Installations & Logistic Services; Miguel G. Coronel, NAPOLCOM Commissioner; Avelino L. Razon, Jr., Former PNP Chief and NAPOLCOM Commissioner; Celia Sanidad-Leones, NAPOLCOM Commissioner; Jesus Ame Verzosa, Former Director General, PNP; P/Dir. Luizo Cristobal Ticman, P/Dir. Ronald Dulay Roderos, P/Dir. Leocadio Salva Cruz Santiago, Jr., Members, PNP Negotiation Committee (NC) and PNP NHQ-BAC; P/Dir. Romeo Capacillo Hilomen, Member, PNP NC; P/Ddg. Jefferson Pattaui Soriano, P/CSupt. Herold G. Ubalde, Members, PNP NHQ-BAC; P/Supt. Ermilando Villafuerte, P/Supt. Roman E. Loreto, Legal Officers, PNP NHQ-BAC; P/CSupt. Luis Luarca Saligumba, P/SSupt. Job Nolan D. Antonio, P/Dir. George Quinto Piano, P/SSupt. Edgar B. Paatan, P/Supt. Mansue Nery Lukban, P/CInsp. Maria Josefina Vidal Recometa, P/SSupt. Claudio DS Gaspar, Jr., P/SSupt. Larry Balmaceda, SPO3 Jorge B. Gabiana, SPO3 Ma. Linda A. Padojinog, PO3 Dionisio Jimenez, PO3 Avensuel G. Dy, NUP Ruben S. Gongona, NUP Erwin O. Chavarria, NUP Emilia A. Aliling, NUP Erwin Paul Maranan, Members, Inspecting Team and the Inspection and Acceptance Committee, PNP; P/SSupt. Joel Crisostomo DL Garcia, Recommending Authority on WTCD Report No. T2009-04, PNP, P/SSupt. Lurimer B. Detran, Secretariat Head, PNP NHQ-BAC; Atty. Jose Miguel "Mike" Arroyo, Hilario "Larry" B. De Vera, in their private capacities; and Rep. Ignacio "Iggy" Arroyo. *Id.* at 74-76.

[7] SEC. 3. *Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This

3019,[8] in relation to RA 9184,[9] and (ii) Dishonesty, Gross Neglect of Duty, and Conduct Prejudicial to the Best Interest of the Service under paragraphs 1, 2 and 20, Section 52(A), Uniform Rules on Administrative Cases in the Civil Service.[10]

In his Counter-Affidavit dated January 12, 2012, respondent Villafuerte claimed that his only participation in the procurement process was the drafting of several documents under the instruction of P/SSupt. Lurimer B. Detran, Head of the BAC Secretariat, to wit:

(i) Negotiation Committee Resolution No. 2009-04, entitled "Recommending the Award of Contract and Purchase Order to Manila Aerospace Products Trading (MAPTRA[11]) for the delivery of One (1) Fully Equipped and Two (2) Standard Light Police Operational Helicopter All Brand New Worth One Hundred Four Million Nine Hundred Eight-five Thousand Pesos (P104,985,000.00) Inclusive of All Taxes, Import Duties and Charges;"

(ii) BAC Resolution No. 2009-36, entitled "Affirming the Recommendation of the Negotiation Committee to Award the Supply Contract and Purchase Order to Manila Aerospace Products Trading (MAPTRA) for the Delivery of One (1) Fully-Equipped and Two (2) Standard Light

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provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

x x x x x x x x x

(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.

[8] ANTI-GRAFT AND CORRUPT PRACTICES ACT, August 17, 1960.

[9] AN ACT PROVIDING FOR THE MODERNIZATION, STANDARDIZATION AND REGULATION OF THE PROCUREMENT ACTIVITIES OF THE GOVERNMENT AND FOR OTHER PURPOSES, otherwise known as the "GOVERNMENT PROCUREMENT REFORM ACT," January 10, 2003.

[10] Civil Service Commission (CSC) Resolution No. 991936, August 31, 1999.

[11] Also referred to as MAPTRA Sole Proprietorship and MAPTRA Corporation in some parts of the *rollo*.

> Police Operational Helicopter All Brand New Worth One Hundred Four Million Nine Hundred Eighty-five Thousand Pesos (₱104,985,000.00) Inclusive of All Taxes, Import Duties and Charges;"
>
> (iii) Supply Contract between the PNP and MAPTRA; and
>
> (iv) Notice to Proceed addressed to Mr. Larry B. De Vera.[12]

Aside from the foregoing, respondent Villafuerte further alleged that he was also instructed by P/Dir. George Quinto Piano, a member of the PNP Inspection and Acceptance Committee, to draft a demand letter to MAPTRA for the replacement of the LPOHs and a complaint-affidavit for *Estafa* against the officials of MAPTRA.[13]

Ruling of the OMB

In the OMB Resolution, the OMB concluded that the procurement process was marred with irregularities and found substantial evidence to hold respondent Villafuerte guilty of Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.[14] The OMB likewise ordered the filing of a corresponding Information for violation of Section 3(e) of RA 3019 with the Sandiganbayan against respondent Villafuerte for the same acts.[15]

The OMB found that the requirement in a negotiated procurement under the Implementing Rules and Regulations Part A (IRR-A) of RA 9184,[16] *i.e.*, that the procuring entity directly negotiate only with a "technically, legally and financially capable supplier, contractor or consultant,"[17] was not observed

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[12] *Rollo,* p. 93.

[13] *Id*. at 94.

[14] *Id*. at 208-209.

[15] *Id*. at 211-212.

[16] IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT NO. 9184, OTHERWISE KNOWN AS THE GOVERNMENT PROCUREMENT REFORM ACT (AS AMENDED), (Amended IRR-RA 9184).

[17] See *rollo,* p. 145.

as MAPTRA was not so qualified. In particular, considering that potential bidders are required to submit certain documentary requirements to be evaluated by the BAC under the IRR-A, the OMB concluded that respondent Villafuerte and his other co-respondents, given their respective positions, conspired to award the LPOH contract to an unqualified bidder.[18]

The OMB Resolution held thus:

WHEREFORE, it is hereby resolved as follows:

x x x x x x x x x

OMB-C-A-11-0758-L (ADMINISTRATIVE CASE)

1) Respondents P/Dir. Leocadio Salva Cruz Santiago, Jr., **P/Supt. Ermilando Villafuerte,** P/Supt. Roman E. Loreto, P/CSupt. Herold G. Ubalde, P/CSupt. Luis Laurca Saligumba, P/SSupt. Job Nolan D. Antonio, P/Dir. George Quinto Piano, P/SSupt. Edgar B. Paatan, P/SSupt. Mansue Nery Lukban, P/CInsp. Maria Josefina Vidal Recometa, P/SSupt. Claudio DS Gaspar Jr., SPO3 Ma. Linda A. Padojinog, PO3 Avensuel G. Dy and NUP Ruben S. Gongona are hereby found **GUILTY of *Serious Dishonesty* and *Conduct Prejudicial to the Best Interest of the Service,* and are thus meted the penalty of DISMISSAL FROM THE SERVICE,** including the accessory penalties of **forfeiture of retirement benefits and perpetual disqualification to hold public office,** pursuant to the *Uniform Rules on Administrative Cases in the Civil Service* (CSC Resolution No. 991936, as amended).[19] (Additional emphasis supplied)

Respondent Villafuerte thereafter questioned the OMB Resolution via a Petition for Review[20] under Rule 43 with the Court of Appeals (CA), which was docketed as CA-G.R. SP No. 127801. The case was consolidated with an appeal filed by P/Supt. Roman E. Loreto, which similarly assailed the OMB Resolution.[21]

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[18] See *id*. at 162-163.

[19] *Id.* at 211-215.

[20] *Id*. at 216-259.

[21] See *id*. at 59.

In his appeal, respondent Villafuerte argued that his duties and functions as a member of the BAC Secretariat are merely administrative and ministerial in nature and that he was merely following the instructions of his superiors.[22] Respondent Villafuerte claimed that it is the Technical Working Group of the NHQ-BAC that has the duty and responsibility to verify whether a proponent is indeed technically, legally, and financially capable to enter into a contract with the PNP.[23] Lastly, respondent Villafuerte argued that there was no positive and conclusive evidence to support the OMB's finding of conspiracy against him and his co-respondents.[24]

Ruling of the CA

In the Decision[25] dated January 28, 2015, the CA **reversed** the OMB Resolution and exonerated respondent Villafuerte from the administrative charges:

> **WHEREFORE,** the petition is hereby **GRANTED.** The assailed *Joint Order* dated 30 May 2012 and *Order* dated 05 November 2012 issued by the Office of the Ombudsman are **REVERSED** and **SET ASIDE** with respect to petitioner PSUPT. Roman E. Loreto and PSUPT. Ermilando O. Villafuerte. Accordingly, PSUPT. Roman E. Loreto and PSUPT. Ermilando O. Villafuerte are **EXONERATED** from the administrative charges against them for lack of substantial evidence.
>
> **SO ORDERED.**[26]

Herein petitioner, through the Office of the Solicitor General, then filed a motion for reconsideration, which was subsequently denied by the CA in the Resolution[27] dated August 3, 2015 for

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[22] *Id.* at 244.

[23] *Id.* at 245.

[24] *Id.* at 254-256.

[25] *Id.* at 59-68.

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

[27] *Id.* at 69-73.

lack of merit. In the same Resolution, the CA granted a Motion for Partial Reconsideration filed by respondent Villafuerte, ordering his reinstatement and entitlement to backwages and other benefits pursuant to the Revised Rules on Administrative Cases in the Civil Service,[28] to wit:

> **WHEREFORE,** the Motion for Reconsideration filed by respondents is hereby **DENIED** for lack of merit, whereas the Motion for Partial Reconsideration filed by petitioners is hereby **GRANTED.** Petitioners are ordered reinstated to their former positions without loss of seniority rights. Moreover, the Philippine National Police is hereby ordered to pay herein petitioners their backwages and all benefits which would have accrued in their favor as if they have not been illegally dismissed. The said amounts shall be computed from 30 May 2012 until their actual reinstatement.
>
> **SO ORDERED.**[29]

Hence, this Petition.

On February 2, 2016, respondent Villafuerte filed a Comment[30] dated January 29, 2016. Petitioner thereafter filed its Reply[31] dated February 23, 2017.

Issue

Whether the CA committed reversible error in reversing the OMB Resolution finding respondent Villafuerte liable for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

The Court's Ruling

The Petition is denied.

As culled from the Petition, the principal issue for resolution is whether there is substantial evidence to find respondent

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[28] Sec. 53(d), Resolution No. 1101502, promulgated on November 8, 2011.

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

[30] *Id.* at 293-323.

[31] *Id.* at 370-379.

Villafuerte administratively liable.[32] The Court finds in the negative.

Questions of fact cannot be raised in appeals by certiorari under Rule 45; Exceptions

As a rule, questions of fact are proscribed in Rule 45 petitions.[33] A question of fact exists when doubt or difference arises as to the truth or falsehood of facts or when the resolution of the issue raised requires a calibration of the whole evidence.[34] As a trier of laws, the Court is not duty-bound to analyze and weigh again the evidence already considered in the proceedings below.[35]As an exception, however, the Court may resort to a factual inquiry in case there are conflicting findings between or among the tribunals' ruling on certain questions of fact.[36]

In this case, the Court thus finds occasion to apply the exception considering the different factual conclusions of the OMB and the CA regarding respondent Villafuerte's administrative liability.

There is no substantial evidence to hold respondent Villafuerte liable for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service

In administrative cases, substantial evidence is required to sustain a finding of culpability, that is, such amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[37]

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[32] See *id*. at 39.

[33] See *General Mariano Alvarez Services Cooperative, Inc. v. National Housing Authority*, 753 Phil. 353, 359 (2015).

[34] *Central Bank of the Philippines v. Castro*, 514 Phil. 425, 434 (2005).

[35] *Miro v. Vda. de Erederos*, 721 Phil. 772, 785 (2013).

[36] *Office of the Ombudsman v. Dechavez*, 721 Phil. 124, 129-130 (2013).

[37] *Field Investigation Office v. Piano*, G.R. No. 215042, November 20, 2017, p. 8.

In the main, petitioner alleges that as a member of the BAC Secretariat, respondent Villafuerte was charged with the duty of (i) taking custody of procurement documents and other records, and (ii) assisting in managing the procurement processes and as such, he was expected to know whether the legal specifications for the procurement of the LPOHs under pertinent laws were satisfied.[38] Petitioner claims that since respondent Villafuerte had custody over the procurement documents, he therefore had the opportunity to examine the documents submitted by MAPTRA and should have known that the latter failed to meet the requirements under the law.[39] Petitioner further claims that respondent Villafuerte should have been cautious enough to inquire behind MAPTRA's eligibility instead of "simply closing his eyes to the apparent and obvious irregularities surrounding the procurement process."[40]

Proceeding from the foregoing, petitioner thus faults respondent Villafuerte for drafting several documents that led to the award of the contract to MAPTRA, which allegedly amounted to Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.[41] Specifically, petitioner posits that respondent Villafuerte made it appear that MAPTRA possessed all the qualifications of a qualified bidder — when in fact it did not — thus resulting to damage to the Government.[42]

Essentially, petitioner would like to impress upon the Court that respondent Villafuerte, through his individual actions, was part of a larger conspiracy in the procurement of the LPOHs and as such, is liable for Serious Dishonesty and Conduct Prejudicial to the Best Interest of the Service.

Petitioner fails to persuade.

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[38] *Rollo,* pp. 41-42.

[39] *Id*. at 43.

[40] *Id*. at 45.

[41] *Id*. at 43-45.

[42] *Id*. at 44.

In the first place, conspiracy as a means of incurring liability is strictly confined to criminal cases; even assuming that the records indicate the existence of a felonious scheme, the administrative liability of a person allegedly involved in such scheme cannot be established through conspiracy, considering that one's administrative liability is separate and distinct from penal liability. Thus, in administrative cases, the only inquiry in determining liability is simply whether the respondent, through his individual actions, committed the charges against him that render him administratively liable.

In any case, it bears stressing that while the OMB's factual findings in their entirety tend to demonstrate a sequence of irregularities in the procurement of the LPOHs, **this does not *ipso facto* translate into a conspiracy between each and every person involved in the procurement process.** For conspiracy to be appreciated, it must be clearly shown that there was a conscious design to commit an offense; **conspiracy is not the product of negligence but of intentionality on the part of cohorts**.[43] **Conspiracy is never presumed**.[44]

To establish respondent Villafuerte's participation in the alleged conspiracy, the OMB Resolution concluded as follows:

> With respect to respondents Villafuerte and Loreto, they were legal officers designated as members of the BAC Secretariat. As such, they had the opportunity to examine the documents submitted by MAPTRA. They knew, therefore, that the latter failed to meet the technical and financial requirements required by IRR-A. However, they still proceeded to prepare the necessary papers to recommend the award of the contract to the unqualified supplier. Moreover, at the time respondent Villafuerte prepared the Supply Contract, he saw the incorporation papers of MAPTRA Corporation which indicated that it was issued Certificate of Incorporation on June 10, 2009. He was present during the June 15, 2009 negotiations when MAPTRA Sole Proprietorship submitted its proposal. Hence, when he drafted the Supply Contract he already knew that MAPTRA misrepresented

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[43] *Magsuci v. Sandiganbayan,* 310 Phil. 14, 20 (1995).

[44] *Froilan v. Sandiganbayan,* 388 Phil. 32, 42 (2000).

itself as a sole proprietorship during the negotiations on June 15, 2009. This is not merely tolerating an irregularity but clearly participating in the commission thereof.[45]

Aside from the sweeping statements of the OMB, there is a dearth of evidence on record to arrive at a conclusion that respondent Villafuerte was complicit in a conspiracy to defraud the Government. As consistently stressed by respondent Villafuerte, the following documents were drafted **upon the instruction of his superior officer,** P/SSupt. Lurimer B. Detran: (i) Negotiation Committee Resolution No. 2009-04, (ii) BAC Resolution No. 2009-36, (iii) Supply Contract between the PNP and MAPTRA; and (iv) Notice to Proceed addressed to Mr. Larry B. De Vera of MAPTRA.[46] **None of the aforesaid documents suggest that respondent Villafuerte had a material role in the awarding of the contract to MAPTRA.**

In fact, **the nature of the functions of the BAC Secretariat under the Amended IRR-A of RA 9184 confirms that respondent Villafuerte does not possess recommendatory authority of any kind:**

> **Section 14. BAC Secretariat**
>
> 14.1. The head of the procuring entity shall create a Secretariat which will serve as the main support unit of the BAC. x x x The Secretariat shall have the following functions and responsibilities:
>
> 1. Provide administrative support to the BAC;
> 2. Organize and make all necessary arrangements for the BAC meetings;
> 3. Attend BAC meetings as Secretary;
> 4. Prepare Minutes of the BAC meetings;
> 5. Take custody of procurement documents and be responsible for the sale and distribution of bidding documents to interested bidders;

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

[46] *Id.* at 305-307.

6. Assist in managing the procurement processes;
7. Monitor procurement activities and milestones for proper reporting to relevant agencies when required;
8. Consolidate PPMPs from various units of the procuring entity to make them available for review as indicated in Section 7 of this IRR-A;
9. Make arrangements for the pre-procurement and pre-bid conferences and bid openings; and
10. Be the central channel of communications for the BAC with end users, PMOs, other units of the line agency, other government agencies, providers of goods, civil works and consulting services, and the general public.

Here, petitioner is imputing liability to respondent Villafuerte on the simple fact that the award of the contract to MAPTRA was made through the documents that he drafted. **This is egregious error.** Using the same logic, respondent Villafuerte's participation in the alleged conspiracy thus becomes equivocal, to say the least, considering that he was also the one who drafted the demand letter to MAPTRA for the replacement of the LPOHs and a complaint-affidavit for Estafa against the officials of MAPTRA upon the instructions of P/Dir. George Quinto Piano.[47] In other words, petitioner cannot judge respondent Villafuerte's actions based on the end result of the documents drafted.

Based on the foregoing, **petitioner miserably failed to establish a nexus between the ministerial act of drafting the said documents and a scheme to defraud the Government.** Petitioner cannot satisfy the threshold of substantial evidence using only conjectures and suppositions; the mere fact that an irregular procurement process was uncovered does not mean that all persons involved, regardless of rank or functions, were acting together in conspiracy. Moreover, as already discussed above, neither does proof of criminal conspiracy automatically impute administrative liability on all those concerned.

[47] *Rollo,* p. 94.

On this score, the Court finds merit in and accordingly adopts the following disquisition in the CA Decision:

> In the present case, no records will show that petitioners took part in the alleged conspiracy. **They were not signatories of any document pertaining to the procurement of the three (3) helicopters. The petitioners were neither part of the team who inspected the procured helicopters nor were they signatories in the disbursement vouchers for the payment of the said helicopters. Hence, there is no direct evidence that will link them to the alleged conspiracy.**
>
> Petitioner Loreto was not present in the 15 June 2009 negotiation which eventually led to the awarding of the Supply Contract to MAPTRA. Perforce, there is no clear or substantial evidence proffered against him to become administratively liable. **Anent petitioner Villafuerte though he was present in the 15 June 2009 negotiation, however, there are no records to show that he has the power to recommend or decide on the negotiation that was conducted. He was merely instructed to prepare the Supply Contract, nothing more.**
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> x x x x x x x x x
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> It cannot be disputed that only the members of the Bids and Awards Committee are the only persons authorized and empowered to decide on matters pertaining to the bidding and procurement. **The BAC Secretariat is clearly given the mandate to only safe keep the documents and facilitate the procurement process. They only rely on the decision of the members of the BAC itself and to prepare whatever document they are instructed to do so. Hence, it cannot be determined as to what extent of culpability that petitioners committed in the alleged conspiracy.**
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> x x x x x x x x x
>
> Here, there was no substantial evidence presented against the petitioners. Petitioner Loreto was not present in the 15 June 2009 negotiation that led to the awarding of the Supply Contract to MAPTRA and both petitioners were merely members of the BAC Secretariat who were only support group *(sic)*, as custodian of documents and to facilitate the procurement process. **Their alleged silence cannot be equated to acquiesce *(sic)* or participation in the alleged anomaly or irregularity. Petitioners cannot, therefore, be held civilly or**

administratively liable for such acts unless there is a clear showing of bad faith, malice or gross negligence.[48] (Emphasis and underscoring supplied)

Parenthetically, petitioner makes much of the fact that respondent Villafuerte was under the Office of Legal Affairs of the PNP before being detailed to the BAC Secretariat.[49] From this fact, petitioner concludes that respondent Villafuerte's legal background "should have cautioned him that it was improper to award the contract to MAPTRA" and therefore he could no longer escape culpability from his act of drafting the necessary documents recommending the award to MAPTRA.[50] This reasoning is specious.

Even as petitioner does not contest the CA's finding that respondent Villafuerte's duties as Member of the BAC Secretariat are ministerial in nature, it insists on holding respondent Villafuerte liable. **What petitioner is thus doing is effectively imposing additional duties upon respondent Villafuerte by the mere fact that he previously worked under the Office of Legal Affairs; that respondent Villafuerte's purported failure to go above and beyond his regular functions under the BAC Secretariat makes him equally responsible for the damage resulting to the government. This is untenable and simply unfair.** While eagerness in public service is indeed ideal, there is simply no basis in fact to find respondent Villafuerte liable for not examining each and every document and on the basis of which make an independent assessment of the qualifications of bidders — when, as a member only of the BAC Secretariat, he is merely charged with the custody thereof. **To be certain, an opportunity to examine documents does not, by any means, impose a mandatory duty to examine the same.**

Neither can dishonesty or conduct prejudicial to the service be attributed to respondent Villafuerte by the mere fact that he

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[48] *Id.* at 64-66.

[49] *Id.* at 42-43.

[50] *Id.* at 42.

drafted Negotiation Committee Resolution No. 2009-04 recommending the award of the contract to MAPTRA as a sole proprietorship, notwithstanding the fact that it was apparently issued a Certificate of Incorporation on June 10, 2009, or five (5) days prior to the June 15, 2009 negotiations leading to the issuance of Negotiation Committee Resolution No. 2009-04. Petitioner specifically posits that respondent Villafuerte, who was present in the June 15, 2009 negotiations, effectively consented to the irregularities attending the procurement process due to his knowledge that MAPTRA represented itself as a sole proprietorship despite being incorporated a few days earlier.

The Court disagrees; without more, such bare circumstance does not qualify as substantial evidence that respondent Villafuerte was guilty of any impropriety and therefore administratively liable. No deliberate intention to mislead the Government in pursuance of a larger conspiracy can be derived from the mere fact that there was a purported error in designating MAPTRA either as a sole proprietorship or a corporation. In the first place, as summarized in the OMB Resolution itself, the Negotiation Committee, which is in charge of evaluating the eligibility of MAPTRA, had already made a finding thereon:

> 30. In the evaluation of the eligibility of MAPTRA Sole Proprietorship, the Minutes of the Negotiation states, inter alia, that the eligibility and technical documents submitted by said entity are all in order and conforming with the requirements of the Committee, thus:
>
> > [T]he Negotiation Committee called on the second proponent which is MAPTRA. The Chairman instructed MAPTRA's representative to hand over their Eligibility, Technical and Financial documents to the Secretariat and TWG. **After a thorough checking by the BAC Legal and TWG on the Eligibility and Technical documents, it was found to be all in order and conforming with the requirements by the Committee,** hence the opening of its financial proposal. x x x[51] (Emphasis supplied)

Thus, as a mere Member of the BAC Secretariat, respondent Villafuerte had no compelling reason to evaluate MAPTRA's

[51] *Id.* at 125.

eligibility all over again while drafting the pertinent documents, especially as such is not even a part of his duties. Further in this regard, the Court finds respondent Villafuerte's explanation to have sufficiently clarified the matter:

> 7.18. It should herein be emphasized, that among the papers and documents PSSUPT Detran gave to herein Respondent are the incorporation papers of MAPTRA **which was not presented during the negotiation conference conducted on 15 June 2009.**Apparently, MAPTRA was in the process of incorporation during the period of negotiation. It is relevant to state, however, that it appears from the documents that MAPTRA maintained the same business facilities, address, and continued to engage in the same line and kind of business as the sole proprietorship.
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> 7.19. **Since it was more than two (2) weeks from 15 June 2009, the date of the negotiation conference, that the Respondent was informed that after deliberating the matter the NHQ-BAC awarded the supply contract to MAPTRA and the pertinent documents were given to him, the Respondent presumed that the NHQ-BAC through the Technical Working Group (TWG) already conducted verification of the documents submitted by MAPTRA.** The Minutes of the 15 June 2009 negotiation conference shows that members of the BAC TWG were present, namely: *Police Chief Inspector Cherry M. Fajardo, Police Chief Inspector Maria Josefina Recometa, SPO3 Ma. Linda A. Padojinog, and NUP Ruben S. Gongona.*
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> 7.20. Further, considering that the NHQ-BAC must have already taken all the MAPTRA documents into consideration, including the legal, financial and technical aspects thereof, when they deliberated on the award made to MAPTRA, as well as the fact that the Respondent is not aware of any prohibition thereon, he proceeded in drafting the required documents as he was commanded to do. Thus, when Respondent drafted the Supply Contract, he indicated therein that MAPTRA is a corporation as can be gleaned from the documents subsequently given to him by his superior officer.[52] (Emphasis supplied)

Further on this matter, Justice Leonen, in his dissenting opinion, opines that respondent Villafuerte should be held liable

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[52] *Id.* at 299-300.

considering that he is a member of the bar.[53] He argues that respondent Villafuerte's claim of performing ministerial duties is untenable as having administrative or ministerial functions does not strip a lawyer of his ethical duties as embodied in the Code of Professional Responsibility (CPR).[54] Specifically, Justice Leonen argues that in the drafting of the subject documents, respondent Villafuerte was engaged in the practice of law as it entailed application of his legal knowledge, training, and experience.[55] Thus, Justice Leonen opines that respondent Villafuerte's duties could not have been ministerial as his legal training should have prompted him as to the impropriety of the contract and that his purported failure to advise his superiors of irregularities rendered him liable.[56]

The Court cannot accept the foregoing ratiocination of Justice Leonen. While it may be true that a lawyer cannot, at his convenience, shed himself of his ethical duties as a member of the legal profession, holding him accountable for alleged violations of the CPR must be done in strict observance of established procedure. Here, while there is an apparent intersection between respondent Villafuerte's duties as Member of the BAC Secretariat and his duties as a member of the bar, the Court cannot hold him liable for violations of the latter as he was never properly charged for the same nor was he given the opportunity to respond to any such charges. The two offices that respondent Villafuerte occupy have separate and distinct duties and functions and are governed by entirely different rules. Thus, to insist on penalizing him for acts done in violation of one office despite being charged for violation of the other — no matter how patent the infraction — would infringe upon the most basic requirement of due process.

More importantly, there is nothing explicit in the statutory duties of the BAC Secretariat that would require respondent

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[53] *J.* Leonen, Dissenting Opinion, p. 2.

[54] *Id.*

[55] *Id.* at 3.

[56] *Id.*

Villafuerte to further examine the findings of the Negotiation Committee, which is the body charged with evaluating the qualifications of MAPTRA. That respondent Villafuerte had incidentally applied his legal knowledge and training does not discount the fact that he drafted the contested documents purely under the instructions of his superiors — not as a result of any exercise of discretion on his part. Such circumstance undeniably points to the conclusion that his duties are only ministerial in nature.

Again, it is untenably and simply unfair to effectively impose additional duties upon respondent Villafuerte by the mere fact that he is a lawyer so that his purported failure to go above and beyond his regular functions under the BAC Secretariat makes him part of a conspiracy to defraud the government. To reiterate, there is simply no basis to find respondent Villafuerte liable for not examining each and every document and on the basis of which make an independent assessment of the qualifications of bidders — when, as a member only of the BAC Secretariat, he is merely charged with the custody thereof.

All told, the Court is not prepared to punish respondent Villafuerte for merely discharging the ministerial functions of his office as Member of the BAC Secretariat, especially when such acts were made pursuant to the instructions of his superiors. Without more, and there being absolutely no substantial evidence existing from the records to hold respondent Villafuerte liable for either Serious Dishonesty or Conduct Prejudicial to the Best Interest of the Service, the judgment here can be no other than total exoneration.

A final note.

The Office of the Ombudsman is, by special designation of the Constitution, the "protector of the people."[57] As such, the Constitution has bequeathed upon it a unique arsenal of powers to investigate any and all acts or omissions of public officers that appear to be illegal, unjust, improper, or inefficient.[58] As

[57] 1987 CONSTITUTION, Art. XI, Sec. 12.

[58] *Id.*, Art. XI, Sec. 13(1).

well, it is empowered to impose penalties in the exercise of its administrative disciplinary authority.[59] In this regard, while the nature of its functions is largely prosecutorial, the Office of the Ombudsman is not, by any means, exempted from upholding the fundamental rights of all citizens as safeguarded by the Constitution. This was stressed by the Court in *Morales, Jr. v. Carpio Morales:*[60]

> x x x [T]he Ombudsman's duty is not only to prosecute but, more importantly, to **ensure that justice is served.** This means determining, at the earliest possible time, whether the process should continue or should be terminated. The duty includes using all the resources necessary to prosecute an offending public officer where it is warranted, as well as to refrain from placing any undue burden on the parties in the case, or government resources where the same is not.[61]

Following the pronouncements in *Morales, Jr.*, the Ombudsman is thus reminded to exercise the utmost circumspection in its own pursuit of justice. It must be stressed that it is not prosecuting ordinary citizens, but public servants who play instrumental roles in our system of government, regardless of rank. In this regard, to stubbornly pursue baseless cases against public officers not only places an unnecessary burden upon their person, but also ultimately hampers the effective dispensation of government functions due to the unique positions that they occupy. The responsibility of the Ombudsman is made even greater given that a decision imposing the penalty of dismissal is immediately executory and is not stayed by a pending appeal:

> Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a

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[59] *Office of the Ombudsman v. Apolonio,* 683 Phil. 553, 563 (2012).

[60] 791 Phil. 539 (2016).

[61] *Id.* at 555.

verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer.[62] (Emphasis supplied)

In the same vein, it should be emphasized, following the cited provision, that the CA has a concomitant responsibility to ensure that, in case of exoneration, such a decision must perforce be immediately executory, notwithstanding an appeal that may be lodged by the Ombudsman with the Court. The Court finds such rule necessary to fulfill the interests of justice and fairness, given that not only the livelihoods of our public servants are at stake, but likewise the efficient operations of government as a whole.

All told, inasmuch as the Office of the Ombudsman enjoys independence, it cannot and should not lose sight of our laws, which it is bound to uphold and obey.[63] The Ombudsman is as much the protector of the innocent as it is the sentinel of the integrity of the public service; the zeal of prosecution must, at

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[62] RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN, Rule III, Sec. 7, as amended by Administrative Order No. 17 dated September 15, 2003.

[63] *Presidential Ad Hoc Fact-Finding Committee on Behest Loans v. Desierto*, 664 Phil. 16, 30 (2011).

all times, be tempered with evidence. In this case, the cavalier attitude of the Ombudsman in distilling the facts and meting out the most severe penalty of dismissal cannot go unnoticed; the dismissal of an officer based on nothing but conjecture and a talismanic invocation of conspiracy is, aside from being manifestly unjust, a gross disservice to its mandate. To be sure, the cleansing of our ranks cannot be done at the expense of a fair and just proceeding.

WHEREFORE, premises considered, the instant Petition is **DENIED.** The Decision dated January 28, 2015 and Resolution dated August 3, 2015 of the Court of Appeals in CA-G.R. SP. Nos. 127757 and 127801 are hereby **AFFIRMED.**

Accordingly, this Decision shall be immediately executory insofar as the reinstatement of P/Supt. Ermilando O. Villafuerte to his former position is concerned, which shall be without loss of seniority rights and with payment of backwages and all benefits which would have accrued as if he had not been illegally dismissed, following Section 58 of the 2017 Rules on Administrative Cases in the Civil Service.[64]

SO ORDERED.

Leonardo-de Castro, C.J., Peralta, Bersamin, del Castillo, Perlas-Bernabe, Tijam, Reyes, A. Jr., and *Reyes, J. Jr., JJ.,* concur.

Leonen, J., dissents, see dissenting opinion.

Jardeleza and *Gesmundo, JJ.,* no part.

Carpio, J., on official leave.

DISSENTING OPINION

LEONEN, *J.*:

I refuse to believe that the accused in this case was a mere unthinking bureaucrat who had no duty except to draft documents.

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[64] CSC Resolution No. 1701077, promulgated on July 3, 2017.

I believe that as a lawyer, he had the competence to know when there was a defect in the procedure. As a public officer, he was duty bound to exercise utmost responsibility to ensure that powerful individuals did not abuse their positions.

I dissent that he should be acquitted.

Respondent P/Supt. Ermilando O. Villafuerte, in his Comment, admits drafting only the following:

> a) Negotiation Committee Resolution No. 2009-04 entitled "Recommending the Award of Contract and Purchase Order to Manila Aerospace Products Training (MAPTRA) for the Delivery of One (1) Fully Equipped and Two (2) Standards Light Police Operational Helicopter All Brand New Worth One Hundred Four Million Nine Hundred Eight-Five Thousand Pesos (₱104,985,000.00) Inclusive of All Taxes, Imports, Duties, and Charges";
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> b) NHQ-BAC Resolution No. 2009-36 entitled "Affirming the Recommendation of the Negotiation Committee to Award the Supply Contract and Purchase Order to Manila Aerospace Products Training (MAPTRA) for the Delivery of One (1) Fully-equipped and Two (2) Standard Light Police Operational Helicopter All Brand New Worth One Hundred Four Million Nine Hundred Eight-Five Thousand Pesos (₱104,985,000.00)";
>
> c) Supply Contract Between the PNP and MAPTRA. The Supply Contract was eventually executed by and between PDIR Luizo C. Ticman, who signed for the PNP, and the representative of MAPTRA, Mr. Larry B. De Vera. The said contract was likewise approved and signed by Police Director General Jesus Verzosa, Chief, PNP.
>
> d) Notice to Proceed addressed to Mr. Larry B. de Vera, President of MAPTRA.[1]

The *ponencia* sweepingly declared that "[n]one of the aforesaid documents suggest that respondent Villafuerte had a material role in the awarding of the contract to [Manila Aerospace Products Trading (MAPTRA)]."[2] Scrutiny of the documents is indispensable. As the documents do not appear in the records

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[1] *Rollo,* p. 299.

[2] *Ponencia,* p. 9.

of this case, this Court turns to the findings of fact of the Ombudsman in its Joint Resolution[3] in OMB-C-C-11-0758-L and OMB-C-A-11-0758-L to examine their contents.

As to Negotiation Committee Resolution No. 2009-04, the Ombudsman found:

> [T]he Negotiation Committee, in its Resolution 2009-04, recommended the award of contract and purchase order to MAPTRA Sole Proprietorship, for the delivery of one (1) fully equipped and two (2) standard LPOHs, all brand new, worth ₱104,985,000.00. It stated, among others, that the proposal of MAPTRA was acceptable because the helicopters they would deliver were consistent with the NAPLOCOM approved specifications; the total price quoted was within the [Approved Budget for the Contract]; and MAPTRA was a legally, technically, and financially capable supplier of helicopters since it has been engaged in the business for so many years with available and existing service facilities.[4]

The last statement alone was found to be false. According to the Ombudsman, the irregularities were conspicuous in the very documents submitted to the Bids and Awards Committee:

> 32. However, the documents pertaining to the completed transactions of MAPTRA Sole Proprietorship indicate that it had so far supplied only one unit of helicopter while the rest of its transactions involved the sale of spare parts and maintenance, thus:

Corporation/ Company	**Nature of Contract**	**Amount**
DPWH	Sale of spare parts	Php3,068,963.66
Allied Banking Corporation	Sale of spare parts/ maintenance	Php9,314,983.42
Philippine Navy	Sale of helicopter (one [1] unit Rotary Wing Trainer Aircraft in 2007)	PHP15,295,000.00
ABS-CBN	Maintenance	USD348,099.60
Tanduay Distilleries, Inc.	Sale of spare parts	Php2,742,604

[3] *Rollo,* pp. 74-215.

[4] *Id*. at 125.

33. Further, MAPTRA Sole Proprietorship's single largest contract and the only similar contract with that of the PNP was only for ₱15,295,000.00.

34. Likewise, the Independent Auditor's Report with Balance Sheets submitted by MAPTRA reveals that its "Current Assets" in 2007 and and 2008 were ₱14,180,600.00 and ₱11,594,832.00, respectively, and that its "Current Liabilities" in said years were ₱13,803,844.00 and ₱12,043,260.00, respectively.

35. MAPTRA Sole Proprietorship or MAPTRA-Corporation had not submitted a commitment from a licensed bank to extend to it a credit line if awarded the contract. Neither did it submit a cash deposit certificate in an amount which is at least equal to ten percent (10%) of the ₱105,000,000.00 ABC, or ₱10,500,000.00.[5]

By this alone, it is inconceivable that respondent, who prepared the Negotiation Committee Resolution No. 2009-04 and under whose custody the supplier's financial documents were, had no hand in the anomaly.

The NHQ-BAC Resolution No. 2009-36 "affirmed the recommendation of the Negotiation Committee to recommend to the [Philippine National Police] Chief the award of the supply contract to MAPTRA Sole Proprietorship."[6] The Supply Contract is where the parties obligated themselves to deliver to the Philippine National Police one *brand new* fully-equipped and two standard brand new Light Police Operational Helicopters for MAPTRA, and to pay MAPTRA the amount of ₱104,985,000.00 for the Philippine National Police.[7]

The Ombudsman found that the misrepresentations on the financial and technical capabilities of MAPTRA were exhibited in the documents they submitted to the Bids and Awards Committee.[8] To exculpate himself from the administrative charge, respondent argues that his duties as a legal officer of the Bids

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

[6] *Id*. at 127.

[7] *Id*.

[8] *Id*. at 126-129.

and Awards Committee Secretariat render him as performing ministerial duties. He insists that the Bids and Awards Committee Secretariat's functions are purely administrative in nature.

The duties of a lawyer, as embodied in the Code of Professional Responsibility, are not ministerial. I cannot agree with the *ponencia's* view that respondent's act of drafting the procurement documents was administrative and ministerial.

Respondent's invocation of the Bids and Awards Committee Secretariat's administrative functions is a poor excuse and a mockery of the profession he brandishes. As a member of the legal profession, respondent performs duties impressed with public interest. Having administrative and ministerial functions does not strip a lawyer of his ethical duties embodied in the Code of Professional Responsibility.

The first canon in the Code of Professional Responsibility instructs lawyers to "uphold the Constitution, obey the laws of the land and promote respect for law and for legal processes."[9] A lawyer must conduct himself with honesty and integrity in all his dealings.[10] Further, he must maintain "a high standard of legal proficiency, morality, honesty, integrity and fair dealing, and must perform their four-fold duty to society, the legal profession, the courts and their clients, in accordance with the values and norms embodied in the Code of Professional Responsibility."[11] The legal profession demands exacting standards from its members.

Respondent alleged that he was under the Office of the Legal Affairs of the Philippine National Police before he was assigned as the Legal Officer of the Bids and Awards Committee Secretariat as an additional duty.[12] According to him, taking

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[9] CODE OF PROFESSIONAL RESPONSIBILITY, Canon 1.

[10] *Villanueva v. Atty. Ishiwata,* 486 Phil. 1, 6 (2004) [Per *J.* Sandoval-Gutierrez, Third Division].

[11] *Luna v. Galarrita,* 763 Phil. 175 (2015) [Per *J.* Leonen, *En Banc*] citing *Jinon v. Jiz,* 705 Phil. 321 (2013) [Per *J.* Perlas-Bernabe, *En Banc*], *Molina v. Magat,* 687 Phil. 1 (2012) [Per *J.* Mendoza, Third Division].

[12] *Rollo,* p. 296.

custody of procurement documents and assisting in the management of the procurement process were among the Bids and Awards Committee Secretariat's official functions.[13]

In *Roxas v. Republic Estate Corporation,*[14] this Court defined a ministerial duty:

> A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and *without regard to the exercise of [one's] own judgment* upon the propriety or impropriety of the act done.[15] (Emphasis supplied)

A duty is ministerial when it does not require the exercise of discretion or judgment. Respondent is a high-ranking police officer and a lawyer. At its barest minimum, he is no stranger to the law. In preparing the Bids and Awards Committee resolutions and the supply contract in furtherance of the procurement, respondent made representations concerning MAPTRA's qualifications for which he must have reviewed the financial documents. This constituted practice of law and exercise of his judgment, entailing application of his legal knowledge, training, and experience.[16] His duty was not ministerial as his legal training prompted him of the impropriety of the task at hand.

Respondent contends that he relied in good faith in the documents which his superior presented to him and was "not aware of any prohibition thereon."[17] In preparing the Supply Contract, he claims that he indicated that "MAPTRA is a corporation, as can be gleaned from the documents."[18]

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[13] *Id.* at 306-307.

[14] G.R. Nos. 208205 & 208212, June 1, 2016 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/208205.pdf> [Per *J.* Leonen, Second Division].

[15] *Id.* at 20 citing *Teodosio v. Somosa, et al.*, 612 Phil. 858, 872-873 (2009) [*Per Curiam, En Banc*].

[16] *Cayetano v. Monsod,* 278 Phil. 235 (1991) [Per *J.* Paras, *En Banc*].

[17] *Rollo,* p. 300.

[18] *Id.*

Respondent is inconsistent. He cannot claim good faith in relying on the documents, unaware of an irregularity on its face, when he had foreknowledge of MAPTRA's ineligibility. In respondent's Comment before this Court, he claimed:

> It should herein be emphasized, that among the papers and documents PSSUPT Detran gave to herein Respondent are the incorporation papers of MAPTRA which was not presented during the negotiation conference conducted on 15 June 2009. Apparently, MAPTRA was in the process of incorporation during the period of negotiation. It is relevant to state, however, that it appears from the documents that MAPTRA maintained the same business facilities, address, and continued to engage in the same line and kind of business as the sole proprietorship.[19]

Respondent's narration of facts in his Comment appears to be quoted from his Petition for Review before the Court of Appeals. Curiously, he omitted a damning statement:

> It should herein be emphasized that, among the papers and documents PSSUPT Detran gave to herein Respondent are the incorporation papers of MAPTRA which was not presented during the negotiation conference conducted on 15 June 2009. ***In fact, [respondent] recalls that on 15 June 2009, MAPTRA claimed that it is a sole proprietorship owned by Mr. Larry B. De Vera.*** Apparently, MAPTRA was in the process of incorporation during the period of negotiation, ***of which fact, [respondent] is not certain if the NHQ-BAC was apprised at the time.*** It is relevant to state, however, that it appears from the documents that MAPTRA maintained the same business facilities, address, and continued to engage in the same line and kind of business as the sole proprietorship.[20] (Emphasis supplied.)

MAPTRA's Certification of Incorporation presented to respondent indicated that it was issued on June 10, 2009.[21] This is contrary to what he personally heard from a MAPTRA representative. Not only was respondent in attendance in the negotiation conference on June 15, 2009, but more importantly,

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[19] *Id.* at 299-300.

[20] *Id.* at 229.

[21] *Id.* at 124.

respondent ***knew*** of MAPTRA's ineligibility and the apparent falsehood in the statement in the document he prepared. At minimum, there was an irregularity staring right at him. It seems that respondent ***willfully*** disregarded the facts before him and looked the other way. His foreknowledge of MAPTRA's ineligibility as a supplier warranted an inquiry into the transaction for which he was preparing the documents. He must have, at the very least, informed his superior of the patent irregularity.

As a defense, respondent harps on the Bids and Awards Committee Secretariat's administrative functions as defined by law. However, respondent's specific function does not appear on record. Nonetheless, it would be the height of ignorance to claim that he was not obligated as the Bids and Awards Committee Secretariat's *legal officer* to inform his superior of the *manifest legal infirmities* in the contract. Clearly, respondent was remiss in his basic duty, which, to my mind, does not have to be specifically delineated for him.

In effect, what respondent claims and the majority is prepared to accept is that he drafted the procurement documents without verifying the representations and statements declared there despite personal knowledge of their falsehood. As it was his superior's instruction, he prepared the documents unmindful of the supplier's financial documents under his custody and for his perusal. In conclusion, the majority is acquitting respondent high-ranking police officer-lawyer because his official function was to merely keep the supplier's documents safe and to unthinkingly prepare the procurement documents as instructed. I cannot condone this.

Respondent cannot claim failure to exercise judgment under the circumstances or worse, ignorance of the law he had sworn to obey. He failed to conduct himself as a lawyer according to the best of his knowledge and discretion, contrary to the solemn oath he had sworn to be admitted into the legal profession.

Moreover, respondent is a high-ranking public official.[22]

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[22] Rep. Act No. 6713, Sec. 3 provides:

"Public Officials" includes elective and appointive officials and employees,

"Public office is a public trust."[23] It involves a delegation of sovereign functions to an individual for the benefit of the public.[24] No less than the Constitution demands a public officer's "utmost responsibility, integrity, loyalty, and efficiency"[25] in the performance of one's duties. This, respondent failed to do.

Respondent cannot hide behind his superior's alleged instruction to disavow liability. As a public official, he performed the sovereign function of being the legal officer of the Philippine National Police Bids and Awards Committee Secretariat. He served the interest of the public, and not his superior's. Inept legal work of a public official exposes the public to unnecessary risks and as in this case, blatant corruption.

Lawyers cannot disabuse themselves of their inescapable duties as embodied in the Code of Professional Responsibility. They must perform their duties, at all times and in whatever capacity, in accordance with the dictates of the legal profession. To exculpate respondent from the administrative charge against him in the guise of having administrative and ministerial functions is to lessen the confidence reposed by the public in the fidelity, honesty, and integrity of the legal profession.

In *LRTA v. Salvaña*,[26] this Court discussed the administrative charge of serious dishonesty:

> Dishonesty has been defined "as the 'disposition to lie, cheat, deceive, or defraud; untrustworthiness, lack of integrity' . . . ." Since the utmost integrity is expected of public servants, its absence is not only frowned upon but punished severely.
>
> Section 52, Rule IV of the URACCS provides:

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permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

[23] CONST., Art. XI, Sec. 1.

[24] *Government v. Springer*, 50 Phil. 259 (1927) [*J.* Malcolm, Second Division].

[25] CONST., Art. XI, Sec. 1.

[26] 736 Phil. 123 (2014) [Per *J.* Leonen, *En Banc*].

> Section 52. *Classification of Offenses.* — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following are grave offenses with their corresponding penalties:
>
> 1. Dishonesty — 1st Offense — Dismissal
>
> . . . . . .

In *Remolona v. Civil Service Commission,* this court explained the rationale for the severity of the penalty:

> It cannot be denied that dishonesty is considered a grave offense punishable by dismissal for the first offense under Section 23, Rule XIV of the Rules Implementing Book V of Executive Order No. 292. And the rule is that dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of duty by the person charged. **The rationale for the rule is that if a government officer or employee is dishonest or is guilty of oppression or grave misconduct, even if said defects of character are not connected with his office, they affect his right to continue in office. The Government cannot tolerate in its service a dishonest official, even if he performs his duties correctly and well, because by reason of his government position, he is given more and ample opportunity to commit acts of dishonesty against his fellow men, even against offices and entities of the government other than the office where he is employed; and by reason of his office, he enjoys and possesses a certain influence and power which renders the victims of his grave misconduct, oppression and dishonesty less disposed and prepared to resist and to counteract his evil acts and actuations.**[27] (Emphasis in the original, citations omitted)

The Rules on the Administrative Offense of Dishonesty defines dishonesty as "the concealment or distortion of truth, which shows lack of integrity or a disposition to defraud, cheat, deceive

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

or betray and an intent to violate the truth."[28] Dishonesty is serious when it "causes serious damage and grave prejudice to the government."[29] Undoubtedly, the millions of public funds involved in this illegal dealing brought grave prejudice to the government.

A conduct prejudicial to the best interest of the service is "any misconduct 'which need not be related or connected to the public officers' official functions but tends to tarnish the image and integrity of his/her public office.'"[30] There is no need to belabor this point.

The "old boys club" is often used as metaphor for the existence of powerful but corrupt leadership in an agency. It describes an atmosphere where all public officers look the other way rather than evolve the courage to stand up and call attention to anomalies in their office. The "old boys club" syndrome survives on the reality that the impoverished masses who stand to benefit from the weeding out of corruption are not proximate. The "old boys club" thrives on both fear from the powerful and the institutionalization of powerlessness on the part of the other public offices in that office.

I disagree that a police superintendent could not have mustered the courage to do his constitutional and statutory duty to serve the people with "utmost responsibility, integrity, loyalty, and efficiency." Respondent saw that there was something amiss. He saw the anomaly, yet he chose to do nothing. In effect, he conspired.

To allow respondent to go free without liability is contrary to the value of his office and his rank. It is to allow the "old boys club" to continue.

Thus, I dissent.

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[28] CSC Res. No. 06-0538, Sec. 1.

[29] CSC Res. No. 06-0538, Sec. 3.

[30] *Abos v. Borromeo IV,* 765 Phil. 10 (2015) [Per. *J.* Leonen, Second Division] citing *Largo v. Court of Appeals,* 563 Phil. 293 (2007) [Per *J.* Ynares-Santiago, *En Banc*].

EN BANC

[G.R. No. 230651. September 18, 2018]

ALLIANCE OF QUEZON CITY HOMEOWNERS' ASSOCIATION, INC., *petitioner, vs.* **THE QUEZON CITY GOVERNMENT, represented by HON. MAYOR HERBERT BAUTISTA, QUEZON CITY ASSESSOR'S OFFICE, and QUEZON CITY TREASURER'S OFFICE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; DOCTRINES OF ADMINISTRATIVE EXHAUSTION AND HIERARCHY OF COURTS; REMEDIES IN RELATION TO REAL PROPERTY TAX ASSESSMENTS OR TAX ORDINANCES UNDER THE LOCAL GOVERNMENT CODE (LGC).— The exhaustion of administrative remedies doctrine requires that before a party may seek intervention from the court, he or she should have already exhausted all the remedies in the administrative level. The Local Government Code (LGC) provides two (2) remedies in relation to real property tax assessments or tax ordinances. These are: (1) Sections 226 and 252 thereof which allow a taxpayer to question the reasonableness of the amount assessed before the city treasurer then appeal to the Local Board of Assessment Appeals; and (2) Section 187 thereof which allows an aggrieved taxpayer to question the validity or legality of a tax ordinance by duly filing an appeal before the Secretary of Justice before seeking judicial intervention. In the present case, Alliance admitted that these administrative remedies were not complied with, and that the petition was immediately filed before the Court.

2. ID.; ID.; ID.; EXCEPTIONS; ONE EXCEPTION IS WHEN STRONG PUBLIC INTEREST IS INVOLVED; CASE AT BAR.— [T]he rule on administrative exhaustion admits of exceptions, one of which is **when strong public interest is involved.** Although a petitioner's failure to exhaust the required administrative remedies has been held to bar a petition in court, the Court has relaxed the application of this rule "in view of

the more substantive matters," as in this case. In particular, a local government unit's authority to increase the Fair Market Values (FMVs) of properties for purposes of local taxation is a question that indisputably affects the public at large. x x x While taxation is an inherent power of the State, the exercise of this power should not be unjust, excessive, oppressive, or confiscatory as explicitly prohibited under the LGC. As Alliance proffers, the alleged exorbitant increase in real property taxes to be paid based on the assailed Ordinance triggers a strong public interest against the imposition of excessive or confiscatory taxes. Courts must therefore guard the public's interest against such government action. Accordingly, the Court exempts this case from the rule on administrative exhaustion. Meanwhile, the hierarchy of courts doctrine prohibits parties from directly resorting to this Court when relief may be obtained before the lower courts. Nevertheless, this doctrine is not an iron-clad rule; it also admits of exceptions, such as when the case involves matters of transcendental importance. x x x [that] strict and rigid application, which would result in technicalities that tend to frustrate, rather than promote substantial justice, must always be eschewed."

3. ID.; CIVIL PROCEDURE; PARTIES; ONLY NATURAL OR JURIDICAL PERSONS, OR ENTITIES AUTHORIZED BY LAW MAY BE PARTIES IN A CIVIL ACTION.— The Rules of Court mandates that only natural or juridical persons, or entities authorized by law may be parties in a civil action. Non-compliance with this requirement renders a case dismissible on the ground of **lack of legal capacity to sue,** which refers to "**a plaintiff's general disability to sue,** such as on account of minority, insanity, incompetence, **lack of juridical personality** or any other general disqualifications of a party." Jurisprudence provides that **an unregistered association,** having no separate juridical personality, **lacks the capacity to sue in its own name.** In this case, Alliance admitted that it has no juridical personality, considering the revocation of its SEC Certificate of Registration and its failure to register with the HLURB as a homeowner's association. x x x It is noteworthy to mention that in the case of *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City,* the Court decided to give due course to the petition despite the lack of legal capacity to sue of petitioner SPARK (also an unincorporated association

like Alliance) because individuals or natural persons joined as co-petitioners in the suit, unlike in the present case.

APPEARANCES OF COUNSEL

Bernaldo Directo & Po Law Offices for petitioner.
Office of the City Attorney, Quezon City for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This petition for *certiorari,* prohibition, and *mandamus*[1] with a prayer for the issuance of a temporary restraining order (TRO) and/or writ of preliminary injunction assails the constitutionality and legality of Quezon City (QC) Ordinance No. SP-2556, Series of 2016,[2] otherwise known as "An Ordinance Approving the Schedule of Fair Market Value of Lands and Basic Unit Construction Cost for Buildings, and Other Structures for the Revision of Real Property Assessments in Quezon City, Pursuant to the Provisions of the Local Government Code of 1991 [(LGC)] [Republic Act No. (RA) 7160],[3] and its Implementing Rules and Regulations, and For Other Purposes" (2016 Ordinance). The petition was filed against respondents the QC Government, represented by Mayor Herbert Bautista, the QC Assessor's Office, and the QC Treasurer's Office (respondents).

The Facts

In 2010, the Department of Interior and Local Government and the Department of Finance (DOF) issued Joint Memorandum Circular No. 2010-01,[4] directing all local government units to

[1] *Rollo,* pp. 3-12.

[2] Enacted on December 5, 2016. *Id.* at 22-108.

[3] ENTITLED "THE LOCAL GOVERNMENT CODE OF THE PHILIPPINES" (January 1, 1992).

[4] *Rollo,* pp. 253-255. Signed by then DOF Secretary Cesar V. Purisima and then Department of Interior and Local Government Secretary (now deceased) Jesse M. Robredo.

implement Section 219[5] of the LGC, which requires assessors to revise the real property assessments in their respective jurisdictions every three (3) years. In the said Memorandum, the assessors were also ordered to: *(a)* require all owners or administrators of real properties, prior to the preparation of the revised schedule of Fair Market Values (FMV), to file sworn statements declaring the true value of their properties and the improvements thereon; and *(b)* comply with the DOF issuances relating to the appraisal and assessment of real properties, particularly, DOF Local Assessment Regulation No. 1-92, DOF Department Order No. 37-09 (Philippine Valuation Standards), and DOF Department Order No. 2010-10 (Mass Appraisal Guidebook).[6] Hence, given that the last reevaluation of real property assessment values in QC was made way back in 1995 under Ordinance No. SP-357, Series of 1995 (1995 Ordinance), which thus rendered the values therein outdated,[7] the QC Assessor prepared a revised schedule of FMVs and submitted it to the *Sangguniang Panlungsod* of QC for approval pursuant to Section 212 of the LGC.[8]

On December 5, 2016, the *Sangguniang Panlungsod* of QC enacted the assailed 2016 Ordinance, which: *(a)* approved the revised schedule of FMVs of all lands and Basic Unit Construction Cost for buildings and other structures, whether for residential, commercial, and industrial uses;[9] and *(b)* set the new assessment levels at five percent (5%) for residential

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[5] The provision reads:

Section 219. *General Revision of Assessments and Property Classification.* – The provincial, city or municipal assessor shall undertake a general revision of real property assessments within two (2) years after the effectivity of this Code and every three (3) years thereafter.

[6] See *rollo*, p. 254.

[7] See *id*. at 23.

[8] See *id*. at 24. As prompted by Joint Memorandum Circular No. 2010-01, the QC Assessor prepared the revised FMV schedule jointly with the city assessors of the Cities of Manila, Caloocan, and Pasay.

[9] See *id*.

and fourteen percent (14%) for commercial and industrial classifications.[10] The revised schedule increased the FMVs indicated in the 1995 Ordinance to supposedly reflect the prevailing market price of real properties in QC.[11] The 2016 Ordinance was approved on December 14, 2016, and pursuant to Section 6 thereof, the General Revision of Real Property Assessment for lands shall become demandable beginning January 1, 2017, while that for Buildings and other Structures shall take effect beginning 2018.[12]

On April 7, 2017, petitioner Alliance of Quezon City Homeowners' Association, Inc. (Alliance), allegedly a non-stock, non-profit corporation,[13] filed the present petition, praying that: *(a)* a TRO be issued to restrain the implementation of the 2016 Ordinance; *(b)* the said Ordinance be declared unconstitutional for violating substantive due process, and invalid for violating Section 130 of the LGC; and (*c*) the tax payments made by the QC residents or individuals based on the 2016 Ordinance's revised schedule of FMVs be refunded.[14]

In the petition, Alliance argued that the 2016 Ordinance should be declared unconstitutional for violating substantive due process, considering that the increase in FMVs, which resulted in an increase in the taxpayer's base, and ultimately, the taxes to be paid, was unjust, excessive, oppressive, arbitrary, and confiscatory as proscribed under Section 130 of the LGC.[15]

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[10] See *id*. at 97. Section 4 a (1) of the Ordinance reads: "1. Assessment Level for Land – The City Assessor shall undertake the general revision of real property assessments pursuant to Section 1 hereof and shall apply the new assessment level of five percent (5%) for residential and fourteen percent (14%) for commercial and industrial classification, respectively, thereby amending Section 8 (a) of the 1993 Quezon City Revenue Code to determine the assessed value of the land."

[11] See *id*. at 23-24.

[12] *Id*. at 107-108. See also *id*. at 5.

[13] *Id*. at 4.

[14] See *id*. at 11.

[15] See *id*. at 9-10.

Moreover, it averred that the hike in the FMVs up to 500% of the previous values was arbitrary and has no factual basis because the 2016 Ordinance contains no standard or explanation on how the QC Assessor arrived at the new amounts in the Schedule of FMVs.[16]

Alliance further pointed out that there was no real consultation prior to the enactment of the 2016 Ordinance as required by law, noting that only a brief one (1)-day consultation hearing was held in November 2016 before the approval of the 2016 Ordinance on December 14, 2016. The short time frame from the consultation to the approval reveals that the proceedings were fast-tracked.[17]

It likewise argued that the abrupt effectivity of the 2016 Ordinance merely a month after its enactment, *i.e.*, from December 2016 to January 2017, is unreasonable as it compelled the QC residents to pay exorbitant real property taxes for the year 2017 without giving them sufficient time to prepare for the payment of the increased taxes.[18] Thus, the 2016 Ordinance is confiscatory because their inability to pay the real property taxes will result in their property being declared as delinquent, and thereafter, auctioned to the public.[19] This scenario also amounts to restraint of trade as applied to those properties used in businesses.[20]

On April 18, 2017, the Court issued a TRO[21] against the implementation of the 2016 Ordinance and required respondents to file their comment.

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[16] See *id*. at 8-9.

[17] See *id*. at 5.

[18] See *id*. at 10.

[19] *Id.*

[20] *Id*. at 9.

[21] *Id*. at 128-132. Signed by Deputy Clerk of Court Anna-Li R. Papa-Gombio.

In their Comment,[22] respondents countered that the petition is procedurally infirm because Alliance: *(a)* failed to exhaust its administrative remedies under the LGC, which were to question the assessments on the taxpayers' properties by filing a protest before the City Treasurer, as well as to assail the constitutionality of the 2016 Ordinance before the Secretary of Justice;[23] *(b)* violated the hierarchy of courts when it directly filed its petition before this Court; [24] *(c)* has no legal capacity to sue since its Certificate of Registration as a corporation was revoked by the Securities and Exchange Commission (SEC) in an Order dated February 10, 2004,[25] and it has no separate juridical personality as a homeowners' association due to its non-registration with the Housing and Land Use Regulatory Board (HLURB);[26] and *(d)* is not a real party-in-interest because it does not own any real property in QC to be affected by the 2016 Ordinance.[27]

On the substantive aspect, respondents posited that the 2016 Ordinance complied with all the formal and substantive requisites for its validity.[28] In particular, they claimed that twenty-nine (29) public consultations were conducted in barangay assemblies throughout the six (6) districts of QC; in fact, Alliance's President, Gloria Soriano, was present and had actively participated in two (2) of those assemblies.[29]

Further, respondents maintained that the resulting increase in tax due was reasonable because the increase in FMVs was tempered by the decrease in the assessment levels to minimize impact on the taxpayers.[30] They claimed that the assessment

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[22] Dated June 16, 2017. *Id*. at 168-187.

[23] See *id*. at 172-176.

[24] *Id*. at 176.

[25] *Id*. at 169.

[26] *Id*. at 169-170.

[27] *Id*. at 171.

[28] See *id*. at 177-183.

[29] *Id*. at 178.

[30] *Id*. at 181.

levels were reduced from eighteen percent (18%) to five percent (5%) for residential classification, and from forty-five (45%) to fourteen (14%) for commercial and industrial classifications.[31]

They also stressed that the QC Assessor arrived at the new FMVs in the 2016 Ordinance using the approaches specified in DOF Local Assessment Regulation No. 1-92, which prescribes guidelines in assessing real properties.[32] Respondents likewise averred that the assessment was not fast-tracked as it underwent an immense study for three (3) years from 2013 and was subjected to numerous public consultations.[33] They emphasized that the last adjustment in the schedule of FMVs was in 1995 and no revisions were made since then until the 2016 Ordinance was enacted.[34] They pointed out that the huge leap in FMVs of lands after twenty-one (21) years was inevitable due to the interplay of economic and market forces, highlighted by significant infrastructure and real estate development projects, as well as the population growth in QC.[35] They further noted that the FMVs in the 2016 Ordinance are fair and equitable, considering that those values are even lower than the FMVs of QC's neighboring cities in Metro Manila, *i.e.*, Pasay, Caloocan, Manila, and Mandaluyong.[36]

On July 14, 2017, the Office of the Solicitor General (OSG) likewise filed its Comment,[37] arguing that the petition should be dismissed on the grounds of non-exhaustion of administrative remedies, non-observance of the hierarchy of courts, and lack of *locus standi*.[38] It further alleged that the 2016 Ordinance was valid because Alliance failed to: *(a)* overcome the

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[31] *Id.*

[32] See *id*. at 181-182.

[33] *Id*. at 184.

[34] *Id*. at 180.

[35] *Id.*

[36] *Id*. See also *id*. at 256.

[37] Dated June 28, 2017. *Id*. at 271-295.

[38] See *id*. at 276-285.

presumption of constitutionality; *(b)* show that the substantial increase in the assessed values of real properties violates the fundamental principles of taxation; *(c)* prove that the public hearing required before passing an ordinance was not complied with; and *(d)* submit evidence that the 2016 Ordinance was abruptly implemented. The OSG added that Alliance failed to demonstrate its clear legal right to enjoin the implementation of the subject ordinance.[39]

In the Reply,[40] Alliance argued, as regards its failure to exhaust administrative remedies, that: *first*, the remedy of payment under protest as provided for in Sections 229 and 252 of the LGC is inapplicable in this case because such remedy requires prior payment of taxes, which would be unfair and unreasonable on the part of its members who cannot afford to pay the increased taxes;[41] and *second*, the remedy of appeal to the Secretary of Justice would not have the effect of suspending the effectivity of the 2016 Ordinance.[42]

Alliance also contended that its petition raised only a question of law *(i.e.*, whether respondents gravely abused its discretion in increasing the FMVs up to 500% as contained in the 2016 Ordinance) which is cognizable by the Court.[43] In any event, it maintained that the petition is of transcendental importance warranting the relaxation of the doctrine on hierarchy of courts.[44]

Alliance further claimed that it has legal capacity to sue because it is merely representing its trustees and members who filed the petition in their own personal capacities as taxpayers and residents of QC. In fact, these trustees and members are the ones who will suffer personal and substantial injury by the implementation of the 2016 Ordinance.[45]

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[39] See *id*. at 285-293.

[40] Dated October 18, 2017. *Id*. at 329-348.

[41] See *id*. at 333.

[42] *Id*. at 335.

[43] *Id*. at 333.

[44] See *id*. at 336.

[45] See *id*. at 330-331.

On the merits, Alliance posited that the 2016 Ordinance failed to comply with both the procedural and substantive requirements for a valid ordinance, considering that: *(a)* the alleged twenty-nine (29) public consultation/hearings were conducted without the required written notices as prescribed under Article 276 (b) of the LGC's Implementing Rules and Regulations;[46] *(b)* the 2016 Ordinance is unjust, excessive, oppressive, and confiscatory, and is not based on the taxpayer's ability to pay;[47] *(c)* it failed to comply with the assessment calendar prescribed under Section 2 of DOF Local Assessment Regulation No. 1-92;[48] and *(d)* there is no legal basis to increase the FMVs based on the latest market developments.[49]

The Issues Before the Court

The main issues before the Court are: (1) on the procedural aspects, whether or not the petition is infirm for violations of the doctrines of exhaustion of administrative remedies and hierarchy of courts, as well as Alliance's lack of legal capacity to sue; and (2) on the substantive aspect, whether or not the 2016 Ordinance is valid and constitutional.

The Court's Ruling

I. Doctrines of Administrative Exhaustion and Hierarchy of Courts.

The exhaustion of administrative remedies doctrine requires that before a party may seek intervention from the court, he or she should have already exhausted all the remedies in the administrative level.[50] The LGC provides two (2) remedies in relation to real property tax assessments or tax ordinances. These

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[46] See *id.* at 337-341.

[47] *Id.* at 342.

[48] *Id.*

[49] *Id.* at 343.

[50] *Maglalang v. Philippine Amusement and Gaming Corporation*, 723 Phil. 546, 556 (2013); citing *Public Committee of the Laguna Lake Development Authority v. SM Prime Holdings, Inc.*, 645 Phil. 324, 331 (2010).

are: (1) Sections 226 and 252[51] thereof which allow a taxpayer to question the reasonableness of the amount assessed before the city treasurer then appeal to the Local Board of Assessment Appeals;[52] and (2) Section 187[53] thereof which allows an

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[51] The provisions read as follows:

Section 252. *Payment under Protest.* — (a) No protest shall be entertained unless the taxpayer first pays the tax. There shall be annotated on the tax receipts the words "paid under protest." The protest in writing must be filed within thirty (30) days from payment of the tax to the provincial, city treasurer or municipal treasurer, in the case of a municipality within Metropolitan Manila Area, who shall decide the protest within sixty (60) days from receipt.

(b) The tax or a portion thereof paid under protest shall be held in trust by the treasurer concerned.

(c) In the event that the protest is finally decided in favor of the taxpayer, the amount or portion of the tax protested shall be refunded to the protestant, or applied as tax credit against his existing or future tax liability.

(d) In the event that the protest is denied or upon the lapse of the sixty-day period prescribed in subparagraph (a), the taxpayer may avail of the remedies as provided for in Chapter 3, Title II, Book II of this Code.

Section 226. *Local Board of Assessment Appeals.* — Any owner or person having legal interest in the property who is not satisfied with the action of the provincial, city or municipal assessor in the assessment of his property may, within sixty (60) days from the date of receipt of the written notice of assessment, appeal to the Board of Assessment Appeals of the province or city by filing a petition under oath in the form prescribed for the purpose, together with copies of the tax declarations and such affidavits or documents submitted in support of the appeal. (Underscoring supplied)

[52] In *City of Pasig v. Republic* (671 Phil. 791, 799-800 [2011]), the Court outlined the administrative procedure to question the correctness of an assessment, to wit:

Should the taxpayer/real property owner question the excessiveness or reasonableness of the assessment, Section 252 directs that the taxpayer should first pay the tax due before his protest can be entertained. There shall be annotated on the tax receipts the words "paid under protest." It is only after the taxpayer has paid the tax due that he may file a protest in writing within thirty days from payment of the tax to the Provincial, City or Municipal Treasurer, who shall decide the protest within sixty days from receipt. In no case is the local treasurer obliged to entertain the protest unless the tax due has been paid.

If the local treasurer denies the protest or fails to act upon it within the 60-day period provided for in Section 252, the taxpayer/real property owner

aggrieved taxpayer to question the validity or legality of a tax ordinance by duly filing an appeal before the Secretary of Justice before seeking judicial intervention. In the present case, Alliance admitted that these administrative remedies were not complied with, and that the petition was immediately filed before the Court.[54]

However, the rule on administrative exhaustion admits of exceptions,[55] one of which is **when strong public interest is involved.**

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may then appeal or directly file a verified petition with the (Local Board of Assessment Appeals (LBAA)] within sixty days from denial of the protest or receipt of the notice of assessment, as provided in Section 226 of R.A. No. 7160[.]

And, if the taxpayer is not satisfied with the decision of the LBAA, he may elevate the same to the [Central Board of Assessment Appeals (CBAA)], which exercises exclusive jurisdiction to hear and decide all appeals from the decisions, orders and resolutions of the Local Boards involving contested assessments of real properties, claims for tax refund and/or tax credits or overpayments of taxes. An appeal may be taken to the CBAA by filing a notice of appeal within thirty days from receipt thereof. (Underscoring supplied)

See also *Camp John Hay Development Corporation v. CBAA*, 718 Phil. 543, 556 (2013).

[53] The provision reads as follows:

Section 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings.* — x x x any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however,* That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally,* That **within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.** (Emphasis supplied)

[54] See *rollo*, p. 335.

[55] The exceptions include: (1) when the question raised is purely legal, (2) when the administrative body is in estoppel; (3) when the act complained of is patently illegal; (4) when there is urgent need for judicial intervention;

Although a petitioner's failure to exhaust the required administrative remedies has been held to bar a petition in court,[56] the Court has relaxed the application of this rule "in view of the more substantive matters,"[57] as in this case. In particular, a local government unit's authority to increase the FMVs of properties for purposes of local taxation is a question that indisputably affects the public at large. As for QC, the widespread effect of the 2016 Ordinance to its constituents is glaringly apparent, considering that QC has a land area of 16,112.8 hectares, which is almost one-fourth of the entire Metro Manila. Moreover, QC holds 23.3% of Metro Manila's total population.[58] While taxation is an inherent power of the State, the exercise of this power should not be unjust, excessive, oppressive, or confiscatory as explicitly prohibited under the LGC. As Alliance proffers, the alleged exorbitant increase in real property taxes to be paid based on the assailed Ordinance triggers a strong public interest against the imposition of excessive or confiscatory taxes.[59] Courts must therefore guard the public's interest against such government action. Accordingly, the Court exempts this case from the rule on administrative exhaustion.

Meanwhile, the hierarchy of courts doctrine prohibits parties from directly resorting to this Court when relief may be obtained before the lower courts.[60] Nevertheless, this doctrine is not an

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(5) when the claim involved is small; (6) when irreparable damage will be suffered, (7) **when there is no other plain, speedy and adequate remedy,** (8) **when strong public interest is involved;** (9) when the subject of controversy is private land; and (10) in *quo-warranto* proceeding. *(Lopez v. City of Manila,* 363 Phil. 68, 82 [1999]).

[56] See *Hagonoy Market Vendor Association v. Municipality of Hagonoy, Bulacan,* 426 Phil. 769 (2002); and *Reyes v. Court of Appeals,* 378 Phil. 232 (1999).

[57] See *Alta Vista Golf and Country Club v. City of Cebu,* 778 Phil. 685, 703 (2016); and *Cagayan Electric Power and Light Co., Inc. v. City of Cagayan de Oro,* 698 Phil. 788, 799 (2012).

[58] See Quezon City Statistics as of 2017 < http://quezoncity.gov.ph/index.php/facts-and-figures?format=pdf> (visited July 27, 2018).

[59] See *rollo,* pp. 334-335 and 342-343.

[60] See *Chiquita Brands, Inc. v. Omelio,* G.R. No. 189102, June 7, 2017.

iron-clad rule; it also admits of exceptions,[61] such as when the case involves matters of transcendental importance. In this case, Alliance argues that the implementation of the 2016 Ordinance will directly and adversely affect the property interests of around "3,085,786 million" residents of QC.[62]

In *Ferrer, Jr. v. Bautista (Ferrer, Jr.)*,[63] the Court allowed the direct resort to it, noting that the challenged ordinances would "adversely affect the property interests of all paying constituents of (QC],"[64] and that it would serve as a test case for the guidance of other local government units in crafting ordinances. It added that these circumstances allow the Court to set aside the technical defects and take primary jurisdiction over the petition, stressing that "[t]his is in accordance with the well-entrenched principle that rules of procedure are not inflexible tools designed to hinder or delay, but to facilitate and promote the administration of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate, rather than promote substantial justice, must always

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[61] The exceptions to the hierarchy of courts doctrine were enumerated in *The Dioceses of Bacolod v. Commission on Elections* (751 Phil. 301, 331-335 [2015]), as follows: (1) there are genuine issues of constitutionality that must be addressed at the most immediate time; (2) **the issues involved are of transcendental importance,** such that the imminence and clarity of the threat to fundamental constitutional rights outweigh the necessity for prudence; (3) in cases of first impression; (4) the constitutional issues raised are better decided by this court; (5) the time element presented in this case cannot be ignored; (6) when the subject of review is an act of a constitutional organ; (7) when petitioners rightly claim that they had no other plain, speedy, and adequate remedy in the ordinary course of law that could free them from the injurious effects of respondents' acts in violation of their right to freedom of expression; and (8) when the petition includes questions that are "dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy."

[62] *Rollo,* p. 335.

[63] 762 Phil. 233 (2015).

[64] *Id.* at 247.

be eschewed."[65] Considering the circumstances of this case and the pronouncement in *Ferrer, Jr.*, the Court also deems it proper to relax the doctrine of hierarchy of courts.

Notwithstanding the exemption of this case from the above-discussed procedural doctrines, the Court is constrained to dismiss the petition due to Alliance's lack of legal capacity to sue.

II. Legal Capacity to Sue.

The Rules of Court mandates that only natural or juridical persons, or entities authorized by law may be parties in a civil action. Non-compliance with this requirement renders a case dismissible on the ground of **lack of legal capacity to sue,** which refers to **"a plaintiff's general disability to sue,** such as on account of minority, insanity, incompetence, **lack of juridical personality** or any other general disqualifications of a party."[66]

Jurisprudence provides that **an unregistered association,** having no separate juridical personality, **lacks the capacity to sue in its own name.**[67] In this case, Alliance admitted that it has no juridical personality, considering the revocation of its SEC Certificate of Registration and its failure to register with the HLURB as a homeowner's association. Nevertheless, Alliance insists that the petition should not be dismissed because it was filed by the members of the Board of Trustees in their own personal capacities, as evidenced by a letter[68] dated March 10,

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[65] *Id*. at 248; citing *Social Justice Society Officers v. Lim,* 748 Phil. 25, 88-89 (2014); further citing *Jaworski v. Philippine Amusement and Gaming Corporation,* 464 Phil. 375, 385 (2004).

[66] *Alabang Development Corporation v. Alabang Hills Village Association,* 734 Phil. 664, 669 (2014), citing *Columbia Pictures, Inc. v. Court of Appeals,* 329 Phil. 875, 901 (1996); emphases and underscoring supplied.

[67] *Association of Flood Victims v. Commission on Elections,* 740 Phil. 472, 480 (2014). See also *Dueñas v. Santos Subdivision Homeowners Association,* 474 Phil. 834, 846-847 (2004) and *Samahang Magsasaka ng 53 Hektarya v. Mosquera,* 547 Phil. 560, 570 (2007).

[68] See Authorization Letter (Resolution No. 17-3-A) dated March 10, 2017; *rollo,* p. 15.

2017 (Authorization Letter) authorizing its ostensible Treasurer, Danilo Liwanag (Liwanag), to file the petition in their behalf.

The Court disagrees. A perusal of the petition readily shows that it was filed by Alliance, and not by the individual members of its Board of Trustees in their personal capacities. As it is evident from the title and "Parties"[69] section of the petition, the same was filed solely in the name of "Alliance of Quezon City Homeowners' Association, Inc.," as petitioner. Moreover, the Authorization Letter above-adverted to clearly indicates that the signatories therein **signed merely in their official capacities as Alliance's trustees.**[70] In fact, even assuming that the trustees intended to file the case in their own behalf, Section 3, Rule 3 of the Rules of Court[71] requires that their names as beneficiaries must be included in the title of the case, which was, however, not done here. Thus, Alliance's claim that the petition was filed by the trustees in their personal capacities is bereft of merit.

For another, Alliance argued that the status of its authorized representative, Liwanag, as a taxpayer and resident of QC, is sufficient to correct the procedural lapse.

This contention is erroneous. In *Association of Flood Victims (AFV) v. Commission on Elections*,[72] the Court dismissed the

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[69] *Id*. at 3-4.

[70] The Authorization Letter reads: "RESOLVED, as it is hereby resolved, that the treasurer of [Alliance of Quezon City Homeowners' Association, Inc. (AQCHAI)] Mr. Danilo Liwanag is authorized **by the Board of [T]rustees** to be the Official Representative in filing the T.R.O. with the Supreme Court." (*Id*. at 15; emphasis and underscoring supplied).

[71] The provision reads:

Section 3. *Representatives as parties*. – Where the action is allowed to be prosecuted or defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed the real party in interest. x x x.

See also *Samahang Magsasaka ng 53 Hektarya v. Mosquera*, *supra* note 67, at 570-571.

[72] *Supra* note 67.

petition for *certiorari* and/or *mandamus* because the petitioner therein – being an unincorporated association – had no capacity to sue in its own name and accordingly, its representative who filed the petition in its behalf, had no personality to bring an action in court.[73] Moreover, in *Dueñas v. Santos Subdivision Homeowners Association*,[74] the Court held that the complaint filed by an unregistered association cannot be treated as a suit by the persons who signed it.[75]

On these scores, the fact that Liwanag, a natural person, signed and verified the petition did not cure Alliance's lack of legal

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[73] The Court stated thus:

Petitioner [AFV] is an unincorporated association not endowed with a distinct personality of its own. **An unincorporated association,** in the absence of an enabling law, **has no juridical personality and thus, cannot sue in the name of the association.** Such unincorporated association is not a legal entity distinct from its members. If an association, like petitioner [AFV), has no juridical personality, **then all members of the association must be made parties** in the civil action. x x x.

x x x x x x x x x

Since petitioner [AFV] has no legal capacity to sue, petitioner **Hernandez, who is filing this petition as a representative of the [AFV], is likewise devoid of legal personality to bring an action in court.** Neither can petitioner Hernandez sue as a taxpayer because he failed to show that there was illegal expenditure of money raised by taxation or that public funds are wasted through the enforcement of an invalid or unconstitutional law.

x x x (*Id*. at 479-481; emphases supplied).

[74] *Supra* note 67.

[75] The Court held:

The records of the present case are bare of any showing by [Santos Subdivision Homeowners' Association (SSHA)] that it is an association duly organized under Philippine law. It was thus an error for the HLURB-NCR Office to give due course to the complaint in HLURB Case No. REM-070297-9821, given the SSHA's lack of capacity to sue in its own name. **Nor was it proper for said agency to treat the complaint as a suit by all the parties who signed and verified the complaint. The members cannot represent their association in any suit without valid and legal authority. Neither can their signatures confer on the association any legal capacity to sue.** x x x" (*Id*. at 846; emphases and underscoring supplied)

capacity to file this case. By the same logic, the signatures of the supposed trustees in the Authorization Letter did not confer Alliance with a separate juridical personality required to pursue this case.

In the final analysis, there is no proper petitioner to the present suit. Should this case proceed despite Alliance's legal non-existence, the Court will certainly remain in continuous quandary as to who should the reliefs be granted to, since no other proper party filed the case. It is noteworthy to mention that in the case of *Samahan ng mga Progresibong Kabataan (SPARK) v. Quezon City*,[76] the Court decided to give due course to the petition despite the lack of legal capacity to sue of petitioner SPARK (also an unincorporated association like Alliance) because individuals or natural persons joined as co-petitioners in the suit, unlike in the present case.

All told, while this case falls under the exceptions to the doctrines of exhaustion of administrative remedies and hierarchy of courts, the Court is still constrained to dismiss the petition due to Alliance's lack of legal capacity to sue. Thus, the resolution of the issues anent the validity and constitutionality of Quezon City Ordinance No. SP-2556, Series of 2016, while indeed of great public interest and of transcendental importance, must nonetheless await the filing of the proper case by the proper party. Accordingly, the Court no longer deems it necessary to resolve the other issues raised in this case.

WHEREFORE, the petition is **DISMISSED** due to petitioner Alliance of Quezon City Homeowners' Association, Inc.'s lack of legal capacity to sue. The Temporary Restraining Order issued on April 18, 2017 is hereby **LIFTED.**

SO ORDERED.

Leonardo-de Castro, C.J., Peralta, Bersamin, del Castillo, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Reyes, J. Jr., JJ.,* concur.

Carpio, J., on official leave.

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[76] See G.R. No. 225442, August 8, 2017.

FIRST DIVISION

[A.M. No. P-17-3740. September 19, 2018]
(Formerly A.M No. 16-04-89-RTC)

RE: HABITUAL TARDINESS OF CLERK III JOHN B. BENEDITO, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, OLONGAPO CITY, ZAMBALES.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; SUSPENSION AS A PENALTY SHOULD BE SERVED USING CALENDAR AND NOT WORKING DAYS; EFFECTS OF SUSPENSION.— Finding the x x x position of the OCA to be well-taken, the Court, thus, declares that the suspension imposed upon Benedito contemplates of **calendar** and not **working** days. Benedito's assertion that a suspension served by calendar days loses its punitive nature, is erroneous. It must be stressed that aside from temporary cessation of work, suspension also carries with it other accessory penalties. For one, suspension of one day or more is considered as a gap in the continuity of service. During the period of suspension, the employee is also not entitled to all monetary benefits including leave credits. Moreover, the penalty of suspension carries with it disqualification from promotion corresponding to the period of suspension.

2. ID.; ID.; ID.; ID.; AN EMPLOYEE MUST BE EXCUSED FROM THE CONSEQUENCES OF HIS ERRONEOUS INTERPRETATION OF THE COURT'S RESOLUTION, ABSENT FAULT ON HIS/HER PART AND IN THE ABSENCE OF SHOWING THAT HE/SHE WAS IN BAD FAITH OR MOTIVATED BY MALICE.— The Court, however, disagrees with the recommendation of the OCA that the days when Benedito did not report for work on the mistaken belief that he was still serving his penalty of suspension, must be deducted from his leave credits. As may be recalled, Benedito started serving his 10-day suspension on October 6, 2017. Counting 10 calendar days therefrom, his last day of service of the suspension was on October 15, 2017, a Sunday. Per his

DTR for October 2017 submitted in connection with this case, Benedito was on leave the succeeding two days or from October 16-17, 2017. And from August 18 to 20, 2017 (Wednesday to Friday) and August 23, 2017 (Monday) or for four working days, he still did not report for work due to his perceived notion that he was still under suspension. However, the Court finds that Benedito merely erroneously interpreted the Court's August 16, 2017 Resolution which, admittedly, was silent whether the suspension shall be served using calendar or working days. Suffice it to state that, even with the exercise of prudence, Benedito, a Clerk III who was not shown to be learned in the law, could not have determined with certainty whether the service of his suspension was by calendar or working days. Note that the OCA itself mentioned in its Memorandum that even the Revised Rules on Administrative Cases in the Civil Service is silent on whether the number of days for preventive suspension and suspension as a penalty shall be for calendar days or working days. Indeed, the mistakes was induced through no fault of Benedito. In *Wooden v. Civil Service Commission*, the Court after finding that the petitioner therein committed an honest mistake of fact in answering an entry in his Personal Data Sheet, excused him from the legal consequences of his act. He was accordingly exonerated of the charge of dishonesty and ordered reinstated to his position as Teacher I with payment of back salaries. Similarly, in this case, there being no fault on the part of Benedito and in the absence of showing that he was in bad faith or motivated by malice, Benedito must be excused from the consequences of his erroneous interpretation of the Resolution dated August 16, 2017. Hence, he should not be considered on leave of absence on October 18, 19, 20, and 23, 2017 and instead deemed to have rendered full service to the court on the said days.

R E S O L U T I O N

DEL CASTILLO, *J.*:

The Court, in its Resolution[1] of August 16, 2017, found John B. Benedito (Benedito), Clerk III of the Office of the Clerk of

[1] *Rollo,* pp. 13-14.

Court, Regional Trial Court, Olongapo City, Zambales, guilty of habitual tardiness, *viz.*:

> xxx Accordingly, respondent Clerk III John B. Benedito is found GUILTY of habitual tardiness and is SUSPENDED for ten (10) days effective from notice, without salary and other benefits, with a STERN WARNING that a repetition of the same or any similar act shall be dealt with more severely.[2]

In an undated letter,[3] Benedito informed the Court that he started serving his suspension of 10 days on October 6, 2017, until he completed the same. He, however, sought clarification as follows:

> My very main reason in writing you x x x is to ask for [a] clear interpretation of the ten (10)[-day] suspension meted on me in the dispositive portion of the [August 16, 2017] Resolution x x x because from October 6, 2017 which is Friday [and] onwards[,] I started serving the ten (10)[-day] suspension on working days of the month of October 2017 which ended on October 23, 2017 as reflected in my Daily Time Record for the month of October 2017 x x x. This is so, because it is of my humble opinion that a suspension order is punitive in nature such that the deprivation or prevention of a particular employee['s] right to report for work must x x x be served on a working day or on days he is supposed to report for work. My predicament at present is when I went to the Leave Division of the Supreme Court on January 15, 2018 to inquire regarding my Leave Credits[,] I was informed that the ten[-day suspension] meted on me according to them should have been served on calendar days and not on working days[,] therefore[,] according to them suspension includes Saturdays and Sundays.
>
> Allow me to cite an example on why I stand with my argument that suspension is punitive in nature, and this being so, must x x x be served during working days[.] [S]uppose[d] an employee is meted with a penalty of suspension of two x x x days and he receive[d] the notice on a Friday and said notice states that it is immediately executory upon notice[.] [F]ollowing the interpretation of the Leave Division, [the suspension, in effect] would not x x x anymore [serve] as a

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[2] *Id.* at 14.

[3] *Id.* at 15.

punishment [to] an erring employee because he will just report for work on Monday following the suspension [served during the weekend] as if nothing happened[.] x x x [W]ith this kind of occurrence, the very purpose of suspension as a punishment would be in vain.[4]

The matter was referred to the Office of the Court Administrator (OCA) for evaluation, report, and recommendation.

In its Memorandum[5] of July 17, 2018, the OCA held that Benedito's 10-day suspension should be construed as 10 calendar days and not 10 working days, *viz*.:

The ten (10) days suspension to be served by respondent Clerk III Benedito shall be construed as ten (10) calendar days. It has been observed that in cases where the penalty given by the Court is suspension, the reference is to calendar days. Note that even the Revised Rules on Administrative Cases in the Civil Service is silent on whether the number of days for preventive suspension and suspension as a penalty shall be for calendar days or working days. Article 13 of the Civil Code which has been superseded by Executive Order No. 292 only made mention of the definition when the law speaks of years, months, days or nights. Section 31 of Executive Order No. 292 on legal periods defines 'year' to be twelve calendar months; 'month' of thirty days, unless it refers to a specific calendar month in which case it shall be computed according to the number of days the specific month contains; 'day,' to a day of twenty-four (24) hours; and 'night,' from sunset to sunrise. It is not explicitly provided whenever the law or order simply uses the word 'day' whether it shall mean 'calendar day' or 'working day'.

However, in the case of *The Board of Trustees of the Government Service Insurance System and Winston F. Garcia, in his capacity as GSIS President and General Manager v. Albert M. Velasco and Mario I. Molina*, 'calendar days' was applied in the counting of the ninety (90) days preventive suspension imposed on respondents. The latter were placed under preventive suspension on 23 May 2002 and the same ended on 21 August 2002. The Court held that after serving the period of their preventive suspension and without the administrative case being finally resolved, respondent should have been reinstated.

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[4] *Id*.

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

By analogy, the above interpretation can be applied in the instant matter, especially so when the order of suspension against respondent Clerk III Benedito in the Resolution dated 16 August 2017 was silent in that regard.

Such construction is also observed in labor cases when the order of suspension of an employee does not specify whether it will be for a number of working or calendar days, in which case, suspension shall be served in calendar days which is favorable to the laborer. This is in keeping with the principle that 'all doubts in the implementation and interpretation of the provisions of the Labor Code, including its implementing rules and regulations shall be resolved in favor of labor.'

Considering that respondent Clerk III Benedito, pursuant to the Resolution dated 16 August 2017, has already served his suspension for ten (10) calendar days starting from 06 October 2017 to 15 October 2017, per his [Daily Time Record] DTR for the month of October 2017, the same shall be considered lifted. However, those days when respondent Clerk III Benedito did not report for work, on the assumption that he was still serving his penalty of suspension, shall be deducted from his leave credits. He should be considered on leave of absence on 18, 19, 20 and 23 October 2017.

More importantly, considering that respondent Clerk III Benedito has already served his penalty, this administrative matter should now be considered closed and terminated.[6]

Finding the above position of the OCA to be well-taken, the Court, thus, declares that the suspension imposed upon Benedito contemplates of **calendar** and not **working** days.

Benedito's assertion that a suspension served by calendar days loses its punitive nature, is erroneous. It must be stressed that aside from temporary cessation of work, suspension also carries with it other accessory penalties. For one, suspension of one day or more is considered as a gap in the continuity of service.[7] During the period of suspension, the employee is also

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

[7] Section 56(c), Rule 10, 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS).

not entitled to all monetary benefits including leave credits.[8] Moreover, the penalty of suspension carries with it disqualification from promotion corresponding to the period of suspension.[9]

The Court, however, disagrees with the recommendation of the OCA that the days when Benedito did not report for work on the mistaken belief that he was still serving his penalty of suspension, must be deducted from his leave credits. As may be recalled, Benedito started serving his 10-day suspension on October 6, 2017. Counting 10 calendar days therefrom, his last day of service of the suspension was on October 15, 2017, a Sunday. Per his DTR[10] for October 2017 submitted in connection with this case, Benedito was on leave the succeeding two days or from October 16-17, 2017. And from August 18 to 20, 2017 (Wednesday to Friday) and August 23, 2017 (Monday) or for four working days, he still did not report for work due to his perceived notion that he was still under suspension. However, the Court finds that Benedito merely erroneously interpreted the Court's August 16, 2017 Resolution which, admittedly, was silent whether the suspension shall be served using calendar or working days. Suffice it to state that, even with the exercise of prudence, Benedito, a Clerk III who was not shown to be learned in the law, could not have determined with certainty whether the service of his suspension was by calendar or working days. Note that the OCA itself mentioned in its Memorandum that even the Revised Rules on Administrative Cases in the Civil Service is silent on whether the number of days for preventive suspension and suspension as a penalty shall be for calendar days or working days. Indeed, the mistake was induced through no fault of Benedito. In *Wooden v. Civil Service Commission*,[11] the Court, after finding that the petitioner therein committed an honest mistake of fact in answering an entry in his Personal

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[8] *Id*.

[9] Sec. 57, Rule 10, 2017 RACCS.

[10] *Rollo*, p. 18.

[11] 508 Phil. 500 (2005).

Data Sheet, excused him from the legal consequences of his act. He was accordingly exonerated of the charge of dishonesty and ordered reinstated to his position as Teacher I with payment of back salaries. Similarly, in this case, there being no fault on the part of Benedito and in the absence of showing that he was in bad faith or motivated by malice, Benedito must be excused from the consequences of his erroneous interpretation of the Resolution dated August 16, 2017. Hence, he should not be considered on leave of absence on October 18, 19, 20, and 23, 2017 and instead deemed to have rendered full service to the court on the said days.

WHEREFORE the suspension imposed upon Clerk III John B. Benedito of the Office of the Clerk of Court, Regional Trial Court, Olongapo City, Zambales in the Resolution dated August 16, 2017 due to habitual tardiness is **DECLARED** as referring to ten (10) **calendar** days. Considering that he had served out his suspension by October 15, 2017, Clerk III Benedito should be deemed to have rendered full service to the court on October 18, 19, 20, and 23, 2017. This administrative matter is now deemed **CLOSED and TERMINATED**.

SO ORDERED.

Leonardo-de Castro, C.J., Bersamin, Jardeleza, and *Tijam, JJ.,* concur.

FIRST DIVISION

[A.M. No. MTJ-12-1814. September 19, 2018]
(Formerly OCA IPI No. 10-2324-MTJ)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE FRANCISCO A. ANTE, JR. and WILFREDO A. PASCUA,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; AN ADMINISTRATIVE PROCEEDING IS NOT THE PROPER FORUM TO REVIEW A QUESTION ON THE ISSUANCE OF SEARCH WARRANTS.—** It is elementary that not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice. To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment. As regards the issuance of search warrants outside his jurisdiction, the Court has pronounced in the very recent case of *Re: Report on the Preliminary Results of the Spot Audit in the Regional Trial Court, Branch 170, Malabon City* that an administrative proceeding is not the proper forum to review the search warrants issued to determine whether the compelling reasons cited therein are indeed meritorious, x x x The same could be said as to the allegation that the examination of applicants and witnesses in six search warrants that [respondent judge] issued were not probing, exhaustive, and appeared to be merely routinary and *pro forma*.

2. **ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; IMPOSED FOR FAILURE TO MONITOR THE RETURN OF THE SEARCH WARRANTS TEN DAYS AFTER THE ISSUANCE OF THE SAME; CASE AT BAR.—** Judge Ante [is] guilty of simple neglect in monitoring the return of the search warrants ten days after the issuance of the same in compliance with the rules. The audit team randomly chose 141 search warrants to be examined, and among the 141, at least 50 search warrants had no returns attached to the records contrary to the requirement of the Rules. Plainly, Sec. 12 of the Rule 126 reads: **Section 12**. *Delivery of property and inventory thereof to court; return and proceedings thereon*.— x x x (b) Ten (10) days after issuance of the search warrant, **the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made.** x x x As well noted by the OCA, Judge Ante merely rendered an all-encompassing denial in his comment as well as a general statement that he always ordered the applicants to make a return thereof: x x x This cannot suffice.

3. ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY DISTINGUISHED FROM GROSS NEGLECT OF DUTY.— Simple neglect of duty means the failure of an employee official to give proper attention to a task expected of him either signifying a "disregard of a duty resulting from carelessness or indifference." On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty. Considering the circumstances, We cannot consider the neglect as gross in nature. x x x [B]asic is the rule that the complainant has the burden of proving by substantial evidence the allegations in the complaint; or such evidence as a reasonable mind may accept as adequate to support a conclusion. In this case, there is no clear proof that Judge Ante's actions were colored with willful neglect or intentional wrongdoing. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.

4. ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; SIMPLE NEGLECT OF DUTY; PENALTY.— Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. We deem it proper to impose the penalty of three (3) months suspension without pay on Judge Ante and a stern warning that a repetition of the same or similar act will be dealt with more severely.

D E C I S I O N

TIJAM, *J.*:

Before Us is an administrative complaint against Judge Francisco A. Ante, Jr. (Judge Ante), of the Municipal Trial Court in Cities (MTCC), in Vigan City, Ilocos Sur, for gross ignorance of the law.[1]

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[1] *Rollo,* pp. 2-12.

The said administrative complaint rooted from a joint resolution dated April 19, 2010 issued by now Retired Judge Modesto L. Quismorio (Judge Quismorio), who was then the Presiding Judge of MTCC, Candon City, Ilocos Sur, in Criminal Case Nos. 4939 and 4940 entitled "*People of the Philippines v. Stephen Ronquillo and Willie Molina*," quashing Search Warrant No. 37, S' 2009 issued by Judge Ante.[2]

In the said joint resolution, Judge Quismorio stated:

> Consequently, Judge Ante, to the mind of this Court did not examine the witnesses who claimed to have personal knowledge that accused Stephen Ronquillo has in his possession one (1) M 16 Armalite Rifle and one (1) cal. 45 Pistol "in the form of searching questions and answers of facts personally known to them" in utter violation of the aforequoted constitutional and statutory mandate which could have laid the basis for the issuance of the assailed warrant upon probable cause.[3]

In a letter-complaint dated October 1, 2010, Judge Ante charged Judge Quismorio with conduct unbecoming a judge. He found the conclusion in the above-quoted resolution malicious, unfounded, baseless and not supported by facts. He asserted that the conclusion was downright insulting and portrayed him as a judge lacking in the knowledge of the law. Judge Ante further said that as a fellow judge, Judge Quismorio should have shown respect instead of projecting himself as an all-knowing and knowledgeable judge at his expense because he (Judge Quismorio) was an applicant for the position of Presiding Judge of the Regional Trial Court, Tagudin, Ilocos Sur.[4]

In an Answer dated January 7, 2011,[5] Judge Quismorio explained that the statement quoted by Judge Ante was one of the bases for declaring the invalidity of the search warrant for

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[2] *Id*. at 20.

[3] *Id*. at 32.

[4] *Id*. at 2.

[5] *Id.* at 19.

utter failure to observe one of the vital requirements before issuing a search warrant as mandated by Section 5 in relation to Section 4 of Rule 126 of the Rules of Court:

> Section 5. *Examination of complainant: record.* — The judge must before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

The record of the proceedings for the application of said warrant reveals that Judge Ante failed to comply with the statutory requirement to personally examine the applicant and his witnesses in the form of searching questions and answers on the facts personally known to them pursuant to Section 4.[6]

Judge Quismorio pointed out that any magistrate worth his salt and true to his oath as a lawyer and as a member of the judiciary must at all times uphold the mandate of the law and act as an avid sentinel in the preservation and protection of the civil rights and liberties of the people specifically their rights against unreasonable search and seizure and must shun altogether the indiscriminate issuance of search warrants in gross violation of the same.[7] Judge Quismorio charged Judge Ante with gross ignorance of the law amounting to willful and deliberate issuance of said search warrant (No. 37 and other search warrants) in wanton, unmitigated and flagrant violation of constitutional and statutory requirements, and should be sanctioned accordingly. He also raised that Judge Ante issued a total of 156 search warrants in 2009 and 161 in 2010.[8]

In a Resolution dated July 27, 2011, the Court, among others, considered the comment of Judge Quismorio as a complaint for gross ignorance of the law against Judge Ante, and directed the Office of the Court Administrator (OCA) to conduct an

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[6] *Id*. at 18.

[7] *Id*.

[8] *Id*. at 19.

audit of the records of MTCC, Vigan, Ilocos Sur, particularly on the cases involving the issuance of search warrants.[9]

In OCA Memorandum dated May 21, 2012,[10] the OCA reported that it conducted an audit on February 22 and 23, 2012, the results of which, are as follows:

1. From January 2005 to February 23, 2012, or for a period of seven (7) years, Judge Francisco A. Ante, Jr., Municipal Trial Court in Cities (MTCC), Vigan City, Ilocos Sur, issued a total of one thousand seven hundred thirty-two (1,732) search warrants. Hereunder is the tabulation of the number of search warrants issued within that period on a monthly and yearly basis.

	2005	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**TOTAL**
JAN	33	43	12	26	7	14	4	10	**151**
FEB	49	18	16	22	12	25	5	4	**151**
MAR	46	13	18	7	9	17	9	-	**119**
APR	60	22	6	25	3	23	8	-	**147**
MAY	78	18	8	19	12	12	10	-	**157**
JUNE	108	18	9	31	29	18	5	-	**218**
JUL	121	20	38	18	23	19	2	-	**241**
AUG	44	25	24	23	17	15	5	-	**153**
SEP	56	16	25	21	21	0	10	-	**149**
OCT	46	13	24	26	7	8	8	-	**132**
NOV	16	6	21	20	13	7	6	-	**89**
DEC	10	6	0	4	2	3	0	-	**25**
TOTAL	**667**	**218**	**203**	**242**	**155**	**161**	**72**	**14**	**1732**

2. Comparatively, based on the records of the Statistical Reports Division, Court Management Office, OCA, all the other courts in the Province of Ilocos Sur, consisting of eight (8) second level courts and fourteen (14) first level courts, or a total of twenty-two (22) courts, issued a total of one hundred sixty-five (165) search warrants only over the same period stated in the preceding paragraph, thus:

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[9] *Id.* at 53-55.

[10] *Id.* at 56-60.

	2005	2006	2007	2008	2009	2010	2011	2012	TOTAL
JAN	1	1	0	10	0	0	0	0	**12**
FEB	3	6	0	3	3	0	0	0	**15**
MAR	2	4	0	13	0	0	5	0	**24**
APR	1	9	6	3	0	0	0	-	**19**
MAY	1	0	9	14	0	0	0	-	**24**
JUNE	0	3	0	0	0	0	3	-	**6**
JUL	6	8	2	0	0	1	0	-	**17**
AUG	9	9	7	2	0	1	0	-	**28**
SEP	0	1	0	0	0	0	0	-	**1**
OCT	2	2	0	0	3	0	0	-	**7**
NOV	4	0	3	0	0	0	0	-	**7**
DEC	0	0	5	0	0	0	0	-	**5**
TOTAL	**29**	**43**	**32**	**45**	**6**	**7**	**3**	**0**	**165**

3. Of the 1,732 search warrants issued by Judge Ante, Jr. from January 2005 to February 23, 2012, the Team examined the records of one hundred forty-one (141) randomly chosen search warrants, taking into consideration Sections 2, 4, 5 and 12, Rule 126 of the Revised Rules of Court, which provide:

Section 2. *Court where application for search warrant shall be filed.* — An application for search warrant shall be filed with the following:

a) Any court within whose territorial jurisdiction a crime was committed.

b) For compelling reasons stated in the application, any court within the judicial region where the crime was committed if the place of the commission of the crime is known, or any court within the judicial region where the warrant shall be enforced.

x x x x x x x x x

Section 4. *Requisites for issuing search warrant.* — A search warrant shall not issue except upon probable cause in connection with one specific offense 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 things to be seized which may be anywhere in the Philippines.

Section 5. *Examination of complainant; record.* — The judge must, before issuing the warrant, personally examine **in the form of searching questions and answers, in writing and under oath**, the complainant and the witnesses he may produce on facts personally known to them and **attach to the record their sworn statements**, together with the affidavits submitted.

x x x x x x x x x

Section 12. *Delivery of property and inventory thereof to court; return and proceedings thereon. —*

(a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

(b) Ten (10) days after issuance of the search warrant, **the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made**. If the return has been made, the judge shall ascertain whether Section 11 of this Rule has been complied with and shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.

(c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result, and other actions of the judge.

A violation of this section shall constitute contempt of court.

4. As culled from the attached Table 1, the examination of the randomly chosen search warrants (SW) yielded the following findings and observations:

4.1. The places that were the subject of most of the search warrants issued by Judge Ante, Jr. from January 2005 up to February 2012 are outside the territorial jurisdiction of this court. In fact, of the one hundred forty-one (141) search warrants examined, only eleven (11) were to be enforced within his territorial jurisdiction, *i.e.*, Vigan City, Ilocos Sur;

4.2. While the applications for search warrant referred to above cited "compelling reasons" ('to avoid leakage', 'there

is no RTC judge and the presiding judge of the court of the place where the crime was committed is also not available' and 'to ensure the secrecy of the operation') for filing said applications with the MTCC, Vigan City, Ilocos Sur, Judge Ante, Jr. appears to have accepted said "compelling reasons" "hook, line and sinker," as he failed to elicit from the applicants and their witnesses additional information in support of the supposed "compelling reasons" during the examination conducted on some of these applications;

4.3. Most of the records of the search warrants do not show that Judge Ante, Jr. conducted the required examination of the applicants and their witnesses. In fact, of the one hundred forty-one (141) search warrants examined by the Team, one hundred twenty-three (123) search warrants appear to have been issued by Judge Ante, Jr. without complying with Section 5, Rule 126, Rules of Court, requiring a judge to "personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce" and "attach to the record their sworn statements, together with the affidavits submitted," "before issuing the [search] warrant";

4.4. The questions propounded by Judge Ante, Jr. during the examination of the applicants and their witnesses in six (6) search warrants he issued are not probing and exhaustive and they appear to be merely routinary or *pro-forma*, which, under ordinary circumstances, would not have established probable cause for the issuance of a search warrant as required under Section 4 of the same Rule cited above. The manner of questioning by Judge Ante, Jr. appears to be the same and consistent in other applications for search warrant from January 2005 up to February 2012, and fall short of the standard of "searching questions and answers" required under Section 5 of said Rule. Consequently, a considerable number of search warrants he issued yielded a negative result;

4.5. In SW Nos. 89 S' 2005 and 129 S' 2006, no affidavits of the applicants and their witnesses were attached to their respective records in violation of Section 5 of the same Rule cited above, requiring the judge to "attach to the record their sworn statements, together with the affidavits submitted";

> 4.6. There is a considerable number of search warrants issued since January 2005 in which no return has been made, but Judge Ante, Jr. failed to require the persons to whom these warrants were issued to explain why no return has been made as required of him under Section 12 (b) of the Rule cited above; and
>
> 4.7. In SW 400 S' 2005, Judge Ante, Jr. issued an Order dated July 13, 2005 directing P/CInsp. Rolando B. Osaias to turn over to the court the seized articles consisting of 46 pieces of assorted Narra flitches within 10 days from receipt of the order. However, the record does not show that the subject articles were turned over to the court, but, as of audit date, Judge Ante, Jr. has not yet taken any further action thereon. (Underscoring and emphasis supplied)[11]

The audit team found that the manner by which Judge Ante has been issuing search warrants since January 2005 may be characterized by laxity amounting to violations of Sections 2, 4, 5, and 12(b) of Rule 126.[12]

It noted that the great disparity between the number of search warrants Judge Ante issued and that of all the other courts in the Province of Ilocos over the same period (January 2005 to February 2012) showed how the applicants, who are mostly officials of the Philippine National Police (PNP), took advantage of said laxity. It further noted that Judge Ante would grant applications for search warrants to applicants even if no return had been made on an earlier issued warrant.[13]

The audit team also took Wilfredo A. Pascua's admission, in his February 23, 2012 Affidavit, that he only transcribes the stenographic notes if a party needs a copy of the TSN as a reinforcement that Judge Ante violated Section 5, Rule 126 for having failed to attach to the record the sworn statements of the complainants and applicants and their witnesses, together with the affidavits submitted, before issuing the warrant.[14]

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[11] *Id.* at 56-59.

[12] *Id.* at 59.

[13] *Id.*

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

In a Resolution dated June 25, 2012, Judge Ante was required by the Court to comment on the OCA Memorandum dated May 21, 2012. Wilfredo A. Pascua, Court Stenographer was also required to show cause why no disciplinary action should be taken against him for his failure to transcribe the stenographic notes of the examinations conducted by Judge Ante on most of the applications for search warrants from January 2005 to February 2012.[15]

Wiflredo A. Pascua submitted an explanation dated July 26, 2012 that as the lone stenographer of the court from 2004 to July 2007, it was impossible for him to transcribe all the stenographic notes on time, and that he had an arrangement with the presiding judge and the clerk of court that he will immediately transcribe stenographic notes when there is an order transmitting the complete records of search warrants to other courts for further proceedings.[16]

Judge Ante submitted a Comment/Explanation dated August 23, 2012 stating that the total issuance of 1,732 search warrant within a span of 8 years is only minimal and that the Rules of Court does not prescribe a limit or number of search warrants to be issued by a Judge, at a given time.[17]

Judge Ante denied that he violated Sections 2, 4, 5 and 12(b), Rule 126 because it is a matter of record that the applications for search warrants were accompanied with the proper supporting documents such as the affidavit of witnesses and the applicants.[18]

Judge Ante also denied that 123 search warrants had been issued without personal examination of the witnesses in violation of Sec. 5, Rule 126 because he did propound searching questions as evidenced by the submitted affidavits of complaining witnesses, police officers, the Clerk of Court and Court

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[15] *Id.* at 339.

[16] *Id.* at 341-342.

[17] *Id.* at 565.

[18] *Id.* at 566.

Stenographer. He also disagreed that the questions propounded were not probing and exhaustive as he considered the testimonies of the complainants and witnesses very credible and convincing before the search warrants were issued. He denied that the findings of the audit team that a considerable number of these search warrants yielded a negative result or were not served at all; that a number of search warrants do not have a return; that he issued warrants without attaching the affidavits of the applicants to the record.[19]

Judge Ante stated that Wilfredo A. Pascua's explanation satisfactorily explained why some of the stenographic notes were not yet attached to the record of the search warrants, and the said failure cannot be made as the basis for the audit team to conclude that he violated Sec. 5, Rule 126. He also stated that he stopped issuing search warrants outside his territorial jurisdiction and that from January 2012 up to the writing of the comment, he had only issued 18 search warrants.[20]

In a Resolution dated September 17, 2012, the Court consolidated A.M. OCA IPI No. 10-2324-MTJ (Judge Francisco A. Ante, Jr. v. Judge Modesto L. Quismorio, Jr., Municipal Trial Court in Cities, Candon, Ilocos Sur) and A.M. No. MTJ-12-1814 (Office of the Court Administrator v. Judge Ante, Jr. and Mr. William A. Pascua).[21]

The OCA, in its Memorandum dated May 29, 2013, recommended the dismissal from service of Judge Ante for gross ignorance of the law and grave abuse of discretion.[22]

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[19] *Id.*

[20] *Id.* at 568.

[21] *Id.* at 577.

[22] *Id.* at 595.

RECOMMENDATION

IN VIEW OF ALL THE FOREGOING, it is respectfully recommended that:

1. the instant complaint against **Judge Modesto I. Quismorio, Jr.**, former Presiding Judge, MTCC, Candon City, Ilocos Sur, be **DISMISSED** for utter lack of merit;

In a Resolution dated September 4, 2013, the Court resolved, among others, to dismiss the complaint against Judge Quismorio (A.M. OCA IPI No. 10-2324-MTJ) for utter lack of merit. It also considered the issue on the show cause order against Mr. Wilfredo A. Pascua, Court Stenographer, MTCC, Vigan, Ilocos Sur as closed and terminated as he had satisfactorily explained himself on the matter. The Court further required Judge Ante to manifest to the Court whether he was willing to submit this matter for resolution on the basis of the pleadings filed.[23]

Judge Ante filed a Motion for Reconsideration as regards the dismissal of the complaint against Judge Quismorio, which was denied with finality in a Resolution dated April 7, 2014.[24]

In a Resolution dated April 18, 2016, Judge Ante was fined ₱2,000 and directed to comply.[25]

In a Resolution dated September 14, 2016, the Court noted without action Judge Ante's explanation as regards his failure to manifest whether he is willing to submit the matter for resolution on the basis of pleadings, and prayed that the Court order a formal investigation to be conducted through the Executive Judge of the Regional Trial Court of Ilocos Sur so that he will be able to present testimonial and documentary

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2. the issue on the **SHOW CAUSE ORDER** against **Mr. Wi1fredo A. Pascua**, Stenographer, MTCC, Vigan, Ilocos Sur, be deemed **CLOSED** and **TERMINATED** since he has satisfactorily explained himself on the matter; and

3. for the indiscriminate issuance of search warrants in violation of Article III, Section 2 of the 1987 Constitution in relation to Sections 4 and 5, Rule 126 of the Revised Rules of Court, **Judge Francisco A. Ante, Jr.**, MTCC, Vigan, Ilocos Sur, be found guilty of **GROSS IGNORANCE OF THE LAW, and GRAVE ABUSE OF DISCRETION** and be **DISMISSED** from the service, with forfeiture of retirement and other benefits except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations.

[23] *Id.* at 603.

[24] *Id.* at 605.

[25] *Id.* at 609.

evidence and prove his innocence on the false and malicious charge filed against him.[26]

The issue now is whether Judge Ante's issuance of allegedly defective search warrants merit administrative sanction.

We rule in the affirmative.

It is elementary that not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice.[27] To hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment.[28]

As regards the issuance of search warrants outside his jurisdiction, the Court has pronounced in the very recent case of *Re: Report on the Preliminary Results of the Spot Audit in the Regional Trial Court, Branch 170, Malabon City*[29] that an administrative proceeding is not the proper forum to review the search warrants issued to determine whether the compelling reasons cited therein are indeed meritorious, thus:

> Note, too, that the determination of the existence of compelling reasons under Section 2(b) of Rule 126 is a matter squarely addressed to the *sound discretion of the court* where such application is filed, subject to **review by an appellate court** in case of grave abuse of discretion amounting to excess or lack of jurisdiction.
>
> Clearly, this *administrative proceeding* is not the proper forum to review the search warrants issued by Judge Docena and Judge Magsino in order to determine whether the compelling reasons cited in their respective applications are indeed meritorious.
>
> Given these circumstances, we cannot agree with the OCA's findings that Judge Docena and Judge Magsino violated Section 2 of Rule

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[26] *Id.* at 611.

[27] *Dipatuan v. Mangotara*, 633 Phil. 67, 77 (2010).

[28] *Lumbos v. Judge Baliguat*, 528 Phil. 953, 968 (2006) citing *Sacmar v. Reyes-Carpio*, 448 Phil. 37, 42 (2003).

[29] A.M. No. 16-05-142-RTC, September 5, 2017.

126 by simply issuing search warrants involving crimes committed outside the territorial jurisdiction of the RTC of Malabon City where: a) there is no compelling reason to take cognizance of the applications; and b) the compelling reasons alleged in the applications *appear* to be unmeritorious.

It is obvious that Judge Docena and Judge Magsino simply exercised the trial court's **ancillary jurisdiction over a special criminal process** when they took cognizance of the application and issued said search warrants. And as previously discussed, the propriety of the issuance of these warrants is a matter that should have been raised in a motion to quash or in a *certiorari* petition, if there are allegations of grave abuse of discretion on the part of the issuing judge. (Emphasis ours)[30]

The same could be said as to the allegation that the examination of applicants and witnesses in six search warrants that he issued were not probing, exhaustive, and appeared to be merely routinary and *pro forma*.

Considering that the Court has closed and terminated the case against Wilfredo A. Pascua, and taken his explanation as sufficient to explain the discrepancy in the lack of stenographic notes, this should likewise not render Judge Ante liable for the failure to attach the same to the warrants issued.

We find, however, Judge Ante guilty of simple neglect in monitoring the return of the search warrants ten days after the issuance of the same in compliance with the rules. The audit team randomly chose 141 search warrants to be examined, and among the 141, at least 50 search warrants had no returns attached to the records contrary to the requirement of the Rules.

Plainly, Sec. 12 of Rule 126 reads:

Section 12. *Delivery of property and inventory thereof to court; return and proceedings thereon. —*

(a) The officer must forthwith deliver the property seized to the judge who issued the warrant, together with a true inventory thereof duly verified under oath.

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[30] *Id.*

> (b) Ten (10) days after issuance of the search warrant, **the issuing judge shall ascertain if the return has been made, and if none, shall summon the person to whom the warrant was issued and require him to explain why no return was made**. If the return has been made, the judge shall ascertain whether Section 11 of this Rule has been complied with and shall require that the property seized be delivered to him. The judge shall see to it that subsection (a) hereof has been complied with.
>
> (c) The return on the search warrant shall be filed and kept by the custodian of the log book on search warrants who shall enter therein the date of the return, the result, and other actions of the judge.
>
> A violation of this section shall constitute contempt of court.

As well noted by the OCA, Judge Ante merely rendered an all-encompassing denial in his comment as well as a general statement that he always ordered the applicants to make a return thereof:

> That likewise, it is not all true and it is a matter of record that a number of search warrants do not have a return of the search warrants issued because after the issuance of a particular search warrant, I had always ordered the applicants to make a return of the search warrant, and for the information of the Hon. Supreme Court the police officers when ordered to make a return of the search warrant to the issuing Court, makes a request that the confiscated items be temporarily kept in their custody for ballistic examination which I allowed and that after ballistic examination said police officers turned over the confiscated items such as firearms and drugs to the Fiscal's Office for preliminary investigation. That there were times when I ordered the police officers to make a return of the search warrant and to turn over the confiscated items to the Court as required by the Rules of Court but the police officers failed to turn over the confiscated items particularly firearms because the Fiscal's Office refused to return the confiscated items even though these police officers told the Fiscal that these items must be turned over to the Court issuing the search warrant.[31]

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[31] *Rollo*, p. 567.

This cannot suffice and simply cannot overturn the affirmative allegations and report made by the audit team, where the specific search warrants in which no returns were made were itemized. As it were, Judge Ante's statements remain bare and unsubstantiated and deserve scant consideration.

Simple neglect of duty means the failure of an employee official to give proper attention to a task expected of him either signifying a "disregard of a duty resulting from carelessness or indifference."[32] On the other hand, gross neglect of duty is characterized by want of even the slightest care, or by conscious indifference to the consequences, or by flagrant and palpable breach of duty.[33]

Considering the circumstances, We cannot consider the neglect as gross in nature. It is well to note that the audit team merely took a random sample of all the search warrants issued by Judge Ante in the span of eight years. We cannot base a graver imposition of penalty on a mere supposition that had the audit been more extensive, the findings would surely be more revealing than from what was established and reported by the audit team. We are constrained to rule on what is presented before Us, because basic is the rule that the complainant has the burden of proving by substantial evidence the allegations in the complaint; or such evidence as a reasonable mind may accept as adequate to support a conclusion.[34] In this case, there is no clear proof that Judge Ante's actions were colored with willful neglect or intentional wrongdoing. Good faith and absence of malice, corrupt motives or improper considerations are sufficient defenses in which a judge charged with ignorance of the law can find refuge.[35]

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[32] *Office of the Ombudsman v. De Leon*, 705 Phil. 26, 38 (2013) citing *Republic of the Philippines v. Canastillo,* 551 Phil. 987, 996 (2007).

[33] *Court of Appeals by: COC Marigomen v. Manabat, Jr.*, 676 Phil. 157, 164 (2011).

[34] *Concerned Citizen v. Divina*, 676 Phil. 166, 176 (2011).

[35] *Atty. Martinez, et al. v. Judge De Vera*, 661 Phil. 11, 23 (2011).

Under Section 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. We deem it proper to impose the penalty of three (3) months suspension without pay on Judge Ante and a stern warning that a repetition of the same or similar act will be dealt with more severely.[36]

WHEREFORE, Judge Francisco A. Ante, Jr., Municipal Trial Court in Cities, Vigan City, Ilocos Sur, is hereby found **GUILTY** of simple neglect of duty, and We hereby **SUSPEND** him from office for **THREE MONTHS** without pay to commence immediately upon receipt of this Decision, with a **STERN WARNING**, that a repetition of the same or similar acts will be dealt with more severely.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), Bersamin, del Castillo, and *Jardeleza, JJ.*, concur.

FIRST DIVISION

[G.R. No. 196765. September 19, 2018]

FRANCIS M. ZOSA, NORA M. ZOSA and MANUEL M. ZOSA, JR., *petitioners, vs.* **CONSILIUM, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; MANNER AND PERIOD OF APPEAL ARE MANDATORY

[36] *Anonymous v. Velarde-Laolao*, 564 Phil. 620, 639 (2007).

AND JURISDICTIONAL REQUIREMENTS; LIBERAL APPLICATION THEREOF REQUIRES REASONABLE EXPLANATION FOR A PARTY'S FAILURE TO COMPLY WITH THE RULES.— Fundamental is the rule that the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements; hence, cannot simply be discounted under the guise of liberal construction. But even if we were to apply liberality as prayed for, it is not a magic word that once invoked will automatically be considered as a mitigating circumstance in favor of the party invoking it. There should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.

2. ID.; ID.; ID.; ID.; ID.; FAILURE TO PAY THE FULL DOCKET FEES WITHIN THE PERIOD FOR TAKING THE APPEAL WARRANTS THE DISMISSAL OF APPEAL; NEGLIGENCE OF COUNSEL'S CLERK FOR THE BELATED PAYMENT OF THE APPEAL FEE IS NOT A COMPELLING OR SUFFICIENT EXPLANATION.— Consilium prays for the liberal application of Section 4 in relation to Section 13, Rule 41 of the Rules of Court, as amended on the justification that its counsel's clerk "forgot" to pay the appeal fee when he filed the notice of appeal – an excusable negligence. [With the provisions under] Sections 4 and 13, Rule 41 of the Rules of Court, as amended x x x "the Court has consistently upheld the dismissal of an appeal or notice of appeal for failure to pay the full docket fees within the period for taking the appeal. Time and again, this Court has consistently held that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory." x x x If the Court were to admit the tendered excuse, *i.e.,* the negligence of the counsel's clerk as compelling or sufficient explanation for the belated payment of the appeal fee, we would be putting a premium on such lackadaisical attitude and negating a considerable sum of our jurisprudence that affirmed dismissals of appeals or notices of appeal for nonpayment of the full appellate docket fees. We will not do that.

