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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[A.C. No. 12115. October 15, 2018]

ANITA F. ALAG, *complainant, vs.* **ATTY. JUAN C. SENUPE, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE CHARGES; COMPLAINANTS MUST SHOW IN A SATISFACTORY MANNER THE FACTS UPON WHICH THEIR CLAIMS ARE BASED; OTHERWISE, RESPONDENT-LAWYER IS NOT OBLIGED TO PROVE HIS EXCEPTION OR DEFENSE BECAUSE AN ATTORNEY ENJOYS THE LEGAL PRESUMPTION THAT HE IS INNOCENT OF THE CHARGES PROFFERED AGAINST HIM UNTIL THE CONTRARY IS PROVED, AND THAT, AS AN OFFICER OF THE COURT, HE HAS PERFORMED HIS DUTIES IN ACCORDANCE WITH HIS OATH. — ["]In administrative proceedings, complainants bear the burden of proving the allegations in their complaints by **substantial evidence**." Accordingly, complainant must show in a satisfactory manner the facts upon which their claims are based; otherwise, respondent is not obliged to prove his exception or defense. This is because an attorney enjoys the legal presumption that he is innocent of the charges proffered against him until the contrary is proved, and that, as an officer of the Court, he has performed his duties in accordance with his oath. In this case, complainant's claims

of deceit, malpractice, and gross misconduct on the part of respondent revolve around the alleged inclusion of Lot 646-B-2 in the list of properties of Salvacion's estate, and Reytaliano's takeover of the said lot through the "wits and eloquence" of respondent who purportedly knew that the lot no longer belonged to Salvacion. Complainant specifically alleged that Lot 646-B-2 was mortgaged by Salvacion to a certain Teofila, who, in turn, executed a document for the transfer of her rights to complainant for a valuable consideration. Unfortunately, however, complainant failed to attach the supporting documents to prove her claims. In fact, complainant was given several opportunities to make such submissions, and yet repeatedly failed to produce the supporting documents evidencing the alleged mortgage and transfer of rights involving Lot 646-B-2. Thus, being mere allegations that are unsupported by substantial evidence, complainant's imputations against respondent anent the inclusion of Lot 646-B-2 must fail.

2. ID.; ID.; ID.; CONFLICT OF INTEREST; A LAWYER IS PROHIBITED FROM REPRESENTING A CLIENT IF THAT REPRESENTATION WILL BE DIRECTLY ADVERSE TO ANY OF HIS PRESENT CLIENTS; NOT VIOLATED. — Essentially, "[t]he rule concerning conflict of interest prohibits a lawyer from representing a client *if that representation will be directly adverse to any of his present clients.*" In this case, there is no proof showing that respondent, by merely notarizing the said document, represented Arnulfo in the intestate proceedings. In fact, respondent did such act to the benefit of Reytaliano, who sought possession of Lot 64-B-2 as the appointed Administrator of Salvacion's estate; hence, respondent was faithfully acting in pursuit of his client's legitimate interests. And given that there is no evidence to prove that Arnulfo's Affidavit was merely wrangled from him in exchange for the dropping of his name in the direct contempt charge, the Court is hard-pressed to find any ethical violation on the part of respondent.

3. ID.; ID.; ID.; DISBARMENT PROCEEDINGS ARE EXERCISED UNDER THE SOLE JURISDICTION OF THE COURT, AND THE RECOMMENDATIONS OF THE INTEGRATED BAR OF THE PHILIPPINES IMPOSING THE PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW OR DISBARMENT ARE ALWAYS SUBJECT

TO THIS COURT'S REVIEW AND APPROVAL.— It deserves pointing out that the Investigating Commissioner merely glossed over the foregoing matter based on his opinion that the same is one which is within the competence and jurisdiction of the probate court to resolve. The Court, however, clarifies that the alleged act, while committed during the intestate proceedings, was questioned by complainant as a form of professional misconduct, which thus conjures an issue which is clearly administrative in nature and therefore, should have been passed upon during the IBP proceedings below. As jurisprudence states: The Supreme Court exercises exclusive jurisdiction to regulate the practice of law. It exercises such disciplinary functions through the IBP, but it does not relinguish its duty to form its own judgment. Disbarment proceedings are exercised under the sole jurisdiction of the [Court], and the IBP's recommendations imposing the penalty of suspension from the practice of law or disbarment are always subject to this Court's review and approval.

D E C I S I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from a Petition for Disbarment[1] dated November 4, 2009 (with attached complaint-affidavit[2] dated October 12, 2009) filed by complainant Anita F. Alag (complainant), before the Integrated Bar of the Philippines (IBP), against respondent Atty. Juan C. Senupe, Jr. (respondent) for allegedly committing acts constituting deceit, malpractice, and gross misconduct.

The Facts

Respondent is the legal counsel of Reytaliano N. Alag (Reytaliano), petitioner in Special Proceedings No. 06-8564,[3]

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[1] *Rollo*, pp. 2-7.

[2] *Id*. at 8-11.

[3] See Petition dated July 14, 2006; *id*. at 12-15.

entitled "*In the Matter of the Intestate Estate of Salvacion Novo Lopez – Petition for Letters of Administration*," pending before the Regional Trial Court of Iloilo City, Branch 29 (RTC), where complainant and her children were impleaded as heirs of the deceased Salvacion Novo Lopez (Salvacion), along with her siblings and cousins.[4]

In an Order[5] dated February 5, 2008, the RTC, with the agreement of the parties, appointed Reytaliano as the Administrator of the properties left by Salvacion, with the following obligations: (1) to identify and collate the properties owned by the decedent and submit to the RTC their respective identifying marks and titles; (2) to render an inventory of the said properties and report on their respective status; and (3) to report on whether the taxes of the properties have been duly paid.[6] After being duly sworn in,[7] Reytaliano filed, through respondent, a Motion for the Administrator to Take Over **Lot 646-B-2** and for Accounting,[8] where he alleged that the said lot had never been alienated and is still in the name of Salvacion. He further claimed that complainant and her siblings have been cultivating the said lot and appropriating the produce thereof from the time of Salvacion's death in 1992, for which they were ordered to render an accounting from the said year.[9] Thereafter, the said motion was granted in an Order[10] dated May 4, 2009.

Upon execution of the May 4, 2009 Order, the actual tiller of Lot 646-B-2, Arnulfo[11] V. Sobrevega (Arnulfo), refused to

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[4] *Id*. at 12.