3. ID.; ID.; MOTIONS; NOTICE OF HEARING; REQUISITE THAT HEARING MUST NOT BE LATER THAN 10 DAYS FROM THE FILING OF THE MOTION; VIOLATED IN CASE AT BAR.— As to the defective notice of hearing in Consilium's motion for reconsideration, the Rules of Court, as amended, require every written motion, except those that the court may act upon without prejudicing the rights of an adverse party, to be set for hearing by its proponent. The substance of a notice of hearing is laid out in Section 5, Rule 15 of the Rules of Court, as amended. It reads: Section 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing **which must not be later than ten (10) days after the filing of the motion.** Herein, it is clear that the notice of hearing in Consilium's motion for reconsideration failed to comply with the requisites set forth in the aforequoted rule. In fact, Consilium's counsel, Atty. Gaviola, admitted to purposely defying the 10-day requirement as he would not be available to attend any hearing within the 10-day period from the filing of said motion. The Court has been categorical in treating a litigious motion without a valid notice of hearing as a mere scrap of paper. And "[t]he subsequent action of the court on a defective motion does not cure the flaw, for a motion with a fatally defective notice is a useless scrap of paper, and the court has no authority to act thereon."

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioners.
Allan C. Gaviola for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *C.J.*:

This is a Petition for Review on *Certiorari* filed under Rule 45 of the Rules of Court, as amended, assailing the Decision[1]

[1] *Rollo*, pp. 23-31; penned by Associate Justice Pampio A. Abarintos with Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez concurring.

and Resolution[2] dated November 30, 2010 and April 8, 2011, respectively, of the Court of Appeals in CA-G.R. SP No. 03538 entitled, *"Consilium Inc. represented by Arturo T. Guillen v. The Honorable Presiding Judge Geraldine Faith Econg of the Regional Trial Court, Branch 9 of Cebu City, Francis M. Zosa, Nora M. Zosa, and Manuel M. Zosa, Jr.,"* which *reversed* and set aside the Orders dated January 15, 2008[3] and April 2, 2008[4] of the Regional Trial Court (RTC) Branch 9, Cebu City in Civil Case No. CEB-26038 entitled, *"Francis M. Zosa, Nora M. Zosa and Manuel M. Zosa, Jr. v. Rosario Paypa, Rollyben R. Paypa and Rubi R. Paypa."*

The Facts

On January 17, 2001, a complaint[5] for "Declaration of Nullity of Deed of Sale and TCT No. T-113390, and Quieting of Title" was filed before the RTC by herein petitioners Francis M. Zosa, Nora M. Zosa and Manuel M. Zosa, Jr. (hereinafter collectively referred to as the "Zosas"), against Rosario Paypa, Rollyben R. Paypa and Rubi R. Paypa (hereinafter collectively referred to as the "Paypas").

During the pendency of the aforementioned case, on January 29, 2003, respondent Consilium, Inc. (Consilium) was allowed to intervene therein on the ground that on November 23, 2000, it had purchased the subject property in good faith from the Paypas for ₱1,585,100.00.[6]

In a Decision[7] dated September 27, 2007, the RTC ruled in favor of the Zosas, to wit:

WHEREFORE, by reason of preponderance of evidence, the court hereby renders judgment in favor of the plaintiffs and against defendants. The court hereby:

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[2] *Rollo,* p. 40.

[3] CA *rollo,* pp. 54-55.

[4] *Id.* at 61.

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

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

[7] *Id.* at 38-49.

1. Declares the Deed of Absolute Sale as void; and

2. Orders the cancellation of TCT No. T-113390 which was issued in the name of defendants Sps. Paypa.

All other claims, as well as the counterclaims are hereby considered DISMISSED.[8]

On October 17, 2007, Consilium filed a Notice of Appeal,[9] alleging to have received the Decision of the RTC on October 10, 2007. Note, however, that the corresponding appeal fee was paid only on October 31, 2007, or six days from October 25, 2007, the last day to perfect an appeal.

The Zosas opposed the Notice of Appeal on the ground that the appeal was *"filed out of time x x x while the Notice of Appeal was filed on October 17, 2007, the docket/appeal fee was paid only on October 31, 2007 which was beyond the period x x x to file the Notice of Appeal."*[10]

In Consilium's Comment to the Zosas' Opposition (to the Notice of Appeal), it explained that such omission, however, was sheer inadvertence, *i.e., "[t]hat after the Notice of Appeal was prepared by undersigned counsel, [he] left for Basilan to attend to some pressing engagements with the Basilan Electric Cooperative of which he is the designated Project Supervisor, in charge for its rehabilitation x x x instruction[s] were given to his clerk Jonathan Cabañez to file the Notice of Appeal as well as to pay the docket fee x x x [t]hat, while the Notice of Appeal was filed, the aforenamed clerk forgot to pay the docket fee as required x x x upon the return of the undersigned counsel on October 31, 2007, he found out that the docket fee was not paid, thus, he immediately caused the payment of the same."* It insisted that such "inadvertence" was a case of excusable negligence.[11]

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[8] *Id*. at 48-49. The RTC held that the signatures of the spouses Manuel Zosa and Amparo Zosa on the subject deed were forgeries; hence, making the document void.

[9] *Id*. at 50-52.

[10] *Id*. at 111-112; Opposition to Notice of Appeal.

[11] *Id*. at 113-116; Comments to Opposition to Notice of Appeal.

Acting on the Notice of Appeal, the RTC resolved to deny due course thereto in an Order dated January 15, 2007, *viz.*:

> WHEREFORE, in view of the foregoing, the Notice of Appeal filed by the Intervenor Consilium, Inc. is hereby denied due course.[12]

On February 7, 2008, Consilium moved for the reconsideration of the above-mentioned Order, and prayed for the relaxation of the rules of procedure. The motion was set for hearing on February 22, 2008 per the Notice of Hearing stated in the said motion.

The Zosas, however, sought the outright denial of Consilium's motion for reconsideration on the ground that it was set for hearing beyond the 10-day period prescribed in Section 5, Rule 15 of the Rules of Court, as amended.

The RTC, for its part, set the hearing of Consilium's motion for reconsideration on March 3, 2008.[13]

And in an Order dated March 3, 2008, the RTC treated the motion as a mere scrap of paper, *viz.*:

> The Court, however, regrets that it cannot rule on the motion for reconsideration filed by [the] intervenor thru counsel, on the ground that the same was received by this Court on February 7, 2008 and yet, the Motion was set for hearing beyond the 10-day period set forth by the rules, pursuant to Section 5, Rule 15 of the 1997 Rules on Civil Procedure.[14]

Upon receipt of the above-quoted Order, Consilium sought clarification as to its import, arguing –

> 2. That with the foregoing pronouncement of the Honorable Court, intervenor-movant is now in a quandary on what to do and where to go, considering that the action of the Court, with due respect, left practically everything in a suspended animation or uncertainty;
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> x x x x x x x x x

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[12] *Id.* at 55.

[13] Per Order dated February 12, 2008; CA *rollo*, p. 57.

[14] CA *rollo*, p. 59.

4. That the court's refusal to rule on the Motion for Reconsideration after having taken cognizance of it, may simply mean a deferment of its action on the motion, which is not countenance [d] by Section 3, second paragpraph of Rule 16, which states that "the court shall not defer the resolution of the motion for the reason that the ground relied upon is not indubitable" x x x;

5. That, whether or not, the motion was filed contrary to the provision of Section 5, Rule 15, the Court should render a resolution thereon, in as much as the grounds relied upon by intervenor-movant in its motion are not only worthy of consideration, and did not appear indubitable, but also worth giving the aggrieved party the chance to avail of the remedies provided for under the Rules in the interest of justice and fair play x x x;

x x x x x x x x x

8. That, having taken cognizance of the Motion for Reconsideration by the Court's admission of the filing thereof, and the subsequent resetting of the date of hearing and its actual hearing of the arguments of intervenor-movant, the latter is of the view and for which it submits, that the alleged procedural defect mentioned above was cured. Moreover, the alleged defect herein mentioned is entirely procedural and within the discretion of the court to set aside if only to uphold justice, equity and fair play, and discourage the disposition of cases by technicality. In this connection, it is pertinent to consider that, "the rules shall be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding(,)" Rule l, Section 6(,) Rules of Court.[15]

In response to the foregoing motion for clarification, the RTC issued an Order[16] dated April 2, 2008, to wit:

Under established jurisprudence, any motion that does not comply with Sec. 5 of Rule 16 of the 1997 Rules of Civil Procedure is a mere scrap of paper. In this case, the scheduled hearing of the said motion for reconsideration was beyond the period specified by the rules which must not be later than ten (10) days after the filing of the motion. Furthermore, a motion that fails to comply with the mandatory provision of Rule 15, Section 5 is pro forma which do

[15] *Id.* at 132-134.

[16] *Id*. at 61.

not merit the attention of the court. The subsequent action of the court did not cure the procedural defect for a motion with a notice fatally defective is a "useless piece of paper." And finally, the motion for reconsideration aside from being a mere scrap of paper is also pro forma as the motion reiterates issues already passed upon by the court.

Thereafter, Consilium elevated the matter to the Court of Appeals *via* a petition for *certiorari* under Rule 65 of the Rules of Court, as amended.[17]

In a Decision dated November 30, 2010, the Court of Appeals granted the petition, the dispositive part of which reads:

> WHEREFORE, premises considered, the PETITION is GRANTED. The assailed Orders dated 15 January 2008 and 02 April 2008, are hereby REVERSED and SET ASIDE. The Regional Trial Court, Branch 9, Cebu City, is DIRECTED to GIVE DUE COURSE to the Notice of Appeal filed by the petitioner on 17 October 2007 in Civil Case No. CEB-26038.[18]

The appellate court held that the "liberal application of the Rules is warranted since the rights of the parties were not affected even if the hearing of said motion [for reconsideration] was originally set by petitioner beyond the 10-day period required by the Rules [of Court, as amended]. Private respondents [the Zosas] received a copy of the motion for reconsideration in question. They were certainly not denied an opportunity to study the arguments in the said motion as they filed an opposition to the same."[19] Further, it gave great weight to the fact that, notwithstanding the non- compliance to the 10-day rule on notice of hearing, the RTC reset the hearing of said motion to a later date – a fact that points to the original intention of the trial court, which is to take cognizance of the motion.

With respect to the matter of the late payment of appeal fee, the Court of Appeals opined that "jurisprudence is replete [with]

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

[18] *Id.* at 30.

[19] *Rollo,* p. 27.

cases which gave due course to an appeal even if the appellate docket fees were filed out of time"; hence, "it is x x x incumbent upon the public respondent to give due course to the Notice of Appeal."[20]

The subsequent motion for reconsideration was denied in a Resolution dated April 8, 2011.

Hence, the present petition raising the following assignment of errors:

The Issue

I – The Court of Appeals Erred In Holding That The Regional Trial Court Committed Grave Abuse of Discretion In Not Acting On Respondent's Motion For Reconsideration For Being Filed In Violation Of Section 5 Of Rule 15;

II – The Court Of Appeals Erred In Holding That The Regional Trial Court Committed Grave Abuse of Discretion In Not Giving Due Course To Respondent's Notice Of Appeal On The Ground That The Docket Fee For The Appeal Was Paid Only 6 Days After The Expiration Of The Reglementary Period To File The Appeal;

III – The Court Of Appeals Erred In Holding That The Forgetfulness Of The Clerk Of Respondent's Counsel To Pay The Docket Fee For The Appeal On Time Is A Good Reason To Liberally Apply The Rule On Perfection Of Appeal; and

IV – The Court Of Appeals Erred In Not Dismissing Respondent's Petition On The Ground That It Does Not Have A Meritorious Case.[21]

The Zosas maintain that the Court of Appeals erred when it held that the lack of notice of hearing is cured when the trial court "promptly resets a hearing with a notice to the parties."[22] They argue that the defect is not about the lack of notice of hearing but the fact that the motion was set for hearing beyond the 10-day period required under Section 5 of the Rules of Court, as amended.

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

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

[22] *Id*. at 11.

The Zosas assert that "[t]he payment of the docket fee within the reglementary period is a mandatory requisite for the perfection of the appeal."[23] The reason extended by Consilium's counsel, *i.e.*, that the latter's clerk forgot to pay the appeal fee within the period to file the notice of appeal, is not enough to justify a liberal application of such mandatory requirement.[24]

For its part, Consilium counters that "[t]he rules were formulated for a just and speedy disposition of cases x x x it must [be] construed liberally in order to promote their objective of securing a just, speedy, and inexpensive disposition of every action and proceeding."[25]

Consilium's counsel, Atty. Gaviola, particularly clarifies that he set the notice of hearing of the motion for reconsideration on February 22, 2008, or 15 days from the time he filed said motion on February 7, 2008 because he would be unavailable to attend the hearing on any day earlier than February 22, 2008 – "*[i]t may be considered disrespect upon the Honorable Court for respondent Consilium's counsel to set the date within the tenth day, but be absent therefrom because he would not be unavailable.*"[26]

Atty. Gaviola further rationalizes that his action showed that he had been "more than compliant in preventing delays [by] immediately filing [the] motion for reconsideration [on February 7, 2008] without awaiting for the final day of filing which would have been on the 13th of February."[27]

In any case, Consilium posits that the defect in the notice of hearing was cured when the RTC reset same to a later date.

As to the issue of the late payment of its appeal fee, Consilium insists that the mandatory nature of payment of the appeal fee

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[23] *Id.* at 14.

[24] *Id.* at 15-16.

[25] *Id.* at 60.

[26] *Id.* at 59.

[27] *Id.*

within the reglementary period to file a notice of appeal admits of exceptions as evidenced by jurisprudence to such effect.

The numerous issues notwithstanding, the basic matter to be resolved in this petition is whether or not Consilium extended a reasonable and compelling reason to justify the Court of Appeals' relaxation of the mandatory application of the rules on appeals and motions.

The Ruling of the Court

The petition is meritorious.

Fundamental is the rule that the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements; hence, cannot simply be discounted under the guise of liberal construction.[28] But even if we were to apply liberality as prayed for, it is not a magic word that once invoked will automatically be considered as a mitigating circumstance in favor of the party invoking it. There should be an effort on the part of the party invoking liberality to advance a reasonable or meritorious explanation for his/her failure to comply with the rules.[29]

In this case, contrary to the finding of the Court of Appeals, there is no compelling reason advanced to exempt Consilium from the consequences of its noncompliance with the rules on appeals and motions.

Consilium prays for the liberal application of Section 4 in relation to Section 13, Rule 41 of the Rules of Court, as amended on the justification that its counsel's clerk "forgot" to pay the appeal fee when he filed the notice of appeal – an excusable negligence.

Sections 4 and 13, Rule 41 of the Rules of Court, as amended provide:

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[28] *Dadizon v. Court of Appeals*, 617 Phil. 139, 151-152 (2009), citing *Gutierrez v. Court of Appeals*, 135 Phil. 25, 32 (1968); *Dee Hwa Liong Electronics Corporation v. Papiona*, 562 Phil. 451, 456 (2007).

[29] *Labao v. Flores*, 649 Phil. 213, 223 (2010).

Section 4. *Appellate Court Docket and Other Lawful Fees.* — Within the period for taking an appeal, the **appellant shall pay** to the clerk of the court which rendered the judgment or final order appealed from, **the full amount of the appellate court docket and other lawful fees.** Proof of payment of said fees shall be transmitted to the appellate court together with the original record or the record on appeal.

x x x x x x x x x

Section 13. *Dismissal of Appeal.* — Prior to the transmittal of the original record or the record on appeal to the appellate court, the **trial court may, *motu proprio* or on motion, dismiss the appeal** for having been taken out of time or **for nonpayment of the docket and other lawful fees within the reglementary period.** (As amended, A.M. No. 00-2-10-SC, May 1, 2000.) (Emphases supplied.)

With the foregoing provisions, "the Court has consistently upheld the dismissal of an appeal or notice of appeal for failure to pay the full docket fees within the period for taking the appeal. Time and again, this Court has consistently held that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory."[30]

Admittedly, there are exceptions to the aforecited general rule on the timely payment of appellate docket fees, embodied also in jurisprudence as identified by the Court of Appeals[31] and Consilium in its petition for *certiorari* with the appellate court. But reading them, including a catena of other cases,[32]

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[30] *Fil-Estate Properties, Inc. v. Judge Homena-Valencia*, 562 Phil. 246, 255 (2007); citing *Manalili v. De Leon*, 422 Phil. 214, 220 (2001); *St. Louis University v. Cordero*, 478 Phil. 739, 750 (2004).

[31] Citing *Villena v. Rupisan*, 549 Phil.146, 164-165 (2007).

[32] *Yambao v. Court of Appeals*, 399 Phil. 712, 717-718 (2000); *Buenaflor v. Court of Appeals*, 400 Phil. 395, 402-403 (2000); *Alfonso v. Andres*, 439 Phil. 298, 305-306 (2002); *Villamor v. Court of Appeals*, 478 Phil. 728, 736 (2004).

will show that they involve exceptionally meritorious reasons why the appellate docket fees were not timely paid – the substantive merits of the case, a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules, the existence of a special or compelling circumstance, *etc.*

The Court of Appeals cites *Villena v. Rupisan*[33] where the appellate docket fees were paid six days beyond the reglementary period to appeal. Therein, we upheld the Court of Appeals decision reversing the trial court's denial of the notice of appeal where the reason extended by the appellant for their failure to timely pay the docket fees was admitted poverty, which is a defense miles away from the proffered lapse in memory by Consilium. Such excuse does not even come close to the ample precedents allowing for liberal construction of the rules of procedure. In other words, in *Villena* and the other cited cases where we upheld the liberal application of the rules, the appellants therein hinged their arguments on exceptionally meritorious circumstances peculiar to their particular situations that convinced Us of their entitlement to a lax application of the Rules.

If the Court were to admit the tendered excuse, *i.e.*, the negligence of the counsel's clerk as compelling or sufficient explanation for the belated payment of the appeal fee, we would be putting a premium on such lackadaisical attitude and negating a considerable sum of our jurisprudence that affirmed dismissals of appeals or notices of appeal for nonpayment of the full appellate docket fees. We will not do that.

Moreover, categorizing the "lapse in memory" as compelling reason would set a bad precedent wherein such negligence of an appellant's counsel or his clerk is sufficient to relax the jurisdictional requirements for the perfection of an appeal.

As to the defective notice of hearing in Consilium's motion for reconsideration, the Rules of Court, as amended, require every written motion, except those that the court may act upon

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[33] *Supra* note 31.

without prejudicing the rights of an adverse party, to be set for hearing by its proponent. The substance of a notice of hearing is laid out in Section 5, Rule 15 of the Rules of Court, as amended. It reads:

> Section 5. *Notice of hearing.* — The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing **which must not be later than ten (10) days after the filing of the motion.** (Emphasis supplied.)

Herein, it is clear that the notice of hearing in Consilium's motion for reconsideration failed to comply with the requisites set forth in the aforequoted rule. In fact, Consilium's counsel, Atty. Gaviola, admitted to purposely defying the 10-day requirement as he would not be available to attend any hearing within the 10-day period from the filing of said motion.

The Court has been categorical in treating a litigious motion without a valid notice of hearing as a mere scrap of paper.[34] And "[t]he subsequent action of the court on a defective motion does not cure the flaw, for a motion with a fatally defective notice is a useless scrap of paper, and the court has no authority to act thereon."[35]

In this case, therefore, the Court of Appeals erred in liberally applying the tenets of Section 5 of Rule 15 in the absence of a compelling or satisfactory reason, worse, in the face of an open defiance to the provisions of the Rules of Court, as amended.

To extricate Consilium from the effects of the mandatory application of the Rules of Court, as amended, would, again,

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[34] *Garcia v. Sandiganbayan,* 532 Phil. 338, 348 (2006); *Bacelonia v. Court of Appeals,* 445 Phil. 300 (2003); *Sebastian v. Cabal,* 143 Phil. 364, 366 (1970); *Manila Surety and Fidelity Co., Inc. v. Batu Construction and Company,* 121 Phil. 1221, 1224 (1965); *Philippine National Bank v. Donasco,* 117 Phil. 429, 433 (1963); *Gov't. of the Phil. Islands v. Sanz,* 45 Phil. 117, 121 (1923); *The Roman Catholic Bishop of Lipa v. The Municipality of Unisan,* 44 Phil. 866, 871 (1920).

[35] *Garcia v. Sandiganbayan, id.*, citing *Andrada v. Court of Appeals,* 158 Phil. 576, 579 (1974). See *Sacdalan v. Bautista,* 155 Phil. 153 (1974).

give premium to the unbridled disregard by Atty. Gaviola of the most basic of procedural rules. Indeed, Consilium erred not once, but twice during the course of the proceedings. The negligence is anything but excusable.

A final word.

> Litigants must bear in mind that procedural rules should always be treated with utmost respect and due regard since these are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. Though litigations should, as much as possible, be decided on their merits and not on technicalities, this does not mean, however, that procedural rules are to be belittled to suit the convenience of a party. Indeed, the primordial policy is a faithful observance of the Rules of Court, and their relaxation or suspension should only be for persuasive reasons and only in meritorious cases x x x.[36]

WHEREFORE, the petition is **GRANTED.** The Decision and Resolution dated November 30, 2010 and April 8, 2011, respectively, of the Court of Appeals in CA-G.R. SP No. 03538 entitled, *"Consilium, Inc. represented by Arturo T. Guillen v. The Honorable Presiding Judge Geraldine Faith Econg of the Regional Trial Court, Branch 9 of Cebu City, Francis M. Zosa, Nora M. Zosa, and Manuel M. Zosa, Jr."* are **REVERSED** and **SET ASIDE.** No cost.

SO ORDERED.

Bersamin, del Castillo, Jardeleza, and *Tijam, JJ.,* concur.

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[36] *Estate of the late Juan B. Gutierrez v. Heirs of Spouses Jose and Gracita Cabangon,* 761 Phil. 511, 520 (2015).

FIRST DIVISION

[G.R. No. 201821. September 19, 2018]

PABLO B. MALABANAN, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

REMEDIAL LAW; JURISDICTION; JURISDICTION OF THE COURT OVER THE SUBJECT MATTER IS DETERMINED FROM THE ALLEGATIONS IN THE COMPLAINT, THE LAW IN FORCE AND THE CHARACTER OF THE RELIEF SOUGHT.— The basic rule is that the jurisdiction of a court over the subject matter is determined from the allegations in the complaint, the law in force at the time the complaint is filed, and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims averred. Jurisdiction over the subject matter is not affected by the pleas or the theories set up by the defendant in the answer or motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant.

APPEARANCES OF COUNSEL

Pedro N. Belmi for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The action for the reversion of land initiated by the State is not directed against the judgment of the Land Registration Court but against the title. Hence, jurisdiction is vested in the Regional Trial Court of the province or city where the land involved is located.

The Case

The registered owner appeals the decision promulgated on May 27, 2011,[1] whereby the Court of Appeals reversed and set aside the order issued on December 11, 1998 by the Regional Trial Court (RTC), Branch 83, in Tanauan, Batangas dismissing the action for reversion of land and cancellation of title instituted by the Republic of the Philippines (Republic), through the Office of the Solicitor General (OSG), docketed as Civil Case No. C-192.[2]

Antecedents

The Republic commenced Civil Case No. C-192 against Angelo B. Malabanan, Pablo B. Malabanan (petitioner herein), and Greenthumb Realty and Development Corporation (Greenthumb), the registered owners of various parcels of land covered by certificates of title derived from Transfer Certificate of Title (TCT) No. T-24268 of the Registry of Deeds of Batangas.

The Republic alleged that TCT No. T-24268 had emanated from Original Certificate of Title (OCT) No. 0-17421 of the Registry of Deeds of Batangas, which was purportedly issued pursuant to Decree No. 589383 in L.R.A. Record No. 50573; that upon verification, the Land Registration Authority could not find any copy of the judgment rendered in LRC Record No. 50573; and that the tract of land covered by TCT No. T-24268, being within the unclassified public forest, remained part of the public domain that pertained to the State and could not be the subject of disposition or registration.[3]

In response, the petitioner moved to dismiss Civil Case No. C-192 by arguing that the RTC had no jurisdiction over the action because it sought the annulment of the judgment and the decree issued in LRC Record No. 50573 by the Court of

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[1] *Rollo*, pp. 22-31; penned by Associate Justice Vicente S.E. Veloso, and concurred in by Associate Justice Francisco P. Acosta and Associate Justice Angelita A. Gacutan.

[2] *Id*. at 23.

[3] *Id*. at 49.

First Instance the jurisdiction over which pertained to the Court of Appeals (CA).[4]

The Republic opposed the motion to dismiss, insisting that its complaint did not ask the RTC to annul a judgment because the judgment supposedly rendered in LRC Record No. 50573 did not exist to begin with.[5]

On December 11, 1998, the RTC granted the motion to dismiss,[6] stating as follows:

> The motion is meritorious.
>
> A similar complaint for reversion to the public domain of the same parcel of land was filed with this Court on July 14, 1997 by plaintiff against defendants-movants. The case, docketed as Civil Case No. T-784 was dismissed on December 7, 1992 for lack of jurisdiction.
>
> As pointed out by the movants, the nullification of Original Certificate of Title No. 0-17421 and all its derivative titles would involve the nullification of the judgment of the Land Registration Court which decreed the issuance of the title over the property. Therefore, the applicable provision of law is Section 9 (2) of Batas Pambansa Blg. 129 which vests upon the Court of Appeals exclusive jurisdiction over actions for annulment of judgments of the Regional Trial Courts.
>
> Moreover, this Court is aware, and takes judicial notice, of the fact that the parcels of land, subject of reversion had been the subject of several cases before this court concerning the ownership and possession thereof by defendant-movants. These cases were even elevated to the Court of Appeals and the Supreme Court which, in effect upheld the ownership of properties by defendants Malabanans. Said decisions of this Court, the Court of Appeals and the Supreme Court should then be annulled.[7]

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[4] *Id*. at 75.

[5] *Id*. at 53.

[6] *Id*. at 26.

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

After the Republic filed its notice of appeal.[8] The defendants (including the petitioner) moved that the RTC deny due course to the notice of appeal on the ground that the mode of appeal adopted was improper because the issue of jurisdiction, being a question of law, was directly cognizable by the Supreme Court on appeal by petition for review on *certiorari*.[9]

On June 29, 1999, the RTC denied due course to the Republic's notice of appeal, and dismissed the appeal.[10]

The Republic assailed the order of June 29, 1999 in the CA by petition for *certiorari* (CA-G.R. No. SP No. 54721), alleging that the RTC thereby gravely abused its discretion amounting to lack or excess of its jurisdiction.

The CA promulgated its ruling of February 29, 2000 to the effect that the determination of whether or not an appeal could be dismissed on the ground that the issue involved was a pure question of law was exclusively lodged in the CA as the appellate court; and that the RTC should have given due course to the appeal, and transmitted the original records to the CA.[11]

On May 27, 2011, the CA, resolving the appeal of the Republic on the merits, set aside the order issued by the RTC on December 11, 1998,[12] and disposed as follows:

WHEREFORE, the appeal is **GRANTED**. The assailed December 11, 1998 Order of the RTC is **SET ASIDE** and the case is consequently **REMANDED** to the RTC with the directive that all defendants-appellees be required to file their respective responsive pleading, and to thereafter proceed with the trial on the merits as well as the resolution of the case with dispatch.

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[8] *Id*. at 52.

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

[10] *Id*. at 51.

[11] See *Republic v. Malabanan,* G.R. No. 169067, October 6, 2010, 632 SCRA 338, 342.

[12] *Supra* note 1.

No costs.

SO ORDERED.[13]

The CA explained as follows:

The Republic insists that it "cannot be precluded from availing the remedy of an action for reversion in order to revert lands of the public domain, such as the parcel of land covered by OCT No. 0-17421 which was improperly titled in the name of private person to its patrimony" and over which the RTC exercises exclusive original jurisdiction. It claims that the DENR found that the land covered by TCT No. 24268 is within the unclassified public forest of Batangas per Land Classification CM No. 10, thereby making the subject property not capable of private ownership nor of disposition, or registration.

We agree.

It is settled that jurisdiction of courts over the subject matter of the litigation is conferred by law and determined by the allegations in the complainant.

Here, the Republic alleges that upon an investigation by the DENR, the subject property was found to be situated within the **unclassified public forest of Batangas**, thereby rendering it inalienable. More so that the defendants-appellees' title over the property emanated from an original certificate of title, whose decree of registration and upon which it was based, is not therefore null and void.

Under Section 101 of Commonwealth Act No. 141, or the Public land Act, viz.:

> "**Section 101.** All actions for the reversion to the Government of lands of the public domain or improvements thereon shall be instituted by the Solicitor General or the officer acting in his stead, in the proper courts, in the name of the [Republic of the Philippines]."

Stated differently, **where a parcel of land considered to be inalienable land of the public domain is found under private ownership, the Government is allowed by law to file an original action for reversion,** an action where the ultimate relief sought is to revert the land to the government pursuant to the Regalian Doctrine,

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[13] *Rollo,* p. 30.

and over which action, no doubt, **the RTC exercise exclusive jurisdiction.**

Besides, inasmuch as the allegations in the April 30, 1998 Motion to Dismiss raised matters which require presentation of evidence and determination of facts, said allegations are consequently best resolved in a trial on the merits, and not in a motion to dismiss. It thus behooved the RTC to assume jurisdiction over the Republic's action for reversion, calibrate all the evidence that both parties will present in the trial, and determine whether Republic's pieces of evidence indeed prove its contention that the subject property is part of the public domain.[14]

On May 4, 2012, the CA denied the petitioner's motion for reconsideration for its lack of merit.[15]

Hence, this appeal.

Issues

The petitioner insists that the CA erred: (1) in setting aside the order of the RTC for the dismissal of Civil Case No. C-192; and (2) in directing the RTC to proceed with the trial on the merits as well as the resolution of Civil Case No. C-192 with dispatch.

The petitioner argues that the action to annul OCT No. 0-17421 and its derivative certificates of title necessarily related to the final judgment of the Land Registration Court; and that conformably with the rulings in *Estate of the Late Jesus* S. *Yujuico v. Republic*,[16] *Collado v. Court of Appeals*,[17] and *Republic v. Court of Appeals*,[18] the Republic should lodge its complaint for annulment of judgment in the CA pursuant to Rule 47 of the *Rules of Court.*

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

[15] *Id.* at 40.

[16] G.R. No. 168661, October 26, 2007, 537 SCRA 513, 528-529.

[17] G.R. No. 107764, October 4, 2002, 390 SCRA 343, 351.

[18] G.R. No. 126316, June 25, 2004, 432 SCRA 593, 597.

The Republic counters that it is not seeking hereby the annulment of the judgment from which Decree No. 589383 was derived inasmuch as such judgment did not exist; and that the action for reversion and cancellation of title was definitely within the jurisdiction of the RTC.[19]

Should Civil Case No. C-192 be considered an action to annul the judgment of the Land Registration Court?

Ruling of the Court

The appeal lacks merit.

The basic rule is that the jurisdiction of a court over the subject matter is determined from the allegations in the complaint,[20] the law in force at the time the complaint is filed, and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims averred.[21] Jurisdiction over the subject matter is not affected by the pleas or the theories set up by the defendant in the answer or motion to dismiss;[22] otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant.[23]

The complaint in Civil Case No. C-192 alleged that: *(a)* TCT No. T-24268 had emanated from OCT No. 0-17421 of the Registry of Deeds of Batangas pursuant to Decree No. 589383, issued in L.R.C. Record No. 50573; *(b)* copy of the decision in L.R.C. Record No. 50573 could not be found in the files of the Land Registration Authority; *(c)* the land described in TCT No. T-24268 was within the unclassified public forest of

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[19] *Rollo,* pp. 56-65.

[20] *Arzaga v. Copias,* G.R. No. 152404, March 28, 2003, 400 SCRA 148, 154.

[21] *Padlan v. Dinglasan,* G.R. No. 180321, March 20, 2013, 694 SCRA 91, 98-99.

[22] *Sta. Clara Homes Owners' Association v. Gaston,* G.R. No. 141961, January 23, 2002, 374 SCRA 396, 409.

[23] *Commart (Phils.), Inc. v. Securities and Exchange Commission,* G.R. No. 85318, June 3, 1991, 198 SCRA 73, 81.

Batangas; *(d)* TCT No. T-24268 was subdivided into four lots that were covered by TCT No. T-24386, TCT No. T-24387, TCT No. T-24388 and TCT No. T-24389; *(d)* the land covered by TCT No. T-24386 was in turn subdivided into 92 lots registered in the name of Greenthumb Realty and Development Corporation; *(e)* the lands covered by TCT No. T-24387 and TCT No. T-24388 were now subdivided into nine lots each all in the name of the Malabanans (including herein petitioner); and *(f)*TCT No. T-24389 remained in the name of the Malabanans.

The complaint sought as reliefs the cancellation of OCT No. 0-17421, and the reversion to the Republic of the tract of land therein covered on the grounds that there had been no decision of the Land Registration Court authorizing its issuance, and that the land covered by TCT No. 24268 was within the unclassified public forest of Batangas.

We find and declare that the complaint of the Republic was not seeking the annulment of the judgment issued in L.R.C. Record No. 50573.

The factual setting in *Republic v. Roman Catholic Archbishop of Manila*[24] is similar to that in Civil Case No. C-192. Therein, the Republic filed a complaint for cancellation of titles and reversion of OCT No. 588 supposedly issued pursuant to Decree No. 57486 because OCT No. 588 did not cover the lots described in Decree No. 57486. In resolving whether or not the RTC had jurisdiction over the action for cancellation of titles and reversion, the Court observed and held:

> It is axiomatic that the nature of an action and whether the tribunal has jurisdiction over such action are to be determined from the material allegations of the complaint, the law in force at the time the complaint is filed, and the character of the relief sought irrespective of whether the plaintiff is entitled to all or some of the claims averred. Jurisdiction is not affected by the pleas or the theories set up by defendant in an answer to the complaint or a motion to dismiss the same.
>
> In the present case, the material averments, as well as the character of the relief prayed for by petitioners in the complaint before the

[24] G.R. Nos. 192975 and 192994, November 12, 2012, 685 SCRA 216.

RTC, show that their action is one for cancellation of titles and reversion, not for annulment of judgment of the RTC. The complaint alleged that Lot Nos. 43 to 50, the parcels of land subject matter of the action, were not the subject of the CFI's judgment in the relevant prior land registration case. Hence, petitioners pray that the certificates of title of RCAM be cancelled which will not necessitate the annulment of said judgment. Clearly, Rule 47 of the Rules of Court on annulment of judgment finds no application in the instant case.

The RTC may properly take cognizance of reversion suits which do not call for an annulment of judgment of the RTC acting as a Land Registration Court. Actions for cancellation of title and reversion, like the present case, belong to the class of cases that "involve the title to, or possession of, real property, or any interest therein" and where the assessed value of the property exceeds ₱20,000.00, fall under the jurisdiction of the RTC. Consequently, no grave abuse of discretion excess of jurisdiction can be attributed to the RTC in denying RCAM's motion to dismiss.[25]

The rulings in *Estate of the Late Jesus S. Yujuico v. Republic*,[26] *Collado v. Court of Appeals*[27] and *Republic v. Court of Appeals*[28] the petitioner cited and relied upon have no relevance herein. Therein, the Republic had instituted actions for the annulment of judgment, not actions for the cancellation and reversion of title, like what happened herein. The Republic recognized therein that the land titles subject of each action had been issued pursuant to final judgments rendered by the Land Registration Court, and that such judgments must necessarily be first invalidated before the lands involved could revert to the public domain. In contrast, the Republic alleges herein that no judgment had ever existed.

In a reversion suit, we should emphasize, the attack is directed not against the judgment ordering the issuance of title, but against the title that is being sought to be cancelled either because the

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

[26] *Supra* note 16.

[27] *Supra* note 17.

[28] *Supra* note 18.

judgment was not validly rendered, or the title issued did not faithfully reflect the land referred to in the judgment,[29] or because no judgment was rendered at all.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on May 27, 2011 in CA-G.R. CV No. 70770; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), del Castillo, Tijam, and *Reyes, J. Jr.,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 215671. September 19, 2018]

ALSONS DEVELOPMENT AND INVESTMENT CORPORATION, *petitioner, vs.* **THE HEIRS OF ROMEO D. CONFESOR (ANGELITA, GERALDINE, ROMEO, JR., ROWENA, JULIANE, NICOLE, and RUBYANNE, ALL SURNAMED CONFESOR), and THE HONORABLE OFFICE OF THE PRESIDENT,** *respondents.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; HUMAN RELATIONS; PREJUDICIAL QUESTION; COMES INTO PLAY ONLY IN A SITUATION WHERE A CIVIL ACTION AND A

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[29] *Supra* note 24, at 222.

[*] Vice Associate Justice Francis H. Jardeleza, who inhibited due to his prior participation as the Solicitor General, per the raffle of September 12, 2018.

CRIMINAL ACTION ARE BOTH PENDING AND THERE EXISTS IN THE FORMER AN ISSUE WHICH MUST BE PREEMPTIVELY RESOLVED BEFORE THE CRIMINAL ACTION MAY PROCEED; EXCEPTION; CASE AT BAR.— Generally, a prejudicial question comes into play only in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed because the resolution of the civil action is determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. This, however, is not an ironclad rule. It is imperative that We consider the rationale behind the principle of prejudicial question, *i.e.*, to avoid two conflicting decisions. x x x Here, the two cases involved are the cancellation of IFPMA No. 21 in the case at bar and the cancellation of title and reversion case before the RTC. Respondents sought the cancellation of IFPMA No. 21 upon its claim of ownership over the property subject of the said leasehold agreement, as evidenced by their certificate of title. As claiming owners, respondents maintain that the government has no right to enter into such leasehold agreement over the subject property. Thus, respondents argue that IFPMA No. 21 should be cancelled. On the other hand, petitioner cited the pending annulment of title and reversion case before the RTC, wherein the Republic claims that respondents' title is fake and spurious and as such, the subject property remains in the public domain. Corollarily, the government claims that it has the right to lease or dispose of the same. Thus, it is petitioner's position that said civil case between the Republic and respondents operates as a bar to the action for cancellation of IFPMA No. 21. x x x [T]he cancellation of the IFPMA No. 21 is the logical consequence of the determination of respondents' right over the subject property. Further, to allow the cancellation thereof at the instance of the respondents notwithstanding the possibility of finding that respondents have no right over the property subject thereof is a "sheer exercise in futility." For what happens if we, for the time being, uphold respondents' title and allow the cancellation of IFPMA No. 21 and later on in the civil case, the RTC rules to cancel respondents' TCT for being fake and spurious and reverts the property to the public domain? It would then turn out that the cancellation was not proper. That will be a clear case of conflicting decisions. On the other hand, if respondents

will be proven to have a clear right over the subject property, then they can proceed to exercise every power of dominion over the same. In fine, as the outcome of the civil case is determinative of the issue in the case at bar, by the dictates of prudence, logic, and jurisprudence, the proper recourse is to wait for the resolution of the said civil case. Certainly, at this point, delving into the issue on the propriety of IFPMA No. 21's cancellation is premature.

2. ID.; ID.; ID.; ID.; ID.; ID.; WHERE THE RIGHTS OF PARTIES TO AN ACTION CANNOT BE PROPERLY DETERMINED UNTIL THE QUESTIONS RAISED IN ANOTHER ACTION ARE SETTLED, THE FORMER SHOULD BE STAYED.— Every court has the inherent power to control its case disposition with economy of time and effort for itself, the counsels, as well as the litigants as long as the measures taken are in consonance with law and jurisprudence. Where the rights of parties to an action cannot be properly determined until the questions raised in another action are settled, the former should be stayed.

APPEARANCES OF COUNSEL

Angel Esguerra III for petitioner.

LACAS LAW OFFICE, Vicente A. Garcia and *Gerald Jacob* for respondents.

Stephen Arceño, collaborating counsel for respondents.

D E C I S I O N

TIJAM, *J.*:

Assailed in this petition for review on *certiorari* [1] under Rule 45 of the Rules of Court is the Decision[2] dated December 13,

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[1] *Rollo,* pp. 12-42.

[2] Penned by Associate Justice Myra V. Garcia-Fernandez, concurred in by Associate Justices Magdangal M. De Leon and Victoria Isabel A. Paredes; *id.* at 48-73.

2013 of the Court of Appeals (CA) in CA-G.R. SP No. 117707, which affirmed the Decision dated July 6, 2009 and Resolution dated December 20, 2010 of the Office of the President (OP) in O.P. Case No. 08-D-127 (DENR Case No. 8276), ordering the cancellation and revocation of the Industrial Forest Plantation Management Agreement (IFPMA) No. 21 between the Department of Environment and Natural Resources (DENR) and Alsons Development and Investment Corporation (petitioner).

Factual Antecedents

On January 15, 1996, petitioner and the DENR, through its Regional Executive Director executed a leasehold agreement, *i.e.*, IFPMA No. 21, with a term of 25 years over a parcel of land with an area of 899 hectares, more or less, located in Sitio Mabilis, Barangay San Jose, General Santos City, South Cotabato.[3]

It was alleged that petitioner's rights in IFPMA No. 21 can be traced from Ordinary Pasture Permit (OPP) No. 1475 issued to Magno Mateo (Mateo) by the Bureau of Forestry on June 23, 1953 over a pasture land located in Sitio Mabilis, Buayan, South Cotabato. On June 28, 1960, Mateo assigned his rights and interests over the covered property to Tuason Enterprises, Inc., thus, Pasture Lease Agreement (PLA) No. 61 was cancelled and PLA No. 1715 dated December 13, 1960 was issued. On March 24, 1964, Tuason Enterprises Inc. transferred its leasehold rights to petitioner, thus, PLA No. 1715 was cancelled and PLA No. 2476 was issued. On June 26, 1992, petitioner and the DENR entered into Industrial Forest Management Agreement (IFMA) No. 21 for a period of 25 years. On August 17, 1994, IFMA No. 21 was re-issued expanding the coverage area. On January 16, 1995, IFMA No. 21 was converted to IFPMA No. 21, where the coverage area was further increased. Finally, IFPMA No. 21 dated January 15, 1996 was executed.[4]

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

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

The controversy ignited when on August 15, 2005, the Heirs of Romeo D. Confesor (respondents) filed a protest docketed as RED Claim No. 008-06 against petitioner before the DENR, Region 12 of Koronadal City, praying for the cancellation of IFPMA No. 21 on the ground that the a large portion of the land subject thereof was part of the property covered by consolidated Original Certificate of Title (OCT) No. V-1344 (P-144) P-2252. Asserting ownership through their predecessor-in-interest, respondents basically argued that the DENR had no jurisdiction to enter into the said leasehold agreement because the subject property was no longer classified as a public land.[5]

Relevantly, prior to the filing of respondent's protest, the subject property was put under investigation through the Task Force *Titulong Malinis* of the Land Registration Authority (LRA), which submitted a report dated August 2, 2004, stating that there was reasonable ground to believe that OCT No. V-1344 (P-144) P-2252 is a spurious title by virtue of a letter dated July 20, 2004 by Engr. Edmund Mateo, acting chief of the LRA's Plan Examination Section, which stated that Plan PSU-120055 is situated in San Pablo City, Laguna.[6]

The said task force's report was, however, set aside by the Department of Justice (DOJ) in its Resolution dated February 2, 2007, sustaining the validity and authenticity of OCT No. V-1344 (P-144) P-2252, finding that the said title existed in the DENR, Maganoy, Maguindanao files per certification dated July 9, 2004 of Datu Nguda P. Guiampaca, CENRO IB; that the Technical Services and Survey Records Documentation Section of the Land Management Bureau affirmed that the PSU-120055 is located in Buayan, Cotabato; and that the subject property was classified as alienable and disposable with no adverse claim of ownership except that of the registered owners.[7]

Meanwhile, the DENR conducted its own investigation on OCT No. V-1344 (P-144) P-2252 due to the boundary dispute

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[5] *Id*. at 51-52.

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

[7] *Id*.

between the coverage of the said title *vis-a-vis* that covered by IFPMA No. 21. In its report dated September 9, 2005, the DENR stated that OCT No. V-1344 (P-144) P-2252 cannot be considered spurious absent any evidence to show fraud or irregularity in the issuance thereof. However, the DENR found that while OCT No. V-1344 (P-144) P-2252 under PSU-120055 was genuine, there were segregated certificates of title under Plan PSU-117171 purportedly issued to Romeo D. Confesor, *et al.*, which were all fake and spurious as the same were not derived from OCT No. V-1344 (P-144) P-2252 under PSU-120055. On August 22, 2005, the DENR, Region 12 of Koronadal dismissed respondents' protest against IFPMA No. 21 for lack of merit.[8]

In its decision dated July 13, 2007, the DENR Secretary affirmed the regional director's findings and conclusion. It was further ruled that respondents were guilty of laches for not having raised the issue of ownership against petitioner's predecessor-in-interest.[9]

However, on appeal, the OP set aside the DENR's decision in its July 6, 2009 Decision, upholding the validity and existence of OCT No. V-1344 (P-144) P-2252 under the Torrens system. The OP ruled that any doubt on the title's authenticity should be raised in a direct attack before the regular court. Further, the OP ruled that laches does not apply to lands registered under the Torrens system. Consequently, the OP ordered the cancellation and revocation of IFPMA No. 21 insofar as respondents' property is concerned.[10]

Petitioner filed a motion for reconsideration of the OP's July 6, 2009 Decision.[11]

On October 12, 2009, the OP resolved to grant petitioner's motion for reconsideration, this time ruling that laches applies and that Sales Patent V-1836 dated May 21, 1955 was not

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[8] *Id*. at 53-57.

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

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

[11] *Id*. at 60-61.

perfected by respondents and/or their predecessor-in-interest as they failed to comply with the requirements under Section 65 of CA 141, one which is to introduce permanent improvements on the land within the prescribed period.[12]

It was then respondents' turn to file a motion for reconsideration.[13]

On December 20, 2010, the OP again reversed itself, ruling that respondents have established their ownership of the subject property, reinstating thus its July 6, 2009 Decision.[14]

On January 19, 2011, petitioner filed a Petition for Review with a Prayer for Status Quo Order before the CA, questioning the OP's July 6, 2009 Decision, manifesting that a petition for annulment of title and reversion of the land covered by OCT No. V-1344 (P-144) P-2252, among others, was filed before the Regional Trial Court (RTC) of General Santos City entitled *Republic of the Philippines, et al. v. Romeo D. Confesor, et al.*, docketed as Civil Case No. 7711, which was a direct action by the Republic, through the DENR, to nullify respondents' title for being fake and spurious.[15] Petitioner argued, thus, that in deference to the pendency of Civil Case No. 7711 before the RTC, it is more prudent for the CA to maintain the *status quo*.[16]

On January 24, 2011, petitioner filed with the CA an Urgent Motion for Issuance of a Status Quo Order or Temporary Restraining Order/Writ of Preliminary Injunction in view of the pendency of Civil Case No. 7711, arguing that the said civil case is a confirmation that the State never recognized the validity of respondents' title.[17]

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[12] *Id.* at 61-63.

[13] *Id.* at 63.

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

[15] *Id.* at 22-23 and 29-30.

[16] *Id.* at 29.

[17] *Id.*

On March 14, 2011, the CA in its Resolution denied the said motion for injunctive relief.[18]

Undaunted, petitioner filed a motion for reconsideration of the denial to issue injuctive relief. This was, however, not acted upon by the CA.[19]

Meanwhile, in an Order dated March 21, 2013, Civil Case No. 7711 was ordered dismissed by the RTC, without prejudice, for failure of the parties to file judicial affidavits.[20]

The CA then promulgated its assailed Decision[21] on December 13, 2013, affirming the OP's December 20, 2010 Decision. *First,* the CA ruled that the subject property is alienable and disposable, having been conceded through a free patent and registered under the Torrens system.[22] *Second,* the CA found that the evidence on record established that OCT No. V-1344 (P-144) P-2252 under PSU-120055 arising from Sales Patent No. 1836 granted to Romeo Confesor, *et al.*, is not spurious.[23] *Third,* the CA ruled that Section 38, of Act No. 496 provides only for a period of one year from the date of entry of a decree of registration to question the same.[24] In this case, the sales patent was issued to respondent's predecessor-in-interest on May 21, 1955 and thereafter consolidated OCT No. V-1344 (P-144) P-2252 was duly registered on December 21, 1956 and no question was raised regarding the same. Further, the CA noted that while it may be argued that the right of the State to demand reversion of unlawfully acquired lands of public domain cannot be barred by prescription, the same can only be done in cases of fraud and irregularity and through a direct proceeding attacking the

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[18] *Id.*

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

[20] *Id.* at 30.

[21] *Id.* at 48-73.

[22] *Id.* at 65-68.

[23] *Id.* at 68-69.

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

validity of the title pursuant to Section 48 of Presidential Decree (P.D.) No. 1529. *Fourth*, as to the issue of laches, the CA ruled that the same does not apply considering the indefeasible character of respondent's title being registered under the Torrens system.[25]

On January 20, 2014, petitioner filed a motion for reconsideration, which was denied in the CA's assailed Resolution[26] dated November 28, 2014.[27]

In the meantime, the Republic re-filed its petition for the annulment of titles and reversion on March 26, 2014, docketed as Civil Case No. 8374 before the RTC.[28]

Hence, this petition.

Petitioner now argues that the CA erred in not considering that the herein issue of whether or not to cancel IFPMA No. 21 is dependent solely on the outcome of the petition for reversion and annulment of respondents' title pending before the RTC (Civil Case No. 8374). Also, petitioner argues that the CA erred in not upholding the finding of the DENR, the administrative agency that decides whether a land may be leased or disposed of for titling, that substantial evidence exists to prove respondents' title to be fake.[29]

Issue

The primordial issue for Our resolution is whether or not the civil case for annulment of title and reversion before the RTC constitutes a prejudicial question which would operate as a bar to the action for the cancellation of IFPMA No. 21.[30]

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[25] *Id*. at 70.

[26] *Id*. at 30, 75-76.

[27] *Id*. at 30.

[28] *Id*. at 78-91.

[29] *Id*. at 31.

[30] *Id*.

The other issues raised, which pertain to the ownership of the subject property, are factual in nature which is beyond the scope of the instant petition. As it will be further discussed below, such issues should be properly addressed in the annulment of title and reversion case pending before the RTC.

Ruling of the Court

We find merit in the instant petition.

Generally, a prejudicial question comes into play only in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed because the resolution of the civil action is determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case.[31] This, however, is not an ironclad rule. It is imperative that We consider the rationale behind the principle of prejudicial question, *i.e.*, to avoid two conflicting decisions.[32]

In *Abacan, Jr. v. Northwestern University, Inc.*,[33] We applied the principle of prejudicial question even when there was no criminal case involved therein. The cases involved were a case for nullification of election of directors before the Securities and Exchange Commission (SEC) and a civil case for damages and attachment before the RTC. We explained:

> Technically, there would be no prejudicial question to speak of in this case, if we are to consider the general rule that a prejudicial question comes into play in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed, because howsoever the issue in the civil action is resolved would be determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case. **However, considering the rationale behind the principle of prejudicial question, being to avoid two conflicting decisions, prudence dictates that we apply the principle underlying the doctrine to the case at bar.**

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[31] *Abacan, Jr. v. Northwestern University, Inc.*, 495 Phil. 123, 137 (2005).

[32] *Dreamwork Construction, Inc. v. Janiola, et al.*, 609 Phil. 245, 251 (2009).

[33] 495 Phil. 123 (2005).

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In the present case, the question of which between the Castro and the Nicolas factions are the *de jure* board of directors of NUI is lodged before the SEC. The complaint before the RTC of Laoag meanwhile alleges that petitioners, together with their co-defendants, comprised of the "Castro faction," wrongfully withdrew the amount of ₱1.4 M from the account of NUI with Metrobank. Moreover, whether or not Roy Nicolas of the "Nicolas faction" is a duly elected member of the Board of NUI and thus with capacity to institute the herein complaint in behalf of the NUI depends on the findings of the SEC in the case pending before it. It would **finally determine** whether Castro, *et al*. legally withdrew the subject amount from the bank and whether Nicolas lawfully initiated the complaint in behalf of herein respondent NUI. It is petitioners' claim, and we agree, that the presence or absence of their liability for allowing the withdrawal of ₱1.4 M from the account of NUI with Metrobank in favor of the "Castro faction" is reliant on the findings of the SEC as to which of the two factions is the *de jure* board. Since **the determination of the SEC as to which of the two factions is the *de jure* board of NUI is crucial to the resolution of the case before the RTC**, we find that the trial court should suspend its proceedings until the SEC comes out with its findings.[34] (Citations omitted and emphasis ours)

The earlier case of *Quiambao v. Hon. Osorio*,[35] also finds relevant application in the case at bar. In *Quiambao,* the case before the court was an action for forcible entry, where private respondents claimed to be the legitimate possessors of the subject property and that petitioner therein, by force, intimidation, strategy and stealth, entered into a portion thereof, placed bamboo posts, and built a house thereon. By way of affirmative defense and as a ground for the dismissal of the case, petitioner argued that the pendency of an administrative case for cancellation of Agreement to Sell before the Office of the Land Authority between the same parties and the same parcel of land, wherein petitioner disputed private respondents' right of possession over the said land by reason of the latter's default in paying the

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

[35] 242 Phil. 41 (1988).

complete purchase price thereof, is determinative of private respondents' right to eject petitioner therefrom. Simply put, petitioner argued that the administrative case poses a prejudicial question which bars the judicial action until its termination.[36]

In the said case, the Court recognized the fact that the cases involved were civil and administrative in character and thus, technically, there was no prejudicial question to speak of. In ruling, however, the Court also took into consideration the apparent intimate relation between the two cases in that, the right of private respondents to eject petitioner from the subject property depends primarily on the resolution of the issue of whether respondents, in the first place, have the right to possess the said property, which was the issue pending in the administrative case. Relevant portions of the Court's decision in the said case are herein quoted:

> The actions involved in the case at bar being respectively civil and administrative in character, it is obvious that technically, there is no prejudicial question to speak of. Equally apparent, however, is the intimate correlation between said two [2] proceedings, stemming from the fact that the right of private respondents to eject petitioner from the disputed portion depends primarily on the resolution of the pending administrative case. For while it may be true that private respondents had prior possession of the lot in question, at the time of the institution of the ejectment case, such right of possession had been terminated, or at the very least, suspended by the cancellation by the Land Authority of the Agreement to Sell executed in their favor. Whether or not private respondents can continue to exercise their right of possession is but a necessary, logical consequence of the issue involved in the pending administrative case assailing the validity of the cancellation of the Agreement to Sell and the subsequent award of the disputed portion to petitioner. If the cancellation of the Agreement to Sell and the subsequent award to petitioner are voided, then private respondents would have every right to eject petitioner from the disputed area. Otherwise, private respondent's right of possession is lost and so would their right to eject petitioner from said portion.

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[36] *Id.* at 443.

Faced with these distinct possibilities, the more prudent course for the trial court to have taken is to hold the ejectment proceedings in abeyance until after a determination of the administrative case. Indeed, logic and pragmatism, if not jurisprudence, dictate such move. To allow the parties to undergo trial notwithstanding the possibility of petitioner's right of possession being upheld in the pending administrative case is to needlessly require not only the parties but the court as well to expend time, effort and money in what may turn out to be a sheer exercise in futility. x x x.[37]

Here, the two cases involved are the cancellation of IFPMA No. 21 in the case at bar and the cancellation of title and reversion case before the RTC. Respondents sought the cancellation of IFPMA No. 21 upon its claim of ownership over the property subject of the said leasehold agreement, as evidenced by their certificate of title. As claiming owners, respondents maintain that the government has no right to enter into such leasehold agreement over the subject property. Thus, respondents argue that IFPMA No. 21 should be cancelled. On the other hand, petitioner cited the pending annulment of title and reversion case before the RTC, wherein the Republic claims that respondents' title is fake and spurious and as such, the subject property remains in the public domain. Corollarily, the government claims that it has the right to lease or dispose of the same. Thus, it is petitioner's position that said civil case between the Republic and respondents operates as a bar to the action for cancellation of IFPMA No. 21.

Undeniably, whether or not IFPMA No. 21 should be cancelled at the instance of the respondents is solely dependent upon the determination of whether or not respondents, in the first place, have the right over the subject property. Respondents' right in both cases is anchored upon the Transfer Certificate of Title (TCT) that they are invoking. If the RTC cancels respondents' TCT for being fake and spurious, it proceeds then that respondents do not have any right whatsoever over the subject property and thus, do not have the right to demand IFPMA No. 21's cancellation. If the RTC will rule otherwise and uphold

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[37] *Id.* at 445-446.

respondents' TCT, then respondents would have every right to demand IFPMA No. 21's cancellation.

Thus, applying the wisdom laid by this Court in the case of *Quiambao,* indeed, the cancellation of the IFPMA No. 21 is the logical consequence of the determination of respondents' right over the subject property. Further, to allow the cancellation thereof at the instance of the respondents notwithstanding the possibility of finding that respondents have no right over the property subject thereof is a "sheer exercise in futility." For what happens if we, for the time being, uphold respondents' title and allow the cancellation of IFPMA No. 21 and later on in the civil case, the RTC rules to cancel respondents' TCT for being fake and spurious and reverts the property to the public domain? It would then turn out that the cancellation was not proper. That will be a clear case of conflicting decisions. On the other hand, if respondents will be proven to have a clear right over the subject property, then they can proceed to exercise every power of dominion over the same.

In fine, as the outcome of the civil case is determinative of the issue in the case at bar, by the dictates of prudence, logic, and jurisprudence, the proper recourse is to wait for the resolution of the said civil case. Certainly, at this point, delving into the issue on the propriety of IFPMA No. 21's cancellation is premature.

Every court has the inherent power to control its case disposition with economy of time and effort for itself, the counsels, as well as the litigants as long as the measures taken are in consonance with law and jurisprudence. Where the rights of parties to an action cannot be properly determined until the questions raised in another action are settled, the former should be stayed.[38]

Verily, the issue as to whether or not to uphold the factual findings of the DENR regarding the authenticity and legality of respondents' title is, precisely, better addressed at the full-

[38] *Id*. at 446, citing *1 Am Jur 2d.*

blown trial in the civil case directly attacking said title pending before the RTC.

WHEREFORE, premises considered, the petition is **GRANTED**. The Decision dated December 13, 2013 of the Court of Appeals in CA-G.R. SP No. 117707 is hereby **REVERSED and SET ASIDE**. Accordingly, respondents Heirs of Romeo D. Confesor's (Angelita, Geraldine, Romeo, Jr., Rowena, Juliane, Nicole, and Rubyanne, all surnamed Confesor) protest before the Department of Environment and Natural Resources is **DISMISSED** and as such, Industrial Forest Plantation Management Agreement No. 21 remains effective without prejudice to the outcome of Civil Case No. 8374 before the Regional Trial Court of General Santos City, Branch 35. The said trial court is **ORDERED** to proceed with the case with dispatch.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), Bersamin, del Castillo and *Reyes, A. Jr.,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 216062. September 19, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HILARIO NEPOMUCENO *y* VISAYA @ "BOK",** *accused-appellant.*

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[*] Designated additional Member per Raffle dated August 13, 2018 *vice* Associate Justice Francis H. Jardeleza.

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA NO. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE DANGEROUS DRUG WHICH IS THE *CORPUS DELICTI* MUST BE SUFFICIENTLY ESTABLISHED.— The State bears the burden of proving the elements of the illegal sale of dangerous drugs in violation of Section 5 of R.A. No. 9165 and of the illegal possession of dangerous drugs in violation of Section 11 of the same law. To discharge its burden of proof, the State should establish the *corpus delicti*, or the body of the crime itself. *Corpus delicti* is defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime was actually committed. As applied to a particular offense, the term means *the actual commission by someone of the particular crime charged*. The *corpus delicti* is a compound fact made up of two elements, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of the act or result. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* if the subject drugs are missing, or if substantial gaps occur in the chain of custody of the seized drugs as to raise doubts about the authenticity of the evidence presented in the trial court. In fine, the dangerous drug is itself the *corpus delicti*. The only way by which the State could lay the foundation of the *corpus delicti* is to establish beyond reasonable doubt the illegal sale or illegal possession of the dangerous drug by preserving the identity of the drug offered as evidence against the accused. The State does so only by ensuring that the drug presented in the trial court was the same substance bought from the accused during the buy-bust operation or recovered from his possession at the moment of arrest. The State must see to it that the custody of the seized drug subject of the illegal sale or of the illegal possession was safeguarded from the moment of confiscation until the moment of presentation in court by documenting the stages of such custody as to establish the chain of custody, whose objective is to remove unnecessary doubts about the identity of the incriminating evidence.

2. ID.; ID.; SECTION 21 ON THE PROCEDURE IN THE HANDLING OF THE CONFISCATED SUBSTANCE;

STRICT COMPLIANCE IS REQUIRED; NON-COMPLIANCE EXCUSED ONLY IF A JUSTIFIABLE REASON IS ADVANCED FOR THE LAPSES.— Section 21 of R.A. No. 9165, as amended, sets specific procedures in the handling of the confiscated substance, x x x Strict compliance with the prescribed procedure is necessary because the illegal drug has the unique characteristic of becoming indistinct and not readily identifiable, thereby generating the possibility of tampering, alteration or substitution by accident or otherwise. The rules governing the observance of the measures safeguarding the conduct and process of the seizure, custody and transfer of the drug for the laboratory examination and until its presentation in court must have to be strictly adhered to. The preservation of the *corpus delicti* is primordial to the success of the criminal prosecution for illegal possession and illegal sale of the dangerous drug. x x x The last sentence of paragraph (a) of Section 21 excuses lapses in the arresting officer's compliance with the requirements only if a justifiable reason is advanced for the lapses. x x x The Court accepts that "while the chain of custody should ideally be perfect, in reality it is not, 'as it is almost always impossible to obtain an unbroken chain."' This limitation on the chain of custody is well recognized in the IRR, which states that non-compliance with the requirements under justifiable grounds shall not render void and invalid such seizures of and custody over said item as long as the integrity and evidentiary value of the seized item are properly preserved by the apprehending officer/team. In deciding drug-related offenses, therefore, the courts should deem to be essential "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

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.*:

This appeal seeks the review and reversal of the decision promulgated on May 16, 2014,[1] whereby the Court of Appeals (CA) upheld the conviction of the accused-appellant handed down by the Regional Trial Court (RTC) in Manila in Criminal Case No. 08-259713 and Criminal Case No. 08-259714, respectively, for the violation of Section 5, Article II, Republic Act No. 9165 (*Comprehensive Dangerous Drugs Act of 2002*) and the violation of Section 11(3) of the same law through the judgment dated May 3, 2012.[2]

The RTC imposed life imprisonment and a fine of ₱500,000.00 for the violation of Section 5, and the indeterminate sentence of 12 years and one day, as minimum, to 15 years, as maximum, and fine of ₱300,000.00 for the violation of Section 11(3).[3]

Antecedents

The Office of the City Prosecutor of Manila filed against the accused-appellant the following informations dated February 28, 2008, to wit:

Criminal Case No. 08-259713

That on or about February 21, 2008, in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver, or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell one (1) heat-sealed transparent plastic sachet with net weight of ZERO POINT ZERO TWO ZERO gram (0.020g), known as "SHABU" containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

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[1] *Rollo*, pp. 2-10; penned by Associate Justice Jane Aurora C. Lantion, and concurred in by Associate Justice Vicente S.E. Veloso and Associate Justice Myra V. Garcia-Fernandez.

[2] Records, pp. 62-65; penned by Presiding Judge Reynaldo A. Alhambra.

[3] *Id*.

Criminal Case No. 08-259714

That on or about February 21, 2008, in the City of Manila, Philippines, the said accused, without being authorized by law to possess any dangerous drug, did then and there wilfully, unlawfully and knowingly have in his possession and under his custody and control white crystalline substance contained in one (1) heat-sealed transparent plastic sachet with net weight of ZERO POINT ZERO TWO THREE gram (0.023g), known as 'SHABU" containing methylamphetamine hydrochloride, a dangerous drug.

CONTRARY TO LAW.

The CA summarized the factual and the procedural antecedents in its assailed decision, *viz.*:

The Prosecution's version is synthesized by the Office of the Solicitor General as follows:

On February 20, 2008, confidential informant reported to Police Inspector John Guiagi, head of Station Anti-Illegal Drugs (SAID) in Police Station 3, and informed him that an alias "Bok" was selling drugs in Felix Huertas St., Sta. Cruz, Manila. He instructed PO2 Boy Nino Baladjay and PO2 David Gonzales to take the confidential informant with them and conduct surveillance on the target. After confirming the information, Gonzales prepared a pre-operation report and a coordination form with the PDEA to conduct buy-bust operation on the next day.

On February 21, 2008, Guiagi briefed Baladjay, SPO3 Morales and PO1 Cabocan on the conduct of the buy-bust operation. Baladjay prepared three (3) marked one hundred pesos (Php100.00) bills and he was designated as poseur buyer. They left the police station around 3:30 p.m. and proceeded to Felix Huertas St., near Fabella Hospital. Upon arrival, the confidential informant pointed to appellant and together with Baladjay, they approached the target. Baladjay was introduced to appellant by informant (sic) as a buyer. Appellant asked Baladjay, "*magkano*?" to which he replied three hundred pesos (Php300.00). Appellant then pulled from his pocket two (2) small plastic sachets containing white crystalline substance and asked Baladjay to pick one. After Baladjay picked one (1) sachet, he gave the three hundred pesos (Php300.00) to appellant and executed the pre-arranged signal. Baladjay then introduced himself as a police officer and arrested appellant. Baladjay recovered the other sachet

and the marked money. Several persons tried to prevent the arrest hence they had to first bring appellant to the police station before marking the sachets and the money.

Subsequent laboratory examination of the sachets' contents confirmed it was *methylamphetamine hydrochloride*, otherwise known as *shabu*.

In his *Brief*, Appellant's version of the facts is as follows:

On February 21, 2008, at around 4:00 o'clock in the afternoon, Bok (Appellant) was on his way, coming from his work as a welder, when two (2) men riding in tandem on a motorcycle pulled over and asked him "where is the house of Hilario?" Bok replied that it was he, and was asking them "why," when he suddenly noticed five (5) other men, three (3) of which were in civilian clothing while the other two (2) were in police uniform, on board a car. The men on the motorcycle informed Bok that they wanted to invite him to the police station to ask him some question (sic). Tired and with hurting eyes, Bok told the policemen to ask him on the spot, but it fell on deaf ears. Curious, Bok decided to just go with them.

At the police station, Bok was surprised when he was suddenly detained inside the cell. Bok repeatedly asked the policemen the reason for his detention, but no one answered. Bok later found out that he was being charged for being a pusher when no illegal drug was ever found or recovered from him.[4]

Judgment of the RTC

As stated, the RTC convicted the accused-appellant of the crimes charged upon finding that the Prosecution had sufficiently and credibly proved all the elements of illegal sale and illegal possession of dangerous drugs, or *shabu*. It held that the arresting officers were entitled to the presumption of the regularity of the performance of their functions, which justified declaring them to have complied with the procedures prescribed by law for the preservation of the integrity of the confiscated evidence. The RTC disposed thusly:

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[4] *Rollo*, pp. 4-5.

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding accused **HILARIO NEPOMUCENO y VISAYA @ Bok GUILTY** beyond reasonable doubt:

1. In ***CRIM. CASE NO. 08-259713***, of the crime of Violation of Sec. 5, Article II, Republic Act 9165, and is hereby sentenced to suffer Life Imprisonment and to pay fine in the amount of **₱500,000.00**; and

2. In ***CRIM. CASE NO. 08-25714***, of the crime of Violation of Sec. 11 (3), Article II, Republic Act 9165, and is hereby sentenced to suffer imprisonment of ***Twelve* (12) years and one (1) day**, as minimum, to **Fifteen (15) years**, as maximum, and to pay fine in the amount of **₱300,000.00**.

Cost against the accused.

SO ORDERED.[5]

Decision of the CA

On appeal, the CA affirmed the convictions, observing that the Prosecution had established that the police officers were able to preserve the integrity of the confiscated dangerous drugs despite the non-compliance with the procedural requirements stated in Section 21 of R.A. No. 9165; and that the chain of custody of the dangerous drugs in question was further shown to have been unbroken. The *fallo* reads:

WHEREFORE, the instant appeal is **DISMISSED**. The *Decision* dated 3 May 2012 of the Regional Trial Court of Manila, Branch 53, in Criminal Case Nos. 08-259713 and 08-259714 is hereby **AFFIRMED**.

SO ORDERED.[6]

Issues

In this appeal, the Office of the Solicitor General (OSG) as counsel of the Prosecution[7] and the Public Attorney's Office

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[5] CA *rollo*, p. 65.

[6] *Rollo*, p. 10.

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

(PAO) as counsel of the accused-appellant,[8] separately manifested that for purposes of this appeal they were no longer filing supplemental briefs, and adopted their respective briefs submitted to the CA.

Accordingly, the accused-appellant continues to argue that he was entitled to acquittal because of the non-compliance by the apprehending officers with the procedural requirements stated in Section 21 of R.A. No. 9165; that the Prosecution did not justify the non-compliance by the apprehending officers with the post-arrest requirements of Section 21 of R.A. No. 9165; and that such non-compliance was sufficient reason to doubt the integrity of the confiscated dangerous drugs as the substances seized from him.

In response, the OSG submits that the mere non-compliance with the procedural post-operation requirements of Section 21 of R.A. No. 9165 did not engender doubts as to the integrity of the confiscated dangerous drugs considering that, as the RTC correctly found, the integrity of the seized drugs as evidence of the *corpus delicti* had been preserved.

Ruling of the Court

The appeal is meritorious.

The State bears the burden of proving the elements of the illegal sale of dangerous drugs in violation of Section 5 of R.A. No. 9165 and of the illegal possession of dangerous drugs in violation of Section 11 of the same law. To discharge its burden of proof, the State should establish the *corpus delicti*, or the body of the crime itself. *Corpus delicti* is defined as the body or substance of the crime and, in its primary sense, refers to the fact that a crime was actually committed. As applied to a particular offense, the term means *the actual commission by someone of the particular crime charged*. The *corpus delicti* is a compound fact made up of two elements, namely: the existence of a certain act or result forming the basis of the criminal charge, and the existence of a criminal agency as the cause of the act

[8] *Id*. at 25-26.

or result. Consequently, the State does not comply with the indispensable requirement of proving the *corpus delicti* if the subject drugs are missing, or if substantial gaps occur in the chain of custody of the seized drugs as to raise doubts about the authenticity of the evidence presented in the trial court.[9]

In fine, the dangerous drug is itself the *corpus delicti*. The only way by which the State could lay the foundation of the *corpus delicti* is to establish beyond reasonable doubt the illegal sale or illegal possession of the dangerous drug by preserving the identity of the drug offered as evidence against the accused. The State does so only by ensuring that the drug presented in the trial court was the same substance bought from the accused during the buy-bust operation or recovered from his possession at the moment of arrest.[10] The State must see to it that the custody of the seized drug subject of the illegal sale or of the illegal possession was safeguarded from the moment of confiscation until the moment of presentation in court by documenting the stages of such custody as to establish the chain of custody, whose objective is to remove unnecessary doubts about the identity of the incriminating evidence.[11]

Section 21 of R.A. No. 9165,[12] as amended, sets specific procedures in the handling of the confiscated substance, thusly:

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

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[9] *People v. Bautista*, G.R. No. 177320, February 22, 2012, 666 SCRA 518, 531-532.

[10] *People v. Pagaduan*, G.R. No. 179029, August 9, 2010, 627 SCRA 308, 317-318.

[11] See *Mallillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619.

[12] See Republic Act No. 10640.

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;
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> x x x x x x x x x

The *Implementing Rules and Regulation of Section 21 (a) of RA 9165*, as amended, (IRR) echoes the foregoing requirements, thus:

> x x x x x x x x x
>
> (a) The apprehending office/team having initial custody and control of the drugs **shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at**

the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further* that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items; x x x

Strict compliance with the prescribed procedure is necessary because the illegal drug has the unique characteristic of becoming indistinct and not readily identifiable, thereby generating the possibility of tampering, alteration or substitution by accident or otherwise. The rules governing the observance of the measures safeguarding the conduct and process of the seizure, custody and transfer of the drug for the laboratory examination and until its presentation in court must have to be strictly adhered to.[13]

The preservation of the *corpus delicti* is primordial to the success of the criminal prosecution for illegal possession and illegal sale of the dangerous drug. Consequently, we cannot accord weight to the OSG's insistence that the mere non-compliance by the arresting officers with the procedures, without any proof of actual tampering, alteration or substitution, did not jeopardize the integrity of the confiscated drug for being contrary to the letter and intent of the law. We deem it worthy to reiterate that the safeguards put in place by the law precisely to prevent and eliminate the *possibility* of tampering, alteration or substitution as well as to ensure that the substance presented in court was itself the drug confiscated at the time of the apprehension are not to be easily dismissed or ignored.

The accused could not be protected from tampering, alteration or substitution of the incriminatory evidence unless the Prosecution established that the arresting or seizing officer complied with the requirements set by Section 21 of R.A. No. 9165. Yet, the records herein reveal that the police officers did

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[13] *People v. Kamad*, G.R. No. 174198, January 19, 2010, 610 SCRA 295, 304-305.

not mark the confiscated drugs at the place of the arrest but only upon their arrival at the police station; and did not conduct the physical inventory of the confiscated drug and did not take pictures thereof as required by Section 21.

The last sentence of paragraph (a) of Section 21 excuses lapses in the arresting officer's compliance with the requirements only if a justifiable reason is advanced for the lapses. Here, although the failure to mark the confiscated substances upon arrest of the accused could be excusable in light of the testimony of PO2 Baladjay that a neighbor of the accused had started a commotion during the arrest proceedings that rendered the immediate marking in that place impractical, the non-compliance with the requirements for the physical inventory and for photographing of the confiscated drug being taken "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" was not explained at all by the arresting officers.

In *People v. Pagaduan*,[14] we emphasized the importance of the inventory and compliance with the other procedural requirements to safeguard the integrity of the confiscated drug and the failure to provide a justification to non-compliance of the requirements, and expounded on the consequence of the non-compliance being an acquittal, *viz*.:

> In several cases, we have emphasized the importance of compliance with the prescribed procedure in the custody and disposition of the seized drugs. We have repeatedly declared that the deviation from the standard procedure dismally compromises the integrity of the evidence. In *People v. Morales*, we acquitted the accused for failure of the buy-bust team to photograph and inventory the seized items, without giving any justifiable ground for the non-observance of the required procedures. *People v. Garcia* likewise resulted in an acquittal because no physical inventory was ever made, and no photograph of

[14] *Supra*, note 10, at 320-322.

the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. In *Bondad, Jr. v. People*, we also acquitted the accused for the failure of the police to conduct an inventory and to photograph the seized items, without justifiable grounds.

We had the same rulings in *People v. Gutierrez*, *People v. Denoman, People v. Partoza*, *People v. Robles*, and *People v. dela Cruz*, where we emphasized the importance of complying with the required mandatory procedures under Section 21 of R.A. No. 9165.

We recognize that the strict compliance with the requirements of Section 21 of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence. For this reason, the last sentence of the implementing rules provides 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[.]" Thus, noncompliance with the strict directive of Section 21 of R.A. No. 9165 is not necessarily fatal to the prosecution's case; police procedures in the handling of confiscated evidence may still have some lapses, as in the present case. **These lapses, however, must be recognized and explained in terms of their justifiable grounds, and the integrity and evidentiary value of the evidence seized must be shown to have been preserved.**

In the present case, the prosecution did not bother to offer any explanation to justify the failure of the police to conduct the required physical inventory and photograph of the seized drugs. The apprehending team failed to show why an inventory and photograph of the seized evidence had not been made either in the place of seizure and arrest or at the nearest police station (as required by the Implementing Rules in case of warrantless arrests). **We emphasize that for the saving clause to apply, it is important that the prosecution explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had been preserved. In other words, the justifiable ground for noncompliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist.**

Underscoring the lapses committed by the police operatives in handling the confiscated drug involved herein is the following excerpt of testimony, to wit:

Q: By the way, was there any photograph taken from [sic] the accused and the specimen recovered?

A: None, sir.

Q: Why there was [sic] no photograph taken during that time?

A: There was no camera available, sir.

Q: How about an inventory, was there any inventory made by your office with respect to the item you recovered from the accused?

A: None, it was a Spot Report, sir.

Q: Who prepared that Spot Report?

A: SPO2 Gonzales, sir.[15]

Although the foregoing excerpt seemingly indicated that the arresting officers were thereby attempting to explain their lapses, particularly the failure to take photographs of the confiscated drug as directed in the law, the supposed unavailability of a camera was obviously improbable simply because almost every person at that time carried a mobile phone with a camera feature. Even more obvious is the fact that the arrest resulted from a buy-bust operation in relation to the conduct of which the police officers had more than sufficient time to anticipate the need for the camera. Also, the preparation of the spot report did not replace the conduct of the actual inventory that R.A. No. 9165 and its IRR specifically required. The inventory and the spot report were entirely distinct and different from each other. The latter referred to an immediate initial investigative or incident narrative on the commission of the crime (or occurrence of natural or man-made disaster or unusual incidents involving loss of lives and damage to properties), and was addressed to higher officers;[16] it was an internal report on the arrest incident

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[15] TSN, dated March 2, 2010, p. 21.

[16] *The Philippine National Police Manual*, PNPM-DIDM-DS-9-1. The Criminal Investigation Manual (Revised) 2011. Accessed at http://

prepared without the participation of other persons like the accused, representatives of the media, the DOJ and a public official to witness the preparation of the inventory and to sign the inventory. In contrast, the inventory indicated the drugs and related material seized or recovered from the suspect, and should bear the signatures of the relevant persons that would insulate the process of incrimination from suspicion. Another distinction related to the requirement to furnish the suspect a copy of the inventory, which did not apply to the spot report.

The Court cannot condone the lapses or be blind to them because the requirements that were not complied with were crucial in the process of successfully incriminating the accused. The deliberate taking of the identifying steps ensured by the requirements was precisely aimed at obviating switching, "planting" or contamination of the evidence.[17] Verily, the arresting officers' failure to plausibly explain their lapses left in grave doubt the very identity of the *corpus delicti*, an important step in proving the offenses charged. For one, the lapses – being irregularities on the part of the arresting lawmen – quickly disauthorized the trial court from presuming the regularity in the performance of their official duties by the arresting officers.

The Court accepts that "while the chain of custody should ideally be perfect, in reality it is not, 'as it is almost always impossible to obtain an unbroken chain.'"[18] This limitation on the chain of custody is well recognized in the IRR, which states that non-compliance with the requirements under justifiable grounds shall not render void and invalid such seizures of and custody over said item as long as the integrity and evidentiary value of the seized item are properly preserved by the apprehending officer/team. In deciding drug-related offenses,

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www.pnp.gov.ph/images/Manuals_and_Guides/DIDM/Criminal-Investigation-Manual.pdf last January 24, 2018.

[17] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 357.

[18] *People v. Mendoza*, G.R. No. 189327, February 29, 2012, 667 SCRA 357, 368.

therefore, the courts should deem to be essential "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[19]

For failure of the Prosecution to prove the guilt of the accused-appellant beyond reasonable doubt, he is entitled to acquittal. His personal liberty could not be validly jeopardized unless the proof marshalled against him satisfied that degree of moral certainty that should produce in the unprejudiced mind of the neutral judge a conviction that the accused was guilty in doing the act with which he was charged of having committed contrary to law.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on May 16, 2014 in CA-G.R. CR-HC No. 05663; **ACQUITS** accused-appellant **HILARIO NEPOMUCENO *y* VISAYA** for failure of the Prosecution to prove his guilt for the crimes charged beyond reasonable doubt; and **ORDERS** his **IMMEDIATE RELEASE** from confinement unless there are other lawful causes for his confinement.

Let a copy of this decision be sent to the Director of the Bureau of Corrections in Muntinlupa City for immediate implementation. The Director of the Bureau of Corrections shall report the action taken to this Court within five (5) days from receipt of this decision.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), del Castillo, Tijam, and *Reyes, J. Jr.,*[*] *JJ.*, concur.

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[19] *People v. Torres*, G.R. No. 191730, June 5, 2013, 697 SCRA 452, 466.

[*] Vice Associate Justice Francis H. Jardeleza, who inhibited due to his prior participation as the Solicitor General, per the raffle of September 12, 2018.

FIRST DIVISION

[G.R. Nos. 228349 and 228353. September 19, 2018]

MIGUEL DRACULAN ESCOBAR, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and SANDIGANBAYAN (THIRD DIVISION),** *respondents.*

[G.R. Nos. 229895-96. September 19, 2018]

REYNALDO F. CONSTANTINO, *petitioner, vs.* **SANDIGANBAYAN, THIRD DIVISION, and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

POLITICAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; VIOLATED WHEN THERE ARE UNREASONABLE, ARBITRARY, AND OPPRESSIVE DELAYS WHICH RENDER THE RIGHTS NUGATORY; DETERMINING FACTORS FOR VIOLATION OF THE RIGHT.— In no uncertain terms, the Constitution declares that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies." This right, like the right to a speedy trial, is deemed violated when the proceedings is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; "or [even] without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried." "Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed." The constitutional guarantee to a speedy disposition of case is a relative or flexible concept. "While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but deliberate. It is consistent with delays and depends

upon the circumstances." "What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory." In *Capt. Roquero v. The Chancellor of UP-Manila, et al.*, the Court held that: The doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.

APPEARANCES OF COUNSEL

Maria Nympha Mandagan for petitioner Miguel Draculan Escobar.

Falgui Law Office for petitioner Reynaldo Constantino.

D E C I S I O N

TIJAM, *J.*:

This is a consolidated case stemming from the Resolutions dated January 13, 2015[1] and November 22, 2016[2] of the Sandiganbayan in Criminal Case Nos. SB-12-CRM-0129 and SB-12-CRM-0130 denying petitioners Miguel D. Escobar (Escobar) and Reynaldo F. Constantino's (Constantino) motions dated July 19, 2012 and September 22, 2012, respectively. Escobar assails the foregoing issuances through a Verified Petition for Review[3] under Rule 45 of the Rules of Court; while Constantino challenges the same issuances through a Petition for *Certiorari* with Injunction[4] under Rule 65 of the Rules of Court, both on the ground of violation of their constitutional right to speedy disposition of cases.

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[1] *Rollo* (G.R. Nos. 229895-96), pp. 56-102.

[2] *Id*. at 103-112.

[3] *Rollo* (G.R. Nos. 228349 and 228353), pp. 22-31.

[4] *Rollo* (G.R. Nos. 229895-96), pp. 3-44.

Antecedent Facts

Petitioners Miguel Draculan Escobar (Escobar) and Reynaldo F. Constantino (Constantino) were elected officers of the Province of Sarangani (Province). Escobar served as a governor for the period 2001 to 2004;[5] while Constantino was the Vice Mayor of Malungon, Sarangani Province.[6]

Sometime in 2003, various anonymous complaints were filed before the Office of the Ombudsman for Mindanao (OMB-Mindanao) against officers and employees of the Province for allegedly utilizing dummy cooperatives and people's organizations as beneficiaries of funds sourced out from Grants and Aids and from the Countrywide Development Fund (CDF) of Representative Erwin Chiongbian.[7] The complaints were assigned the reference codes CPL-M-03-0163 and CPL-M-03-0729,[8] and later as OMB-CPL-M-03-0163 and OMB-CPL-M-03-0792.

On October 29, 2003, the OMB-Mindanao issued a Joint Order directing petitioners to file their counter-affidavits. The cases were then re-docketed for preliminary investigation as OMB-M-C-03-0487-J.[9]

On August 11, 2004, Graft Investigation and Prosecution Officers (GIPOs) issued a Resolution in OMB-M-C-03-0487-J, finding probable cause against the provincial officers, among them was Escobar, for Malversation through Falsification of Public Documents and violation of Section 3(e) of Republic Act (R.A.) No. 3019,[10] and recommended the filing of the corresponding information.[11]

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[5] *Rollo* (G.R. Nos. 228349 and 228353), p. 24.

[6] *Rollo* (G.R. Nos. 229895-96), p. 49.

[7] *Rollo* (G.R. Nos. 229895-96), p. 160.

[8] *Id*. at 160; *rollo* (G.R. Nos. 228349 and 228353), pp. 59-60.

[9] *Rollo* (G.R. Nos. 229895-96), pp. 75 and 164.

[10] ANTI-GRAFT AND CORRUPT PRACTICES ACT. Approved August 17, 1960.

On April 15, 2005, the GIPOs issued another Resolution in OMB-M-C-04-0479-K, a case connected to OMB-C-03-0487-J, finding probable cause against Constantino for the same crime allegedly committed by Escobar. The GIPOs recommended that Constantino be included as one of the accused in the information.[12]

On August 8, 2011, the OMB-Mindanao issued a Memorandum, approving the recommendation of the GIPOs.[13]

Eventually, on May 7, 2012, two (2) Informations, one for Malversation through Falsification of Public Documents docketed as Criminal Case No. SB-12-CRM-0129 and another for violation of Section 3(e) of R.A. No. 3019, docketed as Criminal Case No. SB-12-CRM-0130, were filed against petitioners with the Sandiganbayan. The Informations accused petitioners in conspiracy with other officers of the Province of having taken advantage of their office in falsifying Disbursement Voucher No. 401-2002-5-63 dated May 29, 2002, by making it appear that financial assistance in the amount of ₱250,000.00 had been requested by Bamboo Craftsman of Datal Batong, Malungon, Sarangani Province, which resulted to the damage and prejudice of the government.[14]

Sec. 3. *Corrupt practices of public officers.* In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[11] *Rollo* (G.R. Nos. 229895-96), pp. 76-85.

[12] *Id.* at 85.

[13] *Id.* at 86.

[14] *Id.* at 86-88.

Escobar filed an Omnibus Motion (i) for Dismissal Prohibition; (ii) for Quashal of Information/Reinvestigation[15] dated July 19, 2012, arguing among others, that the piecemeal filing of criminal informations against him, seven (7) years apart from each other, is violative of his constitutional right to due process, his right to speedy disposition of cases, and the basic tenets of fairplay.

For his part, Constantino filed an Omnibus Motion (A) for Dismissal of Cases; and (B) for Quashal of Information, or (C) for Reinvestigation dated September 22, 2012,[16] and a Supplemental Motion to Dismiss[17] dated October 1, 2013. In both motions, Constantino argued among others, that the Ombudsman's act in filing the Informations on May 7, 2012 or a span of more than seven (7) years from its April 15, 2005 Resolution, violated his constitutional right to due process and speedy disposition of cases, including the constitutional mandate of the Ombudsman to act promptly on complaints submitted before it.[18]

On January 13, 2015, the Sandiganbayan issued a Resolution[19] denying the Omnibus Motions to Dismiss separately filed by petitioners. The Sandiganbayan held, among others, that there is no inordinate delay in the filing of the Informations to warrant their dismissal based on the following factors: limited resources of the prosecution; volume of the case record; and the investigation ordered by then Tanodbayan Simeon V. Marcelo (Tanodbayan Marcelo) on the numerous individuals who used fictitious names in encashing the checks, including the persons who purportedly signed the documents involved in the case.

On November 22, 2016, the Sandiganbayan issued another Resolution[20] denying Constantino's Manifestation with Urgent

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[15] *Rollo* (G.R. Nos. 228349 and 228353), pp. 166-185.

[16] *Rollo* (G.R. Nos. 229895-96), p. 61.

[17] *Id.* at 45-53.

[18] *Id.* at 61.

[19] *Id.* at 56-102.

[20] *Id.* at 103-113.

Motion for Reconsideration dated March 9, 2015 and Escobar's Motion for Reconsideration dated March 13, 2015.

Aggrieved, the petitioners sought a review of the Sandiganbayan's twin resolutions.

Escobar filed a Verified Petition for Review under Rule 45 of the Rules of Court and raised this sole issue:

WHETHER OR NOT THE RESPONDENTS COMMITTED CERTIORARIABLE ERROR IN FINDING THE DELAY OF EIGHT (8) YEARS IN THE FILING OF THE TWO (2) INFORMATIONS NOT INORDINATE JUSTIFIED AND DID NOT VIOLATE THE RIGHT TO SPEEDY DISPOSITION OF CASES AGAINST [ESCOBAR].[21]

Constantino, on the other hand, in his Petition for *Certiorari* with Injunction under Rule 65 of the Rules of Court, advanced the following arguments:

A. PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT IS THE PROPER REMEDY TO ASSAIL THE SUBJECT RESOLUTIONS.

B. THE HONORABLE THIRD DIVISION OF THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF EXCESS OF JURISDICTION WHEN IT DISREGARDED THE VIOLATION OF THE RIGHT TO DUE PROCESS OF [CONSTANTINO] BY DENYING HIS MOTION TO DISMISS AND TO QUASH.

C. THE HONORABLE THIRD DIVISION OF THE SANDIGANBAYAN COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED THE MANIFESTATION WITH URGENT MOTION FOR RECONSIDERATION OF [CONSTANTINO].[22]

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[21] *Rollo* (G.R. Nos. 228349 and 228353), pp. 27-28.

[22] *Rollo* (G.R. Nos. 229895-96), pp. 14-15.

Ruling of the Court

The petitions are meritorious.

The OMB-Mindanao, for its failure within a reasonable time, to resolve the criminal charges, let alone to file the same with the Sandiganbayan, violated petitioners' right to speedy disposition of their cases, as well as its own constitutional duty to act promptly on complaints filed before it.

We explain.

In no uncertain terms, the Constitution declares that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies."[23] This right, like the right to a speedy trial, is deemed violated when the proceedings is attended by vexatious, capricious, and oppressive delays;[24] or when unjustified postponements of the trial are asked for and secured; "or [even] without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried."[25] "Equally applicable is the balancing test used to determine whether a defendant has been denied his right to a speedy trial, or a speedy disposition of a case for that matter, in which the conduct of both the prosecution and the defendant are weighed."[26] The constitutional guarantee to a speedy disposition of case is a relative or flexible concept.[27] "While justice is administered with dispatch, the essential ingredient is orderly, expeditious and not mere speed. It cannot be definitely said how long is too long in a system where justice is supposed to be swift, but

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[23] 1987 Philippine Constitution, Article III, Section 16.

Sec. 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

[24] *Dela Peña v. Sandiganbayan*, 412 Phil. 921, 929 (2001).

[25] *Perez v. People, et al.*, 568 Phil. 491, 514 (2008), citing *Gonzales v. Sandiganbayan (1st Division)*, 276 Phil. 323, 334 (1991).

[26] *Lumanlaw v. Judge Peralta, Jr.*, 517 Phil. 588, 598 (2006).

[27] *Enriquez v. Office of the Ombudsman*, 569 Phil. 309, 316 (2008).

deliberate. It is consistent with delays and depends upon the circumstances."[28] "What the Constitution prohibits are unreasonable, arbitrary and oppressive delays which render rights nugatory."[29]

In *Capt. Roquero v. The Chancellor of UP-Manila, et al.*,[30] the Court held that:

> The doctrinal rule is that in the determination of whether that right has been violated, the factors that may be considered and balanced are as follows: (1) the length of delay; (2) the reasons for the delay; (3) the assertion or failure to assert such right by the accused; and (4) the prejudice caused by the delay.[31] (Citation omitted)

Following these principles *vis-à-vis* the factual milieu of the case, the Court finds that there was a violation of petitioners' constitutional right to a speedy disposition of their cases.

Length of Delay

The records show that the complaint that gave rise to the criminal informations pending in the Sandiganbayan was filed with the OMB-Mindanao sometime in 2003.[32] After finding of probable cause, the OMB-Mindanao issued a Resolution dated August 11, 2004, recommending the indictment of Escobar and another Resolution dated April 15, 2005, for the indictment of Constantino, both for Malversation Through Falsification of Public Documents and Violation of Section 3(e) of R.A. No. 3019. Thereafter, the Office of Special Prosecutor issued a Memorandum dated August 8, 2011, approving the resolutions recommending the filing of the Informations with the Sandiganbayan. Eventually, the Informations were filed with the Sandiganbayan on May 7, 2012.[33]

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[28] *Corpuz v. Sandiganbayan,* 484 Phil. 899, 917 (2004).

[29] *Braza v. Sandiganbayan,* 704 Phil. 476, 495 (2013).

[30] 628 Phil. 628 (2010).

[31] *Id.* at 640.

[32] The date is February 10, 2003, as mentioned in *J.* Martires' dissenting opinion, *rollo* (G.R. Nos. 229895-96), p. 117.

[33] *Id.*

From the chronology of events, the following conclusion may be gathered, thus:

I. The length of time in finding probable cause up to the approval of the recommendation for the filing of the Informations with the Sandiganbayan:

A. On Escobar: six (6) years, eleven (11) months and twenty-eight (28) days, reckoned from August 11, 2004 to August 8, 2011.

B. On Constantino: six (6) years, three (3) months and twenty-four (24) days, reckoned from April 15, 2005 to August 8, 2011.

II. The length of time before the Informations were filed with the Sandiganbayan:

A. On Escobar: seven (7) years, eight (8) months and twenty-six (26) days, reckoned from August 11, 2004 to May 7, 2012.

B. On Constantino: seven (7) years and twenty-two (22) days, reckoned from April 15, 2005 to May 7, 2012.

Based on the foregoing, it is clear that the preliminary investigation by the OMB-Mindanao lasted more than six (6) years before its approval; and the filing of the Informations with the Sandiganbayan took seven (7) long years counted from the finding of probable cause.

Indeed, the OMB-Mindanao had taken an unusually long period of time to investigate the criminal complaint and to determine whether to file the Informations, criminally charging petitioners in the Sandiganbayan. To our mind, such long delay was inordinate and oppressive, so as to constitute, under the factual backdrop of the case, an outright violation of petitioners' constitutional right to the speedy disposition of their cases.

The stalling in this case measures up to the unreasonableness of the delay in the disposition of cases as held by the Courts in its long line of decisions, to wit:

In *Tatad v. Sandiganbayan,*[34] the delay of close to three (3) years in the termination of the preliminary investigation conducted by the Tanodbayan constituted a violation of the constitutional right of the accused under the broad umbrella of the due process clause and his constitutional guarantee to speedy disposition of cases.

In *Lopez, Jr. v. Office of the Ombudsman,*[35] due to the Ombudsman's failure to resolve the complaints against petitioner pending for almost four (4) years, this Court dismissed the same for being a violative of petitioner's constitutional right to speedy disposition of his cases.

In *People v. Sandiganbayan, et al.,*[36] this Court held that the delay on the part of the Ombudsman in the conduct of its fact-finding and preliminary investigation for nearly five (5) years and five (5) months, was vexatious, capricious and oppressive.

In *Roque v. Office of the Ombudsman,*[37] this Court held that the failure of the Ombudsman to resolve a complaint that has been pending for six (6) years is a clear violation of the petitioners' right to due process and to a speedy disposition of their cases.

In *Inocentes v. People, et al.,*[38] this Court ruled that petitioner's right to speedy disposition of his case was violated due to the delay of at least seven (7) years before the informations against him were filed with the Sandiganbayan.

Evidently, if in those precedents, this Court considered the periods mentioned therein as violative of the Constitutional right to speedy disposition of cases, there is a similar reason for Us to hold so in the petitioners' case. The circumstances of this case do not warrant or justify the length of time, *i.e.*, 6 years, as to the termination of the preliminary investigation;

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[34] 242 Phil. 563 (1988).

[35] 417 Phil. 39 (2001).

[36] 723 Phil. 444 (2013).

[37] 366 Phil. 568 (1999).

[38] 789 Phil. 318 (2016).

and, 7 years, as to the filing of the Informations in Court, it took the OMB-Mindanao to resolve the case.

Reasons for the delay

The aforementioned discussion in the OMB-Mindanao's delay remains unjustified. We cannot subscribe to the Sandiganbayan's sweeping statement that the delay was caused by the prosecution's limited resources; the volume of the case record; and the further fact that, then Tanodbayan Marcelo ordered the investigation on the persons who used fictitious names in encashing checks, among others. This is insufficient. What glares from the records is the fact that the completion of the preliminary investigation accounted for six (6) years and the filing of the Informations were more than seven (7) years. What transpired during the interval or inactivity has not been adequately proven and justified.

Clearly, the delay in this case is a disregard of the Ombudsman's Constitutional mandate to be the "protector of the people" and as such, required to act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service.[39]

Invocation of the constitutional right

The records show that petitioners invoked their right to speedy disposition of cases immediately after the Informations were filed with the Sandiganbayan. Escobar filed his Omnibus Motion (i) for Dismissal/Prohibition; (ii) for Quashal of Information/ Reinvestigation dated July 19, 2012;[40] while Constantino filed his Omnibus Motion (i) for Dismissal of Cases and (b) for Quashal

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[39] 1987 Philippine Constitution, Article XI, Section 12.

Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

[40] *Rollo* (G.R. Nos. 228349 and 228353), pp. 166-185.

of Information or (c) for Reinvestigation dated September 22, 2012.[41] In both motions, the petitioners consistently harped on the OMB-Mindanao's protracted delay before it opted to file the Informations with the Sandiganbayan. In fact, even in the absence of said motions, the petitioners could not be faulted for allegedly failing to raise the issue of the OMB-Mindanao's inordinate delay. This is not their duty, but that of the OMB-Mindanao's and its special prosecutors. As we have emphatically held in *Cervantes v. Sandiganbayan:*[42]

> It is the duty of the prosecutor to speedily resolve the complaint, as mandated by the Constitution, regardless of whether the petitioner did not object to the delay or that the delay was with his acquiescence provided that it was not due to causes directly attributable to him.[43]

Similarly, we pointed out in *Coscolluela v. Sandiganbayan, et al.,*[44] that:

> Being the respondents in the preliminary investigation proceedings, it was not the petitioners' duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman's responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Baker v. Wingo*:
>
> > A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.[45] (Citation omitted)

Prejudice caused by the delay

The passage of more than seven (7) years before the OMB-Mindanao elected to file the Informations with the Sandiganbayan is certainly prejudicial to the petitioners' constitutional right to speedy disposition of cases. It defeats the salutary objective

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[41] *Rollo* (G.R. Nos. 229895-96), p. 11.

[42] 366 Phil. 602 (1999).

[43] *Id*. at 609.

[44] 714 Phil. 55 (2013).

[45] *Id*. at 64.

of said right, which is "to assure that an innocent person may be free from anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose."[46] To perpetuate a violation of this right by the lengthy delay would result to petitioners' inability to adequately prepare for their case and would create a situation where the defense witnesses are unable to recall accurately the events of the distant past,[47] leading to the impairment of petitioners' possible defenses. This, we cannot countenance without running afoul to the Constitution.

In view of the unjustified passage of time surrounding the OMB-Mindanao's resolution of the case and the resultant prejudice that the inordinate delay has caused, it is indubitable that petitioners' constitutional right to speedy disposition of case had been infringed. Perforce, the assailed resolutions must be set aside and the criminal cases filed against petitioners be dismissed.

WHEREFORE, the petitions are hereby **GRANTED.** The Resolutions dated January 13, 2015 and November 22, 2016 of the Third Division of the Sandiganbayan are **ANNULLED** and **SET ASIDE.** The Sandiganbayan is likewise **ORDERED** to **DISMISS** Criminal Case Nos. SB-12-CRM-0129 and SB-12-CRM-0130, for violation of the Constitutional rights to speedy disposition of cases of petitioners Miguel D. Escobar and Reynaldo F. Constantino.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), Bersamin, del Castillo, and *Jardeleza, JJ.*, concur.

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[46] *Id*. at 65.

[47] *Corpuz v. Sandiganbayan,* 484 Phil. 899, 918 (2004).

FIRST DIVISION

[G.R. No. 230861. September 19, 2018]

ASIAN TRANSMISSION CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; THE TAXPAYER HAS THE PRIMARY RESPONSIBILITY FOR THE PROPER PREPARATION OF THE WAIVER OF THE PRESCRIPTIVE PERIOD FOR ASSESSING DEFICIENCY TAXES.— We reiterate through this decision that the taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes. Hence, the Commissioner of Internal Revenue (CIR) may not be blamed for any defects in the execution of the waiver. x x x In *Commissioner of Internal Revenue v. Next Mobile Inc.*, the Court declared that as a general rule a waiver [of the statute of limitations] that did not comply with the requisites for validity specified in RMO No. 20-90 and RDAO 01-05 was invalid and ineffective to extend the prescriptive period to assess the deficiency taxes. However, due to peculiar circumstances obtaining, the Court treated the case as an exception to the rule, and considered the waivers concerned as valid x x x. In this case, the CTA in Division noted that the eight waivers of ATC contained the defects, x x x. We agree with the holding of the CTA *En Banc* that ATC's case was similar to the case of the taxpayer involved in *Commissioner of Internal Revenue v. Next Mobile Inc*. The defects noted in the waivers of ATC were not solely attributable to the CIR. Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, a careful reading of RDAO 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver. Such responsibility did not pertain to the BIR as the receiving party. Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the respondent CIR

and her subordinates. Moreover, the principle of estoppel was applicable. The execution of the waivers was to the advantage of ATC because the waivers would provide to ATC the sufficient time to gather and produce voluminous records for the audit. It would really be unfair, therefore, were ATC to be permitted to assail the waivers only after the final assessment proved to be adverse.

APPEARANCES OF COUNSEL

Buñag & Associates Law Office for petitioner.
Bureau of Internal Revenue Litigation Division for respondent.

D E C I S I O N

BERSAMIN, *J.*:

We reiterate through this decision that the taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes. Hence, the Commissioner of Internal Revenue (CIR) may not be blamed for any defects in the execution of the waiver.

The Case

This appeal seeks the review and reversal of the decision promulgated on August 9, 2016,[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) reversed and set aside the decision rendered by its Second Division (CTA in Division) holding that the waivers executed by petitioner Asian Transmission Corporation (ATC) were invalid and did not operate

[1] *Rollo*, pp. 32-44; penned by Associate Justice Lovell R. Bautista, with the concurrence of Presiding Justice Roman G. Del Rosario, Associate Justice Juanito C. Castañeda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Caesar A. Casanova, Associate Justice Esperanza R. Fabon-Victorino, Associate Justice Cielito N. Mindaro-Grulla, Associate Justice Amelia R. Cotangco-Manalastas and Associate Justice Ma. Belen M. Ringpis-Liban.

to extend the three-year period of prescription to assess deficiency taxes for the calendar year 2002.[2]

Antecedents

As found by the CTA in Division, the factual and procedural antecedents are as follows:

> [ATC] is a corporation duly organized and existing under Philippine Laws and with business address at Carmelray Industrial Park, Canlubang, Calamba City, Laguna. ATC is a manufacturer of motor vehicle transmission component parts and engines of Mitsubishi vehicles. It was organized and registered with the Securities and Exchange Commission on August 29, 1973 as evidenced by its Certificate of Incorporation.
>
> [The CIR] is the Commissioner of the Bureau of Internal Revenue (BIR) with office address at BIR National Office Bldg., Agham Road, Diliman, Quezon City.
>
> On January 3, 2003 and March 3, 2003, ATC filed its Annual Information Return of Income Taxes Withheld on Compensation and Final Withholding Taxes and Annual Information Return of Creditable Income Taxed Withheld (Expanded)/Income Payments Exempt from Withholding Tax, respectively.
>
> On August 11, 2004, ATC received Letter of Authority [(LOA)] No. 200000003557 where [the CIR] informed ATC that its revenue officers from the Large Taxpayers Audit and Investigation Division II shall examine its books of accounts and other accounting records for the taxable year 2002.
>
> Thereafter, [the CIR] issued a Preliminary Assessment Notice (PAN) to ATC.
>
> Consequently, on various dates, ATC, through its Vice President for Personnel and Legal Affairs, Mr. Roderick M. Tan, executed several documents denominated as "Waiver of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code" (Waiver), as follows:

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[2] *Id*. at 229-261; penned by Associate Justice Casonova, with the concurrence of Associate Justice Castañeda, Jr. and Associate Justice Cotangco-Manalastas.

Waiver	Source of Document	Date of Execution	Date of Extension of Investigation
First Waiver	Page 415, BIR Records	September 8, 2004	June 30, 2005
Second Waiver	Page 419, BIR Records	March 3, 2005	December 31, 2005
Third Waiver	Page 422, BIR Records	November 10, 2005	June 30, 2006
Fourth Waiver	Page 429, BIR Records	March 21, 2006	December 31, 2006
Fifth Waiver	Page 767, BIR Records	March 21, 2006	June 30, 2007
Sixth Waiver	Page 349, BIR Records	April 18, 2007	December 31, 2007
Seventh Waiver	Page 354, BIR Records	October 25, 2007	June 30, 2008
Eight[h] Waiver	Page 1176, BIR Records	May 30, 2008	December 31, 2008

Meanwhile, on February 28, 2008, ATC availed of the Tax Amnesty [P]rogram under Republic Act No. 9480.

On July 15, 2008, ATC received a Formal Letter of Demand from [the] CIR for deficiency [WTC] in the amount of P[hp]62,977,798.02, [EWT] in the amount of P[hp]6,916,910.51, [FWT] in the amount of P[hp]501,077.72. On August 14, 2008, ATC filed its Protest Letter in regard thereto.

Accordingly, on April 14, 2009, ATC received the Final Decision on Disputed Assessment where [the] CIR found ATC liable to pay deficiency tax in the amount of P[hp]75,696,616.75. Thus, on May 14, 2009, ATC filed an appeal letter/request for reconsideration with [the] CIR.

On April 10, 2012, ATC received the Decision of [the] CIR dated November 15, 2011, denying its request for reconsideration. As such, on April 23, 2012, ATC filed the instant Petition for Review (with Application for Preliminary Injunction and Temporary Restraining Order).[3]

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

Ruling of the CTA in Division

On November 28, 2014, the CTA in Division rendered its decision granting the petition for review of ATC. It held that ATC was not estopped from raising the invalidity of the waivers inasmuch as the Bureau of Internal Revenue (BIR) had itself caused the defects thereof, namely: (a) the waivers were notarized by its own employee despite not being validly commissioned to perform notarial acts; (b) the BIR did not indicate the date of its acceptance; (c) the BIR did not specify the amounts of and the particular taxes involved; and (d) respondent CIR did not sign the waivers despite the clear mandate of RMO 20-90 to that effect. It ruled that the waivers, being invalid, did not operate to toll or extend the three-year period of prescription.[4]

The CTA in Division disposed:

WHEREFORE, in view thereof, the Petition for Review is hereby **GRANTED**. Accordingly, the deficiency [WTC] in the amount of P[hp]67,722,419.38, [EWT] in the amount of P[hp]7,436,545.83 and [FWT] in the amount of P[hp]537,651.55, or in the total amount of P[hp]75,696,616.75 for the taxable year 2002, are hereby declared **CANCELLED, WITHDRAWN and WITH NO FORCE AND EFFECT**.

SO ORDERED.[5]

On December 16, 2014, the CIR moved for reconsideration, and ATC opposed.

On March 13, 2015, the CTA in Division denied the CIR's motion for reconsideration,[6] to wit:

WHEREFORE, premises considered, [the CIR's] Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[7]

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[4] *Id*. at 260.

[5] *Id*. at 260-261.

[6] *Id*. at 281-292; penned by Associate Justice Casanova, with the concurrence of Associate Justice Castañeda, Jr., Associate Justice Cotangco-Manalastas (on leave).

[7] *Id*. at 292.

On April 20, 2015, the CIR filed a petition for review in the CTA *En Banc*.

Decision of the CTA *En Banc*

On August 9, 2016, the CTA *En Banc* promulgated the assailed decision reversing and setting aside the decision of the CTA in Division, and holding that the waivers were valid. It observed that the CIR's right to assess deficiency withholding taxes for CY 2002 against ATC had not yet prescribed. It disposed:

> **WHEREFORE**, premises considered, the Court hereby **GRANTS** the Petition for Review. Accordingly, the Decision promulgated on November 28, 2014 and the Resolution on March 13, 2015 by the Second Division are **REVERSED** and **SET ASIDE**. Let the case be **REMANDED** to the Court in Division for further proceedings in order to determine and rule on the merits of respondent's petition seeking the cancellation of the deficiency tax assessments for calendar year 2002 for withholding tax on compensation, expanded withholding tax, and final withholding tax in the aggregate amount of Php75,696,616.75.
>
> **SO ORDERED.**[8]

On September 9 and September 16, 2016, ATC filed its motion for reconsideration[9] and supplemental motion for reconsideration,[10] respectively, but the CTA *En Banc* denied the motions for lack of merit.

Issue

In this appeal, ATC insists that the CTA *En Banc* acted in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in applying the ruling in *Commissioner of Internal Revenue v. Next Mobile Inc*.[11] as well as the equitable principles of *in pari delicto*, unclean hands, and *estoppel*.

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

[9] *Id*. at 54-64.

[10] *Id.* at 65-71.

[11] G.R. No. 212825, December 7, 2015, 776 SCRA 343.

Ruling of the Court

The appeal has no merit.

To be noted is that the CTA *En Banc* cited *Commissioner of Internal Revenue v. Kudos Metal Corporation*,[12] whereby the Court reiterated that RMO 20-90 and RDAO 05-01 governed the proper execution of a valid waiver of the statute of limitations; and pointed to *Commissioner of Internal Revenue v. Next Mobile Inc., supra*, to highlight the recognized exception to the strict application of RMO 20-90 and RDAO 05-01.

In *Commissioner of Internal Revenue v. Next Mobile Inc.*, the Court declared that as a general rule a waiver that did not comply with the requisites for validity specified in RMO No. 20-90 and RDAO 01-05 was invalid and ineffective to extend the prescriptive period to assess the deficiency taxes. However, due to peculiar circumstances obtaining, the Court treated the case as an exception to the rule, and considered the waivers concerned as valid for the following reasons, *viz*.:

First, the parties in this case are *in pari delicto* or "in equal fault." *In pari delicto* connotes that the two parties to a controversy are equally culpable or guilty and they shall have no action against each other. However, although the parties are *in pari delicto*, the Court may interfere and grant relief at the suit of one of them, where public policy requires its intervention, even though the result may be that a benefit will be derived by one party who is in equal guilt with the other.

Here, to uphold the validity of the Waivers would be consistent with the public policy embodied in the principle that taxes are the lifeblood of the government, and their prompt and certain availability is an imperious need. Taxes are the nation's lifeblood through which government agencies continue to operate and which the State discharges its functions for the welfare of its constituents. As between the parties, it would be more equitable if petitioner's lapses were allowed to pass and consequently uphold the Waivers in order to support this principle and public policy.

Second, the Court has repeatedly pronounced that parties must come to court with clean hands. Parties who do not come to court

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[12] G.R. No. 178087, May 5, 2010, 620 SCRA 232.

with clean hands cannot be allowed to benefit from their own wrongdoing. Following the foregoing principle, respondent should not be allowed to benefit from the flaws in its own Waivers and successfully insist on their invalidity in order to evade its responsibility to pay taxes.

Third, respondent is estopped from questioning the validity of its Waivers. While it is true that the Court has repeatedly held that the doctrine of estoppel must be sparingly applied as an exception to the statute of limitations for assessment of taxes, the Court finds that the application of the doctrine is justified in this case. Verily, the application of estoppel in this case would promote the administration of the law, prevent injustice and avert the accomplishment of a wrong and undue advantage. Respondent executed *five* Waivers and delivered them to petitioner, one after the other. It allowed petitioner to rely on them and did not raise any objection against their validity until petitioner assessed taxes and penalties against it. Moreover, the application of estoppel is necessary to prevent the undue injury that the government would suffer because of the cancellation of petitioner's assessment of respondent's tax liabilities.

Finally, the Court cannot tolerate this highly suspicious situation. In this case, the taxpayer, on the one hand, after voluntarily executing waivers, insisted on their invalidity by raising the very same defects it caused. On the other hand, the BIR miserably failed to exact from respondent compliance with its rules. The BIR's negligence in the performance of its duties was so gross that it amounted to malice and bad faith. Moreover, the BIR was so lax such that it seemed that it consented to the mistakes in the Waivers. Such a situation is dangerous and open to abuse by unscrupulous taxpayers who intend to escape their responsibility to pay taxes by mere expedient of hiding behind technicalities.

It is true that petitioner was also at fault here because it was careless in complying with the requirements of RMO No. 20-90 and RDAO 01-05. Nevertheless, petitioner's negligence may be addressed by enforcing the provisions imposing administrative liabilities upon the officers responsible for these errors. The BIR's right to assess and collect taxes should not be jeopardized merely because of the mistakes and lapses of its officers, especially in cases like this where the taxpayer is obviously in bad faith.[13]

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[13] *Supra* note 11, at 361-363.

In this case, the CTA in Division noted that the eight waivers of ATC contained the following defects, to wit:

1. The notarization of the Waivers was not in accordance with the 2004 Rules on Notarial Practice;
2. Several waivers clearly failed to indicate the date of acceptance by the Bureau of Internal Revenue;
3. The Waivers were not signed by the proper revenue officer; and
4. The Waivers failed to specify the type of tax and the amount of tax due.[14]

We agree with the holding of the CTA *En Banc* that ATC's case was similar to the case of the taxpayer involved in *Commissioner of Internal Revenue v. Next Mobile Inc*. The foregoing defects noted in the waivers of ATC were not solely attributable to the CIR. Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, a careful reading of RDAO 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver. Such responsibility did not pertain to the BIR as the receiving party. Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the respondent CIR and her subordinates.

Moreover, the principle of estoppel was applicable. The execution of the waivers was to the advantage of ATC because the waivers would provide to ATC the sufficient time to gather and produce voluminous records for the audit. It would really be unfair, therefore, were ATC to be permitted to assail the waivers only after the final assessment proved to be adverse. Indeed, the Court observed in *Commissioner of Internal Revenue v. Next Mobile Inc*. that:

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[14] *Rollo*, pp. 257-258.

In this case, respondent, after deliberately executing defective waivers, raised the very same deficiencies it caused to avoid the tax liability determined by the BIR during the extended assessment period. It must be remembered that by virtue of these Waivers, respondent was given the opportunity to gather and submit documents to substantiate its claims before the CIR during investigation. It was able to postpone the payment of taxes, as well as contest and negotiate the assessment against it. Yet, after enjoying these benefits, respondent challenged the validity of the Waivers when the consequences thereof were not in its favor. In other words, respondent's act of impugning these Waivers after benefiting therefrom and allowing petitioner to rely on the same is an act of bad faith.[15]

Thus, the CTA *En Banc* did not err in ruling that ATC, after having benefitted from the defective waivers, should not be allowed to assail them. In short, the CTA *En Banc* properly applied the equitable principles of *in pari delicto*, unclean hands, and estoppel as enunciated in *Commissioner of Internal Revenue v. Next Mobile case*.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; **AFFIRMS** the decision promulgated on August 9, 2016 by the Court of Tax Appeals *En Banc* in CTA EB No. 1289 (CTA Case No. 8476); and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), del Castillo, Jardeleza, and *Tijam, JJ.*, concur.

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[15] *Supra* note 11, at 359-360.

FIRST DIVISION

[G.R. No. 207397.* September 24, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CARPIO MARZAN *y* LUTAN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— The Court upholds the ruling of the RTC, which was affirmed by the CA x x x. It is settled that factual findings of the trial court, especially when affirmed by the appellate court, are entitled to great respect and generally should not be disturbed on appeal unless certain substantial facts were overlooked which, if considered, may affect the outcome of the case.

2. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUISITES.— According to Article 14, paragraph 16 of the Revised Penal Code (RPC), "[t]here is treachery when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Thus, two conditions must necessarily occur before treachery or *alevosia* may be properly appreciated, namely: "(1) the employment of means, methods, or manner of execution that would insure the offender's safety from any retaliatory act on the part of the offended party, who has, thus, no opportunity for self-defense or retaliation; [and] (2) deliberate or conscious choice of means, methods, or manner of execution. The essence therefore of treachery is the suddenness and unexpectedness of the attack on an unsuspecting victim thereby depriving the latter of any chance to defend himself and thereby ensuring its commission without risk to the aggressor.

3. ID.; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; NOT APPRECIATED IN THE ABSENCE

* Re-raffled on August 9, 2017.

OF UNCONDITIONAL AND VOLUNTARY SURRENDER.— [V]oluntary surrender should not be appreciated. In the case at bar, there was no showing that accused-appellant unconditionally and voluntarily surrendered himself to the authorities either because he acknowledged his guilt or because he wished to save them the trouble and expense in looking for and capturing him. Accused-appellant was just nonchalantly sitting at the curb when the police force responded and handcuffed him.

4. ID.; MURDER; PENALTY IS *RECLUSION PERPETUA* WHICH IS INDIVISIBLE AND COULD NOT BE GRADUATED IN CONSIDERATION OF ANY MODIFYING CIRCUMSTANCES; DAMAGES.— [T]he Court ruled in *People v. Lota,* "the consideration of any mitigating circumstance in [accused-appellant's] favor would be superfluous because, although the imposable penalty under Article 248 of the *Revised Penal Code* is *reclusion perpetua* to death, the prohibition to impose the death penalty pursuant to Republic Act No. 9346 rendered *reclusion perpetua* as the only penalty for murder, which penalty, being indivisible, could not be graduated in consideration of any modifying circumstances." In fine, there being no modifying circumstance, the proper penalty for the crime of murder is *reclusion perpetua.* As regards the monetary awards, the RTC and the CA properly awarded ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity and ₱50,000.00 as temperate damages. The amount awarded as exemplary damages must, however, be increased from ₱25,000.00 to ₱75,000.00.

5. ID.; FRUSTRATED HOMICIDE; ELEMENTS.— Both the RTC and the CA also properly found accused-appellant guilty of the crime of frustrated homicide for the stabbing of Bernardo. The following elements of frustrated homicide were proved during trial: (1) the accused intended to kill Bernardo as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstances for murder under Article 248 of the RPC exist. Records show that Bernardo was only trying to placate accused-appellant but was immediately stabbed. Bernardo sustained a stab wound in his stomach caused by a sharp pointed object. Accused-appellant even uttered the words "you are also

one of them" before stabbing Bernardo. The nature, circumstances and location of the wound sustained by Bernardo demonstrated accused-appellant's intent to kill. He would have succumbed to death due to the said injury if he were not brought to the hospital immediately thereafter.

6. ID.; ID.; PENALTY AND DAMAGES.— Under Article 249 of the RPC, the penalty for homicide is *reclusion temporal*. For frustrated homicide, the imposable penalty is one degree lower than that imposed in homicide or *prision mayor*. There being no modifying circumstance, the maximum imposable penalty is within the range of *prision mayor* in its medium period or eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the minimum term of the penalty is *prision correccional* in any of its periods. Thus, as modified, accused-appellant is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day *of prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. As regards the award of damages, the same must likewise be modified. Pursuant to prevailing jurisprudence, Bernardo is entitled to moral damages and civil indemnity in the amount of ₱30,000.00 each. However, the award of temperate damages in the amount of ₱20,000.00 is deleted. Finally, all monetary awards shall earn interest at the rate of 6% *per annum* from date of finality of this Decision until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

On appeal is the March 5, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04451 affirming with

[1] CA *rollo*, pp. 93-104; penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Noel G. Tijam (now a Member of this Court) and Romeo F. Barza.

modification the April 8, 2010 consolidated Decision[2] of the Regional Trial Court (RTC) of Camiling, Tarlac, Branch 68 convicting herein accused-appellant Carpio Marzan *y* Lutan (accused-appellant) of the crime of murder in Criminal Case No. 04-36 and frustrated homicide in Criminal Case No. 04-37.

At the outset, it must be stated that accused-appellant does not deny that he stabbed his brothers Apolonio[3] Marzan (Apolonio) and Bernardo Marzan (Bernardo) with a bolo on May 22, 2003 at Camiling, Province of Tarlac. Nonetheless, accused-appellant interposes the defense of insanity.

Factual Antecedents

Accused-appellant was charged in two separate Informations for murder and frustrated murder the accusatory portions of which read:

Criminal Case No. 04-36

That on or about [the] 22nd day of May, 2003 at around 1:30 o'clock in the afternoon at Bonifacio St., Poblacion 1, Municipality of Camiling, Province of Tarlac, and within the jurisdiction of this Honorable Court, the said accused with treachery and evident [premeditation,] did then and there willfully, unlawfully and feloniously with the use of a bladed weapon, stab to death of [sic] Apolonio Marzan.

Contrary to law.[4]

Criminal Case No. 04-37

That on or about [the] 22nd day of May, 2003 at around 1:30 o'clock in the afternoon [in] Municipality of Camiling, Province of Tarlac, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with intent to kill, treachery and evident premeditation, did then and there willfully, unlawfully and feloniously stab several times Bernardo Marzan with a bladed weapon hitting him on the vital parts of his body, with the accused having performed all the

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[2] *Id*. at 13-18; penned by Presiding Judge Jose S. Vallo.

[3] Apolinario in some parts of the records.

[4] Records, p. 1.

acts or execution which would [produce] the crime of Murder but did not produce it by reason independent of his will.

Contrary to law.[5]

When arraigned, accused-appellant entered a plea of not guilty.

Version of the Prosecution

To prove accused-appellant's guilt, the prosecution presented Bernardo, Erlinda Cabiltes (Erlinda), Lolita Rombaoa (Lolita), and Dr. Valentin Theodore Lumibao (Dr. Lumibao). Their testimonies can be summarized as follows:

On May 22, 2003, at around 1:30 p.m., Erlinda saw accused-appellant enter the house of her bedridden father, Apolonio, while uttering *"agda kalaban ko"* (I have an enemy). Not long after, Erlinda heard her father screaming *"apay Aping?"* (why Aping?) and *"uston Aping!"* (enough Aping) Thereafter, Erlinda saw accused-appellant emerge from her father's house wearing a blood-stained shirt and holding a bladed instrument dripping with blood. Erlinda ran to the *barangay* captain's house to ask for help.

Lolita also saw accused-appellant come out from Apolonio's house holding a blood-stained weapon. Out of fear, however, Lolita hid herself in the comfort room.

Bernardo tried to placate accused-appellant but the latter furiously said, "you are also one of them" and stabbed Bernardo in the stomach.

Dr. Lumibao conducted an autopsy of Apolonio's body. In an Autopsy Report,[6] Dr. Lumibao declared that the cause of death was hypovolemic shock secondary to massive internal bleeding due to multiple penetrating stab wounds.

Version of the Accused-Appellant

The defense claimed that accused-appellant was insane at the time of the incident. To prove accused-appellant's insanity,

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[5] *Id*. at 16.

[6] *Id*. at 13.

the defense presented his wife Isabel Marzan (Isabel). Isabel testified that her husband had behavioral problems and suffering from a mental condition. She said that her husband would often appear to be nervous and *tulala.* As regards the stabbing incident, Isabel recounted that, on that fateful day, she saw her husband going back and forth mumbling something. She, together with her mother-in-law and brother-in-law Eduardo Marzan, tried to calm accused-appellant but the latter suddenly ran towards Apolonio's house while holding a bolo and uttering the words, *"kesa ako ang maunahan nila, unahan ko na sila"*. According to Isabel, accused-appellant, after stabbing his brothers Apolonio and Bernardo, just sat down and remained *tulala* until the police arrived and handcuffed him.

Ruling of the Regional Trial Court

The RTC found accused-appellant guilty beyond reasonable doubt of the crime of murder with respect to the killing of Apolonio. However, as to the stabbing of Bernardo, the RTC held that accused-appellant was guilty of frustrated homicide as the attack, albeit without warning, was not deliberate. The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, [accused-appellant] is found guilty beyond reasonable doubt of the offense of Murder (Criminal Case No. 04-36) and hereby sentences him to a penalty of Reclusion Perpetua, there being no attendant mitigating nor aggravating circumstances.
>
> In Criminal Case No. 04-37 for Frustrated Murder however, [accused-appellant] is only found guilty beyond reasonable doubt of the lesser offense of Frustrated Homicide and hereby sentences him to an indeterminate prison term of five [5] years of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum, there being no attendant mitigating nor aggravating circumstances.
>
> [Accused-appellant) is likewise ordered to pay the heirs of Apolonio Marzan the amount of ₱75,000.00 as moral damages, the amount of ₱75,000.00 as civil indemnity, the amount of ₱25,000.00 as exemplary damages and the amount of ₱50,000.00 as temperate damages.

As regards the private complainant [Bernardo], the [accused-appellant] is ordered to pay him the amount of ₱20,000.00 as temperate damages and the amount of ₱10,000.00 as moral damages.

SO ORDERED.[7]

Ruling of the Court of Appeals

The CA sustained the RTC in finding accused-appellant guilty beyond reasonable doubt of the crimes of murder and frustrated homicide. Nevertheless, the CA held that the RTC failed to consider the mitigating circumstance of voluntary surrender. Thus, in the herein assailed Decision,[8] the CA modified the RTC Decision, *viz.*:

WHEREFORE, premises considered, the assailed Decision dated April 8, 2010 of the Regional Trial Court (RTC) of Camiling, Tarlac, Branch 68 in Criminal Case No. 04-36 is **AFFIRMED** and Criminal Case No. 04-37 is **AFFIRMED with MODIFICATION** as to the penalty imposed in that accused-appellant is hereby sentenced to suffer the indeterminate penalty of [four] 4 years, [two] 2 months and [one] 1 day of *Prision Correccional* as minimum to eight (8) years or *Prision Mayor* as maximum. The rest of the appealed judgment **STANDS.**

SO ORDERED.[9]

Hence, this appeal.

The Court required[10] both parties to file their respective supplementary briefs, but they merely opted to adopt their briefs before the CA.

Issues

In his Brief,[11] accused-appellant assigns the following errors:

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[7] CA *rollo,* pp. 17-18.

[8] *Id*. at 93-104.

[9] *Id*. at 103. (Emphasis in the original)

[10] See Resolution dated August 5, 2013, *rollo,* pp. 19-20.

[11] CA *rollo,* pp. 32-53.

I

THE COURT A QUO GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S PLEA OF INSANITY.

II

THE COURT A QUO GRAVELY ERRED IN TAKING INTO ACCOUNT THE QUALIFYING CIRCUMSTANCE OF TREACHERY.

III.

THE COURT A QUO GRAVELY ERRED IN FAILING TO APPRECIATE THE MITIGATING CIRCUMSTANCE OF VOLUNTARY SURRENDER.[12]

Ruling

The appeal is unmeritorious.

The Court upholds the ruling of the RTC, which was affirmed by the CA, that accused-appellant was not completely deprived of intelligence immediately prior to or at the time of the commission of the crime and that treachery was present. It is settled that factual findings of the trial court, especially when affirmed by the appellate court, are entitled to great respect and generally should not be disturbed on appeal unless certain substantial facts were overlooked which, if considered, may affect the outcome of the case. After a careful review of the records, the Court finds no cogent reason to overturn the findings of fact made by both the RTC and the CA that led to their uniform conclusion that accused-appellant was guilty of murder and frustrated homicide.

In rejecting the accused-appellant's argument that he should be declared criminally exempt from the murder charge, considering that he was suffering from psychosis when he stabbed his brothers, the RTC correctly held that:

Even assuming that the testimony of the wife of the accused is true, [accused-appellant]'s abnormal behavior immediately prior [to]

[12] *Id*. at 34.

the stabbing incident and at the time of the incident while suggestive of an aberrant behavior[,] can not be equated with a total deprivation of will or an absence of the power to discern. On the contrary, accused was even sane enough to help his mother stand up after falling on the ground and seated her in front of a house and surrender himself and his bolo to the responding policemen. x x x[13]

The testimony of the defense's lone witness, Isabel, taken during the hearing before the RTC on September 3, 2009 is enlightening:

ATTY. ABELLERA [defense counsel]

x x x x x x x x x

Q And for how long did your husband stay inside the house of your brother-in-law at that time?
A Only for a while, sir, and then he came out

Q When he came out, what did your husband do at that time?
A He came out as if nothing happened. sir, and when one of my brothers-in-law approached to help, he stabbed him.

Q And who is that second brother-in-law who was stabbed by your husband?
A [Bernardo], sir.

Q And after hitting [Bernardo], what happened next?
A [Bernardo] ran away and my mother-in-law ran to the house of Apolonio and when she embraced my husband, she fell down on the ground, sir.

Q When your mother-in-law fell down on the ground, what happened to [accused-appellant]
A He helped his mother get up and let her sit in front of the house, sir.[14]

Moreover, Isabel herself testified that her husband had worked as a tricycle driver and possessed the necessary license therefor, *viz.*:

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[13] *Id*. at 16.

[14] TSN dated September 3, 2009, p. 12.

PROS. GUARDIANO [prosecution upon cross examination]

x x x x x x x x x

Q And as you said, x x x your husband [worked as] a tricycle driver
A Yes, sir.

Q So he possessed a license, am I correct?
A Yes, sir.

Q And am I correct that he was never involved in any accident?
A Yes, sir.

Q And he was never involved with any quarrel with anybody?
A Yes, sir.[15]

x x x x x x x x x

Like the RTC, the CA found the defense of insanity as unavailing in this case, *viz.*:

In questioning the propriety of the [RTC Decision], accused-appellant relied heavily on the findings of Dr. Roxas of the NCMH that he was suffering from psychosis classified as schizophrenia. x x x

We are not convinced. It is settled that the moral and legal presumption is always in favor of soundness of mind; that freedom and intelligence constitute the normal condition of a person. Otherwise stated, the law presumes all acts to be voluntary, and that it is improper to presume that acts were done unconsciously. Therefore, whoever invokes insanity as a defense has the burden of proving its existence. In short, to be entitled to this exempting circumstance under Article 12 of the Revised Penal Code, the defense must prove that the accused was deprived of intelligence immediately prior [to] or at the time of the commission of the crime.

A careful scrutiny of the applicable law and jurisprudential rule on the matter reveals that for insanity to be appreciated in favor of the accused, there must be complete deprivation of intelligence in committing the act, that is, the accused is deprived of reason or there is a complete absence of the power to discern or a total deprivation

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

of the will. Mere abnormality of the mental faculties will not exclude imputability. x x x

x x x x x x x x x

Clearly, schizophrenia does not fall within the stringent standard contemplated by law as an exempting circumstance. In fact, even accused-appellant's psychological report supports this conclusion. The salient portion of which provides:

ASSESSMENT AND REMARKS:

> Based on the history, mental status examinations, observations and psychological test, the patient was found to be suffering from psychosis classified as Schizophrenia. This mental disorder is characterized by the presence of delusions, hallucinations, disorganized/irrelevant speech, disorganized/bizarre behavior and disturbance in [e]ffect. Likewise, the patient's impulse control, frustration tolerance and judgment are affected. In addition, there is a significant impairment in functioning in areas of work, social relations and self-care. This psychiatric disorder runs a chronic course marked by periods of remissions and exacerbations.

The foregoing findings evidently show that accused-appellant's alleged sickness is merely temporary and occurs only intermittently. x x x[16]

As regards the presence of treachery, the RTC pronounced that, at the time of the attack, the now deceased Apolonio was lying in bed, recuperating from illness, unprepared and hapless. Unquestionably, Apolonio had no opportunity nor the strength to resist the attack coming from accused-appellant and defend himself.

Jurisprudence tells us that the assessment of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its unique opportunity to observe the witnesses first hand and note their demeanor, conduct and attitude while under examination. Such rule is binding and conclusive upon this Court especially when affirmed by the appellate court, as in this case.

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[16] CA *rollo*, pp. 97-100.

According to Article 14, paragraph 16 of the Revised Penal Code (RPC), "[t]here is treachery when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Thus, two conditions must necessarily occur before treachery or *alevosia* may be properly appreciated, namely: (1) the employment of means, methods, or manner of execution that would insure the offender's safety from any retaliatory act on the part of the offended party, who has, thus, no opportunity for self-defense or retaliation; [and] (2) deliberate or conscious choice of means, methods, or manner of execution.[17] The essence therefore of treachery is the suddenness and unexpectedness of the attack on an unsuspecting victim thereby depriving the latter of any chance to defend himself and thereby ensuring its commission without risk to the aggressor.

Here, as correctly found by the RTC and the CA, both requisites were present. The sudden attack on the victim who was then at home, bedridden, recuperating from sickness, completely unaware of any danger and unable to defend himself constituted treachery because the accused-appellant was thereby ensured that the victim would not be in any position to ward off or evade his blows, or strike back at him. Evidently, the attack was executed in a manner that the victim was rendered defenseless and unable to retaliate. There is thus no doubt that treachery attended the killing. Hence, the Court is in accord with the RTC and the CA in giving credence to the testimony of the prosecution witnesses and finding that the prosecution has aptly discharged its burden of proving, with moral certainty, the guilt of accused-appellant for the crime of murder.

Nevertheless, contrary to the ruling of the CA, voluntary surrender should not be appreciated. In the case at bar, there was no showing that accused-appellant unconditionally and voluntarily surrendered himself to the authorities either because

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[17] *People v. Guzman*, 542 Phil. 152, 170 (2007).

he acknowledged his guilt or because he wished to save them the trouble and expense in looking for and capturing him. Accused-appellant was just nonchalantly sitting at the curb when the police force responded and handcuffed him. In any case, as the Court ruled in *People v. Lota*,[18] "the consideration of any mitigating circumstance in [accused-appellant's] favor would be superfluous because, although the imposable penalty under Article 248 of the *Revised Penal Code* is *reclusion perpetua* to death, the prohibition to impose the death penalty pursuant to Republic Act No. 9346 rendered *reclusion perpetua* as the only penalty for murder, which penalty, being indivisible, could not be graduated in consideration of any modifying circumstances." In fine, there being no modifying circumstance, the proper penalty for the crime of murder is *reclusion perpetua*.

As regards the monetary awards, the RTC and the CA properly awarded ₱75,000.00 as moral damages, ₱75,000.00 as civil indemnity and ₱50,000.00 as temperate damages. The amount awarded as exemplary damages must, however, be increased from ₱25,000.00 to ₱75,000.00.[19]

Both the RTC and the CA also properly found accused-appellant guilty of the crime of frustrated homicide for the stabbing of Bernardo. The following elements of frustrated homicide were proved during trial: (1) the accused intended to kill Bernardo as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstances for murder under Article 248 of the RPC exist. Records show that Bernardo was only trying to placate accused-appellant but was immediately stabbed. Bernardo sustained a stab wound in his stomach caused by a sharp pointed object. Accused-appellant even uttered the words "you are also one of them" before stabbing Bernardo. The nature, circumstances and location of the wound sustained by Bernardo demonstrated accused-appellant's intent to kill. He would have

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[18] G.R. No. 219580, January 24, 2018.

[19] *People v. Jugueta,* 783 Phil. 806 (2016).

succumbed to death due to the said injury if he were not brought to the hospital immediately thereafter.

Under Article 249 of the RPC, the penalty for homicide is *reclusion temporal*. For frustrated homicide, the imposable penalty is one degree lower than that imposed in homicide[20] or *prision mayor*. There being no modifying circumstance, the maximum imposable penalty is within the range of *prision mayor* in its medium period or eight (8) years and one (1) day to ten (10) years. Applying the Indeterminate Sentence Law, the minimum term of the penalty is *prision correccional* in any of its periods. Thus, as modified, accused-appellant is hereby sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day *of prision correccional,* as minimum, to eight (8) years and one (1) day of *prision mayor,* as maximum.

As regards the award of damages, the same must likewise be modified. Pursuant to prevailing jurisprudence,[21] Bernardo is entitled to moral damages and civil indemnity in the amount of ₱30,000.00 each. However, the award of temperate damages in the amount of ₱20,000.00 is deleted.

Finally, all monetary awards shall earn interest at the rate of 6% *per annum* from date of finality of this Decision until full payment.

WHEREFORE, the appeal is **DISMISSED.** The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04451 finding accused-appellant Carpio Marzan *y* Lutan **GUILTY** beyond

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[20] REVISED PENAL CODE, Article 250 – *Penalty for frustrated parricide, murder or homicide*. – The courts, in view of the facts of the case. may impose upon the person guilty of the frustrated crime of parricide, murder or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provisions of Article 50.

The courts, considering the facts of the case, may likewise reduce by one degree the penalty which under Article 51 should be imposed for an attempt to commit any of such crimes.

[21] *People v. Jugueta, supra* note 19.

reasonable doubt of murder in Criminal Case No. 04-36 and frustrated homicide in Criminal Case No. 04-37 is hereby **AFFIRMED with MODIFICATIONS** that, in Criminal Case No. 04-36, the amount of exemplary damages is increased to ₱75,000.00, while in Criminal Case No. 04-37, accused-appellant is sentenced to suffer the indeterminate penalty of two (2) years, four (4) months and one (1) day of *prision correccional,* as minimum, to eight (8) years and one (1) day of *prision mayor,* as maximum and to pay civil indemnity and moral damages each in the amount of ₱30,000.00. The award of temperate damages is deleted. Finally, all damages awarded shall earn interest at the rate of six (6%) percent *per annum* from date of finality of this Decision until full payment.

SO ORDERED.

Leonardo-de Castro, C.J., Bersamin, and *Gesmundo,*[**] *JJ.,* concur.

Reyes, A. Jr.,[**] *J.,* on leave.

FIRST DIVISION

[G.R. No. 213222. September 24, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERTO PETALINO *alias* "LANIT,"** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL AND ALIBI; CANNOT PREVAIL OVER POSITIVE TESTIMONY.—

[**] Designated additional members per September 25, 2017 raffle.

We have held that denial and alibi do not prevail over the positive identification of the accused by the State's witnesses who testify categorically and consistently, and who are bereft of ill-motive towards the accused. Denial, if not substantiated by clear and convincing evidence, is a negative and self-serving defense that carries no greater evidentiary value than the declaration of a credible witness upon affirmative matters. Indeed, we have held that denial and alibi, to be credited, must rest on strong evidence of non-culpability on the part of the accused. x x x The RTC's treatment of the identification by Bariquit of the accused-appellant as the assailant who had stabbed the victim was warranted. Bariquit's credibility as an eyewitness was unassailable considering that there was no showing or hint of ill-motive on his part to falsely incriminate the accused-appellant. His identification of the latter as the assailant of Nalangay, being firm and untainted by ill-motive, prevailed over the unsubstantiated denial.

2. ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY INCONSISTENCIES IN TESTIMONIES ON MATTERS THAT TRANSPIRED BEFORE THE CRIME AND DID NOT RELATE TO THE MATERIAL FACTS.— The RTC and the CA both ruled out the challenge posed by the accused-appellant against Bariquit's credibility. We agree with them. The inconsistencies referred to what had transpired before the crime was committed, and did not to relate to material facts vital to the determination of the guilt or innocence of the accused-appellant. The inconsistencies were also too minor and trivial to have any significance in this adjudication. At best, they concerned credibility, but the adverse findings by the trial court on the credibility of witnesses and of their testimonies were entitled to great respect, even finality, unless said findings were shown to have been arbitrary, or unless facts and circumstances of weight and influence were shown to have been overlooked, misunderstood, or misapplied by the trial judge that, if properly considered or appreciated, would have affected the outcome in favour of the accused-appellant. Needless to state, such findings are now binding on the Court because the CA has affirmed them. We also remind that minor inconsistencies in testimony do not necessarily weaken or diminish the testimonies of witnesses who displayed consistency on material points, *i.e.*, the elements of the crime and the identity of the perpetrator.

Instead of weakening or diminishing the testimonies, the inconsistencies should strengthen credibility because they discounted the possibility of the witnesses being rehearsed. It is notable that the inconsistencies ascribed to Bariquit did not detract from his declaration of having personally witnessed the stabbing of the victim by the accused-appellant.

3. CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS.— Under Article 14, paragraph 16, of the *Revised Penal Code*, treachery is present when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which offended party might make. For treachery to be appreciated, therefore, the Prosecution must establish the attendance of the following essential elements, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or to retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, method or form of execution must be shown to be deliberated upon or consciously adopted by the offender. It is not sufficient for the Prosecution to show that the victim was unable to defend himself, for the Prosecution must also establish that the accused consciously adopted the mode of attack to facilitate the perpetration of the killing without risk to himself.

4. ID.; ID.; ID.; ID.; ACTS CONSTITUTING TREACHERY MUST BE SUFFICIENTLY AVERRED IN THE INFORMATION.— Both the RTC and the CA concluded that the killing of Nalangay was attended by treachery. This is where we disagree with the lower courts. To start with, the acts constituting treachery were not sufficiently averred in the information, x x x It is clear from the averments to the effect that "accused, armed with a knife, with treachery and evident premeditation, with a decided [purpose] to kill .... stab, hit and wound Johnny Nalangay with the said knife... causing upon the latter injuries on vital parts of his body which caused his death" did not state that the accused-appellant had deliberately adopted means of execution that denied to the victim the opportunity to defend himself, or to retaliate; or that the accused-appellant had consciously and deliberately adopted the mode of attack to ensure himself from any risk from the defense that

the victim might make. To merely state in the information that treachery was attendant is not enough because the usage of the term *treachery* was but a conclusion of law.

5. ID.; ID.; ID.; ID.; THE FINDING OF THE ATTENDANCE OF TREACHERY SHOULD BE BASED ON CLEAR AND CONVINCING EVIDENCE.— [T]he finding of the attendance of treachery, x x x should be based on clear and convincing evidence. The attendance of treachery cannot be presumed. The same degree of proof to dispel any reasonable doubt was required before treachery could be considered either as an aggravating or qualifying circumstance. In short, such evidence must be as conclusive as the fact of killing itself.

6. ID.; HOMICIDE; PENALTY.— There being no treachery, the crime committed by the accused-appellant was homicide. Under Article 249 of the *Revised Penal Code*, the penalty for homicide is *reclusion temporal*. Considering that there were no aggravating or mitigating circumstances to modify the liability, the penalty is imposed in its medium period (*i.e.*, 14 years, eight months and one day to 17 years and four months). Applying the *Indeterminate Sentence Law*, the minimum of the indeterminate sentence is nine years of *prision mayor*, and the maximum is 14 years, eight months and one day. To conform to *People v. Jugueta*, the heirs of the victim are entitled to recover ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The heirs of the victim should further recover ₱50,000.00 as temperate damages (in lieu of actual damages for burial expenses). All the items of civil liability shall earn legal interest of 6% *per annum* reckoned from the finality of this decision until full satisfaction.

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.*:

Treachery is not appreciated against the accused despite the attack being sudden and unexpected when the meeting between him and the victim was casual, and the attack was done impulsively.

The Case

We review the decision promulgated on April 24, 2014,[1] whereby the Court of Appeals (CA) affirmed the judgment rendered on January 24, 2013 by the Regional Trial Court (RTC), Branch 35, in Iloilo City finding accused-appellant Alberto Petalino *alias* "Lanit" guilty beyond reasonable doubt of the crime of murder.[2]

Antecedents

The accused-appellant was charged with murder through the information dated February 19, 1998, which avers:

> That on or about the 30th day of November, 1997 in the City of Iloilo, Philippines and within the jurisdiction of this Honorable Court, herein accused, armed with a knife, with treachery and evident premeditation, with a decided purposes (sic) to kill, did then and there willfully, unlawfully and criminally stab, hit and wound Johnny Nalangay with the said knife, which the said accused was provided at the time, thereby causing upon the latter injuries on vital parts of his body which caused his death few hours thereafter.
>
> CONTRARY TO LAW.[3]

As culled from the assailed decision of the CA, the following are the antecedent facts, to wit:

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[1] *Rollo*, pp. 4-14; penned by Associate Justice Ramon Paul L. Hernando, and concurred in by Associate Justice Ma. Luisa C. Quijano-Padilla and Associate Justice Marie Christine Azcarraga-Jacob.

[2] CA *rollo*, pp. 25-31; penned by Judge Fe Gallon-Gayanilo.

[3] *Rollo*, p. 5.

Version of the Prosecution

Eyewitness Franklin Bariquit recalled that on November 30, 1997, he attended a party with his friend, a certain Carlo, in Barangay Danao, Iznart Street, Iloilo City. There, he met and befriended Johnny Nalangay, the victim in this case.

At around 1:30 in the morning, he and the victim decided to leave. They then headed towards the YMCA where they intended to get their respective rides for home. Bariquit walked behind the victim when the two passed through a narrow alley towards Iznart St. While they were walking, Bariquit saw a person, whom he later identified as accused Alberto Petalino *alias* Lanit, walking towards them from the opposite direction. When accused had passed the victim, he suddenly turned towards him, grabbed his hair and without warning, stabbed the victim in the back. The victim tried to run away, but he fell down after running a distance.

Thereafter, the accused and Bariquit confronted each other, The latter kicked the accused causing him to fall down and to drop his knife. Bariquit then ran away and proceeded to PO's Marketing which was located near the Bank of the Philippine Islands. After sensing that the accused was no longer chasing him, he went back to the alley where he last saw the victim. There, Bariquit found the victim lying on the ground, face down and bloodied all over. The victim managed to utter some words but became unconscious when he was taken to St. Paul's Hospital where he eventually died.

Jaime Nalangay, the father of the victim, testified that his son was only twenty (20) years old at the time of his untimely death. According to him, a police officer and his friend came over to their house and informed him that his son was stabbed. Thus, he went to the hospital but when he arrived there, he found his son dead. Nalangay alleged that he spent Php15,000.00 for the embalming of his son's remains and another Php10,000.00 for his burial although he could not present receipts as he lost them. He also asserted that his son's death caused him so much pain which could never be quantified into monetary amount.[4]

Version of the Defense

x x x x x x x x x

[4] *Id*. at 6.

Accused Petalino testified in court to refute the accusations against him.

Accused narrated that on November 30, 1997 at around eleven o'clock in the evening, he was at his sister's store located in Valeria-Solis Street, Iloilo City helping his sister serve the customers. He left the store shortly later and headed home towards Valeria-Iznart Streets, Iloilo City. He entered a narrow alley along the way and met two persons. One of them, a certain Bariquit, called him "Lanit". At first, he did not reply as he did not know the two. When he was called the second time, he turned his back and accidentally bumped into another person that he later identified as the victim.

Accused apologized but the victim got angry and boxed him on his chest. Accused lost control and punched the victim back. Thereafter, the victim fell down, drew his knife and chased him. The victim then attempted to stab him but they wrestled and accused was able to get hold of the knife. Meanwhile, the victim's two other companions attempted to help. This prompted accused to run away as both were drunk. He was chased and so, he ran towards the interior portion of Valeria Street and proceeded inside his nipa hut.[5]

x x x x x x x x x

Judgment of the RTC

On January 24, 2013, the RTC rendered judgment finding the accused-appellant guilty beyond reasonable doubt of murder,[6] disposing:

WHEREFORE, in the light of the foregoing, judgment is hereby rendered finding the accused, **Alberto Petalino** alias "Lanit" **GUILTY** beyond reasonable doubt of Murder defined and penalized under Article 248 of the Revised Penal Code. He is hereby sentenced to suffer the penalty of *Reclusion Perpetua* with all the accessory penalties provided for by law. As civil liability, he is ordered to indemnify the heirs of the victim, Johnny Nalangay, ₱75,000.00 as indemnity ex-delicto, ₱50,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages.

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[5] *Id*. at 7.

[6] CA *rollo*, pp. 25-31.

The accused is entitled to full credit in the service of his sentence, the preventive imprisonment he has undergone pursuant Article 29 of the Revised Penal Code.

SO ORDERED.[7]

Decision of the CA

On appeal, the accused-appellant argued that:

I.

THAT THE TRIAL COURT ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIME CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

II.

THAT THE TRIAL COURT ERRED IN APPRECIATING THE QUALIFYING CIRCUMSTANCE OF TREACHERY WHEN IT WAS NOT PROVEN BY THE PROSECUTION.[8]

On April 24, 2014,[9] the CA affirmed the conviction, opining that the inconsistencies in the declaration of eyewitness Franklin Bariquit related to minor and trivial matters that did not necessarily impair his credibility; that the accused-appellant's denial of the offense did not overcome Bariquit's positive identification of him as the assailant; and that the qualifying circumstance of treachery had attended the killing of Johnny Nalangay, upgrading the killing to murder. The CA disposed thusly:

WHEREFORE, premises considered, the Decision dated January 24, 2013 of the Regional Trial Court, Branch 35 of Iloilo City in Criminal Case No. 48298 is hereby **AFFIRMED** in toto. No costs.

SO ORDERED.[10]

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[7] *Id*. at 31.

[8] *Rollo*, p. 8.

[9] *Supra* note 1.

[10] *Id*. at 14.

Issues

The accused-appellant seeks the reversal of his conviction by insisting that the Prosecution did not prove his guilt beyond reasonable doubt; and that the Prosecution did not prove the qualifying circumstance of treachery.

Ruling of the Court

The appeal is partly meritorious.

1.
Denial and alibi did not prevail over positive identification

We have held that denial and alibi do not prevail over the positive identification of the accused by the State's witnesses who testify categorically and consistently, and who are bereft of ill-motive towards the accused. Denial, if not substantiated by clear and convincing evidence, is a negative and self-serving defense that carries no greater evidentiary value than the declaration of a credible witness upon affirmative matters.[11] Indeed, we have held that denial and alibi, to be credited, must rest on strong evidence of non-culpability on the part of the accused.[12]

The accused-appellant admitted being at the crime scene, but denied stabbing the victim. He submitted that the victim had drawn a knife and run after him to stab him; and that they had then wrestled until he had gotten hold of the knife. He recalled that he had run away because the victim's two drunk companions had tried to go to latter's succor. He denied having anything to do with the stabbing of the victim, and having any idea how the victim had sustained his fatal injury.

As mentioned, the RTC gave scant consideration to the claim of the accused-appellant, and accorded full credence to Bariquit's

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[11] *People v. Oandasan, Jr.*, G.R. No. 194605, June 14, 2016, 793 SCRA 278, 289-290.

[12] *People v. Narido*, G.R. No. 132058, October 1, 1999, 316 SCRA 131, 149.

positive and categorical identification of the accused-appellant as the assailant who had stabbed and mortally wounded the victim. The RTC's treatment of the identification by Bariquit of the accused-appellant as the assailant who had stabbed the victim was warranted. Bariquit's credibility as an eyewitness was unassailable considering that there was no showing or hint of ill-motive on his part to falsely incriminate the accused-appellant. His identification of the latter as the assailant of Nalangay, being firm and untainted by ill-motive, prevailed over the unsubstantiated denial.[13]

The accused-appellant pointed to the supposed inconsistencies and improbabilities that rendered the testimony of Bariquit on the incident undependable. According to the accused-appellant, Bariquit, although stating on direct examination that he and the victim had attended a birthday party prior to the stabbing incident, later declared on cross-examination that he and the victim had been at a party that was "not really a birthday party." The accused-appellant also pointed to the confusion on the part of Bariquit about the exact place where the party had been held.

The RTC and the CA both ruled out the challenge posed by the accused-appellant against Bariquit's credibility. We agree with them. The inconsistencies referred to what had transpired before the crime was committed, and did not to relate to material facts vital to the determination of the guilt or innocence of the accused-appellant. The inconsistencies were also too minor and trivial to have any significance in this adjudication. At best, they concerned credibility, but the adverse findings by the trial court on the credibility of witnesses and of their testimonies were entitled to great respect, even finality, unless said findings were shown to have been arbitrary, or unless facts and circumstances of weight and influence were shown to have been overlooked, misunderstood, or misapplied by the trial judge that, if properly considered or appreciated, would have affected the outcome in favour of the accused-appellant. Needless to state, such findings are now binding on the Court because the

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[13] *People v. Oandasan, Jr., supra* note 11, at 289.

CA has affirmed them.[14] We also remind that minor inconsistencies in testimony do not necessarily weaken or diminish the testimonies of witnesses who displayed consistency on material points, *i.e.*, the elements of the crime and the identity of the perpetrator.[15] Instead of weakening or diminishing the testimonies, the inconsistencies should strengthen credibility because they discounted the possibility of the witnesses being rehearsed.[16] It is notable that the inconsistencies ascribed to Bariquit did not detract from his declaration of having personally witnessed the stabbing of the victim by the accused-appellant.

2.
Treachery was improperly considered as attendant

Under Article 14, paragraph 16, of the *Revised Penal Code*, treachery is present when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which offended party might make.

For treachery to be appreciated, therefore, the Prosecution must establish the attendance of the following essential elements, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or to retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, method or form of execution must be shown to be deliberated upon or consciously adopted by the offender.[17] It is not sufficient for the Prosecution to show that the victim was unable to defend himself, for the Prosecution must also establish that the accused consciously

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[14] *Dela Cruz v. Court of Appeals*, G.R. No. 139150, July 20, 2001, 361 SCRA 636, 645.

[15] *People v. Delima*, G.R. No. 222645, June 27, 2018.

[16] *People v. Bagaua*, G.R. No. 147943, December 12, 2002, 394 SCRA 54, 63.

[17] *People v. Delector*, G.R. No. 200026, October 4, 2017.

adopted the mode of attack to facilitate the perpetration of the killing without risk to himself.[18]

Both the RTC and the CA concluded that the killing of Nalangay was attended by treachery. This is where we disagree with the lower courts.

To start with, the acts constituting treachery were not sufficiently averred in the information, which pertinently stated:

> x x x herein accused, armed with a knife, with treachery and evident premeditation, with a decided purposes (sic) to kill, did then and there willfully, unlawfully and criminally stab, hit and wound Johnny Nalangay with the said knife, which the said accused was provided at the time, thereby causing upon the latter injuries on vital parts of his body which caused his death few hours thereafter x x x.[19]

It is clear from the averments to the effect that "accused, armed with a knife, with treachery and evident premeditation, with a decided [purpose] to kill .... stab, hit and wound Johnny Nalangay with the said knife... causing upon the latter injuries on vital parts of his body which caused his death" did not state that the accused-appellant had deliberately adopted means of execution that denied to the victim the opportunity to defend himself, or to retaliate; or that the accused-appellant had consciously and deliberately adopted the mode of attack to ensure himself from any risk from the defense that the victim might make.[20]

To merely state in the information that treachery was attendant is not enough because the usage of the term *treachery* was but a conclusion of law.[21] As we pointed out in *People v. Valdez:*[22]

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[18] *Rustia, Jr. v. People*, G.R. No. 208351, October 5, 2016, 805 SCRA 311, 320.

[19] *Rollo*, 5.

[20] *People v. Valdez*, G.R. No. 175602, January 18, 2012, 663 SCRA 272, 287-288.

[21] *People v. Dasmariñas*, G.R. No. 203986, October 4, 2017.

[22] *Supra*, note 20, at 288.

x x x It should not be difficult to see that merely averring the killing of a person by shooting him with a gun, without more, did not show how the execution of the crime was directly and specially ensured without risk to the accused from the defense that the victim might make. Indeed, the use of the gun as an instrument to kill was not per se treachery, for there are other instruments that could serve the same lethal purpose. Nor did the use of the term treachery constitute a sufficient averment, for that term, standing alone, was nothing but a conclusion of law, not an averment of a fact. In short, the particular acts and circumstances constituting treachery as an attendant circumstance in murder were missing from the informations.

The requirement of sufficient factual averments is meant to inform the accused of the nature and cause of the charge against him in order to enable him to prepare his defense. It emanates from the presumption of innocence in his favor, pursuant to which he is always presumed to have no independent knowledge of the details of the crime he is being charged with. Thus, the facts stated in the body of the information should determine the crime of which he stands charged and for which he must be tried.[23] The information must sufficiently give him knowledge of what he had allegedly committed because he was presumed innocent and unaware of the illegal acts imputed against him.

Secondly, the finding of the attendance of treachery, assuming the sufficiency of the allegations thereon in the information, should be based on clear and convincing evidence. The attendance of treachery cannot be presumed.[24] The same degree of proof to dispel any reasonable doubt was required before treachery could be considered either as an aggravating or qualifying circumstance.[25] In short, such evidence must be as conclusive as the fact of killing itself.

For treachery to be properly appreciated, the State must show not only that the victim had been unable to defend himself, but

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[23] *Id.*

[24] *Cirera v. People*, G.R. No. 181843, July 14, 2014, 730 SCRA 27, 48.

[25] *People v. Calinawan*, G.R. No. 226145, February 13, 2017, 817 SCRA 424, 434.

also that the accused had consciously adopted the mode of attack to facilitate the perpetration of the killing without risk to himself.[26] The fact alone that the attack mounted by the accused-appellant against the victim was sudden and unexpected, and did not afford the latter any opportunity to undertake any form or manner of defense or evasion did not necessarily justify a finding that treachery was attendant without any showing that the accused-appellant had consciously and deliberately adopted such mode of attack in order to insure the killing of the victim without any risk to himself arising from the defense that the latter could possibly adopt. That showing was not made herein. For one, the stabbing was committed when the victim was walking together with Bariquit, whose presence even indicated that the victim had not been completely helpless. Also, Bariquit's testimony indicated that the encounter between the victim and the accused-appellant had been only casual because the latter did not purposely seek out the victim. In this connection, treachery could not be appreciated despite the attack being sudden and unexpected when the meeting between the accused and the victim was casual, and the attack was done impulsively.[27]

There being no treachery, the crime committed by the accused-appellant was homicide. Under Article 249 of the *Revised Penal Code*, the penalty for homicide is *reclusion temporal*. Considering that there were no aggravating or mitigating circumstances to modify the liability, the penalty is imposed in its medium period (*i.e.*, 14 years, eight months and one day to 17 years and four months). Applying the *Indeterminate Sentence Law*, the minimum of the indeterminate sentence is nine years of *prision mayor*, and the maximum is 14 years, eight months and one day.

To conform to *People v. Jugueta*,[28] the heirs of the victim are entitled to recover ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages. The heirs of the victim should

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[26] *Rustia, Jr. v. People*, *supra* note 18, at 320.

[27] *People v. Ramelo*, G.R. No. 224888, November 22, 2017.

[28] G.R. No. 202124, April 5, 2016, 788 SCRA 331, 382.

further recover ₱50,000.00 as temperate damages (in lieu of actual damages for burial expenses). All the items of civil liability shall earn legal interest of 6% *per annum* reckoned from the finality of this decision until full satisfaction.[29]

WHEREFORE, the Court **AFFIRMS** the decision promulgated on April 24, 2014 by the Court of Appeals subject to the following **MODIFICATIONS**, namely: (1) accused-appellant **ALBERTO PETALINO** alias **"LANIT"** is found and pronounced guilty beyond reasonable doubt of **HOMICIDE**, and, **ACCORDINGLY**, is punished with the indeterminate sentence of nine years of *prision mayor*, as minimum, to 14 years, eight months and one day of *reclusion temporal*, as maximum; and (2) accused-appellant **ALBERTO PETALINO** alias **"LANIT"** is **ORDERED TO PAY** to the heirs of the late Johnny Nalangay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages, plus legal interest of 6% *per annum* reckoned from the finality of this decision until full settlement.

The accused-appellant shall further pay the costs of suit.

SO ORDERED.

Leonardo-de Castro, C.J., del Castillo, and *Tijam, JJ.*, concur.

Jardeleza, J., on wellness leave.

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[29] *People v. Delector*, *supra*, note 17.

FIRST DIVISION

[G.R. No. 218401. September 24, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JANET PEROMINGAN *y* GEROCHE,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT (RA NO. 9165); SALE OF DANGEROUS DRUGS; ELEMENTS OF THE CRIME MUST BE SUFFICIENTLY ESTABLISHED AND THE DANGEROUS DRUGS MUST BE PRESENTED.— In prosecutions for violation of Section 5 of R.A. No. 9165, the State bears the burden of proving the elements of the offense of sale of dangerous drugs, which constitute the *corpus delicti,* or 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 crime was actually committed. In cases involving the violation of laws prohibiting the illegal sale of dangerous drugs, the dangerous drugs are themselves the *corpus delicti.* Consequently, the State must present the seized drugs, along with proof that there were no substantial gaps in the chain of custody thereof as to raise doubts about the authenticity of the evidence presented in court. As such, the State and its agents are mandated to faithfully observe the safeguards in every drug-related operation and prosecution.

2. ID.; ID.; CHAIN OF CUSTODY TO PRESERVE THE INTEGRITY OF THE EVIDENCE OF THE *CORPUS DELICTI*.— Section 21 of R.A. No. 9165, as amended, defines the procedural safeguards covering the seizure, custody and disposition of the confiscated dangerous drugs, x x x The *Implementing Rules and Regulations of Section 21 of R.A. No. 9165* (IRR) have reiterated the statutory safeguards, x x x The proper handling of the confiscated drug is paramount in order to ensure the chain of custody, a process essential to preserving the integrity of the evidence of the *corpus delicti.* In this connection, *chain of custody* refers to the duly recorded authorized movement and custody of the seized drugs, controlled chemicals or plant sources of the dangerous drugs or laboratory

equipment, from the time of their seizure or confiscation to the time of their receipt in the forensic laboratory, to their safekeeping until their presentation in court as evidence and for the purpose of destruction. The documentation of the movement and custody of the seized items should include the identity and signature of the person or persons who held temporary custody thereof, the date and time when such transfer or custody was made in the course of safekeeping until presented in court as evidence, and the eventual disposition. Accordingly, the safeguards of marking, inventory and picture-taking are all vital to establish that the substance confiscated from the accused was the very same one delivered to and presented as evidence in court.

3. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTY FAILS IN THE PRESENCE OF LAPSES THEREIN.—** It is quite notable that the RTC and the CA relied too much on the presumption of regularity in the performance of official duties on the part of the police officers involved in the arrest and investigation of the accused-appellant. Their excessive reliance was unwarranted in view of the various patent indications of lapses on the part of the officers. Such lapses should have instead raised a red flag to caution against an unquestioning reliance. Consequently, presuming that they had regularly performed their duty became entirely bereft of factual and legal bases. We remind the lower courts that the presumption of regularity in the performance of duty could not be stronger or firmer than the presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of being presumed innocent would become subordinate to a mere rule of evidence primarily devised for judicial convenience. Where, like herein, the proof adduced against the accused does not overcome the presumption of innocence, the presumption of regularity in the performance of duty should not be a factor in adjudging the accused guilty of the crime charged.

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.*:

This appeal seeks the reversal of the decision promulgated by the Court of Appeals on May 26, 2014,[1] and the consequent acquittal of accused-appellant Janet Peromingan *y* Geroche for the crime of Illegal Sale of Dangerous Drugs as defined and punished by Section 5 of Republic Act No. 9165 *(Comprehensive Dangerous Drugs Act of 2002).*

Antecedents

On July 7, 2008, the accused-appellant was charged with the violation of Section 5 of R.A. No. 9165 through the information that reads:

> That on or about July 1, 2008 in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell one (1) heat sealed transparent plastic sachet with markings "SAID" weighing ZERO POINT ZERO FIVE SEVEN (0.057) gram of white crystalline substance containing methylamphetamine hydrochloride known as "shabu", which is a dangerous drug.
>
> CONTRARY TO LAW.[2]

The RTC summarized the factual and procedural antecedents, as follows:

> The testimony of **PSI ELISA REYES** was dispensed with after the public prosecutor and the defense counsel stipulated that she is the same Forensic Chemist who conducted the laboratory examination on the specimen submitted to their Office; that after forming physical, chemical and confirmatory tests, the examination gave positive result for Methylamphetamine Hydrochloride; that the result was reduced

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[1] *Rollo,* pp. 2-7; penned by Associate Justice Ricardo R. Rosario, and concurred in by Associate Justice Amelita G. Tolentino and Associate Justice Manuel M. Barrios.

[2] CA *rollo,* p. 9.

into writing in **Chemistry Report No. D-639-08**; and that she has no personal knowledge as to the source of the specimen subject matter of this case as well as to the circumstances surrounding the apprehension of the accused.

SPO3 ROLANDO DEL ROSARIO testified that on July 1, 2008 at around 10:00 o'clock in the morning, their Office received a telephone call from an unidentified caller informing them that a woman in black blouse and maong shorts, who was selling illegal drugs, was at the house of a certain pusher named **Onin** at Langkaan Area near Asuncion Street, Tondo, Manila; that he immediately informed Police Chief Inspector Roberto Macabeo about the information who in turn, instructed him and PO1 Arturo Ladia to verify the information; that at around 10:30 o'clock in the morning of the same day, he and PO1 Ladia boarded a sidecar and proceeded to the reported area; that at the target area, he saw from a distance of about I0-15 meters a woman in black blouse and maong shorts; that when he passed in front of the woman whose identity he later came to know as Janet Peromingan, the latter asked him "***Kukuha ka?***"; that he replied: *"**Yes**"* and pulled out a Two Hundred Peso (₱200) bill from his pocket and handed it to Janet Peromingan; that the accused in turn, handed to him a plastic sachet containing white crystalline substance; that after receiving the plastic sachet, he immediately arrested Janet Peromingan and identified himself as a police officer, thereafter, he apprised the latter of her constitutional rights, informed her of her violation, and brought her to their police station; that he recovered the buy-bust money from the accused; that at the police station, he marked the plastic sachet which he bought from the accused with the marking **SAID**, after which, he turned it over together with the buy-bust money to their Investigator, SPO1 Antonio Marcos, who then prepared the request for laboratory examination and delivered the specimen to the Crime Laboratory Unit of the SOCO; that he came to know later that the specimen yielded positive result to Methylamphetamine Hydrochloride also known as Shabu; that he executed two (2) Sworn Statements, the Affidavit of Poseur-Buyer and the Joint Affidavit of Apprehension; that they did not coordinate with the Barangay Officials in the place of arrest because nobody want to witness the apprehension; that before proceeding to the reported area, they did not prepare any document, did not coordinate with the PDEA, and did not bring any writing instrument because they went to the said area just to verify the veracity of the information received; and that the photographs of the items recovered from the accused taken by their Investigator were in the custody of the latter.

The testimony of **SPO2 ANTONIO MARCOS** was dispensed with after the public prosecutor and the defense counsel stipulated that on July 1, 2008, he was the designated Investigator at the Police Station 2, MPD, Moriones, Tondo; that he prepared the following documents: the Affidavit of Attestation (Exhibit H), the Joint Affidavit of Apprehension (Exhibit A), the Booking Sheet and Arrest Report (Exhibit B), the Referral-Letter for Inquest (Exhibit C), the Request for Laboratory Examination (Exhibit D), the Spot Report (Exhibit I), and the Inventory of the Seized Item (Exhibit J); that he was not the one who marked the confiscated evidence; that he delivered the specimen to the Crime Laboratory Unit; and that he has no personal knowledge as to the source of the specimen subject matter of this case as well as to the circumstances surrounding the arrest of the accused.

In addition, the prosecution offered Exhibit "A" to "H", inclusive of markings.

Accused **JANET PEROMINGAN,** on the other hand, took the witness stand for her own defense. She testified that she is residing at Isla Puting Bato and she is only doing laundry for a living; that on July 1, 2008 at around 5:30 in the morning, while she and her son Emerjohn Peromingan were walking along Langkaan, Tondo, on their way to Divisoria market, two (2) male persons in civilian attire suddenly grabbed them, forced them to board on a sidecar, and brought them to the Police Station 2, Tondo; that her son Emerjohn was released at the police station while she was asked to stay; that at the police station, the male persons whom she found out to be police officers asked her about the whereabouts of a certain **Evelyn** who according to them was big time; that when she could not point out to the police officers the whereabouts of Evelyn, the Investigator and their superior asked from her ₱150,000.00 for bail and in exchange for her freedom; that when she failed to give the money demanded of her, the police officers placed her inside the detention cell; that they informed her that she was charged for Violation of Section 5 when she was brought for inquest; that although she told the policemen that she was only a laundry woman, the police officers demanded ₱150,000.00 from her; that prior to her arrest, she did not know the arresting police officers; that she could not think of any reason why they would fabricate charges against her.

The defense offered no documentary evidence.[3]

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

Judgment of the RTC

On March 1, 2012, the RTC convicted the accused-appellant as charged, disposing:

> **WHEREFORE**, in view of the foregoing, judgment is hereby rendered finding accused JANET PEROMINGAN y GEROCHE **GUILTY** beyond reasonable doubt of the crime of Violation of Sec. 5, Republic Act 9165, and is hereby sentenced to suffer Life Imprisonment and to pay fine in the amount of ***₱500,000.00.***
>
> Costs against the accused.
>
> **SO ORDERED.**[4]

The RTC accorded credence to the version of the apprehending police officer; and cited the presumption of regularity in the performance of duty by said officer.[5]

Decision of the CA

On May 26, 2014, the CA affirmed the RTC, holding as follows:

> ***WHEREFORE,*** the Decision of the Regional Trial Court of Manila, Branch 53, dated 1 March 2012, in Criminal Case No. 08-262348, finding Janet Peromingan y Geroche guilty of sale of zero point zero fifty- seven (0.057) gram of *methylamphetamine hydrochloride* or *shabu,* in violation of Section 5, Article II of Republic Act No. 9165, and sentencing her to life imprisonment with a fine of Five Hundred Thousand Pesos (₱500,000.00), is **AFFIRMED.**
>
> ***SO ORDERED.***[6]

The CA considered the buy-bust operation mounted against the accused-appellant as valid. It stated that without any contrary evidence and showing of ill will on the part of the entrapping police officers, they were presumed to have performed their duties in a regular manner. It declared that the chain of custody

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[4] *Id*. at 13.

[5] *Id*. at 12-13.

[6] *Id*. at 80.

of the seized substance was not broken; and that the *corpus delicti* was properly identified during the trial.[7]

Hence, this appeal.

Issues

For purposes of this appeal, the Office of the Solicitor General (OSG)[8] and the Public Attorney's Office[9] manifested that they were no longer filing their respective supplemental briefs, and prayed that the briefs submitted to the CA be considered in resolving the appeal.

In her appellant's brief, the accused-appellant has argued that the account by SPO3 Rolando Del Rosario of the circumstances leading to the arrest of the accused-appellant was incredible; that no confidential informant accompanied SPO3 Del Rosario and helped in identifying the accused-appellant as the person supposedly selling drugs; that SPO3 Del Rosario was merely equipped with the information that there was a woman in a black blouse and maong shorts selling illegal drugs in the specified area; that it was unbelievable that the accused-appellant would voluntarily offer her commodity to SPO3 Del Rosario; that the failure of the police officers to follow the procedure for the custody and disposition of the confiscated drugs as provided for in Section 21 of R.A. No. 9165, as amended, had compromised the identity of the *corpus delicti;* and that the irregularities and substantial gaps broke the chain of custody of the seized drug and rendered highly suspicious the identity of the drug presented in court.

In response, the OSG has maintained that the conviction was based on the positive and direct testimony of SPO3 Del Rosario who had apprehended the accused-appellant *in flagrante delicto;* that the testimony of SPO3 Del Rosario was fully corroborated by the other prosecution witness, PO1 Arturo Ladia, who, as

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

[8] *Id*. at 14.

[9] *Id*. at 20.

the investigator on duty in Station 2 at the time, had personally witnessed the offer to sell *shabu* by the accused-appellant to SPO3 Del Rosario; that the arrest of the accused-appellant *in flagrante delicto* while selling *shabu* to SPO3 Del Rosario without any license or authority was legal and valid; that the Prosecution satisfactorily proved beyond reasonable doubt the existence of all the elements of the crimes of illegal sale and of unauthorized possession of *shabu* committed by the accused-appellant; and that the chain of evidence and circumstances showed that the integrity and identity of the *shabu* seized from the accused-appellant were never compromised.[10]

Ruling of the Court

The appeal is meritorious.

In prosecutions for violation of Section 5 of R.A. No. 9165, the State bears the burden of proving the elements of the offense of sale of dangerous drugs, which constitute the *corpus delicti*, or 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 crime was actually committed. In cases involving the violation of laws prohibiting the illegal sale of dangerous drugs, the dangerous drugs are themselves the *corpus delicti*. Consequently, the State must present the seized drugs, along with proof that there were no substantial gaps in the chain of custody thereof as to raise doubts about the authenticity of the evidence presented in court. As such, the State and its agents are mandated to faithfully observe the safeguards in every drug-related operation and prosecution.[11]

Section 21 of R.A. No. 9165, as amended, defines the procedural safeguards covering the seizure, custody and disposition of the confiscated dangerous 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/*

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

[11] *People v. Calates*, G.R. No. 214759, April 4, 2018.

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. (Emphasis supplied)

x x x x x x x x x

The *Implementing Rules and Regulations of Section 21 of R.A. No. 9165* (IRR) have reiterated the statutory safeguards, *viz.*:

> (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)
>
> x x x x x x x x x

The proper handling of the confiscated drug is paramount in order to ensure the chain of custody, a process essential to preserving the integrity of the evidence of the *corpus delicti*. In this connection, *chain of custody* refers to the duly recorded authorized movement and custody of the seized drugs, controlled chemicals or plant sources of the dangerous drugs or laboratory equipment, from the time of their seizure or confiscation to the time of their receipt in the forensic laboratory, to their safekeeping until their presentation in court as evidence and for the purpose of destruction. The documentation of the movement and custody of the seized items should include the identity and signature of the person or persons who held temporary custody thereof, the date and time when such transfer or custody was made in the course of safekeeping until presented in court as evidence, and the eventual disposition. Accordingly, the safeguards of marking, inventory and picture-taking are all vital to establish that the substance confiscated from the accused was the very same one delivered to and presented as evidence in court.[12]

A review of the records reveals that the police officers did not follow the procedural safeguards prescribed by law, and thereby created serious gaps in the chain of custody of the confiscated dangerous drug. SPO3 Del Rosario, the only Prosecution witness who testified, readily admitted that the officers did not coordinate with any media representative,

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[12] *Id.*

Department of Justice (DOJ) representative, or elected official during the physical inventory. Worse, SPO3 Del Rosario did not show that the marking and the inventory of the seized dangerous drugs were done in the presence of the accused-appellant or her representative. There was also no proof that any photograph was taken to document the evidence seized, *viz.*:

Q: -By the way, earlier according to you, you purchased the one (1) small plastic sachet form the accused. If you will see again that plastic sachet will you be able to recognize it?

A: -Yes sir.

Q: -How will you be able to identify it?

A: -We put marking of SAID sir.

Q: -And who put that marking?

A: -I myself sir.

Q: -Where were you when you put that marking?

A: -At the office sir.

Q: -Why is it that you only put that marking inside your office and not at the place where you arrested the accused?

A: -Because at that time of apprehension we have no writing instrument because at that time we were just there to verify the veracity of the information sir.

x x x x x x x x x

Q: -After you informed the accused of her constitutional rights, what happened next?

A: -We brought her to our officer sir.

Q: -Did you coordinate with the barangay officials of that place?

A: -No sir.

Q: -Why is it that you did not coordinate with the barangay officials of that place?

A: -There is no barangay official willing to witness the apprehension sir.

Q: -And did you not call any barangay official?

A: -Only barangay tanod sir.

Q: -Do you still recall the name of that barangay tanod?

A: -I cannot remember sir.

Q: -You said that after you arrested the accused, you returned to the police station. Where did you keep the plastic sachet that you recovered from the accused when you returned to the police station?

A: -In my pocket sir.

Q: -And what happened when you arrived at the police station?

A: -I immediately marked the specimen, I put SAID and I turned over to the investigator and the investigator prepared the request for laboratory examination to SOCO sir.

Q: -And who delivered the said specimen to the crime laboratory unit?

A: -Also the investigator sir, SPO1 Antonio Marcos sir.

x x x x x x x x x

Q: -By the way, was there any photograph taken from the items that you recovered from the accused Mr. Witness?

A: -I think there was a photograph taken by the investigator sir.

Q: -Do you know where is that photograph right now, if you know?

A: -I think it was in the custody of the investigator sir.

x x x x x x x x x

Q: -Before you conducted the verification, did you coordinate with the PDEA?

A: -No sir.

Q: -Why is it that you did not coordinate with the PDEA?

A: -We were only just there to verify the information sir.[13]

We further note that the "TURN OVER RECEIPT/ INVENTORY OF SEIZED ITEMS" allegedly prepared by SPO1 Antonio Marcos had not been signed by SPO1 Marcos, or by the accused-appellant, or by any of the personalities required by law to witness the inventory and the photographing of the confiscated dangerous drugs (namely: the media representative, the representative from the DOJ, and an elective official).[14] The absence of SPO1 Marcos' signature from the document engendered doubts about the proper custody and handling of the dangerous drug after leaving the hands of SPO3 Del Rosario. Indeed, there was no way of ascertaining whether or not SPO1 Marcos had truly received the dangerous drug from SPO3 Del Rosario unless there was evidence from which to check such information. It is notable that the inventory itself – being dated June 28, 2008 – was faulty by virtue of its being dated prior to the apprehension of the accused-appellant on July 1, 2008.

The unavoidable consequence of the lapses and actuations of the police officers was the non-preservation of the chain of custody, which, in turn, raised serious doubt on whether or not the *shabu* presented as evidence was really the *shabu* supposedly sold by the accused-appellant to the poseur buyer. In fact, assuming that there had been an illegal transaction, we could even wonder aloud if it was really the accused-appellant who had sold the *shabu.* A reading of the details of the spot report prepared by SPO1 Marcos indicates that the accused-appellant was tagged as "U", meaning *User,* as opposed to "Pu" or *Pusher.* Moreover, the spot report reflected a crime different from that for which the accused-appellant was supposedly arrested, to wit:

> SPECIFIC PROVISIONS OF RA 9165 VIOLATED: Vagrancy and Sec. 11[15]

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[13] TSN, April 20, 2010, pp. 10-15.

[14] Records, p. 10.

[15] *Id.* at 4.

It is quite notable that the RTC and the CA relied too much on the presumption of regularity in the performance of official duties on the part of the police officers involved in the arrest and investigation of the accused-appellant. Their excessive reliance was unwarranted in view of the various patent indications of lapses on the part of the officers. Such lapses should have instead raised a red flag to caution against an unquestioning reliance. Consequently, presuming that they had regularly performed their duty became entirely bereft of factual and legal bases.

We remind the lower courts that the presumption of regularity in the performance of duty could not be stronger or firmer than the presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of being presumed innocent would become subordinate to a mere rule of evidence primarily devised for judicial convenience. Where, like herein, the proof adduced against the accused does not overcome the presumption of innocence, the presumption of regularity in the performance of duty should not be a factor in adjudging the accused guilty of the crime charged.[16]

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on May 26, 2014 by the Court of Appeals in C.A.-G.R. CR HC No. 05569; **ACQUITS** accused-appellant **JANET PEROMINGAN *y* GEROCHE** for failure to establish her guilt beyond reasonable doubt for the violation of Section 5, Article II of Republic Act No. 9165 *(Comprehensive Dangerous Drugs Act of 2002);* and **ORDERS** her immediate release from confinement at the Correctional Institute for Women, Bureau of Corrections, in Mandaluyong City, unless she is confined thereat for some other lawful cause.

Let a copy of this decision be furnished to the Director of the Bureau of Corrections in Muntinlupa City for immediate implementation.

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[16] *People v. Catalan,* G.R. No. 189330, November 28, 2012, 686 SCRA 631, 646.

The Director of the Bureau of Corrections is directed to report the action taken conformably with this decision within five days from receipt of this decision.

SO ORDERED.

Leonardo-de Castro, C.J., del Castillo, and *Tijam, JJ.,* concur.

Jardeleza, J., on wellness leave.

EN BANC

[A.C. No. 11978. September 25, 2018]
(Formerly CBD Case No. 10-2769)

KENNETH R. MARIANO, *complainant, vs.* **ATTY. JOSE N. LAKI,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITIES; RULE ON THE ACCOUNTING OF MONIES AND PROPERTIES RECEIVED BY LAWYERS FROM CLIENTS AND THEIR RETURN UPON DEMAND; VIOLATION IN CASE AT BAR.— The rule on the accounting of monies and properties received by lawyers from clients as well as their return upon demand is explicit. Canon 16, Rules 16.01, 16.02 and 16.03 of the CPR provides: CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEY AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION. Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client. Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him. Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand. In the instant case, it

is clear that Atty. Laki violated his sworn duties under the CPR. Not only did he fail to file the petition for annulment of marriage despite receipt of the acceptance fee in the amount of ₱150,000.00, he also failed to account for the money he received. He also failed to keep his client abreast with the developments and status of the case as he actually never provided Mariano a copy of the petition despite demand. Worse, after receiving his acceptance fee, Atty. Laki also made it difficult for his client to contact him, as in fact Mariano felt that he was being avoided. x x x Atty. Laki's failure to render an accounting, and to return the money if the intended purpose thereof did not materialize, constitutes a blatant disregard of Rule 16.01 of the CPR.

2. ID.; ID.; RULE THAT A LAWYER SHALL NOT ATTRIBUTE TO A JUDGE MOTIVES NOT SUPPORTED BY THE RECORD; VIOLATION IN CASE AT BAR.— [W]hat we find more deplorable was Atty. Laki's act of giving assurance to Mariano that he can secure a favorable decision without the latter's personal appearance because the petition will be filed in the RTC of Tarlac, which is allegedly presided by a "friendly" judge who is receptive to annulment cases. Atty. Laki's deceitful assurances give the implication that a favorable decision can be obtained by being in cahoots with a "friendly" judge. It gives a negative impression that decisions of the courts can be decided merely on the basis of close ties with the judge and not necessarily on the merits. Without doubt, Atty. Laki's statements cast doubts on the integrity of the courts in the eyes of the public. By making false representation to his client, Atty. Laki not only betrayed his client's trust but he also undermined the trust and faith of the public in the legal profession. Canon 11 and Rule 11.04 of the CPR state that: Canon 11 — A lawyer shall observe and maintain the respect due to the Courts and to judicial officers and should insist on similar conduct by others. x x x Rule 11.04 A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

3. ID.; LAWYERS; DISBARMENT; PROPER FOR GROSS MISCONDUCT AND WILLFUL DISOBEDIENCE OF LAWFUL ORDERS COMMITTED IN CASE AT BAR.— In the instant case, *first,* Atty. Laki received money from his client for the purpose of filing a petition but he failed to do so; *second,* after his failure to render legal service despite the receipt of acceptance fee, he also unjustifiably refused to return the

money he received; *third*, he grossly disrespected the IBP by ignoring its directives to file his answer to the complaint and appear at the mandatory hearings; and *lastly*, Atty. Laki maligned the Judiciary by giving the impression that court cases are won, not on the merits, but through close ties with the judges. From these actuations, it is undisputed that Atty. Laki wronged his client and the Judiciary as an institution, and the IBP of which he is a member. He disregarded his duties as a lawyer and betrayed the trust of his client, the IBP, and the courts. The Court, thus, rules that Atty. Laki deserves the ultimate administrative penalty of disbarment. Finally, we also deem it proper to order the return of the acceptance fee in the amount of ₱150,000.00 which Atty. Laki received from Mariano, considering that said transaction was borne out of their professional relationship.

APPEARANCES OF COUNSEL

The Law Firm of Dante S. David for complainant.

D E C I S I O N

***PER CURIAM*:**

Before us is a Affidavit-Complaint dated October 7, 2010 filed by complainant Kenneth R. Mariano *(Mariano)* against respondent Atty. Jose N. Laki *(Atty. Laki)*, docketed as A.C. No. 11978 for dishonesty, unprofessional conduct and violation of the Code of Professional Responsibilities *(CPR)*.[1]

The facts are as follows:

On January 7, 2009, Mariano alleged that he approached Atty. Laki to engage his legal services for the filing of a petition for annulment of his marriage. Atty. Laki then informed him to prepare the amount of ₱160,000.00, representing a package deal for his professional fee, docket fee and expenses for the preparation and filing of the petition, subject to an advance

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

payment of ₱50,000.00. Mariano expressed surprise over the huge amount that Atty. Laki was asking, thus, the latter assured him that he could secure a favorable decision even without Mariano's personal appearance since he will file the petition for annulment before the Regional Trial Court *(RTC)* of Tarlac which is presided by a "friendly judge" and is known to be receptive to annulment cases.

Believing in Atty. Laki's assurances, Mariano initially paid Atty. Laki the amount of ₱50,000.00, as evidenced by a receipt[2] issued by Atty. Laki himself on January 7, 2009. Upon Atty. Laki's relentless follow-ups to pay the remaining balance, Mariano made the succeeding payments in the amounts of ₱40,000.00 and ₱60,000.00 on April 13, 2009 and August 2009, respectively, as evidenced by receipts[3] issued by Atty. Laki.

For almost a year thereafter, Mariano followed up with Atty. Laki the status of the petition. He then discovered that the petition has yet to be filed. Atty. Laki told him that the Presiding Judge of the RTC-Tarlac where he allegedly filed the petition has been dismissed by the Supreme Court, thus, he decided to withdraw the case since he did not expect the new presiding judge to be "friendly."

Doubtful of Atty. Laki's allegations, Mariano attempted to get a copy of the petition but the former told him that he still has to locate the copy in his office. Mariano tried several times to get hold of a copy of the petition but nevertheless failed, as it became very difficult to meet Atty. Laki. Mariano averred that he also tried calling Atty. Laki through his cellphone, but his calls were likewise rejected. These then prompted Mariano to instead demand the return of his money considering that it was apparent that Atty. Laki failed to fulfill his duty as lawyer to file the petition for annulment.

Despite Mariano's demand to Atty. Laki to return his money, his demands were left unheeded. Atty. Laki promised Mariano

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[2] *Id.* at 6.

[3] *Id.* at 7-8.

that he would return the money in installments within two weeks because he still has to raise it, but Atty. Laki failed to make good of his promise. Later, Mariano's succeeding phone calls were rejected. Mariano also alleged that Atty. Laki's office in Guagua, Pampanga, was always closed. On August 29, 2010, per advise of another lawyer, Mariano sent a demand letter[4] to Atty. Laki which was served at the Integrated Bar of the Philippines *(IBP)*, Pampanga Chapter, San Fernando, Pampanga, where the latter allegedly holds office as an IBP Director.

Aggrieved, Mariano filed the instant disbarment complaint against Atty. Laki for dishonesty, unprofessional conduct and violations of the CPR.

On October 11, 2010, the IBP-Commission on Bar Discipline *(IBP-CBD)* ordered Atty. Laki to submit his Answer on the complaint against him.[5]

On February 4, 2011, the IBP-CBD issued a Notice of Mandatory Conference/Hearing[6] notifying the parties to appear on March 4, 2011 with a warning that non-appearance by the parties shall be deemed a waiver of their right to participate in the proceedings.

On February 18, 2011, Atty. Laki moved for the cancellation and postponement of the mandatory conference on the ground that he has to appear for court hearings in Pampanga on the same day.[7]

On March 4, 2011, both Mariano and Atty. Laki failed to attend the rescheduled mandatory conference. As such, the Commission issued an Order[8] cancelling the scheduled conference and resetting it to April 15, 2011 with a stern warning to the parties that no further postponement will be entertained.

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

[5] *Id.* at 11.

[6] *Id.* at 12.

[7] *Id.* at 16.

[8] *Id.* at 20.

On April 15, 2011, Mariano was the only one who appeared before the Commission, and Atty. Laki was absent, despite notice, without any explanation. As such, the Commission issued an Order[9] noting that Atty. Laki again failed to appear despite warning and that he has yet to file an answer to the complaint. Consequently, the case was submitted for report and recommendation.

A month after, or on May 24, 2011, Atty. Laki filed a Manifestation with Motion,[10] explaining that he was suffering from acute bronchitis during the scheduled mandatory conference, and attached a medical certificate thereto. He, likewise, prayed that the Order submitting the case for report and recommendation be recalled and reconsidered, and that the mandatory conference be set preferably on June 24, 2011.

In an Order[11] dated June 3, 2011, the Commission, in the interest of justice, set aside its previous Order considering the case was submitted for report and recommendation, and set anew the mandatory conference on July 15, 2011.

On July 15, 2011, Mariano and Atty. Laki both appeared on the rescheduled mandatory conference, but the counsel of Mariano was absent, thus, the conference was reset on August 26, 2011. The Commission also noted that Atty. Laki has still not filed his Answer to the Complaint.[12]

On October 14, 2011, the case was re-assigned to Commissioner Leland R. Villadolid, Jr., and the parties were notified to appear before the Commission for the mandatory conference on November 29, 2011.[13]

On November 24, 2011, Atty. Laki filed an Urgent Motion for Postponement[14] on the ground that he has two scheduled

[9] *Id.* at 22.

[10] *Id.* at 24.

[11] *Id.* at 28.

[12] *Id.* at 30.

[13] *Id.* at 31.

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

court hearings on the scheduled mandatory conference on November 29, 2011.

On November 29, 2011, it was only Mariano who appeared before the Commission. The Commission, however, noted Atty. Laki's urgent motion for postponement on record and issued an Order[15] granting his motion for postponement to January 17, 2012. It also noted that Atty. Laki has still not submitted his Answer, thus, was given a final period of fifteen (15) days to file it.

On January 17, 2012, there was still no appearance on the part of Atty. Laki but his secretary, a certain Michael Brutas, appeared and informed the Commission that Atty. Laki would not be able to appear because his *"kinakapatid"* passed away. Mariano interposed objections arguing that the case has been pending for quite some time already, and that Atty. Laki has failed to submit his Answer to the complaint despite numerous notices. Finding merit in Mariano's arguments, the Commission denied the request of Atty. Laki for postponement. The Commission terminated the mandatory conference and gave Mariano fifteen (15) days to submit his verified position paper, after which, the case was submitted for report and recommendation.[16]

On February 17, 2012, Mariano filed his Position Paper[17] in compliance with the Order of the Commission. However, Atty. Laid still failed to submit his Answer to the Complaint. He was eventually declared in default. Thus, the instant case was submitted for report and recommendation.[18]

However, on March 28, 2012, Atty. Laki filed a Motion for Reconsideration with Motion to Lift the Order of Default as he claimed that his absence during the scheduled mandatory

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[15] *Id.* at 36-37.

[16] *Id.* at 39.

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

[18] *Id.*

conference on January 17, 2012 was unintentional and was not meant to delay the proceedings.[19]

In its Report and Recommendation[20] dated August 20, 2015, the IBP-CBD recommended that Atty. Laki be disbarred from the practice of law. It, likewise, recommended that Atty. Laki be ordered to return to the complainant the amount of ₱150,000.00 which he received as professional fee. In Resolution No. XXII-2016-323,[21] the IBP-Board of Governors adopted and approved the IBP-CBD's report and recommendation.

After a review of the records of the case, We resolve to sustain the findings and recommendation of the IBP-Board of Governors.

The ethics of the legal profession rightly enjoin every lawyer to act with the highest standards of truthfulness, fair play and nobility in the course of his practice of law. Lawyers are prohibited from engaging in unlawful, dishonest, immoral or deceitful conduct and are mandated to serve their clients with competence and diligence. To this end, nothing should be done by any member of the legal fraternity which might tend to lessen in any degree the confidence of the public in the fidelity, honesty, and integrity of the profession.[22]

Canon 1, Rule 1.01 of the Code provides that "[lawyers] shall not engage in unlawful, dishonest, immoral or deceitful conduct." By taking the lawyer's oath, lawyers become guardians of the law and indispensable instruments for the orderly administration of justice. As such, they can be disciplined for any conduct, in their professional or private capacity, which renders them unfit to continue to be officers of the court.[23]

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

[20] *Id.* at 102-115.

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

[22] *Posidio v. Atty. Vitan,* 548 Phil. 556, 562 (2007).

[23] *Foronda v. Atty. Alvarez, Jr.,* 737 Phil. 1, 10 (2014), citing *Manzano v. Soriano,* 602 Phil. 419, 426-427 (2009).

The rule on the accounting of monies and properties received by lawyers from clients as well as their return upon demand is explicit. Canon 16, Rules 16.01, 16.02 and 16.03 of the CPR provides:

CANON 16 – A LAWYER SHALL HOLD IN TRUST ALL MONEY AND PROPERTIES OF HIS CLIENT THAT MAY COME INTO HIS POSSESSION.

Rule 16.01 – A lawyer shall account for all money or property collected or received for or from the client.

Rule 16.02 – A lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him.

Rule 16.03 – A lawyer shall deliver the funds and property of his client when due or upon demand.

In the instant case, it is clear that Atty. Laki violated his sworn duties under the CPR. Not only did he fail to file the petition for annulment of marriage despite receipt of the acceptance fee in the amount of ₱150,000.00, he also failed to account for the money he received. He also failed to keep his client abreast with the developments and status of the case as he actually never provided Mariano a copy of the petition despite demand. Worse, after receiving his acceptance fee, Atty. Laki also made it difficult for his client to contact him, as in fact Mariano felt that he was being avoided.

Having received payment for services which were not rendered, Atty. Laki was unjustified in keeping Mariano's money. His obligation was to immediately return the said amount. His refusal to do so despite repeated demands constitutes a violation of his oath where he pledges not to delay any man for money and swears to conduct himself with good fidelity to his clients. His failure to return the money, also gives rise to the presumption that he has misappropriated it for his own use to the prejudice of, and in violation of, the trust reposed in him by the client. It is a gross violation of general morality as well as of professional ethics, as it impairs public confidence in the legal profession.[24]

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[24] *Id.*, citing *Arma v. Atty. Montevilla,* 581 Phil. 1, 8 (2008).

It must be emphasized anew that the fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client. When a lawyer collects or receives money from his client for a particular purpose, he should promptly account to the client how the money was spent. If he does not use the money for its intended purpose, he must immediately return it to the client. Atty. Laki's failure to render an accounting, and to return the money if the intended purpose thereof did not materialize, constitutes a blatant disregard of Rule 16.01 of the CPR.

But what we find more deplorable was Atty. Laki's act of giving assurance to Mariano that he can secure a favorable decision without the latter's personal appearance because the petition will be filed in the RTC of Tarlac, which is allegedly presided by a "friendly" judge who is receptive to annulment cases. Atty. Laki's deceitful assurances give the implication that a favorable decision can be obtained by being in cahoots with a "friendly" judge. It gives a negative impression that decisions of the courts can be decided merely on the basis of close ties with the judge and not necessarily on the merits. Without doubt, Atty. Laki's statements cast doubts on the integrity of the courts in the eyes of the public. By making false representation to his client, Atty. Laki not only betrayed his client's trust but he also undermined the trust and faith of the public in the legal profession.

Canon 11 and Rule 11.04 of the CPR state that:

> Canon 11 - A lawyer shall observe and maintain the respect due to the Courts and to judicial officers and should insist on similar conduct by others.
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> x x x x x x x x x
>
> Rule 11.04— A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case.

From the foregoing rules, a lawyer, as an officer of the court; he is, "like the court itself, an instrument or agency to advance the ends of justice." His duty is to uphold the dignity and authority

of the courts to which he owes fidelity, "not to promote distrust in the administration of justice." Faith in the courts, a lawyer should seek to preserve. For, to undermine the judicial edifice "is disastrous to the continuity of government and to the attainment of the liberties of the people."[25] Thus, it has been said of a lawyer that "[a]s an officer of the court, it is his sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the courts so essential to the proper administration of justice.[26] It is with this exacting standard that we measure Atty. Laki, and find him wanting.

The misconduct of Atty. Laki is further aggravated by Atty. Laki's non-chalant attitude on the proceedings before the IBP, as demonstrated by his repetitive disregard of the IBP's directives to file his comment on the complaint and appear during hearings. Atty. Laki, while astute in filing several motions for postponement of the mandatory conference, he never filed his answer to the complaint, despite several reminders and opportunities given by the IBP. He, likewise, offered no justification or any valid reason as to why he failed to submit his Answer.

Clearly, Atty. Laki's act of ignoring the IBP's directives is tantamount to an obstinate refusal to comply with the IBP's rules and procedures. This constitutes blatant disrespect for the IBP which amounts to conduct unbecoming a lawyer.[27] As an officer of the court, Atty. Laki is expected to know that said directives of the IBP, as the investigating arm of he Court in administrative cases against lawyers, is not a mere request but an order which should be complied with promptly and completely.[28] As an officer of the court, it is a lawyer's duty

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[25] *Cruz v. Justice Aliño-Hormachuelos, et al.*, 470 Phil. 435, 445 (2004), citing *Surigao Mineral Reservation Board v. Cloribel*, No. L-27072, January 9, 1970, 31 SCRA 1, 16-17.

[26] *Id.*

[27] *Almendarez, Jr. v. Atty. Langit,* 528 Phil. 814, 821 (2006).

[28] *Caspe v. Atty. Mejica,* 755 Phil. 312, 321 (2015).

to uphold the dignity and authority of the court. The highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes.

PENALTY

This Court, in its unceasing quest to promote the people's faith in courts and trust in the rule of law, has consistently exercised its disciplinary authority on lawyers who, for malevolent purpose or personal malice, attempt to obstruct the orderly administration of justice, trifle with the integrity of courts, and embarrass or, worse, malign the men and women who compose them.[29]

Thus, a member of the Bar may be penalized, even disbarred or suspended from his office as an attorney, for violation of the lawyer's oath and/or for breach of the ethics of the legal profession as embodied in the CPR. The practice of law is a profession, a form of public trust, the performance of which is entrusted to those who are qualified and who possess good moral character. The appropriate penalty for an errant lawyer depends on the exercise of sound judicial discretion based on the surrounding facts.

In the instant case, *first,* Atty. Laki received money from his client for the purpose of filing a petition but he failed to do so; *second,* after his failure to render legal service despite the receipt of acceptance fee, he also unjustifiably refused to return the money he received; *third,* he grossly disrespected the IBP by ignoring its directives to file his answer to the complaint and appear at the mandatory hearings; and *lastly,* Atty. Laki maligned the Judiciary by giving the impression that court cases are won, not on the merits, but through close ties with the judges.

From these actuations, it is undisputed that Atty. Laki wronged his client and the Judiciary as an institution, and the IBP of which he is a member. He disregarded his duties as a lawyer and betrayed the trust of his client, the IBP, and the courts.

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[29] *Pobre v. Senator Defensor-Santiago,* 613 Phil. 352, 365 (2009).

The Court, thus, rules that Atty. Laki deserves the ultimate administrative penalty of disbarment.

Finally, we also deem it proper to order the return of the acceptance fee in the amount of ₱150,000.00 which Atty. Laki received from Mariano, considering that said transaction was borne out of their professional relationship.

IN VIEW OF ALL THE FOREGOING, the Court finds respondent **ATTY. JOSE N. LAKI, GUILTY** of gross misconduct and willful disobedience of lawful orders, rendering him unworthy of continuing membership in the legal profession. He is, thus, **ORDERED DISBARRED** from the practice of law and his name stricken-off of the Roll of Attorneys, effective immediately. We, likewise, **REVOKE** his incumbent notarial commission, if any, and **PERPETUALLY DISQUALIFIES** him from being commissioned as a notary public.

Furthermore, Atty. Laki is **ORDERED** to **RETURN** to complainant Kenneth R. Mariano the total amount of ₱150,000.00, with legal interest of six percent (6%) *per annum,* if it is still unpaid, within ninety (90) days from receipt of this Decision.

Let copies of this Decision be furnished the Office of the Bar Confidant, which shall forthwith record it in the personal file of respondent. All the courts of the Philippines; the Integrated Bar of the Philippines, shall disseminate copies thereof to all its Chapters; and all administrative and quasi-judicial agencies of the Republic of the Philippines.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Tijam, Gesmundo, and *Reyes, J. Jr., JJ.,* concur.

Leonen and *Jardeleza, JJ.,* on wellness leave.

Caguioa, J., on official business.

Reyes, A. Jr., J., on leave.

EN BANC

[A.M. No. P-16-3507. September 25, 2018]
(Formerly OCA IPI No. 14-4365-P)

CESAR T. DUQUE, *complainant, vs.* **JAARMY G. BOLUS-ROMERO and MA. CONSUELO JOIE A. FAJARDO, Clerk of Court V and Sheriff IV, respectively, both of Branch 93, Regional Trial Court, San Pedro, Laguna,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; SHERIFFS; FAILURE TO STATE THE CORRECT NUMBER OF TORRENS TITLE OF THE PROPERTY TO BE SOLD IN THE NOTICE OF SHERIFF'S SALE CONSTITUTES INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF ONE'S OFFICIAL DUTIES AS SHERIFF; CASE AT BAR.— Sheriff Fajardo did not comply with the orders issued for her to comment on the complaint. She thereby impliedly admitted that she had no reasonable explanation to give or offer for the serious charges upon which she was being held accountable. The graver violation she committed, as the OCA justifiably found, concerned her omission from the notice of sheriff's sale of the correct number of the Torrens title of the property to be sold. Thereby, she was administratively liable for inefficiency and incompetence in the performance of her official duties as the sheriff. In our view, the omission of such important and significant details was apparently deliberate, and necessarily invalidated the notice and the ensuing sheriff's sale of the property. We cannot tolerate her omission considering that the issuance and publication of the notice of the sheriff's sale were not idle ceremonies to be casually made. The notice was intended to serve the public interest attendant to the sheriff's sale in order to widely disseminate the date, time, and place of the execution sale of the real property subject of the notice not only to avoid the forced disposition through the auction from becoming a fire sale to the prejudice of the owner but also to invite the public

to participate and compete with the judgment creditor as far as bidding for the property during the sheriff's auction was concerned.

2. ID.; ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; INEFFICIENCY AND INCOMPETENCE IN THE PERFORMANCE OF OFFICIAL DUTIES ARE GRAVE OFFENSES; SIMPLE NEGLECT OF DUTY IS A LESS GRAVE OFFENSE; PENALTY IN CASE AT BAR.— Under Rule 10, paragraph B.4 of the *Revised Rules on Administrative Cases in the Civil Service* (RRACS), inefficiency and incompetence in the performance of official duties are grave offenses punishable by suspension from office for six months one day to one year for the first offenses, and dismissal from the service for the second violations. On the other hand, simple neglect of duty is a less grave offense under Rule 10, paragraph D.1 of the RRACS that deserves suspension from office for one month and one day to six months for the first violation, and dismissal from the service for the second. x x x Respondent Sheriff Fajardo, being guilty of gross inefficiency and incompetence in the performance of her official duties, as well as simple neglect of duty, would be penalized with suspension from office for one year, but in view of her dismissal from the service having mooted the imposition of suspension as the penalty, she should be punished with a straight fine of ₱50,000.00 as the OCA has recommended.

D E C I S I O N

***PER CURIAM*:**

Before the Court is the administrative complaint brought by Cesar T. Duque (complainant) charging respondents Clerk of Court (CoC) V Jaarmy G. Bolus-Romero and Sheriff IV Ma. Consuelo Joie E. Fajardo, both of Branch 93 of the Regional Trial Court (RTC) in San Pedro City, Laguna with falsification of public documents, inefficiency and incompetence in the performance of their duties committed in relation to Civil Case No. SPL-0823 entitled *Benjamin G. Cariño v. Safeway Shuttle*

Service, Inc. and Cesar Duque, an action for collection and damages.[1]

The complainant averred in his complaint-affidavit[2] that on April 29, 2002, Benjamin G. Cariño had filed in the RTC a complaint for the recovery of sum of money against him and Safeway Service Inc. (SSSI), a passenger bus company providing shuttle services to the employees of manufacturing companies located within the export processing zones of Cavite and Laguna, docketed as Civil Case No. SPL-0823; that on August 15, 2005, the RTC had rendered judgment ordering him and SSSI to pay Cariño jointly and severally the amount of ₱231,262.00, plus interest computed at 12% *per annum* from the filing of the complaint, and 25% of the recoverable amount as and for attorney's fee; that he and SSSI had appealed the adverse judgment in due course, but the CA had affirmed it on August 31, 2007, disposing:

> **WHEREFORE**, premises considered, the appeal is **DISMISSED**. The *decision* of the Regional Trial Court of San Pedro, Laguna dated 15 August 2005 is **AFFIRMED.** The defendants-appellants are hereby ordered to pay the plaintiff-appellee, the sum of ₱231,262.00 plus legal interest as payment for the supplies and spare parts delivered by the plaintiff-appellee and accordingly received by the defendants-appellants. The defendants-appellants are likewise ordered to pay the plaintiff-appellee twenty-five percent (25%) of the recoverable amount as attorney's fee. Costs againts the defendants-appellants.
>
> **SO ORDERED.**[3]

and that respondent CoC Bolus-Romero had pre-empted the Presiding Judge of the RTC by issuing the writ of execution dated July 14, 2008 in Civil Case No. SPL-0823 whereby she altered the judgment to increase the "legal interest" of 6% *per annum* decreed in the CA's decision dated August 31, 2007 to

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

[2] *Id*.

[3] *Id*. at 37.

"12%"*per annum* in manifest partiality and evident bad faith to benefit Cariño.[4]

As to respondent Sheriff Fajardo, the complainant declared as follows:

1) That he issued a falsified Notice to Pay dated July 14, 2008 giving complainant Duque and SSSI three days receipt thereof within which to pay Php 555,037.00 exclusive of interest and legal fees.

2) That Sheriff Fajardo issued a falsified levy dated July 28, 2008 to and served only upon "[To]: The Registrar of Deeds, Muntinlupa City" which levied complainant Duque's real property in Ayala Alabang with an appraised value then of ₱6,600,000.00, more or less, covered by TCT No. 29049 in the Registry of Deeds of Muntilupa City without said notice of levy being addressed to and first served on complainant Duque.

3) That Sheriff Fajardo issued a Notice of Sale purportedly dated September 23, 2008 containing a printed text involving substitution of transfer certificate of real property owned by another person covered by TCT No. T-447031 located at Barangay Landayan, San Pedro, Laguna that respondent Fajardo caused to be published for the auction sale in Laguna Courier on October 27 and November 3, 2008; but that what she actually sold in a sham auction sale purportedly held on November 1, 2008 for ₱350,467.12 only to respondent Cariño was a different real property covered by TCT No. T-29049 located at Brgy. Ayala Alabang, Muntinlupa City, with an appraised value then of ₱6,600,000.00, more or less owned by complainant.[5]

The complainant further asserted that Cariño and his counsel had been guilty of bad faith because they employed various schemes of enticement to persuade the respondents to act in concert to manipulate the execution proceedings: from the issuance of the illegal writ of execution to increase the "legal rate of interest from 6% to 12%"; to the falsification of the

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[4] *Id*. at 6.

[5] *Id*. at 7-8.

sheriff's notice of levy and sale to cover up the sham execution sale involving substitution of titles and registration, and to the annotation of the fake certificate of sale in favor of Carino in the Registry of Deeds of Muntinlupa City.[6]

In her comment dated March 19, 2015,[7] CoC Bolus-Romero countered that the charges against her had no legal and factual bases at all. She pointed out that she had drafted the resolution on the execution as directed by Presiding Judge Francisco Dizon Paño of the RTC and in accordance with the dispositive portion of the decision of the CA, Fifteenth Division; that the task of ordering the execution of the judgment had devolved upon Judge Paño as the trial judge, but she could perform the issuance and release of the writ of execution as the clerk of court because doing so was among her ministerial duties under Section 4, Rule 136 of the *Rules of Court;* and that she did not alter the dispositive portions of the judgments of the RTC and the CA, but only copied therefrom verbatim.[8]

The Office of the Court Administrator (OCA) twice required Sheriff Fajardo to comment on the complaint-affidavit dated July 22, 2014,[9] the first time, through the first Indorsement dated December 3, 2014, and the second through the 1st tracer dated July 23, 2015,[10] but she did not comply.

Findings of the OCA

In its evaluation and report,[11] the OCA found that respondent CoC Bolus-Romero was not administratively culpable for falsifying the dispositive portion of the CA's decision considering that the extant records indicated that she had only copied verbatim the dispositive portions of the final judgments of the RTC and

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[6] *Id*.

[7] *Id*. at 277-290.

[8] *Id*. at 283.

[9] *Id*. at 271.

[10] *Id.* at 311.

[11] *Id*. at 319-320.

the CA; that based on the records she had not participated in the proceedings conducted after the issuance of the writ of execution; and that there was no link between her and the bogus and sham proceedings of execution.[12]

As to respondent Sheriff Fajardo, the OCA concluded that she should be held administratively liable for inefficiency and incompetence in the performance of her official duties, and for neglect of duty.[13] The OCA pointed out that the notice of sheriff's sale did not state the correct number of the Torrens title of the property to be sold; that the omission was a substantial and fatal error that invalidated the entire notice inasmuch as the purpose of the publication of the notice of sheriff's sale was to inform all the interested parties on the date, time, place of the execution sale of the real property subject of the notice; and that the omissions and lapses by respondent Sheriff Fajardo constituted inefficiency and incompetence in the performance of her official duties.[14]

Accordingly, the OCA recommended that:

1) the instant administrative complaint be **RE-DOCKETED** as regular administrative matter against respondent Sheriff IV Ma. Consuela Joie A. Fajardo, Branch 93, Regional Trial Court, San Pedro, Laguna;

2) respondent Sheriff Fajardo be found **GUILTY** of inefficiency and incompetence in the performance of official duties and simple neglect of duty and be **FINED** in the amount of Php 50,000.00 *pro hac vice;*

3) the Financial Management Office, Office of the Court Administrator, be **DIRECTED** to collect the fine of Php 50,000.00 from respondent Sheriff Fajardo or offset the fine against her total accrued leave credits totaling 166.71 days as of 31 December 2014 per attached Certification dated 4 November 2015 of the OAS-Employees' Leave Division; and

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[12] *Id.* at 318.

[13] *Id.* at 318.

[14] *Id.* at 319-320.

4) the instant administrative complaint against Clerk of Court V Atty. Jaarmy G. Bolus-Romero be **DISMISSED** for lack of merit.[15]

The Court **ADOPTS** the OCA's findings and **APPROVES** the OCA's recommendations considering that the records fully supported them.

CoC Bolus-Romero was not liable under the charges tendered by the complainant for the simple reason that she did not commit any violation of her functions and responsibilities in the issuance of the writ of execution. As the OCA found, all that she had done was to faithfully reflect the executory portions of the judgments of the RTC and the CA. That she did so constituted her strict compliance with and adherence to the requirements of the *Rules of Court* and the relevant jurisprudence for the writ of execution not to be different or vary from the judgment subject of execution.

On the other hand, Sheriff Fajardo did not comply with the orders issued for her to comment on the complaint. She thereby impliedly admitted that she had no reasonable explanation to give or offer for the serious charges upon which she was being held accountable. The graver violation she committed, as the OCA justifiably found, concerned her omission from the notice of sheriff's sale of the correct number of the Torrens title of the property to be sold. Thereby, she was administratively liable for inefficiency and incompetence in the performance of her official duties as the sheriff. In our view, the omission of such important and significant details was apparently deliberate, and necessarily invalidated the notice and the ensuing sheriff's sale of the property. We cannot tolerate her omission considering that the issuance and publication of the notice of the sheriff's sale were not idle ceremonies to be casually made. The notice was intended to serve the public interest attendant to the sheriff's sale in order to widely disseminate the date, time, and place of the execution sale of the real property subject of the notice not only to avoid the forced disposition through the auction from

[15] *Id.* at 320.

becoming a fire sale to the prejudice of the owner but also to invite the public to participate and compete with the judgment creditor as far as bidding for the property during the sheriff's auction was concerned.

We cannot overemphasize that the sheriff is one of the front-line representatives of the justice system, and if, by her lack of care and diligence in the implementation of judicial writs, she should lose the trust reposed on her, she inevitably diminishes the faith of the people in the Judiciary. Hence, we cannot tolerate, least of all condone, any act of a sheriff like the respondent herein for if we did so we would permit her to diminish the faith of the people in the entire Judiciary.[16]

Under Rule 10, paragraph B.4 of the *Revised Rules on Administrative Cases in the Civil Service* (RRACS), inefficiency and incompetence in the performance of official duties are grave offenses punishable by suspension from office for six months one day to one year for the first offenses, and dismissal from the service for the second violations. On the other hand, simple neglect of duty is a less grave offense under Rule 10, paragraph D.1 of the RRACS that deserves suspension from office for one month and one day to six months for the first violation, and dismissal from the service for the second.

It is relevant to mention that respondent Sheriff Fajardo had been dismissed from the service with forfeiture of all benefits except her accrued leave benefits, and perpetual disqualification for re-employment in the government service, including government-owned and government-controlled corporations pursuant to the ruling handed down against her in *Gillera v. Fajardo*,[17] whereby she was declared guilty of dishonesty and conduct unbecoming an officer of the Court.

Respondent Sheriff Fajardo, being guilty of gross inefficiency and incompetence in the performance of her official duties, as

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[16] *Office of the Court Administrator v. Macusi, Jr.,* A.M. No. P-13-3105, September 11, 2013, 705 SCRA 377, 390.

[17] A.M. No. P-14-3237 (formerly OCA I.P.I. No. 09-3256-P), October 21, 2014, 738 SCRA 632.

well as simple neglect of duty, would be penalized with suspension from office for one year, but in view of her dismissal from the service having mooted the imposition of suspension as the penalty, she should be punished with a straight fine of ₱50,000.00 as the OCA has recommended.

WHEREFORE, the Court **FINDS** and **DECLARES**:

1. Respondent Sheriff IV **MA. CONSUELO JOIE A. FAJARDO** of the Regional Trial Court, Branch 93, in San Pedro, Laguna guilty of gross inefficiency and incompetence in the performance of her official duties, and simple neglect, and, accordingly, **FINES** her in the amount of ₱50,000.00; and

2. DISMISSES the administrative charge of falsification and alteration of the writ of execution brought against Clerk of Court (COC) V A**TTY. JAARMY G. BOLUS-ROMERO** for lack of merit.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Tijam, Gesmundo, and *Reyes, J. Jr., JJ.,* concur.

Leonen and *Jardeleza, JJ.,* on wellness leave.

Caguioa, J., on official leave.

Reyes, A. Jr., J., on leave.

EN BANC

[A.M. No. RTJ-15-2413. September 25, 2018]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE LYLIHA AQUINO, Regional Court of Manila, Branch 24,** *respondent.*

[A.M. No. RTJ-15-2414. September 25, 2018]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE RALPH LEE, Regional Trial Court of Quezon City, Branch 83,** *respondent.*

[A.M. No. RTJ-15-2415. September 25, 2018]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE ROMMEL BAYBAY, Regional Trial Court of Makati City, Branch 132,** *respondent.*

[A.M. No. RTJ-15-2416. September 25, 2018]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **JUDGE MARINO RUBIA, Regional Trial Court of Biñan, Laguna, Branch 24,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; NEW CODE OF JUDICIAL CONDUCT; A JUDGE MUST COMPORT HIMSELF/HERSELF IN A MANNER THAT HIS/HER CONDUCT MUST BE FREE OF A WHIFF OF IMPROPRIETY, NOT ONLY WITH RESPECT TO THE PERFORMANCE OF HIS/HER OFFICIAL DUTIES BUT ALSO AS TO HIS/HER BEHAVIOR OUTSIDE HIS/HER SALA AND AS A PRIVATE INDIVIDUAL.— [C]onsidering that she was then running for re-election as PJA Secretary-General, it would have done well for Judge Aquino to have been more circumspect in her actions and limited her assistance to providing the necessary information to the PJA members on the available hotel accommodations. Despite it being the practice of past PJA Secretaries-General, Judge Aquino was expected to have sufficient discretion and discernment to reevaluate, as needed, the propriety and/or extent of the assistance to be extended to PJA members for the booking of their accommodations for the 2013 Convention and election especially considering that Judge Aquino was a candidate herself in the said election. As this

case has demonstrated, Judge Aquino's booking of hotel accommodations for the PJA members, although done in good faith or with the best intentions, could be easily misconstrued and politicized during the period of election of PJA officers to be intended to further Judge Aquino's candidacy. Under the aforesaid circumstances, Judge Aquino deserves to be admonished. Canon 4 of the New Code of Judicial Conduct states that "[p]ropriety and the appearance of propriety are essential to the performance of all the activities of a judge[,]" and Section 1 thereof explicitly mandates that "[j]udges shall avoid impropriety and the appearance of impropriety in all of their activities." A judge is the visible representation of the law and of justice. A judge must comport himself/herself in a manner that his/her conduct must be free of a whiff of impropriety, not only with respect to the performance of his/her official duties but also as to his/her behavior outside his/her sala and as a private individual. A judge's character must be able to withstand the most searching public scrutiny because the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system.

2. ID.; ID.; ID.; MERE IMPUTATION OF BIAS OR PARTIALITY IS NOT ENOUGH GROUND FOR INHIBITION, AS THERE MUST BE EXTRINSIC EVIDENCE OF MALICE OR BAD FAITH ON THE JUDGE'S PART, AND THE EVIDENCE MUST BE CLEAR AND CONVINCING TO OVERCOME THE PRESUMPTION THAT A JUDGE WILL UNDERTAKE HIS/HER NOBLE ROLE TO DISPENSE JUSTICE ACCORDING TO LAW AND EVIDENCE WITHOUT FEAR OR FAVOR.— Unjustified assumptions and mere misgivings that the judge acted with prejudice, passion, pride, and pettiness in the performance of his/her functions cannot overcome the presumption that the judge decided on the merits of a case with an unclouded vision of its facts. Mere imputation of bias or partiality is not enough ground for inhibition. There must be extrinsic evidence of malice or bad faith on the judge's part. Moreover, the evidence must be clear and convincing to overcome the presumption that a judge will undertake his/her noble role to dispense justice according to law and evidence without fear or favor. Because voluntary inhibition is

discretionary, Judge Aquino would have been in the best position to determine whether or not there was a need for her to inhibit from the *RII Builders case,* and her decision to continue to act on the case should be respected. Simply put, there is no basis for the Court to take any administrative action against Judge Aquino for her non-inhibition in the *RII Builders case.*

3. ID.; ID.; ID.; IN ADMINISTRATIVE PROCEEDINGS, TECHNICAL RULES OF PROCEDURE AND EVIDENCE ARE NOT STRICTLY APPLIED, AS THE ESSENCE OF ADMINISTRATIVE DUE PROCESS IS SIMPLY AN OPPORTUNITY TO BE HEARD.— It is irrelevant that Judge Lee's use and distribution of desk calendars, posters, and tarpaulins was not among the possible violations of the Guidelines on the Conduct of Elections of Judges' Associations and the New Code of Judicial Conduct committed by Judge Lee which were initially identified by the Ad Hoc Investigating Committee. Judge Lee's conduct in relation to the 2013 PJA elections was generally subject to further investigation by Investigating Court of Appeals Justice Leagogo. Judge Lee was well-aware that Investigating Court of Appeals Justice Leagogo was inquiring deeper into Judge Lee's use and distribution of the desk calendars, posters, and tarpaulins, which were mentioned for the first time by the witnesses during the hearings; and Judge Lee was undeniably afforded the opportunity to present evidence and argue against considering his use and distribution of such printed materials as an administrative infraction. Judge Lee cannot insist that he was denied due process. In administrative proceedings, technical rules of procedure and evidence are not strictly applied; administrative due process cannot be fully equated to due process in its strict judicial sense. The essence of administrative due process is simply an opportunity to be heard.

4. ID.; ID.; GUIDELINES ON THE CONDUCT OF ELECTIONS OF JUDGES' ASSOCIATIONS (A.M. NO. 07-4-17-SC); SECTION 5 THEREOF; THE PROHIBITION THAT OFFICIALS OF THE COURTS UNDER THE JUDICIARY AND THE OFFICE OF THE COURT ADMINISTRATOR SHALL NOT, DIRECTLY OR INDIRECTLY, INTERVENE IN THE ELECTIONS OF THE JUDGES' ASSOCIATIONS OR ENGAGE IN ANY PARTISAN ELECTION ACTIVITY DOES NOT APPLY TO THE CANDIDATE IN THE ELECTION.— [S]ection 5 of the Guidelines on the Conduct

of Elections of Judges' Associations explicitly states that "[o]fficials of the courts under the Judiciary and the Office of the Court Administrator shall not, directly or indirectly, intervene in the elections of the judges' associations or engage in any partisan election activity." Judge Lee cannot be held liable for violation of said Section 5 for the prohibition therein does not apply to the candidate in the election, but pertains to officials of the courts and the OCA. Even if the Court was to assume that Judge Lee did approach Court of Appeals Justice Isaias P. Dicdican (Dicdican) for help in campaigning in Visayas, there was no showing that Judge Lee was able to prevail upon Court of Appeals Justice Dicdican and that Court of Appeals Justice Dicdican actually campaigned for Judge Lee for PJA President in the 2013 elections among the judges in Visayas.

5. ID.; ID.; ID.; SECTION 4(d) THEREOF; A CANDIDATE IS PROHIBITED FROM PROVIDING FREE HOTEL ROOM ACCOMMODATIONS TO THE JUDGES FOR THE PURPOSE OF INDUCING OR INFLUENCING THE SAME TO VOTE FOR HIM/HER AT AN ELECTION TO BE CONDUCTED.— For the Court, Judge Baybay violated Section 4(d) of the Guidelines on the Conduct of Elections of Judges' Associations when he offered room accommodations at The Pearl Manila with a 25% discount on the room rates to select judges who were attending the 2013 PJA Convention and voting at the election. Indeed, the Guidelines prohibit the candidate from providing "free room accommodations" to the judges, which in its plain or ordinary sense means that the room accommodations would have entirely been without charge; Yet, a 25% discount from the regular rate of the hotel room accommodation still constitutes a significant reduction of the amount payable by the judges who availed of the same, and in fact, the 25% discount can be deemed as a free portion of the room rate. In addition, as Investigating Court of Appeals Justice Garcia observed, Judge Baybay approached Atty. Campos, a fraternity brother and the General Manager of The Pearl Manila, to arrange the 25% discount on room accommodations at the said hotel; and that the discounted room accommodations were offered and enjoyed only by select judges identified with Judge Baybay's group and were not promoted through the PJA Secretariat for all judges attending the convention and election. These facts taken together reveal Judge Baybay's clear intention

to personally extend to the judges the favor of discounted room accommodations at The Pearl Manila so he could secure said judges' vote in his favor as candidate for PJA President in the elections.

6. ID.; ID.; ID.; ID.; A CANDIDATE IS PROHIBITED FROM DISTRIBUTING CAMPAIGN MATERIALS OTHER THAN HIS *CURRICULUM VITAE* OR BIODATA AND ACCEPTABLE FLYERS.— As Investigating Court of Appeals Justice Barza found, substantial evidence supports the charge that Judge Rubia violated Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations by distributing campaign materials other than his *curriculum vitae* or biodata and acceptable flyers. It is undisputed that Judge Rubia distributed to different RTCs around the country campaign kits, each consisting of a small bag; a cap and a t-shirt bearing the seal of the PJA, Judge Barza's name and the position he was running for, *i.e.*, "for EVP," and his campaign slogan of "UNITY= STRENGTH"; and printed materials, including a letter of endorsement from the Rotary Club.

7. ID.; ID.; ID.; ID.; FAILURE BY ANY MEMBER OF THE JUDGES' ASSOCIATION TO OBSERVE OR COMPLY WITH THE GUIDELINES ON THE CONDUCT OF ELECTIONS OF JUDGES' ASSOCIATIONS CONSTITUTES A SERIOUS ADMINISTRATIVE OFFENSE; PROPER IMPOSABLE PENALTY.— The Guidelines on the Conduct of Elections of Judges' Associations itself provides, under Section 7 thereof, for the liability for noncompliance with any of its provisions, thus: Sec. 7. *Liability for Non-compliance with the Guidelines.*- Failure by any member of the judges' association to observe or comply with the provisions of this Resolution shall constitute a **serious administrative offense** and shall be dealt with in accordance with Rule 140 of the Revised Rules of Court. Court officials and personnel who violate provisions of the Resolution shall be administratively liable and proceeded against in conformity with existing Supreme Court and Civil Service rules and regulations. Rule 140 of the Rules of Court classifies administrative charges as serious, less serious, or light and enumerates the appropriate sanctions for each. For serious charge or offense, Section 11 of Rule 140 prescribes the following sanctions: Sec. 11. *Sanctions.* — A. If the respondent is guilty

of a serious charge, any of the following sanctions may be imposed: 1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided,* however, that the forfeiture of benefits shall in no case include accrued leave credits; 2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months: or 3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00. When the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances. Given the foregoing, the Court deems it appropriate to impose upon Judge Lee and Judge Rubia the penalty of a fine in the amount of ₱21,000.00 each for their respective violations of Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations; and upon Judge Baybay the penalty of a fine in the amount of ₱30,000.00 for his violations of Sections 4(a) and 4(d) of the same Guidelines.

D E C I S I O N

***PER CURIAM*:**

I
FACTUAL ANTECEDENTS

These cases arose from several news reports concerning a fixer in the Judiciary by the name of *"Arlene"* and an alleged controversy in the 2013 Philippine Judges Association (PJA) elections.

For his regular column *Blurbal Thrusts* in the Daily Tribune, Louie Logarta wrote an article for September 12, 2013 entitled, *"CJ Sereno Should Probe High-Flying Court Fixer,"* in which he reported that a certain person named *Arlene* was a well-known fixer among judges of the Regional Trial Courts (RTCs) and Justices of the Court of Appeals. *Arlene* was characterized as a "high-flying influence peddler or fixer" with an impressive

array of unassailable contacts listed in her "pink book"; and alleged as a close relative of a Filipino-Chinese flour importer who wielded influence over the Bureau of Customs and the Department of Agriculture. At one of the conventions of the RTC judges, *Arlene* was reported to have bragged about her considerable influence over the members of the Judiciary and her success rate in fixing cases pending before the courts. This was reinforced by the fact that *Arlene* paid for lavish affairs or parties for her "assets" in the Judiciary.

The name *Arlene* resurfaced in the article dated September 27, 2013 of Ramon Tulfo (Tulfo) entitled, *"Godino v. Godino"*[1] in his regular column On Target posted on the Philippine Daily Inquirer website. In his article, Tulfo referred to *"Arlene L."* who was widely known among employees and judges in Metro Manila courts and even Justices of the Court of Appeals. *Arlene L.* was known for her high connections in the Judiciary and her high-flying lifestyle. Tulfo explicitly described her as a "fixer" of high-profile cases in Metro Manila courts. Tulfo posted a version of the same article in Filipino, this time entitled, *"Mr. Godino v. Mrs. Godino,"*[2] on the website of Bandera on September 28, 2013.

Jarius Bondoc (Bondoc), in his regular column Gotcha in Philippine Star, authored an article entitled, *"Just call her Ma'am Arlene, the Judiciary's Napoles,"* published on October 17, 2013 about the existence of a certain *"Ma'am Arlene,"* who allegedly wielded considerable influence in the Judiciary. Bondoc equated *Ma'am Arlene* to the notorious Janet Lim-Napoles (Napoles), the perpetrator of the Priority Development Assistance Fund scam. Bondoc narrated that this *Ma'am Arlene* sponsored birthday bashes, junkets abroad, and expensive gifts for appellate court Justices and trial court Judges; *Ma'am Arlene's* connections went beyond the courts and extended all the way to the

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[1] https://newsinfo.inquirer.net/496619/godino-vs-godino, last date visited September 24, 2018.

[2] https://bandera.inquirer.net/32339/mr-godino-vs-mrs-godino, last date visited September 24, 2018.

Department of Justice and the Office of the Ombudsman; *Ma'am Arlene* was notorious as a fixer of cases, with investigators, prosecutors, and magistrates, mostly in Metro Manila; *Ma'am Arlene* always gets what she wants because "court bigwigs and key personnel are in her secret payroll"; *Ma'am Arlene* owned the Judiciary just like Napoles owned Congress; and *Ma'am Arlene* was not a lawyer but she was lawyering inside chambers, for such dishonorable clients as a flour importer who allegedly brought in banned substances.

Court Administrator Jose Midas P. Marquez (Marquez) deduced that the write-ups regarding *Ma'am Arlene* resulted from the controversial 2013 PJA elections. The Office of the Court Administrator (OCA) received reports from several judges of intense campaigning for positions in the said election, and *Ma'am Arlene* allegedly supported one of the candidates therein.

Given the aforementioned circumstances, the OCA conducted an investigation into the reports on *Ma'am Arlene.* In a letter dated October 8, 2013, the OCA required the candidates vying for the position of President in the 2013 PJA elections to comment on said reports.

Then Presiding Justice Andres B. Reyes, Jr.[3] of the Court of Appeals conducted his own inquiry into the matter based on the allegations that a clerk in the Court of Appeals was one of the three women suspected to be *Ma'am Arlene.*

In the meantime, the Court *en banc* issued a Resolution dated October 17, 2013 in A.M. No. 13-10-07-SC,[4] creating an *ad hoc* committee to investigate Bondoc's report on *Ma'am Arlene,* thus:

In view of all these developments, the Court RESOLVED to CREATE an AD HOC INVESTIGATING COMMITTEE composed

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[3] Now Associate Justice of this Court.

[4] Entitled, *Re: Creation of an Investigating Committee re: the report of Mr. Jarius Bondoc of the Philippine Star that a certain "Ma'am Arlene" influences the Judiciary as well as investigators and prosecutors of the Department of Justice and the Office of the Ombudsman.*

of Associate Justice Marvic Mario Victor F. Leonen as Chair, and retired Associate Justices Ma. Alicia Austria-Martinez and Romeo J. Callejo, Sr. as Members, to:

(a) conduct an investigation into the above matter and coordinate with any and all relevant offices and agencies for such purpose;

(b) access, receive, and evaluate information from any source; and

(c) provide recommendations to the Supreme Court En Banc.

The Investigating Committee is vested with all necessary powers, including the power to designate its own resource persons, call upon witnesses to give testimony, and avail itself of whatever assistance the Court can provide to perform its functions.

The same Resolution mandated that "all other investigations shall cease."

The Ad Hoc Investigating Committee eventually submitted its undated report citing four RTC judges, namely, Judge Rommel O. Baybay (Baybay) of RTC-Makati, Branch 132; Judge Ralph S. Lee (Lee) of RTC-Quezon City, Branch 83; Judge Marino E. Rubia (Rubia) of RTC-Biñan, Laguna, Branch 24; and Judge Lyliha A. Aquino (Aquino) of RTC-Manila, Branch 24, all candidates in the 2013 PJA elections, for probable violations of the Guidelines on the Conduct of Elections of Judges' Associations and the New Code of Judicial Conduct, to wit:

Based on its investigation, there were findings of acts that might constitute violations of the rules of the Supreme Court in the conduct of the elections of the officers of the Philippine Judges Association (PJA), particularly this court's resolution on the Guidelines of the Conduct of Elections of Judges Association dated May 3, 2007. The acts were committed by the following:

1. Judge Rommel Baybay, Regional Trial Court of Makati, Branch 132;

2. Judge Ralph Lee, Regional Trial Court of Quezon City, Branch 83;

3. Judge Marino Rubia, Regional Trial Court of Biñan, Laguna, Branch 24; and

4. Judge Lyliha Aquino of the Regional Trial Court of Manila, Branch24.

a. Probable Violations of Supreme Court En Banc Resolution Prescribing Guideline in the Conduct of Elections of Judges' Association dated May 3, 2007.

i. Section 4(a) on prohibited acts, such as provision of campaign materials other than flyers and curricula vitae

x x x x x x x x x

Probable Violations of Judge Rubia

Judge Rubia provided campaign materials such as kits containing a collared t-shirt and a cap with the seal of the PJA. The collared t-shirts and cap had Judge Rubia's name sewn on them, and the position he was running for, which was Executive Vice President of the PJA, with the tagline "Unity=Strength." More than 200 kits were given away and distributed to Regional Trial Court judges throughout the country. As early as 2011, Judge Rubia had already been giving away caps and other campaign paraphernalia during golf tournaments.

The Rotary Club of Makati Southwest and several private donors allegedly bankrolled the purchase of campaign materials, including the caps, t-shirts, and kits.

Probable Violations of Judge Baybay

Judge Baybay provided cellular phones to be given away as raffle prizes in events where judges of the Regional Trial Courts were participants. The raffle prizes were allegedly given in order to promote Judge Baybay as a candidate for the presidency of the PJA.

Probable Violations of Judge Lee

Judge Lee provided cellular phones to be given away as raffle prizes for events where judges of the Regional Trial Court were participants. The raffle prizes were allegedly given in order to promote Judge Lee as a candidate for the presidency of the PJA.

A day after the PJA elections, Judge Lee distributed mugs to judges who participated in the elections. The mugs had his name printed on it, showing him as President of the PJA. Judge Lee bought these mugs prior to the election, and the budget came from the campaign funds.

ii. Section 4 (d) on prohibited acts, such as providing free transportation or free hotel accommodations to members of judges' associations

x x x x x x x x x

Probable violations of Judge Rubia

During the 2013 PJA elections, Judge Rubia offered free hotel accommodations in the Heritage Hotel for certain judges. These offers took place in meetings within regional chapters of the PJA and through informal means such as verbal offers or social media.

Probable Violations of Judge Baybay

Judge Baybay offered discounted hotel rooms in the Pearl Manila, a hotel within the vicinity of the venue of The 2013 PJA Elections. These rooms were given for free or at a discounted rate allegedly as a means of securing votes in order to ensure his victory as a candidate for the presidency of the PJA. Judge Baybay also reserved rooms in Resorts World Manila for purposes of securing votes for the 2013 PJA Elections.

Probable Violations of Judge Lee

Judge Lee allegedly reserved 180 rooms of the Century Park Hotel in Manila for the accommodations of judges during the 2013 PJA Elections. When certain judges were about to pay for their rooms at the check-out counter, they were informed that the rooms were already paid for. Judge Lee facilitated the reservation of these rooms allegedly as a means of securing votes for the 2013 PJA Elections.

Probable violations of Judge Aquino

Judge Aquino booked the hotel rooms in Century Park Hotel, Judge Aquino is the incumbent Secretary-

General of the PJA. During the 2013 elections, Judge Aquino was running for re-election for the same position. The accommodations booked by Judge Aquino were said to be paid for by only one person.

Judge Aquino also asked some judges why they were booked in other hotel rooms, when they could have availed of accommodations at the Century Park Hotel.

iii. Section 4(h) on prohibited acts, such as the use of court personnel in the distribution of campaign materials and paraphernalia

x x x x x x x x x

Judge Rubia used the clerk of court of the Regional Trial Court of Dumaguete in the distribution of his campaign materials. During the 2013 PJA elections, Judge Rubia used certain employees of Biñan courts to serve as poll watchers. The court employees were stationed in the Century Park Hotel wearing vests bearing the words "Rotary Club."

b. Probable Violations of the New Code of Judicial Conduct

All the enumerated probable violations of Judges Rubia, Lee and Baybay may amount to actions that violate the New Code of Judicial Conduct. However, the Committee found that Judge Aquino may have committed actions that are probable direct breaches of the New Code of Judicial Conduct.

Canon 1 on Independence, Section 4 of the New Code of Judicial Conduct x x x

x x x x x x x x x

Canon 2 on Integrity, Sections 1 and 2 of the New Code of Judicial Conduct x x x

x x x x x x x x x

Canon 4 on Propriety, Section 8 of the New Code of Judicial Conduct x x x

x x x x x x x x x

Canon 6, Section 1 of the New Code of Judicial Conduct on Competence and Diligence x x x

x x x x x x x x x

Judge Aquino may have used her affinity and personal ties with former Deputy Court Administrator Antonio Eugenio to enable her transfer to Branch 24 of the Regional Trial Court of Manila. Former Deputy Court Administrator Antonio Eugenio acceded to her request in view of Judge Aquino's position as Secretary General of the PJA from 2011 to 2013.

In addition, a car raffled off to Judge Lyliha Aquino during the 2009 elections of the PJA. However, the car was already registered in her name in 2008.[5]

On July 22, 2014, the Court *en banc* issued a Resolution referring A.M. No. 13-10-07-SC to the Court of Appeals for further investigation. Pursuant to the directive in the said Supreme Court Resolution, the investigation of each of the above-named RTC judges was raffled separately to a Court of Appeals Associate Justice. The investigation of Judge Baybay was raffled to Court of Appeals Justice Ramon A. Garcia (Garcia); that of Judge Lee to Court of Appeals Justice Celia C. Librea-Leagogo (Leagogo); that of Judge Rubia to Court of Appeals Justice Romeo F. Barza (Barza); and that of Judge Aquino to Court of Appeals Justice Jose C. Reyes, Jr.[6] (Reyes).

The Court *en banc*, in its Resolution dated July 22, 2014 in A.M. No. 13-10-07-SC, further resolved to (a) immediately suspend its recognition of Judges Lee and Aquino as officers of the PJA; (b) defer action on the PJA pending the dialogue among the remaining PJA officers and Supreme Court Associate Justice Marvic Mario Victor F. Leonen; and (c) recall Judge Aquino's designation as Acting Presiding Judge of RTC-Manila, Branch 24 and order her to return to her station in RTC - Tuguegarao City, Cagayan, Branch 4.

The Court hereby proceeds to present the findings of the assigned Investigating Court of Appeals Justices and the ruling of the Court on the administrative liability or liabilities of each RTC judge.

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[5] CA *rollo*, pp. 8-13.

[6] Now Associate Justice of this Court.

II
INVESTIGATING COURT OF APPEALS JUSTICES' REPORTS AND RECOMMENDATIONS AND THE COURT'S RULING ON THE RTC JUDGES' ADMINISTRATIVE LIABILITIES

JUDGE AQUINO (A.M. No. RTJ-15-2413)

The election of PJA officers was held during the annual PJA Convention. Judge Aquino, Presiding Judge of RTC-Manila, Branch 24, was the PJA Secretary-General running for re-election in 2013. There were three major allegations against Judge Aquino: (1) booking for the accommodations of PJA members at Century Park Hotel for the 2013 PJA Convention, with said accommodations being paid for by only one person; (2) using her close personal ties to then Deputy Court Administrator (DCA) Antonio M. Eugenio, Jr. (Eugenio)[7] to effect her transfer from her original station at RTC-Tuguegarao City, Cagayan, Branch 4 (a Family Court) to RTC-Manila, Branch 24 (a Commercial Court), before which one of the cases of *Ma'am Arlene* was pending; and (3) winning a Chery car, sponsored by *Ma'am Arlene*, at a raffle held during the 2009 PJA Convention, but said car turned out to be already registered in Judge Aquino's name months before said raffle.

In her defense, Judge Aquino asserted that she did not commit any violation of the Guidelines on the Conduct of Elections of Judges' Associations and the New Code of Judicial Conduct. Judge Aquino claimed that she only blocked rooms for the judges at the Century Park Hotel pursuant to her duties as PJA Secretary-General and with the express consent and knowledge of the PJA Board. She was tasked to scout and reserve rooms and a conference hall that could accommodate the 700 members of the PJA. Century Park Hotel was chosen for its availability and price and it was the hotel manager who advised her to book early as there might be other events at the hotel. Judge Aquino denied having a hand in the payment of the judges' room

[7] Retired on November 13, 2012.

accommodations before, during, or after the event. The members who were billeted at Century Park Hotel paid for their room accommodations themselves as evidenced by the individual receipts issued to them. Judge Aquino emphasized that she made the bookings at the Century Park Hotel solely for the convenience and pursuant to the personal preferences of the PJA members, and were not intended to influence the PJA members to vote for her or her group. She reserved the rooms as had been the practice of past PJA Secretaries-General and working committee chairpersons, which should not be viewed with malice or bad faith.

Judge Aquino disavowed being close to DCA Eugenio and that she used their close relations to secure her transfer from the RTC in Tuguegarao City, Cagayan to the one in Manila. Since her family had been residing in Manila since 2007, Judge Aquino requested DCA Raul B. Villanueva (Villanueva) that she be allowed to perform her judicial functions in Tuguegarao City for 15 days of the month and in any court in Metro Manila for the remaining days of the month. After she won as Secretary-General in 2011, Judge Aquino again requested DCA Villanueva that she be transferred to a court in Metro Manila, but without specifying any *sala*, so that she may be able to perform her duties as a PJA officer. Judge Aquino later made similar requests to DCA Eugenio, who was then in-charge of Region 2 (to which RTC-Tuguegarao City, Cagayan belonged), but the latter never made any commitment to her. Eventually, Administrative Order No. 53-2012 dated April 17, 2012 was signed and issued by then Chief Justice Renato C. Corona and Associate Justices Antonio T. Carpio and Presbitero J. Velasco, Jr. designating Judge Aquino as Acting Presiding Judge of RTC-Manila, Branch 24 in a full-time capacity. Judge Aquino explained that by the title of the case *RII Builders v. Gerodias, et al. (RII Builders case),* she had no idea who were included in the "*et al.*" and that *Ma'am Arlene,* subsequently identified as Arlene Lerma, was among the defendants in the said case. Her only participation in the case was to implement the Writ of Execution already issued therein by DCA Eugenio, who was the former Presiding Judge of RTC-Manila, Branch 24.

As for the Chery car she won at the raffle held during the PJA Convention in October 2009, Judge Aquino refuted the allegation that the said car was already registered in her name as early as August 2008. She maintained that the first time she saw the Chery car was in October 2009 during the PJA Convention, when said car was displayed at the entrance of the hotel. Judge Aquino was not able to get the car right away on the night of the raffle as the papers were not yet ready. She received the car only in November 2009 at her residence, delivered by a representative of Chery Phils.

Judge Aquino claimed that she learned for the first time that the Chery car was already supposedly registered in her name in 2008 when she received the Resolution dated September 16, 2014 of Investigating Court of Appeals Justice Reyes directing her to file her comment on the matter. She went to the Land Transportation Office (LTO) in Makati City and found that there was an actual Sales Invoice dated August 8, 2008 for the Chery car in her name. She repudiated, under oath, the signature on the Sales Invoice. While her name appeared on the Sales Invoice, the address was wrong and the Taxpayer Identification Number (TIN) stated therein was her husband's. Also, on the date the Sales Invoice was issued, *i.e.*, August 8, 2008, she was in Tuguegarao City, discharging her duties as Presiding Judge of RTC-Tuguegarao City, Cagayan, Branch 4.

Judge Aquino further pointed out that upon scrutiny, it could be observed that her name on the Sales Invoice was merely superimposed with the use of correction fluid. On the dorsal part of the Sales Invoice, it could be discerned that the original name thereon, which was erased, was "Golden Blue Metal Dragon" with address at E. Rodriguez Ave., Libis, Quezon City. There also appeared several other signatures on the face of the Sales Invoice which were not known to her. She did not issue any authorization in favor of any other person to receive the Chery car on her behalf. She never bought any Chery car in her entire life, and neither did she receive from any person or company a Chery car model 2008. It was just by mere luck that she won the car in the raffle at the PJA Convention in

October 2009, which was conducted and drawn in the presence of all PJA members and guests.