[5] *Id*. at 35-36. Penned by Judge Gloria G. Madero.

[6] *Id*. at 35.

[7] See Oath of Office dated April 17, 2008; *id*. at 37.

[8] Dated February 23, 2009. *Id*. at 38-40.

[9] See *id*. at 39.

[10] *Id*. at 41.

[11] "Arnolfo" in some parts of the *rollo*.

surrender possession of the said lot, claiming that complainant had mortgaged the same to him, and that his cultivation thereof was part of the conditions of the mortgage.[12] Thus, Reytaliano filed a motion for the issuance of a writ of possession (WP Motion)[13] to oust Arnulfo from the subject lot.[14] Later, however, Arnulfo himself manifested before the RTC that he was only a paid laborer of complainant.[15] Consequently, respondent charged[16] complainant and Arnulfo with direct contempt for lying in open court and misleading the RTC into believing that Arnulfo is not a lessee nor a mortgagee.[17] Pending resolution thereof, Arnulfo executed an Affidavit[18] attesting that while he was indeed a mortgagee of the subject lot, he had already turned-over the possession of the same to Reytaliano. In the same document, Arnulfo clarified that it was actually complainant who persuaded him to contrarily manifest that he was only a paid laborer – and not a mortgagee – who worked on the said lot.[19] On the basis of the said Affidavit, respondent moved[20] for the dismissal of the WP Motion on the ground of mootness, and further, the exclusion of Arnulfo from the direct contempt charge.

Complainant then sought the disbarment[21] of respondent in Case No. 09-2552 before the IBP, claiming, *inter alia*, that:

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[12] See *rollo*, p. 43.

[13] Not attached to the *rollo.*

[14] See *rollo*, p. 48.

[15] *Id*. at 42.

[16] See Motion to Cite Defendants Anita Alag and Arnolfo Sobrevega for Direct Contempt of Court dated June 18, 2009; *id*. at 42-45.

[17] See *id*. at 44.

[18] Dated July 20, 2009. *Id*. at 48-49.

[19] See *id*. at 46.

[20] See Manifestation and Urgent Motion to Dismiss Motion for Issuance of Writ of Possession and to Exclude Arnulfo Sobrevega as Respondent in the Motion to Cite for Contempt dated July 20, 2009; *id*. at 46-47.

[21] See *id*. at 2-7.

(*a*) respondent knew about, but suppressed the fact that Lot 646-B-2 is no longer owned by Salvacion, resulting in its inclusion in the proceedings and causing confusion among the oppositors; and **(*b*)** respondent, by participating in the execution and notarization of the Affidavit of Arnulfo, dealt with a party having adverse interest to the one he is representing, which act amounts to a misconduct in the highest degree.[22]

In an Order[23] dated November 9, 2009, the IBP directed respondent to submit his answer to the petition. In lieu thereof, respondent filed a Motion for Bill of Particulars,[24] praying that, in order for him to adequately respond to the petition, complainant be ordered to produce documents evidencing the real estate mortgage, which complainant alleged[25] was executed by Salvacion in favor of a certain Teofila Soldevilla (Teofila) over Lot 646-B-2,[26] as well as the transfer of the latter's rights to complainant for a valuable consideration.[27] The said motion was granted in an Order[28] dated December 9, 2010. However, despite receipt of a copy of the said Order, *complainant failed to furnish respondent with the required documents*, prompting the IBP to issue an Order[29] dated March 30, 2011, directing complainant to explain within seven (7) days from notice, under pain of sanction in case of non-response, why she failed to comply with the December 9, 2010 Order.

Faced with complainant's continued non-compliance thereof, respondent filed a *Motion to Dismiss*,[30] arguing that the

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[22] See *id*. at 3-7.

[23] *Id*. at 50. Signed by Director for Bar Discipline Alicia A. Risos-Vidal.

[24] Dated November 23, 2009. *Id*. at 51-52.

[25] See *id*. at 3-4.

[26] See *id*. at 52.

[27] *Id*. at 51.

[28] *Id*. at 58-59. Signed by Commissioner Hector B. Almeyda.

[29] *Id*. at 60.

[30] Dated June 21, 2011. *Id*. at 63-66.

allegations in the petition show no cause of action, and that the same is nothing more than a harassment suit.[31] Despite recognizing that the said motion is a prohibited pleading, the IBP nevertheless directed complainant in an Order[32] dated June 29, 2011 to comment thereon within fifteen (15) days from notice, but still to no avail. Consequently, *the IBP issued an Order*[33] *dated March 8, 2012, allowing respondent's Motion to Dismiss to remain on record but to be treated as his answer*, and in the interest of fast tracking the case, requiring both parties to file their respective position papers within thirty (30) days from notice, without which, the matter shall thereafter be deemed submitted for report and recommendation. However, nothing was filed by either party.[34]

The IBP's Report and Recommendation

In a Report and Recommendation[35] dated March 5, 2014, the IBP Investigating Commissioner dismissed the complaint for failure of complainant to clearly establish the alleged violation of the Code of Professional Responsibility (CPR), ratiocinating that *respondent's act of allegedly misleading the RTC anent the inclusion of Lot 646-B-2, as well as his preparation of Arnulfo's Affidavit in the intestate proceedings, are "matters that are really addressed and within the competence and jurisdiction of the probate court to resolve*."[36]

Nonetheless, *respondent was faulted for not complying with the direct order to file his answer to the petition, and for filing a Motion to Dismiss*, which was a prohibited pleading — a fact which he should have known as a lawyer. He was, thus, strongly warned that a similar nonchalant attitude from him

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[31] *Id*. at 66.

[32] *Id*. at 76.

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

[34] *Id*. at 89.

[35] *Id*. at 87-91. Signed by Commissioner Hector B. Almeyda.

[36] *Id*. at 90.

shall be dealt with more seriously. He was further admonished to be more circumspect in his dealings with authorities designated to exact obedience to the CPR.[37]

In a Resolution[38] dated February 22, 2015, the IBP-Board of Governors (IBP-BOG) adopted and approved with modification the Investigating Commissioner's Report and Recommendation, meting upon respondent the penalty of suspension from the practice of law for a period of three (3) months.

Aggrieved, respondent filed a Motion for Reconsideration,[39] denying his refusal to file the required answer, and insisting that, *when the IBP treated his Motion to Dismiss as his answer, there was no more need for him to file another one*.[40] Among others, respondent argued that *the tenor of the March 8, 2012 Order directing the filing of a position paper was merely permissive, and not mandatory*, in that the parties may file their respective position papers only "if they wish to do so."[41]

In an Order[42] dated November 4, 2015, the IBP-BOG directed complainant to submit her comment thereon.

Subsequently, in a Resolution[43] dated January 27, 2017, the IBP-BOG **reversed** its earlier resolution suspending respondent from the practice of law for a period of three (3) months, and **dismissed the administrative complaint** against him for lack

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[37] See *id*. at 90-91.

[38] See Notice of Resolution in Resolution No. XXI-2015-220 issued by National Secretary Nasser A. Marohomsalic; *id*. at 86, including dorsal portion.

[39] Dated October 22, 2015. *Id*. at 92-100.

[40] See *id*. at 98.

[41] *Id*. at 97.

[42] *Id*. at 102. Signed by IBP Director for Bar Discipline Ramon S. Esguerra.

[43] See Notice of Resolution in Resolution No. XXII-2017-808 issued by Assistant National Secretary Camille Bianca M. Gatmaitan-Santos; *id*. at 105-106.

of merit. In the Extended Resolution,[44] the dismissal was found to be proper, in view of complainant's failure to adduce any evidence of deceit, malpractice, and gross misconduct on the part of respondent. Since complainant failed to discharge the burden of proving her claims against respondent, the latter is presumed to have performed his duties in accordance with his oath.[45]

The Issue Before the Court

The essential issue in this case is whether or not respondent should be held administratively liable.

The Court's Ruling

Jurisprudence dictates that "in administrative proceedings, complainants bear the burden of proving the allegations in their complaints by **substantial evidence**."[46] Accordingly, complainant must show in a satisfactory manner the facts upon which their claims are based; otherwise, respondent is not obliged to prove his exception or defense. This is because an attorney enjoys the legal presumption that he is innocent of the charges proffered against him until the contrary is proved, and that, as an officer of the Court, he has performed his duties in accordance with his oath.[47]

In this case, complainant's claims of deceit, malpractice, and gross misconduct on the part of respondent revolve around the alleged inclusion of Lot 646-B-2 in the list of properties of Salvacion's estate, and Reytaliano's takeover of the said lot through the "wits and eloquence" of respondent who purportedly

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[44] *Id*. at 107-118.

[45] *Id*. at 117.

[46] See *Re: Letter of Lucena Ofendoreyes Alleging Illicit Activities of a Certain Atty. Cajayon Involving Cases in the Court of Appeals, Cagayan de Oro City*, A.M. No. 16-12-03-CA and IPI No. 17-248-CA-J, June 6, 2017; emphasis supplied.

[47] See *Yagong v. Magno*, A.C. No. 10333, November 6, 2017.

knew that the lot no longer belonged to Salvacion.[48] Complainant specifically alleged that Lot 646-B-2 was mortgaged by Salvacion to a certain Teofila, who, in turn, executed a document for the transfer of her rights to complainant for a valuable consideration.[49]

Unfortunately, however, complainant failed to attach the supporting documents to prove her claims. In fact, complainant was given several opportunities to make such submissions, and yet repeatedly failed to produce the supporting documents evidencing the alleged mortgage and transfer of rights involving Lot 646-B-2.[50] Thus, being mere allegations that are unsupported by substantial evidence, complainant's imputations against respondent anent the inclusion of Lot 646-B-2 must fail.

The same goes for complainant's imputation that respondent committed a "misconduct in the highest degree"[51] when he notarized the Affidavit of Arnulfo (stating, *inter alia*, that Arnulfo had already surrendered the possession of Lot 646-B-2 to Reytaliano, respondent's client) and thus, dealt "with a party having [an] adverse interest to the one he is representing."[52]

Essentially, "[t]he rule concerning conflict of interest prohibits a lawyer from representing a client *if that representation will be directly adverse to any of his present or former clients*."[53] In this case, there is no proof showing that respondent, by merely notarizing the said document, represented Arnulfo in the intestate proceedings. In fact, respondent did such act to the benefit of Reytaliano, who sought possession of Lot 646-B-2 as the appointed Administrator of Salvacion's estate; hence, respondent was faithfully acting in pursuit of his client's legitimate interests.

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[48] See *rollo*, pp. 3-4.

[49] See *id*.

[50] See *id*. at 82-83.

[51] *Id*. at 6.

[52] *Id*.

[53] *Heirs of Falame v. Baguio*, 571 Phil. 428, 441 (2008); italics and underscoring supplied.

And given that there is no evidence to prove that Arnulfo's Affidavit was merely wrangled from him in exchange for the dropping of his name in the direct contempt charge, the Court is hard-pressed to find any ethical violation on the part of respondent.

It deserves pointing out that the Investigating Commissioner merely glossed over the foregoing matter based on his opinion that the same is one which is within the competence and jurisdiction of the probate court to resolve.[54] The Court, however, clarifies that the alleged act, while committed during the intestate proceedings, was questioned by complainant as a form of professional misconduct, which thus conjures an issue which is clearly administrative in nature and therefore, should have been passed upon during the IBP proceedings below. As jurisprudence states:

> The Supreme Court exercises exclusive jurisdiction to regulate the practice of law. It exercises such disciplinary functions through the IBP, but it does not relinquish its duty to form its own judgment. Disbarment proceedings are exercised under the sole jurisdiction of the [Court], and the IBP's recommendations imposing the penalty of suspension from the practice of law or disbarment are always subject to this Court's review and approval.[55]

And finally, since the IBP failed to articulate its reasons, the Court elucidates that respondent was correctly cleared from his supposed administrative infraction relative to his failure to file an answer or a position paper during the IBP proceedings. Based on the records, respondent's Motion to Dismiss, albeit a prohibited pleading,[56] was allowed by the IBP to be treated as his answer. Meanwhile, per the IBP's March 8, 2012 Order, the parties were directed to file their respective position papers

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[54] *Rollo*, p. 124.

[55] *Ylaya v. Gacott*, 702 Phil. 390, 421 (2013).