Judge Aquino presented before Investigating Court of Appeals Justice Reyes the testimonies of the following witnesses: Judge Angelo C. Perez (Perez), Presiding Judge of RTC-Cabanatuan City, Branch 27 and PJA Director for Region 3; Judge Caridad V. Galvez, Presiding Judge of RTC-Dagupan City, Branch 43 and PJA Deputy Vice President for Finance; Judge Eugene C. Paras (Paras), Presiding Judge of RTC-Makati City, Branch 58, PJA Executive Vice-President, and designated Acting PJA President with the suspension of recognition of Judge Lee; Ms. Sherby Ann U. Gokian (Gokian), Senior Sales Account Manager of Century Park Hotel; Judge Kathrine A. Go, Executive Judge of RTC-San Carlos City, Negros Occidental, Presiding Judge of RTC-San Carlos City, Negros Occidental, Branch 59, and President of the Negros Occidental RTC Judges' Association; Judge Efren G. Santos, Presiding Judge of RTC-Naga City, Branch 22, President of PJA Camarines Sur Chapter, and previous PJA Regional Director for Region V; Judge Josefina E. Bacal, Presiding Judge of RTC-Malaybalay, Bukidnon, Branch 10 and PJA Regional Director for Region 10 from 2011 to 2013; Judge Yolanda U. Dagandan (Dagandan), Presiding Judge of RTC-Leyte, Branch 15 and former PJA Regional Director for Region 8 in 2006 to 2007; Judge Pablo M. Agustin, Presiding Judge of RTC-Aparri, Cagayan, Branch 10; Judge Francisco S. Donato, Presiding Judge of RTC-Ballesteros, Cagayan; Judge Jezarene C. Aquino, Presiding Judge of RTC-Tuguegarao City, Cagayan, Branch 5; Judge Marivic A. Cacatian-Beltran, Presiding Judge of RTC-Tuguegarao City, Cagayan, Branch 3; Judge Vilma T. Pauig, Presiding Judge of Tuguegarao City, Cagayan, Branch 2; Judge Edmar P. Castillo, Sr., Presiding Judge of RTC-Tuao, Cagayan, Branch 11; and Judge Aquino herself.

Investigating Court of Appeals Justice Reyes likewise heard the testimonies of resource persons recommended by the Supreme Court, *viz.*: Retired DCA Eugenio, who served as Presiding Judge of RTC-Manila, Branch 24 from 2000 to 2012 and DCA from March 1, 2012 to November 1, 2012; Judge Cristina J.

Sulit (Sulit), Presiding Judge of RTC-Makati City, Branch 140 and PJA Treasurer; DCA Thelma C. Bahia (Bahia); Judge Cynthia M. Florendo (Florendo), Presiding Judge of RTC-San Jose City, Nueva Ecija, Branch 39; Judge Maria Amifaith S. Fider-Reyes (Fider-Reyes), Presiding Judge of RTC-San Fernando, Pampanga, Branch 42, Acting Judge of RTC-San Fernando, Pampanga, Branch 60, and Assisting Judge of RTC-Makati City, Branch 61; Judge Jose G. Paneda, Presiding Judge of RTC-Quezon City, Branch 220; and Judge Nelso A. Tribiana (Tribiana), Presiding Judge of RTC-Sto. Domingo, Nueva Ecija, Branch 37.

Investigating Court of Appeals Justice Reyes lastly summoned before him Aurea D. Cervantes, Acting Records Officer of LTO-Makati City; and Fe Juralbal, one of the cashiers of Century Park Hotel who issued receipts to the judges during the 2013 PJA Convention.

Ultimately, Investigating Court of Appeals Justice Reyes found Judge Aquino guilty of violating Canons 4 (Propriety),[8] 1 (Independence),[9] and 2 (Integrity)[10] of the the New Code of Judicial Conduct.

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[8] Specifically, Investigating CA Justice Reyes cited:

CANON

Propriety

Propriety and the appearance of propriety are essential to the performance of all the activities of a judge.

Sec. 1. Judges shall avoid impropriety and the appearance of impropriety in all of their activities.

Sec. 2. As a subject of constant public scrutiny, judges must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, judges shall conduct themselves in a way that is consistent with the dignity of the judicial office.

[9] Investigating CA Justice Reyes referred to the following provisions:

CANON 1

Independence

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

x x x x x x x x x

Reproduced below are the pertinent portions of Investigating Court of Appeals Justice Reyes' Report:[11]

On Booking Hotels

There is no question that Judge Aquino booked hotel rooms in Century for participating judges during the 2013 PJA convention. There are testimonies that she helped in booking accommodations in other conventions.

x x x x x x x x x

The PJA Program for 2013 shows that indeed Judge Aquino was assigned to head the Registration Committee, as well as the Venue/ Physical Arrangement, Convention Kits and Directory Committees.

The Minutes of the PJA Officers/Board of Directors' Meeting held on February 27, 2013 at Grand Caprice Hotel, Cagayan De Oro City also reflects that Judge Aquino was assigned to the Secretariat and

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Sec. 4. Judges shall not allow family, social, or other relationships to influence judicial conduct or judgment. The prestige of judicial office shall not be used or lent to advance the private interests of others, nor convey or permit others to convey the impression that they are in a special position to influence the judge.

x x x x x x x x x

Sec. 8. Judges shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

[10] The particular provisions applied by Investigating CA Justice Reyes are as follows:

CANON 2

Integrity

Integrity is essential not only to the proper discharge of the judicial office but also to the personal demeanor of judges.

Sec. 1. Judges shall ensure that not only is their conduct above reproach, but that it is perceived to be so in the view of a reasonable observer.

Sec. 2. The behaviour and conduct of judges must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Sec. 3. Judges should take or initiate appropriate disciplinary measures against lawyers or court personnel for unprofessional conduct of which the judge may have become aware.

[11] *Rollo* of A.M. No. RTC-15-2413.

the Venue committees for the 2013 PJA Convention. It was further stipulated that Judge Aquino will take care of hotel reservations.

In the Minutes of the PJA Officers/Board of Directors' Meeting held on May 29, 2013 at Ching Palace, Salinas Drive, Cebu it was further reflected that "the Secretariat will accept hotel arrangement but to the account of the judges concerned."

While there was testimony stating that a candidate offered to shoulder the hotel accommodations of participants, this pertained to Judge Baybay, and not to Judge Aquino or her team. Judge Dagandan in her testimony said that Judge Pitas asked her to join "them" because their hotel accommodations, plane fares and allowances will be shouldered. She later learned that the party referred to by Judge Pitas pertained to that of Judge Baybay.

Judge Tribiana also testified that when he was about to check-out from Century, the cashier told him that his bill has already been paid for. While this suggests the possibility that a person or a group of persons paid for the accommodations of the judges billeted at Century, this by itself does not constitute sufficient evidence, strong enough to show that Judge Aquino or her team committed the acts prohibited by the Guidelines.

x x x x x x x x x

Judges Florendo and Perez of Nueva Ecija, were also able to explain the reason why Judge Aquino asked the NE judges why they were billeted at Heritage and not at Century where they had earlier reservations. That is, Judge Aquino was concerned that the PJA may have to pay for the rooms reserved for the NE judges but not used by them.

Still, the undersigned finds that Judge Aquino acted with impropriety in booking the hotel accommodations of judges in the 2013 Convention.

Judge Aquino herself admitted that her act of booking hotel rooms for judges might be improper.

Q Did it not occur to you that time that it may not be proper for you to be helping in the preparation or in booking of judges because you were running for re-election, did it not occur to you that it might be improper?

A It might be improper your Honor but the officers running are also incumbent officers your Honor, running for different

> positions only, so all of us have specific tasks in the convention and no other will do it your Honor as officers.

Judge Paras also related that while he was Secretary-General, he initially hesitated to book rooms in New World Hotel for the 2011 Convention. This is because, it was not part of their duties to book judges in hotels, but merely an accommodation for the members and in order to help those coming from the provinces.

Judge Aquino, instead of merely informing the judges about the contact numbers of the Secretariat and supervising the same, directed the judges on several occasions to coordinate with her, *directly*, their requests for hotel accommodations.

The letter Judge Aquino sent the judges dated June 19, 2013 informing them of the upcoming PJA Convention gave instructions to "[k]indly confirm attendance to [her] at CP#[xxx]" or thru the Secretariat ... "

In the meeting of the PJA Board of Directors held on February 27, 2013, Judge Aquino "reminded the judges present to inform their co-judges in their area to have hotel reservations coursed through her." While in the Meeting held on May 29, 2013, Judge Aquino announced that she will be " accepting personally those who want to course their hotel accommodation through her."

Judge Florendo even commented that respondent judge took pains in reaching each and every one of them by sending text messages with regard to room reservations.

As one running for re-election as Secretary-General, her act of booking hotel reservations for the participants gave her undue advantage against the opponent/s as the judges who benefited from her action would not only know her but would feel some degree of indebtedness to her. As admitted by her witness, Judge Efren Santos, the help extended by Judge Aquino in reserving hotel rooms influenced his vote for Secretary-General. Adding only that he voted for her not just for such favor but for other reasons as well.

The Undersigned notes that the judges see this as a practice among Secretaries-General.

Such practice or perception no matter how widely held by judges however should not diminish the high expectations on judges, whose conduct must not only be beyond reproach, but also perceived to be

so. The fact that it has been the practice will not make an act that is improper proper.

As a judge whose conduct is subject to constant scrutiny, Judge Aquino should have avoided committing acts that might be perceived as inappropriate, undue or unfair. Here, her personal and overly eager interest in the accommodations of judges gave rise to suspicion that she or her team were herding judges at Century to vote for their slate.

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On Judge Aquino's Transfer to Manila

From the testimonies of Former DCA Eugenio and incumbent DC Bahia, it appears that there are no strict guidelines observed in granting requests of judges for transfer of assignment to other stations.

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While they also consider the case load of the requesting judge and whether he or she has a pending administrative case these factors seem not to be absolute or restrictive.

In the case of Judge Aquino, she said that she asked to be transferred to Manila because of her position as Secretary General and because of her family. At the time of her transfer however, her case load was 438 and her station at Tuguegarao was a Family Court, while the one she was transferred to was a Commercial Court.

DCA Eugenio called a case load of 400-plus as "reasonable" while DCA Bahia said it was "manageable."

But even DCA Bahia could not deny her initial surprise when Judge Aquino was to be designated at Branch 24, Manila which is a Commercial Court, when she is a Family Court judge in Tuguegarao. DCA Bahia merely explained that she acceded as it was the Court Administrator himself who asked for Judge Aquino's transfer. DCA Bahia also thought that it would benefit Judge Aquino to be exposed to other cases.

What invites suspicion however was that Judge Aquino was designated at RTC Branch 24 Manila, the same branch previously presided by DCA Eugenio and where cases involving Arlene Lerma were pending.

DCA Eugenio admitted knowing Arlene Lerma since 2008. Since then, Arlene has been going to PJA Conventions bringing raffle prizes. He also knows that Arlene is one of the defendants in a case in his sala.

In 2011, while judge of Branch 24, Eugenio decided a case in favor of the defendants, which included Arlene. He ruled against RII Builders and made it liable to pay millions in damages which may impoverish the Romeros.

When Judge Aquino was assigned to Branch 24, Arlene Lerma's case was still pending.

Judge Aquino meanwhile averred that when she was designated as Acting Presiding Judge of Branch 24 Manila in a full time capacity, she did not know that it was a Commercial Court and that it was previously presided by DCA Eugenio. She also claimed that she did not know that Arlene was a defendant in her sala since Arlene did not appear in her court. Judge Aquino admitted seeing Arlene however in PJA conventions.

Judge Aquino maintains that she has no close ties with DCA Eugenio and that her relationship with him is purely professional. This may be so. But she also testified that as early as 2007, she already occupied an appointive position at the PJA. The President at the time was DCA Eugenio.

It was also DCA Eugenio himself, who personally picked Judge Aquino's name from a *tambiolo* in 2009 when the grand prize was the Chery vehicle. The vehicle which DCA Eugenio believed was donated by Vice-Mayor Moreno. It is of record however that Lerma has been the one bringing prizes at PJA conventions.

The circumstances surrounding Branch 24— DCA Eugenio — Judge Aquino — and — Arlene Lerma are just riddled with too many coincidences that would raise red flags in the mind of any reasonable observer.

The undersigned however could not fault Judge Aquino for accepting her designation to Branch 24, as she requested to be detailed, not specifically in that sala, but anywhere in Metro Manila. There was no proof that she specifically asked to be assigned at Branch 24.

Still, the fact that she was appointed to a Commercial Court should have alerted Judge Aquino and placed her on guard to possible

situations where parties may be perceived to have undue influence or inappropriate connections with her.

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Upon her transfer to Branch 24, it is expected that she would conduct an inventory of the cases assigned to her sala. A mere instruction to her branch clerk of court to give her a list of all the parties in the cases pending in her sala would have alerted her that Arlene was a named party in her court. Had Judge Aquino been astute and keen in keeping the integrity and appearance of integrity of her office, she would have seen that Arlene was a defendant in cases involving millions of pesos, the same Arlene whom she knows to have been bringing gifts to the PJA, of which she is an officer.

When Judge Aquino was designated to Branch 24 in 2012, she was already a Secretary-General of the PJA, an active member who admitted to have known Arlene since 2008. Judge Aquino claimed however that she learned that Arlene was bringing raffle prizes, for Vice-Mayor Moreno, only in 2011. Even so, this was before her designation to Branch 24 Manila.

x x x x x x x x x

Judge Aquino tries to explain that her involvement in the case of Arlene Lerma was only in granting the Motion for Implementation of the Writ of Execution that was previously issued by Judge Eugenio.

Be that as it may, it would have been more prudent if Judge Aquino avoided ruling on a motion where Arlene was a party because their social relationship could reasonably tend to raise suspicion that it was an element in the determination of Arlene's case. This may erode the trust of litigants in the judge's impartiality and eventually undermine the people's faith in the administration of justice. Judges must not only render just, correct and impartial decisions but should do so in such a manner as to be free from any suspicion as to the judge's fairness, impartiality and integrity.

In the alternative, Judge Aquino could have avoided socializing with Arlene or having any association with her, in view of the cases in her court where Arlene is personally interested.

x x x x x x x x x

While Judge Aquino may not have acted in bad faith in accepting her detail to Branch 24 Manila and in failing to inhibit herself in

cases involving Arlene Lerma, it also cannot be denied that she lacked circumspection required of her stature as a magistrate of the courts. For her failure to avoid the air of suspicion and appearance of impropriety in the proceedings in her sala, Judge Aquino failed to live up to the demand and degree of propriety required of her by the New Code of Judicial Conduct. For this, it is recommended that she be admonished and sternly warned that a repetition of the same or similar acts would be dealt with more severely.

On the Raffled Car

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During Judge Aquino's testimony on October 27, 2014, she said that when she asked Judge Eugenio who was the donor of the car she won in 2009, Judge Eugenio said that it came from the PJA.

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DCA Eugenio testified however that to his knowledge, the Chery vehicle was donated by Vice-Mayor Moreno.

x x x x x x x x x

When asked if it is possible that it is Arlene Lerma who is the one actually donating and not Vice-Mayor Moreno, DCA Eugenio answered that it is for Moreno to answer.

x x x x x x x x x

Whether it was actually Arlene Lerma or Vice-Mayor Moreno who donated the Chery vehicle which Judge Aquino won in 2009, what is clear is that *it did not come from the PJA.*

Many judges who testified before the Undersigned said that the most memorable raffle for them was when the Chery vehicle was the grand prize.

Needless to state, that raffle was not ordinary. Again, it should have alerted Judge Aquino to be more careful and scrupulously suspecting lest the integrity of her robe be put into question.

Even her husband asked the representative of the car dealer if they were supposed to pay donor's tax since it is a "winning". The Aquinos merely relied however on the assurances of the car dealer who said that "they will take care of everything."

Judge Aquino should not have used the same degree of laxity that she would observe in dealing with first hand vehicles that her family would buy from car dealers. In such cases, they pay out of their own pockets the price of the vehicle.

Here, Judge Aquino did not buy the car. She "won" it in a raffle, albeit during a PJA convention.

Judge Aquino would have us believe that as a judge from the province, she had no idea where the raffle prizes come from.

It was established however that as early as 2008 or 2009, Arlene has been in charge of raffles, that she gives instructions on how the gifts should be brought, where to place them, and; that she was working with Vice-Mayor Moreno. Arlene was also always present every time there was a convention, including conventions of the PWJA.

Judge Paras testified that he heard about Arlene assisting the PJA in 2008, when he started being active in the association. Even then, he had questions in his mind why Arlene was in the conventions, as it was improper that Arlene was helping in bringing raffle prizes.

Even DCA Eugenio admitted that he knew Arlene since 2008 and that from such time, she was bringing raffle prizes at conventions in behalf of Moreno.

Judge Aquino also said that since 2007, she has been an officer of the PJA, in an appointive position while DCA Eugenio was PJA President. She was a Business Manager before becoming a Secretary General in 2011.

In 2008, she saw Arlene in the Davao convention. They even sat at the same table, with Arlene sitting beside the wife of Moreno.

Considering all these circumstances, the Investigating Justice finds it hard to believe that Judge Aquino did not know or at least had an inkling that the raffled car came from Lerma or Moreno. Any reasonable magistrate would wonder and ask why Lerma is present in events organized for judges.

If Judge Paras learned, through from hearsay reports, that Lerma was bringing raffle prizes in conventions during Judge Eugenio's presidency, it is not farfetched that Aquino would have heard the same.

Arlene's presence in the PJA events, coupled with the unusual nature of the raffle in 2009 — the prize being a car and the first and

only time that such item was raffled off in PJA— should have alerted Judge Aquino and placed her on guard as to the possible source of the prize.

Had she been thorough and strict in ensuring that the papers of the vehicle were in order, then she would have seen that the Vehicle Sales Invoice submitted by the Chery representative to the LTO had been erased with the use of a correction fluid and dated August 8, 2008. She would have seen that the vehicle did not come from PJA. She would have known that the vehicle may have come from either Vice-Mayor Moreno or Arlene Lerma, which in either case, would compromise her position as a member of the judiciary. (Citations omitted.)

Based on the foregoing, Investigating Court of Appeals Justice Reyes recommended as follows:

In view of the facts gathered and applicable rules and jurisprudence, the Undersigned respectfully recommends:

1. That Judge Lyliha A. Aquino be WARNED to be circumspect in the performance of her duties as Secretary-General of the PJA, to avoid any appearance of impropriety and appearance that she is taking undue advantage of her incumbency.

2. That Judge Lyliha A. Aquino be ADMONISHED for failing to inhibit herself in cases involving Arlene Lerma and avoid suspicion and appearance of impropriety by reason of their social relations. Judge Aquino should also be STERNLY WARNED that a repetition of the same or similar acts would be dealt with more severely.

3. That Judge Lyliha A. Aquino be FINED in the amount of TWENTY THOUSAND PESOS (₱20,000.00) for accepting a Chery car in the 2009 PJA Raffle. She should also be STERNLY WARNED that a repetition of the same or similar acts would be dealt with more severely. It is further recommended that Judge Aquino be ordered to return the Chery vehicle she won in the said raffle, for proper disposition.

It is further recommended:

4. That the PJA Officers/Board of Directors be STERNLY REMINDED of Canon 1, Section 5 of the New Code and

avoid soliciting favors, gifts, donations and the like, from local officials, which will cast suspicion on the integrity, independence and propriety of members of the judiciary.

5. That a FORMAL INVESTIGATION be conducted on possible violations committed by Former Deputy Court Administrator Antonio Eugenio of the New Code of Judicial Conduct.[12]

While the Court takes into account Investigating Court of Appeals Justice Reyes' report and recommendations, it appreciates some of the factual background and evidence differently and arrives at a disparate conclusion as to whether or not Judge Aquino is guilty of any administrative infraction.

It has been established that Judge Aquino, as head of the Secretariat as well as the registration and venue committees, was tasked to look for the best venue for the 2013 PJA Convention, which might very well include scouting for and recommending convenient and economical accommodations for participating members. However, Investigating Court of Appeals Justice Reyes observed that Judge Aquino did more than just provide PJA members with the contact details of the PJA Secretariat and the Century Park Hotel reservation staff and coordinate the booking of the accommodations of interested PJA members at the said hotel. Judge Aquino encouraged PJA members to book their accommodations through her and even personally made the bookings for the participating PJA members.

On the other hand, it also appears that it had been the practice of previous PJA Secretaries-General to book accommodations for PJA members who attend the yearly conventions of the association. In addition, PJA members who appeared as witnesses before Investigating Court of Appeals Justice Reyes testified that they paid for their accommodations at the Century Park Hotel which were booked for them by Judge Aquino and several of them were reimbursed by their respective local government units.

Section 4 (d) of the Guidelines on the Conduct of Elections of Judges' Associations provides:

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[12] *Id.*

Sec. 4. *Prohibited acts and practices relative to elections.* — Judges' associations and their members, whether singly or collectively and whether or not a candidate for any elective office in the association, shall refrain, directly or indirectly, in any form or manner, by himself or through another person, from the following acts and practices relative to elections:

x x x x x x x x x

d. Providing or giving, **free of charge,** transportation through any mode and accommodations, regardless of category, at hotels, motels or other lodging places to any member for the purpose of inducing or influencing the said member to withhold his vote, or to vote for or against a candidate at elections to be conducted[.] (Emphasis supplied.)

Strictly, Judge Aquino did not violate the aforequoted provision as she did not provide or give free accommodations to the PJA members. There is no sufficient evidence to refute Judge Aquino's good faith especially considering that the booking of accommodations for PJA members was long practiced by PJA Secretaries-General. Extending help or assistance to the PJA members in booking their hotel accommodations at the annual convention — which basically involved confirming said members' room reservations at the hotel and at times, relaying the members' payment that were coursed through her to the hotel — is far different from paying for their room accommodations herself. While PJA members might have felt gratitude for the convenience of booking their hotel accommodations through Judge Aquino, it could not have induced the same sense of indebtedness or exerted equal weight of influence as compared to having their hotel accommodations totally paid for. In fact, no witness who appeared before Investigating Court of Appeals Justice Reyes stated that they were actually induced or influenced to vote for Judge Aquino as PJA Secretary-General solely because the latter booked their hotel accommodations for the 2013 PJA Convention.

Even so, considering that she was then running for re-election as PJA Secretary-General, it would have done well for Judge Aquino to have been more circumspect in her actions and limited her assistance to providing the necessary information to the

PJA members on the available hotel accommodations. Despite it being the practice of past PJA Secretaries- General, Judge Aquino was expected to have sufficient discretion and discernment to reevaluate, as needed, the propriety and/or extent of the assistance to be extended to PJA members for the booking of their accommodations for the 2013 Convention and election especially considering that Judge Aquino was a candidate herself in the said election. As this case has demonstrated, Judge Aquino's booking of hotel accommodations for the PJA members, although done in good faith or with the best intentions, could be easily misconstrued and politicized during the period of election of PJA officers to be intended to further Judge Aquino's candidacy. Under the aforesaid circumstances, Judge Aquino deserves to be admonished.

Canon 4 of the New Code of Judicial Conduct states that "[p]ropriety and the appearance of propriety are essential to the performance of all the activities of a judge[,]" and Section 1 thereof explicitly mandates that "[j]udges shall avoid impropriety and the appearance of impropriety in all of their activities." A judge is the visible representation of the law and of justice. A judge must comport himself/herself in a manner that his/her conduct must be free of a whiff of impropriety, not only with respect to the performance of his/her official duties but also as to his/her behavior outside his/her sala and as a private individual. A judge's character must be able to withstand the most searching public scrutiny because the ethical principles and sense of propriety of a judge are essential to the preservation of the people's faith in the judicial system.[13]

The Court, however, finds no basis for holding Judge Aquino administratively liable for not inhibiting herself from the *RII Builders case.*

It was Judge Eugenio, then still the Presiding Judge of RTC-Manila, Branch 24, who decided the *RII Builders case* in 2011 against plaintiff RII Builders and ordered the latter to pay millions

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[13] *Tuvillo v. Laron,* A.M. Nos. MTJ-10-1755 and MTJ-10-1756, October 18, 2016, citing *Re: Letter of Judge Augustus Diaz,* 560 Phil. 1, 4-5 (2007).

in damages to the defendants, who included Arlene Lerma. Judge Eugenio also eventually issued the Writ of Execution in the case. In 2012, Judge Eugenio was appointed DCA and Judge Aquino was designated as the Acting Presiding Judge of RTC-Manila, Branch 24. Judge Aquino merely issued an Order granting the defendants' Motion for Implementation of the Writ of Execution in the *RII Builders case.*

Section 1, Rule 137 of the Rules of Court enumerates the circumstances when a judge is mandatorily disqualified and when a judge may voluntarily inhibit from a case. Said rule is recited in full below:

> Sec. 1. *Disqualification of Judges.* — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.
>
> A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

None of the circumstances for the mandatory disqualification applies to Judge Aquino in the *RII Builders case.* The next question is whether Judge Aquino should have voluntarily inhibited herself from the said case wherein Arlene Lerma was one of the parties.

The Court answers in the negative.

The following lengthy disquisition of the Court in *Philippine Commercial International Bank v. Dy Hong Pi*[14] is relevant to this case:

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[14] 606 Phil. 615, 636-639 (2009).

Under the first paragraph of Section 1, Rule 137 of the Rules of Court, a judge or judicial officer shall be mandatorily disqualified to sit in any case in which:

(a) he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise; or

(b) he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of civil law; or

(c) he has been executor, administrator, guardian, trustee or counsel; or

(d) he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

Paragraph two of the same provision meanwhile provides for the rule on **voluntary inhibition** and states: "[a] judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above." That discretion is a matter of conscience and is addressed primarily to the judge's sense of fairness and justice. We have elucidated on this point in **Pimentel v. Salanga,** as follows:

> A judge may not be legally prohibited from sitting in a litigation. But when suggestion is made of record that he might be induced to act in favor of one party or with bias or prejudice against a litigant arising out of circumstances reasonably capable of inciting such a state of mind, he should conduct a careful self-examination. He should exercise his discretion in a way that the people's faith in the courts of justice is not impaired. A salutary norm is that he reflect on the probability that a losing party might nurture at the back of his mind the thought that the judge had unmeritoriously tilted the scales of justice against him. That passion on the part of a judge may be generated because of serious charges of misconduct against him by a suitor or his counsel, is not altogether remote. He is a man, subject to the frailties of other men. He should, therefore, exercise great care and caution before making up his mind to act in or withdraw from a suit where that party or counsel is involved. He could

> in good grace inhibit himself where that case could be heard by another judge and where no appreciable prejudice would be occasioned to others involved therein. On the result of his decision to sit or not to sit may depend to a great extent the all-important confidence in the impartiality of the judiciary. If after reflection he should resolve to voluntarily desist from sitting in a case where his motives or fairness might be seriously impugned, his action is to be interpreted as giving meaning and substances to the second paragraph of Section 1, Rule 137. He serves the cause of the law who forestalls miscarriage of justice.

The present case not being covered by the rule on mandatory inhibition, the issue thus turns on whether Judge Napoleon Inoturan should have voluntarily inhibited himself.

At the outset, we underscore that while a party has the right to seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling the case, this right must be weighed with the duty of a judge to decide cases without fear of repression. Respondents consequently have no vested right to the issuance of an Order granting the motion to inhibit, given its discretionary nature.

However, **the second paragraph of Rule 137, Section 1 does not give judges unfettered discretion to decide whether to desist from hearing a case. The inhibition must be for just and valid causes, and in this regard, we have noted that the mere imputation of bias or partiality is not enough ground for inhibition, especially when the charge is without basis. This Court has to be shown acts or conduct clearly indicative of arbitrariness or prejudice before it can brand them with the stigma of bias or partiality.** Moreover, extrinsic evidence is required to establish bias, bad faith, malice or corrupt purpose, in addition to palpable error which may be inferred from the decision or order itself. The only exception to the rule is when the error is so gross and patent as to produce an ineluctable inference of bad faith or malice.

We do not find any abuse of discretion by the trial court in denying respondents' motion to inhibit. Our pronouncement in ***Webb, et al. v. People of the Philippines, et al.*** is *apropos:*

> A perusal of the records will reveal that petitioners failed to adduce any extrinsic evidence to prove that respondent judge

> was motivated by malice or bad faith in issuing the assailed rulings. *Petitioners simply lean on the alleged series of adverse rulings of the respondent judge which they characterized as palpable errors. This is not enough.* We note that respondent judge's rulings resolving the various motions filed by petitioners were all made after considering the arguments raised by all the parties. x x x.
>
> x x x x x x x x x
>
> We hasten to stress that a party aggrieved by erroneous interlocutory rulings in the course of a trial is not without remedy. The range of remedy is provided in our Rules of Court and we need not make an elongated discourse on the subject. *But certainly, the remedy for erroneous rulings, absent any extrinsic evidence of malice or bad faith, is not the outright disqualification of the judge. For there is yet to come a judge with the omniscience to issue rulings that are always infallible. The courts will close shop if we disqualify judges who err for we all err.* (Emphasis supplied, citations omitted.)

There is an absolute dearth of evidence herein of Judge Aquino's bias, partiality, malice, or bad faith, which would have called for her voluntary inhibition in the *RII Builders case.* As of the time of this investigation, Judge Aquino's involvement in the case was only to grant the Motion for Implementation of the Writ of Execution that had been previously issued by Judge Eugenio. While it was shown that Judge Aquino knew Arlene Lerma personally; that Judge Aquino interacted with Arlene Lerma at several social events; and that Judge Aquino, as PJA officer, would have known that Arlene Lerma had been donating raffle prizes for the annual PJA conventions, these alone are insufficient reasons for Judge Aquino's voluntary inhibition from the *RII Builders case.* There was no proof of the closeness of the relations between Judge Aquino and Arlene Lerma which would have weighed on the former's judgment and discretion in the case. The prizes were donated by Arlene Lerma to the PJA to be raffled to any of its participating members at the annual conventions and were not personally and directly given

to Judge Aquino. There is no allegation or argument herein that Judge Aquino's grant of the Motion for Implementation of the Writ of Execution was in any way palpably wrong, arbitrary, baseless, or rendered in grave abuse of discretion or with extrinsic malice or bad faith.

Even the purported "coincidences" in Judge Aquino's designation as Presiding Judge of RTC-Manila, Branch 24, vice DCA Eugenio, cannot be taken against Judge Aquino. Any suspicion that Judge Aquino purposely sought out her transfer and designation to DCA Eugenio's previous court, before which Arlene Lerma's case was still pending, is belied by careful consideration of the circumstances surrounding Judge Aquino's transfer and designation as Presiding Judge of RTC-Manila, Branch 24. Judge Aquino's request for transfer from RTC-Tuguegarao City, Cagayan, Branch 4 was coursed through the proper authorities. Judge Aquino requested for transfer to any court in Metro Manila, and she did not specifically mention RTC-Manila, Branch 24. Judge Aquino's designation as Acting Presiding Judge of RTC-Manila, Branch 24 was officially approved under Administrative Order No. 53-2012 dated April 17, 2012, signed by the Chief Justice and the two most senior Associate Justices of the Supreme Court. Both DCA Eugenio and DCA Bahia attested before Investigating Court of Appeals Justice Reyes that there were no existing guidelines for requests for transfer of judges to other stations. Thus, Judge Aquino's transfer from an RTC designated as a Family Court in Tuguegarao City, Cagayan to an RTC designated as a Commercial Court in Manila was not evidently irregular, the two courts being of the same level and there being no existing rule or guidelines against such a transfer.

Unjustified assumptions and mere misgivings that the judge acted with prejudice, passion, pride, and pettiness in the performance of his/her functions cannot overcome the presumption that the judge decided on the merits of a case with an unclouded vision of its facts[15] Mere imputation of bias or

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[15] *Jimenez, Jr. v. People*, 743 Phil. 468, 493 (2014).

partiality is not enough ground for inhibition. There must be extrinsic evidence of malice or bad faith on the judge's part. Moreover, the evidence must be clear and convincing to overcome the presumption that a judge will undertake his/her noble role to dispense justice according to law and evidence without fear or favor. Because voluntary inhibition is discretionary, Judge Aquino would have been in the best position to determine whether or not there was a need for her to inhibit from the *RII Builders case*, and her decision to continue to act on the case should be respected.[16]

Simply put, there is no basis for the Court to take any administrative action against Judge Aquino for her non-inhibition in the *RII Builders case*.

Similarly, Judge Aquino cannot be faulted for accepting the Chery car she won at the raffle during the 2009 PJA Convention.

The Chery car was the grand raffle prize at the PJA Convention in October 2009. It was still unclear whether it was sponsored by then Manila Vice Mayor Francisco Moreno Domagoso, more popularly known as Isko Moreno (Moreno); or by Arlene Lerma; or by Vice Mayor Moreno, through Arlene Lerma. Then Judge Eugenio picked Judge Aquino's name by luck from a *tambiolo* containing 600 or more names of PJA members present at the convention. There was no proof at all of any irregularity in the raffle of the Chery car at the 2009 PJA Convention, which was conducted in the presence of the raffle committee and all the participating members and guests of PJA. While there are legitimate questions as to the propriety of the PJA soliciting and/or accepting raffle prizes from public officers and private persons for its conventions, these are for the association to address. Individual PJA officers or members could not be administratively sanctioned simply for joining the raffle and receiving their prizes.

Even the irregularities in the papers of the Chery car cannot be attributed to Judge Aquino. Judge Aquino could not have

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[16] *Villamor, Jr. v. Manalastas*, 764 Phil. 456, 475-476 (2015).

transacted with the Chery car dealer in Metro Manila and she could not have been issued the Vehicle Sales Invoice for the Chery car on August 8, 2008 as evidence proved that she was then discharging her duties as Presiding Judge of RTC-Tuguegarao City, Cagayan, Branch 4 on the very same date. It would seem that the Vehicle Sales Invoice dated August 8, 2008 was issued in the name of the initial buyer of the Chery car, *i.e.,* Golden Blue Metal Dragon with address at E. Rodriguez Ave., Libis, Quezon City. After Judge Aquino won the Chery car at the raffle, the name and address of Golden Blue Metal Dragon on the Vehicle Sales Invoice was erased using correction fluid and Judge Aquino's name was superimposed on the same. Indeed, Judge Aquino might have been negligent to some degree in not ascertaining that all the papers for the Chery car were consistent and in order before she accepted the same, but it did not have any professional implication for her and it certainly was not tantamount to any administrative offense.

JUDGE LEE (A.M. No. RTJ-15-2414)

In compliance with the directive of Investigating Court of Appeals Justice Leagogo, Judge Lee filed on September 23, 2014 his Comment, attaching to the same his Judicial Affidavit and those of his witnesses, *viz.*: Judge Ma. Theresa V. Mendoza-Arcega[17] (Arcega), Executive Judge of RTC-Malolos City, Bulacan, Presiding Judge of RTC-Malolos City, Bulacan, Branch 17, and Vice-President of the Philippine Women Judges' Association (PWJA); Judge Luisito G. Cortez (Cortez), Presiding Judge of RTC-Quezon City, Branch 84 and President of the Quezon City Regional Trial Court Judges' Association; retired RTC Judge Franklin J. Demonteverde (Demonteverde) who served as PJA President in 2011-2013; Gokian; Reginald C. Dela Paz (Dela Paz), Judge Lee's personal driver; and Rudy Macapagal (Macapagal), owner of RM Advertising Company.

Judge Lee challenged the report of the Ad Hoc Investigating Committee citing him for possible violations of the Guidelines on the Conduct of Elections of Judges' Associations and the

[17] Now Associate Justice of the Sandiganbayan.

New Code of Judicial Conduct. Judge Lee pointed out that the Summary of Findings of the Ad Hoc Investigating Committee as quoted in Investigating Court of Appeals Justice Leagogo's Resolution dated September 12, 2014 failed to provide details on the circumstances surrounding the improprieties which he allegedly committed. The allegations against him were stated as matters of fact *sans* any evidentiary support.

Judge Lee averred that he did not give out cellular phones as raffle prizes; it was not clear at which events the RTC judges were present and the cellular phones from Judge Lee were supposedly given out as raffle prizes; there was no statement of the condition under which the cellular phones were given that would have supported the impression that he used them to advertise his bid for the PJA presidency in the 2013 elections; and the testimonies of Judges Cortez, Demonteverde, and Arcega would disprove the allegation that he raffled away cellular phones to RTC judges in any event between October 2012 to October 2013 to promote his PJA presidency.

Judge Lee though did not deny giving out mugs with his image and name a day after his proclamation as PJA President, but he took exception to the malicious assertion that he used campaign funds to purchase the said mugs. As Macapagal's Judicial Affidavit would show, Judge Lee confirmed his orders for the mugs and commissioned the printing of his image and name thereon only after he had been proclaimed PJA President on October 9, 2013. Judge Lee paid ₱30,000.00 from his own pocket for the 700 mugs. Judge Lee claimed that he gave away the mugs with no other intention than to share his elation over winning as President in the 2013 PJA elections and to serve as a token for his colleagues to remember him by. Judge Lee also referred to Dela Paz's Judicial Affidavit which stated that the mugs were distributed to those in attendance at the Ballroom of Century Park Hotel, Manila only after Judge Lee's proclamation as PJA President, which was after the election and not during the campaign period as would qualify the mugs as campaign propaganda.

According to Judge Lee, the accusation that he booked 180 rooms for his colleagues attending the 2013 PJA elections was equally bereft of any evidentiary support. Judge Lee denied facilitating the reservation of hotel rooms for any of the judges who participated in the 2013 PJA elections, much less paying for 180 hotel rooms in exchange for votes. Judge Lee submitted the Judicial Affidavit of Gokian, then the Senior Sales Account Manager of Century Park Hotel, Manila, who handled the account of the PJA Convention and election of officers in October 2013.

Investigating Court of Appeals Justice Leagogo set the case for hearings for presentation of oral and documentary evidence. Judge Lee himself, Judge Arcega, Judge Cortez, Judge Demonteverde, Gokian, Dela Paz, and Macapagal appeared as witnesses for Judge Lee. Pursuant to the subpoenas issued to them by Investigating Court of Appeals Justice Leagogo, Court Administrator Marquez; Judge Josefina E. Siscar (Siscar), Presiding Judge of RTC-Manila, Branch 55; Judge Felix P. Reyes (Reyes), Presiding Judge of RTC-Marikina City, Branch 272; Judge Fider-Reyes; Judge Baybay; Judge Florendo; and Judge Tribiana also testified during the investigation.

Investigating Court of Appeals Justice Leagogo submitted her Report and Recommendations on November 19, 2014.

Investigating Court of Appeals Justice Leagogo first addressed the possible violations of the Guidelines on the Conduct of Elections of Judges' Associations and the New Code of Judicial Conduct committed by Judge Lee as stated in the report of the Ad Hoc Investigating Committee. Investigating Court of Appeals Justice Leagogo's findings are as follows:

> Based on the further investigation conducted as required under SC *En Banc* Resolution dated 22 July 2014, **the Investigating Justice found no evidence to sustain the aforesaid probable violations of Judge Lee concerning the cellular phones and mugs under Section 4(a).**
>
> In EJ Arcega's Judicial Affidavit, she stated in A5 thereof that there was no occasion in the PWJA and Bulacan RTCJ wherein Judge

Lee provided raffle prizes, particularly cellular phones, in their events or activities. She further testified that: Judge Lee did not distribute any cellular phone or raffle prizes and has not given out any prize from March 2013 up to October 2013 in any affair of the judges of the RTC of Malolos, Bulacan.

In Judge Cortez' Judicial Affidavit, he stated in A6 thereof that there was no occasion wherein Judge Lee provided or gave out raffle items particularly cellular phones to some or to all their events in Quezon City. He further testified that Judge Lee has not given any gift or prize in any of their meetings or parties nor did Judge Lee distribute cellular phones.

In Judge Demonteverde's Judicial Affidavit, he stated in A5 thereof that there was no occasion wherein Judge Lee provided raffle prizes particularly cellular phones in all their events, meetings and conventions. He further testified that Judge Lee has not donated any gift, cellular phones, or anything in kind in connection with conventions or RTC activities in Bacolod.

In Judge Lee's Affidavit, he stated in A4 thereof that he did not provide mobile phones as prizes in any of the events participated in by his colleagues and him prior to the 2013 PJA elections.

Judge Reyes, one of Judge Lee's rival for the presidency of the 2013 PJA elections, also testified that he has not heard that Judge Lee distributed cellular phones in any of the affairs of the PJA such as convention or election, or during campaign sorties; and he is the President of the RTCJA of Marikina City and Judge Lee never distributed or gave any prize or raffle during their parties.

Judge Tribiana also testified that he has never heard of Judge Lee donating raffle prizes in any of their activities. Judge Siscar likewise testified that she could not think of any instance when Judge Lee provided cell phones as raffle prizes to RTC judges in any of the parties or affairs of RTC Manila.

With respect to the charge that Judge Lee distributed mugs to the judges with the printed words "From: Judge Ralph S. Lee(,) President, PJA["]; the Investigating Justice finds **no** violation of Section 4(a) of SC *En Banc* Resolution dated 03 May 2007 as the mugs were distributed on 10 October 2013, or the day **after** the 09 October

2013 PJA elections when Judge Lee was already proclaimed PJA President. Hence, the said mugs cannot be considered as election campaign materials designed to induce the judges to vote for him as President. In fact, as clearly shown on the said mugs; the word used was "From" and not "For."

x x x x x x x x x

As pointed out by Judge Lee in his Memorandum: It is impossible that a token given by him as an elected officer **after** the elections could possibly contribute to his campaign or be treated as an incentive for voters to support his candidacy; the mugs were given out as a token for his colleagues to remember him by; and the mugs could not by any measure qualify as campaign propaganda since they were distributed after the elections, and not during the campaign.

x x x x x x x x x

Based on further investigation conducted, the **Investigating Justice found no substantial evidence that would support the aforesaid probable violation regarding the hotel room reservations for the judges allegedly made by Judge Lee.**

In administrative proceedings, the quantum of proof required to establish a respondent's malfeasance is not proof beyond reasonable doubt but substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion x x x.

From the testimonies of the witnesses, what appears on record is that it was Judge Aquino who reserved 100 rooms at the Century Park Hotel, Manila for judges who would attend the PJA Convention and Elections from 08 to 10 October 2013. There was no testimony given during the further investigation that it was Judge Lee who reserved the hotel rooms for judges or that he facilitated or paid for the hotel accommodations of the judges as a means of securing their votes.

x x x x x x x x x

Hence, the Investigating Justice finds that there is no substantial evidence of Judge Lee's probable violation under Section 4(d) of the Supreme Court *En Banc* Resolution dated 03 May 2007, as well

as Section 4 of Canon 1, Sections 1 and 2 of Canon 2, Section 8 of Canon 4, and Section 1 of Canon 6 ofthe New Code of Judicial Conduct, as stated in the Summary of Findings of the Investigating Committee.[18] (Citations omitted).

Nonetheless, Investigating Court of Appeals Justice Leagogo particularly described several circumstances which rendered suspicious how some of the hotel accommodations of judges were paid for and gave the impression that said accommodations were paid in advance for the judges, to wit:

A. A perusal of the photocopies of the 229 official receipts issued by the Century Park Hotel to the judges who attended the 2013 PJA Conventions and Elections, which were submitted by Gokian, the Sales Manager of the hotel, shows that **all** were dated 08 October 2013, which is highly unusual since the said date was the first day of the Convention, and not the date when the judges checked out from the hotel. When the receipts were summarized and computed, the total payment reflected in the said receipts submitted by Gokian is ₱1,219,751.07;

B. Judge Lee denied the charge that he paid for any of the hotel room accommodations of the judges. The first time Judge Lee testified on 03 October 2014, he stated that: he checked in on 07 October 2014 at 12:00 o'clock noon and checked out before noon of 10 October 2013, when he checked out, he paid on the last day of his stay at Century Park Hotel on 10 October 2013; judges paid before noon of 10 October 2013; there was a long line and the receipts were written in front of them and were given to them on the last day. When he testified on rebuttal on 24 October 2014, there was a variance in his story as he stated that: it was his wife who paid for him; his wife was with him during the last day of the convention; when he checked out, he surrendered the key, but because of the long line, they had to wait for their receipts; and he and his wife were together when they paid. Despite his testimony to the effect that he and the judges paid before noon of 10 October 2013, the photocopies of the official receipts issued to the judges by the Century Park Hotel as submitted by Gokian shows that the same were all issued on the same date, 08 October 2013, which is the first day of the Convention, including

[18] CA *rollo,* pp. 316-320.

OR No. A118215 issued to Judge Lee in the amount of ₱16,500.00 but not on the date when they checked out from the hotel on 10 October 2013.

C. Even EJ Arcega, who was one of the witnesses presented by Judge Lee, testified that: she does not know if she was included in the 100 rooms reserved by Judge Aquino; she never called up Century Park Hotel; she checked in the day before the elections and stayed at the hotel for two (2) nights; she paid around ₱5,000.00 per night or ₱10,000.00 for two (2) nights with her roommate Judge Cita Clemente of Malolos, Bulacan; they paid in cash; and they were issued an official receipt and a copy of that receipt was returned to the provincial capitol for liquidation. It could be gleaned from OR No. A117932 dated 08 October 2013 issued to EJ Arcega that the receipt was issued to her on the day that she checked in on 08 October 2013, which was the day before the elections on 09 October 2013, and not on the day when she checked out on 10 October 2013, after staying at the hotel for two (2) nights.

D. With respect to Judge Cortez, another witness of Judge Lee, he testified that: he checked in at the Century Park Hotel together with the other judges of Quezon City; he coursed through the reservation of the judges to Judge Aquino; and only 2 or 3 judges made their own personal reservations, while about 37 judges were reserved by Judge Aquino, through his request as Director of PJA Quezon City. Judge Cortez was likewise issued OR No. A117576 on 08 October 2013, which was the start of the 2013 PJA Convention and Elections, and not when he checked out.

E. In contrast, when the three (3) photocopies of the receipts (OR Nos. A118231, A118235 and A118236) issued to PJA, which were submitted by Gokian, were shown to Judge Lee by the Investigating Justice, he agreed that the payment made by the PJA to the Century Park Hotel were all dated 10 October 2013 (which was the last day of the PJA Convention); and he agreed with the observation of the Investigating Justice that all the photocopies of the alleged receipt of the judges submitted by Gokian were dated 08 October 2013, which was the date when the judges checked in but not the date when they checked out.

F. The out-of-the-ordinary date of issuance of official receipts by Century Park Hotel to judges at the start of the PJA Convention when they checked in and not on the date when the judges checked out

raises a red flag that someone else might have paid in advance for the hotel room accommodations of judges, as reflected in the photocopies of the official receipts submitted by Gokian to the Investigating Justice, which are uniformly dated 08 October 2013, when the judges checked in at the Century Park Hotel. It should be pointed out that with respect to OR No. A118259 issued to Judge Baybay, one of the 2013 PJA presidential contenders who checked in at the Century Park Hotel and paid in cash, his receipt was not dated on the date when he checked in.

G. It bears serious note that the photocopies of the official receipts issued to Judges Eugene Paras, Jaime Santiago, Jose Paneda, Racquelen Vasquez, Georgina Hidalgo, Danilo Cruz, Sylvia Paderanga, Angelo Perez, Divina Gracia Pelino, Evelyn Nery and Lily Laquindanum —who all belong to the Team Lee-Paras also show that their receipts were dated 08 October 2013. When the Investigating Justice showed Judge Lee the receipts of the aforesaid Judges under his slate, he confirmed that their receipts were all dated 08 October 2013, and not when they checked out from the Century Park Hotel.

H. Oddly enough, Judges Efren G. Santos, Lyliha A. Aquino and Cristina J. Sulit, who were part of Judge Lee's team and who were also booked at the Century Park Hotel, were not included in the photocopies of official receipts submitted by Gokian. The Investigating Justice also especially finds it peculiar that Judgs Sulit and Aquino's official receipts for their hotel room accommodations at Century Park Hotel were not among those submitted by Gokian since Judge Sulit is the PJA Treasurer, while Judge Aquino is the PJA Secretary General, the event organizer and the one who reserved 100 rooms at the Century Park Hotel, Manila for Judges who would attend the 2013 PJA Convention and Elections. Judge Lee even testified that Judge Aquino was billeted at the Century Park Hotel during the convention. A subpoena *duces tecum* and *ad testificandum* was issued to Gokian but she failed to submit the duplicate copies of all the receipts that she submitted to the Investigating Justice even when she testified for the second time on 13 October 2014.

I. Judge Reyes testified that he heard other judges talking about candidates reserving hotel rooms for judges to accommodate them, especially those coming from the provinces.

J. EJ Florendo testified that Judge Perez, the President of PJA Nueva Ecija, who ran for Vice President for Special Projects, also

told them (Nueva Ecija judges) that they may have two (2) reserved rooms at the Century Park Hotel for them to use as dressing room because they were supposed to render a special number in the convention; she does not know who paid for the said reserved rooms allotted for the Nueva Ecija judges; and they were not able to use the rooms as they were unable to present their number due to lack of practice.

K. Judge Siscar testified that during the convention, she heard from other judges that Lerma paid for the hotel accommodations of certain judges during the convention and elections, but she has no personal knowledge of the same, and it was talked about by the judges that Lerma paid for the airfare, registration fee and hotel accommodation of judges which she did in favor and in support of Judge Lee; but she never heard anybody acknowledging that he/she was one of the recipients thereof.

L. Judge Siscar also testified that during the 2013 PWJA Convention in Tacloban, Lerma approached her when she was inside the convention; at that time, she (Siscar) was with Judge Emy Geluz; Lerma approached them and addressed the two of them maybe because she (Lerma) thought that both of them were running for elections; Lerma approached her (Siscar) and said *"Pwede ba akong makiusap sa inyong dalawa?"* She told them, *"Huwag na daw po kaming tumakbo sa ticket ni Rommel Baybay "Pwede daw syang maglambing at makiusap sa amin na huwag na kaming tumakbo,"* and she told Lerma, *"Bakit ngayon mo lang sinabi?* I already gave my word. I (am) already committed. So I cannot withdraw anymore."

Why would Lerma ask Judge Siscar to withdraw her candidacy at the 2013 PJA Convention under the team of Judge Baybay? It bears note, at this juncture, that among the four (4) candidates for the 2013 PJA presidency, Judge Baybay was the closest opponent of Judge Lee, judging from the results of the elections, as shown in the PJA Elections Final Tally Sheet. Moreover, former DCA Eugenio was closely identified with Lerma, and it was testified to by Judge Siscar (as Lerma was even at the retirement party of DCA Eugenio at the Century Park Hotel) that DCA Eugenio campaigned for Judge Lee. DCA Eugenio served for two terms as President of PJA (now PJA *President-Emeritus)* followed by Judge Demonteverde, then Judge Lee and the three of them belonged to the same group, as testified to by Judge Lee himself. As further testified to by Judge Lee, Judge Baybay's candidacy was openly supported by the opposing Sigma

Rho block of now Justice Romeo F. Barza, who served as PJA President before DCA Eugenio. There also appears to be "bad blood" between DCA Eugenio and Judge Baybay. During a PJA board meeting in April 2013, presided by Judge Demonteverde, at the house of Judge Paras, Judge Baybay, as member of the PJA wanted to attend the same; however, at the moment DCA Eugenio saw Judge Baybay at the meeting, DCA Eugenio threw the financial report of Judge Sulit to Judge Baybay and a very angry DCA Eugenio shouted *"Yan ba! Yan ba ang hinahanap mo!"*

M. Judge Tribiana's testimony is the most telling. He divulged that he checked in at Century Park Hotel at the start of the convention on 08 October 2013, and checked out at 12:00 o'clock on 10 October 2013. He categorically testified that he was not required to pay for his hotel room accommodation, although he was issued an official receipt (OR No. A117914). He wondered why he was not required to pay and he asked the hotel personnel who issued the receipt but they did not tell him why. His inquiry was, *"Oh, why do I not have to pay"* and the reply was *"It's okay, sir"* to which he retorted *"But I need a receipt."* Surprisingly, Judge Tribiana was given a receipt and yet, per his candid testimony, he did not pay. When asked by the Investigating Justice who sponsored his room accommodation, he testified that he no longer asked the hotel personnel because he was then eager to go home. He also does not know who reserved for him at the Century Park Hotel. Upon further inquiry, he narrated that when he arrived in the afternoon at the Century Park Hotel, he was informed by Judge Montero that he has an accommodation at the said hotel. He just saw Judge Montero, by chance, at the lobby of Century Park Hotel and Judge Montero told him, *"I saw your name in the list."* When probed further, he testified that he does not know the aforesaid "list" and that according to Judge Montero, if he (Tribiana) registers there, he would be accommodated because his name was included in the list. He likewise testified that he already told the Investigating Committee of the Supreme Court about his free hotel accommodation at the Century Park Hotel and the Committee even took the original copy of his official receipt.

When confronted about the said "list", Judge Lee testified that: he had no knowledge of the list of judges that was mentioned by Judge Tribiana because it was Judge Aquino who might have possibly prepared a list; and he denied knowledge of who were the judges included in the list prepared by Judge Aquino, in connection with the room bookings or reservations since he has not seen the list.

N. Although Gokian, who was one of Judge Lee's witnesses, testified that it is not true that somebody paid for the judges' hotel rooms for the convention, other than the judges themselves, her testimony cannot be relied upon. Gokian admitted that: she was not at the check-out counter when the judges were checking out and she does not know for fact that another person or some other persons paid for the hotel accommodations of judges; it was not her role to issue receipts; at the time of check in, she was not at the check-in counter; and she was not one of those who issued the receipts. Moreover, although Gokian testified that insofar as her knowledge is concerned, Lerma did not make any reservation for hotel room accommodations of judges, she flip-flopped and also testified that she does not know whether Lerma paid for any rooms or other expenses of the judges during the convention and election.[19] (Citations omitted.)

Investigating Court of Appeals Justice Leagogo further listed other possible administrative offenses committed by Judge Lee, thus:

1. Judge Lee violated Section 4(a) of the Supreme Court *En Banc* Resolution dated 03 May 2007. Several judges testified that they received the 2013 desk calendar and they saw the poster and tarpaulin (5 feet 3½ inches by 2 feet 3 inches) of Judge Lee that violate Section 4(a) of the SC *En Banc* Resolution dated May 3, 2007 which categorically prohibits the preparation, use and distribution by candidates of other election campaign materials like posters, streamers, banners or prohibited propaganda matters. A calendar, poster and tarpaulin are not the same as a *curriculum vitae*, bio-data or flyer which are the only allowed election campaign materials under Section 4(a).

x x x x x x x x x

2. It further appears that Judge Lee might have violated Section 5 of the Supreme Court *En Banc* Resolution dated 03 May 2007 [prohibition against the intervention by officials of the court and the Office of the Court Administrator] x x x

x x x x x x x x x

Per the letter of inhibition dated 27 August 2014 of Justice Isaias P. Dicdican, the latter voluntarily inhibited himself from conducting

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[19] *Id.* at 320-325.

the investigation of Judge Lee on the ground that — *"x x x the said judge approached me sometime in September of last year and requested me to help him relative to his candidacy as President of the [PJA]. He requested me to campaign for him among the RTC judges in the Visayas whom I knew. xxx"*. However, when Judge Lee was queried on the matter by the Investigating Justice, he denied the same x x x.

When Court Administrator Marquez was asked, he testified that although he was not aware of any express rule prohibiting justices of the Court of Appeals to campaign for any of the judges, he thinks that they should inhibit themselves from being partial in favor of any particular PJA candidate. Court Administrator Marquez also thinks that a Justice of the Court of Appeals falls under Section 5 of the SC *En Banc* Resolution dated 03 May 2007.[20] (Citations omitted.)

As for the connection between Judge Lee and Arlene Lerma, Investigating Court of Appeals Justice Leagogo wrote the following observations:

The Investigating Justice finds the presence of Arlene Lerma in the judiciary disturbing. In the course of the further investigation conducted, several judges testified that Lerma, who is not a judge, is frequently seen attending events, meetings, conventions, elections, and parties of judges. It appears that she has a strong clout over judges. Lerma is supposedly connected with Manila Vice Mayor Isko Moreno.

x x x x x x x x x

The Investigating Justice tried to unearth if there is any direct link between Judge Lee and Lerma but no evidence was found. Judge Lee testified that Lerma did not sponsor any of their activities or sorties. Justice Fider-Reyes also testified that she never saw Lerma with Judge Lee. Judge Siscar also testified that: she does not know if Judge Lee has any connection with Lerma or if he is being supported by Lerma in the 2013 convention and election; and she has not heard that Judge Lee was financially assisted by Lerma in any of his activities in PJA.

However, there are morsels of information from the judges and from Court Administrator Marquez, whose testimonies, after analysis,

[20] *Id.* at 325-334.

are quite revealing. The further investigation conducted showed that Judge Lee has friendly ties with now retired DCA Eugenio and Judge Demonteverde, who are both closely associated with Lerma. Judge Lee himself testified that DCA Eugenio and Judge Demonteverde, who are both former Presidents of the PJA, and he, belonged to the same group. Judge Demonteverde also testified that he and Judge Lee are very close friends. Judge Lee also testified that DCA Eugenio is his friend.

x x x x x x x x x

What appears to the Investigating Justice, based on the testimonies she heard from the judges during the further investigation is that retired DCA Eugenio, who was a two-termer PJA President and now PJA *President-Emeritus,* was the one who brought Lerma to the judges, more particularly in the **PJA,** and whose presence in the conventions, meetings and events is perturbing. Furthermore, the presence of Lerma in the PWJA conventions, meetings and events is, to say the least, disquieting. However, whatever personal advantage or favors Lerma has curried from her propinquity and/or friendship with the judges, to the detriment of the administration of justice, were not established in the course of further investigation of Judge Lee in the above-captioned case.[21]

Investigating Court of Appeals Justice Leagogo's recommendations in the end read:

As discussed under the Evaluation (pages 56-61), the Investigating Justice found no evidence (cellular phones and mugs) and no substantial evidence (hotel room accommodations) that Judge Ralph S. Lee is guilty of probable violations under Section 4(a) and (d) of the Supreme Court Resolution dated 03 May 2007, as stated in the Summary of Findings of the Supreme Court's Investigating Committee created in A.M. No. 13-10-07-SC. However, while it was established in evidence that it was Judge Aquino who reserved 100 rooms at the Century Park Hotel for the accommodation of judges, the nagging suspicion as to how the same was paid is discussed on pages 61-66 hereof.

Nonetheless, it was also stated in the Evaluation that there were other possible violations (pages 66 to 75 hereof) under Sections 4(a)

[21] *Id.* at 334-339.

and 5 of the Supreme Court *En Banc* Resolution dated 03 May 2007, as quoted in OCA Circular Nos. 54-2007 and 120-2013 dated 21 May 2007 and dated 30 September 2013, respectively, committed by Judge Lee, which were uncovered by the Investigating Justice in the course of her further investigation.

These other possible violations were not included in Judge Lee's probable violations as enumerated in the Summary of Findings of the Supreme Court's Investigating Committee created in A.M. No. 13-10-07-SC. The said other possible violations were objected to by Judge Lee as *"new matters or issues asked of and raised by the Investigating Justice which were not included in the Supreme Court Resolution dated July 22, 2014 and Court of Appeals Resolution dated September 12, 2014."* At any rate, Judge Lee cannot complain of lack of due process as he was confronted with the same, and he even presented rebuttal evidence as shown in his 2nd Judicial Affidavit dated 23 October 2014 and testimony on 24 October 2014.

The **other possible violations** of Judge Lee (not found in the Summary of Findings of the Supreme Court's Investigating Committee) are, therefore, respectfully submitted **for the consideration and disposition of the Supreme Court.** The Investigating Justice **refrains** from making any recommendation on whether they constitute as serious administrative offense to be dealt with in accordance with Rule 140 of the Revised Rules of Court, as provided under Section 7 ofthe Supreme Court *En Banc* Resolution dated 03 May 2007 (Prescribing Guidelines on the Conduct of Election of Judge's Association). It bears emphasis that under the Supreme Court *En Banc* Resolution dated 22 July 2014 in A.M. No. 13-10-07-SC, what was referred for further investigation of Judge Lee, among other judges, was *"x x x in relation to the findings of violations of our laws and rules in the conduct of elections of the Philippine Judge's Association officers."* Said "findings of violations" are those probable violations found by the Supreme Court's Investigating Committee, and specifically enumerated in its Summary of Findings. To reiterate, the other possible violations found by the Investigating justice are not included in the said Summary of Findings.[22]

The Court agrees with the findings of Investigating Court of Appeals Justice Leagogo absolving Judge Lee of any administrative liability for (a) purportedly giving away cellular

[22] *Id.* at 340-342.

or mobile phones as raffle prizes, because there was no evidence at all to support such charge; (b) giving away mugs with his image and name, because said mugs were not distributed during the campaign period but only the day after the election and Judge Aquino's proclamation as the winning candidate for PJA President; and (c) reserving and paying for the hotel accommodations of the judges who attended the PJA Convention and election in 2013, because it was established that the reservations were made by Judge Aquino and not by Judge Lee and there was no proof that Judge Lee paid for any of the judges' hotel accommodations. The Court notes the suspicious circumstances surrounding the payment of several judges' accommodations at Century Park Hotel for the 2013 PJA Convention, as recounted in detail by Investigating Court of Appeals Justice Leagogo in her Report, but the Court cannot act on mere suspicions. Administrative cases require that charges be supported by substantial evidence. Herein, there was nary evidence to link or attribute said suspicious circumstances to Judge Lee. Equally unsubstantiated by any proof was Judge Lee's connection or ties to Arlene Lerma. As Investigating Court of Appeals Justice Leagogo observed, it was DCA Eugenio who appeared to be familiar or friends with Arlene Lerma, the latter even attending the retirement party of the former. Although DCA Eugenio and Judge Lee were also close to one another and belonged to the same group in the PJA, it did not necessarily mean that Judge Lee had the same personal relations with Arlene Lerma as DCA Eugenio.

What is actually supported by substantial evidence on record is Judge Lee's violation of Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations, which provides:

> Sec. 4. *Prohibited acts and practices relative to elections.*—Judges' associations and their members, whether singly or collectively and whether or not a candidate for any elective office in the association, shall refrain, directly or indirectly, in any form or manner, by himself or through another person, from the following acts and practices relative to elections:
>
> a. Distributing and disseminating any election campaign material **other than the curriculum vitae or the biodata of a**

> **candidate and flyers** indicating the candidate's qualifications, plan of action, platform or other information on his vision and objectives for the association. No other election campaign material like posters, streamers, banners or other printed propaganda matters shall be prepared, used and distributed by candidates[.] (Emphasis supplied.)

Several witnesses, namely, Judge Arcega, Judge Fider-Reyes, Judge Baybay, Judge Siscar, Judge Reyes, Judge Cortez, and Court Administrator Marquez, testified during the hearings that they saw and/or received 2013 desk calendars, posters, and tarpaulins bearing the pictures, branch numbers, and positions of Judge Lee and the members of his team, and/or his team's slogan, "Team LEEdership for Progress."

The Court quotes with approval Investigating Court of Appeals Justice Leagogo's findings on the matter:

> It bears serious note that when the aforesaid witnesses testified that they received or saw a calendar, poster or tarpaulin of Judge Lee, neither did Judge Lee nor his counsel raise any objection or manifest any correction as to the term used by the witnesses and by the Investigating Justice.
>
> In his 2nd Judicial Affidavit on rebuttal, Judge Lee asserted that the aforesaid calendar, poster and tarpaulin are new matters or issues raised by the Investigating Justice.
>
> It bears emphasis that during the hearing on 01 October 2014, when the Investigating Justice showed to Judge Lee's driver Dela Paz, the colored photograph of the calendar which came from the Supreme Court, Judge Lee manifested for the record that he is admitting the existence of the said calendar. At the end of the hearing on 01 October 2014, the Investigating Justice directed Judge Lee to bring all the materials that he distributed during the campaign such as the calendar, among other things. On the next hearing date on 03 October 2014, Judge Lee himself submitted to the Investigating Justice the calendar. Judge Lee also manifested that he started distributing the calendars as early as March 2013 when he decided to run. He further testified that: the calendar was distributed by each of the candidates or through executive judges or regional directors who were part of their team; Team Lee-Paras decided to contribute a minimum of Php10,000.00 each to defray the expenses for the calendars, flyers

and other expenses in going around the country; his contribution for the calendars, and colored photocopying of the flyers and posters was Php20,000.00; the posters and colored flyers were printed in Sta. Mesa, Manila Printed Matter; they spent more or less Php40,000.00 for the calendars; and there were 1,000 calendars printed which were all distributed except for the one marked as Exhibit "4".

Dela Paz, Judge Lee's driver, also testified that: he distributed Judge Lee's calendars before the PJA Elections; a PJA staff (those who were seated at the secretariat or registration table of the PJA at the entrance of the Grand Ballroom of the Century Park Hotel) also told him to distribute the calendars; and in distributing the calendars, he was accompanied by two (2) male PJA staff.

According to Judge Lee, he and the other candidates were allowed to campaign and distribute campaign materials, such as the calendar, by Chancellor Azcuna. However, a scrutiny of the letter dated 17 June 2013 of Chancellor Adolfo S. Azcuna addressed to Judges Lilyha L. Abella-Aquino and Rommel O. Baybay does not show that Judge Lee and the other candidates were indeed allowed to distribute election campaign materials, such as the calendar. Said letter pertinently states that:

"Dear Your Honors:

This is in connection with your letters requesting for permission to allow the candidates of your respective parties to campaign among the Regional Trial Court Judges during seminars, training workshops and symposia conducted by the Philippine Judicial Academy.

x x x *x x x* *x x x*

1. Both parties are allowed to campaign during the following PHILJA trainings, programs and activities:

x x x *x x x* *x x x*

2. Both parties shall be given equal time to present their platforms and programs;

3. Both parties are only allowed to campaign at the designated time, e.g. during socials or after the conduct of the training activity, or at such other time to be determined by the secretariat assigned in the particular program; and

4. Gift-giving to participant-judges are prohibited.

x x x *x x x* *x x x"*

Moreover, it could be gleaned from the first paragraph of the aforementioned letter that what was requested by Judges Aquino and Baybay were only *"to allow the candidates of (their) respective parties to campaign among the Regional Trial Court Judges during seminars, training workshops and symposia conducted by the Philippine Judicial Academy."* (Underscoring supplied) In any event, contrary to the claim of Judge Lee, not even the PHILJA can authorize the distribution of prohibited election campaign materials in contravention of the Supreme Court *En Banc* Resolution dated 03 May 2007.

x x x x x x x x x

With respect to the poster, it was Judge Lee's witness, Judge Cortez, who first mentioned about a "poster." When Judge Cortez was asked by the Investigating Justice as to what were the campaign materials distributed by Judge Lee or Team Lee in Quezon City, aside from bio-data and flyers, Judge Cortez answered *"Well, I think we received flyers or posters."* When asked further, Judge Cortez testified that the posters were "The same as what is depicted in the calendar, Ma'am."; and it was described by Judge Cortez as an enlarged version of the calendar and that the said poster was posted at the common bulletin board of the RTC of Makati City. Hence, the Investigating Justice was only alerted of the existence of the said posters in the course of the further investigation conducted, which was disclosed by Judge Lee's witness, Judge Cortez. The Investigating Justice cannot turn a blind eye as to what could possibly be a violation of Section 4(a) of the Supreme Court *En Banc* Resolution dated 03 May 2007, thus, she propounded further questions about the posters to Judge Cortez and the other witnesses. It was also due to this discovery that the Investigating Justice required Judge Lee to bring a copy of the poster mentioned by Judge Cortez and any other materials that he used when he campaigned for the 2013 PJA elections.

The existence of the posters can no longer be denied as it was Judge Lee himself who brought and submitted one copy of the poster to the Investigating Justice on 03 October 2014. He also testified that: 1,000 copies of the posters were printed and distributed to various MTCs and RTCs all over the Philippines; some of the posters were sent to the provinces through LBC, or if the judges concerned were

in Manila, they would get them from his office and bring the posters to their stations; and in his campaign sorties, he placed four [4] pieces of the posters at the back of (a vehicle's) windshield using a tape. Judge Lee also testified that he had a room at the Century Park Hotel where they placed the posters and some items for distribution.

x x x x x x x x x

With respect to the tarpaulin, the same was only looked into by the Investigating Justice after Judge Lee testified that prior to the election day itself, he usually put the tarpaulins/banners wrapped at the back of a van or at the side of his moving Starex van. He further testified that: in the Visayas, instead of tarpaulins being attached to a vehicle, they bought a plastic stand where the tarpaulin could be mounted; after each campaign sortie, they rolled the said tarpaulin again and brought it to the next sortie such as in Mindanao; wherever they went, he brought the tarpaulins with him, mounted on a plastic stand, and the said tarpaulin is movable and detachable; in Metro Manila, the tarpaulins were tied on the van or vehicles; they produced more or less four (4) tarpaulins which are enlarged versions of Exhibit "7" for the two (2) cars; and they also have two (2) large tarpaulins mounted on a plastic stand for their campaign sorties in Visayas and Mindanao and they placed the same when they went around Southern Luzon going up north. On page 18 of his Memorandum, Judge Lee stated that the four (4) tarpaulins that he used were recycled and taken from venue to venue.

x x x x x x x x x

In his 2nd Judicial Affidavit, Judge Lee reasoned out in A15 thereof that *"We only used this movable tarpaulin in our quick trip to Iloilo and Aklan. We never hung this tarpaulin (2ft. x 4ft.). We thought of these paraphernalia or 'props' only to attain name recall, with no intention of violating guidelines on the use of poster or tarpaulins. But as can be observed, only photos, branch numbers and positions were reflected with no words 'vote for'. The same design and layout in the flyer was* (sic) *adopted and enlarged."*

Regardless of his reasons for distributing calendars and using posters and tarpaulins as campaign election materials, Section 4(a) of the SC *En Banc* Resolution dated 03 May 2007 is clear that the only election campaign material that can be distributed and disseminated are the *curriculum vitae* or the biodata of the candidate and flyers indicating the candidate's qualifications, plan of action, platform or

other information on his vision and objectives for the association. It was also expressly stated therein that no other campaign material like posters, streamers, banners or other printed propaganda matters shall be prepared, used and distributed by candidates.

x x x x x x x x x

During the hearing on 20 October 2014, the Investigating Justice clarified from Judge Lee regarding the testimony of Judge Baybay that the 2013 PJA COMELEC allowed the use of tarpaulins, but subject to a certain size. Judge Lee answered that he authorized two (2) of his team members Judges Lyliha Aquino and Divina Pelino to attend the PJA COMELEC meeting and they reported to him that per agreement approved by the 2013 PJA COMELEC (composed of Justices Teresita Dy-Liacco Flores, Jane Aurora C. Lantion and Zenaida T. Galapate-Laguilles) the use of tarpaulins and streamers on the day and during the convention period was allowed. When asked to elucidate on the matter of whether the 2013 PJA COMELEC, more particularly Justices Flores, Lantion and Laguilles, were authorized by the Supreme Court to allow the use of tarpaulins and streamers for the PJA elections, Court Administrator Marquez testified that he is not aware of any authority granted by the Supreme Court to them neither were they authorized by the Office of the Court Administrator to allow the use of tarpaulins and streamers during the PJA Convention and Elections.

It bears to stress that, as aptly pointed out by Court Administrator Marquez, the 2013 PJA COMELEC comprising of Justices Flores, Lantion and Laguilles, does not have the authority to allow the use of such election campaign materials, like tarpaulins and streamers, which are prohibited under Section 4(a) of Supreme Court *En Banc* Resolution dated 03 May 2007.[23] (Citations omitted.)

It is irrelevant that Judge Lee's use and distribution of desk calendars, posters, and tarpaulins was not among the possible violations of the Guidelines on the Conduct of Elections of Judges' Associations and the New Code of Judicial Conduct committed by Judge Lee which were initially identified by the Ad Hoc Investigating Committee. Judge Lee's conduct in relation to the 2013 PJA elections was generally subject to further

[23] *Id.* at 326-332.

investigation by Investigating Court of Appeals Justice Leagogo. Judge Lee was well-aware that Investigating Court of Appeals Justice Leagogo was inquiring deeper into Judge Lee's use and distribution of the desk calendars, posters, and tarpaulins, which were mentioned for the first time by the witnesses during the hearings; and Judge Lee was undeniably afforded the opportunity to present evidence and argue against considering his use and distribution of such printed materials as an administrative infraction. Judge Lee cannot insist that he was denied due process. In administrative proceedings, technical rules of procedure and evidence are not strictly applied; administrative due process cannot be fully equated to due process in its strict judicial sense. The essence of administrative due process is simply an opportunity to be heard.[24]

Lastly, Section 5 of the Guidelines on the Conduct of Elections of Judges' Associations explicitly states that " [o]fficials of the courts under the Judiciary and the Office of the Court Administrator shall not, directly or indirectly, intervene in the elections of the judges' associations or engage in any partisan election activity." Judge Lee cannot be held liable for violation of said Section 5 for the prohibition therein does not apply to the candidate in the election, but pertains to officials of the courts and the OCA. Even if the Court was to assume that Judge Lee did approach Court of Appeals Justice Isaias P. Dicdican (Dicdican) for help in campaigning in Visayas, there was no showing that Judge Lee was able to prevail upon Court of Appeals Justice Dicdican and that Court of Appeals Justice Dicdican actually campaigned for Judge Lee for PJA President in the 2013 elections among the judges in Visayas.

JUDGE BAYBAY (A.M. No. RTJ-15-2415)

Investigating Court of Appeals Justice Garcia, in charge of the investigation of Judge Baybay, required the witnesses to submit judicial affidavits and appear personally during hearings, except for Court Administrator Marquez and DCA Villanueva,

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[24] *Avancena v. Liwanag,* 454 Phil. 20, 24 (2003).

who averred that they had no personal knowledge of the probable violations of Judge Baybay.

Investigating Court of Appeals Justice Garcia summarized in his Report and Recommendation[25] the judicial affidavits and/or testimonies of the witnesses, including Judge Baybay himself, as follows:

> In a Judicial Affidavit dated September 25, 2014, Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino stated that she attended the Annual Convention of the Philippine Women Judges Association (PWJA) held on March 6 to 8, 2013 at Palo, Leyte. She was surprised to see Judge Baybay there considering that the convention was exclusively for female judges and justices. Judge Baybay attended all three days of the convention. On the first day, he was seen during the opening program and again during the dinner which he spent going around the hall, talking to lady judges. He was also seen during the dinner socials on the second day of the convention. On the convention's last day, Judge Baybay approached Deputy Court Administrator Delorino and some lady judges from the Municipal Trial Courts of Leyte, who were conversing at the hotel lobby. One of the judges told Judge Baybay that they did not win any of the cellular phones that he had donated during the raffle, to which the latter replied that there was nothing he could do about that. Deputy Court Administrator Delorino was taken aback with the conversation considering that she knew that Judge Baybay was running for president of the PJA and it was obvious to her that his presence and act of donating cellular phones for raffle were part of his campaign strategy.
>
> During the hearing, Judge Baybay did not cross-examine Deputy Court Administrator Delorino. Upon clarificatory questioning by the Investigating Justice, Deputy Court Administrator Delorino expounded on her statement in her judicial affidavit that she received verbal reports of Judge Baybay sponsoring meals for local Regional Trial Court judges during his campaign sorties. Two or three months before the 2013 PJA elections, two judges reported to her that Judge Baybay visited them in Dumaguete with a Chinese-looking male named Edward Du of the Dumaguete Chinese Chamber of Commerce. The judges wondered what Mr. Du was doing with them during the lunch. Mr.

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[25] *Rollo* of A.M. No. RTJ-15-2415.

Du stated that he was contacted by the Makati Chinese Chamber of Commerce to take care of the expenses for the lunch of Judge Baybay.

In a Judicial Affidavit dated September 26, 2014, Judge Yolanda Ubaldo-Dagandan narrated that she saw Judge Baybay attend the 2013 PWJA Convention in Palo, Leyte. Judge Baybay stood out during the convention because the other attendees of the event were exclusively females. Judge Baybay was also hopping from table to table, talking with female judges. During the convention, Judge Dagandan witnessed a raffle of cellular phones, and she had in fact won one. However, she did not know where the cellular phones came from. Sometime in September 2013, she was approached by Judge Crisologo Bitas of the Regional Trial Court, Branch 7, Tacloban City. Judge Bitas tried to convince her to vote for Judge Baybay as president in the 2013 PJA elections in exchange for free accommodations at *The Pearl Manila Hotel* and reimbursement of plane fare. Sometime in February 2013, she was travelling to Basey, Samar with Judge Evelyn Riños-Lesigues to canvass giveaways for the PWJA Convention. Judge Lesigues handed her cellular phone to Judge Dagandan. When Judge Dagandan answered, Mr. Edison Chua introduced himself as a fraternity brother of Judge Rommel Baybay. Mr. Chua requested her to be the Region VIII point person or campaign manager in Region VIII of Judge Baybay as candidate for president of the PJA. In exchange, she will be given ₱50,000,00 to defray the expenses of the 2013 PWJA Convention. Judge Dagandan declined Mr. Chua's offer.

Upon clarificatory questioning by the Investigating Justice, Judge Dagandan claimed that Judge Bitas is the presiding judge of the Regional Trial Court, Branch 7, Tacloban City, wherein she is the assisting judge. One day, after their morning hearing, Judge Bitas approached the table she was occupying. He told her that if she votes for Judge Baybay, the latter would not only reimburse her plane ticket, he would also provide free accommodation at *The Pearl Manila Hotel*.She did not give him any categorical answer but simply listened to what he said.

On cross-examination, Judge Dagandan admitted that while she saw Judge Baybay during the 2013 PWJA Convention, it was only a few minutes before the hearing of the instant case on October 13, 2013 that the two of them first conversed and interacted.

In a Judicial Affidavit dated September 22, 2014, Judge Ma. Theresa V. Mendoza-Arcega recounted that sometime in January or February

2013, Judge Baybay went to her office in Malolos, Bulacan. They had the chance to talk about the forthcoming PWJA Convention which was to be held in March 2013. Judge Baybay offered to donate a refrigerator as a raffle prize of the event. However, considering the inconvenience of bringing a refrigerator unit in and out of Leyte where the 2013 PWJA Convention would be held, Judge Arcega suggested that Judge Baybay donate small items, such as cellular phones, to which the latter acceded. Thus, during the PWJA Convention, Judge Baybay handed five to six units of MyPhone or Cherry Mobile cellular phones to Judge Arcega. Before the raffle started, Judge Arcega simply placed the cellular phones on the table where the other raffle prizes were also displayed, without informing anyone of the donor/sponsor thereof. Judge Arcega further stated that she has no personal knowledge regarding Baybay's alleged offer of discounted hotel rooms in *The Pearl Manila Hotel.*

During the hearing, Judge Baybay opted not to cross-examine Judge Arcega. During the clarificatory questioning, Judge Arcega elucidated that she and Judge Baybay knew each other since 2003 when they were both MTC Judges. The reason why Judge Baybay went to her office in Malolos, Bulacan sometime in January or February 2013 was to ask her if she wanted to run as a PJA officer under his ticket, which she declined. When their convention turned to the upcoming 2013 PWJA Convention, Judge Baybay volunteered to donate a refrigerator to be raffled during the event. The suggestion that he instead donate cellular phones came from her. Judge Baybay gave her around five cellular phones on the day of the raffle itself, which value she estimated was around ₱700.00 to ₱800.00 each.

In a Judicial Affidavit dated September 25, 2014, Judge Josefina E. Siscar narrated that she attended the 2013 PWJA Convention on March 6 to 8, 2013 where she witnessed a raffle that included cellular phones. She, however, has no knowledge as to who donated the said cellular phones. While she knew that certain judges stayed at *The Pearl Manila Hotel* during the 2013 PJA elections on October 8 to 10, 2013, she has no knowledge of any arrangement and simply assumed that they paid for their respective accommodations. She was not privy to the campaign strategies of Judge Baybay. During the hearing, Judge Baybay did not anymore propound questions to Judge Siscar. Upon clarificatory questioning, she recalled that there were more than six cellular phones that were raffled. The raffle prizes also included shawls that cost around ₱400.00 each, three to four perfumes worth ₱1,500.00 each; and eight to ten makeup kits branded

L'Oreal, each valued at ₱600.00 to ₱700.00. The cellular phones were among the last items to be raffled and were considered as major prizes.

In a Judicial Affidavit dated September 22, 2014, Judge Cristina F. Javalera-Sulit stated that she has no personal knowledge with regard to the probable violations of Judge Baybay. On February 14, 2013, she received a tickler or a mini notebook. Its cover bears the phrase, "Say Hello to Baybay." It was a Valentine's Day gift from Judge Baybay. A month later, Judge Sulit learned that other judges who attended the 2013 PWJA Convention received the same tickler from Judge Baybay. On cross-examination, Judge Sulit admitted that the tickler she received was a mere Valentine's Day gift considering that it cannot sway votes towards Judge Baybay. Additionally, all the lady judges in Makati RTC received the same gift. The tickler cannot be considered prohibited campaign materials under A.M. no. 07-4-17-SC. When asked clarificatory questions, Judge Sulit described the tickler given out by Judge Baybay as around four to five inches in length and three to four inches in width. It has around 20 pages, bound together at the side with glue. Its cover was white, glossy, and harder than the pages inside. Judge Sulit estimated that the value of the tickler was approximately ₱30.00 given that it was personalized. Furthermore, Judge Sulit testified she is the incumbent treasurer of the PJA, a position she holds since 2011. As an officer of the PJA, she can confirm that in disseminating information about upcoming PJA conventions, it is standard operating procedure for the PJA secretary-general to attach the brochures and rates of hotels near the convention venue in order to give attending judges a choice of accommodations. The rates as appearing in the brochures are the hotel's normal rates. The PJA officers do not make any special arrangements or ask discounts from the hotels which brochures they attach to the program. She also cannot recall if the brochure of *The Pearl Manila Hotel* was attached to the invitation and program for the 2013 PJA elections.

In a Judicial Affidavit dated September 29, 2014, Atty. Paulo E. Campos, Jr., General Manager of *The Pearl Manila Hotel*, attested that Judge Baybay reserved 28 rooms at *The Pearl Manila Hotel* for the period of October 7 to 10, 2013. Considering the large booking, the group of Judge Baybay was given a twenty-five percent (25%) discount on the base rate of ₱3,500.00 per superior room, or the total amount of ₱2,635.00 per room for a single night.

In an Order dated October 13, 2014, Atty. Campos, Jr. was directed to submit a written report x x x

x x x x x x x x x

In a Compliance dated October 17, 2014, Atty. Campos reported that of the 28 rooms booked by Judge Baybay, eight were booked for two nights; 16 were booked for three nights; while four were booked for four nights. All the bookings were superior rooms priced at ₱2,625.00 per night. While some judges checked-out individually or as a group, all rooms were paid for in cash and Official Receipts issued in the individual names of the guests.

During the hearing on October 20, 2014, Atty. Campos added that he and Judge Baybay are fraternity brothers. Judge Baybay knew Atty. Campos ran *The Pearl Manila Hotel* considering that several meetings of their fraternity were held thereat. A month or two before the 2013 PJA elections, Judge Baybay approached Atty. Campos, asking if some judges could check-in at *The Pearl Manila Hotel* at a discounted rate. Considering that October was not a peak season for the hotel business, Atty. Campos agreed to give Judge Baybay's group a twenty-five percent (25%) discount on the superior room, or at the rate of ₱2,625.00 per night. Atty. Campos also pointed out that it is customary for the hotel to give discounts to large groups. During the cross-examination, Atty. Campos clarified that while it was Judge Baybay who approached and asked for a discount, the rooms were "sold" to the individual judges who registered and stayed therein. On clarificatory questions, Atty. Campos claimed that a superior room can accommodate two guests, but only a single name per room is required for registration. It was thus possible that two judges bunked together in a single room while only one registered. Atty. Campos would then be unable to provide the names of all judges who were actually billeted at the hotel. Moreover, he confirmed that Judge Baybay was among those who billeted himself at *The Pearl Manila Hotel* for the period of October 7 to 9, 2013.

Upon order of the Investigating Justice, Atty. Campos brought seven booklets of Official Receipts issued by *The Pearl Manila Hotel* for the period of September 25, 2013 to October 15, 2013. The booklets were labeled OR No. 4 all the way to OR No. 10, inclusive. Each booklet contains 50 duplicate copies of official receipts since the originals thereof have been given to the payees. The last page of each booklet is an Authority to Print from the Bureau of Internal

Revenue (BIR), showing that each booklet was printed with permission from the said agency.

It must be noted that the transactions covered by booklet OR No. 8 started with receipts dated October 10, 2013 and ended on October 13, 2013. Booklet OR No.9 was a continuation of the previous booklet, with a transaction that was dated October 14, 2013 while the last seven ORs therein were all dated October 17, 2013. Booklet OR No. 10 is a continuation of the transactions from October 17, 2013, as shown by the first two receipts therein. However, there was an insertion thereafter of a receipt antedated October 7, 2013, or ten days prior. It was issued to Judge Lorenzo Balo for ₱22,400.00 as payment for a banquet held in celebration of his birthday. The next 28 receipts that followed were likewise antedated and only issued on October 17, 2013 for the judges who checked-out on either October 10, 2013 or October 11, 2013. Thereafter, the next four ORs were once again dated October 17, 2013. Booklet OR No. 10 ended with a transaction dated October 19, 2013.

When the Investigating Justice asked Atty. Campos to explain the discrepancy in the sequence of the receipts in OR No. 10, Atty. Campos failed to immediately tender a reply. Instead, he requested to be given two days within which to investigate and to confer with the hotel's cashiers in order to reconcile the insertion of the ORs issued to the RTC judges.

In Compliance dated October 23, 2014, Atty. Campos admitted that the receipts issued to the judges who stayed at *The Pearl Manila Hotel* for the period of October 7 to 10, 2013 were antedated and issued only on October 17, 2013. This was necessitated by the overpayment made by Judge Balo during a banquet on October 11, 2013 for the amount of ₱59,428.00. Instead of refunding the excess payment at once, it was agreed that the banquet charges would be reviewed and reconciled first and the excess payment, if any, would just be credited to the final room charges for the judges from Mindanao. Atty. Campos, however, did not shed light on how much was the excess payment of Judge Balo, when it was discovered, or to whom the alleged excess payment was credited.

It must also be noted that the 28 ORs show that 34 judges actually checked-in at *The Pearl Manila Hotel* during the period in question. This is because while 22 receipts bore the name of only a single judge, the other six receipts were issued in the names of two judges.

x x x x x x x x x

In a Judicial Affidavit dated September 22, 2014, Judge Evelyn P. Riños-Lesigues alleged that she has no personal knowledge regarding the probable violations of Judge Rommel Baybay. During the hearing, Judge Lesigues denied the version of Judge Dagandan that sometime in February 2013, Judge Lesigues handed her cellular phone to Judge Dagandan so that the latter may talk with Mr. Edison Chua. Judge Lesigues, in fact, denied travelling to Basey, Samar sometime in February 2013, much less travelling with Judge Dagandan, who was not in good terms with her.

In a Judicial Affidavit dated September 19, 2014, Mr. Edison Y. Chua disclaimed any knowledge of the probable violations of Judge Rommel Baybay. During the hearing, Judge Baybay did not conduct any cross-examination on Mr. Chua. When asked clarificatory questions by the Investigating Justice, Mr. Chua denied Judge Yolanda Ubaldo-Dagandan's statement that they talked via cellular phone wherein he offered ₱50,000.00 in exchange for Judge Dagandan acting as the Region VIII point person for Judge Baybay's election campaign. While he admitted that Judge Baybay is his fraternity brother, he denied helping him in the latter's bid for the PJA presidency.

In a Judicial Affidavit dated September 22, 2014, Judge Ralph S. Lee denied any knowledge regarding the probable violations of Judge Baybay in the conduct of the 2013 PJA elections except for receiving secondhand information that Judge Baybay donated cellular phones as raffle prizes in the 2013 PWJA Convention and offered free and/or discounted hotel rooms in order to promote his candidacy. He went on further to state that Judge Baybay circulated three letters, which Judge Lee described as poisonous, to RTC judges nationwide maligning the previous and present PJA administrations. The letters were followed by news items written by Louie Logarta of the *The Daily Tribune* and Jarius Bondoc of *The Philippine Star*, which articles eventually led to the investigations regarding an alleged fixer in the judiciary who goes by the name *Ma'am Arlene*.

During the cross-examination, Judge Lee clarified that the letters written by Judge Baybay were not addressed to him, but to the two previous PJA presidents as well as to all PJA members. What were addressed to Judge Lee were the letters that were mailed to the RTC judges nationwide containing newspaper clippings and blogs regarding him and *Ma'am Arlene*. Unfortunately, Judge Lee cannot say with certainty who mailed the same considering that some of the letters

were posted from Marikina City while others were posted from Malabon City. On clarificatory questioning, Judge Lee stated that it has been the practice of the PJA national officers, specifically the secretary-general, to inform judges not only of the details of upcoming PJA conventions, but also of alternative hotels and accommodations. This is usually done by attaching hotel flyers or brochures with the rates to the invitation and program of the convention. The same procedure was adopted in the 2013 PJA elections wherein the secretary-general attached brochures for hotels within a five- kilometer radius from the venue of the said convention. Judge Lee, however, cannot say with certainty whether the brochure of *The Pearl Manila Hotel* was attached to the 2013 PJA elections invitation and program sent to the RTC judges nationwide.

In a Judicial Affidavit dated September 22, 2014, Judge Felix P. Reyes admitted that he has no personal knowledge on the probable violations of Judge Baybay in the conduct of the 2013 PJA elections, except for receiving reports that the latter donated cellular phones for raffle in an event attended by RTC judges and that the latter offered free hotel accommodations in exchange for votes. During the hearing, Judge Baybay did not cross-examine Judge Reyes.

While not included in the list of resource persons and/or possible witness, the Investigating Justice ordered Mr. Andrew Tan, Owner-Upper Management of *Resorts World Manila*, and/or his duly authorized representative in charge of hotel reservations and bookings, to submit a judicial affidavit relative to their comment and whatever personal knowledge they may have on the Investigating Committee's finding that Judge Baybay reserved rooms in Resorts World Manila for purposes of securing votes for the 2013 PJA elections. They were further directed to include in their judicial affidavits the number of judges who checked-in, if any; the rate per day; and the discounts availed of, if any, at their respective hotels for the period of October 7 to 10, 2013.

In a Judicial Affidavit dated September 19, 2014, Mr. Stephen James Reilly, in behalf of Mr. Andrew Tan, attested that he is the Chief Operating Officer of Travellers International Hotel Group, Inc., the owner of the three hotels that are currently operating within the premises of Resorts Worla Manila. Further, there is no booking under the name "Rommel Baybay" for the period of October 7 to 10, 2013. However, the hotels' computer database does not bear any salutation or title such as "Judge." Consequently, it cannot be ascertained if any judge checked in at the three hotels during the same time period.

In an Order dated September 26, 2014, Mr. Reilly was given an official list of RTC judges for his reference. In a Supplemental Judicial Affidavit dated October 2, 2014, Mr. Reilly attested that based on the records of the three hotels of Resorts World Manila, there were no bookings, reservations, or payments made under any of the names in the Official List of RTC Judges for the period of October 7 to 10, 2013. During the hearing, Mr. Reilly reaffirmed his declaration that based on the database of the three hotels attached to Resorts World Manila, none of the names enumerated in the Official List of RTC Judges was billeted thereat for the period of October 7 to 10, 2013.

For his defense, in two Judicial Affidavits dated October 9 and 14, 2014, Judge Rommel Baybay denied violating Section 4(a) of A.M. No. 07-4-17-SC. While he admitted that he donated cellular phones for raffle in the 2013 PWJA Convention, he maintained that the provision only prohibits the dissemination of election campaign materials in the form of printed propaganda such as posters, streamers, or banners. The cellular phones which he donated were the low-end brands which cost only about the price of a large cake, which was an appropriate donation for a joyous occasion. He also did not stay for the raffle; nor did he know if it was announced that the raffled phones came from him. He admitted that he attended the 2013 PWJA Convention in March of 2013 wherein he introduced himself to the judges. However, he pointed out that the PWJA Convention was attended not only by the RTC judges, but MTC judges as well, who are not voters in the PJA Elections. He did not discriminate between the two sets of judges. He was also careful not to ask anybody to vote for him.

Judge Rommel Baybay also admitted that he asked *The Pearl Manila Hotel* for discounted room rates, but he claimed that he did so for the benefit of all PJA members. He denied providing, free of charge, transportation or accommodations to hotels or lodging places for the purpose of inducing or influencing members to vote for him for the 2013 PJA elections, in violation of Section 4(d) of A.M. No. 07-4-17-SC.

On the witness stand, Judge Baybay admitted that he was present during the 2013 PWJA Convention to drop off his donation of five to six cellular phones. Since each phone costs only about ₱800.00 each, he opined that they were reasonable tokens given in the spirit of merrymaking. He did not attach any condition in donating the cellular phones, nor did he require that the judges be informed that

he was the donor thereof. He also stated that he was embarrassed to attend the 2013 PWJA Convention because he did not pay the convention fee, so he simply gave the cellular phones for raffle and immediately left afterward. Judge Baybay also admitted that he booked a room at *The Pearl Manila Hotel* during the 2013 PJA elections but he did not use it because he was billeted at Century Park Hotel, the venue of the convention. He only felt obliged to get a room at *The Pearl Manila Hotel* because he was the one who asked for a discount from Atty. Campos. However, Judge Baybay insisted that the discount was given not by virtue of the occupants being judges, but because of the number of rooms booked. He also denied that he offered discounted hotel rooms in exchange for support in the 2013 PJA elections, much less offer free hotel accommodation, free registration fee, pocket money, and allowance. He also admitted giving ticklers with the phrase "Say Hello to Baybay" as Valentine's day gift to female Makati RTC judges and to some judges who attended the 2013 PWJA convention. Around 100 ticklers were given to him for free by the printer who made his election flyers. A similar tickler may be bought from bookstores for ₱12.75. It is inconceivable that the tickler could entice RTC judges to vote for him during the 2013 PJA elections.

Investigating Court of Appeals Justice Garcia concluded that there was sufficient, clear, and convincing evidence to adjudge Judge Baybay guilty of violating (1) Section 4 (a) of the Guidelines on the Conduct of Elections of Judges' Associations in relation to his donation of cellular phones for raffle during the 2013 PWJA Convention; and (2) Section 4(d) of the same Guidelines in relation to the billeting of judges at The Pearl Manila Hotel for the period of October 8 to 10, 2013. For said violations, Investigating Court of Appeals Justice Garcia recommended that Judge Baybay be penalized with suspension of six months from office without salary and other benefits during the same period.

The Court fully adopts the following factual findings and legal conclusions of investigating Court of Appeals Justice Garcia on the violation of Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations by Judge Baybay:

The first issue to be discussed is Judge Baybay's violation of Section 4(a) of A.M. No. 07-4-17-SC which proscribes the distribution and

dissemination of election campaign materials other than the candidates' biodata and flyers. x x x

x x x x x x x x x

The donation of cellular phones by itself is not *per se* a violation of the guidelines on the conduct of elections for judges' associations. However, the incidents that surrounded the donation reveal that the intention of Judge Baybay in doing so was to further his presidential bid, in violation of Section 4(a) of A.M. No. 07-4-17-SC.

Moreover, Judge Baybay originally wanted to donate a refrigerator, a much more expensive and ostentatious item than cellular phones. Also, instead of simply handing off to any lady judge who would attend the convention, Judge Baybay opted to go to Palo, Leyte to personally deliver the donated items and he did so moments before the raffle itself. It cannot be denied that he was seen, and his presence noted, by the attendees of the event as he was the only male present. While the donors of the prizes raffled were not announced, there were some judges who knew that Judge Baybay donated cellular phones as his sole purpose for being in the venue was ostensibly to deliver the items. He also did not simply drop off the phones and left. He stayed during the program, table-hopping and introducing himself to the judges present. As a matter of fact, even if he, admittedly, had no business being in the 2013 PWJA Convention, he was seen during all three (3) days of the convention. Indubitably, Judge Baybay used the donation of the cellular phones for his campaign.

Additionally, the donated cellular phones were either branded *MyPhone* or *Cherry Mobile*, but the exact model and cost of each were not established. Judge Baybay described them as low-end models, costing around ₱800.00 each. Per the cellular phone brochures obtained by the Investigating Justice, the prices of cellular phones of the said brands range from ₱499.99 and may be as expensive as ₱12,999.00. Whatever their actual cost, the cellular phones were considered major prizes, and were among the last items to be raffled. These demonstrate that the donated cellular phones, even if they were the cheapest brand and model, were of value.

There is no merit in Judge Baybay's argument that the donation of cellular phones did not violate Section 4(a) of A.M. No. 07-4-17-SC because the provision only prohibits the use of printed propaganda such as posters, streamers, or banners. Suffice it to state that the provision, if read in its entirety, plainly and without interpretation,

clearly limits the use of campaign materials to biodata and flyers. While the guidelines have expressly disallowed even mere posters which are less expensive per unit cost, what more with cellular phones which are undoubtedly many times more expensive. As such, the use and distribution of any other materials, such as cellular phones, would be proscribed. This is in keeping with the intention of the Supreme Court to keep the amount of campaigning and electioneering within reasonable limits.

In any case, Judge Baybay as a magistrate is expected not only to act with propriety, but to avoid even the appearance of impropriety in his campaign for the PJA presidency. He did not shed off his status as a judge simply because he was outside the courtroom. A judge of law must comport himself at all times in such manner that his conduct, official or otherwise, can bear the most searching scrutiny of the public. Consequently, he should have known that his act of donating cellular phones for raffle during a time when he was running for presidency for a judges' association, and then personally delivering the items to the venue let alone being the sole male present, would violate the guidelines on the conduct of elections of judges' associations.[26]

As for Section 4 (d) of the Guidelines on the Conduct of Elections of Judges' Associations, Investigating Court of Appeals Justice Garcia ruled that Judge Baybay violated the same based on circumstantial evidence, *viz*.:

> Judge Baybay violated Section 4(d) of A.M. No., 07-4-17-SC which prohibits providing or giving free of charge, accommodations at hotels to any member of the Judges' association for the purpose of inducing or influencing the said member to vote for a candidate at an election to be conducted. x x x
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> x x x x x x x x x
>
> When a judge offers free hotel rooms to other judges in exchange for votes in an election of officers for a judges' association, the only parties privy thereto are the sponsor and the beneficiaries. For obvious reasons, the judge who offered free accommodations would not divulge said prohibited practice. Neither could the judges who availed of this privilege be expected to expose his clandestine scheme as to do so would give the impression that they availed of the accommodation

[26] *Id.*

in exchange for their votes, not to mention the fear of exposing themselves to sanctions. It is also difficult for a colleague to testify against another colleague for the sake of camaraderie. This underhanded strategy can also be covered up where there is connivance between the sponsor and the hotel management. All that the latter has to do is to issue individual receipts to the beneficiaries. The difficulty in obtaining direct evidence, however, does not mean that the guilty party can get away with impunity. In such an instance, circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to the unwarranted dismissal of a case.

Circumstantial evidence may be characterized as that evidence that proves a fact or series of facts from which the facts in issue may be established by inference. It has been held that circumstantial evidence is sufficient 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 fair and reasonable conclusion pointing to the guilt of the person charged.

Here, while there is no direct evidence to pin down Judge Baybay, the circumstances in this case, taken together, indubitably establish that he indeed offered free hotel rooms in his bid for the PJA presidency.

First, Judge Dagandan, in a Judicial Affidavit dated September 26, 2014 and on the witness stand, testified that Judge Crisologo Bitas approached her sometime before the 2013 PJA elections and told her that if she will vote for Judge Baybay as PJA president, she would get free hotel accommodation at *The Pearl Manila Hotel.* In fact, the record shows that Judge Bitas is among those who were billeted at *The Pearl Manila Hotel* from October 7 to 10, 2013.

Second, Judge Baybay admitted that he approached his fraternity brother Atty. Campos to ask for a discount at *The Pearl Manila Hotel* in favor of judges attending the 2013 PJA elections. Judge Baybay knew that Atty. Campos runs a hotel in Manila because several meetings of their fraternity were held there.

Third, Judge Baybay did not disseminate the information or coordinate with the PJA regarding the alleged discount offered by *The Pearl Manila Hotel.* Instead, the discount was extended only to the group of Judge Baybay. This belies Judge Baybay's claim that his purpose in negotiating for the discount was to benefit all the

judges attending the elections. Had Judge Baybay informed the PJA secretary-general or the convention secretariat, a brochure of the hotel with the discounted rates should have been attached to the convention's invitation and program. However, Judge Baybay himself admitted that he could not recall if a brochure of *The Pearl Manila Hotel* was attached to the invitation for the 2013 PJA elections.

Fourth, it is clear that none of the judges who were billeted at *The Pearl Manila Hotel* actually paid for their hotel room accommodations upon their check-out on October 10 or 11, 2013. The best evidence of payment should have been the receipts simultaneously issued therefor. However, it was only on October 17, 2013 that the individual receipts were issued but antedated October 10 or 11, 2013. This fact is demonstrated by the two receipts immediately before and the five receipts immediately after the ORs for the judges, which were all dated October 17, 2013 for payments made by other customers and guests of the hotel. In other words, the receipts for the judges were just inserted in between the October 17, 2013 transactions of the hotel.

Fifth, the attempt of Atty. Campos to explain the insertion and antedating of the ORs issued to judges is incredible. He claimed that the receipts were not immediately issued because the hotel still had to credit to the judges' room billings the overpayment made by Judge Balo during a banquet held on October 7, 2013 which was evidenced by a receipt for ₱59,428.00. However, this is unnatural and contrary to the normal course of business for it would have been much easier and less complicated to simply return the alleged overpayment to Judge Balo at the time of its discovery. Moreover, Atty. Campos only made sweeping generalizations and did not present any itemized billing to show the specific amount of excess payment. He was likewise silent with regard to the date when it was discovered, or to whom the alleged excess payment was credited. Worse, the alleged overpayment was contradicted by OR No. 92203 issued on October 17, 2013 but antedated October 11, 2013 evidencing that Judge Balo paid an additional ₱22,400.00 for a banquet.

Sixth, the insertion and antedating of the ORs for the judges issued on October 17, 2013 coincided with the Supreme Court Resolution dated October 17, 2013, resolving to docket the investigation regarding the allegations of a certain "fixer" in the judiciary who goes by the name "Ma'am Arlene" and her role in the allegations of corruption in the judiciary.

Seventh, it is highly inconceivable that all twenty-eight (28) rooms occupied by judges were paid in cash, without a single payment made through a credit card. This is at most odd and strange. During this modern day and age, it is common business practice to pay an account by way of a credit card for the obvious reasons of convenience and security, not to mention the promotional points earned therefrom. Even if some judges have to liquidate the financial assistance extended by their local government units, all they need is the official receipt for their expenses, and this official receipt is necessarily issued whether they pay in cash or by credit card.

The foregoing pieces of circumstantial evidence, when analyzed and taken together, definitely lead to no other conclusion than that Judge Baybay offered free hotel accommodations in exchange for votes in the 2013 PJA elections. To reiterate, direct evidence is not the sole basis from which a conclusion and finding of guilt may be drawn from. Instead, the rules on evidence allow courts to rely on circumstantial evidence to support its conclusion of guilt.[27]

For the Court, Judge Baybay violated Section 4(d) of the Guidelines on the Conduct of Elections of Judges' Associations when he offered room accommodations at The Pearl Manila with a 25% discount on the room rates to select judges who were attending the 2013 PJA Convention and voting at the election. Indeed, the Guidelines prohibit the candidate from providing "free room accommodations" to the judges, which in its plain or ordinary sense means that the room accommodations would have entirely been without charge;Yet, a 25% discount from the regular rate of the hotel room accommodation still constitutes a significant reduction of the amount payable by the judges who availed of the same, and in fact, the 25% discount can be deemed as a free portion of the room rate. In addition, as Investigating Court of Appeals Justice Garcia observed, Judge Baybay approached Atty. Campos, a fraternity brother and the General Manager of The Pearl Manila, to arrange the 25% discount on room accommodations at the said hotel; and that the discounted room accommodations were offered and enjoyed only by select judges identified with Judge

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[27] *Id.*

Baybay's group and were not promoted through the PJA Secretariat for all judges attending the convention and election. These facts taken together reveal Judge Baybay's clear intention to personally extend to the judges the favor of discounted room accommodations at The Pearl Manila so he could secure said judges' vote in his favor as candidate for PJA President in the elections.

The Court though is not ready to jump to the conclusion that Judge Baybay entirely paid for the room accommodations of the judges who stayed at The Pearl Manila for the 2013 PJA election. The Court notes the dubious circumstances surrounding the payment of the judges' room accommodations *(i.e.,* the antedated receipts, off-setting of Judge Balo's overpayment for a banquet, cash payments for all 28 rooms, and the timing of the preparation of the antedated receipts), similar to the suspicious circumstances observed by Investigating Court of Appeals Justice Leagogo in her report on Judge Lee. As in Judge Lee's case, the Court similarly rules herein that in the absence of substantial evidence to link or attribute the questionable circumstances to Judge Baybay, then there is no basis for the Court to hold Judge Baybay administratively accountable for the same.

At the root of the irregularity in the payment of the judges' accommodations at The Pearl Manila was the alleged overpayment by Judge Balo for a banquet, which was merely offset against the payments due from the judges for their room accommodations. However, the connection or relationship between Judge Baybay and Judge Balo was not established. Judge Balo was not subpoenaed as a witness during the investigation so that he could be questioned on his purported overpayment to The Pearl Manila. Also, none of the judges who availed of the discounted room accommodations at The Pearl Manila and were issued antedated receipts were accorded the chance to explain their payments for the said accommodations. The Court reiterates that it cannot make a ruling largely based on suspicions and inferences.

JUDGE RUBIA (A.M. No. RTJ-15-2416)

Judge Rubia was the Presiding Judge of RTC-Biñan, Laguna, Branch 24, when he ran as a candidate for Executive Vice-President of the PJA in the 2013 PJA elections. While the reports on *Ma'am Arlene* were pending investigation, Judge Rubia was dismissed from the service on June 10, 2014 for gross misconduct and conduct unbecoming a judge as he violated Canons 2, 3, and 4 of the New Code of Judicial Conduct in relation to three cases pending before his sala.[28]

By Investigating Court of Appeals Justice Barza's determination, there was sufficient evidence that Judge Rubia violated Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations. Investigating Court of Appeals Justice Barza wrote in his Report on Investigation and Recommendation[29] that:

> From the totality of the evidence adduced and after a judicious evaluation and scrutiny thereof, the undersigned investigating justice has come up with a finding that the respondent judge committed a violation of OCA Circular No. 54-2007 or the Guidelines on the Conduct of Election of Judges' Associations.
>
> For the violation pertaining to Section 4(a) on prohibited acts, on prohibition on distributing or disseminating campaign materials other than flyers and curricula vitae, the undersigned investigating justice finds the evidence submitted by the witnesses to have substantially proven the infraction of respondent Judge Rubia. The investigating justice had been provided with copies of photographs of the said campaign kit, which contained 1) a cap bearing the patch of the seal of the PJA in front, and on the back side of which was embroidered the phrase "UNITY = STRENGTH Judge Mar E. Rubia for EVP", and the inside flap thereof also bearing the embroidered phrase "Judge Mar E. Rubia for EVP"; and 2) collared shirt with the patch of the seal of the PJA on the upper left portion of the front shirt, with the phrase "UNITY= STRENGTH Judge Mar E. Rubia for EVP" embroidered on the right sleeve thereof. Judge Rubia distributed these prior to the PJA election and during the PJA convention.

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[28] *Sison-Barias v. Rubia,* 736 Phil. 81 (2014).

[29] *Rollo* of A.M. No. RTJ-15-2416.

The Judicial Affidavits submitted to the undersigned investigating Justice of Judges Reyes and Nolasco, in compliance with the investigating justice's order dated 16 September 2014, alleged that "giveaways" consisting of a small bag, cap and t-shirt bearing Judge Rubia's name and printed materials were received by their respective courts during the campaign period preceding the October 2013 PJA Election.

The existence of the said kit as well as the allegation that the same had been distributed before the election and during the PJA convention was confirmed by DCA Delorino, Judges Reyes, Nolasco and Florendo during the hearing on 21 October 2014.

Judge Reyes admitted having received, through her staff in the RTC in the City of San Fernando, Pampanga, on September 5, 2013, "giveaways" consisting of a T-shirt, cap and printed materials from Judge Rubia. She also received the same giveaways in her court in Manila. Without giving much importance to the said giveaways, Judge Reyes gave the said giveaways away to whoever was interested. Having received the same, however, gave her the impression that the kit and all its contents were campaign materials. She voted in the PJA elections held in October 2013, where Judge Rubia lost.

Judge Nolasco also admitted having received on October 2013 the same items, one of which bore Judge Rubia's name. She turned over these items to the SC Investigating Committee on January 23, 2014, when she was invited to be a resource person regarding the 2013 PJA Elections, particularly the alleged involvement of a certain "Ma'am Arlene" as well as the election protest of Judge Rubia who ran for Executive Vice-President of the PJA, but lost.

As for the allegation that free hotel accommodation was provided by Judge Rubia to the judges at the convention, Judge Nolasco confirmed that she had been informed that the same was being provided by Judge Rubia, but she politely declined the offer.

Judge Florendo also complied with the above order of the investigating justice and submitted her Judicial Affidavit stating therein that she was given flyers and calendar of Judge Rubia by Heritage Hotel Personnel at the said hotel when she checked in for the PJA Convention in October 2013. Her hotel accommodation was paid by the Provincial Government of Nueva Ecija.

In her Judicial Affidavit, DCA Delorino, as directed by the SC Investigating Committee, obtained three (3) sets of the said campaign

kits distributed by Judge Rubia to members of the PJA in his bid in the said elections. These were personally obtained from courts in Pasay City, Dumaguete City and Malolos City, and had them presented to the SC investigating committee. She was also able to secure a letter from Judge Rubia addressed to the Clerk of Court, RTC Dumaguete City, Negros Occidental, requesting that the campaign kits which Judge Rubia sent by mail, be distributed to all the judges thereat.

During the hearing on 21 October 2014, DCA Delorino also submitted to the investigating justice, a letter dated 17 September 2013 addressed to Judge Evelyn G. Nery, RTC-Branch 19, Cagayan De Oro City, Misamis Oriental, wherein respondent Judge Rubia stated that he is sending a kit (containing a cap, t-shirt, letter and endorsement from the Rotary Club of Makati Southwest) to Judge Nery, which the latter might opt to bring and use during the 2013 PJA Convention.

As can be gleaned from the evidence thus gathered, Judge Rubia committed a violation of the Election Guidelines by intentionally distributing or disseminating campaign materials other than flyers and curricula vitae to the PJA electorate in the 2013 PJA Elections. There is no arguing that the said kit and all its contents exceeded the campaign materials allowed to be distributed as set forth in the Election Guidelines.

Corollarily, and in agreement with the Summary of Findings of the SC Investigating Committee, the said actions of Judge Rubia amount to a violation of the New Code of Judicial Conduct, x x x

x x x x x x x x x

Although the above violation of Judge Rubia does not pertain to the performance of his official functions, it is mandated that his conduct shall be above reproach in all activities. A judge's private life cannot be dissociated from his public life and it is, thus, important that his behavior both on and off the bench be free from any appearance of impropriety. As has been held, a judge's official conduct should be free from the appearance of impropriety, and his personal behavior, not only upon the bench and in the performance of judicial duties, but also his everyday life should be beyond reproach.

x x x x x x x x x

Judge Rubia's actions, however, exceeded or violated the parameters set forth in the above Election Guidelines, quite-telling of his blatant disregard of the rules of the very association of which he aspired to lead.

x x x x x x x x x

Anent Section 4 (d) on prohibited acts, such as providing free transportation or free hotel accommodations to members of judges' association, and Section 4(h) on prohibited acts, such as the use of court personnel in the distribution of campaign materials and paraphernalia, the undersigned finds the evidence gathered and presented as insufficient to prove that Justice Rubia violated the same.

Investigating Court of Appeals Justice Barza considered Judge Rubia's violation of Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations as gross misconduct, punishable by dismissal from service. However, since Judge Rubia was already dismissed from service, Investigating Court of Appeals Justice Barza recommended instead that Judge Rubia be ordered to pay a fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

As Investigating Court of Appeals Justice Barza found, substantial evidence supports the charge that Judge Rubia violated Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations by distributing campaign materials other than his *curriculum vitae* or biodata and acceptable flyers. It is undisputed that Judge Rubia distributed to different RTCs around the country campaign kits, each consisting of a small bag; a cap and a t-shirt bearing the seal of the PJA, Judge Barza's name and the position he was running for, *i.e.*, "for EVP," and his campaign slogan of "UNITY= STRENGTH"; and printed materials, including a letter of endorsement from the Rotary Club.

III
PENALTIES IMPOSED

The rulings of the Court on the charges against the four judges are summarized as follows:

(a) Judge Aquino failed to maintain the appearance of propriety in booking room accommodations for judges for the 2013 PJA Convention and election even when she was running for re-election as PJA Secretary-General;

(b) Judge Lee is guilty of violating Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations for his use and distribution of prohibited campaign materials such as desk calendars, posters, and tarpaulins;

(c) Judge Baybay is guilty of violating Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations for giving away cellphones as raffle prizes at the 2013 PWJA Convention during the campaign period which were deemed prohibited campaign materials, as well as Section 4 (d) of the same Guidelines for providing hotel room accommodations with 25% discount to select judges during the 2013 PJA Convention and election; and

(d) Judge Rubia is guilty of violating Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations for distributing prohibited campaign materials, particularly, campaign kits consisting of a bag, cap, t-shirt, and printed materials.

The Guidelines on the Conduct of Elections of Judges' Associations itself provides, under Section 7 thereof, for the liability for noncompliance with any of its provisions, thus:

> Sec. 7. *Liability for Non-compliance with the Guidelines.*— Failure by any member of the judges' association to observe or comply with the provisions of this Resolution shall constitute a **serious administrative offense** and shall be dealt with in accordance with Rule 140 of the Revised Rules of Court. Court officials and personnel who violate provisions of the Resolution shall be administratively liable and proceeded against in conformity with existing Supreme Court and Civil Service rules and regulations. (Emphasis supplied.)

Rule 140 of the Rules of Court classifies administrative charges as serious, less serious, or light and enumerates the appropriate sanctions for each. For serious charge or offense, Section 11 of Rule 140 prescribes the following sanctions:

Sec. 11. *Sanctions.* — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. *Provided,* however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months: or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.

When the respondent is found guilty of two or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.[30]

Given the foregoing, the Court deems it appropriate to impose upon Judge Lee and Judge Rubia the penalty of a fine in the amount of ₱21,000.00 each for their respective violations of Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations; and upon Judge Baybay the penalty of a fine in the amount of ₱30,000.00 for his violations of Sections 4(a) and 4(d) of the same Guidelines.

IV
FINAL WORDS

With this Decision, the Court hopes to impress upon the judges the strict standards of conduct of their office. Section 1, Canon 4 of the New Code of Judicial Conduct enjoins judges to "avoid impropriety and the appearance of impropriety in **all of their activities.**" A judge's behavior, not only while in the performance of official duties but also outside the court, must be beyond reproach.[31] While all judges are required to hold themselves to

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[30] Section 50, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service.

[31] *Beltran v. Rafer,* 504 Phil. 536, 541 (2005).

the strictest standards of conduct, it is only reasonable to expect more of those who seek elective office in judges' associations as they can best lead by example.

The events surrounding the 2013 PJA elections were indeed unfortunate and disappointing, but hopefully, these will no longer be repeated in the future with the faithful adherence by judges not just to the plain language, but also to the spirit of the Guidelines for the Conduct of Elections of Judges' Associations.

The Guidelines were approved by the Court in a Resolution dated May 3, 2007 in A.M. No. 07-17-17-SC in recognition that "aspects of the elections of judges' associations have the capacity to affect adversely the public perception of the judges' professional and personal behavior"; and that "there is need to structure the elections of these judges' associations along lines that would depoliticize this important activity and redirect efforts towards acceptable and non-partisan interests[.]" There was a need for the Guidelines to "ensure that the different judges' associations would prudently manage as well as undertake honest, simple, clean, transparent and orderly elections of their officers"; and "to keep the amount of campaigning and electioneering within reasonable limits and to assist in the maintenance of a spirit of collegiality and essential fairness in such elections[.]"

The Guidelines had been disseminated to the judges through OCA Circular No. 54-2007 dated May 21, 2007, and again through OCA Circular No. 120-13 dated September 30, 2013 with a reminder for the judges to strictly comply with the provisions thereof on the elections of officers of their respective judges' associations.

The Court also lauds the election reforms undertaken by the PJA, upon the advice of Court Administrator Marquez, among which is the holding of the election of its officers apart from its annual convention and the use of an automated voting system.[32] The PJA National Officers and Directors, in a meeting held in

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[32] "History of Philippine Judges Association," https://www.pja.ph/about.php, last date visited September 24, 2018.

September 2015, issued a Board Resolution adopting the automated system of election and setting the election date to December 3, 2015, and had accordingly amended the By-Laws of the PJA.

The Court writes *finis* to these cases with the following reminder to judges from *In re: Solicitation of Donations by Judge Benjamin H. Virrey*:[33]

> A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. Public confidence in the judiciary is eroded by irresponsible or improper conduct of judges. A judge must avoid all impropriety and the appearance thereof. Being the subject of constant public scrutiny, a judge should freely and willingly accept restrictions on conduct that might be viewed as burdensome by the ordinary citizen.
>
> A magistrate must comport himself at all times in such a manner that his conduct, official and otherwise, can bear the most searching scrutiny of the public that looks up to him as the epitome of integrity and justice. x x x The office of a judge exists for one solemn end — to promote justice and thus aid in securing the contentment and happiness of the people. A judge, so it has often been said, is like Ceasar's wife, and like her, he must be above suspicion and beyond reproach. x x x. (Citations omitted.)

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

1. In **A.M. No. RTJ-15-2413 — OFFICE OF THE COURT ADMINISTRATOR v. JUDGE LYLIHA AQUINO, REGIONAL TRIAL COURT OF MANILA, BRANCH 24,** Judge Lyliha A. Aquino is **ADMONISHED** to be more circumspect in her actions so as to maintain propriety and the appearance of propriety in her judicial as well as non-judicial activities;

2. In **A.M. No. RTJ-15-2414 — OFFICE OF THE COURT ADMINISTRATOR v. JUDGE RALPH LEE, REGIONAL TRIAL COURT OF QUEZON CITY, BRANCH 83,** Judge

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[33] 279 Phil. 688, 694-695 (1991).

Ralph S. Lee is found **GUILTY** of violating Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations and is **ORDERED** to pay a **FINE** of Twenty-One Thousand Pesos (₱21,000.00).

3. In **A.M. No. RTJ-15-2415 — OFFICE OF THE COURT ADMINISTRATOR v. JUDGE ROMMEL BAYBAY, REGIONAL TRIAL COURT OF MAKATI CITY, BRANCH 132,** Judge Rommel O. Baybay is found **GUILTY** of violating Sections 4(a) and 4(d) of the Guidelines on the Conduct of Elections of Judges' Associations and is **ORDERED** to pay a **FINE** of Thirty Thousand Pesos (₱30,000.00); and

4. In **A.M. No. RTJ-15-2416 — OFFICE OF THE COURT ADMINISTRATOR v. JUDGE MARINO RUBIA, REGIONAL TRIAL COURT OF BIÑAN, LAGUNA, BRANCH 24,** Judge E. Rubia is found **GUILTY** of violating Section 4(a) of the Guidelines on the Conduct of Elections of Judges' Associations and is **ORDERED** to pay a **FINE** of Twenty-One Thousand Pesos (₱21,000.00).

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, Bersamin, del Castillo, Perlas-Bernabe, Leonen, Tijam, and *Gesmundo, JJ.,* concur.

Reyes, J. Jr., J., no part.

Jardeleza, J., on official leave.

Caguioa, J., on official business leave.

Reyes, A. Jr., J., on leave.