[56] Section 2, Rule III of the RULES OF PROCEDURE OF THE COMMISSION ON BAR DISCIPLINE (Bar Matter No. 1755, September 25, 2007) provides:

only "if they wish to do so";[57] hence, respondent should not be faulted for not filing one.

WHEREFORE, the administrative complaint against respondent Atty. Juan C. Senupe, Jr. is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa, Reyes, A. Jr.*, and *Reyes, J. Jr.,*[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 207926. October 15, 2018]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **COL. NOEL P. MISLANG,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; NOT ABSOLUTE; A PRIOR MOTION FOR

Section 2. *Prohibited Pleadings*. The following pleadings shall not be allowed, to wit:

a. Motion to dismiss the complaint or petition
b. Motion for a bill of particulars
c. Motion for a new trial
d. Petition for relief from judgment
e. Motion for Reconsideration
f. Supplemental pleadings

[57] *Rollo*, p. 83.

[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

RECONSIDERATION MAY BE DISPENSED WITH WHEN THERE IS A VIOLATION OF DUE PROCESS, AND WHEN THE ISSUE INVOLVED IS PURELY A LEGAL QUESTION.— The argument that respondent failed to exhaust administrative remedies by not filing a motion for reconsideration prior to appealing his case before the CA also fails to persuade. The doctrine of exhaustion of administrative remedies is not absolute. The exceptions include instances when there is a violation of due process, as well as when the issue involved is purely a legal question. Recall that respondent alleged that he was not furnished copies of the complaints despite repeated manifestations and motions lodged before the petitioner, requesting that he be furnished so that he could file his counter-affidavits and position paper. Due process concerns had been put in issue before the CA. Also raised on appeal was the legal effect of respondent's "acquittal" before the General Court Martial on the pending complaints before the Ombudsman, undoubtedly a legal question. There was thus sufficient basis to dispense with a prior motion for reconsideration.

2. ID.; ID.; THE OFFICE OF THE OMBUDSMAN; JURISDICTION THEREOF; THE OMBUDSMAN AND THE GENERAL COURT MARTIAL OF THE ARMED FORCES OF THE PHILIPPINES HAVE CONCURRING OR COORDINATE JURISDICTION OVER ADMINISTRATIVE DISCIPLINARY CASES INVOLVING ERRING MILITARY PERSONNEL, PARTICULARLY OVER VIOLATIONS OF THE ARTICLES OF WAR THAT ARE SERVICE-CONNECTED; CLARIFIED.— On the question of jurisdiction, it is beyond dispute that the Ombudsman and the General Court Martial of the AFP have concurring or coordinate jurisdiction over administrative disciplinary cases involving erring military personnel, particularly over violations of the Articles of War that are service-connected. x x x. In discussing the suppletory application of the Revised Penal Code to court-martial proceedings insofar as those not provided in the Articles of War and the Manual for Courts-Martial, this Court had clarified that a court-martial is a court, and the prosecution of an accused before it is a criminal and not an administrative case. Nonetheless, in threshing out the court-martial's jurisdiction and the nature of offenses committed by military personnel under the Articles of War, this Court also

emphasized its administrative disciplinary character, *viz:* Article 96 of the Articles of War provides: ART. 96. *Conduct Unbecoming an Officer and Gentleman.* — Any officer, member of the Nurse Corps, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct unbecoming an officer and a gentleman shall be **dismissed from the service**. We hold that the offense for violation of Article 96 of the Articles of War is service-connected. This is expressly provided in Section1 (second paragraph) of R.A. No. 7055. x x x . Equally indicative of the "service-connected" nature of the offense is the penalty prescribed for the same — **dismissal from the service** — imposable only by the military court. Such penalty is **purely disciplinary** in character, evidently intended to cleanse the military profession of misfits and to preserve the stringent standard of military discipline. x x x. Being *sui generis*, court-martial proceedings contemplates both the penal and administrative disciplinary nature of military justice. In view of its administrative disciplinary aspect which court-martial proceedings share with the petitioner, both have the concurrent authority to dismiss respondent from the service. "In administrative cases involving the concurrent jurisdiction of two or more disciplining authorities, the body in which the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising concurrent jurisdiction." Having settled that point, this Court proceeds to debunk respondent's theory that by virtue of the MOA of January 28, 2004, the General Court Martial had exclusive jurisdiction over the instant case because it is non-graft and corruption related.

3. ID.; ID.; ID.; ID.; THE JURISDICTION OF A COURT OVER THE SUBJECT MATTER OF THE ACTION IS A MATTER OF LAW AND MAY NOT BE CONFERRED BY CONSENT OR AGREEMENT OF THE PARTIES.— It bears stressing that the January 28, 2004 MOA was not, and could not have been, an abrogation of the Ombudsman's plenary jurisdiction over complaints against public officials or employees for illegal, unjust, improper or inefficient acts or omissions. "[T]he jurisdiction of a court over the subject matter of the action is a matter of law and may not be conferred by consent or agreement of the parties." A plain reading of the MOA would indicate that it was executed to avoid conflicting decisions and wastage of government resources through proper coordination.

The MOA itself expressly recognizes petitioner's primary jurisdiction, even as it foresaw the need for jointly conducting inquiries and/or fact-finding investigations between the petitioner and the AFP, assisted by the Commission on Audit if need be, with respect to graft and corruption cases. It even reserved petitioner's authority to determine what law was violated in cases directly lodged before it, including the provisions of the Article of War. What it does provide is that, should a case be filed before it and it finds that it is non-graft or corruption-related, then it is to be endorsed to the AFP. The purpose of the proviso is coordination and avoidance of conflicting parallel investigations.

4. **ID.; ID.; ID.; CONCURRENCE OF JURISDICTION DOES NOT ALLOW CONCURRENT EXERCISE OF JURISDICTION.—** When the January 28, 2004 MOA provided that non-graft cases against military personnel shall be endorsed by petitioner to the disciplinary authority of the AFP, it had done so as a matter of efficiency and in recognition of the latter's concurrent jurisdiction over the same offenses and its vast resources for the conduct of investigations, including military intelligence. [C]oncurrence of jurisdiction does not allow concurrent exercise of jurisdiction. This is the reason why we have the rule that excludes any other concurrently authorized body from the body first exercising jurisdiction. This is the reason why forum shopping is malpractice of law. The records disclose that the AFP had first acquired jurisdiction and that petitioner should have taken notice of such fact after having been apprised of it on June 16, 2009. This would not have been an abrogation of its jurisdiction, but adherence to the principle of concurrence of jurisdiction that was operationally recognized by the January 28, 2004 MOA. x x x. The AFP having first acquired jurisdiction, petitioner should have refrained from further acting on the complaints.

5. **ID.; ID.; ADMINISTRATIVE PROCEEDINGS; CARDINAL PRINCIPLES OF DUE PROCESS; A JUDGMENT IN AN ADMINISTRATIVE CASE THAT IMPOSES THE EXTREME PENALTY OF DISMISSAL MUST NOT ONLY BE BASED ON SUBSTANTIAL EVIDENCE BUT ALSO RENDERED WITH DUE REGARD TO THE RIGHTS OF THE PARTIES TO DUE PROCESS.—** Even assuming that petitioner validly exercised its jurisdiction, this Court cannot

agree that petitioner's Joint Decision was grounded on substantial evidence. We note that petitioner failed to accord respondent administrative due process. There is nothing on the record to show that respondent was furnished with, or had otherwise received a copy of the complaint-affidavits on which petitioner's Joint Decision was based. Thus, it cannot be said that respondent had a fair opportunity to squarely and intelligently answer the accusations therein or to offer any rebuttal evidence thereto. In *Office of the Ombudsman v. Reyes,* this Court has emphasized that "[a] judgment in an administrative case that imposes the extreme penalty of dismissal must not only be based on substantial evidence but also rendered with due regard to the rights of the parties to due process." Pertinently: [D]ue process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) *the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected;* (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO THE REVIEW OF ERRORS OF LAW COMMITTED BY THE APPELLATE COURT EXCEPT WHERE THE FACTUAL FINDINGS OF THE COURT OF APPEALS AND THE TRIAL COURT ARE CONFLICTING OR CONTRADICTORY.— Petitioner's contention that it may decide cases based solely on the affidavits without need of formal hearing, is correct. However, there is nothing on the record that would refute respondent's assertion that he had not been able to submit counter-affidavit or a position paper to present his side because he was not furnished copies of the complaints despite repeated manifestations and motions. As the opportunity to consider and appreciate the respondent's counter-statement of facts was denied him, the Court agrees

that the CA was hard-pressed to consider the evidence against the respondent as substantial. In *Primo C. Miro v. Maarilyn Mendoza Vda. De Erederos, et al*., it is settled that: x x x. Keeping in mind that: Under Rule 45 of the Rules of Court, jurisdiction is generally **limited to the review of errors of law committed by the appellate court**. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory. The question of whether or not substantial evidence exists to hold the respondent liable for the charge of grave misconduct is one of fact, but a review is warranted considering the conflicting findings of fact of the Deputy Ombudsman and of CA.

7. ID.; ID.; ID.; WHILE ADMINISTRATIVE OR QUASI-JUDICIAL BODIES, SUCH AS THE OFFICE OF THE OMBUDSMAN, ARE NOT BOUND BY THE TECHNICAL RULES OF PROCEDURE, THIS RULE CANNOT BE TAKEN AS A LICENSE TO DISREGARD FUNDAMENTAL EVIDENTIARY RULES; THE DECISION OF THE ADMINISTRATIVE AGENCIES AND THE EVIDENCE IT RELIES UPON MUST, AT THE VERY LEAST, BE SUBSTANTIAL.— Notably, petitioner's factual conclusions were indeed based solely on the allegations in the complaint-affidavits. Compounding this observation with the fact that respondent was not furnished copies of the complaint-affidavits as would have afforded him the opportunity to present his side, the CA cannot be faulted for concluding that petitioner's Joint Decision was not supported by substantial evidence. Generally, "while administrative or quasi-judicial bodies, such as the Office of the Ombudsman, are not bound by the technical rules of procedure, this rule cannot be taken as a license to disregard fundamental evidentiary rules; the decision of the administrative agencies and the evidence it relies upon must, at the very least, be substantial." As the Court explained in *Miro v. Mendoza*: The evidence presented must at least have a modicum of admissibility for it to have probative value. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

APPEARANCES OF COUNSEL

Office of the Ombudsman, Office of Legal Affairs for petitioner.
Rolando Javier for respondent.

D E C I S I O N

TIJAM, *J.*:

This Petition for Review on *Certiorari*[1] under Rule 45 assails the October 15, 2012 Decision[2] and June 7, 2013 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 120603, which reversed and set aside the Office of the Ombudsman's Joint Decision[4] dated May 9, 2011 in:

i. OMB-L-A-05-0201-C (*Cecilia S. Luna v. Vicente P. Valera and Col. Noel P. Mislang*);

ii. OMB-L-A-05-0202-C (*Eduardo Barcelona v. Vicente P. Valera, Col. Noel P. Mislang, Mauro Durwin and Florencio Baharin*); and

iii. OMB-L-A-05-0309-D (*Elena V. Rosqueta v. Vicente P. Valera, Col. Noel P. Mislang, Mauro Durwin and Florencio Baharin*), all for Grave Misconduct.

The Office of the Ombudsman (petitioner) had dismissed the charges against Vicente P. Valera (Valera). Petitioner, however, found Col. Noel P. Mislang (respondent), Mauro Durwin (Durwin) and Florencio Baharin (Baharin) guilty of Grave Misconduct and meted them the penalty of dismissal

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[1] *Rollo*, pp. 10-47.

[2] Penned by Associate Justice Stephen C. Cruz, and concurred in by Associate Justices Franchito N. Diamante and Myra V. Garcia-Fernandez. *Id*. at 53-66.

[3] *Id*. at 70-71.