FIRST DIVISION

[G.R. No. 193156. September 26, 2018]

IVQ LAND HOLDINGS, INC., *petitioner, vs.* **REUBEN BARBOSA,** *respondent.*

SYLLABUS

1. CIVIL LAW; THE CIVIL CODE; QUIETING OF TITLE; IN AN ACTION TO QUIET TITLE, THE PLAINTIFFS OR COMPLAINANTS MUST DEMONSTRATE A LEGAL OR AN EQUITABLE TITLE TO, OR AN INTEREST IN, THE SUBJECT REAL PROPERTY, AND MUST SHOW THAT THE DEED, CLAIM, ENCUMBRANCE OR PROCEEDING THAT PURPORTEDLY CASTS A CLOUD ON THEIR TITLE IS IN FACT INVALID OR INOPERATIVE DESPITE ITS *PRIMA FACIE* APPEARANCE OF VALIDITY OR LEGAL EFFICACY.— We have perused the records of the case once again and we found the recommendation of the Court of Appeals well-taken. IVQ still failed to convince us to rule in its favor. *Secuya v. De Selma* reiterates that: In an action to quiet title, the plaintiffs or complainants must demonstrate a legal or an equitable title to, or an interest in, the subject real property. Likewise, they must show that the deed, claim, encumbrance or proceeding that purportedly casts a cloud on their title is in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. This point is clear from Article 476 of the Civil Code, which reads: "Whenever there is cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet title." "An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein."

2. REMEDIAL LAW; EVIDENCE; BEST EVIDENCE RULE; THE COURT SHALL NOT RECEIVE ANY EVIDENCE THAT IS MERELY SUBSTITUTIONARY IN ITS

NATURE, SUCH AS PHOTOCOPIES, AS LONG AS THE ORIGINAL EVIDENCE CAN BE HAD; ABSENT A CLEAR SHOWING THAT THE ORIGINAL WRITING HAS BEEN LOST, DESTROYED OR CANNOT BE PRODUCED IN COURT, THE PHOTOCOPY MUST BE DISREGARDED, BEING UNWORTHY OF ANY PROBATIVE VALUE AND BEING AN INADMISSIBLE PIECE OF EVIDENCE.— We find that the Court of Appeals cannot be faulted for not giving weight and probative value to the submitted documents that were mere copies. Given the significance and consequence of the original copies of the documents in the outcome of this case, the same should have been presented immediately to the Court or to the Court of Appeals. The fact that the originals were not so submitted is counterintuitive, dubious and even speaks of negligence on the part of IVQ. The Court reiterated in *Philippine Banking Corporation v. Court of Appeals* that: The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, the photocopy must be disregarded, being unworthy of any probative value and being an inadmissible piece of evidence. Moreover, we stressed in *Heirs of Prodon v. Heirs of Alvarez* that: x x x. **The rule further acts as an insurance against fraud. Verily, if a party is in the possession of the best evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes that its production would expose and defeat**. x x x. In this case, IVQ offered no valid reason for the non-production of the original copies of most of the documents it submitted before the Court of Appeals.

3. CIVIL LAW; LAND REGISTRATION; CERTIFICATE OF TITLE; THE CORRECTNESS OR INCORRECTNESS OF THE ENTRIES IN A PARTY'S CERTIFICATE OF TITLE COVERING A PARTICULAR PROPERTY DOES NOT DIRECTLY TRANSLATE TO THE VALIDITY OR INVALIDITY OF SAID PARTY'S OWNERSHIP OR TITLE TO THE PROPERTY; CLARIFIED.— As to the letter dated October 20, 2010 from LRA Director Porfirio R. Encisa, Jr. that explains that the FLS-2554-D in IVQ's TCT No. 253434 was a mere typographical error, the same pertains to an entry in IVQ's TCT No. 253434 and does little to bolster IVQ's claim of ownership over the subject property. The correctness or

incorrectness of the entries in a party's certificate of title covering a particular property does not directly translate to the validity or invalidity of said party's ownership or title to the property. As the Court clarified in *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*: [O]wnership is not the same as a certificate of title. Registering a piece of land under the Torrens System does not create or vest title, because registration is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner.

APPEARANCES OF COUNSEL

Daniel Y. Laogan Law Office for petitioner.
Egmedio Castillon, Jr. for respondent.

R E S O L U T I O N

LEONARDO-DE CASTRO, *C.J.*:

This case returns once more to this Court after we ordered its remand to the Court of Appeals in view of its singular and complicated factual milieu. In our Resolution[1] dated January 18, 2017, we directed the appellate court to conduct further proceedings on the case and to receive additional evidence from the parties, including but not limited to the evidence specifically required by the Court. Thereafter, the Court of Appeals was ordered to submit a report on its findings and recommended conclusions. As the appellate court had since submitted its Report and Recommendation[2] to this Court, the case is now up for resolution.

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[1] *Rollo,* pp. 542-559.

[2] *Id*. at 566-574; penned by Associate Justice Stephen C. Cruz with Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Nina G. Antonio-Valenzuela concurring.

The Petition for Cancellation and Quieting of Title

To recall the antecedents of the case, we quote the factual narration laid out in our Resolution dated January 18, 2017, thus:

> On June 10, 2004, Barbosa filed a Petition for Cancellation and Quieting of Titles against Jorge Vargas III, Benito Montinola, [IVQ Land Holdings, Inc. (IVQ)], and the Register of Deeds of Quezon City, which case was docketed as Civil Case No. Q04-52842 in the RTC of Quezon City, Branch 222.
>
> Barbosa averred that on October 4, 1978, he bought from Therese Vargas a parcel of land identified as Lot 644-C-5 located on Visayas Avenue, Culiat, Quezon City (subject property). Thereafter, Therese Vargas surrendered to Barbosa the owner's duplicate copy of her title, Transfer Certificate of Title (TCT) No. 159487. In the Deed of Absolute Sale in favor of Barbosa and in the copy of Therese Vargas's TCT No. 159487, the subject property was described as:
>
> > A parcel of land (Lot 644-C-5 of the subdivision plan, LRC, Psd-14038, being a portion of Lot 644-C, Fls-2544-D, LRC, Record No. 5975); situated in the District of Culiat, Quezon City, Island of Luzon. x x x containing an area of THREE THOUSAND FOUR HUNDRED FIFTY-TWO (3,452) square meters, more or less.
>
> Barbosa said that he took possession of the subject property and paid real estate taxes thereon in the name of Therese Vargas. Sometime in 2003, Barbosa learned that Therese Vargas's name was cancelled and replaced with that of IVQ in the tax declaration of the subject property.
>
> Upon investigation, Barbosa found out that the subject property was previously registered in the name of Kawilihan Corporation under TCT No. 71507. Therese Vargas acquired the subject property from Kawilihan Corporation and the date of entry of her TCT No. 159487 was November 6, 1970. On the other hand, IVQ supposedly bought the subject property from Jorge Vargas III who, in turn, acquired it also from Kawilihan Corporation. The date of entry of Jose Vargas III's TCT No. 223019 was October 14, 1976. This title was later reconstituted and re-numbered as TCT No. RT-76391. The title of IVQ, TCT No. 253434, was issued on August 6, 2003.

Barbosa argued that even without considering the authenticity of Jorge Vargas III's title, Therese Vargas's title bore an earlier date. Barbosa, thus, prayed for the trial court to issue an order directing the Office of the Register of Deeds of Quezon City to cancel Jorge Vargas III's TCT No. 223019 and IVQ's TCT No. 253434 and adjudicating ownership of the subject property to him.

In their Answer to the above petition, Jose Vargas III, Benito Montinola, and IVQ (respondents in the court *a quo)* countered that the alleged title from where Barbosa's title was allegedly derived from was the one that was fraudulently acquired and that Barbosa was allegedly part of a syndicate that falsified titles for purposes of "land grabbing." They argued that it was questionable that an alleged lot owner would wait for 30 years before filing an action to quiet title. They prayed for the dismissal of the petition and, by way of counterclaim, sought the award of moral and exemplary damages, attorney's fees and costs of suit.

The Register of Deeds of Quezon City neither filed an answer to Barbosa's petition nor participated in the trial of the case.[3] (Citations omitted.)

The Proceedings in the RTC

The trial court proceedings were likewise summarized in our previous resolution in this wise:

During trial, Barbosa testified, *inter alia,* that he is the owner of the subject property that he bought from Therese Vargas. The property was at that time registered in her name under TCT No. 159487. Barbosa took possession of the subject property seven days after he bought the same and he employed a caretaker to live therein. Before Therese Vargas, the owner of the property was Kawilihan Corporation, which company was owned by Jorge Vargas. Barbosa stated that the subject property remained registered in the name of Therese Vargas as he entrusted her title to another person for custody but the said person went to Canada. Barbosa paid real estate taxes on the subject property in the name of Kawilihan Corporation from 1978 until 2002. From 2003 to 2006, he paid real estate taxes thereon in the name of Therese Vargas.

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[3] *Id*. at 543-544.

Barbosa added that in the year 2000, Santiago Sio Soy Une, allegedly the president of Lisan Realty and Development Corporation (Lisan Realty), presented to Barbosa's caretaker a Deed of Sale with Assumption of Mortgage, which was allegedly executed by Jorge Vargas III and Lisan Realty involving the subject property. Barbosa then went on to compile documents on the transactions relating to the subject property.

Barbosa testified that in the Deed of Sale with Assumption of Mortgage of Jorge Vargas III and Santiago Sio Soy Une, the Friar Land Survey (FLS) number was denominated as FLS-2554-D, while in the title of Therese Vargas it was FLS-2544-D. Barbosa obtained a certification from the Lands Management Bureau that FLS-2554-D was not listed in their electronic data processing (EDP) listing, as well as a certification from the DENR that FLS-2554-D had no records in the Land Survey Records Section of said office. On the other hand, he obtained a certification from the Lands Management Bureau that Lot 644 subdivided under FLS-2544-D was listed in their records. Barbosa also learned that IVQ was registered with the Securities and Exchange Commission only on June 5, 1998. Moreover, on January 7, 2004, IVQ filed Civil Case No. Q-1 7499 (04); which is a petition for the cancellation of an adverse claim filed by Santiago Sio Soy Une *(Exhibit "RR")*. In a portion of the transcript of stenographic notes (TSN) in said case, it was stated that IVQ bought the property from Therese Vargas, not from Jorge Vargas III.

Barbosa furthermore secured a certification from the EDP Division of the Office of the City Assessor in Quezon City that there were no records of real property assessments in the name of Jorge Vargas III as of August 15, 2006. Moreover, Barbosa stated that Atty. Jesus C. Apelado, Jr., the person who notarized the March 3, 1986 Deed of Absolute Sale between Jorge Vargas III and IVQ, was not authorized to do so as Atty. Apelado was only admitted as a member of the Philippine Bar in 1987. Also, the notarial register entries, *i.e.*, the document number, page number, book number and series number, of the Deed of Absolute Sale in favor of IVQ were exactly the same as those in the special power of attorney (SPA) executed by Jorge Vargas III in favor of Benito Montinola, who signed the Deed of Absolute Sale on behalf of Jorge Vargas III. The Deed of Absolute Sale and the SPA were notarized by different lawyers but on the same date.

On the part of the respondents in the court *a quo*, they presented a lone witness, Atty. Erlinda B. Espejo. Her testimony was offered to prove that she was the legal consultant of IVQ; that IVQ's TCT No. 253434 was acquired from Jorge Vargas III through TCT No. RT-76391; that Jorge Vargas III's title was mortgaged at Philippine National Bank (PNB), Bacolod; that Benito Montinola, the attorney-in-fact of Jorge Vargas III, sold the subject property to Lisan Realty who in turn assigned its rights to IVQ and; that IVQ redeemed the property from PNB. Barbosa's counsel offered to stipulate on the offer so that the witness' testimony could already be dispensed with.

As to the supposed sale to Lisan Realty and Lisan Realty's assignment of rights to IVQ, the counsel for Barbosa agreed to stipulate on the same if the transactions were annotated in Jorge Vargas III's title. The counsel for IVQ said that they were so annotated. Upon inquiry of the trial court judge, the counsel for IVQ clarified that the transfers or assignment of rights were done at the time that the subject property was mortgaged with PNB. The property was then redeemed by IVQ on behalf of Jorge Vargas III.[4] (Citations omitted).

The Judgment of the RTC

The trial court thereafter rendered a Decision in favor of Barbosa, *viz*.:

On June 15, 2007, the RTC granted Barbosa's petition and ordered the cancellation of IVQ's TCT No. 253434. The trial court noted that while the original copy of the Deed of Absolute Sale in favor of Barbosa was not presented during trial, Barbosa presented secondary evidence by submitting to the court a photocopy of said deed and the deed of sale in favor of his predecessor-in-interest Therese Vargas, as well as his testimony. The RTC ruled that Barbosa was able to establish the existence and due execution of the deeds of sale in his favor and that of Therese Vargas.

The Certification dated February 12, 2004 from the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC, Manila stated that the page on which the Deed of Sale dated October 4, 1978 in favor of Barbosa might have been probably entered was torn. This, however, did not discount the possibility that said deed was actually notarized and recorded in the missing notarial records page. Moreover,

[4] *Id*. at 544-545.

the RTC found that Barbosa adduced evidence that proved the payment of Therese Vargas to Jorge Vargas, as well as the payment of Barbosa to Therese Vargas.

The RTC further observed that Therese Vargas's TCT No. 159487 and Jorge Vargas III's TCT No. 223019 bear more or less identical technical descriptions of Lot 644-C-5, except for their friar survey plan numbers. However, the Lands Management Bureau and Land Survey Records Section of the DENR, NCR issued certifications attesting that their respective offices had no record of FLS-2554-D, the land survey number in the certificates of title held by Jorge Vargas III and IVQ. On the other hand, Barbosa presented a certified true copy of the subdivision survey plan FLS-2544-D from the Lands Management Bureau, thereby bolstering his claim that the title of Therese Vargas was an authentic transfer of the title of Kawilihan Corporation.

Therese Vargas's TCT No. 159487 was also issued earlier in time than Jorge Vargas III's TCT No. 223019. Not only was the original of Therese Vargas's TCT No. 159487 presented in court, but the same was also proven to have existed according to the Certification from the LRA dated October 6, 2003 that Judicial Form No. 109-D with Serial No. 1793128 — pertaining to TCT No. 159487 — was issued by an authorized officer of the Register of Deeds of Quezon City.

In contrast, the RTC noted that IVQ was not able to prove its claim of ownership over the subject property. The deed of sale in favor of IVQ, which was supposedly executed in 1986, was inscribed only in 2003 on Jorge Vargas III's TCT No. RT-76391 that was reconstituted back in 1993. Instead of substantiating their allegations, respondents in the court *a quo* opted to offer stipulations, such as on the matter of Lisan Realty's assignment of its rights of ownership over the subject property in favor of IVQ. However, the said assignment was not reflected in the title of Jorge Vargas III. The RTC likewise found it perplexing that when IVQ filed a petition for cancellation of encumbrance in Jorge Vargas III's title, docketed as LRC No. Q-17499 (04), it alleged therein that it acquired the subject property from Therese Vargas, not Jorge Vargas III.

The trial court added that while there is no record of tax declarations and payment of real estate taxes in the name of Jorge Vargas III, Therese Vargas declared the subject property for taxation purposes in her name and, thereafter, Barbosa paid real estate taxes thereon

in her name. On the other hand, the only tax declaration that IVQ presented was for the year 2006. The RTC also opined that while Barbosa was not able to sufficiently establish his possession of the subject property as he failed to put on the witness stand the caretaker he had authorized to occupy the property, IVQ also did not gain control and possession of the subject property because the same continued to be in the possession of squatters.

To impugn the above decision of the trial court, IVQ, alone, filed a **Motion for Reconsideration/New Trial/Reopening of Trial** under the representation of a new counsel. In its Motion for Reconsideration, IVQ argued that the RTC erred in concluding that Barbosa's title is superior to its title. IVQ alleged that Barbosa submitted forged and spurious evidence before the trial court. On the other hand, in its Motion for New Trial, IVQ alleged that it was defrauded by its former counsel, Atty. Leovigildo Mijares, which fraud prevented it from fully presenting its case in court. IVQ also averred that it found newly-discovered evidence, which it could not have discovered and produced during trial.

In an **Order** dated November 28, 2007; the trial court denied IVQ's**Motion for Reconsideration/New Trial/Reopening of Trial** for lack of merit.[5] (Citations omitted.)

The Proceedings before the Court of Appeals

IVQ filed an appeal to the Court of Appeals, which was docketed as CA-G.R. CV No. 90609. IVQ made the following factual averments in its Appellant's Brief:

On 12 March 1976, Kawilihan Corporation, represented by its President and Chairman of the Board Jorge B. Vargas, executed a Deed of Absolute Sale x x x, whereby he sold the subject property to appellant Vargas, III.

On 14 October 1976, TCT No. 71507 was cancelled and in lieu thereof TCT No. 223019 x x x was issued in the name of appellant Vargas, III who on 23 December 1976 executed a Special Power of Attorney x x x in favor of appellant Benito C. Montinola, Jr. with power among other things to mortgage the subject property for and in behalf of appellant Vargas, III.

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[5] *Id*. at 546-547.

On 25 December 1976, appellant Vargas, III mortgaged the subject property to the Philippine National Bank (PNB), Victorias Branch, Negros Occidental as security for a loan in the principal amount of ₱506,000.00.

On 04 October 1978, Therese Vargas executed a Deed of Absolute Sale x x x wherein she sold the subject property to appellee Barbosa who however did not register the said sale with the Registry of Deeds of Quezon City. It appears that Therese Vargas was able to secure TCT No. 159487 x x x in her name on 06 November 1970 covering the subject property.

Meanwhile, appellant Vargas, III executed another Special Power of Attorney x x x in favor of appellant Montinola, Jr. with power among other things to sell the subject property for and in behalf of appellant Vargas, III. Thus, on 03 March 1986, during the effectivity of the mortgage contract with PNB, appellant Montinola sold the subject property to appellant IVQ for and in consideration of the amount of ₱450,000.00.[6]

Thereafter, the following incidents allegedly took place:

When appellant Vargas, III failed to pay his loan, PNB foreclosed the mortgage and in the public auction that followed, the subject property was sold to PNB.

A Certificate of Sale was issued in favor of PNB but the latter did not cause the registration of the certificate of sale right away.

Sometime in 1991, appellant Montinola, Jr. caused the filing of a Petition for Reconstitution of TCT No. 223019 which was granted in 1993. Consequently, TCT No. RT-76391 was issued, in the name of appellant Vargas, III, in lieu of TCT No. 223019. On 13 July 1993, the Certificate of Sale in favor of PNB was inscribed on appellant Vargas, III's new title.

On 17 February 1994, appellant Vargas, III executed a Deed of Sale with Assumption of Mortgage x x x wherein he sold to Lisan Realty and Development Corporation (Lisan Realty) the subject property with the latter assuming the loan balance with PNB.

On 23 June 1994, appellant IVQ, for and in behalf of defendant Vargas, III, redeemed the subject property from PNB and on 24 June

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[6] CA *rollo,* pp. 40-41.

1994, the Certificate of Redemption was annotated at the dorsal portion of TCT No. RT-76390.

On 21. August 2000, Lisan Realty caused the annotation of an Affidavit of Adverse Claim x x x on TCT No. RT-76390.

Thereafter, appellant IVQ filed a Petition for Cancellation of Encumbrance x x x with the Regional Trial Court of Quezon City, Branch 220, docketed as LRC Case No. Q-17499 (04).

On 06 August 2003, the Register of Deeds of Quezon City cancelled TCT No. RT-76390 and in lieu thereof TCT No. 253434 was issued in the name of appellant IVQ.

On 11 February 2004, the Regional Trial Court of Quezon City, Branch 220 rendered a Decision x x x granting appellant IVQ's Petition for Cancellation of Encumbrance and ordering the cancellation of the annotation of the adverse claim on TCT No. 253434.

In August 2004, appellant IVQ instituted [a] Complaint x x x for unlawful detainer with the Metropolitan Trial Court of Quezon City, Branch 38 against several persons who were occupying the subject property without any right whatsoever. The case was docketed as Civil Case No. 38-33264.

On 26 October 2004, the Metropolitan Trial Court of Quezon City, Branch 38 rendered a Decision x x x in favor of appellant IVQ ordering the defendants therein to vacate the subject property.[7]

In a **Decision dated December 9, 2009,** the Court of Appeals affirmed the judgment of the trial court as it found that Barbosa was able to prove his ownership of the subject property. IVQ sought reconsideration of the appellate court's ruling, but the same was denied in the Court of Appeals **Resolution dated July 30, 2010.**

The Proceedings before the Court

IVQ then sought recourse from the Court.

IVQ instituted before this Court the instant petition for review on *certiorari* on August 20, 2010, which prayed for the reversal of the above rulings of the Court of Appeals. In a **Resolution dated September 29, 2010,** the Court initially denied IVQ's petition for

[7] *Id*. at 41-43.

its failure to show that the Court of Appeals committed any reversible error in its assailed rulings.

IVQ filed a **Motion for Reconsideration** on the denial of its petition. To prove that its title to the subject property is genuine, IVQ averred that the Deed of Absolute Sale in favor of Jorge Vargas III was notarized by Atty. Jejomar C. Binay, then a notary public for Mandaluyong. IVQ attached to its motion for reconsideration, among others, a photocopy of a Certification dated October 8, 2010 from the Office of the Clerk of Court of the RTC of Pasig City that "ATTY. JEJOMAR C. BINAY was appointed Notary Public for and in the Province of Rizal for the year 1976" and that he "submitted his notarial reports for the period January, 1976 up to December, 1976." IVQ also attached a photocopy of the Deed of Absolute Sale in favor of Jorge Vargas III obtained from the records of the National Archives on October 14, 2010.

To prove that Barbosa's claim of ownership is spurious, IVQ attached to its motion for reconsideration the following documents:

(1) a photocopy of a Certification dated October 27, 2010 from the Office of the Bar Confidant of the Supreme Court that Espiridion J. Dela Cruz, the notary public who supposedly notarized the Deed of Absolute Sale in favor of Therese Vargas, is not a member of the Philippine Bar;

(2) a photocopy of the Certification dated October 19, 2010 from the National Archives of the Philippines that a copy of the Deed of Absolute Sale in favor of Therese Vargas is not extant in the files of said office;

(3) a Certification dated October 12, 2010 from the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC of Manila, stating that the notarial entries of Atty. Santiago R. Reyes in the Deed of Absolute Sale between Therese Vargas and Barbosa — Doc. No. 1947, Page 92, Book No. XIV, Series of 1978 —actually pertained to a different deed of sale;

(4) photocopies of pages 90, 91 and 92, Book XIV, Series of 1978 of Atty. Santiago R. Reyes's notarial records, which were reproduced from the National Archives on October 14, 2010, showing that the Deed of Absolute Sale between Therese Vargas and Barbosa was not found therein;

(5) a photocopy of a Certification dated October 14, 2010 of the City Treasurer's Office of the City of Manila, stating that Residence Certificate No. A-423263 —the residence certificate number of Therese Vargas in the Deed of Absolute Sale in favor of Barbosa — was not among those allotted to the City of Manila; and

(6) a letter dated October 20, 2010 from Director Porfirio R. Encisa, Jr. of the LRA Department on Registration, explaining that the land survey number of FLS-2554-D in IVQ's TCT No. 253434 was a mere typographical error and it should have been FLS-2544-D.

In a Resolution dated December 15, 2010, the Court denied IVQ's Motion for Reconsideration.

Undaunted, IVQ filed a Second Motion for Reconsideration, arguing that it was able to submit new pieces of documentary evidence that surfaced for the first time when its Motion for Reconsideration was submitted by its new counsel. IVQ entreated the Court to consider the same in the higher interest of justice.

Barbosa opposed the above motion, countering that the same is a prohibited pleading. Barbosa maintained that it was impossible for IVQ to acquire ownership over the subject property as the latter was only incorporated on June 5, 1998. Thus, IVQ could not have bought the property from Jorge Vargas III on March 3, 1986 or subsequently redeemed the property in 1994.

In a Resolution dated June 6, 2011, the Court reinstated IVQ's petition and required Barbosa to comment thereon.

Barbosa moved for a reconsideration of the said resolution, citing IVQ's lack of legal personality when it supposedly purchased the subject property and IVQ's inconsistent statements as to how it acquired the same. The Court treated the above motion of Barbosa as his comment to IVQ's petition and required IVQ to file a reply thereto.

In its Reply, IVQ primarily argued that Barbosa did not bother to refute the allegations and the evidence on the spuriousness of his title and instead sought to divert the issue by attacking IVQ's corporate existence.

The Court, thereafter, gave due course to the petition and required the parties to submit their respective memoranda.

In its memorandum, IVQ avers that while the evidence supporting its case surfaced for the first time after its petition was filed with this Court, peculiar circumstances involving the actuations of IVQ's former counsel and Barbosa's introduction of spurious documents warrant the suspension of procedural rules in the interest of justice. IVQ insists that Barbosa was not able to prove his claim by preponderance of evidence.

Upon the other hand, Barbosa contends that IVQ could not legally claim ownership of the subject property as this claim is anchored on a Deed of Absolute Sale executed by Jorge Vargas III on March 3, 1986 while IVQ was incorporated only on June 5, 1998. Barbosa also points out that the Deed of Absolute Sale in favor of IVQ was signed only by Jorge Vargas III's representative, Benito Montinola. There is no corresponding signature on the part of the vendee. Barbosa adopts entirely the findings of the RTC and the Court of Appeals that the sale in favor of Therese Vargas is the one to be legally sustained.[8] (Emphases supplied.)

In our **Resolution dated January 18, 2017**, we did not rule on the merits of the case and instead directed the Court of Appeals to receive evidence relative to the documents belatedly submitted by IVQ, as well as any other additional evidence that the parties may choose to submit on their behalf. This we found necessary in light of the ostensible materiality and relevancy of the documents submitted by IVQ and in order to verify the authenticity and veracity of the parties' documentary evidence.

We further instructed the parties to submit to the Court of Appeals: (1) a certified true copy of TCT No. 71507 that is registered in the name of Kawilihan Corporation, if possible; (2) evidence that would establish the character of the parties' possession of the subject property; and (3) information regarding the results of the investigation of the Task Force *Titulong Malinis* of the LRA as to the authenticity of TCT No. 159487 registered in the name of Therese Vargas and TCT No. 223019 registered in the name of Jorge Vargas III.

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[8] *Rollo,* pp. 549-552.

The Report and Recommendation of the Court of Appeals

Before the Court of Appeals, the parties agreed to submit additional documentary evidence through the filing of memoranda and additional testimonial evidence in the form of judicial affidavits. They likewise manifested that they were open to the possibility of reaching an amicable settlement.

The Court of Appeals then submitted to the Court its Report and Recommendation, the relevant portions thereof state:

> On October 02, 2017, the parties' efforts to enter into an amicable settlement proved to be futile. The parties manifested that they could not agree on the terms of settlement that each proposed. Accordingly, this Court required IVQ to present its witness in support of its position. After Ian Pama, IVQ's lone witness, identified his judicial-affidavit and the documentary exhibits previously marked, counsel for Barbosa conducted his cross-examination. Thereafter, IVQ rested its case. No rebuttal evidence was proffered by Barbosa. On October 24, 2017, IVQ filed its Formal Offer of Exhibits.
>
> The parties failed to present a certified true copy of TCT No. 71507 registered in the name of Kawilihan Corporation as required by the Supreme Court.
>
> Meanwhile, [IVQ] offered in evidence the result of the investigation of the Task Force *Titulong Malinis* of the LRA regarding the authenticity of TCT No. 159487 registered in the name of Therese Vargas and TCT No. 223019 registered in the name of Jorge Vargas III. In the certified true copy of the Report dated September 01, 2016, the Investigation Team concluded that:
>
> x x x x x x x x x
>
> Further, it is quite regrettable that the TFTM (Task Force *Titulong Malinis)* could not determine with certainty which of the two (2) titles is spurious [and] which is not in view of the fact that the traceback titles, the supporting documents, as well as the registry's record books are no longer available in the Registry of Deeds of Quezon City. x x x.
>
> WHEREFORE, premises considered, it is respectfully recommended that the investigation of this case be terminated

and that the same be deemed closed. Let a copy of this report be furnished the parties mentioned herein for their information.

x x x x x x x x x

RECOMMENDATION

After a careful examination of the records of the case and the additional evidence adduced by [IVQ], this Court finds that the Deed of Absolute Sale between Therese Vargas and [Barbosa] is indeed tainted with irregularity as to the manner of its notarization. Again, based on the certification, Atty. Santiago R. Reyes's Notarial Reports for the month of October 1978 shows that Doc. No. 1947, Book No. XIV, thereof refers to a document denominated as "Deed of Absolute Sale" executed by and between Francisco T. Lim and Teresita C. Narioca, Vendors and Santiago T. Co, Vendee, and not between Reuben Barbosa and Therese Vargas. Unfortunately, [Barbosa] failed to refute the same during the hearing. Thus, the same is deemed a private document and needs to be properly identified and its due execution proven. x x x

x x x x x x x x x

Notwithstanding, this Court still recommends for the dismissal of the petition pending before the Supreme Court.

Although the Deed of Absolute Sale was irregularly notarized, the same was properly identified and its due execution proven during the trial in the court *a quo*. During [Barbosa's] direct examination, he testified that he entered into a contract of sale with Therese Vargas as evidenced by a Deed of Absolute Sale, to wit:

x x x x x x x x x

Atty. Castillon, Jr.:

> Now, Mr. Witness, you said that you bought this property from Therese Vargas, do you have proof to show of the transaction you entered into with Therese Vargas when you acquired or bought this property?
>
> A: Yes, sir, I have also here the original of the Deed of Absolute Sale between Therese Velez vda. De Vargas and I.

Atty. Castillon, Jr.:

> Witness hands to this representation, Your Honor, a copy (of) the Deed of Sale/Absolute Sale, this marked as our Exhibit "A". I believe, Your Honor, Atty. Mijares may again make some observations that this may not be a faithful reproduction because of some ball pen increase but we [will] again have it again xerox copy so we can present the faithful xerox copy.

Atty. Mijares:

> Except for the submarkings, Your Honor, admitted as faithful reproduction.

x x x x x x x x x

Counsel for [IVQ] even admitted to the genuineness of the document.

The trial court, therefore, was correct in admitting, as [Barbosa's] evidence, the Deed of Absolute Sale between Therese Vargas and Reuben Barbosa and in giving the same probative value. To reiterate, the same was properly identified and was duly authenticated during the trial of the case.

Anent the other certifications presented and formally offered by [IVQ] to show that the Deed of Absolute Sale between Jorge Vargas and Therese Vargas was improperly notarized, We recommend that the same be given of little, if not no value.

At the outset, this Court notes that these certifications are merely photocopies. Although, they were not objected to by [Barbosa] on such ground and this Court had accordingly admitted the same, this Court is not obliged to give them weight and probative value.

The transfer of the subject land between Jorge Vargas and Therese Vargas is already *fait accompli* (meaning, an accomplished or consummated act. The sale was consummated and a transfer certificate of title (TCT No. 159487) had already been issued in favor of Therese Vargas. Further, [Barbosa] had even secured a certification from the LRA, which was already presented and offered in evidence in the court *a quo,* confirming the validity of the issuance of Therese Vargas's title.

As things are, the Report of Task Force *Titulong Malinis* of the LRA marked as Exhibit "V" did not conclusively make a determination

regarding the authenticity of TCT No. 159487 registered in the name of Therese Vargas on one hand, and TCT No. 223019 registered in the name of Jorge Vargas III, on the other. Simply put, it failed to determine whether the titles of Therese Vargas and Jose Vargas III are genuine and authentic. It is, therefore, of little significance to the resolution of the case.

Finally, the other documentary evidence presented and offered by (IVQ] are insufficient to warrant a decision in its favor, either because these had already been presented before the court *a quo* or, even if they are newly offered in evidence, they are inadequate and could not overturn the Supreme Court's dismissal of [IVQ's] petition.

IN VIEW THEREOF, it is hereby recommended that [IVQ's] Second Motion for Reconsideration be **DENIED** for lack of merit[.][9]

The Ruling of the Court

We have perused the records of the case once again and we found the recommendation of the Court of Appeals well-taken. IVQ still failed to convince us to rule in its favor.

Secuya v. De Selma[10] reiterates that:

In an action to quiet title, the plaintiffs or complainants must demonstrate a legal or an equitable title to, or an interest in, the subject real property. Likewise, they must show that the deed, claim, encumbrance or proceeding that purportedly casts a cloud on their title is in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. This point is clear from Article 476 of the Civil Code, which reads:

> "Whenever there is cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet title."
>
> "An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein."

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[9] *Id*. at 568-574.

[10] 383 Phil. 126, 134 (2000).

We emphasize, to the point of being repetitive, that in this case, the Court of Appeals sustained the judgment of the RTC that granted Barbosa's petition for cancellation and quieting of title. The lower courts found that Barbosa was able to substantiate his title to the subject property, while IVQ failed to establish its claim of ownership thereto.

We initially resolved to dismiss the petition of IVQ that assailed the rulings of the lower courts in our Resolution dated September 29, 2010, but IVQ filed a Motion for Reconsideration whereby it attached **photocopies** of specific documents that ostensibly negated Barbosa's title to the subject property. On December 15, 2010, we denied IVQ's Motion for Reconsideration. IVQ then filed a Second Motion for Reconsideration, entreating us to examine the case again. On equitable grounds, we reinstated IVQ's petition.

Even if to the mind of the Court the documents belatedly submitted by IVQ were not newly-discovered evidence, we remanded the case to the Court of Appeals to conduct further proceedings on the case. Not only was this done to give IVQ the opportunity to formally offer in evidence the documents it brought to our attention and for Barbosa to refute them, but also to give the parties yet another chance to submit additional evidence in the interest of fairness and the proper disposition of the issues of this case.

Inexplicably, IVQ merely rehashed its previous arguments and still formally offered in evidence to the Court of Appeals mere **photocopies** of almost all of the documents it attached to its motion for reconsideration. Excepted from these are two documents, namely: (1) the Certification dated October 12, 2010 from the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC of Manila, stating that the notarial entries of Atty. Santiago R. Reyes in the Deed of Absolute Sale between Therese Vargas and Barbosa — Doc. No. 1947, Page 92, Book No. XIV, Series of 1978 — pertained to a different deed of sale; and (2) the letter dated October 20, 2010 from LRA Director Porfirio R. Encisa, Jr., explaining that the FLS-2554-D in IVQ's TCT

No. 253434 was a mere typographical error and it should have been FLS-2544-D.

Additionally, IVQ attempted to introduce new documentary evidence relative to the character of its possession of the subject property, but the same likewise consisted of photocopied documents.

We find that the Court of Appeals cannot be faulted for not giving weight and probative value to the submitted documents that were mere copies. Given the significance and consequence of the original copies of the documents in the outcome of this case, the same should have been presented immediately to the Court or to the Court of Appeals. The fact that the originals were not so submitted is counter intuitive, dubious and even speaks of negligence on the part of IVQ.

The Court reiterated in *Philippine Banking Corporation v. Court of Appeals*[11] that:

> The Best Evidence Rule provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had. Absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, the photocopy must be disregarded, being unworthy of any probative value and being an inadmissible piece of evidence. (Citations omitted.)

Moreover, we stressed in *Heirs of Prodon v. Heirs of Alvarez*[12] that:

> The primary purpose of the Best Evidence Rule is to ensure that the exact contents of a writing are brought before the court, considering that *(a)* the precision in presenting to the court the exact words of the writing is of more than average importance, particularly as respects operative or dispositive instruments, such as deeds, wills and contracts, because a slight variation in words may mean a great difference in rights; *(b)* there is a substantial hazard of inaccuracy in the human

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[11] 464 Phil. 614, 643 (2004).

[12] 717 Phil. 54, 66-67 (2013).

process of making a copy by handwriting or typewriting; and *(c)* as respects oral testimony purporting to give from memory the terms of a writing, there is a special risk of error, greater than in the case of attempts at describing other situations generally. **The rule further acts as an insurance against fraud. Verily, if a party is in the possession of the best evidence and withholds it, and seeks to substitute inferior evidence in its place, the presumption naturally arises that the better evidence is withheld for fraudulent purposes that its production would expose and defeat**. Lastly, the rule protects against misleading inferences resulting from the intentional or unintentional introduction of selected portions of a larger set of writings. (Emphasis supplied; citations omitted.)

In this case, IVQ offered no valid reason for the non-production of the original copies of most of the documents it submitted before the Court of Appeals. Worse, in its Formal Offer of Exhibits[13] in said court, IVQ even claimed that **all** the original and certified true copies of the exhibits/documents enumerated therein were attached to and were appended to form part of the records of the case through the memorandum that IVQ submitted to the Court of Appeals. This is simply untrue. We have carefully gone through the documents annexed to said memorandum and found that almost all of them were mere photocopies. Given the foregoing circumstances, the Court of Appeals was justifiably cautious in doubting the credibility of the documents submitted by IVQ. That the same may have been tampered with or somehow altered in the process of being copied cannot be discounted.

As to the documents the certified true copies of which were offered in evidence before the Court of Appeals, the same still do not warrant the reversal of the RTC and the Court of Appeals rulings.

With respect to the certified true copy of the Certification dated October 12, 2010 from the Office of the Clerk of Court and Ex-Officio Sheriff of the RTC of Manila, which stated that the notarial entries of Atty. Santiago R. Reyes in the Deed of Absolute Sale between Therese Vargas and Barbosa —Doc. No. 1947, Page 92, Book No. XIV, Series of 1978— pertained

[13] CA *rollo,* Vol. II, p. 756.

to a different deed of sale, the same pertained to a possible defect in the notarization of the Deed of Absolute Sale between Therese Vargas and Barbosa. However, as pointed out by the Court of Appeals, the same was insufficient to prove IVQ's allegation that the said deed was fake and invalid.

As noted by the Court of Appeals, Barbosa testified on the genuineness and due execution of the Deed of Absolute Sale in his favor and he presented the original of said deed. The TSN of the case also bear out the fact that the then counsel of IVQ, Atty. Leovigildo Mijares, was shown the original copy of the deed and a photocopy thereof marked as Barbosa's Exhibit "A" and he admitted that the latter was a faithful reproduction of the original deed. IVQ was then bound by its counsel's admission.[14]

As to the letter dated October 20, 2010 from LRA Director Porfirio R. Encisa, Jr. that explains that the FLS-2554-D in IVQ's TCT No. 253434 was a mere typographical error, the same pertains to an entry in IVQ's TCT No. 253434 and does little to bolster IVQ's claim of ownership over the subject property. The correctness or incorrectness of the entries in a party's certificate of title covering a particular property does not directly translate to the validity or invalidity of said party's ownership or title to the property.

As the Court clarified in *Heirs of Clemente Ermac v. Heirs of Vicente Ermac*:[15]

> [O]wnership is not the same as a certificate of title. Registering a piece of land under the Torrens System does not create or vest title, because registration is not a mode of acquiring ownership. A certificate of title is merely an evidence of ownership or title over the particular property described therein. Its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner. (Citations omitted).

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[14] Records, Vol. I, pp. 294-295.

[15] 451 Phil. 368, 377 (2003).

All told, despite the exceptional opportunity that was granted to it, IVQ again failed to adduce sufficient and creditworthy evidence that would convince us to reconsider our previous denial of its petition.

WHEREFORE, the Second Motion for Reconsideration of petitioner IVQ Landholdings, Inc. is hereby **DENIED.**

SO ORDERED.

Bersamin, del Castillo, and *Tijam, JJ.,* concur.

Jardeleza, J., on official leave.

FIRST DIVISION

[G.R. No. 193336. September 26, 2018]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **ELMER M. PACURIBOT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; JURISDICTION OVER AN ADMINISTRATIVE CASE IS NOT LOST BY THE FACT THAT RESPONDENT PUBLIC OFFICIAL HAD CEASED TO BE IN OFFICE DURING THE PENDENCY OF HIS CASE.— [T]he death of respondent during the pendency of the instant case has not rendered moot and academic the issue under consideration, which is whether or not there was grave abuse of discretion on the part of the Ombudsman when it ordered the immediate execution of its July 23, 2008 Decision in OMB-M-A-07-029-B, suspending respondent for nine months for Immorality or Disgraceful and Immoral Conduct even before finality of said decision. Even assuming that respondent died pending his reconsideration or appeal of the Ombudsman's July 23, 2008 Decision in OMB-

M-A-07-029-B, his death does not necessarily preclude the disposition of his reconsideration or appeal with finality. Jurisdiction over an administrative case is not lost by the fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. In *Hermosa v. Paraiso,* the Court proceeded to resolve respondent public official's administrative case notwithstanding that death has already separated him from the service to the end that respondent's heirs may not be deprived of any retirement gratuity and other accrued benefits that they may be entitled to receive as a result of respondent's death in office, as against a possible forfeiture thereof should his guilt have been duly established at the investigation.

2. ID.; ID.; RULES OF PROCEDURE OF THE OFFICE OF THE OMBUDSMAN; THE PENALTY IMPOSED BY THE OMBUDSMAN IN AN ADMINISTRATIVE CASE IS IMMEDIATELY EXECUTORY AND THE FILING OR PENDENCY OF AN APPEAL FROM SUCH DECISION SHALL NOT STAY ITS EXECUTION.— In an *En Banc* Resolution promulgated on October 5, 2010 in *Samaniego,* the Court upheld Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, and ruled that a decision of the Ombudsman in an administrative case is immediately executory and that an appeal shall not stop such decision from being executed as a matter of course. The Court expounded as follows: x x x SEC. 7. *Finality and execution of decision.* – x x x **An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course.** x x x The Ombudsman's decision imposing the penalty of suspension for one year is *immediately executory pending appeal.* It cannot be stayed by the mere filing of an appeal to the CA.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Jerry Ma. Pacuribot for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *C.J.*:

The Office of the Ombudsman filed this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Court of Appeals Decision[1] dated August 7, 2009 and Resolution[2] dated July 12, 2010 in CA-G.R. SP No. 02895-MIN which set aside the directive of the OMB for the immediate implementation, even before finality, of a decision it rendered in an administrative case against respondent Elmer M. Pacuribot penalizing him with nine (9) months suspension from office for Immorality or Disgraceful or Immoral Conduct.

The facts are not disputed.

Respondent, Municipal Treasurer of El Salvador, Province of Misamis Oriental, was administratively charged by his wife before the Ombudsman of Immorality and Conduct Unbecoming of Public Officer allegedly for fathering two children with another woman. The case against respondent was docketed as OMB-M-A-07-029-B.

After the proceedings, the Ombudsman rendered its Decision[3] dated July 23, 2008 against respondent, which was approved by then Acting Ombudsman Orlando C. Casimiro on November 27, 2008, disposing of the case as follows:

WHEREFORE, foregoing premises considered, this Office finds substantial evidence to hold ELMER PACURIBOT y MAGANA

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[1] *Rollo*, pp. 35-42; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Romulo V. Borja and Edgardo T. Lloren.

[2] *Id*. at 29-33.

[3] *Id*. at 61-69.

guilty of Immorality or Disgraceful and Immoral Conduct. In the absence of mitigating and aggravating circumstances, he is thus meted the penalty of NINE (9) MONTHS SUSPENSION pursuant to Sec. 52.A.15, Rule IV of CSC Resolution No. 991936, otherwise known as the Uniform Rules on Administrative Cases in the Civil Service, in relation to Sec. 54.b, Sec. 56.d, and Sec. 58.d, Rule IV thereof. On the other hand, the charge for Conduct Unbecoming of a Public Officer is hereby DISMISSED. Let a copy of this Decision be entered in respondent's 201 (Personal) File.

Section 7, Rule III (Procedure in Administrative Cases) of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17, provides:

x x x x x x x x x

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by an officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be ground for disciplinary action against said officer.

Moreover, Memorandum Circular No. 61, Series of 2006 dated 11 April 2006 of the Ombudsman reads:

x x x x x x x x x

The filing of a motion for reconsideration or a petition for review before the Office of the Ombudsman does not operate to stay the immediate implementation of the foregoing Ombudsman decisions, orders or resolutions.

Only a Temporary Restraining Order (TRO) or a Writ of Preliminary Injunction, duly issued by a court of competent

jurisdiction, stays the immediate implementation of the said Ombudsman decisions, orders or resolutions.

Accordingly, the Regional Director of the Bureau of Local Government Finance, Regional Office No. X is hereby directed to IMMEDIATELY implement the penalty imposed against ELMER PACURIBOT y MAGANA and promptly submit to this Office, within ten (10) days from receipt hereof, a Compliance Report, indicating the subject OMB case number.

Compliance is respectfully enjoined consistent with Sec. 3 (e) of R.A. No. 3019 (Anti-Graft and Corrupt Practices Act) and Sec. 15(3) of R.A. No. 6770 (Ombudsman Act of 1989).[4]

On April 21, 2009, respondent filed his Motion for Partial Reconsideration of the July 23, 2008 Decision of the Ombudsman seeking for the reversal of the judgment finding him administratively liable for Immorality or Disgraceful and Immoral Conduct and for the dismissal of the case against him. Respondent, in the same motion, asked that the directive of the Ombudsman for the immediate implementation of the said decision be recalled pending resolution of the said motion, or his appeal in case he files one.[5]

However, on April 23, 2009, in compliance to the directive of the Ombudsman, the Bureau of Local Government Finance, Region X, through Regional Director Carmelane G. Tugas, issued Regional Office Special Personnel Order No. 015-2009 ordering the suspension of respondent from his office for a period of nine months.[6]

On May 5, 2009, respondent filed before the Court of Appeals a Petition for *Certiorari* under Rule 65 of the Rules of Court, with a prayer for a temporary restraining order, assailing and seeking for the setting aside of the Ombudsman's directive for the immediate implementation of its July 23, 2008 Decision against respondent even before said decision attained finality.[7]

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[4] *Id*. at 66-68.

[5] *Id*. at 75-84.

[6] *Id*. at 74.

[7] *Id*. at 43-60.

In his Petition before the Court of Appeals, respondent underscored the Court's pronouncement in *Office of the Ombudsman v. Samaniego*[8] that the Ombudsman Act expressly gives the parties the right to appeal from an order, directive or decision of the Ombudsman in disciplinary cases where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month or a fine not equivalent to one month salary, which right generally carry with it the stay of execution of the appealed order, directive, or decision pending its final disposition. Respondent claimed that the principle decreed in *Samaniego* as to the stay of execution of an appealed decision of the Ombudsman applies at the instance a motion for reconsideration of a decision of the Ombudsman has been filed since the filing of such motion is preparatory to the filing of an appeal should such motion be subsequently denied.

Respondent pointed out that the July 23, 2008 Decision of the Ombudsman was not yet final and executory as he still had a right to appeal said decision given that the penalty imposed upon him was nine (9) months suspension from office. He also claimed that he filed his April 21, 2009 Motion for Partial Reconsideration as a prerequisite to the filing of an appeal. He asserted that his suspension from office can only be then implemented after the denial of his motion for reconsideration of and upon the lapse of the period to appeal the said Ombudsman decision or, in case he perfected an appeal, only after its denial. Thus, according to respondent, the Ombudsman seriously erred in ordering the immediate execution of its subject decision.

The Court of Appeals issued a Resolution dated June 24, 2009 denying respondent's application for the issuance of a TRO, ruling that an injunctive writ will not be where the acts sought to be enjoined have already been consummated and/or the issuance thereof would prejudge the disposition of the main petition.[9]

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[8] 586 Phil. 497 (2008).

[9] *Rollo,* pp. 108-110.

On August 7, 2009, the Court of Appeals promulgated its assailed Decision finding respondent's petition meritorious and, thus, setting aside the Ombudsman's directive for the immediate implementation of respondent's suspension. The appellate court agreed with respondent that the prevailing jurisprudence then as to the stay of execution of the Ombudsman's administrative order, directive, or decision where the penalty imposed is other than public censure, reprimand, or suspension of not more than one month, or a fine not equivalent to one month salary, was the ruling as pronounced in *Samaniego* on 2008 — that said order, directive, or decision becomes final and executory only after the lapse of the period to appeal if no appeal is perfected, or upon the denial of the appeal. The appellate court disposed as follows:

> WHEREFORE, premises considered, the petition is GRANTED. The directive for the immediate implementation of the nine (9) month suspension imposed against [respondent] Elmer M. Pacuribot, as embodied in public respondent's July 23, 2008 Decision, is SET ASIDE.
>
> The Regional Director, Bureau of Local Government Finance, Department of Finance, Region X, Cagayan de Oro City, is hereby directed to recall Regional Office Special Personnel Order No. 015-2009 dated April 23, 2009, implementing the immediate suspension of petitioner, and to reinstate petitioner to his present position as Municipal Treasurer of El Salvador, Misamis Oriental, pending resolution of petitioner's motion for a partial consideration of public respondent's July 23, 2008 Decision finding petitioner guilty of Immorality or Disgraceful and Immoral Conduct.[10]

The Court of Appeals likewise denied the Ombudsman's motion for reconsideration of the above decision in its Resolution dated July 12, 2010.

The Ombudsman, hence, interposed the present Petition, through the Office of the Solicitor General, alleging the following ground and arguments in support thereof:

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[10] *Id*. at 41.

V.

GROUND FOR THE ALLOWANCE OF THE PETITION

THE TWENTY-FIRST DIVISION OF THE COURT OF APPEALS, CAGAYAN DE ORO STATION, GRAVELY ERRED IN FINDING THAT PETITIONER COMMITTED GRAVE ABUSE OF DISCRETION AND IN SETTING ASIDE THE IMMEDIATE IMPLEMENTATION OF PETITIONER'S DECISION IN OMB CASE NO. OMB-M-A-07-029-B.

VI.

DISCUSSION

I. The subject decision of the Office of the Ombudsman is immediately executory pursuant to Section 7, Rule III of Administrative Order No. 07, as amended by Administrative Order No. 17[; and]

II. With all due respect, the Honorable Court's ruling in the *Samaniego* case did not effectively divest the Office of the Ombudsman of its disciplinary and rule making powers.[11]

In his Comment[12] filed on July 1, 2011, respondent asserts that the suspension imposed upon him by the Ombudsman should not be made immediately executory pending finality of his appeal pursuant to the Court's pronouncement in *Samaniego* on 2008. However, respondent also acknowledges that the Court already modified its ruling in *Samaniego* on 2010 whereby the Court overturned and corrected its earlier ruling that the Ombudsman's decision rendered in an administrative case is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ. He also conceded that the issue before the Court may be deemed moot and academic as he had already served in full his nine months suspension from office and since then he was unable to report to work because his health condition deteriorated fast and became bedridden. Respondent urges the Court, nonetheless, to resolve

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[11] *Id.* at 8-9 and 15.

[12] *Id*. at 133-137.

the present petition in his favor, as well as for the benefit of those similarly situated, by reverting to and applying the ruling which the Court adopted in *Samaniego* on 2008 which he claims as more humane and in keeping with due process.

The Ombudsman filed their Reply[13] on November 9, 2011.

In a Minute Resolution[14] dated July 23, 2014, the Court ordered the parties to submit their respective memoranda. The Ombudsman submitted their Memorandum[15] on October 23, 2014. Respondent, on the other hand, failed to comply with the directive, thus, the Court issued Minute Resolution[16] dated February 11, 2015 requiring respondent's counsel to comply and to show cause why he should not be disciplinary dealt with or held in contempt for his failure to comply. However, respondent and/or his counsel still failed to comply even after the lapse of the period to do so.

On February 10, 2017, counsel for respondent, Atty. Jerry M. Pacuribot, filed a Manifestation[17] informing the Court that respondent already died way back in October 3, 2011, attaching therewith a certified true copy from the National Statistics Authority of the Certificate of Death of respondent issued by the Office of the Civil Registrar General. In the same Manifestation, counsel for respondent apologized for the delay in giving information regarding respondent's death, explaining that he almost forgot about this case as he was then grieving so much about the death of respondent who happened to be his brother.

In a Minute Resolution[18] dated March 27, 2017, the Court noted the Manifestation of Atty. Pacuribot regarding his brother's

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[13] *Id*. at 149-154.

[14] *Id*. at 157-158.

[15] *Id*. at 159-176.

[16] *Id*. at 178.

[17] *Id*. at 198-200.

[18] *Id*. at 212-213.

death and granted the prayer that the same be given due consideration in the final resolution of the case.

The Court grants the Petition.

At the outset, the death of respondent during the pendency of the instant case has not rendered moot and academic the issue under consideration, which is whether or not there was grave abuse of discretion on the part of the Ombudsman when it ordered the immediate execution of its July 23, 2008 Decision in OMB-M-A-07-029-B, suspending respondent for nine months for Immorality or Disgraceful and Immoral Conduct even before finality of said decision.

Even assuming that respondent died pending his reconsideration or appeal of the Ombudsman's July 23, 2008 Decision in OMB-M-A-07-029-B, his death does not necessarily preclude the disposition of his reconsideration or appeal with finality. Jurisdiction over an administrative case is not lost by the fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications.[19] In *Hermosa v. Paraiso,*[20] the Court proceeded to resolve respondent public official's administrative case notwithstanding that death has already separated him from the service to the end that respondent's heirs may not be deprived of any retirement gratuity and other accrued benefits that they may be entitled to receive as a result of respondent's death in office, as against a possible forfeiture thereof should his guilt have been duly established at the investigation.

As to the merits of the present Petition, jurisprudence has long settled with finality that the penalty imposed by the Ombudsman in an administrative case is immediately executory and that the filing or pendency of an appeal from such decision shall not stay its execution.

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[19] *Perez v. Abiera,* 159-A Phil. 575, 580 (1975).

[20] 159 Phil. 417, 419 (1975).

No less than respondent himself pointed out that the Court has set aside and corrected its pronouncement in its 2008 Decision in *Samaniego* relating to the issue at bar. In an *En Banc* Resolution promulgated on October 5, 2010 in *Samaniego*, the Court upheld Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, and ruled that a decision of the Ombudsman in an administrative case is immediately executory and that an appeal shall not stop such decision from being executed as a matter of course.[21] The Court expounded as follows:

> Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003, provides:
>
> > SEC. 7. *Finality and execution of decision.* — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the motion for reconsideration.
> >
> > **An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.**
> >
> > **A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course.** The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against such officer. x x x.

[21] 646 Phil. 445, 449 (2010).

The Ombudsman's decision imposing the penalty of suspension for one year is *immediately executory pending appeal.* It cannot be stayed by the mere filing of an appeal to the CA. This rule is similar to that provided under Section 47 of the Uniform Rules on Administrative Cases in the Civil Service.

In the case of *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH,* we held:

> The Rules of Procedure of the Office of the Ombudsman are clearly procedural and no vested right of the petitioner is violated as he is considered preventively suspended while his case is on appeal. Moreover, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. Besides, there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.

Following the ruling in the above cited case, this Court, in *Buencamino v. Court of Appeals,* upheld the resolution of the [Court of Appeals] denying Buencamino's application for preliminary injunction against the immediate implementation of the suspension order against him. The Court stated therein that the [Court of Appeals] did not commit grave abuse of discretion in denying petitioner's application for injunctive relief because Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman was amended by Administrative Order No. 17 dated September 15, 2003.

Respondent cannot successfully rely on Section 12, Rule 43 of the Rules of Court which provides:

> SEC. 12. *Effect of appeal.* — The appeal shall not stay the award, judgment, final order or resolution sought to be reviewed unless the Court of Appeals shall direct otherwise upon such terms as it may deem just.

In the first place, the Rules of Court may apply to cases in the Office of the Ombudsman suppletorily only when the procedural matter is not governed by any specific provision in the Rules of Procedure of the Office of the Ombudsman. Here, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended, is categorical, an appeal shall not stop the decision from being executory.

Moreover, Section 13(8), Article XI of the Constitution authorizes the Office of the Ombudsman to promulgate its own rules of procedure. In this connection, Sections 18 and 27 of the Ombudsman Act of 1989 also provide that the Office of the Ombudsman has the power to "promulgate its rules of procedure for the effective exercise or performance of its powers, functions and duties" and to amend or modify its rules as the interest of justice may require. For the CA to issue a preliminary injunction that will stay the penalty imposed by the Ombudsman in an administrative case would be to encroach on the rule-making powers of the Office of the Ombudsman under the Constitution and RA 6770 as the injunctive writ will render nugatory the provisions of Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman.

Clearly, Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman supersedes the discretion given to the CA in Section 12, Rule 43 of the Rules of Court when a decision of the Ombudsman in an administrative case is appealed to the CA. The provision in the Rules of Procedure of the Office of the Ombudsman that a decision is immediately executory is a special rule that prevails over the provisions of the Rules of Court. *Specialis derogat generali.* When two rules apply to a particular case that which was specially designed for the said case must prevail over the other.

WHEREFORE, the second motion for partial reconsideration is hereby GRANTED. Our decision dated September 11, 2008 is MODIFIED insofar as it declared that the imposition of the penalty is stayed by the filing and pendency of CA-G.R. SP No. 89999. **The decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of the appeal or the issuance of an injunctive writ**.[22] (Emphasis supplied, citations omitted.)

Since then, the Court has consistently applied the above-quoted ruling in a string of cases.[23]

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[22] *Id.* at 448-451.

[23] *Ombudsman-Mindanao v. Ibrahim,* 786 Phil. 221 (2 016); *Department of the Interior and Local Government v. Gatuz,* 771 Phil. 153 (2015); *Office of the Ombudsman v. Valencerina,* 739 Phil. 11 (2014); *Office of the Ombudsman v. De Leon,* 705 Phil. 26 (2013); *Office of the Ombudsman v. Court of Appeals ,* 655 Phil. 541 (2011).

Thus, in the present Petition, the Ombudsman correctly asserted that its July 23, 2008 Decision in OMB-M-A-07-029-B is immediately executory even pending reconsideration or appeal and finality of said decision, pursuant to Section 7 of Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order No. 17 dated September 15, 2003.

WHEREFORE, in view of the foregoing, the Petition is hereby **GRANTED.** The Decision dated August 7, 2009 of the Court of Appeals in CA-G.R. SP No. 02895-MIN which directed the immediate implementation of respondent's suspension and his reinstatement to his position as Municipal Treasurer of El Salvador, Misamis Oriental, is **REVERSED** and **SET ASIDE.** Considering, however, the death of respondent, this case is considered **CLOSED** and **TERMINATED.**

SO ORDERED.

Bersamin, del Castillo, and *Tijam, JJ.,* concur.

Jardeleza, J., on official leave.

FIRST DIVISION

[G.R. No. 205185. September 26, 2018]

KEPCO ILIJAN CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; TAX REFUND OR CREDIT OF EXCESS AND

UNUTILIZED INPUT VAT; TWO-YEAR PRESCRIPTIVE PERIOD FOR THE FILING OF AN ADMINISTRATIVE CLAIM FOR REFUND OR CREDIT OF UNUTILIZED INPUT VAT WHEN TO RECKON; CLARIFIED.— [Under Sections 112 (A) and (C) of the NIRC] a VAT-registered taxpayer claiming a refund or tax credit of excess and unutilized input VAT must file the administrative claim within two years from the close of the taxable quarter when the sales were made. x x x. The resolution of when to reckon the two-year prescriptive period for the filing an administrative claim for refund or credit of unutilized input VAT in light of the pronouncements in *Atlas* and *Mirant* was extensively addressed and dealt with in *Commissioner of Internal Revenue v. San Roque Corporation* (*San Roque*). To recall, the Court ruled in *Atlas* that "it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter." On the other hand, *Mirant* abandoned *Atlas* and announced that "the reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when the input VAT was paid," applying Section 112(A) of the NIRC and no other provisions that pertained to erroneous tax payments. In *San Roque*, promulgated on February 12, 2013, therefore, the Court clarified the effectivity of the pronouncements in *Atlas* and *Mirant* on reckoning the two-year prescriptive period, elucidating that: *(a)* the *Atlas* pronouncement was effective only from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 through *Mirant*; and *(b)* prior to the promulgation of the ruling in *Atlas*, Section 112 (A) should be applied following the *verba legis* rule adopted in *Mirant.*

2. ID.; ID.; ID.; ID.; THE TWO-YEAR PRESCRIPTIVE PERIOD FOR FILING OF ADMINISTRATIVE CLAIM FOR REFUND OF INPUT TAXES MUST BE RECKONED AT THE CLOSE OF THE TAXABLE QUARTER WHEN THE RELEVANT SALES WERE MADE IN CASE AT BAR.— The records show that the petitioner herein filed its administrative claims for refund for the first, second, third, and fourth quarters of taxable year 2002 on April 13, 2004. Such claims were covered by Section 112(A) of the NIRC that was the rule applicable

prior to *Atlas* and *Mirant*. As such, the proper reckoning date in this case, pursuant to Section 112(A) of the NIRC, was the close of the taxable quarter when the relevant sales were made. Specifically, the close of the quarters of taxable year 2002 took place on March 31, 2002, June 30, 2002, September 30, 2002 and December 31, 2002, giving to the petitioner until March 31, 2004, June 30, 2004, September 30, 2004 and December 31, 2004 within which to file its administrative claims for the first, second, third and fourth quarters, respectively. Under the circumstances, the petitioner had belatedly filed its administrative claim corresponding to the first quarter of taxable year 2002, which was thereby already barred. But the claims for the refund of the input taxes corresponding to the second, third and fourth quarters were timely and not barred.

3. ID.; ID.; ID.; 120-30 PERIOD RULE FOR FILING OF JUDICIAL CLAIM FOR TAX REFUND OR TAX CREDIT OF UNUTILIZED EXCESS INPUT VALUE-ADDED TAX BEFORE THE COURT OF TAX APPEALS, CLARIFIED.— The petitioner brought its judicial claim in the CTA on April 22, 2004, or nine days after filing the administrative claim in the BIR. It did not await the lapse of the 120-day period provided under the NIRC, leading the CTA *En banc* to declare that petitioner had prematurely brought its appeal. Indeed, under Section 112 (c) of the NIRC, the respondent had 120 days from the submission of the complete documents in support of the application of the respondent for the tax refund or tax credit within which to decide whether or not to grant or deny the claim. In case of denial of the claim, or in case of the failure of the respondent to act on the application within the period prescribed , the taxpayer has 30 days from the receipt of the decision or from the expiration of the 120-day period within which to file the petition for review in the CTA. In *Aichi*, the Court clarified that the 120-day period granted to the respondent was mandatory and jurisdictional; hence, the non-observance of the period was fatal to the filing of the judicial claim in the CTA. This was because prior to the expiration of the 120-day period, the respondent still had the statutory authority to render a decision. If there was no decision and the period did not yet expire, there was no cause of action that justified a resort to the CTA. In *San Roque*, the Court acknowledged an instance when a premature filing in the CTA was allowed. The mandatory

and jurisdictional nature of the 120-30 period rule did not apply to claims for refund that were prematurely filed during the interim period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the *Aichi* doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of *Aichi*, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 wherein the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA.

4. ID.; ID.; ID.; THE COURT OF TAX APPEALS COULD TAKE COGNIZANCE OF THE TAXPAYER'S CLAIMS EVEN IF IT FILED ITS JUDICIAL CLAIM WITHOUT WAITING FOR THE DECISION OF THE COMMISSIONER OF INTERNAL REVENUE OR FOR THE EXPIRATION OF THE 120-DAY MANDATORY PERIOD, WHERE THE SAME WAS FILED WITHIN THE PERIOD EXEMPTED FROM THE MANDATORY AND JURISDICTIONAL 120-30 PERIOD RULE.— The petitioner filed its administrative and judicial claims for refund on April 13, 2004 and April 22, 2004, respectively. Both claims were filed after BIR Ruling No. DA-589-03 was issued on December 10, 2003, but before the promulgation of the *Aichi* pronouncement on October 06, 2010. Thus, notwithstanding the petitioner's having filed its judicial claim without waiting for the decision of the respondent or for the expiration of the 120-day mandatory period, the CTA could still take cognizance of the claims because they were filed within the period exempted from the mandatory and jurisdictional 120-30 period rule. As a result, the case has to be remanded to the CTA in Division for further proceedings on the claim for refund of the petitioner's input VAT for the second, third and fourth quarters of taxable year 2002.

APPEARANCES OF COUNSEL

Zambrano & Gruba Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The petitioner hereby appeals the adverse decision promulgated on September 6, 2012,[1] whereby the Court of Tax Appeals *En Banc* (CTA *En Banc)* denied its claim for refund of the input value-added tax (VAT) for taxable year 2002. This appeal concerns the proper reckoning of the periods under Section 112(A) and Section 112(C) of the *National Internal Revenue Code of 1997* (NIRC) for bringing the administrative and judicial claims to seek the refund or issuance of the tax credit certificate of the VAT.

Antecedents

The petitioner, a duly registered domestic corporation engaged in the production of electricity as an independent power producer (IPP) and in the sale of electricity solely to the National Power Corporation (NPC), claimed the refund or issuance of the tax credit certificate for ₱74,658,461.68 for the VAT incurred in taxable year 2002.

It appears that the petitioner filed its quarterly VAT returns for the four quarters of taxable year 2002, thereby showing the incurred expenses representing the importation and domestic purchases of goods and services, including the input VAT thereon. On April 13, 2004, it brought its administrative claim for refund with Revenue District Office (RDO) No. 43 of the Bureau of Internal Revenue (BIR), claiming excess input VAT amounting to ₱74,658,481.68 for taxable year 2002.

On April 22, 2004, nine days after filing the administrative claim, the petitioner filed its petition for review (CTA Case

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[1] *Rollo,* pp. 61-79; penned by Associate Justice Cielito N. Mindaro-Grulla, with Associate Justice Juanito C. Castaneda, Jr., Associate Justice Erlinda P. Uy, Associate Justice Olga Palanca-Enriquez, Associate Justice Caesar A. Casanova concurring; and Presiding Justice Ernesto D. Acosta, Associate Justice Lovell R. Bautista, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Amelia R. Contangco-Manalastas dissenting.

No. 6966), which was assigned to the Second Division of the CTA (CTA in Division).

Judgment of the CTA in Division

On April 14, 2009, the CTA in Division rendered judgment in CTA Case No. 6966 partly granting the petition for review,[2] and ordering the respondent to refund or to issue a tax credit certificate in the reduced amount of ₱23,389,050.05 representing the petitioner's unutilized excess input VAT attributable to its zero-rated sales to NPC for the second, third and fourth quarters of taxable year 2002, but denying the petitioner's input VAT claim for the first quarter of taxable year 2002 on the ground of prescription, and the other input VAT claims for lack of the required documentary evidence.[3]

On April 30, 2009, the petitioner moved for partial reconsideration with prayer to admit attached additional supporting documents. It argued that its claim for the first quarter of taxable year 2002 should not be denied because the rules and jurisprudence then prevailing stated that the reckoning point of the two-year period for filing the claim for refund of unutilized input taxes was the date of filing of the return and payment of the tax due pursuant to the two-year rule under *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue (Atlas)*.[4]

Acting on the petitioner's motion for partial reconsideration, the CTA in Division promulgated the amended decision dated February 18, 2011 denying the entire claim on the ground of prematurity.[5] It opined that it did not acquire jurisdiction over the petition for review because of the petitioner's non-observance of the periods provided under the NIRC,[6] citing the rulings in

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[2] *Rollo*, pp. 105-123.

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

[4] G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.

[5] *Rollo*, pp. 93-104.

[6] *Id*. at 103.

Commissioner of Internal Revenue v. Mirant Pagbilao Corporation (Mirant)[7] and *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*.[8] It decreed thusly:

WHEREFORE, premises considered, the **Motion for Partial Reconsideration** is hereby **DENIED** for lack of merit. On the other hand, the assailed Decision promulgated on April 14, 2009 is hereby **SET ASIDE** and the instant Petition for Review is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.[9]

Decision of CTA *En Banc*

The petitioner elevated the case to the CTA *En Banc*, contending that it had seasonably filed its administrative and judicial claims; and that the CTA had properly acquired jurisdiction over the judicial claim.

Through the now assailed decision promulgated on September 6, 2012,[10] the CTA *En Banc* denied the petition for review, disposing:

WHEREFORE premises considered, the Petition for Review docketed as CTA EB NO. 733 is **DISMISSED**. The Amended Decision dated February 18, 2011 of the Former Second Division of this Court in CTA Case No. 6966, is hereby **affirmed**. No pronouncement as to cost.

SO ORDERED.[11]

On December 13, 2012, the CTA *En Banc* denied the petitioner's motion for reconsideration.[12]

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[7] G.R. No. 172129, September 12, 2008, 565 SCRA 154.

[8] G.R. No. 184823, October 6, 2010, 632 SCRA 422.

[9] *Rollo*, p. 103.

[10] *Id.* at 61-79.

[11] *Id.* at 78.

[12] *Id.* at 52-57.

Hence, this appeal.

Issue

The petitioner submits that the CTA acquired jurisdiction over the case; that the rulings in *Mirant* and *Aichi* should be applied prospectively, and, accordingly, did not apply hereto; that the two-year period for filing the claim for refund of unutilized input taxes was to be reckoned from the filing of the return and the payment of the tax due; and that the claim for the refund of ₱72,618,752.22 should be granted.

Ruling of the Court

The appeal is partly meritorious.

The relevant provisions of the NIRC are Section 112(A) and Section 112(C), to wit:

SEC. 112. *Refunds or Tax Credits of Input Tax.—*

(A) *Zero-rated or Effectively Zero-rated Sales.* — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales, except transitional input tax, to the extent that such input tax has not been applied against output tax: x x x.

x x x x x x x x x

(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* — In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim with the Court of Tax Appeals.

Under the foregoing, a VAT-registered taxpayer claiming a refund or tax credit of excess and unutilized input VAT must file the administrative claim within two years from the close of the taxable quarter when the sales were made.

The CTA *En Banc* ruled that the statutory period for claiming the refund or tax credit was clearly provided under Section 112 of the NIRC; that the ruling in*Mirant* — which did not create a new doctrine but only pronounced the correct application of Section 112 (A) of the NIRC — was the applicable jurisprudence; and that, therefore, no new doctrine had been retroactively applied to the petitioner.

The petitioner avers herein that when it filed its administrative claim on April 13, 2004 it relied in good faith on the prevailing rule that the two-year prescriptive period should be reckoned from the filing of the return and payment of the tax due; and that its reliance on the controlling laws as affirmed in *Atlas* ripened into a property right that neither *Mirant* nor *Aichi* could simply take away.

The resolution of when to reckon the two-year prescriptive period for the filing an administrative claim for refund or credit of unutilized input VAT in light of the pronouncements in *Atlas* and *Mirant* was extensively addressed and dealt with in *Commissioner of Internal Revenue v. San Roque Corporation (San Roque*).[13] To recall, the Court ruled in *Atlas* that "it is more practical and reasonable to count the two-year prescriptive period for filing a claim for refund/credit of input VAT on zero-rated sales from the date of filing of the return and payment of the tax due which, according to the law then existing, should be made within 20 days from the end of each quarter."[14] On the other hand, *Mirant* abandoned *Atlas* and announced that "the reckoning frame would always be the end of the quarter when the pertinent sales or transaction was made, regardless when

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[13] G.R. No. 187485, February 12, 2013, 690 SCRA 336.

[14] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue, supra*, note 4, at 96.

the input VAT was paid,"[15] applying Section 112(A) of the NIRC and no other provisions that pertained to erroneous tax payments.[16] In *San Roque,* promulgated on February 12, 2013, therefore, the Court clarified the effectivity of the pronouncements in *Atlas* and *Mirant* on reckoning the two-year prescriptive period,[17] elucidating that: *(a)* the *Atlas* pronouncement was effective only from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 through *Mirant;* and *(b)* prior to the promulgation of the ruling in *Atlas,* Section 112 (A) should be applied following the *verba legis* rule adopted in *Mirant.*[18]

The records show that the petitioner herein filed its administrative claims for refund for the first, second, third, and fourth quarters of taxable year 2002 on April 13, 2004. Such claims were covered by Section 112(A) of the NIRC that was the rule applicable prior to *Atlas* and *Mirant.* As such, the proper reckoning date in this case, pursuant to Section 112(A) of the NIRC, was the close of the taxable quarter when the relevant sales were made.[19] Specifically, the close of the quarters of taxable year 2002 took place on March 31, 2002, June 30, 2002, September 30, 2002 and December 31, 2002, giving to the petitioner until March 31, 2004, June 30, 2004, September 30, 2004 and December 31, 2004 within which to file its administrative claims for the first, second, third and fourth quarters, respectively. Under the circumstances, the petitioner

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[15] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation, supra,* note 7, at 172.

[16] *CBK Power Corporation v. Commissioner of Internal Revenue,* G.R. No. 202066 & G.R. No. 205353, September 30, 2014, 737 SCRA 218, 233-234.

[17] *Id.*

[18] *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.*, G.R. No. 190021, October 22, 2014, 739 SCRA 147, 156.

[19] *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership,* G.R. No. 191498, January 15, 20I4, 713 SCRA 645, 664.

had belatedly filed its administrative claim corresponding to the first quarter of taxable year 2002, which was thereby already barred. But the claims for the refund of the input taxes corresponding to the second, third and fourth quarters were timely and not barred.

We next determine the timeliness of the filing of the judicial claim in the CTA.

The petitioner brought its judicial claim in the CTA on April 22, 2004 or nine days after filing the administrative claim in the BIR. It did not await the lapse of the 120-day period provided under the NIRC, leading the CTA *En Banc* to declare that the petitioner had prematurely brought its appeal. Indeed, under Section 112 (c) of the NIRC, the respondent had 120 days from the submission of the complete documents in support of the application of the respondent for the tax refund or tax credit within which to decide whether or not to grant or deny the claim. In case of the denial of the claim, or in case of the failure of the respondent to act on the application within the period prescribed, the taxpayer has 30 days from the receipt of the decision or from the expiration of the 120-day period within which to file the petition for review in the CTA.

In *Aichi,* the Court clarified that the 120-day period granted to the respondent was mandatory and jurisdictional; hence, the non-observance of the period was fatal to the filing of the judicial claim in the *CTA.*[20] This was because prior to the expiration of the 120-day period, the respondent still had the statutory authority to render a decision. If there was no decision and the period did not yet expire, there was no cause of action that justified a resort to the CTA.[21]

In *San Roque,* the Court acknowledged an instance when a premature filing in the CTA was allowed.[22] The mandatory and

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[20] *Commissioner of Internal Revenue v. Deutsche Knowledge Services, Pte. Ltd.,* G.R. No. 211072, November 7, 2016, 807 SCRA 90.

[21] *Aichi Forging Co. of Asia, Inc. v. Court of Tax Appeals (En Banc),* G.R. No. 193625, August 30, 2017.

[22] *Commissioner of Internal Revenue v. San Roque Power Corporation, supra,* note 13, at 405.

jurisdictional nature of the 120-30 period rule did not apply to claims for refund that were prematurely filed during the interim period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the *Aichi* doctrine was adopted. The exemption was premised on the fact that prior to the promulgation of *Aichi*, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 wherein the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA. As the Court put it in *San Roque*:

> BIR Ruling No. DA-489-03 does provide a valid claim for equitable estoppel under Section 246 of the Tax Code. BIR Ruling No. DA-489-03 *expressly* states that the **"taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the CTA by way of Petition for Review."**Prior to this ruling, the BIR held, as shown by its position in the Court of Appeals, that the expiration of the 120-day period is mandatory and jurisdictional before a judicial claim can be filed.
>
> There is no dispute that the 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. There are, however, two exceptions to this rule. The first exception is if the Commissioner, through a specific ruling, misleads a particular taxpayer to prematurely file a judicial claim with the CTA. Such specific ruling is applicable only to such particular taxpayer. The second exception is where the Commissioner, *through a general interpretative rule* issued under Section 4 of the Tax Code, misleads all taxpayers into filing prematurely judicial claims with the CTA. In these cases, the Commissioner cannot be allowed to later on question the CTA's assumption of jurisdiction over such claim since equitable estoppel has set in as expressly authorized under Section 246 of the Tax Code.[23]

The petitioner filed its administrative and judicial claims for refund on April 13, 2004 and April 22, 2004, respectively. Both claims were filed after BIR Ruling No. DA-589-03 was issued on December 10, 2003, but before the promulgation of

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[23] *Id.* at 401.

the *Aichi* pronouncement on October 06, 2010. Thus, notwithstanding the petitioner's having filed its judicial claim without waiting for the decision of the respondent or for the expiration of the 120-day mandatory period, the CTA could still take cognizance of the claims because they were filed within the period exempted from the mandatory and jurisdictional 120-30 period rule.

As a result, the case has to be remanded to the CTA in Division for further proceedings on the claim for refund of the petitioner's input VAT for the second, third and fourth quarters of taxable year 2002.

WHEREFORE, the Court **PARTLY GRANTS** the petition for review on *certiorari;* **REVERSES** and **SETS ASIDE** the decision promulgated on September 6, 2012 by the Court of Tax Appeals *En Banc* in CTA EB Case No. 733; and **ORDERS** the remand of the case to the Court of Tax Appeals in Division for further proceedings on the petitioner's claim for refund of its unutilized excess input Value-Added Tax for the second, third and fourth quarters of taxable year 2002.

No pronouncement on costs of suit.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), del Castillo, Tijam, and *Reyes, A. Jr.,*[*] *JJ.,* concur.

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[*] In lieu of Associate Justice Francis H. Jardeleza, who inhibited due to his prior participation as the Solicitor General, per the raffle of September 24, 2018.

FIRST DIVISION

[G.R. No. 210043. September 26, 2018]

AYALA LAND, INC., *petitioner, vs.* **ASB REALTY CORPORATION and E.M. RAMOS & SONS, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED IN A PETITION FOR REVIEW ON *CERTIORARI,* AS THE COURT IS NOT A TRIER OF FACTS AND IS NOT OBLIGED TO GO OVER AND RECALIBRATE A NEW EVIDENCE THAT ALREADY PASSED THE SCRUTINY OF THE LOWER COURTS, ALL THE MORE IN THIS CASE WHERE THE FINDINGS OF THE REGIONAL TRIAL COURT WERE AFFIRMED BY THE COURT OF APPEALS; EXCEPTIONS.— All the issues raised by petitioner ALI are factual in nature. ALI contends that there was sufficient evidence showing that EMRASON confirmed the authority of the Ramos children to enter into contract with ALI; that there was evidence that the Contract to Sell signed by the Ramos children pre-dated the Letter-Agreement signed by Ramos, Sr. and which carried no board authority; and, that there was evidence of bad faith on the part of EMRASON. Suffice it to say that only questions of law are allowed in a petition for review on *certiorari*; this Court is not a trier of facts and is not obliged to go over and recalibrate anew evidence that already passed the scrutiny of the lower courts, all the more in this case where the findings of the RTC were affirmed by the CA. This Court is not unaware of the exceptions to this rule; none, however, exists in this case.

2. CIVIL LAW; THE CIVIL CODE; OBLIGATIONS AND CONTRACTS; A CONTRACT IS NON-EXISTENT WHERE CONSENT IS WANTING; CONSENT OF THE CORPORATION IS GIVEN THROUGH ITS BOARD OF DIRECTORS.— "A contract is void if one of the essential requisites of contracts under Article 1318 of the New Civil

Code is lacking." Consent, being one of these requisites, is vital to the existence of a contract "and where it is wanting, the contract is non-existent." For juridical entities, consent is given through its board of directors. As this Court held in *First Philippine Holdings Corporation v. Trans Middle East (Phils.) Equities, Inc.*, a juridical entity, like EMRASON, "cannot act except through its board of directors as a collective body, which is vested with the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation, subject to the articles of incorporation, by-laws, or relevant provisions of law."

3. MERCANTILE LAW; CORPORATIONS; NO PERSON, NOT EVEN ITS OFFICERS, CAN VALIDLY BIND A CORPORATION WITHOUT THE AUTHORITY OF THE CORPORATION'S BOARD OF DIRECTORS; DOCTRINE OF APPARENT AUTHORITY OR OSTENSIBLE AGENCY AN EXCEPTION.— Although the general rule is that "no person, not even its officers, can validly bind a corporation" without the authority of the corporation's board of directors, this Court has recognized instances where third persons' actions bound a corporation under the doctrine of apparent authority or ostensible agency. In *Nogales v. Capitol Medical Center*, this Court explained the doctrine of apparent authority or ostensible agency, which is actually a species of the doctrine of estoppel, thus – The doctrine of apparent authority is a species of the doctrine of estoppel. Article 1431 of the Civil Code provides that '[t]hrough 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.' Estoppel rests on this rule: 'Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.'

4. ID.; ID.; ACTS DONE BY THE CORPORATE OFFICERS BEYOND THE SCOPE OF THEIR AUTHORITY CANNOT BIND THE CORPORATION UNLESS THE LATTER HAS RATIFIED SUCH ACTS EXPRESSLY OR IS ESTOPPED FROM DENYING THEM.— A perusal of the August 3, 1993 letter shows that EMRASON, through Ramos, Sr. authorized

Ramos, Jr. and Antonio merely to "*collaborate and continue negotiating and discussing with [ALI] terms and conditions* that are mutually beneficial" to the parties therein. Nothing more, nothing less. To construe the letter as a virtual *carte blanche* for the Ramos children to enter into a Contract to Sell regarding the Dasmariñas Property would be unduly stretching one's imagination. "[A]cts done by [the] corporate officers beyond the scope of their authority cannot bind the corporation unless it has ratified such acts expressly or is estopped from denying them." What is clear from the letter is that EMRASON authorized the Ramos children **only** to negotiate the terms of a **potential** sale over the Dasmariñas Property, and not to sell the property in an absolute way or act as signatories in the contract.

5. ID.; ID.; ID.; A CORPORATION ACTS THROUGH ITS BOARD OF DIRECTORS AND NOT THROUGH ITS CONTROLLING SHAREHOLDERS. — Equally misplaced is ALI's reliance on our pronouncement in *People's Aircargo Warehousing v. Court of Appeals*, where we said that the authority of the apparent agents may be "expressly or impliedly [shown] by habit, custom or acquiescence in the general course of business." For, indeed, ALI never mentioned or pointed to certain palpable acts by the Ramos children which were indicative of a habit, custom, or acquiescence in the general course of business that compel the conclusion that EMRASON must be deemed to have been bound thereby implacably and irretrievably. ALI's bare allegation that "the Ramos children submitted corporate documents to [ALI] to convince it that it was negotiating with the controlling shareholders of EMRASON" is gratuitous and self-serving, hence, does not merit this Court's consideration. As an established business entity engaged in real estate, ALI should know that a corporation acts through its Board of Directors and not through its controlling shareholders.

6. ID.; ID.; ID.; APPARENT AUTHORITY OF A CORPORATE PRESIDENT TO BIND THE CORPORATION, DISCUSSED. — In *People's Aircargo*, this Court zeroed in on the apparent authority of a *corporate president* to bind the corporation, *viz*.: Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such

officer has certain limited powers in the transaction of the usual and ordinary business of the corporation. In the absence of a charter or bylaw provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties. Hence, it has been held in other jurisdictions that the president of a corporation possesses the power to enter into a contract for the corporation, when the 'conduct on the part of both the president and the corporation [shows] that he had been in the habit of acting in similar matters on behalf of the company and that the company had authorized him so to act and had recognized, approved and ratified his former and similar actions.' Furthermore, a party dealing with the president of a corporation is entitled to assume that he has the authority to enter, on behalf of the corporation, into contracts that are within the scope of the powers of said corporation and that do not violate any statute or rule on public policy. Here, Ramos, Sr.'s authority to execute and enter into the Letter-Agreement with ASBRC was clearly proven.

7. ID.; ID.; A PARTY DEALING WITH THE PRESIDENT OF A CORPORATION IS ENTITLED TO ASSUME THAT HE HAS THE AUTHORITY TO ENTER, ON BEHALF OF THE CORPORATION, INTO CONTRACTS THAT ARE WITHIN THE SCOPE OF THE POWERS OF SAID CORPORATION AND THAT DO NOT VIOLATE ANY STATUTE OR RULE ON PUBLIC POLICY.— ALI's argument that "respondents failed to establish that [Ramos], Sr. had been in the habit of executing contracts on behalf of EMRASON" is negated by the fact that correspondences between ALI and EMRASON had always been addressed to Ramos, Sr. In fact, ALI must be deemed to have acknowledged the authority of Ramos, Sr. to act on behalf of EMRASON when ALI relied on the August 3, 1993 letter of Ramos, Sr. In any case, this Court clarified in *People's Aircargo* that "[i]t is **not** the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation." Together with this Court's pronouncement that "a party dealing with the president of a corporation is entitled to assume that he has the authority to enter, on behalf of the corporation, into contracts that are within the scope of the powers of said corporation and that do not

violate any statute or rule on public policy," the inevitable conclusion is that Ramos, Sr. was properly authorized to, and validly executed with ASBRC, the said Letter-Agreement.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioner.
Jose Mendoza & Associates for respondent ASB Realty Corp.
Gaston & Tan Law Offices for respondent E. M. Ramos & Sons, Inc.

D E C I S I O N

DEL CASTILLO, *J.*:

[U]nder the doctrine of apparent authority, the question in every case is whether the principal has by his [/her] voluntary act placed the agent in such a situation that a person of ordinary prudence, conversant with business usages and the nature of the particular business, is justified in presuming that such agent has authority to perform the particular act in question.[1]

Petitioner Ayala Land, Inc. (ALI) comes to this Court *via* this Petition[2] for review on *certiorari* to assail the April 30, 2013 Decision[3] and the November 7, 2013 Resolution[4] of the Court of Appeals (CA) in CA-G.R. CV No. 97198. The assailed CA Decision and Resolution affirmed the June 29, 2010 Decision[5] of the Regional Trial Court (RTC) of Imus, Cavite, Branch 20, which (a) declared null and void and unenforceable the May 18, 1994 Contract to Sell entered into between ALI, on the one

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[1] *Professional Services, Inc. v. Court of Appeals*, 568 Phil. 158, 168 (2008).

[2] *Rollo*, pp. 15-34.

[3] *Id*. at 44-58; penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Magdangal M. de Leon and Myra V. Garcia-Fernandez.

[4] *Id*. at 60-62.

[5] *Id*. at 255-268; penned by Presiding Judge Fernando L. Felicen.

hand, and Emerito B. Ramos, Jr. (Ramos, Jr.), Januario B. Ramos (Januario), Josefa R. de la Rama, Victoria R. Tanjuatco, Horacio de la Rama and Teofilo Tanjuatco III (collectively, Ramos children); and, (b) declared valid, binding and enforceable the May 21, 1994 Letter-Agreement entered into between respondent E.M. Ramos & Sons, Inc. (EMRASON) and ASB Realty Corporation (ASBRC).[6]

Factual Antecedents

ALI and ASBRC are domestic corporations engaged in real estate development. On the other hand, EMRASON is a domestic corporation principally organized to manage a 372- hectare property located in Dasmariñas, Cavite (Dasmariñas Property).[7]

The parties' respective versions of the factual antecedents are, as follows:

Version of the Petitioner

ALI claimed that, sometime in August 1992, EMRASON's brokers sent a proposal for a joint venture agreement (JVA) between ALI and EMRASON for the development of EMRASON's Dasmariñas Property.[8] ALI initially declined but eventually negotiated with Ramos, Jr., Antonio B. Ramos (Antonio), and Januario to discuss the terms of the JVA.[9] According to ALI, EMRASON made it appear that Ramos, Jr., Antonio, and Januario had full authority to act on EMRASON's behalf in relation to the JVA.[10] ALI alleged that Emerito Ramos, Sr. (Ramos, Sr.), then EMRASON's President and Chairman, wrote to ALI and therein acknowledged that Ramos, Jr. and

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[6] *Id*. at 267.

[7] Particularly TCT Nos. T-19285; T-19286: T-19287; T-19288; T-19289; T-19290 (Lot No. 3860-A-1); T-19290 (Lot No. 3860-A-3); T-19291; T-19292: T-19293; T-19294; T-19295; T-19296; T-19297; T-19298; T-19299 (Lot No. 3868-A); T-19299 (Lot No. 3868-B); and T-20806. *Id*. at 66.

[8] *Id*. at 16.

[9] *Id*. at 17.

[10] *Id.*

Antonio were fully authorized to represent EMRASON in the JVA, as shown in Ramos, Sr.'s letter[11] dated August 3, 1993.

ALI and the Ramos children subsequently entered into a Contract to Sell dated May 18, 1994, under which ALI agreed to purchase the Dasmariñas Property.

ALI alleged that it came to know that a Letter-Agreement[12] dated May 21, 1994 (Letter-Agreement) and a Real Estate Mortgage[13] respecting the Dasmariñas Property[14] had been executed by Ramos, Sr. and Antonio for and in behalf of EMRASON, on one hand, and ASBRC on the other. It also alleged that the Ramos children[15] wrote to Luke C. Roxas, ASBRC's President, informing the latter of the Contract to Sell between ALI and EMRASON.[16]

Version of the Respondents

For their part, respondents averred that ALI submitted to EMRASON and Ramos, Sr. its proposal to purchase the Dasmariñas Property which proposal was however rejected.[17] On May 17, 1994, EMRASON, through Ramos, Sr., informed ALI that it had decided to accept the proposal of ASBRC because the latter's terms were more beneficial and advantageous to EMRASON.[18] As a result, ASBRC and EMRASON entered into a Letter-Agreement on May 21, 1994.[19] The following day,

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[11] *Id*. at 134.

[12] *Id*. at 78-88. Another letter of even date was made by ASBRC, with the conformity of Ramos, Sr. and Antonio including additional conditions to the letter-agreement. *Id.* at 89-90.

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

[14] *Id*. at 18.

[15] Particularly Ramos, Jr., Januario, Josefa R. De La Rama, and Victoria R. Tanjuatco.

[16] *Rollo,* p. 103.

[17] *Id*. at 67.

[18] *Id*. at 67-68.

[19] *Id*. at 68.

or on May 22, 1994, EMRASON executed a Real Estate Mortgage in compliance with its obligations under the said Letter-Agreement.[20]

Prior to the execution of the Letter-Agreement, a special stockholders' meeting was held on May 17, 1994 during which EMRASON's stockholders "authorized, approved, confirmed and ratified"[21] the Resolution of EMRASON's Board of Directors (Board Resolution). The Board Resolution, which approved the Letter-Agreement and authorized Ramos, Sr. and Antonio to sign the same, was in turn likewise approved by EMRASON's stockholders on the same date, May 17, 1994.[22]

After ASBRC learned about the Contract to Sell executed between ALI and the Ramos children and the annotation of the Contract to Sell on the transfer certificates of title (TCTs) covering the Dasmariñas Property,[23] ASBRC and EMRASON filed a Complaint[24] for the nullification of Contract to sell and the cancellation of the annotations on the TCTs over the Dasmariñas Property.

Ruling of the Regional Trial Court

In a Decision[25] dated June 29, 2010, the RTC declared the Contract to Sell between ALI and the Ramos children void because of the latter's lack of authority to sign the Contract to Sell on behalf of EMRASON. The trial court explained in this wise:

> In the case at bar, defendant Ramos children failed to adduce a single evidence to show that they have been validly authorized by the Board of Directors of EMRASON to enter into a Contract to Sell with ALI thereby rendering the aforesaid contract void and

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[20] *Id*. at 69.

[21] *Id*. at 68.

[22] *Id.*

[23] *Id*. at 70.

[24] *Id*. at 64-77.

[25] *Id*. at 255-268.

unenforceable. Defendant Ramos children failed to present even a single witness to identify board resolutions, secretary's certificates or any written document for the purpose of proving that EMRASON validly conferred authority upon them to sell the subject property. Notably, not a single signatory to the Contract to Sell was presented by defendant Ramos children to identify the same and to testify as to the execution thereof.

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Upon the other hand, defendant ALI claims that it transacted with the Ramos children in good faith. On the contrary, evidence show that ALI knew and has in fact acknowledged the authority of Emerito Ramos, Sr. to enter into contracts for and in behalf of EMRASON before ALI entered into the contract with defendant Ramos children. In almost all of defendant ALI's correspondence with EMRASON, defendant ALI specifically addressed the same to Emerito Ramos, Sr., referring to him either as Chairman or President. In acknowledging the position of Emerito Ramos, Sr. in EMRASON, defendant ALI even requested Emerito Ramos, Sr. to meet its Chairman Jaime Zobel de Ayala, President Francisco H. Licuanan, Vice-President Fernando Zobel and Assistant Vice-President Victor H. Manarang for a luncheon meeting. More importantly, defendant ALI, through its representatives/ realtors namely Mr. Geronimo J. Manzano and Oscar P. Garcia, wrote Emerito Ramos Sr. a letter dated 22 April 1994 regarding the draft formal offer of ALI to develop the subject property. In addition, ALI's letter dated 11 May 1994 clearly shows that it acted in bad faith. A perusal of the said letter which was described to be its "best and final offer", would readily show that the same [was] solely addressed to Emerito Ramos, Sr., seeking his acceptance and approval. If defendant ALI honestly believe[d] that Emerito Ramos, Jr. and Antonio Ramos [were] fully authorized by EMRASON to execute the Contract to Sell surely defendant ALI would not have bothered to seek the acceptance and approval of Emerito. Ramos. Sr. Notably the alleged authorized agents of EMRASON, Emerito Ramos. Jr. and Antonio Ramos, were merely furnished a copy of the said letter proposal and were not even included as signatories for the approval of the same. x x x

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It is an established rule that persons dealing with an assumed agent, whether the assumed agency be a general or special one, are bound at their peril, if they would hold the principal liable, to ascertain not

only the fact of agency but also the nature and extent of authority, and in case either is controverted, the burden of proof is upon them to establish it.

In this connection, the Court observes numerous formal defects in the Contract to Sell[,] which would further support the fact that defendant ALI knew the absence of authority of defendant Ramos children to execute the same. Oddly, the first page of the contract failed to include the names of the duly authorized representative/s of EMRASON as the space specifically provided therefor was left in blank. In contrast, the duly appointed [a]ttorneys-in-fact of ALI are clearly named therein and designated as such. Similarly, page eighteen (18) of the said contract merely provided blank spaces to be filled up by the signatories of EMRASON vis-a-vis that of defendant ALI where the names of the [a]ttorneys-in-[f]act of defendant ALI are typewritten. Even in the acknowledgment page, only the names of the representatives of ALI were included. Interestingly, the acknowledgment failed to mention the names of signatories of EMRASON and their respective Community Tax Certificate Numbers. Considering that the subject contract involves a multi-million [peso] transaction, the Court finds it absolutely incredible that the parties thereto would fail to include the names of the signatories, their respective positions and/or authorities to enter into the said contract.[26] (Citations omitted)

In consequence of the nullification of the Contract to Sell, the RTC ruled that the annotations on the TCTs covered by the said Contract to Sell must likewise be cancelled.[27]

In addition, the RTC declared valid the Letter-Agreement deeding the Dasmariñas Property to ASBRC. Following this Court's ruling in *People's Aircargo and Warehousing Company, Inc. v. Court of Appeals*,[28] the RTC held that Ramos, Sr., as President of EMRASON, had the authority to enter into the Letter-Agreement because "the president is presumed to have the authority to act within the domain of the general objectives

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[26] *Id.* at 258-260.

[27] *Id.* at 261.

[28] 357 Phil. 850 (1998).

of [a company's] business and within the scope of [the president's] usual duties."[29]

The RTC further explained that, assuming *arguendo* that the signing of the Letter-Agreement "was outside the usual powers of Emerito Ramos, Sr., as president," EMRASON's ratification of the Letter-Agreement *via* a stockholders' meeting on March 6, 1995, cured the defect caused by Ramos, Sr.'s apparent lack of authority.[30]

The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered judgment is hereby rendered in favor of plaintiffs ASB Realty Corporation (ASB) and E.M. Ramos & Sons, Inc. (EMRASON) and against defendant Ayala Land and [sic] Inc. (ALI), and defendants Emerito B. Ramos, Jr., Januario [sic] B. Ramos, Josefa R. de la Rama, Victoria R. Tanjuatco, Horacio de la Rama, Teofilo Tanjuatco III, (Ramos children) as follows, *viz*[.]:

1. DECLARING the Contract to Sell dated 18 May 1994 involving the "Dasmariñas Properties" entered into by defendant Ayala Land Inc. and defendant[s] Ramos children as null [and] void and unenforceable;

2. DIRECTING the Register of Deeds for the Province of Cavite to CANCEL the annotation of the aforesaid "Contract to Sell" on the following Transfer Certificates[s] of Title Nos.–

2.1 T-19285	2.7 T-19291	2.13 T-19297
2.2 T- 19286	2.8 T-19292	2.14 T-19298
2.3 T-19287	2.9 T-19293	2.15 T-19299
2.4 T-19288	2.10 T-19294	2.16 T-20806
2.5 T-19289	2.11 T-19295	2.17 T-45584
2.6 T-19290	2.12 T-19296	2.18 T-16444

3. DECLARING the "Letter-Agreement" dated 21 May 1994 entered into by ASB and EMRASON as valid, binding and enforceable;

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[29] *Rollo,* p. 262.

[30] *Id.* at 263.

4. DENYING the claim of plaintiffs ASB and EMRASON for moral damages for lack of merit;

5. ORDERING defendant Ayala Land Inc. and defendant[s] Ramos children to jointly and severally pay ASB and EMRASON the sum of Two [Hundred Fifty] Thousand Pesos (Php250,000.00) as and by way of exemplary damages;

6. ORDERING defendant Ayala Land Inc. and defendant[s] Ramos children to jointly and severally pay ASB and EMRASON the sum of Two [Hundred Fifty] Thousand Pesos (Php250.000.00) as and by way of temperate damages;

7. ORDERING defendant Ayala Land Inc. and defendant[s] Ramos children to jointly and severally pay ASB and EMRASON the sum of One Hundred Fifty Thousand Pesos (Php150,000.00) as and by way of nominal damages;

8. ORDERING defendant Ayala Land Inc. and defendant[s] Ramos children to jointly and severally pay ASB and EMRASON the sum of Two Hundred Thousand Pesos (Php200,000.00) as and by way of attorney's fees;

9. ORDERING defendant Ayala Land Inc. and defendant[s] Ramos children to jointly and severally pay ASB and EMRASON the costs of suit;

10. DENYING the respective Counter-claims of defendant Ayala Land Inc. and defendant[s] Ramos children against plaintiff[s] ASB and EMRASON for lack of factual and legal basis; [and]

11. DENYING the respective Crossclaims of defendant Ayala Land Inc. and defendant[s] Ramos children against one another for lack of merit.

SO ORDERED.[31]

Dissatisfied with the RTC's verdict ALI, Ramos, Jr. and Horacia appealed to the CA.[32]

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[31] *Id*. at 266-268.

[32] *Id*. at 293-297 and 301-302.

Ruling of the Court of Appeals

In its April 30, 2013 Decision,[33] the CA dismissed the appeal and affirmed the RTC's findings.[34] The CA reiterated the RTC's pronouncement that the Ramos children failed to prove their authority to enter into a Contract to Sell on behalf of EMRASON.[35] Citing ALI's letters addressed to Ramos, Sr. and the latter's uncontroverted deposition "that he is the corporation's sole and exclusive authorized representative in the sale of the Dasmariñas Property"[36] vis-à-vis the Ramos children's limited authority to negotiate for the best terms of a sale, the CA then declared that ALI knew or was aware of the Ramos children's lack of authority.

In sustaining the validity of the Letter-Agreement between EMRASON and ASBRC, the appellate court effectively held that Ramos, Sr. was invested with the presumed authority to enter into the said Letter-Agreement.[37] The May 17, 1994[38] stockholders meeting ratifying the Letter-Agreement was likewise considered by the CA as corroborative of the validity of the Letter- Agreement.[39] Moreover, the CA noted that "the very filing of the instant case by EMRASON against ALI and the Ramos children not only for the nullification of the Contract to Sell x x x but also for the confirmation of the Letter-Agreement between EMRASON and [ASBRC] is [a] pure and simple x x x ratification on the part of EMRASON of [Ramos, Sr.'s] act of entering into the said Letter-Agreement."[40]

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[33] *Id*. at 44-58.

[34] *Id*. at 53.

[35] *Id*. at 54.

[36] *Id*. at 55.

[37] *Id.*

[38] Inadvertently stated by the CA as "a special meeting on May 7, 1994". *Id.* at 56.

[39] *Id.*

[40] *Id*. at 57.

The dispositive portion of the CA Decision reads:

WHEREFORE, the appeal is **DISMISSED**. The Decision dated June 29, 2010 of the Regional Trial Court of Imus, Cavite, Branch 20, in Civil Case No. 931-94, is **AFFIRMED**.

SO ORDERED.[41] (Emphasis in the original)

With the denial of its motion for reconsideration in a Resolution[42] dated November 7, 2013, ALI elevated the case to this Court through this petition for review on *certiorari.*

Issues

I. THE COURT OF APPEALS GRAVELY ERRED IN ANNULLING THE CONTRACT TO SELL BETWEEN PETITIONER AND EMRASON NOTWITHSTANDING CLEAR EVIDENCE CONSISTENT WITH STATUTE AND CASE LAW SHOWING EMRASON'S OWN CONFIRMATION THAT THE RAMOS CHILDREN WITH WHOM PETITIONER DEALT, HAD BOTH AUTHORITY AND CAPACITY TO CLOSE THE SALE BETWEEN THEM.

II. THE COURT OF APPEALS SERIOUSLY ERRED IN UPHOLDING THE VALIDITY OF THE LETTER-AGREEMENT BETWEEN ASBRC AND EMRASON DESPITE EVIDENCE AS ALLOWED BY LAW AND JURISPRUDENCE SHOWING THAT THE CONTRACT TO SELL THE RAMOS CHILDREN HAD SIGNED ON BEHALF OF EMRASON PRE- DATED THAT SIGNED BY RAMOS, SR. WITH ASRBC WHICH CARRIED NO BOARD AUTHORITY TO BEGIN WITH.

III. THE COURT OF APPEALS SERIOUSLY ERRED IN AFFIRMING THE RTC'S DISMISSAL OF PETITIONER'S COMPULSORY COUNTERCLAIM AND CROSS-CLAIM DESPITE UNCONTROVERTED EVIDENCE ALLOWED BY LAW AND JURISPRUDENCE SHOWING THE BAD FAITH AND DAMAGE INFLICTED BY EMRASON ON PETITIONER BY ITS DISAVOWAL OF THE AUTHORITY

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[41] *Id.*

[42] *Id.* at 60-62.

GIVEN THE RAMOS CHILDREN TO CLOSE THE SALE TRANSACTION THEY HAD EARLIER SIGNED WITH PETITIONER.[43]

Ruling

We deny the Petition for raising factual issues and failure to show that the CA committed any reversible error in its assailed Decision and Resolution as to warrant the exercise of this Court's discretionary appellate jurisdiction.

All the issues raised by petitioner ALI are factual in nature. ALI contends that there was sufficient evidence showing that EMRASON confirmed the authority of the Ramos children to enter into contract with ALI; that there was evidence that the Contract to Sell signed by the Ramos children pre-dated the Letter-Agreement signed by Ramos, Sr. and which carried no board authority; and, that there was evidence of bad faith on the part of EMRASON. Suffice it to say that only questions of law are allowed in a petition for review on *certiorari;* this Court is not a trier of facts and is not obliged to go over and recalibrate anew evidence that already passed the scrutiny of the lower courts, all the more in this case where the findings of the RTC were affirmed by the CA. This Court is not unaware of the exceptions to this rule; none, however, exists in this case.

In any case, ALI failed to show any reversible error on the part of the CA.

"A contract is void if one of the essential requisites of contracts under Article 1318 of the New Civil Code is lacking."[44] Consent, being one of these requisites, is vital to the existence of a contract "and where it is wanting, the contract is non-existent."[45]

For juridical entities, consent is given through its board of directors. As this Court held in *First Philippine Holdings*

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

[44] *First Philippine Holdings Corporation v. Trans Middle East (Phils.) Equities, Inc.*, 622 Phil. 623, 628 (2009).

[45] *Id.* at 629.

Corporation v. Trans Middle East (Phils.) Equities, Inc.,[46] a juridical entity, like EMRASON, "cannot act except through its board of directors as a collective body, which is vested with the power and responsibility to decide whether the corporation should enter in a contract that will bind the corporation, subject to the articles incorporation, by-laws, or relevant provisions of law."[47] Although the general rule is that "no person, not even its officers, can validly bind a corporation"[48] without the authority of the corporation's board of directors, this Court has recognized instances where third persons' actions bound a corporation under the doctrine of apparent authority or ostensible agency.

In *Nogales v. Capitol Medical Center*,[49] this Court explained the doctrine of apparent authority or ostensible agency, which is actually a species of the doctrine of estoppel, thus –

> The doctrine of apparent authority is a species of the doctrine of estoppel. Article 1431 of the Civil Code provides that '[t]hrough 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.' Estoppel rests on this rule: 'Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.'[50]

Given this jurisprudential teaching, ALI insists that the August 3, 1993 letter[51] of Ramos, Sr. to ALI was proof that EMRASON had acknowledged the authority of the Ramos children to transact

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[46] *Id.*

[47] *Id*. at 629, citing *Associated Bank v. Pronstroller,* 580 Phil. 104, 118 (2008).

[48] *People's Aircargo and Warehousing Company, Inc. v. Court of Appeals, supra* note 28 at 862, citing *Premium Marble Resources, Inc. v. Court of Appeals,* 332 Phil. 10, 18 (1996).

[49] 540 Phil. 225 (2006).

[50] *Id.* at 246, citing *De Castro v. Ginete,* 137 Phil. 453, 459 (1969).

[51] *Rollo,* p. 134.

with ALI and that such letter met the requisites for the application of the doctrine, following this Court's ruling in *Woodchild Holdings, Inc. v. Roxas Electric and Construction Company, Inc.*[52]

ALI's argument does not persuade.

The August 3, 1993 letter[53] pertinently reads:

August 3, 1993

AYALA LAND INC. (ALI)
Makati Stock Exchange Bldg.
Ayala Avenue, Makati
Metro Manila

Attention: Don Jaime Zobel de Ayala
Chairman

Thru : Mr. Victor H. Manarang
Assistant Vice President
Project Development Group

Gentlemen:

We deeply appreciate the privilege of receiving your letter- proposal dated July 28, 1993 signed by Mr. Victor H. Manarang regarding your interest in the development of our properties at Barrios Bucal and Langkaan, Dasmarinas, Cavite on a joint venture basis.

Your said letter-proposal was taken up by the Board of EMRASON during its regular meeting last Saturday, July 31, 1993 for our usual study and consideration. Messrs. Emerito B. Ramos, Jr. and Antonio B. Ramos, corporation officials, have been authorized to collaborate and continue negotiating and discussing with you terms and conditions

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[52] 479 Phil. 896, 914 (2004), where this Court held:

For the principle of apparent authority to apply, the petitioner was burdened to prove the following: (a) the acts of the respondent justifying belief in the agency by the petitioner; (b) knowledge thereof by the respondent which is sought to be held; and, (c) reliance thereon by the petitioner consistent with ordinary care and prudence. x x x

[53] *Rollo,* p. 134.

that are equitable and profitable and mutually beneficial to both ALI and EMRASON.

We are honored to look forward tor the possibility of starting business and friendly relationship with your goodselves.

Very truly yours,

(sgd.)
EMERITO M. RAMOS, SR.
Chairman of the Board

A perusal of the August 3, 1993 letter shows that EMRASON, through Ramos, Sr. authorized Ramos, Jr. and Antonio merely to "*collaborate and continue negotiating and discussing with [ALI] terms and conditions* that are mutually beneficial" to the parties therein. Nothing more, nothing less. To construe the letter as a virtual *carte blanche* for the Ramos children to enter into a Contract to Sell regarding the Dasmariñas Property would be unduly stretching one's imagination. "[A]cts done by [the] corporate officers beyond the scope of their authority cannot bind the corporation unless it has ratified such acts expressly or is estopped from denying them."[54] What is clear from the letter is that EMRASON authorized the Ramos children **only** to negotiate the terms of a **potential** sale over the Dasmariñas Property, and not to sell the property in an absolute way or act as signatories in the contract.

As correctly held by the RTC and the CA, and stressed in *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*:[55]

It is a settled rule that persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency **but also the nature and extent of the agent's authority**, and in case either is controverted, the burden of proof is upon them to establish it. x x x[56] (Emphasis supplied)

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[54] *Woodchild Holdings, Inc. v. Roxas Electric and Construction Company, Inc., supra* note 52 at 910.

[55] 639 Phil. 35 (2010).

[56] *Id*. at 48, citing *Manila Memorial Park Cemetery, Inc. v. Linsangan,* 485 Phil. 764, 779 (2004).

Equally misplaced is ALI's reliance on our pronouncement in *People's Aircargo Warehousing v. Court of Appeals*,[57] where we said that the authority of the apparent agents may be "expressly or impliedly [shown] by habit, custom or acquiescence in the general course of business."[58] For, indeed, ALI never mentioned or pointed to certain palpable acts by the Ramos children which were indicative of a habit, custom, or acquiescence in the general course of business that compel the conclusion that EMRASON must be deemed to have been bound thereby implacably and irretrievably. ALI's bare allegation that "the Ramos children submitted corporate documents to [ALI] to convince it that it was negotiating with the controlling shareholders of EMRASON"[59] is gratuitous and self-serving, hence, does not merit this Court's consideration. As an established business entity engaged in real estate, ALI should know that a corporation acts through its Board of Directors and not through its controlling shareholders.

In *People's Aircargo*,[60] this Court zeroed in on the apparent authority of a *corporate president* to bind the corporation, *viz.:*

> Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation. In the absence of a charter or bylaw provision to the contrary. the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties.
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> Hence, it has been held in other jurisdictions that the president of a corporation possesses the power to enter into a contract for the corporation, when the 'conduct on the part of both the president and the corporation [shows] that he had been in the habit of acting in

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[57] *Supra* note 28.

[58] *Id.* at 863.

[59] *Rollo,* pp. 23-24.

[60] *Supra* note 28.

similar matters on behalf of the company and that the company had authorized him so to act and had recognized, approved and ratified his former and similar actions.' Furthermore, a party dealing with the president of a corporation is entitled to assume that he has the authority to enter, on behalf of the corporation, into contracts that are within the scope of the powers of said corporation and that do not violate any statute or rule on public policy.[61] (Citations omitted)

Here, Ramos, Sr.'s authority to execute and enter into the Letter-Agreement with ASBRC was clearly proven. We quote with approval the RTC's finding thereon, to wit:

Emerito Ramos, Sr. testified that on 17 May 1994[,] a special Board meeting was called to discuss various proposals regarding the Dasmariñas Property. In attendance were Emerito Ramos, Sr., Rogerio Escobal and Arturo de Leon. After some discussion, the Board resolved to accept the proposal of ASB Realty being the most advantageous and beneficial to EMRASON. In the said meeting, the Board [of] Directors also agreed, *viz*[.]*:* that Emerito Ramos, Sr. shall be authorized to accept the cash advance from ASB in his personal capacity; and that Emerito Ramos, Sr. and Antonio Ramos shall be authorized to execute a Real Estate Mortgage in favor of ASB. Then, he identified the Minutes of the aforesaid Board Meeting and the signatures of the members of the board appearing thereon. He further alleged that at 4:00 in the afternoon of 17 May 1994 a Stockholders['] Meeting was subsequently held. He alleged that there was a quorum during the said meeting considering that he was present and the fact that he owns 2/3 of the subscribed capital of EMRASON.[62]

ALI's argument that "respondents failed to establish that [Ramos], Sr. had been in the habit of executing contracts on behalf of EMRASON"[63] is negated by the fact that correspondences between ALI and EMRASON had always been addressed to Ramos, Sr.[64] In fact, ALI must be deemed to have

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[61] *Id*. at 866-867.

[62] *Rollo,* p. 262.

[63] *Id*. at 27.

[64] See *id*. at 25 where ALI stated, "[t]hat petitioner had addressed some of its letters to [Ramos], Sr. does not mean that petitioner knew of his supposed status as EMRASON's exclusive authorized representative, or, that the Ramos children only had limited authority to negotiate.

acknowledged the authority of Ramos, Sr. to act on behalf of EMRASON when ALI relied on the August 3, 1993 letter of Ramos, Sr. In any case, this Court clarified in *People's Aircargo*[65] that "[i]t is **not** the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with the power to bind the corporation."[66] Together with this Court's pronouncement that "a party dealing with the president of a corporation is entitled to assume that he has the authority to enter, on behalf of the corporation, into contracts that are within the scope of the powers of said corporation and that do not violate any statute or rule on public policy,"[67] the inevitable conclusion is that Ramos, Sr. was properly authorized to, and validly executed with ASBRC, the said Letter-Agreement.

Petitioner contends, nonetheless, that Ramos, Sr. could not have possibly been at the stockholders' meeting due to his presence at the time at the Wack -Wack Golf and Country Club.[68] This argument undoubtedly raises a factual issue, and on this score alone, this Court can give it short shrift. Nonetheless, even shunting aside for a moment this legal infirmity, and allowing a re-evaluation of the evidence on record, petitioner's stance is still untenable, because the record shows that another stockholders' meeting was in fact subsequently held on March 6, 1995; and in this March 6, 1995 stockholders' meeting, the stockholders unanimously approved to confirm and ratify the Letter-Agreement.[69]

More than these, this Court cannot gloss over the formal defects in the Contract to Sell, which further shows that ALI did entertain doubts as to the Ramos children's authority to enter into the said contract. Consider the following pronouncement of the RTC, to wit:

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[65] *Supra* note 28.

[66] *Id.* at 864. Emphasis supplied.

[67] *Id.* at 867.

[68] The same was raised by petitioner in his appellant's brief before the CA. See *rollo,* p. 327.

[69] *Id.* at 263.

In this connection, the Court observes numerous formal defects in the Contract to Sell which would further support the fact that defendant ALI knew the **absence** of authority of defendant Ramos children to execute the same. Oddly, the first page of the contract failed to include the names of the duly authorized representative/s of EMRASON as the space specifically provided therefor was left in blank. In contrast, the duly appointed [a]ttorneys-in-fact of ALI are clearly named therein and designated as such. Similarly, page eighteen (18) of the said contract merely provided blank spaces to be filled up by the signatories of EMRASON vis-à-vis that of defendant ALI where the names of the [a]ttorney's-in-[f]act of defendant ALI are typewritten. Even in the acknowledgment page, only the names of the representatives of ALI were included. Interestingly, the acknowledgment **failed** to mention the names of signatories of EMRASON and their respective Community Tax Certificate Numbers. Considering that the subject contract involves a multi-million transaction, the Court finds it absolutely incredible that the parties thereto would **fail** to include the names of the signatories, their respective positions and/or authorities to enter into the said contract.[70] (Emphasis supplied)

Against this backdrop, this Court must uphold, as it hereby upholds, the validity of the Letter-Agreement entered into by and between EMRASON and ASBRC. Under the same parity of reasoning, this Court must affirm, as it hereby affirms, the RTC and CA's declaration of the invalidity or nullity of the Contract to Sell entered into by and between ALI and the Ramos children.

WHEREFORE, the instant Petition is **DENIED.** The April 30, 2013 Decision and November 7, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 97198 are **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, C.J., Bersamin, and *Tijam, JJ.,* concur.

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

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[70] *Id.* at 260.

[*] Per raffle dated September 19, 2018.

FIRST DIVISION

[G.R. No. 213415. September 26, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JIMMY EVASCO *y* NUGAY and ERNESTO ECLAVIA,** *accused,* **JIMMY EVASCO *y* NUGAY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ESSENTIAL REQUISITES.— The essential requisites of murder that the Prosecution must establish beyond reasonable doubt are, 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.

2. ID.; ID.; CONSPIRACY; DIRECT AND IMPLIED CONSPIRACY, DISTINGUISHED; WHEN IT IS PROVED THAT TWO OR MORE PERSONS AIMED BY THEIR ACTS TOWARDS THE ACCOMPLISHMENT OF THE SAME UNLAWFUL OBJECT, EACH DOING A PART SO THAT THEIR COMBINED ACTS, THOUGH APPARENTLY INDEPENDENT, WERE IN FACT CONNECTED AND COOPERATIVE, INDICATING A CLOSENESS OF PERSONAL ASSOCIATION AND A CONCURRENCE OF SENTIMENT, A CONSPIRACY COULD BE INFERRED ALTHOUGH NO ACTUAL MEETING AMONG THEM IS PROVED.— Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it. Conspiracy must be established, not by conjecture, but by positive and conclusive evidence, direct or circumstantial. Jimmy and Ernesto were shown to have acted in conspiracy when they assaulted Wilfredo. Although their agreement concerning the commission of the felony, and their decision to commit it were not established by direct evidence, the records contained clear and firm showing of their having acted in concert to achieve

a common design – that of assaulting Wilfredo. Direct proof of the agreement concerning the commission of a felony, and of the decision to commit it is not always accessible, but that should not be a hindrance to rendering a finding of implied conspiracy. Thus, the Court has discoursed in *Macapagal-Arroyo v. People*: In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the implied conspiracy. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest. Indeed, when it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy could be inferred although no actual meeting among them is proved.

3. **REMEDIAL LAW; EVIDENCE; DEFENSES OF ALIBI AND DENIAL; POSITIVE IDENTIFICATION BY SEVERAL WITNESSES, BEING CATEGORICAL AND CONSISTENT, COULD NOT BE UNDONE BY ALIBI AND DENIAL IN THE ABSENCE OF ANY CREDIBLE SHOWING OF ILL-MOTIVE ON THE PART OF THE IDENTIFYING WITNESSES.—** The lower courts disregarded the alibi and denial interjected by the accused-appellant in his defense. The lower courts were correct in doing so, for alibi and denial were generally self-serving and easily fabricated. Moreover, several witnesses positively identified Jimmy as one of the assailants of the victim. Such positive identification, being categorical and consistent, could not be undone by alibi and denial in the absence of any credible showing of ill-motive on the part of the identifying witnesses.

4. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN EXISTS; ELEMENTS IN ORDER TO BE APPRECIATED AGAINST THE ACCUSED; NOT ESTABLISHED.— The CA concluded that the assault was not treacherous. We concur. Treachery exists when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. For treachery to be appreciated, therefore, the State must establish the following elements, to wit: (1) the accused must employ means, method, or manner of execution that will ensure his safety from defensive or retaliating acts on the part of the victim, with no opportunity being given to the latter to defend himself or to retaliate; and (2) the accused must deliberately or consciously adopt such means, method, or manner of execution. The sudden and unexpected attack by the aggressor on the unsuspecting victim is of the essence of treachery because such manner of attack deprives the latter of any real chance to defend himself and at the same time ensures the commission of the assault without risk to the aggressor, and without the slightest provocation on the part of the victim. In this case, there was no evidence adduced to show that Ernesto and Jimmy had deliberately chosen their particular mode of attack to ensure the accomplishment of their criminal intention. None of the Prosecution's witnesses had seen how the assault had commenced; hence, treachery could not be held to have attended the assault that led to the untimely death of the victim.

5. ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; APPRECIATED ONLY WHEN THERE WAS A *NOTORIOUS INEQUALITY* OF FORCES BETWEEN THE VICTIM AND THE AGGRESSORS THAT WAS PLAINLY AND OBVIOUSLY ADVANTAGEOUS TO THE LATTER WHO PURPOSELY SELECTED OR TOOK ADVANTAGE OF SUCH INEQUALITY IN ORDER TO FACILITATE THE COMMISSION OF THE CRIME.— Abuse of superior strength is to be appreciated only when there was a *notorious inequality* of forces between the victim and the aggressors that was plainly and obviously advantageous to the latter who purposely selected or took advantage of such inequality in order to facilitate the commission of the crime. The assailants must

be shown to have consciously sought the advantage, or to have the deliberate intent to use their superior advantage. In this context, to take advantage of superior strength means to purposely use force *excessively out of proportion* to the means of defense available to the person attacked. The appreciation of the attendance of this aggravating circumstance depends on the age, size and strength of the parties.

6. ID.; ID.; ID.; ID.; AN ATTACK ON THE VICTIM BY TWO PERSONS DOES NOT *PER SE* ESTABLISH THAT THE CRIME WAS COMMITTED WITH ABUSE OF SUPERIOR STRENGTH, ABSENT PROOF OF THE RELATIVE STRENGTH OF THE AGGRESSORS AND THE VICTIM, AS MERE NUMERICAL SUPERIORITY ON THE PART OF THE AGGRESSORS DOES NOT DEFINE THE ATTENDANCE OF THIS AGGRAVATING CIRCUMSTANCE.— Mere numerical superiority on the part of the aggressors does not define the attendance of this aggravating circumstance. As the Court pointed out in *People v. Beduya*: Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. **The fact that there were two persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim.** The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. A review quickly illustrates that the lower courts did not calibrate the relative strengths of the aggressors and their victim. Their failure to do so was palpable enough, for there was no indication of the assailants having deliberately taken advantage of their numerical superiority if there were no witnesses who could describe how the assault had commenced. For sure, their having assaulted the victim *together* was not by itself a definite index of their having deliberately taken advantage of their greater number.

7. ID.; ID.; HOMICIDE; COMMITTED, ABSENT ANY AGGRAVATING CIRCUMSTANCES THAT WOULD QUALIFY THE KILLING TO MURDER; PROPER IMPOSABLE PENALTY.— Considering that the numerical superiority of the assailants could not be considered as the aggravating circumstance of abuse of superior strength that would qualify the killing, the crime was homicide, not murder. Article 249 of the *Revised Penal Code* punishes homicide with *reclusion temporal*. With the absence of any aggravating circumstances, the medium period of *reclusion temporal* – from 14 years, eight months and one day to 17 years and four months – is the proper imposable penalty. Pursuant to the *Indeterminate Sentence Law*, the minimum of the indeterminate sentence should be derived from *prision mayor* (*i.e.*, from six years and one day to 12 years), the penalty next lower than *reclusion temporal*, while the maximum of the indeterminate sentence should be 14 years, eight months and one day. In short, the indeterminate sentence of the accused-appellant is 10 years of *prision mayor*, as the minimum, to 14 years, eight months, and one day of *reclusion temporal*, as the maximum.

8. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— To conform with *People v. Jugueta*, the Court reduces the civil indemnity and moral damages to ₱50,000.00 each, but increases the amount of temperate damages to ₱50,000.00 (in lieu of actual damages representing the expenses for the burial of the remains of the victim, which were not proved with certainty). The award of exemplary damages is deleted because of the absence of any aggravating circumstances. In addition, all the amounts allowed herein 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.*:

The determination of whether or not the aggravating circumstance of abuse of superior strength was attendant requires the arduous review of the acts of the accused in contrast with the diminished strength of the victim. There must be a showing of gross disproportionality between each of them. Mere numerical superiority on the part of the accused does not automatically equate to superior strength. The determination must take into account all the tools, skills and capabilities available to the accused and to the victim to justify a finding of disproportionality; otherwise, abuse of superior strength is not appreciated as an aggravating circumstance.

The Case

The Court considers and resolves the appeal of accused-appellant Jimmy Evasco *y* Nugay (Jimmy) who assails his conviction for murder handed down by the Regional Trial Court (RTC), Branch 63, in Calauag, Quezon through the judgment rendered on November 22, 2011 in Criminal Case No. 5019-C,[1] which the Court of Appeals (CA) affirmed on appeal through the decision promulgated on January 6, 2014.[2]

Antecedents

For the killing of Wilfredo Sasot, Jimmy, along with Ernesto Eclavia (Ernesto), was indicted for murder under the information that alleged:

That on or about the 6th day of June 2006, at Barangay Mambaling, Municipality of Calauag, Province of Quezon, Philippines; and within the jurisdiction of this Honorable Court, the above-named accused, Jimmy Evasco, armed with a stone, conspiring and confederating

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[1] CA *rollo*, pp. 24-37; penned by Presiding Judge Manuel G. Salumbides.

[2] *Rollo*, pp. 2-13; penned by Associate Justice Florito S. Macalino, with the concurrence of Associate Justice Sesinando E. Villon and Associate Justice Zenaida T. Galapate-Laguilles.

with Ernesto Eclavia and mutually helping each other, with intent to kill, with treachery and evident premeditation, and taking advantage of their superior strength, did then and there wilfully, unlawfully and feloniously attack, assault and hit with the said stone one Wilfredo Sasot, thereby inflicting upon the latter fatal injuries on his head, which directly caused his death.

CONTRARY TO LAW.[3]

The factual and procedural antecedents were summarized in the assailed decision of the CA in the following manner, *viz*.:

x x x the prosecution presented three witnesses, namely, Lorna Sasot, Joan Fernandez, and Dr. Haidee T. Lim in order to establish the following:

On June 6, 2006, at about 9:00 p.m., while in Barangay Mambaling, Calauag, Quezon, witness Lorna Sasot (Lorna) went to the house of their neighbor, one Armando Braga (Armando), to fetch her husband, Wilfredo Sasot (Wilfredo).

When Lorna arrived at Armando's house, she saw Ernesto boxing Wilfredo. Thereafter, she saw Jimmy hit Wilfredo's head with a stone. As a result, Wilfredo fell to the ground with his face up.

While Wilfredo was still on the ground, Jimmy continuously hit him with a stone and Ernesto was boxing Wilfredo's body.

After mauling Wilfredo, Jimmy and Ernesto walked away together.

Subsequently, Lorna brought Wilfredo to the hospital and was pronounced dead-on-arrival.

According to Lorna, Wilfredo did not fight back when Ernesto and Jimmy mauled him. He just parried the hands of Ernesto. She also claimed that Jimmy was standing at the back of Wilfredo, when he pounded a stone on Wilfredo's head many times.

Witness Joan Fernandez (Joan) corroborated the testimony of Lorna. She alleged that she was standing for about four meters from the accused when the incident happened. Wilfredo was standing when Jimmy and Ernesto mauled him. In particular, she stated, "*[s]inusuntok po saka iyong bato pinupukpuk po sa ulo ni Wilfredo Sasot*."

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[3] CA *rollo*, p. 16.

Joan also stated that Jimmy hit Wilfredo's head with a stone, which is as big as her fist, while Ernesto with his bare hands hit Wilfredo on his face, chest and neck. Jimmy and Ernesto simultaneously attacked Wilfredo, who was unable to run because the two of them were holding him.

Lorna and Joan identified in open court Jimmy as one of the persons who mauled Wilfredo.

In addition, one Dr. Haidee T. Lim (Dr. Lim), Municipal Health Officer of Calauag, Quezon, testified for the prosecution. She stated that she conducted a Post Mortem Examination of Wilfredo's cadaver. She found that Wilfredo sustained a lacerated wound on his right ear, which could have been caused by a blunt instrument or a hard object. She also averred that there was an abrasion on the area below the chin of Wilfredo.

Dr. Lim also issued the Certificate of Death of Wilfredo and indicated therein that the "immediate cause [of his death] was cerebral infected secondary to mauling, this means a traumatic death or brain injury secondary to mauling."

For its part, the defense presented Jimmy in order to establish the following:

On June 6, 2006, Jimmy was in Barangay Mambaling, Calauag, Quezon and was having a drinking spree with Wilfredo, Ernesto, Armando, Armando's son, along with a certain Efren and Ito.

At about 9:00p.m., Ernesto and Wilfredo had a heated argument. Because the group was allegedly accustomed to such argument, the group did not interfere.

Thereafter, Ernesto and Wilfredo had a fist fight. Wilfredo stood up and Ernesto pushed him on a chair. Then, Wilfredo fell to the ground. The group tried to pacify Ernesto and Wilfredo because the latter was already lying on the ground.

In his cross-examination, Jimmy stated that when Ernesto and Wilfredo were fighting, he was held by Armando and was told not to interfere. He also said that there were only two punches when Wilfredo fell from his chair.

Jimmy averred that the group had a drinking session from 3:00 p.m. up to 10:00 p.m. After the incident, he went home.[4]

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[4] *Rollo*, pp. 3-6.

Judgment of the RTC

After trial, the RTC convicted Jimmy, concluding that the Prosecution's witnesses were credible as they did not have any ill-motive to impute a heinous crime against Jimmy unless the imputation was true; that Jimmy and his co-accused had conspired to kill Wilfredo as borne out by their concerted actions in assaulting the latter; that the killing of Wilfredo had been treacherous and attended with abuse of superior strength; and that the attendance of evident premeditation was ruled out.

The dispositive portion of the judgment of the RTC reads:

> Wherefore, premises considered, the prosecution has sufficiently proved and convinced this court beyond reasonable doubt that **JIMMY EVASCO y Nugay** is **GUILTY** of **Murder** for the killing of Wilfredo Sasot and that he should be punished therefor. He is hereby sentenced to Reclusion Perpetua or imprisonment from twenty (20) years and one (1) day to forty (40) years without eligibility for parole. Let his preventive imprisonment be deducted from the penalty herein imposed pursuant to the provisions of Article 29 of the Revised Penal Code.
>
> Jimmy Evasco is likewise ordered to indemnify the family of the late Wilfredo Sasot the following amounts:
>
> Php75,000.00 - civil indemnity for death;
> Php75,000.00 - for and as moral damages;
> Php30,000.00 - for and as exemplary damages;
> Php25,000.00 - for and as temperate damages.
>
> Let the records of the case insofar as Ernesto Eclavia alias Boy is concerned be sent to the Archives without prejudice to its subsequent prosecution upon the arrest or voluntary surrender of said accused.
>
> **SO ORDERED.**[5]

Decision of the CA

On appeal, the CA affirmed the conviction of Jimmy. It concurred with the disquisition of the RTC, except that it declared that treachery was not attendant. It concluded that Jimmy had committed murder because he and Ernesto abused their superior

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[5] CA *rollo*, p. 82.

strength in killing the victim and in preventing the latter from fleeing. The *fallo* reads:

> **WHEREFORE**, premises considered, the Decision dated November 22, 2011 of the Regional Trial Court of Calauag, Quezon, Branch 63 in Criminal Case No. 5019-C is hereby **AFFIRMED with MODIFICATION** that all monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.
>
> **SO ORDERED.**[6]

Hence, this appeal.[7]

Issue

Jimmy argues that the CA erred in affirming his conviction for murder considering that the RTC gravely erred in finding that conspiracy had existed between him and Ernesto because there was no direct evidence to prove the conspiracy, but only circumstantial evidence. He argues that the Prosecution did not establish the attendance of any of the qualifying circumstances alleged in the information.

Ruling of the Court

The appeal lacks merit.

The essential requisites of murder that the Prosecution must establish beyond reasonable doubt are, 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.[8]

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[6] *Rollo*, p. 12.

[7] The State and the accused-appellant separately manifested that they were no longer filing supplemental briefs, and prayed instead that their respective briefs filed in the CA be considered in resolving the appeal (see *rollo*, pp. 29, 33).

[8] *People v. Lagman*, G.R. No. 197807, April 16, 2012, 669 SCRA 512, 522.

As borne out by the record, Jimmy and Ernesto ganged up on Wilfredo, with Ernesto punching Wilfredo and Jimmy, from behind, hitting Wilfredo on the head with a rock. According to the medico-legal officer, the continuous trauma on the brain was the cause of Wilfredo's death. That Jimmy and Ernesto were the authors of the crime who should be held criminally responsible for the killing of Wilfredo is beyond dispute.

Did the acts of Jimmy and Ernesto establish a conspiracy between them?

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it.[9] Conspiracy must be established, not by conjecture, but by positive and conclusive evidence, direct or circumstantial.

Jimmy and Ernesto were shown to have acted in conspiracy when they assaulted Wilfredo. Although their agreement concerning the commission of the felony, and their decision to commit it were not established by direct evidence, the records contained clear and firm showing of their having acted in concert to achieve a common design – that of assaulting Wilfredo. Direct proof of the agreement concerning the commission of a felony, and of the decision to commit it is not always accessible, but that should not be a hindrance to rendering a finding of implied conspiracy. Thus, the Court has discoursed in *Macapagal-Arroyo v. People*:[10]

> In terms of proving its existence, conspiracy takes two forms. The first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime. However, conspiracies are not always shown to have been expressly agreed upon. Thus, we have the second form, the implied conspiracy. An implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of

[9] Article 8, *Revised Penal Code*.

[10] G.R. No. 220598 & G.R. No. 220953, July 19, 2016, 797 SCRA 241.

sentiment. Implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest.[11]

Indeed, when it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment, a conspiracy could be inferred although no actual meeting among them is proved.[12]

The lower courts disregarded the alibi and denial interjected by the accused-appellant in his defense. The lower courts were correct in doing so, for alibi and denial were generally self-serving and easily fabricated. Moreover, several witnesses positively identified Jimmy as one of the assailants of the victim. Such positive identification, being categorical and consistent, could not be undone by alibi and denial in the absence of any credible showing of ill-motive on the part of the identifying witnesses.[13]

The CA concluded that the assault was not treacherous. We concur. Treachery exists when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.[14] For treachery to be appreciated, therefore, the State must establish the following elements, to wit: (1) the accused must employ means, method,

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[11] *Id.* at 312.

[12] *E.g.*, *People v. de Leon*, G.R. No. 179943, June 26, 2009, 591 SCRA 178, 194-195.

[13] *Medina, Jr. v. People*, G.R. No. 161308, January 15, 2014, 713 SCRA 311, 323.

[14] Article 14, paragraph 16, Revised Penal Code.

or manner of execution that will ensure his safety from defensive or retaliating acts on the part of the victim, with no opportunity being given to the latter to defend himself or to retaliate; and (2) the accused must deliberately or consciously adopt such means, method, or manner of execution.[15] The sudden and unexpected attack by the aggressor on the unsuspecting victim is of the essence of treachery because such manner of attack deprives the latter of any real chance to defend himself and at the same time ensures the commission of the assault without risk to the aggressor, and without the slightest provocation on the part of the victim.[16]

In this case, there was no evidence adduced to show that Ernesto and Jimmy had deliberately chosen their particular mode of attack to ensure the accomplishment of their criminal intention. None of the Prosecution's witnesses had seen how the assault had commenced; hence, treachery could not be held to have attended the assault that led to the untimely death of the victim.

The CA found that Jimmy and Ernesto had perpetrated the killing with abuse of superior strength; and that the manner of attack indicated abuse of their superiority,[17] observing that their simultaneous acts of hitting Wilfredo with the rock and mauling him together indicated their taking advantage of their combined strengths to assault the victim.

We reverse the lower courts' findings. Abuse of superior strength is to be appreciated only when there was a *notorious inequality* of forces between the victim and the aggressors that was plainly and obviously advantageous to the latter who purposely selected or took advantage of such inequality in order to facilitate the commission of the crime. The assailants must be shown to have consciously sought the advantage, or to have the deliberate intent to use their superior advantage. In this

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[15] *Cirera v. People*, G.R. No. 181843, July 14, 2014, 730 SCRA 27, 47.

[16] *People v. Bugarin*, G.R. No. 224900, March 15, 2017.

[17] CA *rollo*, p. 81.

context, to take advantage of superior strength means to purposely use force *excessively out of proportion* to the means of defense available to the person attacked. The appreciation of the attendance of this aggravating circumstance depends on the age, size and strength of the parties.[18]

Mere numerical superiority on the part of the aggressors does not define the attendance of this aggravating circumstance. As the Court pointed out in *People v. Beduya*:[19]

> Abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. **The fact that there were two persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim.** The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked. [Bold emphasis supplied]

A review quickly illustrates that the lower courts did not calibrate the relative strengths of the aggressors and their victim. Their failure to do so was palpable enough, for there was no indication of the assailants having deliberately taken advantage of their numerical superiority if there were no witnesses who could describe how the assault had commenced. For sure, their having assaulted the victim *together* was not by itself a definite index of their having deliberately taken advantage of their greater number.

Considering that the numerical superiority of the assailants could not be considered as the aggravating circumstance of

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[18] *Valenzuela v. People*, G.R. No. 149988, August 14, 2009, 596 SCRA 1, 11.

[19] G.R. No. 175315, August 9, 2010, 627 SCRA 278, 284.

abuse of superior strength that would qualify the killing, the crime was homicide, not murder.

Article 249 of the *Revised Penal Code* punishes homicide with *reclusion temporal*. With the absence of any aggravating circumstances, the medium period of *reclusion temporal* – from 14 years, eight months and one day to 17 years and four months – is the proper imposable penalty. Pursuant to the *Indeterminate Sentence Law*, the minimum of the indeterminate sentence should be derived from *prision mayor* (*i.e.*, from six years and one day to 12 years), the penalty next lower than *reclusion temporal*, while the maximum of the indeterminate sentence should be 14 years, eight months and one day. In short, the indeterminate sentence of the accused-appellant is 10 years of *prision mayor*, as the minimum, to 14 years, eight months, and one day of *reclusion temporal*, as the maximum.

To conform with *People v. Jugueta*,[20] the Court reduces the civil indemnity and moral damages to ₱50,000.00 each, but increases the amount of temperate damages to ₱50,000.00 (in lieu of actual damages representing the expenses for the burial of the remains of the victim, which were not proved with certainty). The award of exemplary damages is deleted because of the absence of any aggravating circumstances. In addition, all the amounts allowed herein shall earn interest of 6% *per annum* reckoned from the finality of this decision until full settlement.

WHEREFORE, the Court **FINDS** and **DECLARE**S accused-appellant Jimmy Evasco *y* Nugay **GUILTY** beyond reasonable doubt of homicide, and, accordingly, **SENTENCES** him to suffer the indeterminate sentence of 10 years of *prision mayor*, as minimum, to 14 years, eight months, and one day of *reclusion temporal*, as maximum; and **ORDERS** him to pay the heirs of the late Wilfredo Sasot ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages, plus legal interest of 6% *per annum* from the finality of this decision until full settlement.

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[20] G.R. No. 202124, April 6, 2016, 788 SCRA 331, 386.

The accused-appellant shall further pay the costs of suit.

SO ORDERED.

Leonardo-de Castro, C.J., del Castillo, Perlas-Bernabe,[*] and *Tijam, JJ.*, concur.

FIRST DIVISION

[G.R. No. 217722. September 26, 2018]

JOMAR ABLAZA *y* CAPARAS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; APPELLATE COURTS WILL NOT OVERTURN THE FACTUAL FINDINGS OF THE TRIAL COURT IN THE ABSENCE OF FACTS OR CIRCUMSTANCES OF WEIGHT AND SUBSTANCE THAT WOULD AFFECT THE RESULT OF THE CASE, ESPECIALLY WHERE THE SAID FINDINGS ARE SUSTAINED BY THE COURT OF APPEALS.— "As a general rule, the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. Otherwise stated, a Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts." Notably here, the arguments advanced by petitioner to support his contention that his guilt was not proven beyond reasonable doubt assail Snyder's credibility as witness, specifically with respect to the latter's

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[*] In lieu of Associate Justice Francis H. Jardeleza, who inhibited due to his prior participation as the Solicitor General, per the raffle of September 24, 2018.

identification of him as one of the perpetrators, which essentially is a question of fact. As held, if a question posed requires the reevaluation of the credibility of witnesses, the issue is factual. And, although there are several exceptions to the rule that factual questions cannot be passed upon in a Rule 45 petition, the Court does not find the existence of any in this case. At any rate, "[t]he assessment of credibility of witnesses is a task most properly within the domain of trial courts." [T]he findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. Said rule finds an ever more stringent application where the said findings are sustained by the CA, as in the case at hand[.] Accordingly, the Court shall not depart from the findings of the RTC as affirmed by the CA on the matter of Snyder's credibility as witness and that of her testimony identifying petitioner as one of the perpetrators of the crime.

2. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS; THE ACT OF GRABBING DOES NOT SUGGEST THE PRESENCE OF VIOLENCE OR PHYSICAL FORCE, BUT IT CONNOTES THE SUDDENNESS OF THE ACT OF TAKING OR SEIZING WHICH CANNOT BE READILY EQUATED WITH THE EMPLOYMENT OF VIOLENCE OR PHYSICAL FORCE.— x x x [T]he Court finds that petitioner should be held liable only for theft. Indeed, the case of *People v. Concepcion* is on all fours with the present case, *viz.*: x x x. The prosecution failed to establish that Concepcion used violence, intimidation or force in snatching Acampado's shoulder bag. Acampado herself merely testified that Concepcion snatched her shoulder bag which was hanging on her left shoulder. Acampado did not say that Concepcion used violence, intimidation or force in snatching her shoulder bag. Given the facts, Concepcion's snatching of Acampado's shoulder bag constitutes the crime of theft, not robbery. x x x. Similarly in this case, Snyder's testimony was bereft of any showing that petitioner and his co-accused used violence or intimidation in taking her necklaces. She merely stated that the perpetrators grabbed her necklaces

without mentioning that the latter made use of violence or intimidation in grabbing them x x x. The OSG argues that the use of the word "grabbed", by itself, shows that violence or physical force was employed by the offenders in taking Snyders' necklaces. The Court, however, finds the argument to be a pure play of semantics. Grab means to take or seize by or as if by a sudden motion or grasp; to take hastily. Clearly, the same does not suggest the presence of violence or physical force in the act; the connotation is on the suddenness of the act of taking or seizing which cannot be readily equated with the employment of violence or physical force. Here, it was probably the suddenness of taking that shocked Snyder and not the presence of violence or physical force since, as pointed out by petitioner, Snyder did not at all allege that she was pushed or otherwise harmed by the persons who took her necklaces.

3. ID.; ID.; SIMPLE ROBBERY; ROBBERY DEFINED; ELEMENTS.— x x x [T]he use of force is not an element of the crime of simple robbery committed under paragraph 5, Article 294 of the RPC. The crime of robbery is found under Chapter One, Title Ten [Crimes Against Property] of the RPC. Chapter One is composed of two sections, to wit: Section One – Robbery with violence against or intimidation of persons; and Section Two – Robbery by the use of force upon things. Robbery in general is defined under Article 293 of the RPC as follows: Art. 293. *Who are guilty of robbery.* – Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery. "The elements of robbery are thus: (1) there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is **with violence against or intimidation of persons** or **with force upon things**." Note that while the fourth requisite mentions "with violence against or intimidation of persons" or "force upon things", only the phrase "with violence against or intimidation of persons" applies to the kinds of robbery falling under Section One, Chapter One, Title Ten of the RPC. The phrase "with force upon things", on the other hand, applies to the kinds of robbery provided under Section Two thereof.

4. ID.; ID.; ID.; PHRASE "BY MEANS OF VIOLENCE AGAINST OR INTIMIDATION OF PERSONS,"

CONSTRUED.— x x x [O]n how to construe the phrase "by means of violence against or intimidation of persons" as used in Article 294, the case of *People v. Judge Alfeche, Jr.* is enlightening: x x x. Paragraphs one to four of Article 294 indisputably involve the use of violence against persons. The actual physical force inflicted results in death, rape, mutilation or the physical injuries therein enumerated. **The simple robbery under paragraph five may cover physical injuries not included in paragraphs two to four. Thus, when less serious physical injuries or slight physical injuries are inflicted upon the offended party on the occasion of a robbery, the accused may be prosecuted for and convicted of robbery under paragraph five**. x x x. It seems obvious that intimidation is not encompassed under paragraphs one to four since no actual physical violence is inflicted; evidently then, it can only fall under paragraph five. But what is meant by the word intimidation? It is defined in Black's Law Dictionary as 'unlawful coercion; extortion; duress; putting in fear'. To take, or attempt to take, by intimidation means 'wilfully to take, or attempt to take, by putting in fear of bodily harm." As shown in *United States vs. Osorio* material violence is not indispensable for there to be intimidation, intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient. x x x.

5. ID.; ID.; ID.; ELEMENT OF VIOLENCE AND INTIMIDATION; FOR THE REQUISITE OF VIOLENCE TO BE PRESENT, THE VICTIM MUST HAVE SUSTAINED LESS SERIOUS PHYSICAL INJURIES OR SLIGHT PHYSICAL INJURIES IN THE OCCASION OF THE ROBBERY, WHILE THE REQUISITE OF INTIMIDATION IS NOT PRESENT WHERE THE ACT OF THE PERPETRATORS IN GRABBING THE VICTIM'S NECKLACE WAS SO SUDDEN THAT IT COULD NOT HAVE PRODUCED FEAR OR DURESS IN THE VICTIM'S MIND AS TO DEPRIVE HER OF THE EXERCISE OF HER WILL.— x x x [F]or the requisite of violence to obtain in cases of simple robbery, the victim must have sustained less serious physical injuries or slight physical injuries in the occasion of the robbery. Or, as illustrated in the book of Justice Luis B. Reyes, The Revised Penal Code (Book Two), there should be some kind of violence exerted to

accomplish the robbery, as when: Snatching money from the hands of the victim and *pushing* her to prevent her from recovering the seized property. x x x Where there is nothing in the evidence to show that some kind of violence had been exerted to accomplish the snatching, and the offended party herself admitted that she did not feel anything at the time her watch was snatched from her left wrist, the crime committed is not robbery but only on simple theft. In this case, Snyder did not sustain any kind of injury at all. And as already mentioned, her testimony was bereft of any showing that violence was used against her by petitioner and his co-accused in that she was pushed, or otherwise harmed on the occasion of the robbery. While one can only imagine how pulling three necklaces at the same time from the victim's neck could not have caused any mark, bruise, or pain to the latter, suffice it to state that such a matter must have been adequately proved by the prosecution during trial as the Court cannot rely on mere assumptions, surmises, and conjectures especially when it is the life and liberty of the petitioner which is at stake. As to intimidation, its non-existence in this case is not in dispute. And even if otherwise, the Court will just the same rule against it. Per the victim's testimony, the act of the perpetrators in grabbing her necklaces was so sudden. Hence, it could not have produced fear or duress in the victim's mind as to deprive her of the exercise of her will.

6. ID.; ID.; THEFT; COMMITTED WHERE THE PROSECUTION FAILED TO SUFFICIENTLY ESTABLISH THAT THE TAKING OF THE PROPERTY BELONGING TO ANOTHER WAS WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS.— "Fundamental is the precept in all criminal prosecutions, that the constitutive acts of the offense must be established with unwavering exactitude and moral certainty because this is the critical and only requisite to a finding of guilt." Here, the fourth requisite of the crime of robbery is not obtaining considering that the prosecution failed to sufficiently establish that the taking of the necklaces was with violence against or intimidation of persons. Accordingly, petitioner must be held liable only for the crime of theft, not robbery.

7. ID.; ID.; ID.; PROPER IMPOSABLE PENALTY.— Under Article 309(3) of the RPC as amended by Republic Act No.

10951, any person guilty of theft shall be punished by the penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than ₱20,000.00 but does not exceed ₱600,000.00. Since petitioner is guilty of the crime of theft of property valued at ₱70,100.00 and, in the absence of any mitigating or aggravating circumstance, the maximum term of the penalty should be within the range of one (1) year, eight (8) months and twenty-one (21) days to two (2) years, eleven (11) months and ten (10) days of *prision correccional*. Applying the Indeterminate Sentence Law, the minimum term of the penalty shall be within the range of the penalty next lower to that prescribed by the RPC for the crime, which is *arresto mayor* in its medium and maximum periods which ranges from two (2) months and one (1) day to six (6) months. For this reason, the Court imposes upon petitioner the indeterminate penalty of six (6) months of *arresto mayor* as minimum, to two (2) years, eleven (11) months and ten (10) days of *prision correccional* as maximum.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
The Solicitor General for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the March 20, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 36343, which affirmed with modification the December 3, 2013 Judgment[2] of the Regional Trial Court (RTC), Branch 75, Olongapo City in Crim. Case No. 384-10 finding Jomar Ablaza *y* Caparas (petitioner) and his co-accused Jay Lauzon *y* Farrales (Lauzon) guilty beyond reasonable doubt of Robbery

[1] *CA rollo*, pp. 112-126; penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Leoncia R. Dimagiba and Melchor Quirino C. Sadang.

[2] Records, pp. 230-233; penned by Judge Raymond C. Viray.

with Violence Against or Intimidation of Persons under paragraph 5, Article 294 of the Revised Penal Code (RPC).

Factual Antecedents

Petitioner and Lauzon were charged in an Information[3] which reads:

> That on or about the twenty-ninth (29th) day of July, 2010, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping one another, with intent to gain, and by means of force and violence against the person of Rosario S. Snyder, did then and there willfully, unlawfully, feloniously and forcibly grab, take, steal and carry away three (3) pcs. of necklaces worth ₱43,800.00, ₱12,800.00 and ₱13,500.00. respectively, or in the total amount of ₱70,100.00 x x x Philippine Currency, belonging to said complainant, to her damage and prejudice.
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> CONTRARY TO LAW.[4]

Petitioner pleaded not guilty to the charge.[5] Lauzon, who was arrested after the conclusion of the pre-trial, also entered a plea of not guilty and adopted the pre-trial proceedings insofar as petitioner was concerned.[6] Trial then ensued.

The prosecution presented as its lone witness the victim, Rosario S. Snyder (Snyder). Snyder narrated that at around 8:30 a.m. of June 29, 2010, she was using her cellphone[7] while walking along Jolo Street, *Barangay* Barreto, Olongapo City[8] when a motorcycle with two male persons on board stopped beside her.[9] The backrider then suddenly grabbed her three

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[3] *Id*. at 1-2.

[4] *Id*. at 1.

[5] *Id*. at 28.

[6] *Id*. at 126.

[7] TSN, June 22, 2011, p. 17.

[8] *Id*. at 3-4.

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

necklaces:[10] one big necklace worth ₱43,800.00 and two other necklaces each with pendants worth ₱13,500.00 and ₱12,800.00, respectively,[11] the prices of which were evidenced by the receipts issued by Eleanor Pawnshop and Jewelry Store where she bought them.[12] Snyder further recounted that after grabbing her necklaces, the two male persons moved a short distance[13] and then looked back at her to check if all her necklaces were taken. Recovering from shock, Snyder managed to shout and ask for help. A tricycle passed by and so the male persons on board the motorcycle immediately sped away.[14] Snyder asked the tricycle driver to run after the snatchers but he unfortunately missed them.[15] Thus, Snyder went to the Police Station to report the incident.[16]

While at the police station, Snyder was shown some pictures from which she identified petitioner as the driver of the motorcycle.[17] Snyder was certain about the identity of petitioner since she had a good look at the robbers' faces when they looked back at her before speeding away and also because petitioner was not wearing any helmet at that time.[18]

On the same day, a policeman accompanied Snyder to the house of petitioner[19] who, when asked, denied any involvement in the snatching incident and claimed that he was asleep at that time.[20] After a while, Snyder and the policeman discovered that Lauzon, whom Snyder earlier learned to be the backrider,[21]

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

[11] *Id*. at 7-8.

[12] *Id*. at 8-9; records, p. 8.

[13] *Id*. at 18.

[14] *Id*. at 20.

[15] *Id*. at 7.

[16] *Id*. at 9.

[17] *Id*. at 10.

[18] *Id*. at 11-12.

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

[20] *Id*. at 14.

[21] *Id*. at 12.

was also in petitioner's house hiding under the kitchen sink.[22] Unfortunately, Snyder was not able to recover her necklaces.[23]

Petitioner served as the sole witness for the defense. Petitioner claimed that on the date and time of the incident, he and Lauzon were asleep in his house in *Purok* 6, Lower Kalaklan in front of Ocean View[24] since they had a drinking spree the night before.[25] Petitioner only woke up[26] when a policeman arrived asking him if he was Jomar Ablaza.[27] Upon confirming that he was Jomar Ablaza, the policeman told him that a woman wanted to see him.[28] However, upon seeing petitioner, the woman told the policeman that he was not the one since the person she was looking for was "tisoy" with tattoo.[29] Upon hearing this, the policeman reminded the woman that petitioner already had a record with the police.[30] The policeman and the woman then simply left.[31] After two months, however, petitioner was arrested in connection with this case.[32]

On cross-examination, petitioner testified that he did not know Snyder prior to the alleged incident and that he was involved in two more cases of robbery and one for theft.[33]

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[22] *Id*. at 14.

[23] *Id*. at 25.

[24] TSN, September 5, 2013, p. 3.

[25] *Id*. at 4.

[26] *Id*.

[27] *Id*.

[28] *Id*. at 5.

[29] *Id*.

[30] *Id*.

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

[32] *Id*. at 6.

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

Ruling of the Regional Trial Court

In its Judgment[34] dated December 3, 2013, the RTC lent credence to Snyder's testimony for being candid, unwavering, clear, coherent and also because she was without any improper motive to wrongly implicate petitioner and Lauzon. The trial court also found the elements of the crime of robbery, to wit: (1) that there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi;* and (4) the taking is with violence against or intimidation of persons or force upon things, to be present, ratiocinating as follows:

> There is taking for sure. The act of the accused riding in tandem [in] forcibly grabbing the necklaces of Snyder from her neck exhibits not only *animus lucrandi*, but also violent taking. The accused did not simply "snatch" the necklaces; they grabbed them from Snyder's neck. The accused ran away with the necklaces in an arrogant display of their intention to deprive Snyder of possession and dominion of her necklaces. And finally, the necklaces belonged to Snyder. She had receipts to prove her ownership. She bought them at a jewelry store.[35]

Petitioner and Lauzon were likewise found to have conspired with each other in committing the crime charged.

Accordingly, the RTC adjudged petitioner and Lauzon as follows:

> WHEREFORE, the court finds JAY LAUZON *y* FARRALES and JOMAR ABLAZA *y* CAPARAS guilty beyond reasonable doubt of Robbery defined and penalized under Article 294 (5) of the Revised Penal Code, and sentences them to each suffer the penalty of imprisonment ranging from four (4) years and two (2) months as minimum to eight (8) years and twenty (20) days as maximum.
>
> The accused are also ordered solidarily to pay Rosario Snyder the amount of Php70,100.00 with interest at 6% *per annum* until the full amount is paid; and to pay the cost of suit.
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> SO DECIDED.[36]

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[34] Records, pp. 230-233.

[35] *Id.* at 232.

[36] *Id.* at 233.

Petitioner filed a Notice of Appeal[37] which was given due course in an Order[38] dated December 17, 2013.

Ruling of the Court of Appeals

In his Brief,[39] petitioner argued that the RTC erred in giving credence to Snyder's testimony which was incredible and full of inconsistencies. Petitioner pointed out that it was unlikely that, after grabbing the necklaces and speeding away, he and Lauzon would still look back at their alleged victim, Snyder. According to him, logic and common experience dictate that they immediately leave the crime scene and not look back. Second, Snyder herself admitted that she was shocked; hence, it was highly unlikely that she would have the emotional stability and mental acuity to accurately remember the robbers' facial features. Also, Snyder did not at the outset describe the physical appearance of the persons who robbed her; instead, she identified petitioner only after she was shown the pictures. Moreover, Snyder was looking for a mestizo who was sporting a tattoo which thus rendered doubtful Snyder's identification of petitioner. Third, there were several inconsistencies in the testimonies of Snyder which tended to demonstrate the fickleness of her memory. Lastly, petitioner found it baffling why he was arrested only after two months and not immediately after a policeman and Snyder went to his house on the day itself of the incident. To petitioner, all these cast doubt on his supposed guilt.

Petitioner likewise argued that, even assuming he committed the acts imputed against him, the RTC should have convicted him only of theft citing *People v. Concepcion*[40] where the accused therein who snatched the victim's bag was held guilty of theft and not robbery.

The CA, however, was not swayed by petitioner's asseverations and found no merit in the appeal. It saw no reason

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[37] *Id.* at 238.

[38] *Id.* at 239.

[39] CA *rollo*, pp. 35-53.

[40] 691 Phil. 542 (2012).

not to believe Snyder's testimony and likewise found all the elements of robbery obtaining. In debunking petitioner's claim that the element of violence was absent, the CA stated that the only way that the necklaces could have been taken from Snyder was through the use of violence and physical force. The CA also concurred with the RTC's finding of conspiracy. However, it found fit to modify the penalty decreed by the trial court and clarified that the 6% interest imposed on the monetary award should be reckoned from the date of finality of the judgment until fully paid.

The dispositive portion of the assailed CA Decision reads:

> WHEREFORE, premises considered, the appeal is hereby DENIED. The Judgment dated December 3, 2013 of the Regional Trial Court, Branch 75, Olongapo City is AFFIRMED WITH MODIFICATION in that accused-appellant Jomar Ablaza *y* Caparas is sentenced to suffer imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum, to eight (8) years of *prision mayor*, as maximum. He is further ordered to pay private complainant Rosario Snyder interest on the award of civil liability assessed at the legal rate of six percent (6%) per annum from date of finality of this judgment until fully paid.
>
> SO ORDERED.[41]

In view of the above, petitioner is now before this Court through this Petition for Review on *Certiorari* imputing upon the CA the following errors:

> X X X THE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE PETITIONER FOR THE CRIME CHARGED DESPITE THE FACT THAT HIS GUILT [HAD] NOT BEEN PROVEN BEYOND REASONABLE DOUBT.
>
> ASSUMING *ARGUENDO* THAT THE PETITIONER COMMITTED THE ALLEGED ACTS, THE COURT OF APPEALS GRAVELY ERRED IN FINDING HIM LIABLE FOR ROBBERY INSTEAD OF THEFT.[42]

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

[42] *Rollo*, p. 16.

Petitioner's Arguments

Petitioner argues that the CA erred in relying on Snyder's uncorroborated testimony concerning his identification as one of the alleged robbers. Said testimony did not inspire belief since, aside from being highly contrary to human nature and experience, it was tainted with several inconsistencies. Moreover, the same was insufficient to sustain petitioner's conviction. While petitioner admits that a lone witness' testimony may be sufficient to convict an accused, this is only true when the testimony is clear, consistent, and credible, which is not the case here. Also, while a denial cannot overcome a positive identification of the accused, the positive identification must first come from a credible witness and the witness's story must be believable and inherently contrived, which again is not true in this case. These, according to petitioner, negate his guilt beyond reasonable doubt.

Even assuming that he committed the acts imputed against him, petitioner contends that he may only be held liable for theft. He disagrees with the CA when it held that the only way that the necklaces could be taken from Snyder was through the use of violence and physical force. Notably, Snyder testified that her necklaces were grabbed from her. However, a necklace can be "grabbed" and taken away without the use of violence. In fact, Snyder did not at all allege that she was pushed or otherwise harmed a by the persons who took her necklaces. In this regard, petitioner once again invokes the ruling in *Concepcion* which he believes to be squarely applicable to his case.

In sum, petitioner prays that he be acquitted of the crime charged or, in the alternative, that he be held liable only for theft.

Respondent's Arguments

In its Comment,[43] Respondent People of the Philippines, through the Office of the Solicitor General (OSG), avers that Snyder was able to positively identify petitioner as she saw

[43] *Id.* at 166-194.

the faces of the perpetrators. This easily inspires belief as the incident happened at around 8:30 a.m. or in broad daylight; the robbers' faces were in open view; and that they were just a short distance away from Snyder when they looked back at her. Significantly, Snyder made the identification from the photographs shown to her just immediately after the incident. And, despite being shown several photographs of persons with police records, she was able to pinpoint petitioner as one of the perpetrators. On the other hand, that Snyder was allegedly looking for a "tisoy" was a mere allegation of petitioner. Anent the inconsistencies in Snyder's testimony, the OSG avers that the same referred to trivial matters that did not affect her credibility. It, thus, posits that the credible and convincing testimony of Snyder sufficiently established the identity of petitioner as one of the perpetrators.

The OSG likewise asserts that petitioner was correctly found guilty of robbery. According to it, *Concepcion* is not applicable to this case since therein, the victim testified that her shoulder bag was snatched but no violence, intimidation, or force was used against her by the perpetrators. However, here, Snyder testified that her necklaces were not merely snatched but grabbed from her. Hence, violence was used upon her person. In view of these, the OSG prays for the denial of the petition for lack of merit.

Our Ruling

There is partial merit in the petition.

"As a general rule, the Court's jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited to the review of pure questions of law. Otherwise stated, a Rule 45 petition does not allow the review of questions of fact because the Court is not a trier of facts."[44] Notably here, the arguments advanced by petitioner to support his contention that his guilt was not proven beyond reasonable doubt assail

[44] *Bank of the Philippine Islands v. Mendoza*, G.R No. 198779, March 20, 2017, 821 SCRA 41, 48.

Snyder's credibility as witness, specifically with respect to the latter's identification of him as one of the perpetrators, which essentially is a question of fact. As held, if a question posed requires the reevaluation of the credibility of witnesses, the issue is factual.[45] And, although there are several exceptions to the rule that factual questions cannot be passed upon in a Rule 45 petition,[46] the Court does not find the existence of any in this case. At any rate, "[t]he assessment of credibility of witnesses is a task most properly within the domain of trial courts."[47]

> [T]he findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand. Consequently, appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. Said rule finds an ever more stringent application where the said findings are sustained by the CA, as in the case at hand[.][48]

Accordingly, the Court shall not depart from the findings of the RTC as affirmed by the CA on the matter of Snyder's credibility as witness and that of her testimony identifying petitioner as one of the perpetrators of the crime.

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[45] *Id*. at 49.

[46] (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. [*Miano, Jr. v. Manila Electric Company (MERALCO)*, G.R. No. 205035, November 16, 2016, 809 SCRA 193, 199.]

[47] *People v. Gerola*, G.R. No. 217973, July 19, 2017.

[48] *Id.*

Nevertheless, the Court finds that petitioner should be held liable only for theft. Indeed, the case of *People v. Concepcion*[49] is on all fours with the present case, *viz.*:

> x x x Article 293 or the [Revised Penal Code (RPC)] defines robbery as a crime committed by 'any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything.' x x x
>
> Theft, on the other hand, is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take the personal property of another without the latter's consent. x x x
>
> By definition in the RPC, robbery can be committed in three ways, by using: (a) violence against any person; (b) intimidation of any person; and/or (c) force upon anything. Robbery by use of force upon things is provided under Articles 299 to 305 of the RPC.
>
> The main issue is whether the snatching of the shoulder bag in this case is robbery or theft. Did Concepcion employ violence or intimidation upon persons, or force upon things, when he snatched Acampado's shoulder bag?
>
> In People v. Dela Cruz, this Court found the accused guilty of theft for snatching a basket containing jewelry, money and clothing, and taking off with it, while the owners had their backs turned.
>
> In People v. Tapang, this Court affirmed the conviction of the accused for frustrated theft because he stole a white gold ring with diamond stones from the victim's pocket, which ring was immediately or subsequently recovered from the accused at or about the same time it was stolen.
>
> In People v. Omambong, the Court distinguished robbery from theft. The Court held:
>
> > Had the appellant then run away, he would undoubtedly have been guilty of theft only, because the asportation was not effected against the owner's will but only without his consent; although, of course, there was some sort of force used by the appellant in taking the money away from the owner.

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[49] *Supra* note 40.

x x x x x x x x x

What the record does show is that when the offended party made an attempt to regain his money, the appellant's companion used violence to prevent his succeeding.

x x x x x x x x x

The crime committed is therefore robbery and not theft, because personal violence was brought to bear upon the offended party before he was definitely deprived of his money.

The prosecution failed to establish that Concepcion used violence, intimidation or force in snatching Acampado's shoulder bag. Acampado herself merely testified that Concepcion snatched her shoulder bag which was hanging on her left shoulder. Acampado did not say that Concepcion used violence, intimidation or force in snatching her shoulder bag. Given the facts, Concepcion's snatching of Acampado's shoulder bag constitute the crime of theft, not robbery. x x x[50] (Citations omitted)

Similarly in this case, Snyder's testimony was bereft of any showing that petitioner and his co-accused used violence or intimidation in taking her necklaces. She merely stated that the perpetrators grabbed her necklaces without mentioning that the latter made use of violence or intimidation in grabbing them, *viz.*:

Q: Do you recall any untoward incident that happened while walking on [July 29, 2010]?
A: Yes, sir.

Q: What is that incident?
A: **Suddenly somebody approached me and took my necklace.**

x x x x x x x x x

Q: Can you tell us how these two persons approached you?
A: While I was walking, a motorcycle stopped[,] x x x [on board it were] the driver and a backrider.

Q: Where did this motorcycle stop?
A: [Beside] me.

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[50] *Id.* at 548-550.

Q: In front of you or beside you?
A: [Beside] me.

x x x x x x x x x

Q: How did these persons grab your necklace?
A: **They suddenly grabbed my necklace and I was shocked.**[51]

The OSG argues that the use of the word "grabbed", by itself, shows that violence or physical force was employed by the offenders in taking Snyders' necklaces. The Court, however, finds the argument to be a pure play of semantics. Grab means to take or seize by or as if by a sudden motion or grasp; to take hastily.[52] Clearly, the same does not suggest the presence of violence or physical force in the act; the connotation is on the suddenness of the act of taking or seizing which cannot be readily equated with the employment of violence or physical force. Here, it was probably the suddenness of taking that shocked Snyder and not the presence of violence or physical force since, as pointed out by petitioner, Snyder did not at all allege that she was pushed or otherwise harmed by the persons who took her necklaces.

Besides, the use of force is not an element of the crime of simple robbery committed under paragraph 5, Article 294 of the RPC.

The crime of robbery is found under Chapter One, Title Ten [Crimes Against Property] of the RPC. Chapter One is composed of two sections, to wit: Section One – Robbery with violence against or intimidation of persons; and Section Two – Robbery by the use of force upon things.

Robbery in general is defined under Article 293 of the RPC as follows:

Art. 293. *Who are guilty of robbery.* – Any person who, with intent to gain, shall take any personal property belonging to another, by

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[51] TSN, June 2, 2011, pp. 4-5: emphases supplied.

[52] https://www.merriam-webster.com/dictionary/grab; last visited on August 28, 2018.

means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

"The elements of robbery are thus: (1) there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi;* and (4) the taking is **with violence against or intimidation of persons** or **with force upon things**."[53]

Note that while the fourth requisite mentions "with violence against or intimidation of persons" or "force upon things", only the phrase "with violence against or intimidation of persons" applies to the kinds of robbery falling under Section One, Chapter One, Title Ten of the RPC. The phrase "with force upon things", on the other hand, applies to the kinds of robbery provided under Section Two thereof.

As mentioned, the RTC convicted petitioner of simple robbery under paragraph 5, Article 294, which article falls under Section One. Article 294 provides:

ART 294. *Robbery with violence against or intimidation of persons. – Penalties.* – Any person guilty of robbery with use of violence against or intimidation of any person shall suffer:

1. The penalty of from *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide, shall have been committed; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua,* when or if by reason or on occasion of such robbery, any of the physical injuries penalized in subdivision 1 of Article 263 [Serious Physical Injuries] shall have been inflicted.

3. The penalty of *reclusion temporal,* when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.

4. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its medium period, if the violence or intimidation employed

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[53] *Consulta v. People*, 598 Phil. 464, 471 (2009).

in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when in the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by subdivisions 3 and 4 of said Article 263.

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases.

Hence, in determining the existence of the fourth requisite in cases of simple robbery under Article 294, courts should look into whether the taking of personal property is with violence against or intimidation of persons and not on whether there was force.

Now, on how to construe the phrase "by means of violence against or intimidation of persons" as used in Article 294, the case of *People v. Judge Alfeche, Jr.*[54] is enlightening:

> Accordingly, the phrase 'by means of violence against or intimidation of persons' in Article 312 must be construed to refer to the same phrase used in Article 294. There are five classes of robbery under the latter, namely: (a) robbery with homicide (par. 1); (b) robbery with rape, intentional mutilation, or the physical injuries penalized in subdivision 1 of Article 263 (par. 2); (c) robbery with physical injuries penalized in subdivision 2 of Article 263 (par. 3); (d) robbery committed with unnecessary violence or with physical injuries covered by subdivisions 3 and 4 of Article 263 par. 4); and (e) robbery in other cases, or simply robbery (par. 5), where the violence against or intimidation of persons cannot be subsumed by, or where it is not sufficiently specified so as to fall under, the first four paragraphs.
>
> Paragraphs one to four or Article 294 indisputably involve the use of violence against persons. The actual physical force inflicted results in death, rape, mutilation or the physical injuries therein enumerated. **The simple robbery under paragraph five may cover physical injuries not included in paragraphs two to four. Thus, when less serious physical injuries or slight physical injuries are inflicted upon the offended party on the occasion of a robbery, the accused may be prosecuted for and convicted of robbery under paragraph five**.

[54] 286 Phil. 936 (1992).

It seems obvious that intimidation is not encompassed under paragraphs one to four since no actual physical violence is inflicted; evidently then, it can only fall under paragraph five.

But what is meant by the word intimidation? It is defined in Black's Law Dictionary as 'unlawful coercion; extortion; duress; putting in fear'. To take, or attempt to take, by intimidation means 'wilfully to take, or attempt to take, by putting in fear of bodily harm.' As shown in *United States vs. Osorio* material violence is not indispensable for there to be intimidation, intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient. x x x[55]

Clearly, for the requisite of violence to obtain in cases of simple robbery, the victim must have sustained less serious physical injuries or slight physical injuries in the occasion of the robbery. Or, as illustrated in the book of Justice Luis B. Reyes, The Revised Penal Code (Book Two), there should be some kind of violence exerted to accomplish the robbery, as when:

Snatching money from the hands of the victim and *pushing* her to prevent her from recovering the seized property.

x x x x x x x x x

Where there is nothing in the evidence to show that some kind of violence had been exerted to accomplish the snatching, and the offended party herself admitted that she did not feel anything at the time her watch was snatched from her left wrist the crime committed is not robbery but only on simple theft.[56]

In this case, Snyder did not sustain any kind of injury at all. And as already mentioned, her testimony was bereft of any showing that violence was used against her by petitioner and his co-accused in that she was pushed, or otherwise harmed on the occasion of the robbery. While one can only imagine how pulling three necklaces at the same time from the victim's neck

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[55] *Id.* at 948-949.

[56] Reyes, Luis, B., *The Revised Penal Code*, Book Two, 2008 Ed., p. 681.

could not have caused any mark, bruise, or pain to the latter, suffice it to state that such a matter must have been adequately proved by the prosecution during trial as the Court cannot rely on mere assumptions, surmises, and conjectures especially when it is the life and liberty of the petitioner which is at stake.

As to intimidation, its non-existence in this case is not in dispute. And even if otherwise, the Court will just the same rule against it. Per the victim's testimony, the act of the perpetrators in grabbing her necklaces was so sudden. Hence, it could not have produced fear or duress in the victim's mind as to deprive her of the exercise of her will.

"Fundamental is the precept in all criminal prosecutions, that the constitutive acts of the offense must be established with unwavering exactitude and moral certainty because this is the critical and only requisite to a finding of guilt."[57] Here, the fourth requisite of the crime of robbery is not obtaining considering that the prosecution failed to sufficiently establish that the taking of the necklaces was with violence against or intimidation of persons. Accordingly, petitioner must be held liable only for the crime of theft, not robbery.

Under Article 309(3) of the RPC as amended by Republic Act No. 10951,[58] any person guilty of theft shall be punished by the penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than ₱20,000.00 but does not exceed ₱600,000.00. Since petitioner is guilty of the crime of theft of property valued at ₱70,100.00 and, in the absence of any mitigating or aggravating circumstance, the maximum term of the penalty should be within the range of one (1) year, eight (8) months and twenty-one (21) days to two (2) years, eleven (1) months and ten (10) days of *prision correccional.* Applying the Indeterminate Sentence

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[57] *Balerta v. People,* 748 Phil. 806, 821 (2014).

[58] 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 August 29, 2017.

Law, the minimum term of the penalty shall be within the range of the penalty next lower to that prescribed by the RPC for the crime, which is *arresto mayor* in its medium and maximum periods which ranges from two (2) months and one (1) day to six (6) months. For this reason, the Court imposes upon petitioner the indeterminate penalty of six (6) months of *arresto mayor* as minimum, to two (2) years, eleven (11) months and ten (10) days *of prision correccional* as maximum.

WHEREFORE, the Petition for Review on *Certiorari* is **PARTIALLY GRANTED.**The assailed March 20, 2015 Decision of the Court of Appeals in CA-G.R. CR No. 36343, which affirmed with modification the December 3, 2013 Judgment of the Regional Trial Court, Branch 75, Olongapo City in Criminal Case No. 384-10 finding petitioner Jomar Ablaza *y* Caparas guilty beyond reasonable doubt of Robbery with Violence Against or Intimidation of Persons under paragraph 5, Article 294 of the Revised Penal Code, is **MODIFIED** in that he is instead found **GUILTY** beyond reasonable doubt of the crime of **THEFT** and sentenced to suffer the indeterminate penalty of six (6) months of *arresto mayor* as minimum, to two (2) years, eleven (11) months and ten (10) days of *prision correccional* as maximum.

SO ORDERED.

Leonardo-de Castro, C.J., Bersamin, and *Tijam, JJ.*, concur.

Jardeleza, J., on official leave.

THIRD DIVISION

[G.R. No. 224567. September 26, 2018]

LYDIA CU, *petitioner, vs.* **TRINIDAD VENTURA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; THE SUPREME COURT IS NOT A TRIER OF FACTS; THUS, 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 THE COURT WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE; EXCEPTIONS.— The Rules of Court requires 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.; ID.; THERE IS A QUESTION OF FACT WHEN THE ISSUE PRESENTED BEFORE THE COURT IS THE CORRECTNESS OF THE LOWER COURTS' APPRECIATION OF THE EVIDENCE PRESENTED BY THE PARTIES.— 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. In this case, the first issue raised by petitioner obviously asks this Court to review the evidence presented during the trial. She has laid down in the present petition the reasons as to why this Court should find respondent guilty of the crime charged against her and reverse the latter's acquittal by the RTC. Clearly, this is not the role of this Court because the issue she presented is factual in nature. Thus, the present petition must fail.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; IN CRIMINAL CASES OR PROCEEDINGS, ONLY THE SOLICITOR GENERAL MAY BRING OR DEFEND ACTIONS ON BEHALF OF THE REPUBLIC OF THE PHILIPPINES, OR REPRESENT THE PEOPLE OR STATE EXCEPT WHEN THERE IS DENIAL OF DUE PROCESS OF LAW TO THE PROSECUTION AND THE STATE OR ITS AGENTS REFUSE TO ACT ON THE CASE TO THE PREJUDICE OF THE STATE AND THE PRIVATE OFFENDED PARTY, AND WHEN THE PRIVATE OFFENDED PARTY QUESTIONS THE CIVIL ASPECT OF A DECISION OF A LOWER COURT.— The CA dismissed petitioner's Petition for Review under Rule 42 of the Rules of Court because she is not the proper party to appeal in a criminal case. It ruled that in criminal cases or proceedings, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State. This is in compliance with the provisions of Section 35(1), Chapter 12, Title III, Book III of the Administrative Code of 1987, as amended x x x. The above, however, is not without

any exception. The two exceptions are: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party, and (2) when the private offended party questions the civil aspect of a decision of a lower court. x x x. In the second exception, it is assumed that a decision on the merits had already been rendered by the lower court and it is the civil aspect of the case which the offended party is appealing. The offended party, who is not satisfied with the outcome of the case, may question the amount of the grant or denial of damages made by the court below even without the participation of the Solicitor General. In *Mobilia Products, Inc. v. Umezawa,* the Court ruled that in criminal cases, the State is the offended party and the private complainant's interest is limited to the civil liability arising therefrom x x x. Nothing in the x x x prayer does it mention nor is categorical in its statement that petitioner only seeks the review of the civil aspect of the case. The fact that petitioner filed a petition for review under Rule 42, or ordinary appeal with the CA, is already an indication that what she was seeking was the reversal of the entire decision of the RTC, in both its criminal and civil aspects. Petitioner could have filed a special civil action for *certiorari* had she intended to merely preserve her interest in the civil aspect of the case.

4. REMEDIAL LAW; EVIDENCE; PREPONDERANCE OF EVIDENCE; THE REQUIRED PROOF TO ESTABLISH THE CIVIL ASPECT OF THE CASE IS ONLY A PREPONDERANCE OF EVIDENCE OR THAT EVIDENCE WHICH IS MORE CONVINCING TO THE COURT AS WORTHIER OF BELIEF THAN THAT WHICH IS OFFERED IN OPPOSITION THERETO.— [G]ranting that what petitioner questioned was the civil aspect of the case, the petition must still fail. A close reading of the records would show that the prosecution was not able to prove and establish its case, not only in its criminal aspect but also in its civil aspect where the required proof needed is only a preponderance of evidence. "Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' Preponderance of evidence is a phrase which, in

the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of belief than that which is offered in opposition thereto."

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; IF THERE IS A DISMISSAL OF A CRIMINAL CASE BY THE TRIAL COURT, OR IF THERE IS AN ACQUITTAL OF THE ACCUSED, IT IS ONLY THE OFFICE OF THE SOLICITOR GENERAL (OSG) THAT MAY BRING AN APPEAL ON THE CRIMINAL ASPECT REPRESENTING THE PEOPLE; AN APPEAL OF THE CRIMINAL CASE NOT FILED BY THE PEOPLE AS REPRESENTED BY THE OSG IS DISMISSIBLE; THE PRIVATE COMPLAINANT OR THE OFFENDED PARTY MAY, FILE AN APPEAL OR A SPECIAL CIVIL ACTION FOR *CERTIORARI* EVEN WITHOUT THE INTERVENTION OF THE OSG, BUT ONLY INSOFAR AS THE CIVIL LIABILITY OF THE ACCUSED IS CONCERNED.— [J]urisprudence holds that if there is a dismissal of a criminal case by the trial court, or if there is an acquittal of the accused, it is only the OSG that may bring an appeal on the criminal aspect representing the People. The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, the People are deemed as the real parties-in-interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court. In view of the corollary principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit, an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible. The private complainant or the offended party may, however, file an appeal without the intervention of the OSG, but only insofar as the civil liability of the accused is concerned. He may also file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case.

APPEARANCES OF COUNSEL

Buenaventura S.G. Sanguyo III for petitioner.
Rolando B. Aquino 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 July 1, 2016, of petitioner Lydia Cu that seeks to reverse and set aside the Resolution[1] dated December 11, 2015 and Resolution[2] dated May 13, 2016 of the Court of Appeals *(CA)* in CA-G.R. CR No. 37691 dismissing petitioner's appeal on the ground that as a private complainant, she is not authorized to represent the State in an appeal from a criminal action.

The facts follow.

Petitioner filed a Complaint-Affidavit for violation of *Batas Pambansa Blg. 22*[3] *(BP 22)* against respondent before the Office of the City Prosecutor of Quezon City. Eventually, the Office of the City Prosecutor found probable cause and an Information was filed with the Metropolitan Trial Court *(MeTC)* of Quezon City against respondent for violation of BP 22.

After trial on the merits, the MeTC, Branch 37 of Quezon City found the respondent guilty beyond reasonable doubt of violation of BP 22. The dispositive portion of the Decision dated January 10, 2014 reads as follows:

The foregoing manifests clearly that the accused has violated beyond reasonable doubt, Batas Pambansa Bilang 22. In view thereof, he is hereby ordered to:

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[1] Penned by Associate Justice Romeo F. Barza, with then Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Zenaida T. Galapate-Laguilles, concurring.

[2] *Id.*

[3] *An Act Penalizing the Making or Drawing and Issuance of a Check Without Sufficient Funds or Credit and For Other Purposes.*

1. Pay the total amount of the check which is for ₱2,000,000.00 and pay an interest of 12% per annum from the date of the check, up to the time that is fully paid;

2. Pay a fine of ₱200,000.00;

3. Suffer an imprisonment of sixty (60) days;

4. Pay the costs of suit, including Attorney's Fees and per appearance fee, should there be any.

The accused is to suffer, subsidiary imprisonment in case of insolvency.

SO ORDERED.

Respondent filed a Notice of Appeal and on December 3, 2014, the Regional Trial Court *(RTC),* Branch 87, Quezon City reversed and set aside the decision of the MeTC. The dispositive portion of the Decision acquitting the respondent reads as follows:

WHEREFORE, viewed in the light of the foregoing, the Decision dated January 10, 2014 of the Court *a quo* is hereby reversed and set aside and a new one rendered ACQUITTING the accused TRINIDAD VENTURA, of the crime of Violation of Batas Pambansa Bilang 22.

The civil aspect of the case is DISMISSED for failure of the private complainant to prove the requisite quantum of evidence preponderance of evidence.

SO ORDERED.

Petitioner, through her counsel, filed a motion for reconsideration, but it was denied by the RTC in its Resolution dated May 5, 2015. Thereafter, she filed a Motion for Extension of Time to File a Petition for Review under Rule 42 of the Rules of Court with the CA. On July 20, 2015, she filed her Petition for Review under Rule 42 with the CA.

The CA, in its Resolution dated December 11, 2015, dismissed the appeal. The CA disposed of the case as follows:

WHEREFORE, the instant appeal is hereby DISMISSED.

SO ORDERED.

According to the CA, in criminal actions brought before the Court of Appeals, or the Supreme Court, the authority to represent the State is solely vested in the Office of the Solicitor General (*OSG*). Petitioner filed a motion for reconsideration which was denied by the CA in its Resolution dated May 13, 2016.

Hence, the present petition with the following issues presented:

I.

WHETHER OR NOT RESPONDENT TRINIDAD VENTURA IS GUILTY OF B.P. 22.

II.

WHETHER OR NOT RESPONDENT IS LIABLE TO PETITIONER FOR THE CIVIL ASPECT.

Petitioner contends that respondent has been proven to have violated BP 22 beyond reasonable doubt as all the elements of the offense were proven by the prosecution. She also insists that in the petition for review that she filed with the CA, she questioned the civil aspect of the decision of the RTC and, thus, there is no need for the representation of the OSG.

In her Comment dated August 30, 2016, respondent argues that petitioner was actually assailing both the criminal and civil aspect of the appealed decision of the RTC when she filed an appeal with the CA. Respondent further contends that petitioner has no legal standing to file the present petition because the subject check was actually deposited not in her account but into the account of MC Nova Apparel Export Corporation which is a family-owned corporation with separate and distinct personality, and petitioner has not presented any authority or board resolution to prove that she was authorized to represent the said corporation.

The petition is without merit.

The Rules of Court requires that only questions of law should be raised in petitions filed under Rule 45.[4] This Court is not a

[4] Rules of Court, Rule 45, Sec. 1.

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"[5] when supported by substantial evidence.[6] Factual findings of the appellate courts will not be reviewed nor disturbed on appeal to this court.[7]

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.*:[8]

(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.[9]

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[5] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546 (1999) [Per *J.* Pardo, First Division].

[6] *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].

[7] *Bank of the Philippine Islands v. Leobrera*, 461 Phil. 461, 469 (2003) [Per *J.* Ynares-Santiago, Special First Division].

[8] 269 Phil. 225 (1990) [Per *J.* Bidin, Third Division].

[9] *Id.* at 232.

These exceptions similarly apply in petitions for review filed before this court involving civil,[10] labor,[11] tax,[12] or criminal cases.[13]

A question of fact requires this court to review the truthfulness or falsity of the allegations of the parties.[14] This review includes assessment of the "probative value of the evidence presented."[15] 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.[16]

In this case, the first issue raised by petitioner obviously asks this Court to review the evidence presented during the trial. She has laid down in the present petition the reasons as to why this Court should find respondent guilty of the crime charged against her and reverse the latter's acquittal by the RTC. Clearly, this is not the role of this Court because the issue she presented is factual in nature. Thus, the present petition must fail.

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[10] *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].

[11] *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].

[12] *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc.*, 364 Phil. 541, 546-547 (1999) [Per J. Pardo, First Division].

[13] *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].

[14] *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].

[15] *Republic v. Ortigas and Company Limited Partnership, supra* note 14, at 288 [Per J. Leonen, Third Division].

[16] *Pascual v. Burgos, et al.*, 776 Phil. 167, 183 (2016).

The CA dismissed petitioner's Petition for Review under Rule 42 of the Rules of Court because she is not the proper party to appeal in a criminal case. It ruled that in criminal cases or proceedings, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State. This is in compliance with the provisions of Section 35(1), Chapter 12, Title III, Book III of the Administrative Code of 1987, as amended, thus:

> Section 35. *Power and Functions.* – The Office of the Solicitor General shall represent the Government of the Philippines, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of a lawyer. When authorized by the President or head of the office concerned, it shall also represent government-owned or controlled corporations. The Office of the Solicitor General shall constitute the law office of the Government and, as such, shall discharge duties requiring the service of a lawyer. It shall have the following specific power and functions:
>
> > (1) Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings; represent the Government and its officers in the Supreme Court, the Court of appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party.

The above, however, is not without any exception. The two exceptions are: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party, and (2) when the private offended party questions the civil aspect of a decision of a lower court.[17]

According to petitioner, she falls under the second because in the petition for review that she filed before the CA, what she questioned was the civil aspect of the decision of the RTC.

In the second exception, it is assumed that a decision on the merits had already been rendered by the lower court and it is

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[17] *Heirs of Delgado, et al. v. Gonzalez, et al.*, 612 Phil. 817, 844 (2009).

the civil aspect of the case which the offended party is appealing.[18] The offended party, who is not satisfied with the outcome of the case, may question the amount of the grant or denial of damages made by the court below even without the participation of the Solicitor General.[19]

In *Mobilia Products, Inc. v. Umezawa,*[20] the Court ruled that in criminal cases, the State is the offended party and the private complainant's interest is limited to the civil liability arising therefrom, thus:

> Hence, if a criminal case is dismissed by the trial court or if there is an acquittal, a reconsideration of the order of dismissal or acquittal may be undertaken, whenever legally feasible, insofar as the criminal aspect thereof is concerned and may be made only by the public prosecutor; or in the case of an appeal, by the State only, through the OSG. The private complainant or offended party may not undertake such motion for reconsideration or appeal on the criminal aspect of the case. However, the offended party or private complainant may file a motion for reconsideration of such dismissal or acquittal or appeal therefrom but only insofar as the civil aspect thereof is concerned.

In *De la Rosa v. Court of Appeals,*[21] citing *People v. Santiago,*[22] the Court held:

> In a special civil action for certiorari filed under Section 1, Rule 65 of the Rules of Court wherein it is alleged that the trial court committed a grave abuse of discretion amounting to lack of jurisdiction or on other jurisdictional grounds, the rules state that the petition may be filed by the person aggrieved. In such case, the aggrieved parties are the State and the private offended party or complainant. The complainant has an interest in the civil aspect of the case so he may file such special civil action questioning the decision or action

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[18] *Id.*

[19] *Id.*

[20] 493 Phil. 85, 108 (2005).

[21] 323 Phil. 596, 605 (1996).

[22] 255 Phil. 851, 862 (1989).

of the respondent court on jurisdictional grounds. In so doing, complainant should not bring the action in the name of the People of the Philippines. The action may be prosecuted in (the) name of said complainant.

The respondent, however, argues that what petitioner prayed for in her petition was for the CA to rule that respondent be guilty of violation of BP 22 and be made liable for the amount of Two Million Four Hundred Thousand Pesos (₱2,400,000.00), plus interests, thus:

> WHEREFORE, the above premises considered, it is respectfully prayed that the assailed Decision dated December 3, 2014 and the Order dated May 5, 2015 be set aside and a new one be rendered finding respondent guilty of violation of BP 22 and be made liable for the amount of TWO MILLION FOUR HUNDRED THOUSAND PESOS (₱2,400,000.00) in favor of the petitioner, plus interests.

Nothing in the above prayer does it mention nor is categorical in its statement that petitioner only seeks the review of the civil aspect of the case. The fact that petitioner filed a petition for review under Rule 42, or ordinary appeal with the CA, is already an indication that what she was seeking was the reversal of the entire decision of the RTC, in both its criminal and civil aspects. Petitioner could have filed a special civil action for *certiorari* had she intended to merely preserve her interest in the civil aspect of the case.

Nevertheless, granting that what petitioner questioned was the civil aspect of the case, the petition must still fail. A close reading of the records would show that the prosecution was not able to prove and establish its case, not only in its criminal aspect but also in its civil aspect where the required proof needed is only a preponderance of evidence. "Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence.' Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. It is evidence which is more convincing to the court as worthier of

belief than that which is offered in opposition thereto."[23] As correctly ruled by the RTC:

> The Court holds that the existence of accused-appellant's civil liability to plaintiff-appellee representing the face value of the dishonored check has not been sufficiently established by [preponderance of] evidence. Plaintiff-appellee mainly relied [on] her testimony before the court [*a quo*] to establish the existence of this unpaid obligation. In gist, she testified that the accused-appellant obtained a loan from her in the amount of $100,000.00 and as partial payment of her obligation, accused-appellant issued the subject MetroBank Check No. 018049 dated June 15, 2007 in the amount of ₱2,400,000.00. When the accused-appellant allegedly refused to pay her obligation, she deposited the check for payment but the same bounced for the reason that it was drawn against insufficient funds. Unfortunately, plaintiff-appellee's testimony alone does not constitute preponderant evidence to establish accused-appellant's liability to her. Apart from the dishonored check, she failed to adduce any other documentary evidence to prove that the accused has still an unpaid obligation to her. Unsubstantiated evidence are not equivalent to proof under the Rules.
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> In contrast, accused-appellant's defense consisted in, among others, her allegation that she had already paid the face value of the check through the private complainant Lydia Cu. Accused-appellant presented documents consisting of an Agreement between her and Lydia Cu, the authorized representative of Jun Yupitun showing that she obtained a loan from Mr. Yupitun through Lydia Cu in the amount of $31,000.00 (Exhibit "2") and the acknowledgment receipt dated July 22, 2014 (Exhibit "2-a") signed by Lydia Cu showing that the principal loan obligation of the accused-appellant was fully paid and gave her instruction to her secretary to just tear the subject check or leave the same to her. The existence and due execution of those documents were not rebutted by the prosecution. Thus, considering the presentation of these documents which were not rebutted by the prosecution through the presentation of a rebuttal witness, it is logical to conclude that absent any evidence to the contrary, it formed part of accused-appellant's evidence of payment of her loan obligation, which includes the face value of the dishonored check.[24]

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[23] *Evangelista v. Spouses Andolong, et al.*, 800 Phil. 189, 195 (2016).

[24] *CA rollo,* pp. 15-16.

Again, jurisprudence holds that if there is a dismissal of a criminal case by the trial court, or if there is an acquittal of the accused, it is only the OSG that may bring an appeal on the criminal aspect representing the People.[25] The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses.[26] For this reason, the People are deemed as the real parties-in-interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court.[27] In view of the corollary principle that every action must be prosecuted or defended in the name of the real party-in-interest who stands to be benefited or injured by the judgment in the suit, or by the party entitled to the avails of the suit,[28] an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible. The private complainant or the offended party may, however, file an appeal without the intervention of the OSG, but only insofar as the civil liability of the accused is concerned.[29] He may also file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case.[30]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated July 1, 2016, of petitioner Lydia Cu is **DENIED** and the Resolution dated December 11, 2015 and the Resolution dated May 13, 2016 of the Court of Appeals in CA-G.R. CR No. 37691 are **AFFIRMED.**

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[25] See *Soriano v. Judge Angeles,* 393 Phil. 769, 776 (2000); and *Bangayan, Jr. v. Bangayan,* 675 Phil. 656, 664 (2011).

[26] *Malayan Insurance Company, Inc., et al. v. Philip Piccio, et al.,* 740 Phil. 616, 622 (2014).

[27] *Jimenez v. Judge Sorongon, et al.,,* 700 Phil. 316, 325 (2012).

[28] *Id.* at 324.

[29] *Villareal v. Aliga,* 724 Phil. 47, 57 (2014).

[30] See *Ong v. Genio,* 623 Phil. 835 (2009).

SO ORDERED.

Gesmundo and *Reyes, J. Jr., JJ.,* concur.

Leonen, J., on wellness leave.

Caguioa,[*] *J.,* on official business.

THIRD DIVISION

[G.R. No. 227311. September 26, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JELMER MATUTINA *y* MAYLAS and ROBERT ROMERO *y* BUENSALIDA,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION AND CONCLUSION ON THE CREDIBILITY OF WITNESSES IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, AND AT TIMES EVEN FINALITY UNLESS THERE IS A CLEAR SHOWING THAT IT WAS REACHED ARBITRARILY OR IT APPEARS FROM THE RECORDS THAT CERTAIN FACTS OR CIRCUMSTANCES OF WEIGHT, SUBSTANCE OR VALUE WERE OVERLOOKED, MISAPPREHENDED OR MISAPPRECIATED BY THE LOWER COURT AND WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULT OF THE CASE.— After a careful review of the records and the parties' submissions, this Court finds no cogent reason to reverse the

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[*] Additional member in lieu of Associate Justice Andres B. Reyes, Jr., per Special Order No. 2588-E dated September 18, 2018.

judgment of conviction. There is no showing that the RTC or the CA committed any error in the findings of fact and the conclusions of law. The settled rule is that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying. Here, the RTC correctly ruled that the elements of rape under Article 266-A paragraph 1(a) of the RPC had been sufficiently established by the prosecution.

2. CRIMINAL LAW; REVISED PENAL CODE; RAPE; AN INTACT HYMEN DOES NOT NEGATE A FINDING THAT THE VICTIM WAS RAPED, AS PENETRATION OF THE PENIS BY ENTRY INTO THE LIPS OF THE VAGINA, EVEN THE BRIEFEST OF CONTACTS AND WITHOUT RUPTURE OR LACERATION OF THE HYMEN, IS ENOUGH TO JUSTIFY A CONVICTION FOR RAPE.— Unlike the belief of Matutina and Romero, consummated rape was committed in this case. Consistent with *People v. Campuhan*, the penis of Matutina indubitably touched the *labias* or slid into the genital organ of AAA and not merely stroked its external surface. Based on the physical examination of medico-legal officer PCI Cabrera, the posterior fourchette of AAA showed clear evidence of blunt penetrating trauma. In open court, PCI Cabrera attested that the whole posterior fourchette of AAA was swollen and that the presence of abrasion therein would point to the blunt penetrating trauma caused by contact with a blunt and hard object such as an erect penis or finger. On this score, We agree with the CA that when AAA professed that Matutina was unable to place his penis inside her private part

as he was forcing it, it could only mean that he was not able to place the full length of his penis inside AAA's vagina. The absence of proof of hymenal laceration is inconsequential. It has been invariably held that an intact hymen does not negate a finding that the victim was raped. Penetration of the penis by entry into the lips of the vagina, even the briefest of contacts and without rupture or laceration of the hymen, is enough to justify a conviction for rape.

3. ID.; ID.; CONSPIRACY; PRESENT WHERE EACH PERFORMED SPECIFIC ACTS WITH SUCH CLOSE COORDINATION AS TO INDICATE BEYOND REASONABLE DOUBT A COMMON CRIMINAL DESIGN OR PURPOSE.— Conspiracy was, likewise, proven since the prosecution sufficiently showed that Matutina and Romero acted in a concerted manner. Each performed specific acts with such close coordination as to indicate beyond reasonable doubt a common criminal design or purpose. As the OSG countered, common experience dictates that the act of Romero (together with Lim) of holding the hands of AAA had no other purpose but to restrain her from escaping and resisting as well as to allow Matutina to succeed in having sexual intercourse with AAA. Indeed, there was a community of purpose and concurrence of sentiment to do a bestial act.

4. REMEDIAL LAW; EVIDENCE; DENIAL; THE DEFENSE OF DENIAL IS A SELF-SERVING NEGATIVE EVIDENCE THAT CANNOT BE GIVEN GREATER WEIGHT THAN THE STRONGER AND MORE TRUSTWORTHY AFFIRMATIVE TESTIMONY OF A CREDIBLE WITNESS.— "The direct, positive and categorical testimony of the prosecution witnesses, absent any showing of ill-motive, prevails over the defense of denial. Like *alibi*, denial is an inherently weak and easily fabricated defense. It is a self-serving negative evidence that cannot be given greater weight than the stronger and more trustworthy affirmative testimony of a credible witness." In the present case, there is no showing of any improper motive on the part of AAA. In fact, both Matutina and Romero practically admitted that there is no bad blood between them and AAA for the latter to unjustly accuse them of raping her. Moreover, aside from not presenting a single unbiased witness to stand in their favor, they were not able to establish their presence in another place at the time of the

commission of the offense and the physical impossibility for them to be at the crime scene.

5. CRIMINAL LAW; REVISED PENAL CODE; RAPE; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Pursuant to *People v. Jugueta,* the awards for damages should be increased. Private complainant is entitled to ₱75,0000.00 as civil indemnity, ₱75,0000.00 as moral damages, and ₱75,0000.00 as exemplary damages. Interest at the rate of six percent (6%) *per annum* is imposed on all the amounts awarded from the date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

On appeal is the November 3, 2015 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 06124, which affirmed with modification the April 17, 2013 Decision[2] of Regional Trial Court *(RTC),* Branch 172, Valenzuela City, in Criminal Case No. 689-V-09, convicting accused-appellants Jelmer Matutina *y* Maylas *(Matutina)* and Robert Romero *y* Buensalida *(Romero)* of rape committed against AAA, a minor.[3]

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[1] 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; *rollo,* pp. 2-18; CA *rollo,* pp. 75-91.

[2] CA *rollo,* pp. 33-38; records, pp. 120-125.

[3] Pursuant to R.A. No. 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes;" R.A. No. 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes;" Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto,*

On October 19, 2009, an Information was filed against accused-appellants Matutina and Romero for the crime of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code *(RPC),* in relation to Republic Act *(R.A.)* No. 7610, committed as follows:

> That on or about October 17, 2009 in Valenzuela City, Metro Manila and within the jurisdiction of this Honorable Court, the above-named accused, together with other person whose name, identity and present whereabouts still unknown, conspiring, confederating and mutually helping one another, with lewd design, by means of force and intimidation employed upon the person of one [AAA], 15 years old (DOB: October 16, 1994), did then and there willfully, unlawfully and feloniously have sexual intercourse with the said complainant/minor, against her will and without her consent, thereby subjecting said minor to sexual abuse which debased, degraded and demeaned her intrinsic worth and dignity as a human being.
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> CONTRARY TO LAW.[4]

In their arraignment, Matutina and Romero pleaded "not guilty."[5] Trial ensued while they were detained in the city jail.[6]

Presented as witnesses for the prosecution were AAA, Police Chief Inspector *(PCI)* Dean Cabrera, Marcos Ragasa, and Police Officer 2 *(PO2)* Aileen DC Roxas. Only Matutina and Romero testified for the defense.

Version of the Prosecution

According to AAA, in the morning of October 17, 2009, she and three of her classmates agreed not to go to school ("cut

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533 Phil. 703 (2006), the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed (*People v. CCC,* G.R. No. 220492, July 11, 2018).

[4] Records, p. 1.

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

[6] *Id.* at 15.

class") and just converse in a billiard hall at the [redacted] in [redacted]. Her companions left at 10:00 a.m. She was supposed to follow them but could not go home because Matutina and his other companions – accused-appellant Romero, Jackson Lim, and a certain Oliver – got her school stuff. From 12 noon until 5:00 p.m., they drank Matador brandy at Oliver's house. As a result, she felt dizzy and did not know what she was doing. As she could recall, she woke up at around 8:00 p.m. and noticed that her face and arms were being cleaned up with a wet towel *(pinupunasan)* by Oliver's mother at the upper floor of their house. Together with two unknown women, they brought her downstairs and made her sit on a plastic chair as she tried to regain her consciousness. She heard that somebody wanted to escort her on the way home. They helped her board a tricycle but none of them went along. Instead, she was taken by Matutina, Romero, and Lim at the back of a house near a dark and grassy portion of the Manolo Compound. They made her lie down in a stony area and told her to keep quiet. Thinking to escape, she told them that she wanted to urinate. Romero and Lim, however, held her hands as Matutina took off her shorts and panty. Romero and Lim kissed and touched her breasts, while Matutina forced his penis into her vagina but was not able to place it inside due to her resistance. The three were not able to continue after they noticed the approaching *barangay captain* and *tanod* with flashlights. They ran away towards the grassy area. Only Matutina and Romero were eventually caught. She was boarded in the *barangay* patrol vehicle, examined by a medico-legal officer at Camp Crame, and taken to the police station for her sworn statement.

Ragasa, a *tanod* of *Barangay* [redacted] on duty around 8:00 p.m. on October 17, 2009, corroborated the testimony of AAA. He was patrolling with Antonio Angeles and Jovito Salonga when Angeles, the team leader, received a radio call from the *barangay* informing them that a female person was in the *"gulod"* together with male persons. As they reached the place, he saw a lady bag, then Matutina, Romero, and Lim who were running away from the scene, and, finally, AAA who was crying while in her school uniform. When Matutina was directed

to come back, he voluntarily returned. Both Matutina and AAA were brought to Block 6 and then to the Women and Children Protection Desk of the Station Investigation Division *(SID).* PO2 Roxas was the one who took the *Sinumpaang Salaysay* of AAA. PO2 Roxas confirmed that even if she was accompanied by her grandmother, all her statements were her own personal answers.

PCI Cabrera, the Medico-Legal Officer of the Philippine National Police *(PNP)* Camp Crame, Quezon City, affirmed under oath the truth of his findings in Medico-Legal Report No. R09-1984 which *"shows clear evidence of blunt penetrating trauma to the posterior fourchette"* of AAA. He stated that the physical injuries and genitalia injuries could have been sustained within 24 hours from the time he examined AAA on October 18, 2009;[7] that the whole posterior fourchette was swollen;[8] and, that the presence of abrasion in the posterior fourchette would point to the blunt penetrating trauma of the female genitalia caused by contact with a blunt and hard object such as an erect penis or finger.[9]

Version of the Defense

Matutina testified that he knows AAA because she used to stand by in their place and that he also knows Romero as his long time neighbor in Manolo Compound. In the morning of October 17, 2009, he saw AAA standing by in the billiard house. At night, he went to the *"gulod"* upon the invitation of Lim. He hanged out with Romero, Lim, and AAA but was not engaged in a drinking spree with them. He does not know of any reason why AAA would accuse him of committing rape against her.

On his part, Romero claimed that he was standing alone in front of their house around 8:00 a.m. on October 17, 2009. He saw AAA conversing with three companions at the nearby billiard hall until they eventually left. Around 3:00 p.m., he was asked

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[7] TSN, February 22, 2010, p. 13.

[8] *Id.* at 14.

[9] *Id.* at 11-12.

by her sister-in-law to buy something from the store, which was approximately 30 meters away from their house. On the way thereto, he passed by AAA as she was having a drinking session at the house of Lim. He was invited to have a shot of Matador, but he refused and went home. Around 8:00 p.m., he went to Lim's house. Seeing no one drinking, he returned home. Back in the house, Lim approached him and asked to go with him to accompany AAA home. He agreed. Subsequently, Lim called AAA in his (Lim's) house and got a tricycle. AAA sat inside the tricycle and he (Romero) sat at the back of the driver. Lim did not ride the tricycle and told him that he would go ahead in the "*labasan*" or "*gulod.*" When the tricycle reached the "*gulod,*" he heard AAA say that she does not want to go home yet. He alighted from the tricycle and so did AAA as she told him that she would urinate. Then Matutina and Lim arrived. They were all surprised when suddenly there were persons shouting, "*ano bakit ginaganyan nyo yan?*" He was afraid so he ran back home. He denied having raped AAA as he did not even touch her. He is not aware if AAA had any personal grudge against him before the incident happened. He thinks though that AAA's grandmother threatened her.

The RTC convicted Matutina and Romero of the crime charged. The *fallo* of its Decision states:

> WHEREFORE, the court finds the accused JELMER MATUTINA y MAYLAS a.k.a. BOYET and ROBERT ROMERO y BUENSALIDA a.k.a. OBET guilty beyond reasonable doubt as principals of the crime of rape under Art. 266-A, paragraph (1)(a) of the Revised Penal Code and in the absence of any modifying circumstance and applying the Indeterminate Sentence Law they are hereby sentenced to suffer the penalty of Reclusion Perpetua and to indemnify AAA in the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages[.]
>
> The City Jail Warden of Valenzuela City is hereby directed to transfer/commit the accused to the New Bilibid Prison, Bureau of Corrections, Muntinlupa City immediately upon receipt of this decision and submit report within five (5) days from compliance.
>
> SO ORDERED.[10]

[10] CA *rollo,* p. 38; records, p. 125.

On appeal, the CA affirmed the judgment of conviction, but modified the interest imposed on the civil liabilities, thus:

> **WHEREFORE,** in light of the foregoing premises, the instant **APPEAL** is hereby **DENIED.** Hence, the Decision dated April 17, 2013 in Criminal Case No. 689-V-09 of RTC, Branch 172, Valenzuela City which adjudged the guilt of JELMER MATUTINA y MAYLAS and ROBERT ROMERO y BUENSALIDA for rape under Art. 266-A, paragraph (1)(a) of the Revised Penal Code is hereby **AFFIRMED**, inclusive of the civil liabilities, with **MODIFICATION** through imposition as to interest at the legal rate of six percent (6%) per annum on all monetary awards from the date of finality of this Decision until fully paid.
>
> **SO ORDERED.**[11]

Now before Us, Matutina and Romero manifested that they would no longer file a Supplemental Brief as they had exhaustively discussed the assigned errors in their Appellant's Brief.[12] In contrast, the Office of the Solicitor General *(OSG)* filed a Supplemental Brief.[13]

After a careful review of the records and the parties' submissions, this Court finds no cogent reason to reverse the judgment of conviction. There is no showing that the RTC or the CA committed any error in the findings of fact and the conclusions of law.

> The settled rule is that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and

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[11] *Rollo,* pp. 17-18; CA *rollo,* pp. 90-91.

[12] *Rollo,* pp. 32-36.

[13] *Id.* at 43-61.

observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.[14]

Here, the RTC correctly ruled that the elements of rape under Article 266-A, paragraph 1(a) of the RPC had been sufficiently established by the prosecution.[15] AAA gave a detailed narration of what transpired in the evening of October 17, 2009. With her unwavering assertions, it was proven beyond reasonable doubt that Matutina, in conspiracy with Romero and Lim (who is at-large), had carnal knowledge of her against her will with the use of force. A perusal of the records would reveal that Matutina, Romero, and Lim brought AAA at the back of a house near a dark and grassy portion of the [redacted]. They made her lie down in a stony area and told her to keep quiet. Romero and Lim held AAA's hands as Matutina took off her shorts and panty. Romero and Lim then kissed and touched her breasts while Matutina forced his penis into her vagina. Matutina's penis was able to touch her private part, but was unable to penetrate inside due to her resistance and the unexpected arrival of the *barangay tanods.*[16]

Unlike the belief of Matutina and Romero, consummated rape was committed in this case. Consistent with *People v.*

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[14] *People v. Tuboro,* 792 Phil. 580, 588 (2016); *People v. Galagati,* 788 Phil. 670, 684 (2016); and *People v. Balmes,* 786 Phil. 425, 432-433 (2016).

[15] Article 266-A of the RPC provides that a 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;

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.

[16] TSN, April 7, 2010, pp. 21-22.

Campuhan,[17] the penis of Matutina indubitably touched the *labias* or slid into the genital organ of AAA and not merely stroked its external surface. Based on the physical examination of medico-legal officer PCI Cabrera, the posterior fourchette[18] of AAA showed clear evidence of blunt penetrating trauma. In open court, PCI Cabrera attested that the whole posterior fourchette of AAA was swollen and that the presence of abrasion therein would point to the blunt penetrating trauma caused by contact with a blunt and hard object such as an erect penis or finger.[19] On this score, We agree with the CA that when AAA professed that Matutina was unable to place his penis inside her private part as he was forcing it, it could only mean that he was not able to place the full length of his penis inside AAA's vagina.

The absence of proof of hymenal laceration is inconsequential. It has been invariably held that an intact hymen does not negate a finding that the victim was raped.[20] Penetration of the penis by entry into the lips of the vagina, even the briefest of contacts and without rupture or laceration of the hymen, is enough to justify a conviction for rape.[21]

Conspiracy was, likewise, proven since the prosecution sufficiently showed that Matutina and Romero acted in a concerted manner. Each performed specific acts with such close coordination as to indicate beyond reasonable doubt a common criminal design or purpose. As the OSG countered, common experience dictates that the act of Romero (together with Lim) of holding the hands of AAA had no other purpose but to restrain her from escaping and resisting as well as to allow Matutina to

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[17] 385 Phil. 912 (2000).

[18] The posterior fourchette is less than one centimeter in length and is part of the female genitalia wherein the *labia mejora* would meet if going towards the back/dorsal portion thereof (See TSN, February 22, 2010, pp. 11-12, 14).

[19] TSN, February 22, 2010, pp. 11-12, 14.

[20] *People v. Tuboro, supra* note 14, at 592.

[21] *Id.*

succeed in having sexual intercourse with AAA. Indeed, there was a community of purpose and concurrence of sentiment to do a bestial act.

"The direct, positive and categorical testimony of the prosecution witnesses, absent any showing of ill-motive, prevails over the defense of denial. Like *alibi,* denial is an inherently weak and easily fabricated defense. It is a self-serving negative evidence that cannot be given greater weight than the stronger and more trustworthy affirmative testimony of a credible witness."[22] In the present case, there is no showing of any improper motive on the part of AAA. In fact, both Matutina and Romero practically admitted that there is no bad blood between them and AAA for the latter to unjustly accuse them of raping her.[23] Moreover, aside from not presenting a single unbiased witness to stand in their favor, they were not able to establish their presence in another place at the time of the commission of the offense and the physical impossibility for them to be at the crime scene.[24]

Pursuant to *People v. Jugueta*,[25] the awards for damages should be increased. Private complainant is entitled to ₱75,0000.00 as civil indemnity, ₱75,0000.00 as moral damages, and ₱75,0000.00 as exemplary damages. Interest at the rate of six percent (6%) *per annum* is imposed on all the amounts awarded from the date of finality of this judgment until fully paid.[26]

WHEREFORE, the instant appeal is **DENIED.** The November 3, 2015 Decision of the Court of Appeals in CA-

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[22] *People v. Balmes, supra* note 14, at 436. See also *People v. Tuboro, supra* note 14, at 592-593 and *People v. Galagati, supra* note 14, at 688.

[23] TSN, May 4, 2012, p. 6; TSN, June 20, 2012, p. 4; TSN, August 29, 2012, p. 14.

[24] See *People v. Tuboro, supra* note 14, at 593 and *People v. Balmes, supra* note 14, at 437.

[25] 783 Phil. 806 (2016).

[26] See *Bangko Sentral ng Pilipinas* Monetary Board Circular No. 799, Series of 2013; effective July 1, 2013, in *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

G.R. CR-HC No. 06124, which affirmed with modification the April 17, 2013 Decision of Regional Trial Court, Branch 172, Valenzuela City, in Criminal Case No. 689-V-09, convicting accused-appellants Jelmer Matutina *y* Maylas and Robert Romero *y* Buensalida for rape committed against AAA, is **AFFIRMED WITH MODIFICATION.** Accused-Appellants are **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. In addition, six percent (6%) interest *per annum* is imposed on all the amounts awarded reckoned from the date of finality of this Decision until the damages are fully paid.

SO ORDERED.

Gesmundo and *Reyes, J. Jr., JJ.,* concur.

Leonen, J., on wellness leave.

Reyes, A. Jr.,[*] *J.,* on leave.

THIRD DIVISION

[G.R. No. 232361. September 26, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FRANCISCO DAMAYO *y* JAIME,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS.— In order that the accused can be convicted of kidnapping and serious illegal detention, the prosecution must prove beyond

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[*] Designated additional member per Special Order No. 2588 dated August 28, 2018.

reasonable doubt all the elements of the crime, namely: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer.

2. **ID.; ID.; ID.; ESSENCE; THE CURTAILMENT OF THE VICTIM'S LIBERTY NEED NOT INVOLVE ANY PHYSICAL RESTRAINT UPON THE LATTER'S PERSON AND IT IS NOT NECESSARY THAT THE OFFENDER KEPT THE VICTIM IN AN ENCLOSURE OR TREATED HIM HARSHLY.—** If the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial. Also, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial. It is settled that the curtailment of the victim's liberty need not involve any physical restraint upon the latter's person and it is not necessary that the offender kept the victim in an enclosure or treated him harshly. The crime of serious illegal detention is committed by detaining a person or depriving him in any manner of his liberty. Its essence is the actual deprivation of the victim's liberty, coupled with indubitable proof the intent of the accused to effect such deprivation. The elements of kidnapping as embodied in Article 267 of RPC have been sufficiently proven in the case at bench.

3. **ID.; ID.; ID.; LEAVING A CHILD IN A PLACE FROM WHICH HE DID NOT KNOW THE WAY HOME, EVEN IF HE HAD THE FREEDOM TO ROAM AROUND THE PLACE OF DETENTION, WOULD STILL AMOUNT TO DEPRIVATION OF LIBERTY INASMUCH AS UNDER THIS SITUATION, THE CHILD'S FREEDOM REMAINS AT THE MERCY AND CONTROL OF THE ABDUCTOR.—** Although it was not established that Jerome was placed inside an enclosure or was locked up, he was nonetheless deprived of his liberty because he cannot leave the place where Damayo brought him as the latter remained

outside and kept watch of him. This only goes to show that Jerome was constantly guarded by Damayo during the period of his captivity. Also, let it be underscored that leaving a child in a place from which he did not know the way home, even if he had the freedom to roam around the place of detention, would still amount to deprivation of liberty inasmuch as under this situation, the child's freedom remains at the mercy and control of the abductor. Here, bringing minor Jerome to a house located somewhere in Pampanga, a place which is totally unfamiliar to him and very far from his residence at Sucat, Muntinlupa City, would constitute denial of the said victim's liberty. Even if Jerome had the freedom of locomotion inside the house of Damayo, he did not have the freedom to leave the same at will or escape therefrom because he did not know where to go and could not possibly go back home to his mother Edna as he didn't know how to do so. Jerome was merely waiting and hoping that he would be brought home or that his parents would fetch him. Verily, the prosecution has established beyond reasonable doubt that Damayo intended to deprive Jerome of his liberty, and his parents, with the custody of their minor son.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHENEVER THERE IS INCONSISTENCY BETWEEN THE AFFIDAVIT AND THE TESTIMONY OF A WITNESS IN COURT, THE TESTIMONY COMMANDS GREATER WEIGHT CONSIDERING THAT AFFIDAVITS TAKEN *EX PARTE* ARE INFERIOR TO TESTIMONY GIVEN IN COURT, THE FORMER BEING ALMOST INVARIABLY INCOMPLETE AND OFTENTIMES INACCURATE. — Jerome's testimony prevails over the statement he gave in the affidavit which he previously executed. It is settled that whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimony given in court, the former being almost invariably incomplete and oftentimes inaccurate. Affidavits are usually incomplete, as these are frequently prepared by administering officers and cast in their language and understanding of what affiants have said. They are products sometimes of partial suggestions and at other times of want of suggestions and inquiries. Almost always, the affiants would simply sign the documents after being read to them. Jurisprudence

is unequivocal in saying that the testimony of a witness prevails over an affidavit.

5. ID.; ID.; ID.; AN INCONSISTENCY, WHICH HAS NOTHING TO DO WITH THE ELEMENTS OF A CRIME, IS NOT A GROUND TO REVERSE A CONVICTION. — [T]he inconsistency adverted to by Damayo is negligible and merely refers to a minor detail that does not bear relevance on the material and significant fact that Damayo kidnapped Jerome. It does not pertain to the why's and wherefore's of the crime, as to adversely affect the reliability of the People's evidence as a whole. An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.

6. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; CARRYING AWAY OF THE VICTIM CAN EITHER BE MADE FORCIBLY OR FRAUDULENTLY.— [W]hether Jerome was taken by force or not is of no moment. What is controlling is the act of the accused in detaining the victim against his will after the offender is able to take the victim in his custody. Besides, it is settled that the carrying away of the victim can either be made forcibly or fraudulently, as in this case. The Court gathers from Jerome's testimony that he was deceived by Damayo to go with him. Jerome clearly testified that Damayo told him that they would just go somewhere for a while and that he would be brought back shortly thereafter. The unsuspecting minor readily acceded to Damayo's request because he trusted his "Kuya Frank," but the latter took him instead to Pampanga. Viewed in the light of the foregoing, the Court finds that the discrepancy in question did not damage nor shatter altogether the credibility and the essential integrity of Jerome's testimony, but instead, the honest inconsistency serves to strengthen rather than destroy the victim's credibility.

7. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIVIAL INCONSISTENCIES DO NOT SHAKE THE PEDESTAL UPON WHICH THE WITNESS' CREDIBILITY RESTS; ON THE CONTRARY, THEY ARE TAKEN AS BADGES OF TRUTH RATHER THAN AS *INDICIA* OF FALSEHOOD FOR THEY MANIFEST SPONTANEITY AND ERASE ANY SUSPICION OF A REHEARSED TESTIMONY AS WELL AS NEGATE ALL DOUBTS THAT THE SAME WERE MERELY PERJURED.

— Anent the inconsistencies in the testimony of witness Edna cited by Damayo, suffice it to say that they are mere trifles which could not discredit her testimony nor diminish her credibility. It must be stressed that even the most candid witnesses oftentimes make mistakes and would fall into confused statements. Trivial inconsistencies do not shake the pedestal upon which the witness' credibility rests. On the contrary, they are taken as badges of truth rather than as *indicia* of falsehood for they manifest spontaneity and erase any suspicion of a rehearsed testimony as well as negate all doubts that the same were merely perjured. A truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and the treachery of human memory. Edna is not expected to remember every single detail of the incident with perfect or total recall.

8. ID.; ID.; ID.; THE TRIAL COURT'S FINDINGS OF CREDIBILITY IS ACCORDED GREAT RESPECT AND EVEN FINALITY, MORE SO IF THE SAME WERE AFFIRMED BY THE COURT OF APPEALS.— What militates against Damayo's claim of innocence is the time-honored rule that the issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying and absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings. The Court accords great respect and even finality to the findings of credibility of the trial court, more so if the same were affirmed by the CA, as in this case. We do not find any compelling reason to deviate from the trial court's evaluation of prosecution witnesses as credible witnesses and the credibility of their respective testimonies. Neither the RTC nor the CA overlooked, misinterpreted, misapplied or disregarded any significant facts and circumstances which when considered would have affected the outcome of the case. To the contrary, the prosecution witnesses' testimonies presented a cohesive, detailed, and convincing account of Jerome's August 7 to 9, 2008 kidnapping incident: from Jerome's actual abduction, to the ransom negotiation, to the supposed ransom payout, and to accused-appellant's apprehension by the police officers and Jerome's rescue.

9. ID.; ID.; ID.; TESTIMONIES OF CHILD VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT, AND THAT THE TESTIMONY OF CHILDREN OF SOUND MIND IS LIKELY TO BE MORE CORRECT AND TRUTHFUL THAN THAT OF OLDER PERSONS.— Damayo's contention is nothing more than a futile maneuver and a vain attempt to provide a viable excuse for taking Jerome from his school and bringing him to his house in Pampanga where he detained said victim for three days. What destroys the veracity of Damayo's claims is the categorical and credible declaration of Jerome that he and his mother have never stayed in Pampanga with Damayo at any given time, and that he has never been in Pampanga before the kidnapping incident. Case law has it that testimonies of child victims are given full weight and credit, and that the testimony of children of sound mind is likely to be more correct and truthful than that of older persons.

10. ID.; ID.; DEFENSE OF DENIAL; DENIAL IS A SELF-SERVING NEGATIVE EVIDENCE, WHICH CANNOT BE GIVEN GREATER WEIGHT THAN THAT OF THE DECLARATION OF A CREDIBLE WITNESS WHO TESTIFIES ON AFFIRMATIVE MATTERS.— Damayo's defense of denial was not corroborated nor bolstered by any competent and independent evidence testimony or other evidence and, hence, cannot be sustained in the face of Jerome's unwavering testimony and of his positive and firm identification of Damayo as the perpetrator. Denial is a self-serving negative evidence, which cannot be given greater weight than that of the declaration of a credible witness who testifies on affirmative matters.

11. ID.; ID.; CREDIBILITY OF WITNESSES; WHERE THERE IS NO EVIDENCE TO SHOW ANY DUBIOUS OR IMPROPER MOTIVE WHY A PROSECUTION WITNESS SHOULD BEAR FALSE WITNESS AGAINST THE ACCUSED OR FALSELY IMPLICATE HIM IN A HEINOUS CRIME, THE TESTIMONY IS WORTHY OF FULL FAITH AND CREDIT.— It bears stressing that Damayo utterly failed to allege, much less, prove any ill or ulterior motive on the part of Jerome and Edna to fabricate a story and to falsely charge Damayo with such a very serious crime. Where there is no evidence to show any dubious or improper motive why a prosecution witness should bear false witness against the accused

or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.

12. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING FOR RANSOM; ACTUAL PAYMENT OF RANSOM IS NOT NECESSARY AS IT IS ENOUGH THAT THE KIDNAPPING WAS COMMITTED FOR THE PURPOSE OF EXTORTING RANSOM. — [T]he Court determines that the qualifying circumstance of extortion of ransom being the purpose of Damayo in kidnapping Jerome was duly alleged in the Information and has been sufficiently established by the prosecution. Edna clearly testified that on August 8, 2008 at around 8 o'clock in the morning, she received a call from Damayo who demanded that he be given ₱150,000.00 in exchange for the safe release of Jerome and that the ransom payout shall be held at the Dau Terminal, Mabalacat, Pampanga. Damayo never rebutted this particular testimony of Edna. The fact that he did not receive the ransom payment is of no consequence. Actual payment of ransom is not necessary for the crime to be committed. It is enough that the kidnapping was committed for the purpose of extorting ransom.

13. ID.; ID.; ID.; ACCUSED-APPELLANT FOUND GUILTY OF THE CRIME OF KIDNAPPING FOR RANSOM; PENALTY OF *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE, IMPOSED.— Since Damayo's guilt for the crime of kidnapping for ransom had been established beyond reasonable doubt, he should be meted the penalty of death under Article 267 of the Revised Penal Code, as amended. However, considering that the imposition of the death penalty has been prohibited by Republic Act No. 9346, entitled *"An Act Prohibiting the Imposition of Death Penalty in the Philippines"*, the penalty of *reclusion perpetua* should be imposed upon Damayo. In addition, the qualification "without eligibility for parole" should be affixed to qualify *reclusion perpetua* pursuant to A.M. No. 15-08-02-SC. Thus, the RTC has properly imposed upon Damayo the penalty of *reclusion perpetua* without eligibility for parole.

14. ID.; ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— Coming now to the civil liabilities, the Court finds that the CA is correct in awarding ₱100,000.00 each for civil indemnity, moral damages and exemplary damages being consistent with current jurisprudence. Further, six percent (6%)

interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before the Court is an appeal from the January 30, 2017 Decision[1] of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 07683, which affirmed with modifications the July 29, 2015 Decision[2] of the Regional Trial Court, Branch 207, Muntinlupa City *(RTC)*, finding accused-appellant Francisco Damayo y Jaime *(Damayo)* guilty beyond reasonable doubt of the crime of Kidnapping for Ransom.

The antecedent facts are as follows:

Damayo was indicted for Kidnapping for Ransom under Article 267 of the Revised Penal Code, as amended, in an Information which reads:

> That, on or about the 7th day of August, 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a private individual, did then and there willfully, unlawfully and feloniously kidnap one JEROME ROSARIO Y SAMPAGA, an eleven (11)-year-old minor, for the purpose of extorting ransom.
>
> CONTRARY TO LAW.

When arraigned, Damayo pleaded not guilty to the charge. After pre-trial, trial on the merits ensued.

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[1] Penned by Associate Justice Socorro B. Inting, with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla concurring; *rollo*, pp. 2-10.

[2] Penned by Judge Philip A. Aguinaldo; CA *rollo*, pp. 38-48.

Version of the Prosecution

As summarized by the Office of the Solicitor General (OSG), the People's factual version is as follows:

On August 7, 2008, at 12:00 noon, Jerome Rosario, then eleven (11) years old, was outside his school at Sucat Elementary School, Brgy. Sucat, Muntinlupa City when appellant, known to him as Kuya Frank, approached and told him that he was there to fetch him as they were going somewhere. Since Jerome was familiar with appellant, he went with him and both boarded a jeep bound for Pasay. Upon arriving at Pasay, they boarded a bus. Jerome did not know where they were going.

Worried that Jerome had not returned from school, his parents Edna Rosario and Jerry Rosario started to look for Jerome. When they chanced upon Daryll, a classmate of Jerome, and asked him on his whereabouts, Daryll informed them that an unknown man had taken Jerome during dismissal time. Edna and Jerry then reported the incident to the barangay, where it was blottered.

The next day, August 8, 2008, Edna received a call on her daughter's cellphone from a person who introduced himself as Jerome's classmate. The man, whom Edna recognized to be appellant, stated that Jerome was with him and will be let go, provided that he will be given ₱150,000.00 and Edna will be unaccompanied when they meet. He directed her to meet him at a terminal in Dau, Pampanga.

The following day, August 9, 2008, Edna and Jerry went to the Muntinlupa City Police Station to report the matter. An operation was planned to retrieve Jerome, where it was agreed that upon meeting appellant at the designated meet-up point, Edna would touch appellant's arm, signaling to the police his identity.

At 2:00 P.M. of the same date, Edna, Jerry, and the police officers, namely, Senior Police Officer 4 (SPO4) Elias Nero, Police Officer 3 (PO3) Rudolph Delmendo, PO3 Roberto Lanting and Police Officer 2 (PO2) Julkabra Sulaiman, proceeded to the Dau terminal in Mabalacat, Pampanga. Upon seeing appellant, Edna touched his arm which prompted the police to arrest him. After handcuffing him, informing him of his arrest and reading him his constitutional rights, the police asked appellant where Jerome was being kept. Appellant told them that Jerome was at his house at No. 301 Telabastaga, San

Fernando, Pampanga. They proceeded to the area and were able to safely recover Jerome.[3]

Version of the Defense

The defense relates Damayo's version of the facts in this manner:

x x x x x x x x x

11. On the other hand, accused FRANCISCO J. DAMAYO vehemently denied the charge against him and interposed that on 7 August 2010, he was instructed by Edna to fetch Jerome from school and to meet her at the Pasay bus terminal thereafter. This is because they were planning to transfer Jerome to another school in Pampanga where they were living as common-law spouses.

12. Prior to the incident, the accused, being one of the Rosarios' close friends, stayed in their house in Sucat for a couple of weeks. At which time, he witnessed how Gerry Rosario abused his wife (Edna) and children. He (accused) tried to distance himself from the Rosarios but Edna kept on asking for his help and advice. As time went by and due to the fact that the accused has always been there for Edna, they grew closer and had an illicit relationship. Ashamed of his weakness, the accused left and stayed with his daughter in Tagaytay. Edna, however, kept on following him.

13. As a last effort to rid himself of his affair with Edna, the accused went to Clark, Pampanga to work there. He, likewise, changed his contact information. Edna, however, was able to trace him and unable to avoid her, the accused succumbed to her desires. They (Edna and the accused) started living together in Pampanga. Edna would then fetch her son, Jerome, every Friday and bring him back to Sucat every Sunday.

14. As the set up proved to be inconvenient for both Edna and Jerome, the couple (Edna and the accused) decided to just transfer Jerome to a school in Pampanga. Thus, on 7 August 2008, after his stay in Tagaytay, the accused met Edna at their house in Sucat, where she asked him to fetch Jerome from school and she will join them at Pasay bus terminal.

15. To his surprise and disappointment, however, Edna did not show up, thus, at Jerome's prodding, the accused decided to leave with Jerome and let Edna follow them to Pampanga.

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[3] *Id.* at 60-62.

16. The following day, or on 8 August 2008, Edna called the accused, asking him to bring Jerome back to Sucat, as her husband learned of their plan (to live together with Jerome in Pampanga), and got mad. Unfortunately, however, the accused had no means to travel back to Sucat that day. He (accused) told Edna to fetch Jerome herself or to wait for him to be able to come up with the money for their fare back to Sucat.

17. On 9 August 2008, while the accused was driving his jeepney, he received a call from Edna, asking him to meet her at Dau terminal. Upon arriving thereat, he was suddenly handcuffed by two (2) men in civilian clothes, accusing him of kidnapping Jerome. He instantly denied it and even told them where to find the boy. With no intention of detaining or abducting Jerome, the accused reasoned that he was only following Edna's instructions.[4]

The RTC Ruling

After trial, the RTC rendered its Decision dated July 29, 2015, finding Damayo guilty beyond reasonable doubt of the crime charged. The dispositive portion of which reads:

WHEREFORE, the Court finds accused Francisco Damayo y Jaime guilty beyond reasonable doubt of kidnapping and serious illegal detention under the first (the private complainant is a minor) and second (for the purpose of extorting ransom) paragraphs of Article 267 (4) of the Revised Penal Code, and is sentenced to *reclusion perpetua* without possibility of parole. He is further ordered to pay private complainant Jerome Rosario y Sampaga civil indemnity in the amount of ₱25,000.00, and moral damages in the amount of ₱25,000.00 both with 6% interest per annum from the finality of this decision until fully paid.

The Jail Warden, Muntinlupa City Jail is directed to immediately transfer accused Francisco Damayo y Jaime to the New Bilibid Prison tor the service of his sentence.

SO ORDERED.[5]

The RTC gave credence to the prosecution evidence which established that on August 7, 2006, Damayo took Jerome Rosario

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

[5] *Id.* at 48.

y Sampaga *(Jerome)*, who was then eleven years of age, from his school and brought the latter to his house in Pampanga where he deprived the said victim of his personal liberty for three (3) days and that Damayo demanded ransom of ₱150,000.00 from Edna, Jerome's mother, for the release of her son from captivity. According to the RTC, Jerome convincingly testified on the events that transpired during the kidnapping incident from August 7 to 9, 2006 and positively identified Damayo as his abductor. The RTC rejected the defense of denial interposed by Damayo because it was not substantiated by clear and convincing evidence.

Not in conformity, Damayo appealed his conviction before the CA.

The CA Ruling

On January 30, 2017, the CA rendered its assailed Decision affirming Damayo's conviction with modification as to the award of damages, the *fallo* of which states:

> WHEREFORE, the Decision dated 29 July 2015 of the Regional Trial Court of Muntinlupa City, Branch 207, in Criminal Case No. 08-556 is AFFIRMED with the following MODIFICATIONS:
>
> (1) that the amounts of moral damages and civil indemnity are increased to ₱100,000.00, each;
>
> (2) that exemplary damages in the amount of ₱100,000.00 is further awarded.
>
> SO ORDERED.[6]

The CA ruled that the prosecution witnesses unerringly established the commission of the crime of kidnapping for ransom and Damayo's culpability thereof. The CA, likewise, brushed aside Damayo's defense of denial for being self-serving and unsupported by any plausible proof.

Aggrieved, Damayo filed the present appeal and posited the lone assignment of error he previously raised before the CA, to wit:

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[6] *Rollo*, p. 9.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF KIDNAPPING SOLELY ON THE BASIS OF THE PROSECUTION WITNESSES' INCONSISTENT AND CONTRADICTORY TESTIMONIES.[7]

In its Resolution[8] dated August 23, 2017, the Court directed both parties to submit their supplemental briefs, if they so desire. On October 23, 2017, the OSG filed its Manifestation (in Lieu of Supplemental Brief)[9] praying that it be excused from filing a Supplemental Brief as its Appellee's Brief had sufficiently ventilated the issues raised. On November 21, 2017, Damayo filed a Manifestation *(In lieu of a Supplemental Brief)*[10] averring that he would adopt all his arguments in his Appellant's Brief filed before the CA where he had already adequately discussed all matters pertinent to his defense.

Insisting on his acquittal, Damayo asserts that the case for the prosecution was enfeebled by the inconsistent and contradictory testimonies of its witnesses, Jerome and Edna Rosario *(Edna)*. He submits that said testimonies are barren of probative weight and, thus, his conviction based thereon was erroneous. He puts premium on the following alleged material and substantial discrepancies to impugn the credibility of Jerome and Edna:

1) Jerome averred in his Affidavit, dated August 9, 2008, that appellant took him by force, while during his direct testimony, Jerome recounted that he voluntarily went with Damayo because he was familiar with him;

2) While at the witness stand, Edna claimed that she and her husband purposely went to Jerome's classmate, Daryll, to know the whereabouts of their son, but during her later testimony, Edna alleged that she and her husband only chanced upon the said classmate; and

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

[8] *Rollo*, pp. 17-18.

[9] *Id.* at 19-21.

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

3) During her direct examination, Edna recalled that it was her daughter who received the call from Damayo, while during her cross-examination, Edna stated that she was the one who received the call from Damayo who demanded ransom of ₱150,000.00.

Damayo denies that he abducted Jerome and maintains that his denial gained commensurate strength since the credibility of the prosecution witnesses is wanting and questionable. He contends that any doubt should be resolved in favor of the accused based on the principle that it is better to liberate a guilty man than to unjustly keep in prison one whose guilt has not been proven by the required quantum of evidence. Damayo stresses that his constitutional right to presumption of innocence remains because there is reasonable doubt that calls for his acquittal.

The Court's Ruling

The appeal is devoid of merit. Damayo's conviction of the crime charged must stand.

In the case at bench, the RTC, as affirmed by the CA, gave more weight and credence to the testimonies of the prosecution witnesses compared to that of Damayo. After a judicious review of the evidence on record, the Court finds no cogent reason to deviate from the factual findings of the RTC and the CA, and their respective assessment and calibration of the credibility of the prosecution witnesses. Despite Damayo's vigorous protestation, the Court is convinced beyond cavil that the prosecution has proven with moral certainty that Damayo kidnapped Jerome for the purpose of extorting money from his parents.

Jerome unmistakably and compellingly narrated, in detail, the events of the kidnapping incident, from the moment he was taken by Damayo from his school and brought to the latter's residence in Pampanga where he remained in captivity for three (3) days until his rescue by the police officers and his parents. The RTC described Jerome's testimony as "simple, straightforward and credible which was not toppled down in

the cross-examination."[11] A perusal of Jerome's testimony confirms the trial court's observation. Jerome was consistent in his account. Even during the rigorous cross-examination conducted by Damayo's counsel, he remained steadfast in his story of the commission of the crime and categorically pinpointed Damayo as his abductor. There is no showing that Jerome simply made up the details of his testimony or that he was coached. His testimony is unequivocal, forthright, cohesive and, hence, bears the hallmarks of honesty and truth. In sum, the RTC did not commit any error when it gave probative weight and credence to Jerome's testimony.

In order that the accused can be convicted of kidnapping and serious illegal detention, the prosecution must prove beyond reasonable doubt all the elements of the crime, namely: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer.[12]

If the victim of kidnapping and serious illegal detention is a minor, the duration of his detention is immaterial. Also, if the victim is kidnapped and illegally detained for the purpose of extorting ransom, the duration of his detention is immaterial.[13] It is settled that the curtailment of the victim's liberty need not involve any physical restraint upon the latter's person and it is not necessary that the offender kept the victim in an enclosure

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

[12] *People v. Anticamara, et al.,* 666 Phil. 484, 511 (2011).

[13] *People v. Pagalasan,* 452 Phil. 341, 362 (2003).

or treated him harshly.[14] The crime of serious illegal detention is committed by detaining a person or depriving him in any manner of his liberty.[15] Its essence is the actual deprivation of the victim's liberty, coupled with indubitable proof of the intent of the accused to effect such deprivation.[16]

The elements of kidnapping as embodied in Article 267 of RPC have been sufficiently proven in the case at bench. It is undisputed that Damayo is a private individual, and that he took Jerome from his school at Sucat Elementary School, Barangay Sucat, Muntinlupa City on August 7, 2008 at 12:00 noon, brought said victim to his house at No. 301 Telabastaga, San Fernando, Pampanga, and kept him there until he was safely recovered by his parents and the police officers on August 9, 2008. That Damayo had no justification whatsoever to detain Jerome is undeniable.

Although it was not established that Jerome was placed inside an enclosure or was locked up, he was nonetheless deprived of his liberty because he cannot leave the place where Damayo brought him as the latter remained outside and kept watch of him. This only goes to show that Jerome was constantly guarded by Damayo during the period of his captivity. Also, let it be underscored that leaving a child in a place from which he did not know the way home, even if he had the freedom to roam around the place of detention, would still amount to deprivation of liberty inasmuch as under this situation, the child's freedom remains at the mercy and control of the abductor.[17]

Here, bringing minor Jerome to a house located somewhere in Pampanga, a place which is totally unfamiliar to him and very far from his residence at Sucat, Muntinlupa City, would constitute denial of the said victim's liberty. Even if Jerome had the freedom of locomotion inside the house of Damayo,

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[14] *People v. Fabro,* G.R. No. 208441, July 17, 2017.

[15] *People v. Domasian,* 292 Phil. 255, 264 (1993).

[16] *People v. Obeso,* 460 Phil. 625, 634 (2003).

[17] *People v. Baluya,* 664 Phil. 140, 151 (2011).

he did not have the freedom to leave the same at will or escape therefrom because he did not know where to go and could not possibly go back home to his mother Edna as he didn't know how to do so. Jerome was merely waiting and hoping that he would be brought home or that his parents would fetch him. Verily, the prosecution has established beyond reasonable doubt that Damayo intended to deprive Jerome of his liberty, and his parents, with the custody of their minor son.

In his attempt at exculpation, Damayo posits that the charge against him should not have been given credence since the testimonies of prosecution witnesses Jerome and Edna are allegedly laced with inconsistencies and discrepancies which cast serious doubt on the veracity of their respective claims. Specifically, Damayo points out that while Jerome stated that he had been taken by force in his affidavit, he subsequently testified during his direct examination that he voluntarily went with the appellant because he personally knew the latter as "Kuya Frank" since Damayo stayed in their house for a time. Damayo submits that such inconsistency is sufficient to discredit Jerome.

Damayo's arguments do not persuade.

Jerome's testimony prevails over the statement he gave in the affidavit which he previously executed. It is settled that whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimony given in court, the former being almost invariably incomplete and oftentimes inaccurate.[18] Affidavits are usually incomplete, as these are frequently prepared by administering officers and cast in their language and understanding of what affiants have said.[19] They are products sometimes of partial suggestions and at other times of want of suggestions and inquiries.[20] Almost always, the affiants would simply sign the

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[18] *People v. Mamarion,* 459 Phil. 51, 85 (2003).

[19] *People v. Cueto,* 443 Phil. 425, 433 (2003).

[20] *People v. Abrera,* 347 Phil. 302, 316 (1997).

documents after being read to them. Jurisprudence is unequivocal in saying that the testimony of a witness prevails over an affidavit.[21]

At any rate, the inconsistency adverted to by Damayo is negligible and merely refers to a minor detail that does not bear relevance on the material and significant fact that Damayo kidnapped Jerome. It does not pertain to the why's and wherefore's of the crime, as to adversely affect the reliability of the People's evidence as a whole. An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction.[22]

Thus, whether Jerome was taken by force or not is of no moment. What is controlling is the act of the accused in detaining the victim against his will after the offender is able to take the victim in his custody.[23] Besides, it is settled that the carrying away of the victim can either be made forcibly or fraudulently,[24] as in this case. The Court gathers from Jerome's testimony that he was deceived by Damayo to go with him. Jerome clearly testified that Damayo told him that they would just go somewhere for a while and that he would be brought back shortly thereafter. The unsuspecting minor readily acceded to Damayo's request because he trusted his "Kuya Frank," but the latter took him instead to Pampanga. Viewed in the light of the foregoing, the Court finds that the discrepancy in question did not damage nor shatter altogether the credibility and the essential integrity of Jerome's testimony, but instead, the honest inconsistency serves to strengthen rather than destroy the victim's credibility.

Anent the inconsistencies in the testimony of witness Edna cited by Damayo, suffice it to say that they are mere trifles which could not discredit her testimony nor diminish her credibility. It must be stressed that even the most candid witnesses

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[21] *People v. Ortiz,* 413 Phil. 592, 611 (2001).

[22] *People v. SPO1 Gonzales, Jr.,* 781 Phil. 149, 156 (2016).

[23] *People v. Siongco, et al.,* 637 Phil. 488, 500 (2010).

[24] *People v. De Guzman,* 773 Phil. 662, 674 (2015).

oftentimes make mistakes and would fall into confused statements. Trivial inconsistencies do not shake the pedestal upon which the witness' credibility rests. On the contrary, they are taken as badges of truth rather than as *indicia* of falsehood for they manifest spontaneity and erase any suspicion of a rehearsed testimony[25] as well as negate all doubts that the same were merely perjured. A truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and the treachery of human memory.[26] Edna is not expected to remember every single detail of the incident with perfect or total recall.

What militates against Damayo's claim of innocence is the time-honored rule that the issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying and absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings.[27] The Court accords great respect and even finality to the findings of credibility of the trial court, more so if the same were affirmed by the CA, as in this case.[28]

We do not find any compelling reason to deviate from the trial court's evaluation of prosecution witnesses as credible witnesses and the credibility of their respective testimonies. Neither the RTC nor the CA overlooked, misinterpreted, misapplied or disregarded any significant facts and circumstances which when considered would have affected the outcome of the case. To the contrary, the prosecution witnesses' testimonies presented a cohesive, detailed, and convincing account of Jerome's August 7 to 9, 2008 kidnapping incident: from Jerome's

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[25] *People v. Diopita,* 400 Phil. 653, 665 (2000).

[26] *People v. Mendoza,* 421 Phil. 149, 168 (2001).

[27] *People v. Dominguez, Jr.,* 650 Phil. 492, 520 (2010).

[28] *Kummer v. People,* 717 Phil. 670, 679 (2013).

actual abduction, to the ransom negotiation, to the supposed ransom payout, and to accused-appellant's apprehension by the police officers and Jerome's rescue.

Still, Damayo denies that he kidnapped Jerome. In a crude effort to muddle the case for the prosecution, Damayo asserts that he and Edna were lovers and that he took Jerome from his school and brought him to Pampanga upon Edna's request. Damayo explains that he and Edna had considered transferring Jerome to a school in Pampanga. He claims that it had been the practice for Edna and Jerome to spend their weekends with him at their rented home in Pampanga.

Damayo's contention is nothing more than a futile maneuver and a vain attempt to provide a viable excuse for taking Jerome from his school and bringing him to his house in Pampanga where he detained said victim for three days. What destroys the veracity of Damayo's claims is the categorical and credible declaration of Jerome that he and his mother have never stayed in Pampanga with Damayo at any given time, and that he has never been in Pampanga before the kidnapping incident. Case law has it that testimonies of child victims are given full weight and credit, and that the testimony of children of sound mind is likely to be more correct and truthful than that of older persons.[29]

Moreover, as aptly observed by the RTC, if the trip to Pampanga was indeed planned as claimed by Damayo, then Jerome would have brought with him certain personal belongings which he will use during his stay at appellant's house. Or, if Edna and Jerome really spend their weekends at Pampanga, there would have been clothes available for use at Damayo's place. Evidence on record, however, showed that for the entire duration of his detention, Jerome only wore his school uniform and only had with him his school bag.