[4] *Id*. at 73-84.

from the service.[5] When respondent appealed to the CA via Rule 43, the CA reversed and set aside the joint decision of the petitioner on the ground of *res judicata* via the presently assailed decision and resolution denying reconsideration thereof.[6] The CA found that respondent had been subjected to a General Court Martial at the Philippine Army Headquarters, whereby respondent was adjudged not guilty of the charges in an Order dated February 7, 2007, for the very same acts alleged in the complaints and on the same evidence.[7]

Antecedent Facts

Respondent Mislang who was the Commanding Officer of the 41st Infantry Battalion, Philippine Army (PA), along with Valera, the then Governor of the Province of Abra, and agents Durwin and Baharin of the Military Intelligence Group were all charged with Grave Misconduct before the Office of the Ombudsman for allegedly hatching a plot to kill the former Mayor of Lagayan, Abra, Cecilia S. Luna (Luna) and her family; and in relation to the shooting of complainants Corporal Eduardo Barcelona (Barcelona) and Corporal Antonio Rosqueta (Rosqueta) of the 41st Infantry Battalion, PA, where the latter was mortally wounded, for the following:

i. complaint-affidavit dated March 8, 2005 of Luna;

ii. complaint-affidavit dated March 11, 2005 of Barcelona, 41st Infantry Battalion, PA; and

iii. complaint-affidavit dated April 13, 2005 of Elena V. Rosqueta.[8]

According to Barcelona, he and Rosqueta (now deceased) regularly reported to respondent for both official and unofficial, as well as legal and illegal, instructions. Respondent allegedly

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[5] *Id*. at 83.

[6] *Id*. at 66.

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

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

gave each of them a .45 caliber pistol in April 2004, and directed them to tail and assassinate Mayor Luna. For the said purpose, they were also provided seed money by the respondent. Barcelona and Rosqueta also met with respondent's so-called assets, Durwin and Baharin.[9]

In June 2004, respondent allegedly ordered the inclusion of Mayor Luna's two sons, Ryan and Jendrick, in the assassination plot. In July 2004, respondent brought Barcelona and Rosqueta, and another supposed lackey of respondent, Corporal John Pablo to the place where the assassination was to be done. The murders were supposed to take place during a birthday party. The self-confessed hired gunmen also claimed to have conversed with Valera, who was allegedly privy to the scheme. The planned assassination was, however, not carried out because of the absence of Ryan and Jendrick at the event.[10]

The failed assassination plot allegedly enraged respondent. Barcelona and Rosqueta were placed on Absence Without Leave (AWOL) status in December 2004, as they began distancing themselves from the respondent. Subsequently, Respondent also allegedly ordered the assassination of Barcelona and Rosqueta, who in turn filed a complaint with the Intelligence Security Group in Fort Bonifacio against respondent on December 17, 2004.[11] Meanwhile, Durwin and Baharin contacted Barcelona and Rosqueta for a meeting. On their way to a party in Isabela Province, Durwin and Baharin shot Rosqueta to death and seriously wounded Barcelona who nonetheless survived.[12]

Meanwhile, on March 8, 2004, Barcelona and Rosqueta submitted their affidavits relative to respondent's part in the assassination plot.[13] Respondent did not submit a counter-affidavit to refute the charges against him.

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[9] *Id*. at 54 and 75.

[10] *Id*. at 54, 76-77.

[11] *Id*. at 112.

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

[13] *Id*. at 79.

While petitioner found insufficient evidence to hold Valera administratively liable,[14] it nonetheless deemed the evidence substantial enough to conclude that respondent, together with agents Durwin and Baharin, were guilty of unlawful behavior in relation to their office.[15]

Consequently on May 9, 2011, the petitioner issued its Joint Decision, which disposed as follows:

WHEREFORE, premises considered:

1. The charges for Grave Misconduct against respondent **VICENTE P. VALERA** are hereby **DISMISSED**.

2. Respondents **COLONEL NOEL MISLANG**, Batallion Commander, 41st Infantry Batallion, Philippine Army, **MAURO DURWIN**, Agent, Military Intelligence Group, and **FLORENCIO BAHARIN**, Agent, Military Intelligence Group, are hereby found **GUILTY** of **GRAVE MISCONDUCT** and are accordingly **METED OUT** the penalty of **DISMISSAL FROM THE SERVICE**.

The Commanding General, Philippine Army, or his duly authorized representative is hereby directed to immediately implement this Decision.

SO ORDERED.[16]

On the same date, petitioner issued an Order[17] for the execution of respondent's dismissal from the service.

Aggrieved, respondent sought recourse before the CA without first moving for reconsideration the petitioner's Joint Decision.[18] Neither the petitioner nor the complainants filed a comment on the petition before the CA.[19]

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[14] *Id*. at 82.

[15] *Id*.

[16] *Id*. at 83.

[17] *Id*. at 54.

[18] *Id*. at 17, 40-42.

[19] *Id*. at 17 and 58.

Considering that no comment on the petition was filed before it, the CA considered respondent's assertion that neither copies of the complaint-affidavits, nor any order from the petitioner to file his counter-affidavits were received by him. The CA took notice of the manifestations and motions filed by the respondent before the petitioner, alternatively asking either to be furnished copies of the complaints or seeking the dismissal of the administrative cases for violation of due process and his right to a speedy disposition of his cases. Respondent contended that he was not made a party to the proceedings.

On June 16, 2009, or four years after the complaints were filed before the petitioner, respondent's former counsel Atty. Leonardo P. Tamayo wrote a letter to Hon. Emilio A. Gonzales III, Deputy Ombudsman for Military and Other Law Enforcement Office (MOLEO), informing the latter that several complaints based on the same evidence supporting the complaints filed before the petitioner had also been filed against the respondent before the General Court Martial, PA; that while pending preliminary investigation before the petitioner, the General Court Martial took cognizance of the complaints, arraigned the respondent, heard the cases and rendered an Order on February 7, 2007 declaring respondent "Not Guilty."[20]

The records also disclosed a letter[21] dated November 11, 2010 of Director Wilbert Candelaria (Dir. Candelaria), Public Assistance and Corruption Prevention Office, Office of the Deputy Ombudsman for Luzon, informing respondent's counsel that OMB-L-A-05-0202-C and OMB-L-C-05-0276-C were already dismissed as of September 24, 2010; while OMB-L-A-05-0201-C, OMB-L-C-05-0275-C, OMB-L-A-05-0309-D, and OMB-L-C-05-0409-D were still undergoing preliminary investigation and administrative adjudication.

On October 15, 2012, the CA issued the presently assailed decision. Reasoning that the rule of "*res inter alios acta alteri*

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[20] *Id*. at 108-109, 119.

[21] *Id*. at 58-59 and 106.

nocere non debet"[22] applies in this case, the CA observed that the evidence relied upon by the petitioner were the affidavits of Barcelona and Rosqueta, implicating the respondent in a supposed conspiracy through their admissions of illegal activities. In this regard, the CA found no independent or extraneous evidence to prove conspiracy.

The CA also found that the General Court Martial, PA, had jurisdiction over the complaints against the respondent, citing the Memorandum of Agreement[23] (MOA) dated January 28, 2004 between the Armed Forces of the Philippines (AFP) and the Office of the Ombudsman, delineating the lines of disciplinary authority between them. The appellate court thus ruled that the decision of the General Court Martial finding respondent "Not Guilty" became *res judicata* to the effect that the petitioner was precluded from further acting on the same complaints investigated, tried, and deliberated upon by the military court under the following charges:

CHARGE I: Violation of the 96th Article of War.
(Conduct Unbecoming of an Officer and a Gentleman)

Specification I: In that LTC NOEL P. MISLANG 0-9155 INF (GSC) PA during his incumbency as the Commanding Officer of the 41st Infantry Battalion, 5thInfantry Division, Philippine Army, a person subject to military law, did, sometime in April 2004 before the National and Local Election, at the province of Abra, wrongfully and unlawfully issued an order to Cpl Eduardo A Barcelona 805092 (Inf) PA and Pfc Antonio R. Rosqueta 792505 (Inf) PA, intelligence operatives of 41st Infantry Battalion, 5th Infantry Division, Philippine Army, to assassinate Mayor Cecil Luna, and her family, of Lagayan, Abra. Contrary to law.

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[22] Things done between strangers ought not to injure those who are not parties to them. (*Black's Law Dictionary*, 5th ed., 1178).

[23] *Rollo*, pp. 60-63.

CHARGE II: Violation of the 97th Article of War. (Neglects to the Prejudice of Good Order and Military Discipline)

Specification I: In that LTC NOEL P. MISLANG 0-9155 INF (GSC) PA, while being the Commanding Officer of the 41st Infantry Battalion, 5th Infantry Division, Philippine Army, a person subject to military law, did, for the period covering June 2004 to November 2004, fail to institute prompt disciplinary actions against his erring personnel namely: Cpl Eduardo A Barcelona 805092 (Inf) PA and Pfc Antonio R Rosqueta 792505 (Inf) PA, intelligence operatives of 41st Infantry Battalion, 5th Infantry Division, Philippine Army, knowing them to be involved in illegal activities. Contrary to law.[24]

The petitioner is now before this Court arguing that *res judicata* is inapplicable in this case, and insisting that the factual findings in its May 9, 2011 Joint Decision are supported by substantial evidence, and thus conclusive upon the reviewing authority.

Issue

Did the CA correctly set aside the Office of the Ombudsman's Joint Decision dated May 9, 2011?

Petitioner insists that the same was based on substantial evidence and points out that it may render its decision in administrative disciplinary cases based only on the affidavits and documents constituting the evidence on record, as it had done so in this case.[25]

Furthermore, petitioner argues that it has jurisdiction over the complaints against respondent notwithstanding the General Court Martial's exercise of its concurrent jurisdiction over the same acts subject of the complaints.[26]

Finally, petitioner now argues that respondent violated the principle of exhaustion of administrative remedies in filing his

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

[25] *Id*. at 23 and 36.

[26] *Id*. at 31 and 37-38.

petition for review before the CA without prior resort to a motion for reconsideration before the Ombudsman. Petitioner also asserts that respondent failed to attach a copy of the assailed May 9, 2011 Joint Decision to respondent's petition that was filed before the CA, which allegedly should have been fatal to respondent's appeal.[27]

The Court's Ruling

Addressing the alleged procedural errors first, this Court finds no merit in petitioner's contention that respondent's Rule 43 petition before the CA should have been dismissed outright. The inference that the assailed Joint Decision was not attached to the petition lodged before the CA cannot be made simply from petitioner's bare assertion that the wrong document was attached to its copy of the petition furnished by the respondent. It does not necessarily follow that the CA was not furnished a correct copy of the appealed Joint Decision. A plain reading of the CA's decision would show that it apparently had a copy of the subject May 9, 2011 Joint Decision, as it even cited the same in its footnotes.[28] The CA then was not deprived the opportunity to fully review the appealed Joint Decision. Petitioner also could have manifested and resolved this matter before the appellate court. It is now too late in the day to make a fatal issue of it before this Court.

The argument that respondent failed to exhaust administrative remedies by not filing a motion for reconsideration prior to appealing his case before the CA also fails to persuade. The doctrine of exhaustion of administrative remedies is not absolute.[29] The exceptions include instances when there is a violation of due process, as well as when the issue involved is purely a legal question.[30] Recall that respondent alleged that

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[27] *Id*. at 40 and 42-43.

[28] *Id.* at 53, 55 and 65.

[29] *Maglalang v. Philippine Amusement and Gaming Corp*., 723 Phil. 546, 557 (2013).

[30] *Id*.

he was not furnished copies of the complaints despite repeated manifestations and motions lodged before the petitioner, requesting that he be furnished so that he could file his counter-affidavits and position paper. Due process concerns had been put in issue before the CA. Also raised on appeal was the legal effect of respondent's "acquittal" before the General Court Martial on the pending complaints before the Ombudsman, undoubtedly a legal question. There was thus sufficient basis to dispense with a prior motion for reconsideration.

On the question of jurisdiction, it is beyond dispute that the Ombudsman[31] and the General Court Martial of the AFP have concurring or coordinate jurisdiction over administrative disciplinary cases involving erring military personnel, particularly over violations of the Articles of War that are service-connected.[32] We briefly revisit the nature of court-martial proceedings for context.

In discussing the suppletory application of the Revised Penal Code to court-martial proceedings insofar as those not provided in the Articles of War and the Manual for Courts-Martial, this Court had clarified that a court-martial is a court, and the prosecution of an accused before it is a criminal and not an administrative case.[33] Nonetheless, in threshing out the court-martial's jurisdiction and the nature of offenses committed by military personnel under the Articles of War, this Court also emphasized its administrative disciplinary character, *viz*:

> Article 96 of the Articles of War provides:
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> ART. 96. *Conduct Unbecoming an Officer and Gentleman*. – Any officer, member of the Nurse Corps, cadet, flying cadet, or probationary second lieutenant, who is convicted of conduct

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[31] R.A. No. 6770 (*The Ombudsman Act of 1989*).

[32] C.A. No. 408, in relation to R.A. No. 7055; *Lt. Gonzales v. Gen. Abaya*, 530 Phil. 189 (2006).