Edna, on the other hand, vehemently denied that she and Damayo were lovers and that she gave him an instruction to bring Jerome to Pampanga. We agree with the courts *a quo*

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[29] *People v. Bisda*, 454 Phil. 194, 224 (2003).

that Edna has not given her consent for Damayo to take and keep her son. This is evident from the fact that Edna, together with her husband, wasted no time and went through the trouble of going to Jerome's school to look for their son when the latter failed to go home at around 4 o'clock in the afternoon on August 7, 2008 and in having the incident of the taking of Jerome by a male person to be blottered before the *Barangay* Office of the Sucat, Muntinlupa City. This is, likewise, clear from the plea of Edna, via cellular phone, for Damayo to bring home her son.

Apart from Damayo's bare assertion, no other evidence was adduced by the defense to substantiate his claim that he and Edna were lovers. Records show that the testimony of defense witness Edwin Alcantara, appellant's son-in-law, confirming the alleged love affair between Damayo and Edna, was ordered by the RTC to be expunged from the records due to the failure of this witness to appear and testify for cross-examination. Granting *arguendo* that Edna and Damayo were indeed sweethearts, the same does not negate the commission of kidnapping. Such a romantic relationship, even if true, does not give Damayo the authority to remove Jerome from his school and detain him for three days at San Fernando, Pampanga away from his parents. In any event, the Court notes that Edna's reactions consisting of immediately reporting the kidnapping of his son to the Muntinlupa City Police and identifying the culprit to be herein appellant, cooperating with the police for the apprehension of Damayo, and testifying against him before the RTC, are certainly not consistent with the conduct of a woman deeply in love with appellant. Besides, if it was really true that Edna and Damayo are lovers, then she should have conveniently joined appellant and Jerome in Pampanga instead.

More importantly, Damayo's defense of denial was not corroborated nor bolstered by any competent and independent evidence testimony or other evidence and, hence, cannot be sustained in the face of Jerome's unwavering testimony and of his positive and firm identification of Damayo as the perpetrator. Denial is a self-serving negative evidence, which cannot be

given greater weight than that of the declaration of a credible witness who testifies on affirmative matters.[30]

It bears stressing that Damayo utterly failed to allege, much less, prove any ill or ulterior motive on the part of Jerome and Edna to fabricate a story and to falsely charge Damayo with such a very serious crime. Where there is no evidence to show any dubious or improper motive why a prosecution witness should bear false witness against the accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[31]

Lastly, the Court determines that the qualifying circumstance of extortion of ransom being the purpose of Damayo in kidnapping Jerome was duly alleged in the Information and has been sufficiently established by the prosecution. Edna clearly testified that on August 8, 2008 at around 8 o'clock in the morning, she received a call from Damayo who demanded that he be given ₱150,000.00 in exchange for the safe release of Jerome and that the ransom payout shall be held at the Dau Terminal, Mabalacat, Pampanga. Damayo never rebutted this particular testimony of Edna. The fact that he did not receive the ransom payment is of no consequence. Actual payment of ransom is not necessary for the crime to be committed. It is enough that the kidnapping was committed for the purpose of extorting ransom.[32]

Since Damayo's guilt for the crime of kidnapping for ransom had been established beyond reasonable doubt, he should be meted the penalty of death under Article 267 of the Revised Penal Code, as amended. However, considering that the imposition of the death penalty has been prohibited by Republic Act No. 9346, entitled *"An Act Prohibiting the Imposition of Death Penalty in the Philippines",* the penalty of *reclusion*

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[30] *People v. Jacalne,* 674 Phil. 139, 148 (2011).

[31] *People v. Gregorio, et al.,* 786 Phil. 565, 596 (2016).

[32] *People v. Salimbago,* 373 Phil. 56, 75 (1999).

perpetua should be imposed upon Damayo. In addition, the qualification "without eligibility for parole" should be affixed to qualify *reclusion perpetua* pursuant to A.M. No. 15-08-02-SC.[33] Thus, the RTC has properly imposed upon Damayo the penalty of *reclusion perpetua* without eligibility for parole.

Coming now to the civil liabilities, the Court finds that the CA is correct in awarding ₱100,000.00 each for civil indemnity, moral damages and exemplary damages being consistent with current jurisprudence.[34] Further, six percent (6%) interest *per annum* shall be imposed on all damages awarded to be reckoned from the date of the finality of this Decision until fully paid.[35]

WHEREFORE, premises considered, the appeal is **DISMISSED.** The Decision of the Court of Appeals dated January 30, 2017 in CA-G.R. CR-HC No. 07683 is hereby **AFFIRMED.** Accused-appellant Francisco Damayo y Jaime is found **GUILTY** beyond reasonable doubt of the crime of Kidnapping for Ransom and is sentenced to suffer the penalty of *Reclusion Perpetua* without eligibility for parole. He is **ORDERED** to **PAY** the private complainant Jerome Rosario y Sampaga the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary

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[33] Section II of A.M. No. 15-08-02-SC (Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties) states:

x x x x x x x x x

II.

In these lights, the following guidelines shall be observed in the imposition of penalties and in the use of the phrase *"without eligibility for parole"*:

(1) x x x: and

(2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification of "without eligibility for parole" *shall be used* to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. No. 9346.

[34] *People v. PO3 Borja,* G.R. No. 199710, August 2, 2017.

[35] *People v. Romobio,* G.R. No. 227705, October 11, 2017.

damages, with legal interest at the rate of six percent (6%) *per annum* from the time of finality of this Decision until fully paid.

SO ORDERED.

Gesmundo and *Reyes, J. Jr., JJ.,* concur.

Leonen, J., on wellness leave.

Reyes, A. Jr.,[*] *J.,* on leave.

FIRST DIVISION

[G.R. No. 210088. October 1, 2018]

ELLEN T. TORDESILLAS, CHARMAINE DEOGRACIAS, ASHZEL HACHERO, JAMES KONSTANTIN GALVEZ, MELINDA QUINTOS DE JESUS, VERGEL O. SANTOS, YVONNE TAN CHUA, BOOMA B. CRUZ, ED LINGAO, ROBY ALAMPAY, JESSICA SOHO, MARIA JUDEA PULIDO, MICHAEL FAJATIN, CONNIE SISON, RAWNNA CRISOSTOMO, J.P. SORIANO, GENA BALAORO, MICHELLE SEVA, LEILANI ALVIS, DANILO ARAO, LETICIA Z. BONIOL, ROWENA C. PARAAN, IRIS C. GONZALES, MA. CRISTINA V. RODRIGUEZ, MARLON RAMOS, LEAH FLOR, MANOLITO C. GAYA, EREL A. CABATBAT, VINCENT CRISTOBAL, JESUS D. RAMOS, MICHAEL C. CARREON, ED DE GUZMAN, MA. AURORA REYES FAJARDO, ELIZABETH JUDITH

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[*] Designated additional member per Special Order No. 2588 dated August 28, 2018.

C. PANELO, ANGEL AYALA, NILO H. BACULO, SR., THE CENTER FOR MEDIA FREEDOM AND RESPONSIBILITY (CMFR), represented by its Executive Director MELINDA QUINTOS DE JESUS; THE NATIONAL UNION OF JOURNALISTS OF THE PHILIPPINES (NUJP), represented by its Secretary General ROWENA PARAAN; THE PHILIPPINE CENTER FOR INVESTIGATIVE JOURNALISM (PCIJ) represented by its Co-Founder and Chairperson of the Board of Editors, MARIA LOURDES C. MANGAHAS; and THE PHILIPPINE PRESS INSTITUTE (PPI) represented by its Executive Director, ARIEL SEBELLINO, *petitioners, vs.* **HON. RONALDO PUNO, Secretary of the Interior and Local Government, HON. RAUL M. GONZALES, Secretary of Justice, HON. GILBERTO C. TEODORO, JR., Secretary of National Defense, DIRECTOR GENERAL AVELINO RAZON, JR., Chief of the Philippine National Police, DIRECTOR GEARY BARIAS, National Capital Region Police Office (NCRPO), CHIEF SUPERINTENDENT LUIZO TICMAN, CHIEF SUPERINTENDENT LEOCADIO SANTIAGO, JR., PNP Special Action Force (SAF) Director, SENIOR SUPERINTENDENT ASHER DOLINA, Chief Criminal Investigation and Detection Group - National Capital Region Office (CIDG-NCRPO), and MAJOR GENERAL HERMOGENES ESPERON, Chief of Staff, Armed Forces of the Philippines,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; FREEDOMS OF SPEECH AND OF THE PRESS; NOT IMMUNE TO REGULATION BY THE STATE IN THE EXERCISE OF ITS POLICE POWER; CASE AT BAR.— At the outset, it must be stated that this Court unwavingly recognizes that one of the cherished liberties in democracy,

such as ours, is the freedom of speech and of the press. In fact, no less than the 1987 Constitution, Article III, Section 4 thereof, mandates full protection to freedom of speech, of expression, and of the press. x x x Nonetheless, as also concedingly stated by the petitioners in their petition, such valued freedom is not absolute and unfettered at all times and under all circumstances. The realities of life in a complex society preclude an absolute exercise of the freedoms of speech and of the press. They are not immune to regulation by the State in the exercise of its police power.

2. ID.; ID.; FREEDOM OF THE PRESS; FOUR ASPECTS; FREEDOM FROM PRIOR RESTRAINT IS FREEDOM FROM CENSORSHIP OF PUBLICATIONS, WHATEVER THE FORM OF THE CENSORSHIP, AND REGARDLESS OF WHETHER IT IS WIELDED BY THE EXECUTIVE, LEGISLATIVE OR JUDICIAL BRANCH OF THE GOVERNMENT; CASE AT BAR.— In as early as the 1935 Constitution, our jurisprudence has recognized four aspects of freedom of the press, to wit: (1) freedom from prior restraint; (2) freedom from punishment subsequent to publication; (3) freedom of access to information; and (4) freedom of circulation. x x x We had the occasion to exhaustively explain the concept of prior restraint in the case of *Chavez*, thus: Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government. x x x The challenged government actions in the instant petition do not, in any way, come near the government actions struck down as unconstitutional for being tantamount to a prior restraint or censorship. As correctly found by the CA, a plain reading of the questioned advisory clearly shows that no media network or personnel is prohibited nor restricted from reporting or writing on any subject matter or from being present and covering newsworthy events, unlike the advisories/resolutions subject of the cases above-cited. The CA and the trial court also correctly pointed out that respondents' questioned acts never hindered the members of the press from freely exercising their profession to cover any newsworthy events such as the Manila Pen standoff.

3. REMEDIAL LAW; PROVISIONAL REMEDIES; INJUNCTION; WHAT TO ESTABLISH TO BE ENTITLED TO THE INJUNCTIVE WRIT; CASE AT BAR.— We sustain thus the RTC's and the CA's finding that there is no prior restraint nor an impermissible regulation on the petitioners' freedom of speech and of the press considering that respondents' questioned acts were merely brought about by the exigencies of the situation and ultimately, were valid exercise of their authority so as not to compromise the safety of the civilians at the scene of the incident. x x x That being established, We find no reason to deviate from the RTC's and CA's ruling, dismissing the case for lack of cause of action as petitioners failed to prove that their rights were violated which constitute an actionable wrong. As such, the prayer for injunction must, perforce, fail. It is settled that to be entitled to the injunctive writ, petitioners must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage. As discussed, contrary to petitioners' assertion, their right to free speech and press was not, in any way, violated by respondents' actions.

4. ID.; EVIDENCE; ADMISSIBILITY; OPINION OF EXPERT TESTIMONY; USE THEREOF IS PERMISSIVE AND NOT MANDATORY ON THE PART OF THE COURT; CASE AT BAR.— No error could also be imputed against the RTC's and the CA's denial to admit Dean Pangalangan's testimony, supposedly as an expert witness. In *Edwin Tabao y Perez v. People of the Philippines*, this Court explained: Section 49, Rule 130 of the Revised Rules of Court states that the opinion of a witness on a matter requiring special knowledge, skill, experience or training, which he is shown to possess, may be received in evidence. **The use of the word "may" signifies that the use of opinion of an expert witness is permissive and not mandatory on the part of the courts. Allowing the testimony does not mean, too, that courts are bound by the testimony of the expert witness.** The testimony of an expert witness must be construed to have been presented not to sway the court in favor of any of the parties, but to assist the court in the determination of the issue before it, and is for the court

to adopt or not to adopt depending on its appreciation of the attendant facts and the applicable law.

APPEARANCES OF COUNSEL

Butuyan & Rayel Law Offices for petitioners.
The Solicitor General for respondents.

D E C I S I O N

TIJAM, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated May 31, 2013 and the Resolution[3] dated November 11, 2013 of the Court of Appeals (CA) in CA- G.R. CV No. 91428.

Factual Antecedents

This case is an offshoot of the "Manila Pen Standoff". We recount that on November 29, 2007, now Senator Antonio Trillanes IV (Trillanes), Brigadier General Danilo Lim, and other members of the Magdalo group, walked out of the Regional Trial Court (RTC) of Makati City before the sala of Presiding Judge Oscar Pimentel (Judge Pimentel), during the hearing of their *coup d'etat* case, known as the "Oakwood Mutiny" staged in July 2003. The group proceeded to the nearby Manila Peninsula Hotel (Manila Pen), took over the hotel, and held a press conference at the lobby, calling for the ouster of then President Gloria-Macapagal Arroyo (President Arroyo).[4]

Members of the press, including some of the petitioners herein, proceeded to Manila Pen to cover news on the situation. Thereat,

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[1] *Rollo*, pp. 28-80.

[2] Penned by Associate Justice Angelita A. Gacutan and concurred in by Associate Justices Fernanda Lampas Peralta and Leoncia Real-Dimagiba; *id*. at 81-94.

[3] *Id*. at 95-97.

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

after issuing a statement at the lobby, demanding for President Arroyo's ouster, the group moved to a function room. Members of the press then followed them to continue with their coverage.[5]

Acting upon the situation, police authorities led by NCRPO Chief Geary Barias, proceeded to the Manila Pen to serve the Warrant of Arrest for Direct Contempt issued by Judge Pimentel against Trillanes' group. However, they refused to receive the warrant, hence, the officers were constrained to shove the same under the front door. The police officers then gave Trillanes' group until 3 o'clock that afternoon to vacate the premises. Despite these orders, however, petitioners Ellen Tordesillas, Charmaine Deogracias, Ashzel Hachero, and James Konstantin Galvez, opted to stay inside the function room with Trillanes' group.[6]

When the 3 o'clock deadline lapsed, the police authorities hurled tear gas canisters inside the hotel lobby and fired warning shots before breaking into the hotel to arrest Trillanes and his group. The members of the press who were inside the function room were also taken by the police officers and were brought to Camp Bagong Diwa with Trillanes' group. After processing, the said members of the press were cleared and released before midnight of the same day.[7]

In a subsequent meeting with the media at the Manila Pen, then Department of Interior and Local Government (DILG) Secretary Ronaldo Puno stated that "[j]ournalists who ignore police orders to leave a crime scene will be arrested and charged with obstruction of justice and willful disobedience of authority."[8]

Likewise, then Armed Forces of the Philippines (AFP) Chief of Staff Major General Hermogenes Esperon made a statement

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[5] *Id*. at 34 & 83.

[6] *Id*. at 83.

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

[8] *Id*. at 84.

that the military is one with the Philippine National Police (PNP) in investigating the journalists who disobeyed the lawful orders and/or hindered the enforcement thereof.[9]

Then Department of National Defense (DND) Secretary Gilbert Teodoro (Secretary Teodoro) also defended the police authorities' actions in arresting the members of the press who ignored the above-cited orders.[10]

Then Department of Justice (DOJ) Secretary Raul Gonzales (Secretary Gonzales) issued an Advisory[11] addressed to all Chief Executive Officers (CEO) of media networks, media companies, and press groups, stating as follows:

> Please be reminded that your respective companies, networks or organizations may incur criminal liabilities under the law, if anyone of your field reporters, news gatherers, photographers, cameramen and other media practitioners will disobey lawful orders from duly authorized government officers and personnel during emergencies which may lead to collateral damage to properties and civilian casualties in case of authorized police or military operations.

Former PNP Director General Avelino Razon announced his support to Secretary Gonzales' advisory and further said that media could be charged with obstruction of justice for disobeying the police warnings.[12]

These circumstances prompted petitioners to file a Complaint[13] for Damages and Injunction with Prayer for Preliminary Mandatory Injunction and/or Temporary Restraining Order (TRO) against respondents on January 28, 2008. Petitioners also filed an Urgent Motion for the Issuance of a 72-hour TRO, which was granted on the same day.[14]

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[9] *Id*.

[10] *Id.*

[11] *Id*. at 101.

[12] *Id*. at 84-85.

[13] *Id*. at 111-124.

[14] *Id*. at 85.

In the main, petitioners averred in the said Complaint that the warrantless and oppressive arrest of journalists who were peacefully exercising their constitutional rights, clearly violates their right to press and project a "chilling effect" on such constitutionally-protected freedom. Petitioners further averred that the acts complained of constitute prior restraint, as such acts prevented journalists from carrying out the duties of their profession to report on a matter of public interest.[15]

After hearings and submission of respective memoranda on the application for TRO, the RTC of Makati, Branch 56, denied the application for TRO in its Order dated February 8, 2008.[16]

Secretary Teodoro and the Office of the Solicitor General (OSG) filed separate Motions to Dismiss on February 12, 2008 and February 28, 2008, respectively. On March 6, 2008, petitioners filed an Opposition to the said Motions to Dismiss.[17]

Secretary Teodoro and the OSG also filed their respective Oppositions/Memoranda to the application for injunction and to the admission of the expert testimony of Dean Raul C. Pangalangan (Dean Pangalangan).[18]

On June 2, 2008, the injunction was likewise denied. Petitioners filed a motion for reconsideration thereof but the same was not resolved by the trial court. Instead, the RTC issued an Order dated June 20, 2008, dismissing petitioners' Complaint on the ground that the petitioners have no cause of action against respondents, thus:

WHEREFORE, for reasons afore-stated, the complaint is hereby **DISMISSED**.

SO ORDERED.[19]

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[15] *Id.* at 119.

[16] *Id.* at 37.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 86.

The CA Ruling

On appeal, the CA found no reversible error in dismissing petitioners' Complaint and in denying their prayer for TRO and/or injunction. In its May 31, 2013 assailed Decision, the CA guaranteed its recognition of the principle that the right to freedom of the press, along with the freedom of speech and of expression, and the right to peaceably assemble, is a right that enjoys primacy in the realm of constitutional protection as these rights constitute the very basis of a functional democratic polity, without which all the other rights would be meaningless and unprotected.[20]

The CA, however, also exhaustively discussed the equally settled principle that these rights are not absolute. It explained that the very nature of every well-ordered civil society necessitates that the exercise of such rights may be so regulated so as not to be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society.[21] In this regard, the CA discussed the concept of the State's police power.

The appellate court, thus, came into the conclusion that petitioners have no cause of action against the respondents as the former failed to show that their rights were violated which constitute an actionable wrong.[22]

Consequently, the CA also held that the petitioners are not entitled to the injunctive relief prayed for, for failure to prove their claim that the acts of the respondents are violative of their rights as members of the press. The CA also found no serious damage or injury sought to be prevented.[23]

As to the admissibility of the testimony of expert witness Dean Pangalangan, the CA sustained the RTC's ruling to exclude

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[20] *Id*. at 87.

[21] *Id*. at 87-88.

[22] *Id*. at 92.

[23] *Id*.

the same as it "runs counter to the power of the Court to interpret and apply the laws to a given set of facts as it undisputedly deal with the constitutionality or legality of the DOJ Advisory, public pronouncements made by other high ranking government officials and the arrest of some of the [petitioners] xxx." Besides, according to the RTC, as affirmed by the CA, there is no factual issue before the court which requires the presentation of an expert witness.[24]

In all, the CA disposed, thus:

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The appealed Orders are hereby **AFFIRMED**.

SO ORDERED.[25]

In its November 11, 2013 assailed Resolution, the CA denied petitioners' motion for reconsideration:

ACCORDINGLY, [petitioners'] *Motion for Reconsideration* is hereby **DENIED**.

SO ORDERED.[26]

Hence, this petition.

Issues

(1) Whether or not the CA committed reversible error in finding that petitioners have no cause of action against respondents:

(a) Whether or not the Advisory issued by the respondents is not content-neutral and thus constitute prior restraint, censorship, and are content-restrictive, which resulted to a "chilling effect" in violation of the freedom of the press;

(b) Whether or not the journalist's arrest was plain censorship.

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[24] *Id*. at 93.

[25] *Id*. at 94.

[26] *Id*. at 97.

(2) Whether or not Dean Pangalangan's testimony should have been admitted.

(3) Whether or not the denial of the TRO and/or injunctive writ was proper.

Our Ruling

Once again, this Court is faced with the predicament of balancing the spectrum with a State action on one hand and the right of free speech and of the press on the other, both constitutionally mandated and/or guaranteed. Specifically, the basic freedom of the press is invoked herein to condemn the taking of some media practitioners to Camp Bagong Diwa, together with Trillanes' group, who disobeyed the order to vacate the premises upon service of the warrant of arrest to the latter, as well as the subsequent public pronouncement and/or advisory, reminding media practitioners that disobedience to lawful orders of duly authorized government officers and personnel during emergencies which may lead to collateral damage to properties and civilian casualties in case of authorized police or military operations may result to criminal liability, as being in the nature of a prior restaint, producing a chilling effect on the exercise of press freedom, violating thus such constitutionally-protected right.

At the outset, it must be stated that this Court unwavingly recognizes that one of the cherished liberties in democracy, such as ours, is the freedom of speech and of the press.[27] In fact, no less than the 1987 Constitution, Article III, Section 4[28] thereof, mandates full protection to freedom of speech, of expression, and of the press. The importance of the right to free speech and press can be gleaned from the language of the said specific constitutional provision, which makes it seem like the said right is not susceptible of any limitation.[29] In the case

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[27] *J.* Carpio's Dissenting Opinion, *Soriano v. Laguardia, et al.*, 629 Phil. 262, 284 (2010).

[28] Sec. 4. No law shall be passed abridging the freedom of speech, of expression, or the press, xxx.

[29] *Chavez v. Gonzales, et al.*, 569 Phil. 155, 198 (2008).

of *Prof. Randolf David v. Gloria Macapagal-Arroyo*,[30] the Court even opined that "[t]he best gauge of a free and democratic society rests in the degree of freedom enjoyed by its media." In the landmark case of *Chavez v. Gonzales*,[31] We highlighted the importance of press freedom as follows:

> Much has been written on the philosophical basis of press freedom as part of the larger right of free discussion and expression. Its practical importance, though, is more easily grasped. It is the chief source of information on current affairs. It is the most pervasive and perhaps most powerful vehicle of opinion on public questions. It is the instrument by which citizens keep their government informed of their needs, their aspirations and their grievances. It is the sharpest weapon in the fight to keep government responsible and efficient. Without a vigilant press, the mistakes of every administration would go uncorrected and its abuses unexposed. As Justice Malcolm wrote in *United States v. Bustos*:
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> > The interest of society and the maintenance of good government demand a full discussion of public affairs. Complete liberty to comment on the conduct of public men is a scalpel in the case of free speech. The sharp incision of its probe relieves the abscesses of officialdom. Men in public life may suffer under a hostile and unjust accusation; the wound can be assuaged with the balm of clear conscience.
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> Its contribution to the public weal makes freedom of the press deserving of extra protection. Indeed, the press benefits from certain ancillary rights. The productions of writers are classified as intellectual and proprietary. Persons who interfere or defeat the freedom to write for the press or to maintain a periodical publication are liable for damages, be they private individuals or public officials. (citation omitted)

Nonetheless, as also concedingly stated by the petitioners in their petition, such valued freedom is not absolute and unfettered at all times and under all circumstances.[32] The realities

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[30] 522 Phil. 705, 805 (2006).

[31] *Chavez v. Gonzales, et al.*, *supra* note 29, *id.* at 201.

[32] *Philippine Journalists, Inc. (People's Journal) v. Thoenen*, 513 Phil. 607 (2005).

of life in a complex society preclude an absolute exercise of the freedoms of speech and of the press. They are not immune to regulation by the State in the exercise of its police power.[33] As the Court succinctly explained in the case of *Cipriano Primicias v. Valeriano Fugoso*:[34]

> xxx [I]t is a settled principle growing out of the nature of well-ordered civil societies that the exercise of those rights is not absolute for it may be so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society. The power to regulate the exercise of such and other constitutional rights is termed the sovereign "police power," which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people.[35]

In as early as the 1935 Constitution, our jurisprudence has recognized four aspects of freedom of the press, to wit: (1) freedom from prior restraint; (2) freedom from punishment subsequent to publication; (3) freedom of access to information; and (4) freedom of circulation.[36]

In this case, petitioners argue that respondents' acts constitute a form of prior restraint. According to the petitioners, the collective threats against journalists embodied in the advisory issued by the DOJ Secretary, unless held to be unconstitutional and enjoined for being an excercise of plain censorship or of prior restraint, "hang like the proverbial Sword of Damocles" as State agents can invoke the same at anytime against any member of the press. Petitioners proceeded by arguing that such threats resulted to a chilling effect on the exercise of petitioners' freedom of the press.[37]

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[33] *ABS-CBN Broadcasting Corporation v. COMELEC*, 380 Phil. 780, 793 (2000).

[34] 80 Phil. 71 (1948).

[35] *Id*. at 75.

[36] *Chavez v. Gonzales*, *supra* note 29, *id*. at 202.

[37] *Rollo*, pp. 42-43.

Petitioners' fears and apprehensions are more apparent than real.

We had the occasion to exhaustively explain the concept of prior restraint in the case of *Chavez*,[38] thus:

> Prior restraint refers to official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination. Freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government. Thus, it precludes governmental acts that required approval of a proposal to publish; licensing or permits as prerequisites to publication including the payment of license taxes for the privilege to publish; and even injunctions against publication. Even the closure of the business and printing offices of certain newspapers, resulting in the discontinuation of their printing and publication, are deemed as previous restraint or censorship. Any law or official that requires some form of permission to be had before publication can be made, commits an infringement of the constitutional right, and remedy can be had at the courts.

Generally, thus, prior restraint is understood to be any form of governmental restriction on, or interference to any form of expression in advance of actual expression, or exercise of the right.

In *Chavez*,[39] the Court struck down the statements made by then DOJ Secretary Gonzales and the National Telecomunications Commission warning the media on airing the alleged wiretapped telephone conversations of then President Gloria Macapagal-Arroyo, as constituting unconstitutional prior restraint on the exercise of free speech and of the press.

In *Primicias*,[40] the City Mayor of Manila's refusal to issue permit for a public assembly was held to have violated the freedom of expression.

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[38] *Chavez v. Gonzales*, *supra* note 29, *id*. at 203-204.

[39] *Supra* note 29.

[40] *Primicias v. Valeriano*, *supra* note 34.

In *ABS-CBN Broadcasting Corporation v. COMELEC,*[41] the Court held that the COMELEC resolution totally prohibiting the conduct of exit polls in the guise of promoting clean, honest, orderly, and credible elections was annulled as the same is an absolute infringement of the constitutionally-guaranteed rights of the media and the electorate.

In *Sanidad v. COMELEC,*[42] a provision in a COMELEC resolution prohibiting the media to allow the use of a column or radio or television time to campaign for or against the plebiscite issues as regards the ratification of the act establishing the Cordillera Autonomous Region, was declared null and void and unconstitutional by the Court as the same restricts, without justifiable reason, the choice of forum where one may express his view, tantamount to a restriction of the freedom of expression.

In *David,*[43] the Court declared as unconstitutional the warrantless search of the Daily Tribune offices, the seizure of materials for publication therein, the stationing of policemen in the vicinity, and the arrogant warning of government officials to media, among others, pursuant to President Arroyo's Presidential Proclamation No. 1017 and General Order No. 5, as the said acts constitute plain censorship.

The list of cases in our jurisprudence could go on but the bottom line is that: there is prior restraint when the government totally prohibits and/or in some way, restricts the expression of one's view or the manner of expressing oneself. There is none in this case.

The challenged government actions in the instant petition do not, in any way, come near the government actions struck down as unconstitutional for being tantamount to a prior restraint or censorship.

As correctly found by the CA, a plain reading of the questioned advisory clearly shows that no media network or personnel is

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[41] *ABS-CBN v. COMELEC, supra* note 33.

[42] 260 Phil. 565 (1990).

[43] *David v. Arroyo, supra* note 30, *id.* at 805-806.

prohibited nor restricted from reporting or writing on any subject matter or from being present and covering newsworthy events, unlike the advisories/resolutions subject of the cases above-cited. The CA and the trial court also correctly pointed out that respondents' questioned acts never hindered the members of the press from freely exercising their profession to cover any newsworthy events such as the Manila Pen standoff.[44]

Contrary to petitioners' contention, no form of threat can be deduced from the subject advisory. No other interpretation can be had of respondents' pronouncements except that for being a reminder of prevailing provisions of the law and jurisprudence, applicable to all and not only to media personalities, that resistance or disobedience to lawful orders of authorities may result to criminal, and even administrative, liabilities. The advisory does not have any statements, expressly nor impliedly, preventing the media to cover police operations and events relating to the Manila Pen standoff and to any future newsworthy events.

Neither was there any indication of the claimed chilling effect on the exercise by the media of the right to free speech and press. It is of public knowledge that news and commentaries as regards the incident continued to be disseminated thereafter. There was no allegation, much less proof, that the media opted to step back from or refused to cover similar events due to fear of incurring criminal liability pursuant to the challenged advisory.

Moreover, it should also be emphasized that the issuance of the advisory, as well as respondents' actions in ordering the dispersal of the media when the warrant of arrest was served, especially when Trillanes' group refused to receive the same, were valid exercises of respondents' authorities. Indeed, as stated in the law establishing the PNP and reorganizing the DILG, Republic Act (RA) No. 6975, it is the declared "policy of the State to promote peace and order, ensure public safety and further strengthen local government capability aimed towards the effective delivery of the basic services to the citizenry through

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[44] *Rollo,* p. 92.

the establishment of a highly efficient and competent police force xxx." Likewise, the Secretary of Justice, being the head of the DOJ, the principal law agency of the country,[45] was well-within his authority to remind the media of the consequences of resisting and disobeying authorities with their lawful orders, especially during emergency situations and when public safety and order are at risk.

Again, at most, the challenged advisory was merely a reminder of already established laws and jurisprudence, and respondents' actions were lawful implementation thereof. With or without such advisory, if media networks and personnel are found to have violated penal laws, they may be prosecuted and held liable therefor. Hence, it cannot be said that the advisory and respondents' acts produced a chilling effect on the media's exercise of their profession.

To be sure, the sacrosanct freedom of expression and of the press does not entail unfettered access to information.[46] As exquisitely stated in the case of *Los Angeles Free Press, Inc. v. City of Los Angeles*, "[r]estrictions on the right of access to particular places at particular times are consistent with other reasonable restrictions on liberty based upon the police power, and these restrictions remain valid even though the ability of the press to gather news and express views on a particular subject maybe incidentally hampered."[47] The CA correctly ruled, thus:

> xxx [A] scrutiny of the questioned statements and advisory reveals that the press people were neither restricted from reporting or writing on any subject matter nor was there any statement disallowing any media persons from covering any newsworthy event. In short, there was no trace of any unlawful restraint on the free discharge of [petitioners'] duties as members of the press.
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> It is undisputed that the members of the press were inside the hotel room where Trillanes and his men were staying. When they

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[45] Title III, Chapter I, Section 1 of Executive Order No. 292.

[46] *Akbayan Citizens Action Party ("AKBAYAN"), et al. v. Aquino, et al.*, 580 Phil. 422 (2008).

[47] 9 Cal. App. 3D 448; 88 Cal. Rptr. 605; 1970.

were ordered by police authorities to leave the room, some of them disobeyed without any regard to the implications of their actions. Such disobedience was the root of the subsequent acts and statements made by [respondents] who were public officials. These acts and statements were necessary precautions to avoid any physical harm that may be caused if such diobedience was repeated. Also, as pointed out by the court *a quo*, the said acts and statements never hindered the members of the press from freely exercising their profession to cover any future events similar to the Manila Pen Standoff. What was regulated was only the means of gathering information, such as not being allowed at the crime scene, purposely for the higher interest of public safety and public order. Hence, there was no curtailment of their right to press freedom, or if there was, such restriction, was justified.[48]

Similarly, there is no indication, much less proof, of a chilling effect or violation of petitioners' right to free speech or free press due to the taking of certain media personnel, who refused to heed the order to vacate the premises during the arrest of Trillanes' group, to Camp Bagong Diwa for processing, debriefing, and documentation.

We sustain thus the RTC's and the CA's finding that there is no prior restraint nor an impermissible regulation on the petitioners' freedom of speech and of the press considering that respondents' questioned acts were merely brought about by the exigencies of the situation and ultimately, were valid exercise of their authority so as not to compromise the safety of the civilians at the scene of the incident. Indeed, a practical assessment of the particular circumstance on hand would show the necessity of respondents' actions. It is not unreasonable for the authories to anticipate and deter a possible mayhem in the arrest of enraged military men, who openly refused to succumb to the authorities, and thus act upon the substantive interest of the State on public safety and order.

That being established, We find no reason to deviate from the RTC's and CA's ruling, dismissing the case for lack of

[48] *Rollo*, pp. 91-92.

cause of action as petitioners failed to prove that their rights were violated which constitute an actionable wrong.

As such, the prayer for injunction must, perforce, fail. It is settled that to be entitled to the injunctive writ, petitioners must show that: (1) there exists a clear and unmistakable right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage.[49] As discussed, contrary to petitioners' assertion, their right to free speech and press was not, in any way, violated by respondents' actions.

No error could also be imputed against the RTC's and the CA's denial to admit Dean Pangalangan's testimony, supposedly as an expert witness. In *Edwin Tabao y Perez v. People of the Philippines*,[50] this Court explained:

> Section 49, Rule 130 of the Revised Rules of Court states that the opinion of a witness on a matter requiring special knowledge, skill, experience or training, which he is shown to possess, may be received in evidence. **The use of the word "may" signifies that the use of opinion of an expert witness is permissive and not mandatory on the part of the courts. Allowing the testimony does not mean, too, that courts are bound by the testimony of the expert witness.** The testimony of an expert witness must be construed to have been presented not to sway the court in favor of any of the parties, but to assist the court in the determination of the issue before it, and is for the court to adopt or not to adopt depending on its appreciation of the attendant facts and the applicable law. It has been held of expert testimonies:
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> > Although courts are not ordinarily bound by expert testimonies, they may place whatever weight they may choose upon such testimonies in accordance with the facts of the case. The relative weight and sufficiency of expert testimony is peculiarly within

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[49] *Australian Professional Realty, Inc., et al. v. Municipality of Padre Garcia, Batangas*, 684 Phil. 283, 292 (2012).

[50] 669 Phil. 486 (2011), citing *People v. Basite*, 459 Phil. 197, 206-207 (2003), citing *People v. Baid*, 391 Phil. 552, 571-572 (2000).

> the province of the trial court to decide, considering the ability and character of the witness, his actions upon the witness stand, the weight and process of the reasoning by which he has supported his opinion, his possible bias in favor of the side for whom he testifies, the fact that he is a paid witness, the relative opportunities for study and observation of the matters about which he testifies, and any other matters which deserve to illuminate his statements. The opinion of the expert may not be arbitrarily rejected; it is to be considered by the court in view of all the facts and circumstances in the case and when common knowledge utterly fails, the expert opinion may be given controlling effect. **The problem of the credibility of the expert witness and the evaluation of his testimony is left to the discretion of the trial court whose ruling thereupon is not reviewable in the absence of abuse of discretion.**[51] (Emphasis ours)

Inasmuch as the matter of admitting the opinion of an expert witness is left to the sound discretion of the trial court, and considering that there is no showing nor allegation of such grave abuse of discretion on the part of the courts *a quo* in not admitting Dean Pangalangan's testimony as an expert witness, We sustain the court *a quo*'s ruling on the matter.

WHEREFORE, premises considered, the instant petition is **DENIED**. The Decision dated May 31, 2013 and the Resolution dated November 11, 2013 of the Court of Appeals in CA-G.R. CV No. 91428 are hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro, C.J. (Chairperson), del Castillo,[*] and *Reyes, A. Jr.,*[**] *JJ.,* concur.

Bersamin, J., on official business.

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[51] *Id.* at 507-508.

[*] Designated Acting Working Chairperson per Special Order No. 2605 dated September 28, 2018.

[**] Designated Additional Member per Raffle dated August 29, 2018 vice Associate Justice Francis H. Jardeleza.

FIRST DIVISION

[G.R. No. 215922. October 1, 2018]

THELMA C. MULLER, GRACE M. GRECIA, KURT FREDERICK FRITZ C. MULLER, and HOPE C. MULLER, in substitution of the late FRITZ D. MULLER, *petitioners, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. CIVIL LAW; LEASE; IMPLIED NEW LEASE; ESTABLISHED IN CASE AT BAR.— Under Article 1670 of the Civil Code, "[i]f at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived." Thus, when petitioners' written lease agreement with respondent expired on June 1, 1987 and they did not vacate the subject properties, the terms of the written lease, other than that covering the period thereof, were revived. The lease thus continued. In this sense, the prescriptive periods cited by petitioners — as provided for in Articles 1144 and 1145 of the Civil Code — are inapplicable. As far as the parties are concerned, the lease between them subsisted and prescription did not even begin to set in.

2. ID.; DAMAGES; PAYMENT THEREOF IN THE FORM OF RENT OR REASONABLE COMPENSATION FOR THE OCCUPATION OF THE PROPERTIES WITHOUT PAYING FOR ITS RENT, WARRANTED IN CASE AT BAR.— Indeed, petitioners' obstinate refusal to pay rent and vacate the subject properties, and their insistence that respondent sell the same to them but without meeting respondent's price, is an underhanded maneuver that unduly tied respondent's hand and deprived it of the use and enjoyment of its properties. This is tantamount to holding the properties hostage and forcing

respondent to accede to whatever petitioners desired. This practice cannot be sanctioned; on the contrary, it must be condemned. The CA is thus correct in ruling that petitioners "should be made liable for damages in the form of rent or reasonable compensation for the occupation of the properties not only from the time of the last demand but starting from the time they have been occupying the subject properties without paying for its rent." Suffice it to state that, as correctly cited by respondent, "the amount demandable and recoverable from a defendant in ejectment proceedings regardless of its denomination as rental or reasonable compensation or damages, flows from the detainer or illegal occupation of the property involved and x x x is merely incidental thereto."

APPEARANCES OF COUNSEL

Sayno Law Office for petitioners.
Hannah Teisha C. Tan for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the October 30, 2013 Decision[2] and November 14, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. S.P. No. 03731 which respectively reversed the June 2, 2008 Decision[4] of the Iloilo City Regional Trial Court, Branch 33 (RTC) in Civil Case No. 07-29531 and denied herein petitioners' Motion for Reconsideration.[5]

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[1] *Rollo*, pp. 13-43.

[2] *Id.* at 46-64; penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Ramon Paul L. Hernando and Gabriel T. Ingles.

[3] *Id.* at 65-71; penned by Associate Justice Gabriel T. Ingles and concurred in by Associate Justices Ramon Paul L. Hernando and Marilyn B. Lagura-Yap.

[4] *Id*. at 159-166; penned by Judge Narciso M. Aguilar.

[5] *Id*. at 438-450.

Factual Antecedents

As found by the CA, the facts are as follows:

x x x [S]pouses Fritz and Thelma Muller[6] are the occupants of two (2) parcels of land with improvements located at Abeto Subdivision, Brgy. Sta. Rosa, Manduriao, Iloilo City owned by [Philippine National Bank[7] (PNB)] with an aggregate area of 1,250 sq. meters, x x x.

x x x x x x x x x

On May 26, 1987, [PNB] informed the [Mullers] that their lease x x x will expire on June 1, 1987; that they had rental arrears for two and a half years amounting to PhP18,000.00; x x x.[8]

Seeking [to renew the lease contract for] another year, x x x Fritz Muller wrote to [PNB[9] proposing to buy] the subject properties x x x. [PNB] denied the request for renewal of the lease on June 13, 1987 x x x.[10]

On October 2, 1987, [PNB Iloilo] informed x x x Fritz that his x x x offer to purchase the [subject properties] was not given due course by the Head Office. x x x.[11]

x x x x x x x x x

On [March 17, 1988, [PNB] demanded for [the Mullers] to vacate the subject properties within fifteen (15) day[s] from the said date, in view of the expiration of the lease.[12]

The demand fell [on] deaf ears. x x x.

x x x x x x x x x

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[6] Herein petitioners.

[7] Herein respondent.

[8] *Rollo*, p. 90; Letter of PNB Acting AVP and Manager Edilberto G. Castro (Castro) to Fritz Muller (Fritz) dated May 26, 1987.

[9] *Id*. at 91.

[10] *Id*. at 92; Letter of Castro to Fritz dated July 13, 1987.

[11] *Id*. at 94; Letter of Castro to Fritz dated October 2, 1987.

[12] *Id*. at 97; Letter of PNB Branch Attorney Manuel Javato to Fritz dated March 17, 1988.

Due to continued occupation of the [Mullers, PNB] x x x sent its final demand letter[13] dated July 17, 2006, demanding [from] them the payment [of] the rental arrears from June 1984 up to June 1, 2006, x x x.

[The Mullers] failed to pay due attention to the written demands against them which [prompted PNB] to institute a Complaint[14] for Ejectment x x x.

x x x x x x x x x

On October 19, 2007, the Municipal Trial Court in Cities of Iloilo City rendered a Decision[15] x x x viz.:

> **WHEREFORE, premises considered, judgment is hereby rendered in favor of [PNB] and ordering x x x Fritz D. Muller and Thelma Muller:**
>
> **1. To vacate the subject premises x x x;**
>
> **2. To pay [PNB] x x x:**
>
> **a. The amount of PhP18,000.00 as rent from June 1984 to June 1987;**
>
> **b. PhP2,000.00 a month from June 1, 1987 to June 1, 1997; and**
>
> **c. PhP2,500.00 a month from June 1, 1997 to August 1, 2007.**
>
> **No cost.**
>
> **SO ORDERED.**

[The Mullers] filed a Notice of Appeal x x x.

On February 1, 2008 PNB filed an Urgent Motion for Execution of the MTCC Judgment praying for its immediate execution for failure of the [Mullers] to file a supersedeas bond to stay the execution of the judgment. x x x.[16] (Emphasis in the original)

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[13] *Id.* at 103.

[14] *Id.* at 72-81.

[15] *Id.* at 115-125; penned by Assisting Judge Ma. Theresa N. Enriquez-Gaspar.

[16] *Id.* at 47-53.

Ruling of the Regional Trial Court

In its June 2, 2008 Decision,[17] the RTC declared that the reckoning point from which a claimant in an unlawful detainer case, in this case, the PNB, may invoke the accrual of its claims is the date of receipt of last demand; that the MTCC cannot take judicial notice of the fair rental value of the subject properties; and that prescription is applicable to the case. It decreed that:

> x x x The receipt of the demand letter dated June 17, 2006 is the date when [the Mullers] became deforciant for which it can be assessed rental. While [PNB] may be entitled to a reasonable compensation from the period [the Mullers] have been in possession of the property prior to receipt of the June 17, 2006 demand letter, the same cannot be awarded in an unlawful detainer suit. In unlawful detainer actions, only rental reckoned from date of receipt of last demand may be awarded x x x.
>
> x x x x x x x x x
>
> [The Mullers] categorically take exception to the taking of judicial notice by the court *a quo* of the fair rental value of the subject properties. They have reason to do so. There is no showing in the judgment appealed from that the three requisites above-mentioned [in *Herrera vs. Bollos* (G.R. No. 138258, January 18, 2002)] were satisfied as the criteria for such taking.
>
> x x x [I]n the award of rental prior to receipt of last demand letter in 2006, the x x x principles of prescription should be considered. x x x. Notably, the possession from 1984 to 1987 was based on a written lease agreement. x x x. Being an obligation based on a written contract, the action to pay rent prescribes in 10 years pursuant to Article 1144 of the Civil Code. For the possession from 1987 onwards, no rent can be awarded as this has also prescribed pursuant to Article 1145, six years after every month of possession. The possession of [the Mullers] after 1987 is based on an oral contract, hence, any action arising therefrom prescribes within six years. x x x.
>
> The rental fixed by the court *a quo* at Php2,500.00, therefore, cannot be sustained. x x x.

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[17] *Id*. at 159-166; penned by Judge Narciso M. Aguilar.

WHEREFORE, x x x the Decision of the Municipal Trial Court in Cities, Branch 3, Iloilo City, in Civil Case No. 07-105 rendered on October 19, 2007 is hereby MODIFIED by fixing the reasonable rental awarded to [PNB] at Php1,000.00 per month to be reckoned only from the date of [the Mullers'] receipt of the latest demand letter until August 1, 2007 when they vacated the subject property.

SO ORDERED.[18] (Emphasis in the original)

PNB appealed before the CA.

Ruling of the Court of Appeals

On October 30, 2013, the CA issued the assailed Decision, decreeing that (1) contrary to the RTC ruling, reasonable compensation for the use and occupancy of the subject properties should be reckoned from receipt of initial demand and not receipt of last demand; (2) prescription does not apply hence PNB can collect rentals which accrued prior to receipt of last demand; and (3) the MTCC properly fixed the rental value of the subject properties, *viz*.:

> x x x [J]urisprudence dictates that the reasonable compensation for the use and occupancy of the premises should reckon from the date of initial demand for the rentals in arrears of Php18,000.00 in 1987, not from the date of the last demand on June 17, 2006. Records of the case show that as early as May 26, 1987, petitioner bank had demanded rental in arrears amounting to Php18,000.00. x x x
>
> x x x Possession, to constitute the foundation of a prescriptive right, must be adverse. Acts of possessory character performed by one who holds by mere tolerance of the owner are clearly not adverse, and such possessory acts, no matter how long so continued, do not start the running of prescription. In this case, [the Mullers], after the expiration of the contract of lease, occupied the subject premises by mere tolerance. Thus, the doctrine of prescription does not apply. Petitioner bank's action to collect reasonable compensation for the use and occupation of its properties has not prescribed.
>
> x x x x x x x x x
>
> It is settled that the plaintiff in an ejectment case is entitled to damages caused by his loss of the use and possession of the premises.

[18] *Id*. at 164-166.

Damages in the context of Section 17, Rule 70 of the 1997 Rules of Civil Procedure is limited to "rent" or fair rental value or the reasonable compensation for the use and occupation of the property. These damages arise from the loss of the use and occupation of the property, and not the damages which petitioner may have suffered but which have no direct relation to their loss of material possession.

Rule 70, Section 17 of the Rules of Court also authorizes the award of an amount representing arrears of rent or reasonable compensation for the use and occupation of the premises x x x

The rationale for limiting the kind of damages recoverable in an unlawful detainer case was explained in *Araos v. Court of Appeals*, wherein the Court held that:

> The rule is settled that in forcible entry or unlawful detainer cases, the only damage that can be recovered is the fair rental value or the reasonable compensation for the use and occupation of the leased property. The reason for this is that in such cases, the only issue raised in ejectment cases is that of rightful possession; hence, the damages which could be recovered are those which the plaintiff could have sustained as a mere possessor, or those caused by the loss of the use and occupation of the property, and not the damages which he may have suffered but which have no direct relation to his loss of material possession.

Taking from the foregoing jurisprudential ruling, We can clearly declare that the damages recoverable in unlawful detainer cases, like the present case, are the rentals or fair rental value or the reasonable compensation for the use and occupation of the property. In this case, records are explicit that [the Mullers] were occupying the subject properties since 1984 and they were not able to pay their rentals from May 1987 to June 2006. [PNB] had been consistent in its demands to pay the rentals but respondents continuously failed to do so. Thus, contrary to the ruling of the RTC, We agree with the MTCC in ordering for the payment of the rentals, not from the date of last demand on June 17, 2006, but from May 26, 1987 or the date of the first demand. It was the time when respondent spouses used and occupied the subject properties without paying for the reasonable compensation, which is justly due to petitioner bank as the registered owner of the properties. The RTC, therefore, gravely erred in granting the rentals in arrears only from the date of last demand for being contrary to law and jurisprudence.

x x x x x x x x x

As it was undisputed that [the Mullers] were occupying the properties under the tolerance of [PNB], they were obligated to vacate the subject properties upon demand. This, they defied. Rather, they continued possessing the same even without paying for the monthly rentals. Thus, they should be made liable for damages in the form of rent or reasonable compensation for the occupation of the properties not only from the time of the last demand but starting from the time they have been occupying the subject properties without paying for its rent.

As regards the application of the doctrine of prescription in the instant case by the RTC, We find the same erroneous.

x x x x x x x x x

In the instant case, the date of last demand was July 17, 2006, while the Complaint was filed on March 26, 2007. Thus, it is well within the period to file the action. Thus, the period to file the action has not prescribed.

x x x x x x x x x

Petitioner asserts that the RTC erred in reversing the MTCC findings as regards the latter's act of taking judicial notice of the fair rental value of the subject properties x x x

Jurisprudence dictates that the lower court may intervene in fixing the rent as a matter of fairness and equity. It is not the appellate court or RTC's function to weigh the evidence all over again, unless there was a showing that the findings of the MTCC are clearly devoid of any support. In fact, it is the RTC's Decision which reduced the monthly rental to Php1,000.00 without any factual and legal bases.

[Thelma C.] Muller, for her part, declares that the MTCC committed palpable error in merely relying on judicial notice, the requisites of which are not attendant in the instant case.

We rule in favor of [PNB].

x x x x x x x x x

Truly, mere judicial notice is inadequate, because evidence is required for a court to determine the proper rental value. In the instant case, the MTCC not only [took judicial notice of the fair rental value] of the subject properties x x x [it] also based [the award] on the

evidence on record. It is unchallenged that the [Mullers] failed to submit their Answer to the Complaint signifying a waiver to present evidence on their behalf. Clearly, no evidence was presented on the part of [the Mullers]. Thus, the MTCC correctly ruled on awarding the monthly rentals based on the Complaint filed by [PNB].

We quote with approval the ruling of the MTCC, to wit:

> On the basis of the foregoing considerations, and taking into account the nature, size and location of the property, the Court finds the claim of PNB as reasonable compensation for the use and occupancy of the property to be just and equitable. The Court however takes exception to the amount payable for the period from June 1984 to June 1987 which should be fixed at ₱18,000.00 only because this was the amount being claimed by PNB in its demand letters. Furthermore, defendant-spouses are required to pay rent at the rate of P2,000.00 from June 1, 1987 to June 1, 1997, and P2,500.00 from June 1, 1997 to August 1, 2007 when they actually vacated the premises.
>
> x x x x x x x x x
>
> ***Award of other reliefs***
>
> x x x x x x x x x
>
> Additionally, the [Mullers are] liable to pay interest by way of damages for [their] failure to pay the rentals due for the use of the subject premises. We reiterate that [PNB's] extrajudicial demand on the [Mullers] was made on May 26, 1987. Thus, from this date, the rentals due from the [Mullers] shall earn interest at 6% per annum, until the judgment in this case becomes final and executory. After the finality of judgment, and until full payment of the rentals and interests due, the legal rate of interest to be imposed shall be 12%.
>
> x x x x x x x x x

WHEREFORE, premises considered, the petition is GRANTED. The *Decision* dated June 2, 2008 of the Regional Trial Court (RTC), Branch 33, Iloilo City in Civil Case No. 07-29531 is hereby **REVERSED** and **SET ASIDE**. The *Decision* dated October 19, 2007 of the Municipal Trial Court in Cities, Branch 3, Iloilo City is hereby **REINSTATED with MODIFICATION** that the unpaid rentals shall earn a corresponding interest of six percent (6%) per annum, to be computed from May 26, 1987 until the finality of this decision. After

this decision becomes final and executory, a 12% interest shall be computed per annum from such finality on the remaining unpaid balance until its satisfaction.

Attorney's Fees shall be awarded in the amount of ten thousand pesos (PhP10,000.00) and judicial costs.

SO ORDERED.[19] (Emphasis in the original)

Petitioners moved to reconsider, but in a November 14, 2014 Resolution, the CA held its ground. Hence, the present Petition.

Issues

Petitioners submit the following issues to be resolved:

1. Whether x x x the award of rentals in an ejectment case may be reckoned from a date beyond the latest demand to vacate x x x

2. Whether x x x the Court of Appeals acted correctly when it cited the case of *Racaza v. Gozum* as basis for ruling that rentals in an ejectment case may be retroactively reckoned beyond the latest demand to vacate?

3. Whether x x x the award of rentals beyond the latest demand letter has prescribed?[20]

Petitioners' Arguments

Petitioners contend that the award of rentals should be reckoned from the time of receipt of the latest demand — July 17, 2006 — and not prior demands; that prior to said last or latest demand, PNB had no right to collect rent, since it is only after receipt of the latest demand that they may be considered illegal occupants of the bank's property and thus obligated to pay rent; that prior to said latest or last demand, their possession of the subject properties may be said to have been tolerated by PNB, and as such, they were "not required to pay the rent within the period prior to their receipt of the latest demand to vacate";[21]

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[19] *Id.* at 54-63.

[20] *Id.* at 24.

[21] *Id.* at 32.

that PNB's claim for the collection of rentals in arrears has prescribed, in that more than 10 years have elapsed since 1987 - the date of the written lease agreement — before PNB filed the ejectment case in 2007; and that even PNB's claim for rentals in arrears after the expiration of the written lease agreement in 1987 has prescribed, since actions arising from written contracts prescribe in 10 years, while that for oral contracts prescribe in six years.

Petitioners thus pray that the CA dispositions be annulled and in lieu thereof, the RTC's June 2, 2008 Decision be reinstated.

Respondent's Arguments

Respondent PNB, on the other hand, argues in its Comment[22] that the Petition is dismissible on account of its defective verification and certification against forum shopping; that as owner, it is entitled to reasonable compensation for petitioners' continued use and occupation of its properties, which thus prevented it from enjoying the same as well as the fruits thereof; that petitioners' occupation was not by mere tolerance, since there was an oral lease agreement between them, and for this reason they must pay rent; and that petitioners' claim of prescription is unavailing to prevent it from recovering damages and rentals in arrears, because there is a continuing lease agreement between the parties all throughout the period in issue, and because the amount demandable and recoverable from a defendant in ejectment proceedings, regardless of its denomination as rental or reasonable compensation or damages, flows from the detainer or illegal occupation of the property involved and is merely incidental thereto.

Our Ruling

The Petition is denied.

The only issues involved here are whether respondent PNB is entitled to rentals in arrears prior to July 17, 2006 and whether its claims therefor have prescribed.

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[22] *Id.* at 474-495.

Petitioners argue that rentals may be awarded to respondent only from the time of the latest demand and not prior ones; that prior to said latest demand, PNB had no right to collect rent, since it is only after receipt thereof that they may be considered illegal occupants of the bank's property and thus obligated to pay rent; and that prior to said latest or last demand, their possession of the subject properties may be said to have been tolerated by PNB, and as such, they were "not required to pay the rent within the period prior to their receipt of the latest demand to vacate."[23] Such arguments are, however, fundamentally logically flawed, because if they were to be believed, then no lessor would be compensated under a lease; the lessee's outstanding rental obligations would simply be condoned. Any lessee would simply withhold the payment of rent and wait until the lessor makes a demand to vacate — at which point the former will simply vacate the premises, with no obligation to pay rent at all.

Under Article 1670 of the Civil Code, "[i]f at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Articles 1682 and 1687. The other terms of the original contract shall be revived." Thus, when petitioners' written lease agreement with respondent expired on June 1, 1987 and they did not vacate the subject properties, the terms of the written lease, other than that covering the period thereof, were revived. The lease thus continued. In this sense, the prescriptive periods cited by petitioners — as provided for in Articles 1144 and 1145 of the Civil Code[24] — are inapplicable. As far as the parties are

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[23] *Id*. at 32.

[24] Art. 1144. The following actions must be brought within ten years from the time the right of action accrues:

(1) Upon a written contract;

(2) Upon an obligation created by law;

(3) Upon a judgment.

concerned, the lease between them subsisted and prescription did not even begin to set in.

Even then, it can be said that so long as petitioners continued to occupy the subject properties - with or without PNB's consent — there was a lease agreement between them. They cannot escape the payment of rent, by any manner whatsoever. First of all, given the circumstances where liberality is obviously not present and was never a consideration for the lease contract, petitioners cannot be allowed to enjoy PNB's properties without paying compensation therefor; this would be contrary to fundamental rules of fair play, equity, and law. Basically, Article 19 of the Civil Code states that "[e]very person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith," and Article 20 provides that "[e]very person who, contrary to law, wilfully or negligently causes damage to another, shall indemnify the latter for the same."

Secondly, even when the parties' lease agreement ended and petitioners failed or refused to vacate the premises, it may be said that a forced lease was thus created where petitioners were still obligated to pay rent to respondent as reasonable compensation for the use and occupation of the subject properties. Indeed, even when there is no lease agreement between the parties, or even when the parties - occupant and property owner — are strangers as against each other, still the occupant is liable to pay rent to the property owner by virtue of the forced lease that is created by the former's use and occupation of the latter's property.

There is no question that after the expiration of the lease contracts which respondent contracted with Aniana Galang and BPI, she lost her right to possess the property since, as early as the actual expiration date of the lease contract, petitioners were not negligent in enforcing their right of ownership over the property.

Art. 1145. The following actions must be commenced within six years:

(1) Upon an oral contract;

(2) Upon a quasi-contract.

While respondent was finally evicted from the leased premises, the amount of monthly rentals which respondent should pay the petitioners as forced lessors of said property from 20 June 1988 (for the ground floor) and 15 August 1988 until 6 January 1998 (for the second and third floors), or a period of almost ten years remains to be resolved.

x x x x x x x x x

At the outset, it should be recalled that there existed no consensual lessor-lessee relationship between the parties. At most, what we have is a forced lessor-lessee relationship inasmuch as the respondent, by way of detaining the property without the consent of herein petitioners, was in unlawful possession of the property belonging to petitioner spouses.

x x x. The plaintiff in an ejectment case is entitled to damages caused by his loss of the use and possession of the premises. Damages in the context of Section 17, Rule 70 of the 1997 Rules of Civil Procedure is limited to "rent" or fair rental value or the reasonable compensation for the use and occupation of the property. x x x[25]

Indeed, petitioners' obstinate refusal to pay rent and vacate the subject properties, and their insistence that respondent sell the same to them but without meeting respondent's price, is an underhanded maneuver that unduly tied respondent's hand and deprived it of the use and enjoyment of its properties. This is tantamount to holding the properties hostage and forcing respondent to accede to whatever petitioners desired. This practice cannot be sanctioned; on the contrary, it must be condemned.

The CA is thus correct in ruling that petitioners "should be made liable for damages in the form of rent or reasonable compensation for the occupation of the properties not only from the time of the last demand but starting from the time they have been occupying the subject properties without paying for its rent."[26] Suffice it to state that, as correctly cited by respondent, "the amount demandable and recoverable from a defendant in

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[25] *Spouses Catungal v. Hao*, 407 Phil. 309, 319-320 (2001).

[26] *Rollo*, p. 57.

ejectment proceedings regardless of its denomination as rental or reasonable compensation or damages, flows from the detainer or illegal occupation of the property involved and x x x is merely incidental thereto."[27]

Finally, we agree with the CA in finding petitioners "liable to pay interest by way of damages for [their] failure to pay the rentals due for the use of the premises"[28] at the rate of "6% *per annum*, [from May 26, 1987 when PNB made its extrajudicial demand] until the judgment in this case becomes final and executory."[29] However, the 12% interest rate it imposed after the finality of judgment and until full payment[30] shall be modified to 6% *per annum* pursuant to *Nacar v. Gallery Frames*.[31]

WHEREFORE, the Petition is **DENIED**. The assailed October 30, 2013 Decision and November 14, 2014 Resolution of the Court of Appeals in CA-G.R. S.P. No. 03731 are **AFFIRMED with modification** that the legal rate of interest of 6% *per annum* shall be imposed after finality of this Decision until full payment.

SO ORDERED.

Leonardo-de Castro, C. J., Jardeleza, and *Tijam, JJ.,* concur.

Bersamin, J., on official leave.

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[27] Francisco, *Rules of Court Annotated*, Vol. III, 2nd Ed., p. 855, citing *Mapua v. Suburban Theaters, Inc.*, 87 Phil. 358, 365 (1950).

[28] *Rollo*, p. 63.

[29] *Id.*

[30] *Id.*

[31] 716 Phil. 267, 282 (2013).

SECOND DIVISION

[G.R. Nos. 226199 and 227242-54. October 1, 2018]

ROSITA TUASON MARAVILLA AND CORAZON TUASON[*] MIRANDA, through their Attorney-in-fact, RUBENCITO M. DEL MUNDO, *petitioners, vs.* **MARCELINO BUGARIN, ANGELITA CONTRERAS, BENJAMIN LAZATIN, LOURDES MANIQUIZ, EDELBERTO[*] PADLAN, REMEDIOS NAVARRO, JOSE PANGAN, EDUVEGES[*] REYES, ALEXANDER CRUZ, PRISCILLA CORTEZ, MILA LAJA, ANTONIO DAANAY, GENEROSA SISON, PERFECTO DELA VEGA, and all other persons claiming rights under them,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; IN EJECTMENT CASES, THE JUDGMENT OF THE REGIONAL TRIAL COURT IS IMMEDIATELY EXECUTORY AND IS NOT STAYED BY AN APPEAL TAKEN THEREFROM; EXCEPTIONS; NOT ESTABLISHED IN CASE AT BAR.— In ejectment cases, the judgment of the RTC against the defendant-appellant is immediately executory, and is not stayed by an appeal taken therefrom, **unless** otherwise ordered by the RTC, or in the appellate court's discretion, suspended or modified, or supervening events occur which have brought about a material change in the situation of the parties and would make the execution inequitable. In this case, the court *a quo*, through its March 18, 2016 and July 28, 2016 Orders (assailed Orders), suspended the execution of its November 17, 2014 Consolidated Decision against respondents in the ejectment cases. Essentially,

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[*] "Tuazon" in some parts of the *rollo*.

[*] "Edilberto" in some parts of the *rollo*.

[*] "Eduviges" in some parts of the *rollo*.

> it ruled that the City of Manila's filing of the expropriation case to acquire the subject land constituted a supervening event that warranted the aforesaid suspension. The Court disagrees. x x x The Court, however, is at a quandary as to how the City of Manila's interest in the expropriation case bears any direct relation to respondents' interest in the ejectment cases, given that the latter were not, in any manner, shown to benefit from the expropriation of the subject property. x x x [T]he Court finds that respondents failed to establish the existence of any supervening event or overriding consideration of equity in their favor, or any other compelling reason, to justify the court *a quo*'s issuance of the assailed Orders suspending the execution of its Consolidated Decision against them pending appeal.

APPEARANCES OF COUNSEL

Rubencito Del Mundo, Attorney-in-fact of petitioners.
Public Attorney's Office for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Orders dated March 18, 2016[2] and July 28, 2016[3] of the Regional Trial Court (RTC) of Manila (RTC-Manila), Branch 47 (court *a quo*) in Civil Case Nos. 13-130387-130400, suspending the issuance of the writ of execution of its Consolidated Decision[4] dated November 17, 2014 against respondents in an unlawful detainer case grounded on the existence of a supervening event, *i.e.*, the filing of an eminent domain petition (expropriation case) over the subject land.

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[1] *Rollo,* pp. 7-26.

[2] *Id*. at 28-30. Penned by Presiding Judge Paulino Q. Gallegos.

[3] *Id*. at 42.

[4] *Id*. at 131-139.

The Facts

The instant case stemmed from separate complaints[5] for unlawful detainer (ejectment cases) filed by petitioners Rosita Tuason Maravilla and Corazon Tuason Miranda, through their attorney-in-fact, Rubencito M. del Mundo (petitioners), before the Metropolitan Trial Court of Manila (MeTC) between November 16 to 25, 2011, seeking to eject respondents Marcelino Bugarin, Angelita Contreras, Benjamin Lazatin, Lourdes Maniquiz, Edelberto Padlan, Remedios Navarro, Jose Pangan, Eduveges Reyes, Alexander Cruz, Priscilla Cortez, Mila Laja, Antonio Daanay, Generosa Sison, Perfecto Dela Vega, and all

[5] See (1) complaint dated November 16, 2011 (filed on November 17, 2011), docketed as Civil Case No. 188306-CV (records [Civil Case No. 13-130387], pp. 5-8); (2) complaint dated November 16, 2011 (filed on November 16, 2011), docketed as Civil Case No. 188309-CV (records [Civil Case No. 13- 130388), pp. 5-8); (3) complaint dated November 24, 2011 (filed on November 24, 2011), docketed as Civil Case No. 188331-CV (records [Civil Case No. 13-130389), pp. 5-8); (4) complaint dated November 24, 2011 (filed on November 24, 2011), docketed as Civil Case No. 188332-CV (records [Civil Case No. 13-130390], pp. 5-8); (5) complaint dated November 24, 2011 (filed on November 24, 2011), docketed as Civil Case No. 188333-CV (records [Civil Case No. 13-130391], pp. 5-8); (6) complaint dated November 24, 2011 (filed on November 24, 2011), docketed as Civil Case No. 188334-CV (records [Civil Case No. 13-130392], pp. 5-8); (7) complaint dated November 24, 2011 (filed on November 24, 2011), docketed as Civil Case No. 188335-CV (records [Civil Case No. 13-130393], pp. 5-8); (8) complaint dated November 24, 2011 (filed on November 24, 2011), docketed as Civil Case No. 188336-CV (records [Civil Case No. 13-130394], pp. 5-8); (9) complaint dated November 24, 2011 (filed on November 25, 2011), docketed as Civil Case No. 188339-CV (records [Civil Case No. 13-130395], pp. 5-8); (10) complaint dated November 24, 2011 (filed on November 25, 2011), docketed as Civil Case No. 188340-CV (records [Civil Case No. 13-130396], pp. 5-8); (11) complaint dated November 24, 2011 (filed on November 25, 2011), docketed as Civil Case No. 188341-CV (records [Civil Case No. 13-130397], pp. 5-8); (12) complaint dated November 24, 2011 (filed on November 25, 2011), docketed as Civil Case No. 188342-CV (records [Civil Case No. 13-130398], pp. 5-8); (13) complaint dated November 24, 2011 (filed on November 25, 2011), docketed as Civil Case No. 188343-CV (records [Civil Case No. 13-130399], pp. 5-8); and (14) complaint dated November 24, 2011 (filed on November 25, 2011), docketed as Civil Case No. 188344-CV (records [Civil Case No. 13-130400], pp. 5-8).

other persons claiming rights under them (respondents), from the portions of the parcel of land located in San Andres, Manila, covered by Transfer Certificate of Title No. 31697[6] (subject land) in the name of petitioners' predecessor-in-interest, Carlos Tuason. The complaints commonly claimed that: (*a*) respondents have been in physical possession of the subject land and paying monthly rentals until November 10, 2010; (*b*) petitioners decided to terminate the leases effective March 17, 2011; (*c*) respondents refused petitioners' demands to pay and to vacate; and (*d*) the complaints were filed within one (1) year from the last demand.[7]

The complaints were consolidated before the MeTC, Branch 29 which rendered a Decision[8] dated May 28, 2013 in favor of petitioners, ordering respondents to vacate the subject land and surrender its possession to petitioners, and to pay: (*a*) their respective unpaid rentals as of the termination of the lease on March 17, 2011; (*b*) ₱5,000.00 each as reasonable monthly compensation for the use and occupation of the subject land every month thereafter; (*c*) attorney's fees; and (*d*) the costs of suit.[9]

The RTC-Manila Proceedings

In a Consolidated Decision[10] dated November 17, 2014, the court *a quo* affirmed the MeTC Decision *in toto*,[11] prompting

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[6] Records (Civil Case No. 13-130387), p. 9; records (Civil Case No. 13-130388), p. 9; records (Civil Case No. 13-130389), p. 9; records (Civil Case No. 13-130390), p. 9; records (Civil Case No. 13-130391), p. 9; records (Civil Case No. 13-130392), p. 9; records (Civil Case No. 13-130393), p. 9; records (Civil Case No. 13-130394), p. 9; records (Civil Case No. 13-130395), p. 9; records (Civil Case No. 13-130396), p. 9; records (Civil Case No. 13-130397), p. 9; records (Civil Case No. 13-130398), p. 9; records (Civil Case No. 13-130399), p. 9; and records (Civil Case No. 13-130400), p. 9.

[7] See *rollo*, pp. 43-45 and 47.

[8] *Id*. at 43-49. Penned by Presiding Judge Rosalia I. Hipolito-Bunagan.

[9] See *id*. at 47-48.

[10] *Id*. at 131-139.

[11] *Id*. at 139.

respondents to file an appeal before the Court of Appeals (CA), docketed as CA-G.R. SP. No. 138449.[12] On the other hand, petitioners moved for execution[13] of the Consolidated Decision, citing Section 21,[14] Rule 70 of the Rules of Court. The motion was opposed[15] by respondents, who contended that supervening events have transpired that would render the execution of the said Decision inequitable, *i.e.*, the City of Manila had: (*a*) passed several ordinances authorizing the City Mayor to acquire the subject land and appropriating funds therefor;[16] and (*b*) already made a formal offer to purchase the subject land.[17] Petitioners countered[18] that respondents failed to comply with the requirements for the stay of the execution of the judgment, and thus, reiterated their motion for execution.[19]

In an Order[20] dated April 20, 2015, the court *a quo* directed the issuance of a writ of execution of the Consolidated Decision, holding that respondents failed to substantiate their claim of the existence of a supervening event. Respondents moved for reconsideration,[21] but the same was denied in an Order[22] dated June 30, 2015.

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[12] See Notice of Appeal dated December 3, 2014; *id*. at 140-141. See also *id*. at 256.

[13] See Motion for Execution dated January 5, 2015; *id.* at 142-147.

[14] Section 21. *Immediate execution on appeal to Court of Appeals or Supreme Court.* — The judgment of the Regional Trial Court against the defendant shall be immediately executory, without prejudice to a further appeal that may be taken therefrom.

[15] See Comment/Opposition dated February 6, 2015; *rollo*, pp. 148-151.

[16] See *id*. at 149.

[17] See *id*. at 150. See also letter of Manila Mayor Joseph Ejercito Estrada (Mayor Estrada) addressed to Atty. Rubencito del Mundo (as attorney-in-fact of Carlos Tuason) dated October 14, 2014; *id*. at 159.

[18] See Reply to the Comment/Opposition on Motion for Execution dated February 16, 2015; *id*. at 161-164.

[19] See *id*. at 162-163.

[20] *Id*. at 165.

[21] See motion for reconsideration dated May 13, 2015; *id*. at 166-169.

[22] *Id*. at 176.

Subsequently, respondents filed an Amended Motion to Deny/ Suspend Issuance of Writ of Execution[23] dated January 28, 2016, raising the filing by the City of Manila before the RTC-Manila of an expropriation case over the subject land,[24] docketed as Civil Case No. 15-134874, which led to the issuance of an Order[25] dated March 18, 2016, suspending the issuance of the writ of execution of the said Consolidated Decision.

Petitioners moved for reconsideration,[26] but the same was denied in an Order[27] dated July 28, 2016; hence, the instant petition.

Meanwhile, the CA rendered a Decision[28] denying respondents' appeal in CA-G.R. SP. No. 138449.[29] On February 17, 2017, a Decision[30] was rendered by the RTC-Manila, Branch 42 in the expropriation case declaring the City of Manila to have the lawful right to take the subject land, and ordering it to pay the amount of ₱31,262,000.00[31] less the amount of initial deposit,[32] as the just compensation for the subject land.

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[23] *Id*. at 181-185.

[24] See *id*. at 182.

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

[26] See Motion for Reconsideration of the Order Suspending Issuance of Writ for Execution dated April 20, 2016; *id*. at 31-39.

[27] *Id*. at 42.

[28] Not attached to the *rollo*.

[29] See *rollo*, p. 257.

[30] *Id*. at 269-270.

[31] Representing the fair market value of the property, which was acknowledged by the parties as the fair and just compensation for the subject land. See *id*. at 270.

[32] In the amount of ₱5,311,040.00 deposited in the Land Bank of the Philippines, YMCA Branch under S/A No. 1981-1685-57 in trust for the expropriation of the subject land. See *id*.

The Issue before the Court

The issue for the Court's resolution is whether or not the court *a quo* erred in suspending the issuance of the writ of execution of its decision against respondents in the ejectment cases on the ground of the existence of a supervening event.

The Court's Ruling

The petition is meritorious.

In ejectment cases, the judgment of the RTC against the defendant-appellant is immediately executory,[33] and is not stayed by an appeal taken therefrom, **unless** otherwise ordered by the RTC, or in the appellate court's discretion, suspended or modified,[34] or supervening events occur which have brought

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[33] Section 21, Rule 70 of the Rules of Court provides:

Section 21. *Immediate execution on appeal to Court of Appeals or Supreme Court.* — The judgment of the Regional Trial Court against the defendant shall be **immediately executory**, without prejudice to a further appeal that may be taken therefrom. (Emphasis supplied)

[34] See *Air Transportation Office v. CA*, 737 Phil. 61, 77 (2014).

See also Section 4, Rule 39 and Section 8 (b), Rule 42 of the Rules of Court, which respectively provide:

Section 4. *Judgments not stayed by appeal.* – Judgments in actions for injunction, receivership, accounting and support, and **such other judgments as are now or may hereafter be declared to be immediately executory, shall be enforceable after their rendition and shall not be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court.** On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

Section 8. *Perfection of appeal; effect thereof.* —

x x x x x x x x x

(b) **Except in civil cases decided under the Rules on Summary Procedure, the appeal shall stay the judgment or final order** unless the Court of Appeals, the law, or these Rules shall provide otherwise. (Emphases supplied)

about a material change in the situation of the parties and would make the execution inequitable.[35]

In this case, the court *a quo*, through its March 18, 2016 and July 28, 2016 Orders (assailed Orders), suspended the execution of its November 17, 2014 Consolidated Decision against respondents in the ejectment cases. Essentially, it ruled that the City of Manila's filing of the expropriation case to acquire the subject land constituted a supervening event that warranted the aforesaid suspension.[36]

The Court disagrees.

There is no dispute that *at the time the assailed Orders were issued* the City of Manila had filed an expropriation case to acquire the subject land, and in fact, obtained a ruling in its favor. These occurrences notwithstanding, records fail to show that the City of Manila had either: (**1**) priorly posted the required judicial deposit in favor of petitioners in order to secure possession of the subject land, in accordance with Section 19[37] of the Local Government Code of 1991;[38] or (**2**) paid the original

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[35] See *Antonio v. Geronimo*, 512 Phil. 711, 718-719 (2005).

[36] See *rollo*, pp. 29-30.

[37] Pursuant to Section 19, Chapter 2, Title One, Book I of the Local Government Code of 1991, which reads:

Section 19. *Eminent Domain.* — A local government unit may, through its chief executive and acting pursuant to an ordinance, exercise the power of eminent domain for public use, or purpose, or welfare for the benefit of the poor and the landless, upon payment of just compensation, pursuant to the provisions of the Constitution and pertinent laws: *Provided, however*, That the power of eminent domain may not be exercised unless a valid and definite offer has been previously made to the owner, and such offer was not accepted: *Provided, further,* That **the local government unit may immediately take possession of the property upon the filing of the expropriation proceedings and upon making a deposit with the proper court of at least fifteen percent (15%) of the fair market value of the property based on the current tax declaration of the property to be expropriated**: *Provided, finally*, That the amount to be paid for the expropriated property shall be determined by the proper court, based on the fair market value of the property. (Emphasis supplied)

[38] Republic Act No. 7160, approved on October 10, 1991.

landowners, *i.e.*, Carlos Tuason's living heirs (the petitioners herein),[39] the adjudged final just compensation for the subject land so as to consider the expropriation process completed and consequently, effectuate the transfer of ownership to it.[40] Thus, at the time the assailed Orders were issued, petitioners remained the owners of the subject land, and therefore were entitled to all the rights appurtenant thereto.

The Court, however, is at a quandary as to how the City of Manila's interest in the expropriation case bears any direct relation to respondents' interest in the ejectment cases, given that the latter were not, in any manner, shown to benefit from the expropriation of the subject property. A perusal of Ordinance No. 8274[41] which authorized the City Mayor of Manila to cause the acquisition of the subject land (in line with the on-site development[42] project of the city[43]) reveals that respondents have not been specifically named as beneficiaries, the expropriation having been made for the benefit of "the qualified members/beneficiaries of the San Andres and Silayan Alley Neighborhood Association, Inc.,"[44] of which they have not been

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[39] See *rollo*, p. 253.

[40] See *Spouses Abad v. Fil-Homes Realty and Development Corporation*, 650 Phil. 608, 616-617 (2010).

[41] See *rollo*, pp. 154-155.

[42] Section 3 (I) of Republic Act No. 7279, entitled "AN ACT TO PROVIDE FOR A COMPREHENSIVE AND CONTINUING URBAN DEVELOPMENT AND HOUSING PROGRAM, ESTABLISH THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES," otherwise known as the "URBAN DEVELOPMENT AND HOUSING ACT OF 1992" (UDHA), approved on March 24, 1992, defines on-site development as referring to "the process of upgrading and rehabilitation of blighted slum urban areas with a view of minimizing displacement of dwellers in said areas, and with provisions for basic services as provided for in Section 21 [thereof]."

[43] See letter of Mayor Estrada addressed to Atty. Rubencito del Mundo (as attorney-in-fact of Carlos Tuason) dated October 14, 2014; *rollo*, p. 159.

[44] See *id*. at 155.

shown to be members. Thus, even if the expropriation process be completed, it is *non sequitur* for respondents to claim[45] that they are automatically entitled to be beneficiaries thereof, for certain requirements must still be met and complied with.[46] Stated differently, absent any competent proof showing that respondents have been identified and registered as socialized housing program beneficiaries[47] for the particular locality/project, they cannot claim any right over the subject land on the basis of the said ordinance, on which the expropriation case is anchored. Consequently, the Court finds that respondents failed to establish the existence of any supervening event or overriding consideration of equity in their favor, or any other compelling reason, to justify the court *a quo*'s issuance of the assailed Orders suspending the execution of its Consolidated Decision against them pending appeal.

A final point. The Court is not unaware of the fact that subsequent to the issuance of the assailed Orders, the City of Manila has already been issued a writ of possession in the

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[45] Respondents claimed that they have acquired vested rights to the subject land by virtue of the grant of the expropriation case, which had supposedly rendered moot the ejectment cases. See *id*. at 184 and 263.

[46] Section 16 of the UDHA provides:

Section 16. *Eligibility Criteria for Socialized Housing Program Beneficiaries*. — To qualify for the socialized housing program, a beneficiary:

(a) Must be a Filipino citizen;

(b) Must be an underprivileged and homeless citizen, as defined in Section 3 of this Act;

(c) Must not own any real property whether in the urban or rural areas; and

(d) Must not be a professional squatter or a member of squatting syndicates.

Section 3 (t) of the UDHA defines "underprivileged and homeless citizens" as "the beneficiaries of this Act and to individuals or families residing in urban and urbanizable areas whose income or combined household income falls within the poverty threshold as defined by the National Economic and Development Authority and who do not own housing facilities. This shall include those who live in makeshift dwelling units and do not enjoy security of tenure[.]"

[47] Section 17 of the UDHA mandates the local government units to identify and register all beneficiaries within their respective localities.

expropriation case, which therefore authorizes it to take actual possession of the subject land. However, the Court discerns that the City of Manila is not a party to this case, given that it sprung from the ejectment cases which *essentially involve a dispute on the mere material possession of the subject land only between the petitioners and respondents herein*. As earlier mentioned, respondents have no direct interest and hence, should not benefit from any ruling favoring the City of Manila in the expropriation case. Thus, under this limited context, the Court finds it proper to completely reverse the assailed Orders, and allow full execution of the Consolidated Decision insofar as the parties herein are concerned. Suffice it to say that nothing precludes the City of Manila from enforcing the writ of possession it obtained in the expropriation case to acquire physical possession of the subject property, which circumstance the Court, however, cannot presume at this point nor, in fact, properly consider without going beyond the parameters of this case.

WHEREFORE, the petition is **GRANTED**. The Orders dated March 18, 2016 and July 28, 2016 issued by the Regional Trial Court of Manila, Branch 47 (court *a quo*) in Civil Case Nos. 13-130387-130400, suspending the issuance of the writ of execution of its Consolidated Decision dated November 17, 2014 against respondents Marcelino Bugarin, Angelita Contreras, Benjamin Lazatin, Lourdes Maniquiz, Edelberto Padlan, Remedios Navarro, Jose Pangan, Eduveges Reyes, Alexander Cruz, Priscilla Cortez, Mila Laja, Antonio Daanay, Generosa Sison, Perfecto Dela Vega, and all other persons claiming rights under them, are hereby **REVERSED** and **SET ASIDE** based on the reasons stated in this Decision. The court *a quo* is directed to issue a writ of execution of the Consolidated Decision dated November 17, 2014.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Reyes, A. Jr.,[**] and *Reyes, J. Jr., JJ.*, concur.

Caguioa, J., on official business.

[**] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 232532. October 1, 2018]

ALFREDO G. GERMAR, *petitioner, vs.* **FELICIANO P. LEGASPI,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT; DEFINED AS TRANSGRESSION OF SOME ESTABLISHED AND DEFINITE RULE OF ACTION, A FORBIDDEN ACT, A DERELICTION OF DUTY, UNLAWFUL BEHAVIOR, WILLFUL IN CHARACTER, IMPROPER OR WRONG BEHAVIOR; GRAVE MISCONDUCT DISTINGUISHED FROM SIMPLE MISCONDUCT.— [T]he Court has defined misconduct as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest in a charge of grave misconduct.

2. ID.; REPUBLIC ACT. NO. 7160 (LOCAL GOVERNMENT CODE); POWERS, DUTIES AND FUNCTIONS OF THE CHIEF EXECUTIVE; A SANGGUNIANG BAYAN AUTHORIZATION, WHICH IS SEPARATE FROM THE APPROPRIATION ORDINANCE, IS NOT REQUIRED IF THE APPROPRIATION ORDINANCE ITSELF SPECIFICALLY PROVIDED FOR THE TRANSACTIONS, BONDS, CONTRACTS, DOCUMENTS, AND OTHER OBLIGATIONS THAT THE LOCAL CHIEF EXECUTIVE WOULD ENTER INTO IN BEHALF OF THE MUNICIPALITY; CASE AT BAR.— According to *Quisumbing,* if the project is already provided for in the appropriation ordinance in sufficient detail, then no separate

> authorization is necessary. On the other hand, if the project is couched in general terms, then a separate approval by the Sangguniang Bayan is required. This delineation first enunciated in *Quisumbing* is further elaborated by the Court in the recent case of *Verceles, Jr. v. Commission on Audit*. x x x In effect, therefore, the subject line-item in this case, like the other line-items in the appropriations ordinance, is a specific allocation to a specific purpose for the specific maintenance and operating expense of a specific office. In the language used in *Belgica*, this line-item which is found in the MOOE of the Office of the Mayor shall already be deemed sufficiently specific. x x x Clearly, the line-item "Consultancy Services" in the MOOE budget of the Office of the Mayor is meant to provide consultants to the Office of the Mayor for the purpose of its day-to-day operations. This is as specific as the line-item could be reasonably provided for in the appropriation ordinance, and the Sangguniang Bayan, by including this in the appropriation ordinance, already acceded to the procurement of consulting services by the Office of the Mayor. Again, in the language of *Verceles*, to require the local chief executive to secure another authorization from the Sangguniang Bayan for this line-item, despite it being specifically identified and subsequently approved, is antithetical to a responsive local government envisioned in the Constitution and the Local Government Code.

APPEARANCES OF COUNSEL

Divina Law for petitioner.
Tan Bayani Olba & Bugayong Law Offices for respondent.

D E C I S I O N

REYES, JR., A., *J.*:

The Case

Challenged before the Court *via* this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court are the Decision[1]

[1] Penned by Associate Justice Carmelita S. Manahan, and concurred in by Associate Justices Japar B. Dimaampao and Franchito N. Diamante; *rollo*, pp. 62-80.

and Resolution[2] of the Court of Appeals, dated September 5, 2016 and June 30, 2017, respectively, in CA-G.R. SP No. 145277. The Decision and Resolution affirmed the Consolidated Resolution[3] of the Office of the Ombudsman in OMB-L-A-15-0054 and OMB-L-A-15-0055.

The Antecedent Facts

After the May 2013 elections, the Municipality of Norzagaray, Province of Bulacan witnessed a change of administration. The petitioner, Alfredo G. Germar (Germar), won the mayoralty position. He replaced the former mayor, respondent Feliciano P. Legaspi (Legaspi).

During Germar's term, he entered into contracts for professional service with six (6) consultants, namely, Mamerto M. Manahan, Danilo S. Leonardo, Edilberto J. Guballa, Rodolfo J. Santos, Epifanio S. Payumo, and Enrique C. Boticario.[4] Respectively, they were to advice the office of the mayor on municipal administration and governance, barangay affairs, business investment and trade, calamity and disaster, and the last two consultants, on security relations.[5]

From the records of the case, it appears that the budget for the salary of the consultants is found in the appropriation ordinance[6] of the municipality for the year 2013. Particularly,

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[2] *Rollo*, pp. 82-87.

[3] *Id*. at 130-136.

[4] *Id*. at 64.

[5] *Id*.

[6] "An Ordinance Authorizing the Annual Budget of the Municipality of Norzagaray, Bulacan for Fiscal Year 2013 Beginning on January 01, 2013 to December 2013 Amounting to Two Hundred Fifty Million Eight Hundred Fifty Nine Thousand Six Hundred Seventy Five Pesos (₱250,859,675.00) for General Fund and the Amount of Twenty Eight Million Seven Hundred Five Thousand Four Hundred Eighteen Pesos and 62/100 (₱28,705,418.62) for Special Fund Covering the Various Expenditures for the Operation of the Municipal Government for Fiscal year 2013, and Appropriating the Necessary Funds for the Purpose."

it is a line-item called as "Consultancy Services" found under the category "Maintenance and Other Operating Expenses" of the Office of the Mayor. These provisions are found in a detailed list which is annexed to the appropriation ordinance, with the heading, "Programmed Appropriation and Obligation by Object of Expenditure."[7]

On October 28, 2014, a year into Germar's service as the mayor of the municipality, Legaspi filed a complaint against the former, together with the six (6) consultants and the Municipal Human Resources Officer of the municipality, before the Office of the Ombudsman (OMB). The charges, both criminal and administrative, included Grave Misconduct, Gross Dishonesty, Grave Abuse of Authority (docketed as OMB-L-A-15-0054 to 55), Malversation and Violation of Republic Act (R.A.) No 7160, R.A. No. 6713, R.A. No. 3019 (docketed as OMB-L-C-15-0039 to 40), and R.A. No. 9184.[8]

In the administrative aspect of the complaint, which is the subject matter of this case, Legaspi averred that Germar entered into these contracts of professional service without the prior authorization of the Sangguniang Bayan. This, Legaspi asserted, is a violation of Section 444 of the Local Government Code,[9]

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[7] *Rollo*, p. 95.

[8] *Id*. at 65.

[9] SECTION 444. The Chief Executive: Powers, Duties, Functions and Compensation. — (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

x x x x x x x x x

(vi) Upon authorization by the sangguniang bayan, represent the municipality in all its business transactions and sign on its behalf all

which deals with the powers, duties, function, and compensation of the local chief executive.

On November 23, 2015, the OMB promulgated a Consolidated Resolution. On the administrative charges, while the OMB held Germar liable for "Grave Misconduct," it dismissed the case against the six (6) consultants and the Human Resources Officer. The *fallo* of the Consolidated Resolution reads:

> **WHEREFORE**, finding probable cause to indict respondent ALFREDO G. GERMAR for violation of Section 3 (e) of RA No. 3019, let the appropriate information be filed before the *Sandiganbayan*.
>
> **FURTHER**, there being substantial evidence, respondent ALFREDO G. GERMAR is found guilty of Grave Misconduct. He is meted the penalty of **DISMISSAL** from the service as well as cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office.
>
> The charges against the other respondents SILANGAN RIVAS, MAMERTO MANAHAN, DANILO LEONARDO, EDILBERTO GUBALLA, RODOLFO SANTOS, EPIFANIO PAYUMO and ENRIQUE BOTICARlO are hereby **DISMISSED** for lack of evidence.
>
> SO ORDERED.[10]

Without filing a motion for reconsideration to the OMB Consolidated Resolution, Germar elevated the case to the Court of Appeals. After the submission of the required pleadings, the appellate court rendered a decision, which denied Germar's petition for review. According to the Court of Appeals, while Germar's non-filing of a motion for reconsideration falls within the exception to the doctrine of exhaustion of administrative remedies,[11] he is nonetheless found guilty of grave misconduct

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bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance;

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[10] *Rollo*, p. 135.

[11] *Id*. at 67.

for entering into consultancy service contracts without the Sangguniang Bayan's authorization.[12]

The *fallo* of the Court of Appeals Decision reads:

> **WHEREFORE**, the instant Petition for Review is hereby **DENIED**. The assailed 23 November 2015 Consolidated Resolution of the Office of the Ombudsman in OMB-L-A-0054 to 55 finding **ALFREDO G. GERMAR GUILTY** of grave misconduct is **AFFIRMED** in toto.
>
> **SO ORDERED.**[13]

Upon the denial of petitioner Germar's motion for reconsideration, he filed the instant petition for review on *certiorari*.

The Issues

In seeking the reversal of the decision of the Court of Appeals, the petitioner raises three issues: (1) whether or not the item of "Consultancy Services" in the appropriation ordinance of the Municipality of Norzagaray is sufficient authorization for the petitioner to sign the contracts of professional service; (2) whether or not Germar's act show good faith such that he is neither guilty of grave misconduct, nor should he be punished with the ultimate penalty of dismissal from service; and (3) whether or not the condonation doctrine finds application herein.[14]

In essence, the issue that the Court is called upon to resolve centers on whether or not Germar is guilty of Grave Misconduct in entering into the six (6) contracts of professional service based solely on the authority of the appropriations ordinance, and no other.

After a careful perusal of the arguments presented and the evidence submitted, the Court finds merit in the petition.

Time and again, the Court has defined misconduct as a transgression of some established and definite rule of action,

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[12] *Id*. at 71.

[13] *Id*. at 79.

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

a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior.[15]

The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest in a charge of grave misconduct.[16]

In finding Germar guilty of grave misconduct, the OMB ruled that Germar "x x x is liable for Grave Misconduct for entering into the subject consultancy contracts in violation of the Local Government Code"[17] and that there was *willful intent to violate the law or willful intent to disregard established rules* on the part of Germar.[18] According to the OMB, Germar violated Section 22(c), in relation to Section 444(b)(l)(vi), of the Local Government Code, which requires an authorization from the Sangguniang Bayan before Germar, as the local chief executive, could enter into contracts in behalf of the municipality. The provisions read:

SECTION 22. Corporate Powers. — (a) Every local government unit, as a corporation, shall have the following powers:

x x x x x x x x x

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[15] See *Office of the Court Administrator v. Tomas*, A.M. No. P-09-2633; *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Castor*, 719 Phil. 96, 100 (2013); *Dalmacio-Joaquin v. Dela Cruz*, 604 Phil. 256, 261 (2009); *Office of the Court Administrator v. Lopez*, 654 Phil. 602, 608 (2011).

[16] See *Office of the Court Administrator v. Tomas*, A.M. No. P-09-2633; *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Castor*, 719 Phil. 96, 100 (2013); *Dalmacio-Joaquin v. Dela Cruz*, 604 Phil. 256, 261 (2009); *Office of the Court Administrator v. Lopez*, 654 Phil. 602, 608 (2011).

[17] *Rollo*, p. 134.

[18] *Id.*

(c) Unless otherwise provided in this Code, **no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sanggunian concerned**. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipal or barangay hall.

x x x x x x x x x (Emphasis supplied)

SECTION 444. The Chief Executive: Powers, Duties, Functions and Compensation. — (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

x x x x x x x x x

(vi) **Upon authorization by the sangguniang bayan, represent the municipality in all its business transactions and sign on its behalf all bonds, contracts, and obligations, and such other documents made pursuant to law or ordinance;**

x x x x x x x x x (Emphasis supplied)

In explaining the OMB's conclusion, the OMB Consolidated Resolution did not heed Germar's explanation that, as the mayor of the municipality, he was vested by law with authority to appoint the municipality's officials and employees. The OMB further said that "[n]o local ordinance was presented either to reflect that the *Sanggunian* even ratified the contracts." Particularly, the OMB very briefly explained:

To be sure, respondent Germar could only muster as basis for his action the authority vested in him by law to appoint the municipality's officials and employees. Then again, consultant respondents here were not employees of the local government and this fact was acknowledged in the consultancy contracts. Under the circumstances of the present case, this Office sees the open defiance and disregard

by respondent Germar of the law's requirement by continually insisting on an applicable provision of the Local Government Code as his legal basis. No local ordinance was presented either to reflect that the Sanggunian even ratified the contracts.[19]

But in his defense, Germar recognized the clear mandate of Sections 22 and 444(b)(l)(vi). He, however, averred that he has indeed acquired the required "prior authorization" from the Sangguniang Bayan. Germar posited that the appropriation ordinance,[20] which clearly provided for funds for "Consultancy Services" is the "prior authorization" required of Sections 22 and 444(b)(l)(vi).

To be sure, this issue is not novel.

In the case of *Quisumbing v. Garcia*,[21] the Court had the occasion to rule on whether a Sangguniang Bayan authorization, which is separate from the appropriation ordinance, is still required if the appropriation ordinance itself already provided for the transactions, bonds, contracts, documents, and other obligations that the local chief executive would enter into in behalf of the municipality.

To answer this query, *Quisumbing* made a general delineation depending on the particular circumstances of the case. According to *Quisumbing*, if the project is already provided for in the appropriation ordinance in sufficient detail, then no separate authorization is necessary. On the other hand, if the project is couched in general terms, then a separate approval by the Sangguniang Bayan is required.

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[19] *Id.* at 134-135.

[20] "An Ordinance Authorizing the Annual Budget of the Municipality of Norzagaray, Bulacan for Fiscal Year 2013 Beginning on January 01, 2013 to December 2013 Amounting to Two Hundred Fifty Million Eight Hundred Fifty Nine Thousand Six Hundred Seventy Five Pesos (₱250,859,675.00) for General Fund and the Amount of Twenty Eight Million Seven Hundred Five Thousand Four Hundred Eighteen Pesos and 62/100 (₱28,705,418.62) for Special Fund Covering the Various Expenditures for the Operation of the Municipal Government for Fiscal year 2013, and Appropriating the Necessary Funds for the Purpose."

[21] 593 Phil. 655, 663-664 (2008).

This delineation first enunciated in *Quisumbing* is further elaborated by the Court in the recent case of *Verceles, Jr. v. Commission on Audit*.[22] In *Verceles*, the Court agreed that the prior authorization for the local chief executive to enter into contracts on behalf of the municipality may be in the form of an appropriation ordinance, for as long as the same specifically covers the project, cost, or contract to be entered into by the local government unit.[23] *Verceles* explained:

> If the project or program is identified in the appropriation ordinance in sufficient detail, then there is no more need to obtain a separate or additional authority from the sanggunian. In such case, the project and the cost are already identified and approved by the sanggunian through the appropriation ordinance. To require the local chief executive to secure another authorization for a project that has been specifically identified and approved by the sanggunian is antithetical to a responsive local government envisioned in the Constitution and in the LGC.
>
> On the other hand, the need for a covering contract arises when the project is identified in generic terms. The covering contract must also be approved by the sanggunian.[24] (Citations omitted)

In applying this delineation, *Verceles* examined the difference in the provisions of the Province of Catanduanes's appropriation ordinance for the fiscal years 2001 and 2002 with regard to the province's "tree seedlings production project."

In the 2001 appropriation ordinance, the funds for the "tree seedlings production project" were derived from the province's economic development fund (EDF), which is a lump-sum amount that did not detail the projects that it could fund. Thus, *Verceles* concluded that, since the appropriation ordinance did not list the specific projects in which the EDF could be used, then the Sangguniang Panlalawigan "has not yet determined how the lump-sum EDF would be spent at the time it approved the annual

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[22] 794 Phil. 629 (2016).

[23] *Id.* at 644.

[24] *Id.* at 646.

budget."[25] Resultantly, the provision in the 2001 appropriation ordinance, insofar as the EDF is concerned, is a generic term that needed a separate authorization from the Sangguniang Panlalawigan.

In contrast, in the 2002 appropriation ordinance, the EDF from which the funds for the "tree seedlings production project" were also derived specifically stated in Section 3 thereof that the lump-sum EDF may be used for "Tree Seedling Production for Environmental Safeguard-Amount: ₱3,000,000.00" This, *Verceles* concluded, is sufficient authority because the same "specifically and expressly set aside ₱3,000,000.00 to fund the tree seedlings production project of the Province."[26]

This thus begs the question in this case: Is the line-item "Consultancy Services" found under the category "Maintenance and Other Operating Expenses" of the budget for the Office of the Mayor which is found in the annex to the appropriations ordinance under the heading, "Programmed Appropriation and Obligation by Object of Expenditure," of sufficient detail which would not require a separate ordinance?

To answer this query, there is a need to discuss the proper characterization of a line-item in an appropriation ordinance.

In the case of *Bengzon v. Secretary of Justice of the Philippine Islands*,[27] the United States Supreme Court defined an "item of appropriation" as "a specific appropriation of money, not some general provision of law which happens to be put in an appropriation bill."[28] In *Araullo, et al. v. President Aquino III, et al.*,[29] the Court reiterated that a line-item is "the last and indivisible purpose of a program in the appropriation law, which is distinct from the expense category or allotment class."[30]

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[25] *Id.* at 651.

[26] *Id.* at 652.

[27] 299 U.S. 410 (1937).

[28] *Id.*

[29] 752 Phil. 716 (2015).

[30] *Id.* at 771.

In *Belgica, et al. v. Hon. Exec. Sec. Ochoa, Jr., et al.*,[31] through the *ponencia* of Justice Estela M. Perlas-Bernabe, this Court further elaborated on this definition by stating that "an item of appropriation must be an item characterized by singular correspondence—meaning an allocation of a specified singular amount for a specified singular purpose, otherwise known as a 'line-item.'"[32]

By this standard, the Court, in *Belgica*, considered the "Calamity Fund, Contingent Fund and the Intelligence Fund" as line-items as they are "appropriations which state a specified amount for a specific purpose."[33] Further, in discussing the veto power of the President for line-items, *Belgica* ruled that "a valid appropriation may even have several related purposes that are by accounting and budgeting practice considered as one purpose, *e.g.*, **MOOE (maintenance and other operating expenses), in which case the related purposes shall be deemed sufficiently specific x x x**"

By analogy, these asseverations in the line-items of appropriation laws may also be applied to appropriation ordinances.

In this case, the Sangguniang Bayan's appropriation ordinance for the fiscal year 2013 indicated a budget of ₱250,859,675.00 to be sourced from the general fund and ₱279,565,093.62 to be sourced from the special fund.[34] Of these amounts, Section 4 of the appropriation ordinance allocated ₱40,609,457.62 to the "Mayor's Office."[35] While this allocation contained no specific line-item, Section 1 of the same ordinance[36] provided for the incorporation of several documents to be made as integral

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[31] 721 Phil. 416 (2013).

[32] *Id.* at 551.

[33] *Id.* at 552.

[34] *Rollo*, p. 90.

[35] *Id.* at 91.

[36] *Id.* at 90.

part thereof. Particularly, it included the budget document denominated as "Budget of Expenditures and Sources of Financing." A review of the records revealed that among the attachments to the appropriation ordinance is LBP Form No. 3, "Programmed Appropriation and Obligation by Object of Expenditure," the first three (3) pages of which pertained to the budget of the Office of the Mayor.[37]

The Object of Expenditures for the Office of the Mayor is categorized into three: (1) Current Operating Expenditures, (2) Capital Outlay, and (3) Special Purpose Appropriation. The Current Operating Expenditures is further divided into two sub-categories: (1) Personal Services and (2) Maintenance and Other Operating Expenses (MOOE). The subject line-item "Consultancy Services" is found in the MOOE along with other line-items such as travelling expenses, training expenses, representation expenses, and intelligence expenses.[38]

In effect, therefore, the subject line-item in this case, like the other line-items in the appropriations ordinance, is a specific allocation to a specific purpose for the specific maintenance and operating expense of a specific office. In the language used in *Belgica*, this line-item which is found in the MOOE of the Office of the Mayor shall already be deemed sufficiently specific.

More, the delineation propounded by the Court in *Verceles* is likewise followed in the case at hand. The cost—in this case ₱900,000.00, or contract—in this case the contract for professional services entered into by Germar, has been properly and clearly identified in the appropriations ordinance. As compared to a lump-sum EDF budget in *Verceles* where there was no mention of any detail of the project to which the fund shall be utilized, the line-item subject of the present case has been identified by the Sangguniang Panlalawigan in the appropriations ordinance. To require a further elaboration of what type of consulting agreement should be entered into is akin to requiring what type of calamity there should be before the calamity fund should be

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[37] *Id.* at 95-97.

[38] *Id.*

used, or what kind of representation there should be before the representation expense could be used. Clearly, the line-item "Consultancy Services" in the MOOE budget of the Office of the Mayor is meant to provide consultants to the Office of the Mayor for the purpose of its day-to-day operations. This is as specific as the line-item could be reasonably provided for in the appropriation ordinance, and the Sangguniang Bayan, by including this in the appropriation ordinance, already acceded to the procurement of consulting services by the Office of the Mayor. Again, in the language of *Verceles*, to require the local chief executive to secure another authorization from the Sangguniang Bayan for this line-item, despite it being specifically identified and subsequently approved, is antithetical to a responsive local government envisioned in the Constitution and the Local Government Code.

By the foregoing discourse, it remains apparent that an authorization from the Sangguniang Bayan, which is separate from the appropriations ordinance for the fiscal year 2013, is not warranted. Germar's action of entering into contracts of professional service with the six (6) consultants could not be considered as a transgression of an established and definite rule of action, nor could it be considered a forbidden act, a dereliction of duty, or an unlawful behavior. Neither is there any *willful intent to violate the law* or any *willful intent to disregard established rules* for clearly, Germar's action is within the parameters of the law as established by the Court in the cases of *Quisumbing* and *Verceles*.

Consequently, it is the Court's considered opinion that Germar should not have been found guilty of Simple Misconduct, let alone Grave Misconduct, on the basis of his lawful action as the mayor of the Municipality of Norzagaray, Province of Bulacan. Ruling contrary thereto is a grave injustice to a sitting local chief executive who merely executed the contracts of professional service pursuant to a specific line-item found in an approved appropriation ordinance.

Indeed, while issues in politics is a reality that all politicians will have to contend with, the Court should not sit idly by when

the law is used as a tool to exact vengeance against those who prevailed over another, especially when it is the voice of the people that dictated who should represent them in their local government. Any deviation from this principle should be unceremoniously struck down and should never be countenanced by the Court.

WHEREFORE, premises considered, the petition for review on *certiorari* is **GRANTED**. The Decision and Resolution of the Court of Appeals, dated September 5, 2016 and June 30, 2017, respectively, in CA- G.R. SP No. 145277 and the Consolidated Resolution of the Office of the Ombudsman in OMB-L-A-15-0054 and OMB-L-A-15-0055 are hereby **REVERSED and SET ASIDE**.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Perlas-Bernabe, and *Reyes, J. Jr.*,[*] *JJ.*, concur.

Caguioa, J., on official business.

SECOND DIVISION

[G.R. No. 234190. October 1, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FERDINAND DE GUZMAN *y* BUHAY,** *accused-appellant.*

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[*] Designated as additional Member per Special Order No. 2587, dated August 28, 2018.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; IN CRIMINAL CASES, AN APPEAL 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; CASE AT BAR.—** 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. 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. Guided by this consideration, the Court finds it proper to modify Ferdinand's conviction to two (2) counts of Qualified Statutory Rape, as will be explained hereunder.

2. **CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE UNDER ARTICLE 266-A (1) (d) THEREOF; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** Statutory Rape under Article 266-A (1) (d) of the RPC is committed by having sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or lack of it, to the sexual act. Proof of force, threat, intimidation, or consent of the offended party is unnecessary as these are not elements of Statutory Rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). The law presumes that the offended party does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to sustain a conviction for Statutory Rape, the prosecution must establish the following: (*a*) the age of the complainant; (*b*) the identity of the accused; and (*c*) the sexual intercourse between the accused and the complainant. Furthermore, these acts of Rape shall be qualified pursuant to Article 266-B (1) of the RPC if: (*i*) ***the victim is under eighteen (18) years of age***; and (*ii*) 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. In this case,

the Court agrees with the findings of the courts *a quo* that the prosecution was able to prove beyond reasonable doubt that Ferdinand had carnal knowledge of his niece-in-law, AAA, on two (2) separate occasions through force and intimidation and when she was still below twelve (12) years of age.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT AND DETERMINATION OF THE CREDIBILITY OF WITNESSES BY THE LOWER COURT, RESPECTED ON APPEAL.— [T]he 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.

4. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE UNDER ARTICLE 266-A (1) THEREOF; *RECLUSION PERPETUA*, WITHOUT ELIGIBILITY FOR PAROLE, PROPER PENALTY IN CASE AT BAR.— Anent the proper penalty to be imposed upon Ferdinand, the Court notes that Section 3 of Republic Act No. 9346 provides that "[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended." Pursuant thereto, and in accordance with Section 2 of the same law, he must be sentenced to suffer the penalty of ***reclusion perpetua*, without eligibility for parole** for each count of Qualified Statutory Rape.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Ferdinand De Guzman *y* Buhay (Ferdinand) assailing the Decision[2] dated June 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08332, which affirmed with modifications the Decision[3] dated September 15, 2015 of the Regional Trial Court of Antipolo City, Branch 72 (RTC) in Crim. Case Nos. 05-29405 and 05-29406 convicting him of two (2) counts of Statutory Rape, defined and penalized under Article 266-A (1) (d) of the Revised Penal Code (RPC).

The Facts

On March 2, 2005 two (2) separate Informations[4] were filed before the RTC, each charging Ferdinand with Statutory Rape, the accusatory portions of which read:

Criminal Case No. 05-29405

That on or about the 7th day of May 2003[,] in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA],[5] a nine (9) year

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[1] See Notice of Appeal dated July 20, 2017; *rollo*, pp. 22-23.

[2] *Id*. at 2-21. Penned by Associate Justice Stephen C. Cruz with Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Nina G. Antonio-Valenzuela, concurring.

[3] CA *rollo*, pp. 59-A-67. Penned by Judge Ruth D. Cruz-Santos.

[4] Not attached to the *rollo*.

[5] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to RA 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST

old minor who is his niece by affinity against the latter's will and consent.

CONTRARY TO LAW.[6]

Criminal Case No. 05-29406

That on or about the 17th day of June 2003[,] in the City of Antipolo, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design and by means of force, threat and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge with one [AAA], a nine (9) year old minor who is his niece by affinity against the latter's will and consent.

CONTRARY TO LAW.[7]

The prosecution alleged that at around four (4) o'clock in the morning of May 7, 2003, AAA was sleeping alone in her room when she was awakened by her aunt's husband, Ferdinand, who was already on top of her. Ferdinand then kissed her, undressed her, and forcibly inserted his penis into her vagina. After about thirty (30) minutes, Ferdinand went to the comfort room, took a bath, and went to work. According to AAA, she was frightened as Ferdinand threatened to hurt her should she fight back or tell the matter to her parents.[8] The incident happened again on June 17, 2003 at around four (4) o'clock in the morning.

WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [2013]. See also Amended Administrative Circular No. 83-2015, entitled "PROTOCOLS AND PROCEDURES IN THE PROMULGATION, PUBLICATION, AND POSTING ON THE WEBSITES OF DECISIONS, FINAL RESOLUTIONS, AND FINAL ORDERS USING FICTITIOUS NAMES/PERSONAL CIRCUMSTANCES," dated September 5, 2017.)

[6] CA *rollo*, p. 59-A.

[7] *Id*.

[8] See *id*. at 60.

AAA was sleeping in the living room when she felt that somebody carried her to the bedroom. Upon realizing that someone was on top of her, she opened her eyes and saw Ferdinand, prompting her to push him away. However, Ferdinand overpowered her, removed her lower garments, and had carnal knowledge of her. After Ferdinand finished, he again threatened AAA before leaving the scene. Eventually, AAA was able to reveal her ordeal to her parents, resulting in the filing of the rape cases against Ferdinand.[9]

For his part, while Ferdinand admitted that he is AAA's uncle-in-law and that he lived at AAA's house on the dates when the alleged incidents of rape occurred, he denied the charges against him. He claimed that during those times, he was sleeping with his wife. He added that he does not know of any reason why AAA would file rape cases against him, but nonetheless, wished that AAA forgives him for any ill feelings that the latter might have against him.[10]

The RTC Ruling

In a Decision[11] dated September 15, 2015, the RTC found Ferdinand guilty beyond reasonable doubt of two (2) counts of Statutory Rape, and accordingly, sentenced him to suffer the penalty of *reclusion perpetua* for each count, and to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱25,000.00 as exemplary damages, for each count.[12]

The RTC found that the prosecution, through AAA's positive and categorical testimony, was able to establish that Ferdinand indeed had carnal knowledge of her without her consent. On the other hand, it did not give credence to Ferdinand's defenses of denial and alibi for being self-serving, especially considering

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[9] See *id.* at 60-61.

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

[11] CA *rollo*, pp. 59-A-67.

[12] *Id.* at 67.

that by his own admissions, it was not physically impossible for him to be at the *locus criminis* when the crimes occurred.[13]

Aggrieved, Ferdinand appealed[14] to the CA.

The CA Ruling

In a Decision[15] dated June 29, 2017, the CA affirmed the RTC ruling with the following modifications: (*a*) increasing the award of exemplary damages to ₱75,000.00; and (*b*) imposing on all monetary awards legal interest at the rate of six percent (6%) per annum from finality of the CA Decision until full payment.[16] It held that AAA's straightforward and categorical testimony explicitly identifying Ferdinand as the perpetrator prevails over the latter's unsubstantiated defenses of denial and alibi.[17]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Ferdinand's conviction for two (2) counts of Statutory Rape should be upheld.

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.[18] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records,

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[13] See *id*. at 63-67.

[14] See Notice of Appeal dated November 9, 2015; *id*. at 12-13.

[15] *Rollo*, pp. 2-21.

[16] *Id*. at 20.

[17] *Id*. at 8-19.

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

revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[19]

Guided by this consideration, the Court finds it proper to modify Ferdinand's conviction to two (2) counts of Qualified Statutory Rape, as will be explained hereunder.

Article 266-A (1) (d), in relation to Article 266-B (1), of the RPC, respectively read:

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:

x x x x x x x x x

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.

x x x x x x x x x

Article 266-B. *Penalties.* — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1) When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.

x x x x x x x x x

Statutory Rape under Article 266-A (1) (d) of the RPC is committed by having sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or lack of

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

it, to the sexual act. Proof of force, threat, intimidation, or consent of the offended party is unnecessary as these are not elements of Statutory Rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of twelve (12). The law presumes that the offended party does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to sustain a conviction for Statutory Rape, the prosecution must establish the following: (*a*) the age of the complainant; (*b*) the identity of the accused; and (*c*) the sexual intercourse between the accused and the complainant.[20] Furthermore, these acts of Rape shall be qualified pursuant to Article 266-B (1) of the RPC if: (*i*) ***the victim is under eighteen (18) years of age***; and (*ii*) 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.[21]

In this case, the Court agrees with the findings of the courts *a quo* that the prosecution was able to prove beyond reasonable doubt that Ferdinand had carnal knowledge of his niece-in-law, AAA, on two (2) separate occasions through force and intimidation and when she was still below twelve (12) years of age. In this regard, it has been long settled that "a young girl would not concoct a sordid tale of a crime as serious as rape at the hands of her [own relative], allow the examination of her private part, and subject herself to the stigma and embarrassment of a public trial, if her motive were other than a fervent desire to seek justice. Hence, there is no plausible reason why AAA would testify against her own [relative], imputing to him the grave crime of [R]ape, if this crime did not happen,"[22] as in this case.

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

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[20] *Id*. at 522-523, citing *People v. Cadano, Jr.*, 729 Phil. 576, 584-585 (2014).

[21] *Id*. at 523.

[22] *Id*. at 523, citing *People v. Rayon, Sr.*, 702 Phil. 672, 680 (2013); citation omitted.

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.[23] In view of the foregoing, as well as the fact that AAA's minority and her relationship with Ferdinand were not only alleged in the Informations but also proven during the trial, the Court finds it proper to upgrade Ferdinand's convictions to two (2) counts of Qualified Statutory Rape.

Anent the proper penalty to be imposed upon Ferdinand, the Court notes that Section 3 of Republic Act No. 9346[24] provides that "[p]ersons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended." Pursuant thereto, and in accordance with Section 2[25] of the same law, he must be sentenced to suffer the penalty of ***reclusion perpetua*, without eligibility for parole** for each count of Qualified Statutory Rape.[26]

Finally, and in view of prevailing jurisprudence, the Court finds it proper to increase the damages awarded to AAA to ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages,

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[23] See *Peralta v. People*, G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015); further citation omitted.

[24] Entitled "AN ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES," approved on June 24, 2006.

[25] Section 2 of RA 9346 reads:

Section 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

[26] See also A.M. No. 15-08-02-SC entitled "GUIDELINES FOR THE PROPER USE OF THE PHRASE 'WITHOUT ELIGIBILITY FOR PAROLE' IN INDIVISIBLE PENALTIES," dated August 4, 2015.

and ₱100,000.00 as exemplary damages for each count of Qualified Statutory Rape, all with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full payment.[27]

WHEREFORE, the appeal is **DENIED**. The Decision dated June 29, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08332 is hereby **AFFIRMED** with **MODIFICATIONS** in that accused-appellant Ferdinand De Guzman *y* Buhay is found **GUILTY** beyond reasonable doubt of two (2) counts of Qualified Statutory Rape, defined and penalized under Article 266-A (1) (d), in relation to Article 266-B, of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole, for each count, and ordered to pay AAA the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages for each count, all with legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full payment.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Jardeleza,[*] and *Reyes, A. Jr., JJ.*, concur.

Caguioa, J., on official business.

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[27] See *People v. Jugueta*, 783 Phil. 806, 848 and 854 (2016).

[*] Designated Additional Member per Special Order No. 2587-C dated September 5, 2018.

SECOND DIVISION

[G.R. No. 236838. October 1, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ZACARIAS LESIN[*] MISA @ "TITING,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY.— In cases for Illegal Sale and/or Illegal 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.; CHAIN OF CUSTODY PROCEDURE; AS A RULE, COMPLIANCE THEREWITH IS STRICTLY ENJOINED; NON-COMPLIANCE THEREWITH UNDER JUSTIFIABLE GROUNDS, PROVEN AS FACTS, 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.— 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,

[*] "Lisen" in some parts of the records.

namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media *AND* the 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 (NPS) *OR* the media." x x x 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." 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." Nonetheless, the 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 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.

3. ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIRED WITNESSES RULE MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORT TO SECURE THE REQUIRED WITNESSES, ALBEIT THEY EVENTUALLY FAILED TO APPEAR.— 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.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Zacarias Lesin Misa @ "Titing" (Misa) assailing the Decision[2] dated September 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02292, which affirmed the Decision[3] dated June 9, 2016 of the Regional Trial Court of Oslob, Cebu, Branch 62 (RTC) in Crim. Case Nos. OS-15-1025 and OS-15-1026 finding Misa guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

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[1] See Notice of Appeal dated October 13, 2017; *rollo*, pp. 17-18.

[2] *Id.* at 4-16. Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Gabriel T. Ingles and Geraldine C. Fiel Macaraig, concurring.

[3] CA *rollo*, pp. 41-48. Penned by Presiding Judge James Stewart Ramon E. Himalaloan.

[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 Informations[5] filed before the RTC charging Misa with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around eleven (11) o'clock in the evening of March 1, 2015, a team composed of members of the Philippine National Police Cebu Police Station, with coordination from the Philippine Drug Enforcement Agency, conducted a buy-bust operation against Misa, during which two (2) heat-sealed plastic sachets containing suspected *shabu* weighing 0.03 gram each were recovered from him. Consequently, a search incidental to his arrest yielded five (5) more heat-sealed plastic sachets containing suspected *shabu* weighing 0.03 gram each. The team, together with Misa, then proceeded to the police station where the seized items were marked, photographed, and inventoried in the presence of Municipal Councilors Raul Butron and Teodoro Mirasol. Notably, the conduct thereof was not done in the presence of representatives from the Department of Justice (DOJ) and/or the media, as police officers claimed that it was difficult to contact them "as their telephone lines were always busy" and that they had to beat the 24-hour deadline in submitting the evidence to the crime laboratory. Thereafter, the seized items were brought to the crime laboratory where, after examination,[6] they tested positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.[7]

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[5] The Information dated March 3, 2015 in Crim. Case No. OS-15-1025 was for Section 5, Article II of RA 9165 (see records [Crim. Case No. OS-15-1025], pp. 1-2); while the Information dated March 3, 2015 in Crim. Case No. OS-15-1026 was for Section 11, Article II of RA 9165 (see records [Crim. Case No. OS-15-1026], pp. 1-2).

[6] See Chemistry Report No. D-541-15 dated March 2, 2015; records (Crim. Case No. OS-15-1026), p. 17.

[7] See *rollo*, pp. 5-7. See also CA *rollo*, pp. 42-45.

For his part, Misa denied the charges against him and claimed that on said date, he was in the public market buying barbeque with his wife when suddenly, a policeman embraced him from behind and arrested him. Despite resisting the arrest, he and his wife were brought to the police station where the police officers recovered from him cash amounting to ₱120.00 and devices for gapping fighting cocks. Thereafter, they were placed inside the jail.[8]

In a Decision[9] dated June 9, 2016, the RTC found Misa guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (*a*) in Crim. Case No. OS-15-1025, to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (*b*) in Crim. Case No. OS-15-1026, to suffer the penalty of imprisonment for twelve (12) years and one (1) day to twelve (12) years and two (2) days, and to pay a fine of ₱300,000.00.[10] The RTC found that the prosecution sufficiently established all the elements of the aforesaid crimes as it was able to prove that: (*a*) a buy-bust transaction took place and Misa was identified as the seller of the dangerous drug; and (*b*) he had no right to possess the drugs incidentally recovered from him subsequent to his arrest.[11]

In a Decision[12] dated September 28, 2017, the CA affirmed the RTC ruling, holding that all the elements of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs were present and the chain of custody rule was duly complied with.[13]

Hence, this appeal seeking that Misa's conviction be overturned.

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[8] See *rollo*, pp. 7-8. See also CA *rollo*, p. 45.

[9] CA *rollo*, pp. 41-48.

[10] *Id.* at 47.

[11] See *id.* at 46-47.

[12] *Rollo*, pp. 4-16.

[13] See *id.* at 9-15.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[14] 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.[15] 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.[16]

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.[17] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of

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[14] 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]).

[15] 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).

[16] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[17] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 14; *People v. Sanchez*, *supra* note 14; *People v. Magsano*, *supra* note 14; *People v. Manansala*, *supra* note 14; *People v. Miranda*, *supra* note 14; and *People v. Mamangon*, *supra* note 14. See also *People v. Viterbo*, *supra* note 15.

the seized items be conducted immediately after seizure and confiscation of the same.[18] 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,[19] "a representative from the media *AND* the DOJ, and any elected public official";[20] 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 (NPS) *OR* the media."[21] 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."[22]

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

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[18] 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].)

[19] 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.

[20] Section 21 (1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

[21] Section 21, Article II of RA 9165, as amended by RA 10640.

[22] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, *supra* note 14. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

substantive law."[23] 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."[24]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[25] 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.[26] The foregoing is based on the saving clause found in Section 21 (a),[27] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was adopted into the text of RA 10640.[28] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[29] and that

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[23] See *People v. Miranda, id*. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang, supra* note 16, at 1038.

[24] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang, id*.

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

[26] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[27] 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.**"

[28] 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.**"

[29] *People v. Almorfe, supra* note 26.

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.[30]

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.[31] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[32] 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.[33]

Notably, the Court, in *People v. Miranda*,[34] 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

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[30] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[31] See *People v. Manansala*, *supra* note 14.

[32] See *People v. Gamboa*, *supra* note 16, citing *People v. Umipang*, *supra* note 16, at 1053.

[33] See *People v. Crispo*, *supra* note 14.

[34] *Supra* note 14.

the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[35]

In this case, it is apparent that the inventory of the seized items was not conducted in the presence of a representative from the NPS (which falls under the DOJ)[36] or the media contrary to the afore-described procedure provided under Section 21, Article II of RA 9165, as amended by RA 10640. During trial, Police Officer 2 Noel Mamale (PO2 Mamale) admitted to this lapse when he testified as follows:

[Fiscal Tessa Mae R. Tapangan]: Who were present during the inventory, Mr. Witness?

[PO2 Mamale]: Two [(2)] *Sangguniang Bayan* members of Oslob, Cebu.

Q: Who were they?
A: Hon. Mirasol and Hon. Bultron.

Q: They were also present when you made the markings?
A: Yes, ma'am.

Q: **Was there anyone from the media and DOJ?**
A: **None, ma'am.**

Q: Why was none?
A: It's hard to contact them.

COURT:
Q: Even if those representatives from the media and DOJ are hard to contact or unavailable but on your part did you make attempts to contact them?
A: Yes, Your Honor.

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[35] See *id*.

[36] See Section 1 of Presidential Decree No. 1275, entitled "REORGANIZING THE PROSECUTION STAFF OF THE DEPARTMENT OF JUSTICE, REGIONALIZING THE PROSECUTION SERVICE, AND CREATING THE NATIONAL PROSECUTION SERVICE" (April 11, 1978) and Section 3 of RA 10071, entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" otherwise known as the "PROSECUTION SERVICE ACT OF 2010" (lapsed into law on April 8, 2010).

Q: How did you make the contacts?
A: Through telephone call.

Q: Who made the telephone call?
A: Our Intel Officer PO2 Johnny Tapales.

Q: When PO2 Johnny Tapales made the call to the representatives were you there near him?
A: Yes, Your Honor.

Q: And of course because you were near you were able to know what was the response on the other line?
A: The telephone lines are always busy.

Q: And that was why you could no longer wait because you have to beat the [24-hour] deadline to submit the evidence to the PNP Crime Laboratory?
A: Yes, Your Honor. (Emphases and underscoring supplied)[37]

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 plain explanation of PO2 Mamale that it was "hard to contact" the required witnesses at that time is undoubtedly too flimsy of an excuse and hence, would not pass the foregoing standard to trigger the operation of the saving clause.

Neither does the apprehending officers' 24-hour submission deadline justify their non-compliance with the required witnesses rule. Notably, if the police officers were already aware that these representatives were hard to contact (as their phone lines were, in fact, "always busy"), then they should have made the proper arrangements beforehand given that they were conducting a pre-planned buy-bust operation, and especially since they were eventually bound to follow a particular submission protocol. Besides, the apprehending officers could not reasonably expect that a representative of the NPS or the media would just be

[37] TSN, June 11, 2015, pp. 4-6.

readily available for the conduct of inventory (and photography) at a mere moment's notice, much less at the officers' beck and call. Foresight is a badge of prudence, and the substantial lack thereof, demonstrates whether or not there were genuine efforts to comply with the chain of custody rule. Unfortunately, the apprehending officers in this case were seriously remiss in this regard.

Thus, in view of the foregoing, the Court concludes that the integrity and evidentiary value of the items purportedly seized from Misa have been compromised. Consequently, he is acquitted of his crimes.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 28, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 02292 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Zacarias Lesin Misa @ "Titing" is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Reyes, A. Jr., and *Reyes, J. Jr.,*[**] *JJ.*, concur.

Caguioa, J., on official business.

[**] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 237204. October 1, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SAIDAMEN OLIMPAIN MAMA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; IN CRIMINAL CASES, AN APPEAL 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.— [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; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.

3. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [I]n instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.

4. ID.; ID.; CHAIN OF CUSTODY PROCEDURE; NON-COMPLIANCE THEREWITH UNDER JUSTIFIABLE

GROUNDS, PROVEN AS FACTS, 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; CASE AT BAR.— Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value. Under the said section, prior to its amendment by RA 10640, the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination. x x x 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 21, Article II of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. x x x** Also, in *People v. De Guzman*, it was emphasized that **the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.** After a judicious study of the case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Mama.

5. ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIRED WITNESSES RULE DOES NOT *PER SE* RENDER THE CONFISCATED ITEMS INADMISSIBLE; A JUSTIFIABLE REASON FOR SUCH FAILURE OR A SHOWING OF ANY GENUINE AND SUFFICIENT EFFORT TO SECURE THE REQUIRED WITNESSES MUST BE ADDUCED; CASE AT BAR.— Based on jurisprudence, it is well to note that the non-compliance with the required witnesses rule 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, Article II of RA 9165 must be adduced. **x x x As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable**. Here, not only do the records disclose that the apprehending officers totally failed to comply with the required witnesses rule, SPO2 de Lima even admitted that they were not strictly implementing the mandate of Section 21, Article II of RA 9165. x x x Perforce, Mama's acquittal is in order.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Saidamen Olimpain Mama (Mama) assailing the Decision[2] dated September 13, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08176, which affirmed the

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[1] See Notice of Appeal dated October 18, 2017; *rollo*, pp. 16-18.

[2] *Id.* at 2-15. Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Samuel H. Gaerlan and Jhosep Y. Lopez, concurring.

Judgment[3] dated February 24, 2016 of the Regional Trial Court of Muntinlupa City, Branch 204 (RTC) in Crim. Case Nos. 09-463 and 09-464 finding Mama guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging Mama with violation of Sections 5 and 11, Article II of RA 9165, the accusatory portions of which read:

Criminal Case No. 09-463

That on or about the 20th day of July 2009, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully and unlawfully sell, trade, deliver and give away to another, Methylamphetamine Hydrochloride, a dangerous drug weighing more or less 4.57 grams, contained in one (1) heat sealed transparent plastic sachet in violation of the above-cited law.

Contrary to law.[6]

Criminal Case No. 09-464

That on or about the 20th day of July 2009, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control Methylamphetamine Hydrochloride, contained in eleven

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[3] CA *rollo*, pp. 47-58. Penned by Presiding Judge Juanita T. Guerrero.

[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] Records, pp. 1-2 and 3-4.

[6] *Id*. at 1.

(11) pieces heat sealed transparent plastic sachets, with a total weight of 49.89 grams, in violation of the above-cited law.

Contrary to law.[7]

The prosecution alleged that on July 20, 2009, the operatives of the District Anti-Illegal Drugs Special Operations Task Group (DAID-SOTG) of the Philippine National Police Southern Police District, Fort Bonifacio, Taguig City, received a report from an asset regarding the high-volume drug trade of a certain "RJ" – later identified as Mama – in Barangay Tunasan, Muntinlupa. After verification of said tip, the DAID-SOTG organized a buy-bust team which included the police asset, Senior Police Officer 2 Salvio R. de Lima (SPO2 de Lima) as the poseur-buyer, and Police Officer 3 Roderick H. Cayas (PO3 Cayas) as the immediate back-up. Thereafter, the buy-bust team went to the target place and upon arrival thereat, the police asset, who arranged the transaction, and SPO2 de Lima met with Mama. After a brief conversation, SPO2 de Lima gave Mama the marked money. Consequently, Mama brought out a green pouch bag from his black shoulder bag and took from it a white envelope containing a plastic sachet of suspected *shabu*. After Mama gave the sachet to SPO2 de Lima, a woman – later identified as Mama's common-law wife – approached Mama and took his black shoulder bag. At that point, SPO2 de Lima performed the pre-arranged signal, prompting PO3 Cayas and the rest of the buy-bust team to swoop in and arrest Mama and his common-law wife. During the arrest, the police officers retrieved Mama's shoulder bag and inspected the same, discovering eleven (11) more plastic sachets containing suspected *shabu* therein. SPO2 de Lima marked the seized items in front of Mama and his common-law wife. Thereafter, the police officers brought Mama, his common-law wife, and the seized sachets to the DAID-SOTG office for booking and inventory purposes and then brought them to the PNP Crime Laboratory for drug-testing. After examination, it was confirmed that the sachets indeed contained methylamphetamine hydrochloride or *shabu*, a dangerous drug.[8] Nonetheless, the

[7] *Id*. at 3.

[8] See Physical Science Report No. D-354-09S dated July 21, 2009; records, p. 10.

inquest prosecutor ordered[9] the release of Mama's common-law wife as her case needed further investigation.[10]

In his defense, Mama pleaded not guilty and denied the charges against him. He narrated that on the day of his arrest, he was sleeping inside his house with his common-law wife when suddenly, armed men, who identified themselves as policemen, barged into his house and started poking a gun at him. The armed men then demanded money and when he could not give any, they started mauling him and taking his personal belongings. He was then taken to the police station where he was accused of committing the crime charged. He then added that during his detention, the police officers were still asking him for money.[11]

The RTC Ruling

In a Judgment[12] dated February 24, 2016, the RTC found Mama guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (*a*) in Criminal Case No. 09-463, to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and (*b*) in Criminal Case No. 09-464, to suffer the penalty of life imprisonment and to pay a fine of ₱400,000.00.[13]

The RTC found the prosecution to have established all the elements of the crimes charged, considering that: (*a*) SPO2 de Lima positively identified Mama as the one who sold him one (1) plastic sachet of *shabu*; and (*b*) in the search incidental to his arrest, he was discovered to be in possession of eleven (11) more plastic sachets containing *shabu*. On the other hand, the RTC did not give credence to Mama's defense of denial as

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[9] See Resolution in I.S. No. INQ-090-00313 signed by 3rd Assistant City Prosecutor Agripino C. Baybay III; *id.* at 5-6.

[10] See *rollo*, pp. 4-7. See also CA *rollo*, pp. 49-51-A.

[11] See *rollo*, pp. 3 and 7-8. See also CA *rollo*, pp. 48 and 51-A-52.

[12] CA *rollo*, pp. 47-58.

[13] *Id.* at 57-A-58.

there was no other evidence to corroborate the same. Finally, the RTC opined that the integrity and identity of the *corpus delicti* of the crimes charged have not been compromised.[14]

Aggrieved, Mama appealed[15] to the CA.

The CA Ruling

In a Decision[16] dated September 13, 2017, the CA affirmed Mama's convictions.[17] It held that the prosecution, through the testimonies of SPO2 de Lima and PO3 Cayas, respectively as poseur-buyer and immediate back-up of the buy-bust team that arrested Mama, was able to show that the latter indeed committed the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. Further, the CA opined that the absence of an elected public official and representatives from the DOJ and the media during the conduct of inventory is not fatal to the prosecution's case as long as the integrity and evidentiary value of the seized items were properly preserved.[18]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Mama is guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of RA 9165.

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

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[14] See *id*. at 53-57-A.

[15] See Notice of Appeal dated February 26, 2016; records, pp. 345-346.

[16] *Rollo*, pp. 2-15.

[17] See *id*. at 14.

[18] See *id*. at 9-14.

in the appealed judgment whether they are assigned or unassigned.[19] "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."[20]

In this case, Mama was charged with Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[21] Meanwhile, in instances wherein an accused is charged with Illegal Possession of Dangerous Drugs, the prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug.[22] In both instances, case law instructs that the identity of the prohibited drug must be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Thus, in order to obviate any unnecessary doubt on the identity of the dangerous drugs, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[23]

Section 21, Article II of RA 9165 outlines the procedure which the police officers must follow when handling the seized

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

[20] *People v. Comboy*, G.R. No. 218933, March 2, 2016, 785 SCRA 512, 521.

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

[22] *People v. Bio*, 753 Phil. 730, 736 (2015).

[23] See *People v. Manansala*, G.R. No. 229092, February 21, 2018, citing *People v. Viterbo*, 739 Phil. 593, 601 (2014).

drugs in order to preserve their integrity and evidentiary value.[24] Under the said section, prior to its amendment by RA 10640,[25] the apprehending team shall, among others, **immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official** who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.[26] In the case of *People v. Mendoza*,[27] 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."[28]

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.[29]In fact,

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[24] See *People v. Sumili*, *supra* note 21, at 349-350.

[25] 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.

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

[27] 736 Phil. 749 (2014).

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

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

the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640[30] – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that **non-compliance with the requirements of Section 21, Article II of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending**

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[30] Section 1 of RA 10640 states:

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

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

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

officer or team.[31] In other words, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21, Article II of RA 9165 and its IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is justifiable ground for non-compliance; **and** (*b*) the integrity and evidentiary value of the seized items are properly preserved.[32] In *People v. Almorfe*,[33] **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**.[34] Also, in *People v. De Guzman*,[35] 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.**[36]

After a judicious study of the case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the integrity and evidentiary value of the dangerous drugs allegedly seized from Mama.

A perusal of the Inventory of Seized Properties/Items[37] dated July 20, 2009 readily reveals the glaring absence of the signatures of any of the required witnesses to the inventory, *i.e.*, public elected official, DOJ representative, and media representative, thereby indicating their failure to witness the conduct of such inventory. When asked about this irregularity, SPO2 de Lima testified as follows:

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

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

[33] 631 Phil. 51 (2010).

[34] *Id.* at 60.

[35] 630 Phil. 637 (2010).

[36] *Id.* at 649.

[37] Records, p. 21.

[Atty. Jaime Felicen]: However, you preferred not to conduct the inventory in the site but in your office. Is that correct? [SPO2 de Lima]: Our common practice is to conduct the inventory in the area, sir.

Q: That is your?
A: Our common practice, sir.

Q: So, are you telling us that you conducted the inventory in that area where you arrested Arjay?
A: Yes, sir.

Q: Are you sure?
A: Yes, sir.

Q: So, your common practice is to conduct the inventory in the area, knowing that there would be no available witness you could pick up to witness the inventory?
A: Yes, sir.

Q: And, that was what happened in this case, wherein you conducted the inventory without any person witnessing that?
A: *Hindi pa po mahigpit ang pamunuan po naming noon dahil sa* compliance of Section 21. *Nong marami na pong nangyayari doon, naghigpit na po sa* compliance ng Section 21.

Q: That was your reason?
A: *Noon po hindi pa masyadong mahigpit*, sir.

Q: When you say, "*hindi pa masyadong mahigpit*" *sino dapat naghihigpit?*
A: The PNP, sir.[38] (Emphases and underscoring supplied)

Based on jurisprudence, it is well to note that the non-compliance with the required witnesses rule does not *per se* render the confiscated items inadmissible.[39] However, a justifiable reason for such failure or a **showing of any genuine and sufficient effort to secure the required witnesses** under Section 21, Article II of RA 9165 must be adduced.[40] In *People v.*

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[38] TSN, August 1, 2012, pp. 27-28.

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

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

Umipang,[41] 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."[42] Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance.[43] 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 set procedure prescribed in Section 21, Article II of RA 9165. **As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable**.[44]

Here, not only do the records disclose that the apprehending officers totally failed to comply with the required witnesses rule, SPO2 de Lima even admitted that they were not strictly implementing the mandate of Section 21, Article II of RA 9165. Thus, for failure of the prosecution to provide justifiable grounds or show that special circumstances exist which would excuse their transgression, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Mama have been compromised. In the prosecution of Illegal Sale and Illegal Possession of Dangerous Drugs under

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[41] *Id.*

[42] *Id*. at 1053.

[43] See *id*.

[44] See *People v. Crispo*, G.R. No. 230065, March 14, 2018.

RA 9165, the State carries the burden of proving not only the elements of the offense, but also to prove the integrity of the *corpus delicti*, failing in which, renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt,[45] as in this case. Perforce, Mama's acquittal is in order.

At a final point, 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.[46]

"In this light, prosecutors are strongly reminded that they have the **positive duty** to prove compliance with the procedure set forth in Section 21[, Article II] of RA 9165, as amended. As such, **they must have the initiative to not only acknowledge but also justify any perceived deviations from the said procedure during the proceedings before the trial court.** Since compliance with the 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

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[45] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, *supra* note 39, at 1039-1040.

[46] 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).

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."[47]

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 13, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08176 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Saidamen Olimpain Mama is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (Chairperson), Reyes, A. Jr., and *Reyes, J. Jr.,*[*] *JJ.,* concur.

Caguioa, J., on official business.

SECOND DIVISION

[G.R. No. 238338. October 1, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGARDO DELA ROSA *y* EMPAMANO @ "BOY," CRISELDA HUERTO *y* DOCOT @ "CECIL," and RONALDO HUERTO *y* DOCOT,** *accused-appellants.*

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[47] See *People v. Miranda*, G.R. No. 229671, January 31, 2018.

[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); IN CASES FOR ILLEGAL SALE AND/OR POSSESSION OF DANGEROUS DRUGS, THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY, OTHERWISE, ACQUITTAL OF THE ACCUSED IS WARRANTED.—** 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.; CHAIN OF CUSTODY PROCEDURE; COMPLIANCE THEREWITH IS STRICTLY ENJOINED UNLESS THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** As part of the chain of custody procedure, the law requires that the apprehending team, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items. 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." 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." 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." Nonetheless, the 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.

3. ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIRED WITNESSES RULE 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.— 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 full 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-appellants.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated November 29, 2016 rendered by the Court of Appeals (CA) in CA-G.R. CR HC No. 07579, which affirmed *in toto* the Decision[3] dated May 18, 2015 of the Regional Trial Court of Makati City, Branch 64 (RTC): (*a*) in Criminal Case No. 14-518 finding accused-appellants Edgardo Dela Rosa *y* Empamano @ "Boy" (Edgardo), Criselda Huerto *y* Docot @ "Cecil" (Criselda), and Ronaldo Huerto *y* Docot (Ronaldo; collectively, accused-appellants) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002;" and (*b*) in Criminal Case No. 14-519 finding accused-appellant Edgardo guilty beyond reasonable doubt of violating Section 11, Article II of RA 9165.

The Facts

The prosecution alleged that on April 26, 2014, a buy-bust team composed of members of the Station Anti-Illegal Drugs

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[1] See Notice of Appeal dated December 27, 2016; *rollo*, p. 17.

[2] *Id*. at 2-16. Penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Marlene B. Gonzales-Sison and Ramon A. Cruz, concurring.

[3] CA *rollo*, pp. 61-67. Penned by Judge Gina M. Bibat-Palamos.

[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.

(SAID) Special Operations Task Group of Makati City was formed to respond to a tip[5] regarding a male and a female peddling illegal drugs along Makati Avenue, Barangay Poblacion, Makati City. After coordinating with the Philippine Drug Enforcement Agency (PDEA),[6] the team, together with their asset, proceeded to the target area where Edgardo, whom the asset called "Mang Boy," sold a plastic sachet containing suspected *shabu* to Police Officer 1 Jojo Valdez (PO1 Valdez), the designated poseur-buyer. Also present during the buy-bust transaction and arrested together with Edgardo were Edgardo's wife, Criselda, and brother-in-law, Ronaldo.[7] A search on the person of Edgardo yielded four (4) more plastic sachets containing suspected *shabu*. Thus, after accused-appellants were apprised of their rights, the arresting officers brought them and the seized items to the barangay hall where the items were marked,[8] photographed, and inventoried[9] in the presence of Barangay Captain Benhur Cruz (Brgy. Captain Cruz).[10] Thereafter, the confiscated items were brought to the crime laboratory for examination[11] and tested positive[12] for Methamphetamine Hydrochloride. Consequently, all three (3) accused-appellants were charged with violation of Section 5, Article II of RA 9165 for Illegal Sale of Dangerous Drugs (0.10 gram),[13] while Edgardo was further charged with

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[5] TSN, September 9, 2014, p. 18.

[6] See Coordination Form with Control No. 0414-00287 dated April 25, 2014; records, p. 80.

[7] See *rollo*, pp. 5-6.

[8] The item sold by Edgardo was marked "BOY" while the four (4) plastic sachets recovered from his person were marked "BOY-1" to "BOY-4"; *id*. at 6.

[9] See Inventory Receipt dated April 27, 2014; records, p. 83.

[10] See *rollo*, p. 6.

[11] See Memorandum Request for Laboratory Examination dated April 26, 2014; records, p. 84.

[12] See Chemistry Report No. D-418-14 dated April 27, 2014; *id*. at 86.

[13] See *id*. at 2-5.

violation of Section 11, Article II of RA 9165 for Illegal Possession of Dangerous Drugs (0.41 gram).[14]

In defense, Edgardo and Criselda denied the charges and claimed that on April 25, 2014, they, together with Ronaldo, were inside a bingo boutique along Makati Avenue when police officers suddenly took them outside and eventually, handcuffed them. They were then taken to the SAID office where they were detained for three (3) days. Thereafter, they were asked to confess to their crimes and further, shown plastic sachets allegedly recovered from them.[15]

In a Decision[16] dated May 18, 2015, the RTC found accused-appellants guilty beyond reasonable doubt of violation of Section 5, Article II of RA 9165, and accordingly, sentenced each of them to life imprisonment and to pay a fine of ₱500,000.00, without subsidiary imprisonment in case of insolvency. In addition, the RTC convicted Edgardo for violation of Section 11, Article II of RA 9165, and hence, sentenced him to an indeterminate penalty of twelve (12) years and one (1) day to fifteen (15) years of imprisonment and to pay a fine of ₱400,000.00, without subsidiary imprisonment in case of insolvency.[17] The RTC found that the elements of the crimes charged were sufficiently established by the prosecution and that the integrity and evidentiary value of the seized items had been properly preserved.[18]

On appeal,[19] the CA affirmed the judgment of conviction in a Decision[20] dated November 29, 2016.[21] Apart from echoing

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[14] See *id*. at 6-8.

[15] See *rollo*, pp. 7-8.

[16] CA *rollo*, pp. 61-67.

[17] *Id*. at 67.

[18] *Id*. at 65-67.

[19] See Notice of Appeal dated May 26, 2015; *id*. at 19.

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

[21] *Id*. at 16.

the findings and conclusions of the RTC, the CA stressed that non-compliance with the provisions of Section 21, Article II of RA 9165 does not automatically render void and invalid the seizure and custody of the confiscated items, so long as the integrity and evidentiary value thereof have been properly preserved by the arresting officers.[22]

Hence, this appeal[23] seeking the reversal of accused-appellants' conviction for the crimes charged.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165,[24] 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.[25] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt

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[22] *Id.* at 14.

[23] *Id*. at 17.

[24] 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]).

[25] 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).

of the accused beyond reasonable doubt and hence, warrants an acquittal.[26]

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.[27] As part of the chain of custody procedure, the law requires that the apprehending team, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items. 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,[28] "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official";[29] 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."[30] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody

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[26] 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*.

[27] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 25; *People v. Sanchez*, *supra* note 24; *People v. Magsano*, *supra* note 24; *People v. Manansala*, *id*.; *People v. Miranda*, *supra* note 24; and *People v. Mamangon*, *supra* note 24. See also *People v. Viterbo*, *supra* note 25.

[28] 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**.

[29] Section 21 (1) and (2), Article II of RA 9165 and its Implementing Rules and Regulations.

[30] Section 21, Article II of RA 9165, as amended by RA 10640.

and remove any suspicion of switching, planting, or contamination of evidence."[31]

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."[32] 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."[33]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[34] 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**.[35] The foregoing is based on the saving clause found in Section 21 (a),[36] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[37] It should,

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[31] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[32] See *People v. Miranda*, *supra* note 24. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 26, at 1038.

[33] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, *id.*

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

[35] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[36] Section 21 (a), Article 11 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.**"

[37] Section 1 of RA 10640 pertinently states: "***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long**

however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[38] 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.[39]

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.[40] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[41] 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 chain of custody rule.[42]

Notably, the Court, in *People v. Miranda*,[43] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly

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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."

[38] *People v. Almorfe, supra* note 35.

[39] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[40] See *People v. Manansala, supra* note 24.

[41] See *People v. Gamboa, supra* note 26, citing *People v. Umipang, supra* note 26, at 1053.

[42] See *People v. Crispo, supra* note 25.

[43] *Supra* note 24.

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."[44]

Records show that although the inventory of the seized items was conducted in the presence of Brgy. Captain Cruz (an elected public official), no representatives from the DOJ and the media were present to witness the same. During trial, PO1 Valdez, one of the members of the buy-bust team and the designated poseur-buyer, explicitly admitted that:

ATTY. PUZON:

Q: You arrived at the Brgy. Hall at around?

WITNESS:

A: Around 2:00 in the morning of April 26, Ma'am.

Q: And upon arrival, you immediately prepared the Inventory Receipt, is that correct?

A: Yes, Ma'am.

x x x x x x x x x

Q: And during that time, the preparation of the Inventory was only witnessed by [Barangay Captain] Benhur Cruz?

A: Yes, Ma'am.

Q: **There was no representative coming from DOJ?**

A: **None, Ma'am.**

Q: **Likewise, there was no representative coming from the media?**

A: **None, Ma'am.**

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

[44] See *id.*

[45] TSN, September 9, 2014, pp. 21-23.

Neither do the records reflect that these witnesses were present during the photography of the seized items, which process is usually conducted contemporaneously with the inventory thereof. As earlier discussed, the prosecution is put to task *to justify the absence of the required witnesses* during the conduct of inventory and photography or, at the very least, show that the arresting officers exerted *genuine and sufficient efforts* to secure their presence. Unfortunately, no such justification or demonstration was even proffered in this case. In consequence, the Court is constrained to conclude that the integrity and evidentiary value of the seized items have been compromised, which perforce already warrants accused-appellants' acquittal. That being said, the Court finds it unnecessary to delve into the other matters raised.

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 29, 2016 of the Court of Appeals in CA-G.R. CR HC No. 07579 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Edgardo Dela Rosa *y* Empamano @ "Boy," Criselda Huerto *y* Docot @ "Cecil," and Ronaldo Huerto *y* Docot are **ACQUITTED** of the crimes 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), Reyes, A. Jr., and *Reyes, J. Jr.,*[*] *JJ.*, concur.

Caguioa, J., on official business.

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 238522. October 1, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NORMAN BARADI *y* VELASCO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** 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.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** [T]he 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.

3. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; ASSESSMENT AND DETERMINATION OF THE CREDIBILITY OF WITNESSES BY THE TRIAL COURT, RESPECTED ON APPEAL.—** 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.

4. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE, SUFFICIENTLY COMPLIED WITH IN CASE AT BAR.—** [T]he Court notes that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165. 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 dangerous 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 [DOJ], and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an 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."

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Lifrendo Gonzales 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 9, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08298, which affirmed the Joint Decision[3] dated February 9, 2016 of the Regional Trial Court of San Fernando City, La Union, Branch 29 (RTC) in Crim. Case Nos. 10462 and 10463, finding accused-appellant Norman Baradi *y* Velasco (Baradi) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] charging Baradi of violating Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around 12:00 noon of July 11, 2014, operatives of the City Anti Illegal Drug-Special Operation Task Group (CAID-SOTG) of San Fernando City, La Union conducted a buy-bust operation against Baradi, during which: (*a*) he allegedly sold a plastic sachet containing 0.5890 gram of suspected methamphetamine hydrochloride or *shabu*; and (*b*)

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[1] See Notice of Appeal dated July 17, 2017; *rollo*, pp. 26-27.

[2] *Id*. at 2-25. Penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Victoria Isabel A. Paredes and Marie Christine B. Azcarraga-Jacob, concurring.

[3] CA *rollo*, pp. 65-73. Penned by Presiding Judge Asuncion F. Mandia.

[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] The Information dated July 14, 2014 in Crim. Case No. 10462 was for Section 5, Article II of RA 9165 (Illegal Sale of Dangerous Drugs); records (Crim. Case No. 10462), pp. 1-2; while the Information dated July 14, 2014 in Crim. Case No. 10463 was for Section 11, Article II of RA 9165 (Illegal Possession of Dangerous Drugs); records (Crim. Case No. 10463), pp. 1-2.

during his arrest, another sachet containing 0.0245 gram of suspected methamphetamine hydrochloride or *shabu* was recovered from him. Immediately after Baradi's arrest, the apprehending officers conducted the marking, inventory, and photography in the presence of a barangay official, a Department of Justice (DOJ) representative, and a media representative at the place where the buy-bust operation took place. Baradi was then brought to the police station and thereafter, SPO1 Gilbert Andulay[6] (SPO1 Andulay), the poseur-buyer and the one who took custody of the suspected drugs, took the seized sachets to the crime laboratory where it was confirmed that the seized plastic sachets from Baradi contained *shabu*.[7]

For his part, Baradi denied the charges against him and invoked the defense of denial and frame-up. He narrated that on the date and time he was arrested, he was supposed to meet a certain "Fatima" at Long Beach Resort in Paringao, Bauang, La Union. While aboard his car, he decided to approach two (2) individuals to ask if one of them was Fatima. Suddenly, the said individuals attempted to open the door of his car, and thereafter, a car driven by a certain "Police Officer Bautista" blocked his car and pointed a gun at him. He was then taken to the San Fernando City Police Station where he and his car were searched without the police finding anything. Afterwards, a barangay official, a DOJ representative, and a media representative arrived, but he deemed it futile to talk to them as he was already framed up and accused of selling drugs.[8]

In a Joint Decision[9] dated February 9, 2016, the RTC found Baradi guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (*a*) in Crim. Case No. 10462, to suffer the penalty of life imprisonment, and to pay a fine of ₱500,000.00; and (*b*) in Crim. Case No. 10463,

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[6] Also referred to as "PO3 Andulay" in some parts of the records.

[7] See *rollo*, pp. 3-8. See also CA *rollo*, pp. 66-68.

[8] See *rollo*, pp. 8-11. See also CA *rollo*, pp. 68-70.

[9] CA *rollo*, pp. 65-73.

to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00.[10] The RTC found that the prosecution had established beyond reasonable doubt the elements of the crimes charged against Baradi, as he was caught *in flagrante delicto* selling *shabu*, and thereafter, was found in possession of another sachet which also contained *shabu*. The RTC also observed that the integrity and evidentiary value of the items seized from Baradi were preserved as the apprehending officers complied with the chain of custody rule.[11] Aggrieved, Baradi appealed[12] the RTC ruling to the CA.

In a Decision[13] dated June 9, 2017, the CA affirmed the RTC ruling.

Hence, this appeal seeking that Baradi's conviction be overturned.

The Court's Ruling

The appeal is without merit.

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;[14] 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.[15] Here, the courts *a quo* correctly found

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[10] *Id*. at 73.

[11] See *id*. at 70-73.

[12] See Notice of Appeal dated March 21, 2016; *id*. at 16-17.

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

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

[15] *People v. Bio*, 753 Phil. 730, 736 (2015).

that all the elements of the crimes charged are present, as the records clearly show that Baradi was caught in *flagrante delicto* selling *shabu* to the poseur-buyer, SPO1 Andulay, during a legitimate buy-bust operation by the CAID-SOTG of San Fernando City, La Union; and that another plastic sachet containing *shabu* was recovered from him during the search made incidental to his arrest. 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]

Further, the Court notes that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165.

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.[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

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[16] See *Cahulogan v. People*, G.R. No. 225695, March 21, 2018. See also *Peralta v. People*, G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[17] 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. 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).

of the chain of custody from the moment the dangerous drugs are seized 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 [DOJ], and any elected public official";[22] or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an 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 17; *People v. Sanchez*, *supra* note 17; *People v. Magsano*, *supra* note 17; *People v. Manansala*, *supra* note 17; *People v. Miranda*, *supra* note 17; and *People v. Mamangon*, *supra* note 17. 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] See Section 21 (1) and (2), Article II of RA 9165; emphases and underscoring supplied.

[23] See Section 21 (1), Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[24]

In this case, it is glaring from the records that after Baradi was arrested during the buy-bust operation and subsequently searched, the poseur-buyer, SPO1 Andulay, immediately took custody of the seized plastic sachets and conducted the marking, inventory, and photography thereof in the presence of a public elected official, a DOJ representative, and a media representative right at the place where Baradi was arrested. Thereafter, SPO1 Andulay secured the seized plastic sachets and delivered the same to the forensic chemist at the crime laboratory, who in turn, personally brought the items to the RTC for identification.[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* have been preserved. Perforce, Baradi's conviction must stand.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated June 9, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08298 is hereby **AFFIRMED**. Accused-appellant Norman Baradi *y* Velasco is found **GUILTY** beyond reasonable doubt of the crimes of Illegal Sale of Dangerous Drugs and Illegal Possession of Dangerous Drugs, defined and penalized under Sections 5 and 11, Article II of Republic Act No. 9165. Accordingly, he is sentenced as follows: (*a*) in Crim. Case No. 10462, to suffer the penalty of life imprisonment, and to pay a fine of ₱500,000.00; and (*b*) in Crim. Case No. 10463, to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of ₱300,000.00.

SO ORDERED.

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[24] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, *supra* note 17.

[25] See *rollo*, pp. 5-6. See also TSN, December 10, 2014, pp. 12-24.

Carpio, Senior Associate Justice (Chairperson), Reyes, A. Jr., and *Reyes, J. Jr.,*[*] *JJ.,* concur.

Caguioa, J., on official business.

EN BANC

[A.M. No. HOJ-08-02. October 2, 2018]

AAA, *complainant, vs.* **EDGARDO V. SALAZAR, Construction and Maintenance General Foreman, Hall of Justice, [redacted],** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY; INCONSISTENCIES IN COMPLAINANT'S NARRATION IN SINUMPAANG SALAYSAY AND DURING THE HEARING ONLY TEND TO STRENGTHEN RATHER THAN WEAKEN THE CREDIBILITY OF THE COMPLAINANT.— While there are inconsistencies in complainant's narration of the sexual assault in her *Sinumpaang Salaysay* and during the hearing, they only tend to strengthen rather than weaken the credibility of the complainant since they were only with respect to minor details. Complainant's testimony is convincing and straightforward. x x x In several cases, this Court ruled that testimonies of child-victims must be given full weight and credit. When a woman, especially if she is a minor, declares that she has been a victim of rape, "she says in effect all that is necessary to show that rape was committed." Youth and immaturity have generally been accepted as badges of truth

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

and sincerity. Moreover, alibi and denial, weighed against the positive identification of a complainant, are weak defenses.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; MISCONDUCT; DEFINED AS A TRANSGRESSION OF SOME ESTABLISHED AND DEFINITE RULE OF ACTION; GROSS MISCONDUCT, ESTABLISHED IN CASE AT BAR.— Misconduct has been defined as a "transgression of some established and definite rule of action." It includes the unlawful behavior or gross negligence of a public officer. The penalty of dismissal is warranted when the misconduct is of a "grave, serious, important, weighty, momentous" character and must imply a wrongful intent, not just a mere error of judgment. Gross misconduct is characterized by a "clear intent to violate the law" or a blatant disregard of some established rule. Courts are regarded by people with high respect and any form of misbehavior within their vicinity tends to diminish their sanctity and dignity. The conduct and behavior of every person connected with the dispensation of justice, from a presiding judge to staff, must always be characterized with propriety and decorum. In the case at bar, respondent's reprehensible acts failed to meet this standard. His acts constitute gross misconduct. Under the Revised Rules on Administrative Cases in the Civil Service, gross misconduct is a grave offense punishable by dismissal from service on the first offense. The penalty of dismissal includes other accessory penalties: the forfeiture of retirement benefits and the perpetual disqualification from holding any other public office.

APPEARANCES OF COUNSEL

Arsenio A. Merrera for complainant.
Patrick J.C. Perez for respondent.

D E C I S I O N

***PER CURIAM*:**

This administrative matter originated from a complaint filed by AAA, assisted by her mother, BBB, charging respondent Edgardo V. Salazar (Salazar), Construction and Maintenance

General Foreman, Hall of Justice, [redacted] with rape.[1] The Office of the Court Administrator found that Salazar had sexual intercourse with then 14-year-old AAA against her will in the Hall of Justice, [redacted].

In a letter dated October 10, 2007,[2] Executive Judge Teodoro Fernandez (Executive Judge Fernandez) of the Regional Trial Court of [redacted] informed the Office of the Court Administrator of a minor's criminal charge of rape before the National Bureau of Investigation against Salazar. Attached to Executive Judge Fernandez's letter was the *Sinumpaang Salaysay* of the minor-victim, AAA.[3]

In her *Sinumpaang Salaysay*, AAA charged Salazar of raping her inside his office, the Maintenance Room of the Hall of Justice in [redacted] on September 1, 2007. She alleged that on August 28, 2007, her cousin, CCC, lent her his cellphone because a friend of his wanted to be "textmates" with her. Later that night, she received a message registered in CCC's phonebook as "Engineer," saying he liked her and wanted her to be his second wife. She texted back saying he should not say that as he did not know her. The following day, she returned CCC's phone.[4]

On September 1, 2007, Saturday, she was accompanied to the Hall of Justice by her two (2) cousins, CCC and DDD, to meet a person who would allegedly give them a cellphone.[5] Upon arrival, Salazar gave money to CCC and DDD to go out and buy snacks. CCC assured AAA that Salazar would not harm her.[6] When CCC and DDD left, Salazar brought AAA to

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

[2] *Id.* at 1.

[3] *Id.* at 2-9.

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

[5] *Id.* at 4.

[6] *Id.* at 5.

his office, where he allegedly licked her vagina and inserted his finger and penis in her vagina against her will.[7]

In his Comment[8] dated December 20, 2007, Salazar countered that he did not rape AAA. He asserted that the complaint was "nothing but a fabricated charge contrived by a wayward teenager who had eloped with her boyfriend."[9] In his Counter-Affidavit[10] dated December 13, 2007, he claimed that there was an anti-termite chemical application in the Hall of Justice on September 1, 2007. He arrived in the office around 9:00 a.m. and instructed four (4) men from the pest control company. According to him, he left at 10:00 a.m. because he and his family were scheduled to leave the province. At noon, they were on board a rented van headed for Antipolo. Thus, he could not have raped AAA.[11]

Salazar also filed a Manifestation[12] before this Court, averring that the Provincial Prosecutor of [redacted] dismissed AAA's criminal complaint for insufficiency of evidence,[13] although she had elevated the case to the Department of Justice for review.[14]

The Court Administrator's initial evaluation stated that the charge against Salazar would constitute either grave misconduct, disgraceful or immoral conduct, or conduct prejudicial to the best interest of the service. However, the conflicting accounts of AAA and Salazar required a full-blown investigation.[15]

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[7] *Id*. at 3.

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

[9] *Id*. at 11.

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

[11] *Id*. at 14.

[12] *Id.* at 28-29.

[13] *Id*. at 37.

[14] *Id*. at 28.

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

This Court, upon the recommendation of the Office of the Court Administrator,[16] re-docketed the case as a regular administrative matter and referred it to Executive Judge Fernandez of Branch 38, Regional Trial Court, Lingayen, Pangasinan for inv[redacted], [redacted] recommendation.[17]

Executive Judge Fernandez inhibited from the investigation of the administrative matter.[18] It was later assigned to Judge Emma P. Bauzon (Judge Bauzon) of Branch 37, Regional Trial Court, [redacted].[19]

In her Report[20] dated September 8, 2009, Judge Bauzon found that AAA failed to establish that she was sexually molested on September 1, 2007 in the Maintenance Room of the Hall of Justice in [redacted].[21] She found contradictions in AAA's testimony. AAA claimed that as Salazar was removing her blouse, bra, and pedal pants, he was holding a gun on his left hand. He allegedly mashed her private parts with his right hand. However, AAA also testified that Salazar used both hands while doing the sexual act, with his left hand holding her right hand. According to Judge Bauzon, "How can the respondent use his left hand to hold her hand when his hand was holding a gun at the [same] time, as she also claimed?"[22]

Judge Bauzon noted that AAA submitted herself to medical examination more than a month after she was allegedly raped. Moreover, as testified by the examining physician, it was possible that the healed lacerations found in her vagina were not caused by an erect penis.[23] Further, AAA was unable to present the

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[16] *Id.* at 40.

[17] *Id*. at 41.

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

[19] *Id*. at 67.

[20] *Id*. at 312-334.

[21] *Id*. at 331.

[22] *Id*. at 328.

[23] *Id*. at 324.

testimonies of her two (2) cousins who would be able to corroborate her presence in the Hall of Justice on September 1, 2007. Meanwhile, Salazar's alibi was corroborated by the testimonies of his witnesses. Judge Bauzon concluded that looking at the totality of the circumstances, the claim was not credible and she recommended the dismissal of the administrative complaint.[24]

The Office of the Court Administrator recommended the conduct of further investigation considering that CCC and DDD did not testify.[25] Judge Bauzon reported that she scheduled hearings on June 23, 2010; July 7, 2010; July 15, 2010; and July 23, 2010.[26] However, CCC and DDD failed to attend despite the subpoena.[27]

In its Memorandum[28] dated November 15, 2011, the Office of the Court Administrator recommended that Salazar be found guilty of gross misconduct, be dismissed from service with forfeiture of all retirement benefits, except accrued leave credits, and be perpetually disqualified from being reinstated or appointed to any public office including government-owned or -controlled corporations.[29]

As to the alleged inconsistency in AAA's testimony on Salazar's use of his hands, the Court Administrator stated that:

> [R]ape is a harrowing experience, the exact details of which are not usually remembered. Inconsistencies, even if they do exist, tend to bolster, rather than weaken the credibility of the witness, for they show that the testimony was not contrived or rehearsed. Testimonial discrepancies could also be caused by the natural fickleness of memory

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[24] *Id*. at 332-334.

[25] *Id*. at 428.

[26] *Id*. at 436.

[27] *Id*. at 439.

[28] *Id*. at 494-520.

[29] *Id*. at 519.

which tends to strengthen rather than weaken credibility, as they erase any suspicion of rehearsed testimony.[30] (Citations omitted)

On the alleged anti-termite chemical application and foul smell in the room, Generoso Fernandez, the security guard on duty, testified that no chemical application was done in Salazar's office.[31] Salazar never controverted this testimony. Thus, it is possible that he could have raped AAA in his office despite the anti-termite chemical spraying that morning.[32]

Moreover, the Court Administrator found that Salazar never denied that he had sent AAA a text message saying that he wanted her to be his second wife.[33]

On CCC's and DDD's failure to testify before the investigating judge, the Court Administrator opined that the Office of the Provincial Prosecutor's January 3, 2008 Resolution revealed that they accompanied AAA to the Hall of Justice on September 1, 2007, which corroborated AAA's allegation.[34]

The Court Administrator found that AAA's testimony was clear, straightforward, and detailed. Meanwhile, Salazar offered only the defense of alibi.[35]

For this Court's resolution is the sole issue of whether or not respondent Edgardo V. Salazar is guilty of gross misconduct and/or conduct prejudicial to the best interest of the service warranting the penalty of dismissal from service, the forfeiture of all retirement benefits, and perpetual disqualification from any public office.

This Court adopts the findings of the Office of the Court Administrator and agrees with its recommendations.

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[30] *Id*. at 518.

[31] *Id*.

[32] *Id*.

[33] *Id*. at 519.

[34] *Id*.

[35] *Id*. at 24.

As found by the Court Administrator, complainant sufficiently showed through her spontaneous testimony that respondent raped her in the premises of the Hall of Justice. The results of the medical examination showed that her healed lacerations may have been caused by an erect penis or a finger, consistent with her testimony that respondent inserted his finger and his penis into her vagina.

Moreover, respondent never denied that he had sent the minor complainant a text message asking her to be his mistress. This act exhibits respondent's moral depravity.

While there are inconsistencies in complainant's narration of the sexual assault in her *Sinumpaang Salaysay*[36] and during the hearing,[37] they only tend to strengthen rather than weaken

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[36] *Id*. at 3.

In her Sinumpaang Salaysay filed with the National Bureau of Investigation, complainant narrated the incident as:

12. T: Isalaysay mo nga kung papaano kang ginahasa ni EDGARDO SALAZAR na gaya ng iyong ipinararatang sa kanya?

S: Nang nasa loob kami ng kanyang opisina ay sinabi niya sa akin na matagal na daw niya akong kursunada. Kasabay nito ay niyakap niya ako at hinalikan sa mga labi. Nagulat ako sa ginawa niya kaya bigla ko siyang itinulak, pero patuloy pa din niya akong niyakap ng mahigpit at pilit na hinahalikan. Nanlaban ako at sumigaw. Sa puntong iyon ay bigla niya akong itinulak at napaupo sa isang upuan. Doon ay pinagbantaan niya ako. Sinabi niyang kung hindi ako titigil ay papatayin niya ako. Kapag manlalaban pa daw ako ay babarilin niya ako. Sa takot ko na patayin niya ako ay naiyak na lamang ako. Pagkatapos noon ay hinubad niya ang aking suot na *pedal* at ang aking *panty*. Inililis niya pataas ang aking *blouse* at ang aking *bra*. Doon ay sinimulan na niya ang pangaabuso sa akin na labag sa aking kalooban.

13. T: Papaano ka niyang inabuso?

S: Dinilaan niya ang ari ko. Ipinasok din niya ang kanyang daliri sa aking ari. Hinalikan niya ang aking dibdib. Matapos niyon ay pilit niyang ipinasok ang kanyang ari sa aking ari. Pagkatapos ay naglabas-masok ang kanyang ari sa loob ng aking ari. Ilang sandali pa ay hinugot niya ang kanyang ari at nakita ko na may pumusitsit na putting likido sa kanyang ari na itinapat niya sa aking hita.

[37] *Id*. at 82-90.

During the hearing, complainant said that respondent forcefully pushed her inside the room in the Office of the Building Administrator. Respondent kissed her on the lips but she resisted by pushing him. He cursed her and

the credibility of the complainant since they were only with respect to minor details.[38] Complainant's testimony is convincing and straightforward.

In *People of the Philippines v. Lusa*,[39] this Court held that the contradictions between the *Sinumpaang Salaysay* and the answers in open court should not defeat the cause of a complainant.[40] The inconsistencies may be explained since "an affidavit [cannot] possibly disclose the facts in their entirety, and may inaccurately describe, without deponent detecting it, some of the occurrences narrated."[41]

In several cases, this Court ruled that testimonies of child-victims must be given full weight and credit.[42] When a woman, especially if she is a minor, declares that she has been a victim of rape, "she says in effect all that is necessary to show that rape was committed."[43] Youth and immaturity have generally been accepted as badges of truth and sincerity.[44] Moreover,

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then took his gun from a steel cabinet, and while pointing the gun at her, he kissed her again. He lifted her blouse and removed her bra and then sucked her breasts. After that, he removed her pedal shorts and her panty, licked her vagina, and then had intercourse with her.

[38] See *People of the Philippines v. Nicolas*, 311 Phil. 79 (1995) [Per *J.* Bellosillo, First Division].

[39] 351 Phil. 537 (1998) [Per *J.* Romero, Third Division].

[40] *Id*. at 544.

[41] *Id*.

[42] See *People of the Philippines v. Lusa*, 351 Phil. 537 (1998) [Per *J.* Romero, Third Division]; *People of the Philippines v. Gabayron*, 343 Phil. 593 (1997) [Per *J.* Hermosisima, Jr., First Division]; *People of the Philippines v. Digno, Jr.*, 320 Phil. 285 (1995) [Per *J.* Bellosillo, First Division].

[43] *People of the Philippines v. Lusa*, 351 Phil. 537, 545 (1998) [Per *J.* Romero, Third Division]; *People of the Philippines v. Gabayron*, 343 Phil. 593, 611 (1997) [Per *J.* Hermosisima, Jr., First Division].

[44] *People of the Philippines v. Lusa*, 351 Phil. 537 (1998) [Per *J.* Romero, Third Division]; *People of the Philippines v. Escober*, 346 Phil. 513 (1997) [Per *J.* Bellosillo, First Division]; *People of the Philippines v. Casil*, 311 Phil. 300 (1995) [Per *J.* Regalado, Second Division].

alibi and denial, weighed against the positive identification of a complainant, are weak defenses.[45]

Misconduct has been defined as a "transgression of some established and definite rule of action."[46] It includes the unlawful behavior or gross negligence of a public officer.[47] The penalty of dismissal is warranted when the misconduct is of a "grave, serious, important, weighty, momentous" character and must imply a wrongful intent, not just a mere error of judgment.[48] Gross misconduct is characterized by a "clear intent to violate the law" or a blatant disregard of some established rule.[49]

Courts are regarded by people with high respect and any form of misbehavior within their vicinity tends to diminish their sanctity and dignity.[50] The conduct and behavior of every person connected with the dispensation of justice, from a presiding judge to staff, must always be characterized with propriety and decorum.[51] In the case at bar, respondent's reprehensible acts failed to meet this standard. His acts constitute gross misconduct.

Under the Revised Rules on Administrative Cases in the Civil Service, gross misconduct is a grave offense[52] punishable by dismissal from service[53] on the first offense. The penalty of dismissal includes other accessory penalties: the forfeiture of

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[45] *People of the Philippines v. Peñaranda*, 194 Phil. 616, 623 (1981) [Per *J*. Concepcion, Jr., Second Division].

[46] *Office of the Court Administrator v. Viesca*, 758 Phil. 16, 26 (2015) [*Per Curiam, En Banc*].

[47] *Id*. at 27.

[48] *Id*.

[49] *Id*.

[50] *Merilo-Bedural v. Edroso*, 396 Phil. 756 (2000) [*Per Curiam, En Banc*].

[51] *Ferrer v. Gapasin, Sr.*, 298 Phil. 572 (1993) [*Per Curiam, En Banc*].

[52] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (2011), RULE 10, Sec. 46(A)(3).

[53] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Sec. 46(A)(3).

retirement benefits[54] and the perpetual disqualification from holding any other public office.[55]

In several cases, this Court has laid down the exacting standards of morality and decency required of those serving the judiciary.[56]

In *Merilo-Bedural v. Edroso*,[57] this Court dismissed a Utility Worker for pinning the complainant Branch Clerk of Court with his body and kissing her against her will. This Court described respondent Utility Worker's behavior as "unbecoming of a court personnel" and dismissed him for gross misconduct and immorality prejudicial to the best interests of the service.[58]

In *Talens-Dabon v. Arceo*,[59] respondent Judge was likewise dismissed from service for gross misconduct and immorality prejudicial to the best interests of service for a "violent kissing incident"[60] and documented proof of his "lustful and lascivious desires"[61] toward the Branch Clerk of Court.

In *Dontogan v. Pagkanlungan, Jr.*,[62] this Court dismissed a Process Server for kissing a Court Stenographer "so hard and evidently prompted by lust it even left a red mark on her upper lip"[63] while reeking of alcohol. This Court deemed his acts as

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[54] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Sec. 52.

[55] REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE, Rule 10, Sec. 52.

[56] See *Merilo-Bedural v. Edroso*, 396 Phil. 756 (2000) [*Per Curiam, En Banc*].

[57] 396 Phil. 756 (2000) [*Per Curiam, En Banc*].

[58] *Id*. at 763.

[59] 328 Phil. 692 (1996) [*Per Curiam, En Banc*].

[60] *Id*. at 704.

[61] *Id*. at 708.

[62] 618 Phil. 95 (2009) [*Per Curiam, En Banc*].

[63] *Id*. at 96.

gross misconduct and violative of Supreme Court Circular No. 09-99.

In the case at bar, respondent's act of having sexual intercourse with complainant against her will constitutes gross misconduct, aggravated by two (2) circumstances: the victim was a minor and it was committed in the Hall of Justice. Thus, the harshest penalty must be imposed upon respondent.

WHEREFORE, respondent Edgardo V. Salazar is hereby **DISMISSED** from service for gross misconduct with forfeiture of all retirement benefits and disqualification from being reinstated or appointed in any public office, including government-owned or -controlled corporations.

SO ORDERED.

Leonardo-de Castro, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Tijam, Reyes, A. Jr., and *Reyes, J. Jr., JJ.,* concur.

Bersamin and *Gesmundo, JJ.,* on official business.

Caguioa, J., on leave.

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ADMINISTRATIVE CODE OF 1987 (E.O. NO. 292)

Application of –– By dismissing respondent's appeal, the Secretary of the DILG, in effect, confirmed respondent's dismissal from the service; such dismissal from the service is executory, pursuant to Sec. 47 of Book V, E.O. No. 292, or the Administrative Code of 1987; This provision of the Civil Service laws is also applicable to the PNP. (Police Dir. Gen. Marquez *vs*. PO2 Mayo, G.R. No. 218534, Sept. 17, 2018) pp. 179-180

ADMINISTRATIVE LAW

Administrative Code of 1987 –– If there is a dismissal of a criminal case by the trial court, or if there is an acquittal of the accused, it is only the OSG that may bring an appeal on the criminal aspect representing the People; the rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses; for this reason, the People are deemed as the real parties-in-interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court. (Cu *vs*. Ventura, G.R. No. 224567, Sept. 26, 2018) p. 650

–– It ruled that in criminal cases or proceedings, only the Solicitor General may bring or defend actions on behalf of the Republic of the Philippines, or represent the People or State; This is in compliance with the provisions of Sec. 35(1), Chapter 12, Title III, Book III of the Administrative Code of 1987, as amended; however, it is not without any exception; the two exceptions are: (1) when there is denial of due process of law to the prosecution and the State or its agents refuse to act on the case to the prejudice of the State and the private offended party, and (2) when the private offended party questions the civil aspect of a decision of a lower court. (*Id*.)

Administrative liability –– Jurisdiction over an administrative case is not lost by the fact that the respondent public

official had ceased to be in office during the pendency of his case; the Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof; contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications; court proceeded to resolve respondent public official's administrative case notwithstanding that death has already separated him from the service to the end that respondent's heirs may not be deprived of any retirement gratuity and other accrued benefits that they may be entitled to receive as a result of respondent's death in office, as against a possible forfeiture thereof should his guilt have been duly established at the investigation. (Office of the Ombudsman *vs*. Pacuribot, G.R. No. 193336, Sept. 26, 2018) p. 564

Administrative proceedings — In administrative proceedings, technical rules of procedure and evidence are not strictly applied; administrative due process cannot be fully equated to due process in its strict judicial sense; the essence of administrative due process is simply an opportunity to be heard. (Office of the Court Administrator *vs*. Judge Aquino, A.M. No. RTJ-15-2413, Sept. 25, 2018) p. 459

Doctrine of exhaustion of administrative remedy — The doctrine requires that before a party may seek intervention from the court, he or she should have already exhausted all the remedies in the administrative level; the doctrine admits of exceptions, one of which is when strong public interest is involved; although a petitioner's failure to exhaust the required administrative remedies has been held to bar a petition in court, the Court has relaxed the application of this rule in view of the more substantive matters. (Alliance of Quezon City Homeowners' Assoc., Inc. *vs*. Quezon City Gov't., G.R. No. 230651, Sept. 18, 2018) p. 277

Preventive suspension — A public official is considered to be on preventive suspension while the administrative case is on appeal; such preventive suspension is punitive in nature and the period of suspension becomes part of the

final penalty of suspension or dismissal eventually adjudged. (Office of the Ombudsman *vs*. PS/Supt. Espina, G.R. No. 213500, Sept. 12, 2018) p. 114

—— The mere reduction of the penalty on appeal does not entitle a government employee to back salaries if he was not exonerated of the charges. (*Id*.)

Revised Rules on Administrative Cases in the Civil Service – – Sec. 48, Rule X of the Revised Rules on Administrative Cases in the Civil Service (RRACCS) grants the disciplining authority the discretion to consider mitigating circumstances in the imposition of the proper penalty. (Office of the Ombudsman *vs*. PS/Supt. Espina, G.R. No. 213500, Sept. 12, 2018) p. 114

AGGRAVATING CIRCUMSTANCES

Abuse of superior strength —– Mere numerical superiority on the part of the aggressors does not define the attendance of this aggravating circumstance; abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime; the fact that there were two persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. (People *vs*. Evasco *y* Nugay, G.R. No. 213415, Sept. 26, 2018) p. 612

—— To be appreciated only when there was a notorious inequality of forces between the victim and the aggressors that was plainly and obviously advantageous to the latter who purposely selected or took advantage of such inequality in order to facilitate the commission of the crime; the assailants must be shown to have consciously sought the advantage, or to have the deliberate intent to use their superior advantage. (*Id*.)

—— To take advantage of superior strength means to purposely use force excessively out of proportion to the means of

defense available to the person attacked; the appreciation of the attendance of this aggravating circumstance depends on the age, size and strength of the parties. (*Id*.)

ALIBI AND DENIAL

Defenses of — Denial and alibi do not prevail over the positive identification of the accused by the State's witnesses who testify categorically and consistently and who are bereft of ill-motive towards the accused; denial, if not substantiated by clear and convincing evidence, is a negative and self-serving defense that carries no greater evidentiary value than the declaration of a credible witness upon affirmative matters; denial and alibi, to be credited, must rest on strong evidence of non-culpability on the part of the accused. (People *vs*. Petalino, G.R. No. 213222, Sept. 24, 2018) p. 409

–– Positive identification, being categorical and consistent, could not be undone by alibi and denial in the absence of any credible showing of ill-motive on the part of the identifying witnesses. (People *vs*. Evasco *y* Nugay, G.R. No. 213415, Sept. 26, 2018) p. 612

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019)

Application of — Sec. 3 of the Anti-Graft and Corrupt Practices Act speaks of corrupt practices of public officers; however, if there is an allegation of conspiracy, a private person may be held liable together with the public officer; this is consistent with the policy behind the statute, which, as provided in its first section, is to repress certain acts of public officers and private persons alike which may constitute graft or corrupt practices or which may lead thereto. (Garcia-Diaz *vs*. Sandiganbayan, G.R. No. 193236, Sept. 17, 2018) p. 127

Conspiracy — A finding of conspiracy means that all the accused are deemed to have consented to and adopted as their own, the offense of the other accused; co-conspirators are answerable collectively and equally, regardless of the degree of their participation in the crime, because it is the common scheme, purpose, or objective that is

punished, not the individual acts of each of the accused. (Garcia-Diaz *vs*. Sandiganbayan, G.R. No. 193236, Sept. 17, 2018) p. 127

Section 3(g) — The elements of Sec. 3(g) [of the Anti-Graft and Corrupt Practices Act] are: first, the accused is a public officer; second, that he or she entered into a contract or transaction on behalf of the government; and third, that the contract or transaction is grossly and manifestly disadvantageous to the government. (Garcia-Diaz *vs*. Sandiganbayan, G.R. No. 193236, Sept. 17, 2018) p. 127

APPEALS

Appeal in criminal cases — An appeal in criminal cases opens the entire case for review, and it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned; the appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law; penalty modified. (People *vs*. Mama, G.R. No. 237204, Oct. 1, 2018) p. 782

(People *vs*. De Guzman *y* Buhay, G.R. No. 234190, Oct. 1, 2018) p. 759

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 findings 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. (Cu *vs*. Ventura, G.R. No. 224567, Sept. 26, 2018) p. 650

Factual findings of the trial courts — Factual findings of the trial court, especially when affirmed by the appellate court, are entitled to great respect and generally and should not be disturbed on appeal unless certain substantial facts were overlooked which, if considered, may affect the outcome of the case. (People *vs*. Marzan *y* Lutan, G.R. No. 207397, Sept. 24, 2018) p. 395

— 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; 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. (People *vs*. De Guzman *y* Buhay, G.R. No. 234190, Oct. 1, 2018) p. 759

Petition for review on certiorari to the Supreme Court under Rule 45 — As a rule, questions of fact are proscribed in Rule 45 petitions; a question of fact exists when doubt or difference arises as to the truth or falsehood of facts or when the resolution of the issue raised requires a calibration of the whole evidence; as a trier of laws, the Court is not duty-bound to analyze and weigh again the evidence already considered in the proceedings below. (Phil. Nat'l. Police-Criminal Investigation and Detection

Group (PNP-CIDG) *vs.* P/Supt. Villafuerte, G.R. Nos. 219771 & 219773, Sept. 18, 2018) p. 243

— In labor cases brought up *via* a Rule 45 petition challenging the CA's decision in a special civil action under Rule 65, this Court's power of review is limited to the determination of whether the CA correctly resolved the presence or absence of grave abuse of discretion on the part of the NLRC. (Almagro *vs*. Phil. Airlines, Inc., G.R. No. 204803, Sept. 12, 2018) p. 71

— Only questions of law are allowed in a petition for review on *certiorari*; this Court is not a trier of facts and is not obliged to go over and recalibrate a new evidence that already passed the scrutiny of the lower courts, all the more in this case where the findings of the RTC were affirmed by the CA. (Ayala Land, Inc. *vs*. ASB Realty Corp., G.R. No. 210043, Sept. 26, 2018) p. 590

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. (Cu *vs*. Ventura, G.R. No. 224567, Sept. 26, 2018) p. 650

Rules on appeal — Fundamental is the rule that the provisions of the law and the rules concerning the manner and period of appeal are mandatory and jurisdictional requirements; hence, cannot simply be discounted under the guise of liberal construction; but even if we were to apply liberality as prayed for, it is not a magic word that once invoked will automatically be considered as a mitigating circumstance in favor of the party invoking it. (Zosa *vs*. Consilium, Inc., G.R. No. 196765, Sept. 19, 2018) p. 318

— The payment of docket fees within the prescribed period is mandatory for the perfection of an appeal; without such payment, the appellate court does not acquire

jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory. (*Id*.)

ARRESTS

Legality of — Appellant can no longer question the legality of his arrest which should have been raised in a motion to quash the Information filed prior to his arraignment; when he failed to file such motion, appellant was deemed to have submitted himself to the jurisdiction of the trial court which precluded him from questioning the legality of his arrest. (People *vs*. Suico *y* Acope, G.R. No. 229940, Sept. 10, 2018) p. 1

ATTORNEYS

Code of Professional Responsibility — A lawyer shall not attribute to a Judge motives not supported by the record or have no materiality to the case. (Mariano *vs*. Atty. Laki, A.C. No. 11978 [Formerly CBD Case No. 10-2769], Sept. 25, 2018) p. 438

—— The rule on the accounting of monies and properties received by lawyers from clients as well as their return upon demand is explicit; the fiduciary nature of the relationship between the counsel and his client imposes on the lawyer the duty to account for the money or property collected or received for or from his client; when a lawyer collects or receives money from his client for a particular purpose, he should promptly account to the client how the money was spent; if he does not use the money for its intended purpose, he must immediately return it to the client. (Akira Yoshimura *vs*. Atty. Panagsagan, A.C. No. 10962 [Formerly CBD Case No. 10-2763], Sept. 11, 2018) p. 16

Disbarment — A disbarment case is *sui generis* for it is neither purely civil nor purely criminal but is rather an investigation by the court into the conduct of its officers; an administrative proceeding for disbarment continues despite the desistance of a complainant, or failure of the complainant to prosecute the same, or as in this case,

the failure of respondent to answer the charges against him despite numerous notices. (Akira Yoshimura *vs*. Atty. Panagsagan, A.C. No. 10962 [Formerly CBD Case No. 10-2763], Sept. 11, 2018) p. 16

—— An administrative case for disbarment is *sui generis* and not meant to grant relief to a complainant as in a civil case but is intended to cleanse the ranks of the legal profession of its undesirable members for the protection of the public and of the courts; it is an investigation on the conduct of the respondent as an officer of the Court and his fitness to continue as a member of the Bar. (AAA *vs*. Atty. De Los Reyes, A.C. No. 10021, Sept. 18, 2018) p. 212

—— In disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar; in such cases, the Court's only concern is the determination of respondent's administrative liability; it should not involve his civil liability for money received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement. (Akira Yoshimura *vs*. Atty. Panagsagan, A.C. No. 10962 [Formerly CBD Case No. 10-2763], Sept. 11, 2018) p. 16

Duties —— As an officer of the court, it is a lawyer's duty to uphold the dignity and authority of the court; the highest form of respect for judicial authority is shown by a lawyer's obedience to court orders and processes. (Akira Yoshimura *vs*. Atty. Panagsagan, A.C. No. 10962 [Formerly CBD Case No. 10-2763], Sept. 11, 2018) p. 16

—— Possession of good moral character is both a condition precedent and a continuing requirement to warrant admission to the bar and to retain membership in the legal profession; lawyers are duty-bound to observe the highest degree of morality and integrity not only upon admission to the Bar but also throughout their career in order to safeguard the reputation of the legal profession. (AAA *vs*. Atty. De Los Reyes, A.C. No. 10021, Sept. 18, 2018) p. 212

Gross immorality — Immoral conduct involves acts that are willful, flagrant, or shameless, and that show a moral indifference to the opinion of the upright and respectable members of the community; it is gross when it is so corrupt as to constitute a criminal act, or so unprincipled as to be reprehensible to a high degree, or when committed under such scandalous or revolting circumstances as to shock the community's sense of decency. (AAA *vs*. Atty. De Los Reyes, A.C. No. 10021, Sept. 18, 2018) p. 212

Liability of — For taking advantage of the trust and confidence of his clients, for his dishonest and deceitful conduct and fraudulent acts for personal gain, for his violation of the notarial law and disrespecting the IBP due to non-compliance of its directive to file comment, his acts constitute malpractice and gross misconduct in his office as attorney. (Akira Yoshimura *vs*. Atty. Panagsagan, A.C. No. 10962 [Formerly CBD Case No. 10-2763], Sept. 11, 2018) p. 16

–– The lawyer wronged his client and the Judiciary as an institution, and the IBP of which he is a member; he disregarded his duties as a lawyer and betrayed the trust of his client, the IBP, and the courts. (Mariano *vs*. Atty. Laki, A.C. No. 11978 [Formerly CBD Case No. 10-2769], Sept. 25, 2018) p. 438

Rule on accounting monies and properties — A lawyer shall account for all money or property collected or received for or from the client; a lawyer shall keep the funds of each client separate and apart from his own and those of others kept by him; a lawyer shall deliver the funds and property of his client when due or upon demand. (Mariano *vs*. Atty. Laki, A.C. No. 11978 [Formerly CBD Case No. 10-2769], Sept. 25, 2018) p. 438

BILL OF RIGHTS

Freedoms of speech and of the press — No less than the 1987 Constitution, Art. III, Sec. 4 thereof, mandates full protection to freedom of speech, of expression, and of the press; the realities of life in a complex society preclude

an absolute exercise of the freedoms of speech and of the press; they are not immune to regulation by the State in the exercise of its police power. (Tordesillas *vs*. Hon. Puno, G.R. No. 210088, Oct. 1, 2018) pp. 699-700

–– In as early as the 1935 Constitution, our jurisprudence has recognized four aspects of freedom of the press: (1) freedom from prior restraint; (2) freedom from punishment subsequent to publication; (3) freedom of access to information; and (4) freedom of circulation; concept of prior restraint, explained in the case of *Chavez*; freedom from prior restraint is largely freedom from government censorship of publications, whatever the form of censorship, and regardless of whether it is wielded by the executive, legislative or judicial branch of the government; application. (Tordesillas *vs*. Hon. Puno, G.R. No. 210088, Oct. 1, 2018) pp. 699-700

Right to speedy disposition of the case — The Constitution declares that "all persons shall have the right to a speedy disposition of their cases before all judicial, quasi--judicial or administrative bodies"; this right, like the right to a speedy trial, is deemed violated when the proceedings is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or [even] without cause or justifiable motive, a long period of time is allowed to elapse without the party having his case tried. (Escobar *vs*. People, G.R. Nos. 228349 and 228353, Sept. 19, 2018) p. 372

CERTIORARI

Petition for — In labor disputes, grave abuse of discretion may be ascribed to the NLRC when: (1) its findings and conclusions are not supported by substantial evidence or in total disregard of evidence material to, or even decisive of, the controversy; (2) it is necessary to prevent a substantial wrong or to do substantial justice; (3) the findings of the NLRC contradict those of the Labor Arbiter; and (4) it is necessary to arrive at a just decision of the case. (Almagro *vs*. Phil. Airlines, Inc., G.R. No. 204803, Sept. 12, 2018) p. 71

CIVIL SERVICE

Revised Rules on Administrative Cases in the Civil Service (RRACS) –– Inefficiency and incompetence in the performance of official duties are grave offenses punishable by suspension from office for six months and one day to one year for the first offenses, and dismissal from the service for the second violation; simple neglect of duty is a less grave offense under Rule 10, par. D.1 of the RRACS that deserves suspension from office for one month and one day to six months for the first violation, and dismissal from the service for the second. (Duque *vs*. Bolus-Romero, A.M. No. P-16-3507 [Formerly OCA IPI No. 14-4365-P], Sept. 25, 2018) p. 451

Uniform Rules on Administrative Cases in the Civil Service — Under Sec. 52, Rule IV of the Uniform Rules on Administrative Cases in the Civil Service, simple neglect of duty is classified as a less grave offense, punishable by suspension without pay for one (1) month and one (1) day to six (6) months for the first offense. (Office of the Court Administrator *vs*. Judge Ante, Jr., A.M. No. MTJ-12-1814 [Formerly OCA IPI No. 10-2324-MTJ], Sept. 19, 2018) p. 301

CLERKS OF COURT

Liability of — Failure to live up to the high ethical standards expected of her as a court employee and accountable officer, the respondent's dismissal from the service with forfeiture of all retirement benefits, excluding accrued leave credits, with prejudice to re-employment in any government office, including government-owned and government-controlled corporations is in order and fully warranted. (Office of the Court Administrator *vs.* Borromeo, A.M. No. P-18-3841 [Formerly A.M. No. 01-12-323-MTC], Sept. 18, 2018) p. 231

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody procedure — 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. (People *vs*. Dela Rosa *y* Empamano, G.R. No. 238338, Oct. 1, 2018) p. 796

(People *vs*. Misa, G.R. No. 236838, Oct. 1, 2018) p. 770

— 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 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 R.A. No. 9165 by R.A. No. 10640, "a representative from the media and the DOJ, and any elected public official"; or (b) if after the amendment of R.A. No. 9165 by R.A. No. 10640, "an elected public official and a representative of the National Prosecution Service (NPS) or the media"; 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." (People *vs*. Dela Rosa *y* Empamano, G.R. No. 238338, Oct. 1, 2018) p. 796

(People *vs*. Misa, G.R. No. 236838, Oct. 1, 2018) p. 770

— Non-compliance with the required witnesses rule does not *per se* render the confiscated items inadmissible; a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Sec. 21, Article II of R.A. No. 9165 must be adduced; police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest

efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable. (People *vs*. Mama, G.R. No. 237204, Oct. 1, 2018) p. 782

— Sec. 21 of R.A. No. 9165, as amended, defines the procedural safeguards covering the seizure, custody and disposition of the confiscated dangerous drugs; the proper handling of the confiscated drug is paramount in order to ensure the chain of custody, a process essential to preserving the integrity of the evidence of the *corpus delicti*; chain of custody refers to the duly recorded authorized movement and custody of the seized drugs, controlled chemicals or plant sources of the dangerous drugs or laboratory equipment, from the time of their seizure or confiscation to the time of their receipt in the forensic laboratory, to their safekeeping until their presentation in court as evidence and for the purpose of destruction. (People *vs*. Peromingan *y* Geroche, G.R. No. 218401, Sept. 24, 2018) p. 424

— Sec. 21, Art. II of R.A. No. 9165 outlines the procedure which the police officers must follow when handling the seized drugs in order to preserve their integrity and evidentiary value; prior to its amendment by R.A. No. 10640, the apprehending team shall, among others, immediately after seizure and confiscation conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, a representative from the media and the Department of Justice, and any elected public official who shall be required to sign the copies of the inventory and be given a copy of the same, and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination; *People v. De Guzman*, cited. (People *vs*. Mama, G.R. No. 237204, Oct. 1, 2018) p. 782

— The apprehending officer has the option whether to mark, inventory, and photograph the seized items immediately

at the place where the drugs were seized, or at the nearest police station, or at the nearest office of the apprehending officer, whichever is the most practicable or suitable for the purpose. (People *vs*. Suico *y* Acope, G.R. No. 229940, Sept. 10, 2018) p. 1

— The buy-bust team had sufficiently complied with the chain of custody rule under Sec. 21, Art. II of R.A. No. 9165; in cases for Illegal Sale and/or Possession of Dangerous Drugs under R.A. No. 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; sufficiently complied with in this case. (People *vs*. Baradi *y* Velasco, G.R. No. 238522, Oct. 1, 2018) p. 808

Illegal possession of dangerous drugs — The prosecution must establish the following elements to warrant his conviction: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (People *vs*. Baradi *y* Velasco, G.R. No. 238522, Oct. 1, 2018) p. 808

(People *vs*. Mama, G.R. No. 237204, Oct. 1, 2018) p. 782

Illegal sale and/or illegal possession of dangerous drugs — In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under R.A. 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. (People *vs*. Dela Rosa *y* Empamano, G.R. No. 238338, Oct. 1, 2018) p. 796

(People *vs*. Misa, G.R. No. 236838, Oct. 1, 2018) p. 770

— The State bears the burden of proving the elements of the illegal sale of dangerous drugs in violation of Sec. 5 of R.A. No. 9165 and of the illegal possession of dangerous drugs in violation of Sec. 11 of the same law; to discharge its burden of proof, the State should establish the *corpus delicti*, or the body of the crime itself. (People *vs*. Nepomuceno *y* Visaya, G.R. No. 216062, Sept. 19, 2018) p. 356

Illegal sale of dangerous drugs — In order to properly secure the conviction of an accused charged with Illegal Sale of Dangerous Drugs, the prosecution must prove: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment. (People *vs*. Baradi *y* Velasco, G.R. No. 238522, Oct. 1, 2018) p. 808

(People *vs*. Mama, G.R. No. 237204, Oct. 1, 2018) p. 782

— In prosecutions for violation of Sec. 5 of R.A. No. 9165, the State bears the burden of proving the elements of the offense of sale of dangerous drugs, which constitute the *corpus delicti*, or the body of the crime; in cases involving the violation of laws prohibiting the illegal sale of dangerous drugs, the dangerous drugs are themselves the *corpus delicti*. (People *vs*. Peromingan *y* Geroche, G.R. No. 218401, Sept. 24, 2018) p. 424

Illegal transport of dangerous drugs — The essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another; as used under the Dangerous Drugs Act, "transport" means to carry or convey from one place to another; the fact of an actual conveyance or transportation itself is sufficient to support a finding that the criminal act was committed. (People *vs*. Suico *y* Acope, G.R. No. 229940, Sept. 10, 2018) p. 1

Section 21 — Strict compliance with the prescribed procedure is necessary because the illegal drug has the unique characteristic of becoming indistinct and not readily

identifiable, thereby generating the possibility of tampering, alteration or substitution by accident or otherwise. (People *vs*. Nepomuceno *y* Visaya, G.R. No. 216062, Sept. 19, 2018) p. 356

CONSPIRACY

Existence of — Conspiracy takes two forms; the first is the express form, which requires proof of an actual agreement among all the co-conspirators to commit the crime; however, conspiracies are not always shown to have been expressly agreed upon; the second form, the implied conspiracy; an implied conspiracy exists when two or more persons are shown to have aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent, were in fact connected and cooperative, indicating closeness of personal association and a concurrence of sentiment; implied conspiracy is proved through the mode and manner of the commission of the offense, or from the acts of the accused before, during and after the commission of the crime indubitably pointing to a joint purpose, a concert of action and a community of interest. (People *vs*. Evasco *y* Nugay, G.R. No. 213415, Sept. 26, 2018) p. 612

—— Each performed specific acts with such close coordination as to indicate beyond reasonable doubt a common criminal design or purpose. (People *vs*. Matutina *y* Maylas, G.R. No. 227311, Sept. 26, 2018) p. 664

—— Exists when two or more persons come to an agreement concerning the commission of a felony, and decide to commit it; conspiracy must be established, not by conjecture, but by positive and conclusive evidence, direct or circumstantial. (People *vs*. Evasco *y* Nugay, G.R. No. 213415, Sept. 26, 2018) p. 612

CONTRACTS

Void contracts — A fundamental characteristic of void or inexistent contracts is that the action for the declaration of their inexistence does not prescribe; nor may the right

to set up the defense of their inexistence or absolute nullity be waived or renounced; void contracts are equivalent to nothing and are absolutely wanting in civil effects; they cannot be validated either by ratification or prescription. (Cruz *vs*. City of Makati, G.R. No. 210894, Sept. 12, 2018) p. 92

— A contract is void if one of the essential requisites of contracts under Art. 1318 of the New Civil Code is lacking; consent, being one of these requisites, is vital to the existence of a contract and where it is wanting, the contract is non-existent; for juridical entities, consent is given through its board of directors. (Ayala Land, Inc. *vs*. ASB Realty Corp., G.R. No. 210043, Sept. 26, 2018) p. 590

CORPORATIONS

Corporate officers — Acts done by the corporate officers beyond the scope of their authority cannot bind the corporation unless it has ratified such acts expressly or is estopped from denying them. (Ayala Land, Inc. *vs*. ASB Realty Corp., G.R. No. 210043, Sept. 26, 2018) p. 590

Doctrine of apparent authority — Although the general rule is that "no person, not even its officers, can validly bind a corporation" without the authority of the corporation's board of directors; this Court has recognized instances where third persons' actions bound a corporation under the doctrine of apparent authority or ostensible agency; it is a species of the doctrine of estoppel; Art. 1431 of the Civil Code provides that through estoppel, an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon. (Ayala Land, Inc. *vs*. ASB Realty Corp., G.R. No. 210043, Sept. 26, 2018) p. 590

— Inasmuch as a corporate president is often given general supervision and control over corporate operations, the strict rule that said officer has no inherent power to act

for the corporation is slowly giving way to the realization that such officer has certain limited powers in the transaction of the usual and ordinary business of the corporation; in the absence of a charter or by law provision to the contrary, the president is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties. (*Id*.)

Intra-corporate controversy — In order that the SEC (now the RTC) can take cognizance of a case, the controversy must pertain to any of the following relationships: (a) between the corporation, partnership, or association and the public; (b) between the corporation, partnership, or association and its stockholders, partners, members, or officers; (c) between the corporation, partnership, or association and the State as far as its franchise, permit, or license to operate is concerned; and (d) among the stockholders, partners, or associates themselves; however, not every conflict between a corporation and its stockholders involves corporate matters; concurrent factors, such as the status or relationship of the parties, or the nature of the question that is the subject of their controversy, must be considered in determining whether the SEC (now the RTC) has jurisdiction over the controversy. (Tumagan *vs*. Kairuz, G.R. No. 198124, Sept. 12, 2018) p. 58

Powers — A corporation acts through its Board of Directors and not through its controlling shareholders. (Ayala Land, Inc. *vs*. ASB Realty Corp., G.R. No. 210043, Sept. 26, 2018) p. 590

— A party dealing with the president of a corporation is entitled to assume that he has the authority to enter, on behalf of the corporation, into contracts that are within the scope of the powers of said corporation and that do not violate any statute or rule on public policy. (*Id*.)

COURT OF TAX APPEALS

Jurisdiction — Notwithstanding the petitioner's having filed its judicial claim without waiting for the decision of the respondent or for the expiration of the 120-day mandatory period, the CTA could still take cognizance of the claims because they were filed within the period exempted from the mandatory and jurisdictional 120-30 period rule; as a result, the case has to be remanded to the CTA in Division for further proceedings on the claim for refund of the petitioner's input VAT for the second, third and fourth quarters of taxable year 2002. (Kepco Ilijan Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 205185, Sept. 26, 2018) p. 577

COURT PERSONNEL

Misconduct — Misconduct has been defined as a "transgression of some established and definite rule of action"; it includes the unlawful behavior or gross negligence of a public officer; penalty of dismissal, when warranted; gross misconduct is characterized by a "clear intent to violate the law" or a blatant disregard of some established rule; the conduct and behavior of every person connected with the dispensation of justice, from a presiding judge to staff, must always be characterized with propriety and decorum; respondent's reprehensible acts failed to meet this standard; penalty. (AAA *vs*. Salazar, A.M. No. HOJ-08-02, Oct. 2, 2018) p. 816

Suspension — An employee must be excused from the consequences of his erroneous interpretation of the court's resolution, absent fault on his/her part and in the absence of showing that he/she was in bad faith or motivated by malice. (Re: Habitual Tardiness of Clerk III John B. Benedito, OCC, RTC, Olongapo City, Zambales, A.M. No. P-17-3740 [Formerly A.M. No. 16-04-89-RTC], Sept. 19, 2018) p. 295

— Aside from temporary cessation of work, suspension also carries with it other accessory penalties; suspension of one day or more is considered as a gap in the continuity

of service; during the period of suspension, the employee is also not entitled to all monetary benefits including leave credits; the penalty of suspension carries with it disqualification from promotion corresponding to the period of suspension. (*Id*.)

DAMAGES

Payment of — Petitioners "should be made liable for damages in the form of rent or reasonable compensation for the occupation of the properties not only from the time of the last demand but starting from the time they have been occupying the subject properties without paying for its rent". (Muller *vs*. PNB, G.R. No. 215922, Oct. 1, 2018) p. 719

DENIAL

Defense of — Denial is a self-serving negative evidence, which cannot be given greater weight than that of the declaration of a credible witness who testifies on affirmative matters. (People *vs*. Damayo *y* Jaime, G.R. No. 232361, Sept. 26, 2018) p. 676

Existence of — The direct, positive and categorical testimony of the prosecution witnesses, absent any showing of ill-motive, prevails over the defense of denial. (People *vs*. Matutina *y* Maylas, G.R. No. 227311, Sept. 26, 2018) p. 664

DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT ACT OF 1990 (R.A. NO. 6975)

Application of — Summary dismissals from the service imposed by the Chief of the PNP under Sec. 42 of R.A. 6975, as amended, are immediately executory. (Police Dir. Gen. Marquez *vs*. PO2 Mayo, G.R. No. 218534, Sept. 17, 2018) pp. 179-180

Finality of disciplinary action — The provision of law governing the finality of disciplinary actions against police officers is Sec. 45 of R.A. No. 6975, as amended, also known as the Department of Interior and Local Government Act of 1990; Sec. 45 of R.A. No. 6975, as amended, provides

that a disciplinary action imposed upon a member of the PNP shall be final and executory, and disciplinary actions are appealable only if it involves either a demotion or dismissal from the service; the second proviso which renders disciplinary actions involving demotion or dismissal from the service imposed by the Chief of the PNP qualifies the general statement that disciplinary actions imposed upon a member of the PNP is final and executory. (Police Dir. Gen. Marquez *vs*. PO2 Mayo, G.R. No. 218534, Sept. 17, 2018) pp. 179-180

EJECTMENT

Action for — A summary proceeding designed to provide expeditious means to protect the actual possession or the right to possession of the property involved; the sole question for resolution in the case is the physical or material possession (possession *de facto*) of the property in question, and neither a claim of juridical possession (possession *de jure*) nor an averment of ownership by the defendant can outrightly deprive the trial court from taking due cognizance of the case; even if the question of ownership is raised in the pleadings, the court may pass upon the issue but only to determine the question of possession especially if the question of ownership is inseparably linked with the question of possession. (Sps. Sanchez *vs*. Divinagracia *Vda*. *De* Aguilar, G.R. No. 228680, Sept. 17, 2018) p. 197

EVIDENCE

Admissibility of — Admissibility of evidence should not be confused with its probative value; admissibility refers to the question of whether certain pieces of evidence are to be considered at all, while probative value refers to the question of whether the admitted evidence proves an issue; a particular item of evidence may be admissible, but its evidentiary weight depends on judicial evaluation within the guidelines provided by the rules of evidence. (Tabuada *vs*. Tabuada, G.R. No. 196510, Sept. 12, 2018) p. 33

—— Although documentary evidence may be preferable as proof of a legal relationship, other evidence of the relationship that are competent and relevant may not be excluded. (*Id*.)

—— Under the Rules of Court, evidence, as the means of ascertaining in a judicial proceeding the truth respecting a matter of fact, may be object, documentary, and testimonial; it is required that evidence, to be admissible, must be relevant and competent. (*Id*.)

Best evidence rule —— Provides that the court shall not receive any evidence that is merely substitutionary in its nature, such as photocopies, as long as the original evidence can be had; absent a clear showing that the original writing has been lost, destroyed or cannot be produced in court, the photocopy must be disregarded, being unworthy of any probative value and being an inadmissible piece of evidence. (IVQ Land Holdings, Inc. *vs*. Barbosa, G.R. No. 193156, Sept. 26, 2018) p. 542

Opinion of expert witness —— No error could also be imputed against the RTC's and the CA's denial to admit Dean Pangalangan's testimony, supposedly as an expert witness; *Edwin Tabao y Perez v. People of the Philippines*, cited; Sec. 49, Rule 130 of the Revised Rules of Court states that the opinion of a witness on a matter requiring special knowledge, skill, experience or training, which he is shown to possess, may be received in evidence; the use of the word "may" signifies that the use of opinion of an expert witness is permissive and not mandatory on the part of the courts. (Tordesillas *vs*. Hon. Puno, G.R. No. 210088, Oct. 1, 2018) pp. 699-700

Preponderance of evidence —— Preponderance of evidence is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term 'greater weight of the evidence' or 'greater weight of the credible evidence; preponderance of evidence is a phrase which, in the last analysis, means probability of the truth; it is evidence which is more convincing to the court as worthier of belief than that which is offered

in opposition thereto. (Cu *vs*. Ventura, G.R. No. 224567, Sept. 26, 2018) p. 650

— The preponderance of evidence, the rule that is applicable in civil cases, is also known as the greater weight of evidence; there is a preponderance of evidence when the trier of facts is led to find that the existence of the contested fact is more probable than its nonexistence; the rule requires the consideration of all the facts and circumstances of the cases, regardless of whether they are object, documentary, or testimonial. (Tabuada *vs*. Tabuada, G.R. No. 196510, Sept. 12, 2018) p. 33

Substantial evidence — In administrative cases, substantial evidence is required to sustain a finding of culpability, that is, such amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (Phil. Nat'l. Police-Criminal Investigation and Detection Group (PNP-CIDG) *vs*. P/Supt. Villafuerte, G.R. Nos. 219771 & 219773, Sept. 18, 2018) p. 243

FALSIFICATION BY A PUBLIC OFFICER

Commission of — Art. 171 of the Revised Penal Code defines and penalizes the felony of falsification by a public officer; in general, the elements of Art. 171 are: first, the offender is a public officer, employee, or notary public; second, he or she takes advantage of his or her official position; and third, he or she falsifies a document by committing any of the acts enumerated in Art. 171. (Garcia-Diaz *vs*. Sandiganbayan, G.R. No. 193236, Sept. 17, 2018) p. 127

— Making untruthful statements in a narration of facts, the elements are: first, the offender makes in a public document untruthful statements in a narration of facts; second, the offender has a legal obligation to disclose the truth of the facts narrated by him or her; and, third, the facts that he or she narrated are absolutely false; to be convicted under Art. 171, the public officer must have taken advantage of his or her official position to commit the falsification either because he or she has the duty to make or prepare or otherwise to intervene in the

preparation of a document, or because he or she has the official custody of the falsified document. (*Id*.)

GUIDELINES ON THE CONDUCT OF ELECTIONS OF JUDGES' ASSOCIATIONS (A.M. NO. 07-4-17-SC)

Section 4(a) — A candidate is prohibited from distributing campaign materials other than his *curriculum vitae* or biodata and acceptable flyers. (Office of the Court Administrator *vs*. Judge Aquino, A.M. No. RTJ-15-2413, Sept. 25, 2018) p. 459

Section 4(d) — The Guidelines prohibit the candidate from providing free room accommodations to the judges, which in its plain or ordinary sense means that the room accommodations would have entirely been without charge. (Office of the Court Administrator *vs*. Judge Aquino, A.M. No. RTJ-15-2413, Sept. 25, 2018) p. 459

Section 5 — Officials of the courts under the Judiciary and the Office of the Court Administrator shall not, directly or indirectly, intervene in the elections of the judges' associations or engage in any partisan election activity. (Office of the Court Administrator *vs*. Judge Aquino, A.M. No. RTJ-15-2413, Sept. 25, 2018) p. 459

Section 7 — Failure by any member of the judges' association to observe or comply with the provisions of this Resolution shall constitute a serious administrative offense and shall be dealt with in accordance with Rule 140 of the Revised Rules of Court; court officials and personnel who violate provisions of the Resolution shall be administratively liable and be proceeded against in conformity with existing Supreme Court and Civil Service rules and regulations. (Office of the Court Administrator *vs*. Judge Aquino, A.M. No. RTJ-15-2413, Sept. 25, 2018) p. 459

HOMICIDE

Commission of — Considering that the numerical superiority of the assailants could not be considered as the aggravating circumstance of abuse of superior strength that would qualify the killing, the crime was homicide, not murder.

(People *vs*. Evasco *y* Nugay, G.R. No. 213415, Sept. 26, 2018) p. 612

Frustrated homicide — The following elements of frustrated homicide were proved during trial: (1) the accused intended to kill Bernardo as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstances for murder under Art. 248 of the RPC exist. (People *vs*. Marzan *y* Lutan, G.R. No. 207397, Sept. 24, 2018) p. 395

HUMAN RELATIONS

Prejudicial question — Generally, a prejudicial question comes into play only in a situation where a civil action and a criminal action are both pending and there exists in the former an issue which must be preemptively resolved before the criminal action may proceed because the resolution of the civil action is determinative *juris et de jure* of the guilt or innocence of the accused in the criminal case; where the rights of parties to an action cannot be properly determined until the questions raised in another action are settled, the former should be stayed. (Alsons Dev't. and Investment Corp. *vs*. Heirs of Romeo D. Confesor, G.R. No. 215671, Sept. 19, 2018) p. 342

INHIBITION

Bias or partiality — Mere imputation of bias or partiality is not enough ground for inhibition; there must be extrinsic evidence of malice or bad faith on the judge's part; the evidence must be clear and convincing to overcome the presumption that a judge will undertake his/her noble role to dispense justice according to law and evidence without fear or favor. (Office of the Court Administrator *vs*. Judge Aquino, A.M. No. RTJ-15-2413, Sept. 25, 2018) p. 459

INJUNCTION

Injunctive writ — To be entitled to the injunctive writ, petitioners must show that: (1) there exists a clear and unmistakable

right to be protected; (2) this right is directly threatened by an act sought to be enjoined; (3) the invasion of the right is material and substantial; and (4) there is an urgent and paramount necessity for the writ to prevent serious and irreparable damage. (Tordesillas *vs*. Hon. Puno, G.R. No. 210088, Oct. 1, 2018) pp. 699-700

INTERESTS

Monetary interest — Anent monetary interest, it is an elementary rule that no interest shall be due unless it has been expressly stipulated in writing; in this case, no monetary interest may be imposed on the loan obligation, considering that there was no written agreement expressly providing for such. (Odiamar *vs*. Valencia, G.R. No. 213582, Sept. 12, 2018) p. 122

Types of interest — There are two (2) types of interest, namely, monetary interest and compensatory interest; monetary interest is the compensation fixed by the parties for the use or forbearance of money; compensatory interest is that imposed by law or by the courts as penalty or indemnity for damages; the right to recover interest arises only either by virtue of a contract (monetary interest) or as damages for the delay or failure to pay the principal loan on which the interest is demanded (compensatory interest). (Odiamar *vs*. Valencia, G.R. No. 213582, Sept. 12, 2018) p. 122

JUDGES

Liability of — Not every error or mistake that a judge commits in the performance of his duties renders him liable, unless he is shown to have acted in bad faith or with deliberate intent to do an injustice; to hold otherwise would be to render judicial office untenable, for no one called upon to try the facts or interpret the law in the process of administering justice can be infallible in his judgment. (Office of the Court Administrator *vs*. Judge Ante, Jr., A.M. No. MTJ-12-1814 [Formerly OCA IPI No. 10-2324-MTJ], Sept. 19, 2018) p. 301

New Code of Judicial Conduct — Judge's booking of hotel accommodations for the PJA members, although done in good faith or with the best intentions, could be easily misconstrued and politicized during the period of election of PJA officers to be intended to further Judge's candidacy; judges shall avoid impropriety and the appearance of impropriety in all of their activities; a judge must comport himself/herself in a manner that his/her conduct must be free of a whiff of impropriety, not only with respect to the performance of his/her official duties but also as to his/her behavior outside his/her *sala* and as a private individual. (Office of the Court Administrator *vs*. Judge Aquino, A.M. No. RTJ-15-2413, Sept. 25, 2018) p. 459

Simple neglect of duty — Means the failure of an employee official to give proper attention to a task expected of him either signifying a disregard of a duty resulting from carelessness or indifference. (Office of the Court Administrator *vs*. Judge Ante, Jr., A.M. No. MTJ-12-1814 [Formerly OCA IPI No. 10-2324-MTJ], Sept. 19, 2018) p. 301

JUDGMENTS

Annulment of judgment — A remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud; its objective is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. (Sps. Sanchez *vs*. Divinagracia *Vda. De* Aguilar, G.R. No. 228680, Sept. 17, 2018) p. 197

— An action for annulment of judgment based on lack of jurisdiction must be brought before the same is barred by laches or estoppel; laches is the failure or neglect for an unreasonable and unexplained length of time to do that which by exercising due diligence could nor should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a

presumption that the party entitled to assert it either has abandoned it or declined to assert it; estoppel precludes a person who has admitted or made a representation about something as true from denying or disproving it against anyone else relying on his admission or representation. (*Id*.)

Conclusiveness of judgment — Although the parties are not exactly the same, the concept of conclusiveness of judgment still applies because jurisprudence does not dictate absolute identity but only substantial identity of parties; there is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case. (Almagro *vs*. Phil. Airlines, Inc., G.R. No. 204803, Sept. 12, 2018) p. 71

— *Res judicata* under the concept of conclusiveness of judgment is embodied in the third paragraph of Sec. 47, Rule 39 of the Rules of Civil Procedure; otherwise known as "preclusion of issues" or "collateral *estoppel*," the doctrine of conclusiveness of judgment bars the relitigation of any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits and conclusively settled by the judgment therein. (*Id*.)

— This applies to the parties and their privies regardless of whether the claim, demand, purpose, or subject matter of the two actions is the same; if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; conclusiveness of judgment applies where there is identity of parties in the first and second cases, but there is no identity of causes of action; conclusiveness of judgment bars the relitigation of particular facts or

issues in another litigation between the same parties on a different claim or cause of action. (*Id*.)

Doctrine of immutability of judgments — The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid cornerstone in the dispensation of justice by the courts; the doctrine of immutability and unalterability serves a two-fold purpose, namely: (a) to avoid delay in the administration of justice and, thus, procedurally, to make orderly the discharge of judicial business; and (b) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. (Sps. Sanchez *vs*. Divinagracia *Vda. De* Aguilar, G.R. No. 228680, Sept. 17, 2018) p. 197

—— The doctrine of immutability of judgment provides that once a final judgment is executory, it becomes immutable and unalterable; it cannot be modified in any respect by any court; the purpose of the doctrine is *first*,to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business, and *second*, to put an end to judicial controversies, at the risk of occasional errors, which is precisely why courts exist. (Citibank N.A. *vs*. Andres, G.R. No. 197074, Sept. 12, 2018) p. 48

JURISDICTION

Distinguished from exercise of jurisdiction — Jurisdiction is not the same as the exercise of jurisdiction; as distinguished from the exercise of jurisdiction, jurisdiction is the authority to decide a cause, and not the decision rendered therein; where there is jurisdiction over the person and the subject matter, the decision on all other questions arising in the case is but an exercise of the jurisdiction; and the errors which the court may commit in the exercise of jurisdiction are merely errors of judgment which are the proper subject of an appeal. (Sps. Sanchez *vs*.

Divinagracia *Vda. De* Aguilar, G.R. No. 228680, Sept. 17, 2018) p. 197

Jurisdiction over the subject matter — The basic rule is that the jurisdiction of a court over the subject matter is determined from the allegations in the complaint, the law in force at the time the complaint is filed, and the character of the relief sought, irrespective of whether the plaintiff is entitled to all or some of the claims averred; jurisdiction over the subject matter is not affected by the pleas or the theories set up by the defendant in the answer or motion to dismiss; otherwise, jurisdiction becomes dependent almost entirely upon the whims of the defendant. (Malabanan *vs*. Rep. of the Phils., G.R. No. 201821, Sept. 19, 2018) p. 333

Over the subject matter and over the parties — The power and authority of the tribunal to hear, try and decide a case and the lack thereof refers to either lack of jurisdiction over the person of the defending party or over the subject matter of the action; lack of jurisdiction or absence of jurisdiction presupposes that the court should not have taken cognizance of the complaint because the law or the Constitution does not vest it with jurisdiction over the subject matter; jurisdiction over the person of the defendant or respondent is acquired by voluntary appearance or submission by the defendant/respondent to the court, or by coercive process issued by the court to such party through service of summons; jurisdiction over the subject matter of the claim is conferred by law and is determined by the allegations of the complaint and the relief prayed for. (Sps. Sanchez *vs*. Divinagracia *Vda. De* Aguilar, G.R. No. 228680, Sept. 17, 2018) p. 197

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Commission of — In order that the accused can be convicted of kidnapping and serious illegal detention, the prosecution must prove beyond reasonable doubt all the elements of the crime, namely: (a) the offender is a private individual; (b) he kidnaps or detains another, or in any manner deprives the latter of his liberty; (c) the act of detention

or kidnapping must be illegal; and (d) in the commission of the offense any of the following circumstances is present: (1) the kidnapping or detention lasts for more than three days; (2) it is committed by simulating public authority; (3) any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or (4) the person kidnapped or detained is a minor, female, or a public officer. (People *vs*. Damayo *y* Jaime, G.R. No. 232361, Sept. 26, 2018) p. 676

— The curtailment of the victim's liberty need not involve any physical restraint upon the latter's person and it is not necessary that the offender kept the victim in an enclosure or treated him harshly; the crime of serious illegal detention is committed by detaining a person or depriving him in any manner of his liberty; Its essence is the actual deprivation of the victim's liberty; coupled with indubitable proof of the intent of the accused to effect such deprivation. (*Id*.)

— What is controlling is the act of the accused in detaining the victim against his will after the offender is able to take the victim in his custody; it is settled that the carrying away of the victim can either be made forcibly or fraudulently. (*Id*.)

KIDNAPPING FOR RANSOM

Commission of — Actual payment of ransom is not necessary for the crime to be committed; it is enough that the kidnapping was committed for the purpose of extorting ransom. (People *vs*. Damayo *y* Jaime, G.R. No. 232361, Sept. 26, 2018) p. 676

LAND REGISTRATION

Certificate of title — The correctness or incorrectness of the entries in a party's certificate of title covering a particular property does not directly translate to the validity or invalidity of said party's ownership or title to the property; registering a piece of land under the Torrens System does not create or vest title, because registration is not a mode of acquiring ownership; a certificate of title is

merely an evidence of ownership or title over the particular property described therein; its issuance in favor of a particular person does not foreclose the possibility that the real property may be co-owned with persons not named in the certificate, or that it may be held in trust for another person by the registered owner. (IVQ Land Holdings, Inc. *vs*. Barbosa, G.R. No. 193156, Sept. 26, 2018) p. 542

Torrens system — One who deals with property registered under the Torrens System is charged with notice only of such burdens and claims as are annotated on the title; the law protects to a greater degree a purchaser who buys from the registered owner himself. (Lifestyle Redefined Realty Corp. *vs*. Heirs of Dennis A. Uvas, G.R. No. 217716, Sept. 17, 2018) p. 164

LEASE

Implied new lease — Under Art. 1670 of the Civil Code, "if at the end of the contract the lessee should continue enjoying the thing leased for fifteen days with the acquiescence of the lessor, and unless a notice to the contrary by either party has previously been given, it is understood that there is an implied new lease, not for the period of the original contract, but for the time established in Arts. 1682 and 1687; the other terms of the original contract shall be revived." (Muller *vs*. PNB, G.R. No. 215922, Oct. 1, 2018) p. 719

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Appropriation ordinance — According to *Quisumbing*, if the project is already provided for in the appropriation ordinance in sufficient detail, then no separate authorization is necessary; on the other hand, if the project is couched in general terms, then a separate approval by the Sangguniang Bayan is required; elaborated in *Verceles, Jr. v. Commission on Audit*; to require the local chief executive to secure another authorization from the Sangguniang Bayan for this line-item, despite it being specifically identified and subsequently approved,

is antithetical to a responsive local government envisioned in the Constitution and the Local Government Code. (Germar *vs*. Legaspi, G.R. No. 232532, Oct. 1, 2018) p. 745

MITIGATING CIRCUMSTANCES

Voluntary surrender — The consideration of any mitigating circumstance in accused-appellant's favor would be superfluous because, although the imposable penalty under Art. 248 of the Revised Penal Code is reclusion perpetua to death, the prohibition to impose the death penalty pursuant to R.A. No. 9346 rendered *reclusion perpetua* as the only penalty for murder, which penalty, being indivisible, could not be graduated in consideration of any modifying circumstances. (People *vs*. Marzan *y* Lutan, G.R. No. 207397, Sept. 24, 2018) p. 395

MORTGAGES

Contract of — Under Art. 2085 of the Civil Code, a mortgage, to be valid, must have the following requisites, namely: (a) that it be constituted to secure the fulfillment of a principal obligation; (b) that the mortgagor be the absolute owner of the thing mortgaged; and (c) that the person constituting the mortgage has free disposal of the property, and in the absence of the right of free disposal, that the person be legally authorized for the purpose. (Tabuada *vs*. Tabuada, G.R. No. 196510, Sept. 12, 2018) p. 33

Real estate mortgage — The status of a mortgagee in good faith does not apply where the title is still in the name of the rightful owner and the mortgagor is a different person pretending to be the owner; in such a case, the mortgagee is not an innocent mortgagee for value and the registered owner will generally not lose his title. (Tabuada *vs*. Tabuada, G.R. No. 196510, Sept. 12, 2018) p. 33

MOTIONS

Notice of hearing — Every written motion, except those that the court may act upon without prejudicing the rights of

an adverse party, is to be set for hearing by its proponent; the notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion. (Zosa *vs*. Consilium, Inc., G.R. No. 196765, Sept. 19, 2018) p. 318

MURDER

Commission of — The essential requisites of murder that the Prosecution must establish beyond reasonable doubt are, 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 Art. 248 of the *Revised Penal Code*; and (4) that the killing was not parricide or infanticide. (People *vs*. Evasco *y* Nugay, G.R. No. 213415, Sept. 26, 2018) p. 612

NOTARY PUBLIC

Duties — A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein; the purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed. (Akira Yoshimura *vs*. Atty. Panagsagan, A.C. No. 10962 [Formerly CBD Case No. 10-2763], Sept. 11, 2018) p. 16

OMBUDSMAN

Rules of Procedure of the Office of the Ombudsman — A decision of the Ombudsman in an administrative case is immediately executory and that an appeal shall not stop such decision from being executed as a matter of course; an appeal shall not stop the decision from being executory; in case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal; a

decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. (Office of the Ombudsman *vs*. Pacuribot, G.R. No. 193336, Sept. 26, 2018) p. 564

PARTIES

Indispensable parties — A party in interest without whom no final determination can be had of an action and who shall be joined either as plaintiffs or defendants; the presence of indispensable parties is necessary to vest the court with jurisdiction. (Tumagan *vs*. Kairuz, G.R. No. 198124, Sept. 12, 2018) p. 58

— The joinder of indispensable parties is mandatory and the responsibility of impleading all the indispensable parties rests on the plaintiff; without the presence of indispensable parties to the suit, the judgment of the court cannot attain real finality; otherwise stated, the absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act not only as to the absent party but even as to those present. (*Id*.)

Parties in a civil action — Rules of Court mandates that only natural or juridical persons, or entities authorized by law may be parties in a civil action; non-compliance with this requirement renders a case dismissible on the ground of lack of legal capacity to sue**,** which refers to a plaintiff's general disability to sue**,** such as on account of minority, insanity, incompetence, lack of juridical personality or any other general disqualifications of a party. (Alliance of Quezon City Homeowners' Assoc., Inc. *vs*. Quezon City Gov't., G.R. No. 230651, Sept. 18, 2018) p. 277

PERSONS AND FAMILY RELATIONS

Disrespect to the dead — The Civil Code provision under Art. 309 on showing "disrespect to the dead" as a ground for the family of the deceased to recover moral and material damages, being under the title of Funerals, obviously envisions the commission of the disrespect during the

period of mourning over the demise of the deceased or on the occasion of the funeral of the mortal remains of the deceased. (Tabuada *vs*. Tabuada, G.R. No. 196510, Sept. 12, 2018) p. 33

PRESUMPTIONS

Presumption of regularity in the performance of official duty — The presumption of regularity in the performance of duty could not be stronger or firmer than the presumption of innocence favoring the accused; otherwise, the constitutional guarantee of being presumed innocent would become subordinate to a mere rule of evidence primarily devised for judicial convenience. (People *vs*. Peromingan *y* Geroche, G.R. No. 218401, Sept. 24, 2018) p. 424

PUBLIC OFFICERS AND EMPLOYEES

Misconduct — Defined as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior; the misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence; as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule must be manifest in a charge of grave misconduct. (Germar *vs*. Legaspi, G.R. No. 232532, Oct. 1, 2018) p. 745

QUALIFYING CIRCUMSTANCES

Treachery — Exists when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof, which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. (People *vs*. Evasco *y* Nugay, G.R. No. 213415, Sept. 26, 2018) p. 612

— For treachery to be appreciated, therefore, the State must establish the following elements, to wit: (1) the accused

must employ means, method, or manner of execution that will ensure his safety from defensive or retaliating acts on the part of the victim, with no opportunity being given to the latter to defend himself or to retaliate; and (2) the accused must deliberately or consciously adopt such means, method, or manner of execution. (*Id*.)

—— The finding of the attendance of treachery should be based on clear and convincing evidence; the attendance of treachery cannot be presumed; the same degree of proof to dispel any reasonable doubt was required before treachery could be considered either as an aggravating or qualifying circumstance; such evidence must be as conclusive as the fact of killing itself. (People *vs*. Petalino, G.R. No. 213222, Sept. 24, 2018) p. 409

—— The sudden and unexpected attack by the aggressor on the unsuspecting victim is of the essence of treachery because such manner of attack deprives the latter of any real chance to defend himself and at the same time ensures the commission of the assault without risk to the aggressor, and without the slightest provocation on the part of the victim. (People *vs*. Evasco *y* Nugay, G.R. No. 213415, Sept. 26, 2018) p. 612

—— There is treachery when the offender commits any of the crimes against person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make. (People *vs*. Marzan *y* Lutan, G.R. No. 207397, Sept. 24, 2018) p. 395

—— To merely state in the information that treachery was attendant is not enough because the usage of the term treachery was but a conclusion of law. (People *vs*. Petalino, G.R. No. 213222, Sept. 24, 2018) p. 409

—— Treachery is present when the offender commits any of the crimes against a person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution, without risk to

himself arising from the defense which the offended party might make; for treachery to be appreciated, therefore, the Prosecution must establish the attendance of the following essential elements, namely: (1) that the means of execution employed gave the person attacked no opportunity to defend himself or herself, or to retaliate; and (2) that the means of execution were deliberately or consciously adopted, that is, the means, method or form of execution must be shown to be deliberated upon or consciously adopted by the offender. (*Id*.)

QUIETING OF TITLE

Action to quit title — In an action to quiet title, the plaintiffs or complainants must demonstrate a legal or an equitable title to, or an interest in, the subject real property; Likewise, they must show that the deed, claim, encumbrance or proceeding that purportedly casts a cloud on their title is in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy. (IVQ Land Holdings, Inc. *vs*. Barbosa, G.R. No. 193156, Sept. 26, 2018) p. 542

— Whenever there is cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet title. (*Id*.)

RAPE

Commission of — The absence of proof of hymenal laceration is inconsequential; it has been invariably held that an intact hymen does not negate a finding that the victim was raped; penetration of the penis by entry into the lips of the vagina, even the briefest of contacts and without rupture or laceration of the hymen, is enough to justify a conviction for rape. (People *vs*. Matutina *y* Maylas, G.R. No. 227311, Sept. 26, 2018) p. 664

REAL ESTATE MORTGAGE LAW (ACT NO. 3135)

Extrajudicial foreclosure — Republication of the notice of sale in the manner prescribed by Act No. 3135 is necessary for the validity of a postponed extrajudicial foreclosure sale; foreclosure sale which deviates from the statutory requirements constitutes a jurisdictional defect invalidating the sale; the Court is mindful of the purpose of publication of the notice of auction sale, which is to give the foreclosure sale a reasonably wide publicity such that those interested might attend the public sale. (Lifestyle Redefined Realty Corp. *vs*. Heirs of Dennis A. Uvas, G.R. No. 217716, Sept. 17, 2018) p. 164

ROBBERY

Commission of — For the requisite of violence to obtain in cases of simple robbery, the victim must have sustained less serious physical injuries or slight physical injuries in the occasion of the robbery; there should be some kind of violence exerted to accomplish the robbery, as when: snatching money from the hands of the victim and pushing her to prevent her from recovering the seized property; where there is nothing in the evidence to show that some kind of violence had been exerted to accomplish the snatching, and the offended party herself admitted that she did not feel anything at the time her watch was snatched from her left wrist, the crime committed is not robbery but only simple theft. (Ablaza *y* Caparas *vs*. People, G.R. No. 217722, Sept. 26, 2018) p. 627

— Material violence is not indispensable for there to be intimidation, intense fear produced in the mind of the victim which restricts or hinders the exercise of the will is sufficient. (*Id*.)

— The elements of robbery are thus: (1) there is taking of personal property; (2) the personal property belongs to another; (3) the taking is with *animus lucrandi*; and (4) the taking is with violence against or intimidation of persons or with force upon things; while the fourth requisite mentions "with violence against or intimidation

of persons" or "force upon things", only the phrase "with violence against or intimidation of persons" applies to the kinds of robbery falling under Section One, Chapter One, Title Ten of the RPC; the phrase "with force upon things", on the other hand, applies to the kinds of robbery provided under Section Two thereof. (*Id*.)

ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS

Commission of — Grab means to take or seize by or as if by a sudden motion or grasp; to take hastily; the same does not suggest the presence of violence or physical force in the act; the connotation is on the suddenness of the act of taking or seizing which cannot be readily equated with the employment of violence or physical force. (Ablaza *y* Caparas *vs*. People, G.R. No. 217722, Sept. 26, 2018) p. 627

SALES

Contract of sale — As a rule, an ordinary buyer may rely on the certificate of title issued in the name of the seller, and need not investigate beyond what the title of the subject property states; in order to be considered a buyer in good faith, a person must buy the property without notice of a right or interest of another party, and pay the purchase price at the time of sale or before notice of a claim on the property. (Lifestyle Redefined Realty Corp. *vs*. Heirs of Dennis A. Uvas, G.R. No. 217716, Sept. 17, 2018) p. 164

Contract of sale — The ownership of the thing sold is acquired by the vendee from the moment it is delivered to him in any of the ways specified in Arts. 1497 to 1501; Delivery may either be actual or constructive. (Lifestyle Redefined Realty Corp. *vs*. Heirs of Dennis A. Uvas, G.R. No. 217716, Sept. 17, 2018) p. 164

SEARCHES AND SEIZURE

Searches incidental to lawful arrests — Normally, searches and seizures are unreasonable unless authorized by a

validly issued search warrant or warrant of arrest; however, searches incidental to lawful arrests, as in this case, are allowed even without a warrant. (People *vs*. Suico *y* Acope, G.R. No. 229940, Sept. 10, 2018) p. 1

SHERIFFS

Liability of — She was administratively liable for inefficiency and incompetence in the performance of her official duties as the sheriff; the omission of such important and significant details was apparently deliberate, and necessarily invalidated the notice and the ensuing sheriff's sale of the property; the notice was intended to serve the public interest attendant to the sheriff's sale in order to widely disseminate the date, time, and place of the execution sale of the real property subject of the notice not only to avoid the forced disposition through the auction from becoming a fire sale to the prejudice of the owner but also to invite the public to participate and compete with the judgment creditor as far as bidding for the property during the sheriff's auction was concerned. (Duque *vs*. Bolus-Romero, A.M. No. P-16-3507 [Formerly OCA IPI No. 14-4365-P], Sept. 25, 2018) p. 451

STARE DECISIS

Principle of — The time-honored principle of *stare decisis et non quieta movere* literally means "to adhere to precedents, and not to unsettle things which are established"; the rule of *stare decisis* is a bar to any attempt to relitigate the same issue 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; It is one of policy grounded on the necessity for securing certainty and stability of judicial decisions. (Almagro *vs*. Phil. Airlines, Inc., G.R. No. 204803, Sept. 12, 2018) p. 71

STATUTORY RAPE

Elements — Statutory Rape under Art. 266-A (1) (d) of the RPC is committed by having sexual intercourse with a woman below twelve (12) years of age regardless of her

consent, or lack of it, to the sexual act; proof of force, threat, or intimidation, or consent of the offended party is unnecessary as these are not elements of Statutory Rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of twelve (12); the prosecution must establish the following: (*a*) the age of the complainant; (*b*) the identity of the accused; and (*c*) the sexual intercourse between the accused and the complainant; these acts of Rape shall be qualified pursuant to Art. 266-B (1) of the RPC if: (*i*) the victim is under eighteen (18) years of age; and (ii) 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. (People *vs*. De Guzman *y* Buhay, G.R. No. 234190, Oct. 1, 2018) p. 759

Penalty — Sec. 3 of R.A. No. 9346 provides that "persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended"; pursuant thereto, and in accordance with Sec. 2 of the same law, he must be sentenced to suffer the penalty of *reclusion perpetua*, without eligibility for parole for each count of Qualified Statutory Rape. (People *vs*. De Guzman *y* Buhay, G.R. No. 234190, Oct. 1, 2018) p. 759

TAXATION

National Internal Revenue Code — A VAT-registered taxpayer claiming a refund or tax credit of excess and unutilized input VAT must file the administrative claim within two years from the close of the taxable quarter when the sales were made; the resolution of when to reckon the two-year prescriptive period for the filing an administrative claim for refund or credit of unutilized input VAT; effectivity of the pronouncements in *Atlas* and *Mirant* on reckoning the two-year prescriptive period, elucidating that: *(a)* the *Atlas* pronouncement was effective only

from its promulgation on June 8, 2007 until its abandonment on September 12, 2008 through *Mirant*; and *(b)* prior to the promulgation of the ruling in *Atlas*, Sec. 112 (A) should be applied following the *verba legis* rule adopted in *Mirant*. (Kepco Ilijan Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 205185, Sept. 26, 2018) p. 577

—— The mandatory and jurisdictional nature of the 120-30 period rule did not apply to claims for refund that were prematurely filed during the interim period from the issuance of BIR Ruling No. DA-489-03 on December 10, 2003 to October 6, 2010 when the *Aichi* doctrine was adopted; the exemption was premised on the fact that prior to the promulgation of *Aichi*, there was an existing interpretation laid down in BIR Ruling No. DA-489-03 wherein the BIR expressly ruled that the taxpayer need not wait for the expiration of the 120-day period before it could seek judicial relief with the CTA. (*Id*.)

—— The proper reckoning date in this case, pursuant to Sec. 112(A) of the NIRC, was the close of the taxable quarter when the relevant sales were made. (*Id*.)

Real property tax — Court must protect private property owners from undue application of the law authorizing the levy and sale of their properties for non-payment of the real property tax; this power of local government units is prone to great abuse, in that owners of valuable real property are liable to lose them on account of irregularities committed by these local government units or officials, done intentionally with the collusion of third parties and with the deliberate unscrupulous intent to appropriate these valuable properties for themselves and profit therefrom. (Cruz *vs*. City of Makati, G.R. No. 210894, Sept. 12, 2018) p. 92

—— Due process of law must be followed in tax proceedings, because a sale of land for tax delinquency is in derogation of private property and the registered owner's constitutional rights. (*Id*.)

Remedies in relation to real property tax assessments or tax ordinances –– The Local Government Code (LGC) provides two (2) remedies in relation to real property tax assessments or tax ordinances; these are: (1) Secs. 226 and 252 thereof which allow a taxpayer to question the reasonableness of the amount assessed before the city treasurer then appeal to the Local Board of Assessment Appeals; and (2) Sec. 187 thereof which allows an aggrieved taxpayer to question the validity or legality of a tax ordinance by duly filing an appeal before the Secretary of Justice before seeking judicial intervention. (Alliance of Quezon City Homeowners' Assoc., Inc. *vs*. Quezon City Gov't., G.R. No. 230651, Sept. 18, 2018) p. 277

Waiver of prescriptive period — The taxpayer has the primary responsibility for the proper preparation of the waiver of the prescriptive period for assessing deficiency taxes; the Commissioner of Internal Revenue (CIR) may not be blamed for any defects in the execution of the waiver; as a general rule a waiver of the statute of limitations that did not comply with the requisites for validity specified in RMO No. 20-90 and RDAO 01-05 was invalid and ineffective to extend the prescriptive period to assess the deficiency taxes; however, due to peculiar circumstances obtaining, the Court treated the case as an exception to the rule, and considered the waivers concerned as valid. (Asian Transmission Corp. *vs*. Commissioner of Internal Revenue, G.R. No. 230861, Sept. 19, 2018) p. 385

THEFT

Commission of — The fourth requisite of the crime of robbery is not obtaining considering that the prosecution failed to sufficiently establish that the taking of the necklaces was with violence against or intimidation of persons; accordingly, petitioner must be held liable only for the crime of theft, not robbery. (Ablaza *y* Caparas *vs*. People, G.R. No. 217722, Sept. 26, 2018) p. 627

UNLAWFUL DETAINER

Execution of — In ejectment cases, the judgment of the RTC against the defendant-appellant is immediately executory, and is not stayed by an appeal taken therefrom, unless otherwise ordered by the RTC, or in the appellate court's discretion, suspended or modified, or supervening events occur which have brought about a material change in the situation of the parties and would make the execution inequitable; respondents failed to establish the existence of any supervening event or overriding consideration of equity in their favor, or any other compelling reason, to justify the court a quo's issuance of the assailed Orders suspending the execution of its Consolidated Decision against them pending appeal. (Maravilla *vs*. Bugarin, G.R. Nos. 226199 and 227242-54, Oct. 1, 2018) p. 734

WITNESSES

Credibility of — An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction. (People *vs*. Damayo *y* Jaime, G.R. No. 232361, Sept. 26, 2018) p. 676

—— Even the most candid witnesses oftentimes make mistakes and would fall into confused statements; inconsistencies do not shake the pedestal upon which the witness' credibility rests; on the contrary, they are taken as badges of truth rather than as *indicia* of falsehood for they manifest spontaneity and erase any suspicion of a rehearsed testimony as well as negate all doubts that the same were merely perjured; a truth-telling witness is not always expected to give an error-free testimony, considering the lapse of time and the treachery of human memory. (*Id*.)

—— Minor inconsistencies in testimony do not necessarily weaken or diminish the testimonies of witnesses who displayed consistency on material points, *i.e*., the elements of the crime and the identity of the perpetrator; instead of weakening or diminishing the testimonies, the inconsistencies should strengthen credibility because they discounted the

possibility of the witnesses being rehearsed. (People *vs*. Petalino, G.R. No. 213222, Sept. 24, 2018) p. 409

— 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; the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties. (People *vs*. Baradi *y* Velasco, G.R. No. 238522, Oct. 1, 2018) p. 808

— Testimonies of child victims are given full weight and credit, and that the testimony of children of sound mind is likely to be more correct and truthful than that of older persons. (People *vs.* Damayo *y* Jaime, G.R. No. 232361, Sept. 26, 2018) p. 676

— The assessment of credibility of witnesses is a task most properly within the domain of trial courts; the findings of the trial court carry great weight and respect due to the unique opportunity afforded them to observe the witnesses when placed on the stand; appellate courts will not overturn the factual findings of the trial court in the absence of facts or circumstances of weight and substance that would affect the result of the case. (Ablaza *y* Caparas *vs*. People, G.R. No. 217722, Sept. 26, 2018) p. 627

— The issue of credibility of witnesses is a question best addressed to the province of the trial court because of its unique position of having observed that elusive and incommunicable evidence of the witnesses' deportment on the stand while testifying and absent any substantial reason which would justify the reversal of the trial court's assessments and conclusions, the reviewing court is generally bound by the former's findings. (People *vs*. Damayo *y* Jaime, G.R. No. 232361, Sept. 26, 2018) p. 676

— The trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it

was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. (People *vs*. Matutina *y* Maylas, G.R. No. 227311, Sept. 26, 2018) p. 664

— Whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimony given in court, the former being almost invariably incomplete and oftentimes inaccurate; affidavits are usually incomplete, as these are frequently prepared by administering officers and cast in their language and understanding of what affiants have said. (People *vs*. Damayo *y* Jaime, G.R. No. 232361, Sept. 26, 2018) p. 676

— Where there is no evidence to show any dubious or improper motive why a prosecution witness should bear false witness against the accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit. (*Id*.)

— While there are inconsistencies in complainant's narration of the sexual assault in her *Sinumpaang Salaysay* and during the hearing, they only tend to strengthen rather than weaken the credibility of the complainant since they were only with respect to minor details; complainant's testimony is convincing and straightforward; in several cases, the Court ruled that testimonies of child-victims must be given full weight and credit; when a woman, especially if she is a minor, declares that she has been a victim of rape, "she says in effect all that is necessary to show that rape was committed". (AAA *vs*. Salazar, A.M. No. HOJ-08-02, Oct. 2, 2018) p. 816

Testimony of — It has been held that testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence. (People *vs*. Suico *y* Acope, G.R. No. 229940, Sept. 10, 2018) p. 1

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