[33] *Maj. Gen. Garcia (ret.) v. Executive Secretary, et al.*, 692 Phil. 114, 138 (2012).

unbecoming an officer and a gentleman shall be **dismissed from the service**.

We hold that the offense for violation of Article 96 of the Articles of War is service-connected. This is expressly provided in Section 1 (second paragraph) of R.A. No. 7055. It bears stressing that the charge against the petitioners concerns the alleged **violation of their solemn oath as officers** to defend the Constitution and the duly-constituted authorities. Such violation allegedly **caused dishonor and disrespect to the military profession**. In short, the charge has a bearing on their **professional conduct** or **behavior** as military officers. Equally indicative of the "service-connected" nature of the offense is the penalty prescribed for the same–**dismissal from the service**–imposable only by the military court. Such penalty is **purely disciplinary** in character, evidently intended to cleanse the military profession of misfits and to preserve the stringent standard of military discipline.[34] (Emphasis in the original).

The peculiarity and import of court-martial proceedings was explained thus:

Military law is *sui generis* (*Calley v. Callaway*, 519 F.2d 184 [1975]), applicable only to military personnel because the military constitutes an armed organization requiring a system of discipline separate from that of civilians (see *Orloff v. Willoughby*, 345 U.S. 83 [1953]). Military personnel carry high-powered arms and other lethal weapons not allowed to civilians. History, experience, and the nature of a military organization dictate that military personnel must be subjected to a separate disciplinary system not applicable to unarmed civilians or unarmed government personnel.

A civilian government employee reassigned to another place by his superior may question his reassignment by asking a temporary restraining order or injunction from a civil court. However, a soldier cannot go to a civil court and ask for a restraining or injunction if his military commander reassigns him to another area of military operations. If this is allowed, military discipline will collapse.[35]

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[34] *Lt. Gonzales v. Gen. Abaya*, *Supra* note 32, *id*. at 210-211.

[35] *Id*. at 214.

Being *sui generis*, court-martial proceedings contemplate both the penal and administrative disciplinary nature of military justice. In view of its administrative disciplinary aspect which court-martial proceedings share with the petitioner, both have the concurrent authority to dismiss respondent from the service. "In administrative cases involving the concurrent jurisdiction of two or more disciplining authorities, the body in which the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising concurrent jurisdiction."[36]

Having settled that point, this Court proceeds to debunk respondent's theory that by virtue of the MOA of January 28, 2004, the General Court Martial had exclusive jurisdiction over the instant case because it is non-graft and corruption related.

Both the CA and the respondent take the view that petitioner acted without authority in issuing its Joint Decision because the MOA of January 28, 2004 between petitioner and the AFP delineated their lines of disciplinary authority, such that non-graft and corruption cases against military personnel are to be endorsed by petitioner to the AFP. Petitioner, on the other hand, argues that the MOA does not set aside its disciplinary power as Ombudsman, arguing that adherence to the MOA is expected but not required. Petitioner insists that because the complaints were directly filed before it, its jurisdiction had already vested.

It bears stressing that the January 28, 2004 MOA was not, and could not have been, an abrogation of the Ombudsman's plenary jurisdiction over complaints against public officials or employees for illegal, unjust, improper or inefficient acts or omissions. "[T]he jurisdiction of a court over the subject matter of the action is a matter of law and may not be conferred by consent or agreement of the parties."[37]

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[36] *Office of the Ombudsman v. Rodriguez*, 639 Phil. 312, 321 (2010).

[37] *Metromedia Times Corp. v. Pastorin*, 503 Phil. 288, 301 (2005).

A plain reading of the MOA would indicate that it was executed to avoid conflicting decisions and wastage of government resources through proper coordination. The MOA itself expressly recognizes petitioner's primary jurisdiction,[38] even as it foresaw the need for jointly conducting inquiries and/or fact-finding investigations between the petitioner and the AFP, assisted by the Commission on Audit if need be, with respect to graft and corruption cases.[39] It even reserved petitioner's authority to determine what law was violated in cases directly lodged before it, including the provisions of the Articles of War.[40] What it does provide is that, should a case be filed before it and it finds that it is non-graft or corruption-related, then it is to be endorsed to the AFP. The purpose of the proviso is coordination and avoidance of conflicting parallel investigations.

When the January 28, 2004 MOA provided that non-graft cases against military personnel shall be endorsed by petitioner to the disciplinary authority of the AFP,[41] it had done so as a matter of efficiency and in recognition of the latter's concurrent

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[38] 1. Treatment of Cases:

1.1 The OMB-MOLEO, having the **primary** jurisdiction to investigate and prosecute cases involving members of the Armed Forces of the Philippines, shall take cognizance of cases filed directly before its Office by any person, both natural and juridical, including those endorsed or forwarded to it by the OESPA and the Commission on Audit; (Emphasis supplied). x x x

[39] 1.3 The OMB-MOLEO and the OESPA (to be assisted by COA as the need arises), can individually or jointly initiate and/or conduct inquiry and/or fact-finding investigation on reports of alleged graft and corruption activities committed by any officer or member of the Armed Forces of the Philippines; x x x

[40] 1.8 The OMB-MOLEO shall have the authority to determine what law was violated by respondent(s) officer and/or personnel of the Armed Forces of the Philippines, including provisions of the Articles of War;

[41] 1.9 The OMB-MOLEO shall hear and decide administrative complaints/cases related to graft and corruption. **Non-graft and corruption-related complaints/cases shall be endorsed by the OMB-MOLEO to the Major Service Commander concerned/Area Commands/AFP Wide Support Service Units, and the OESPA.** (Emphasis supplied).

jurisdiction over the same offenses and its vast resources for the conduct of investigations, including military intelligence. [C]oncurrence of jurisdiction does not allow concurrent exercise of jurisdiction. This is the reason why we have the rule that excludes any other concurrently authorized body from the body first exercising jurisdiction. This is the reason why forum shopping is malpractice of law.[42]

The records disclose that the AFP had first acquired jurisdiction and that petitioner should have taken notice of such fact after having been apprised of it on June 16, 2009.[43] This would not have been an abrogation of its jurisdiction, but adherence to the principle of concurrence of jurisdiction that was operationally recognized by the January 28, 2004 MOA.

The earliest complaint-affidavit filed before the petitioner was dated March 8, 2005,[44] whereas the respective *Sinumpaang Salaysay* of Rosqueta and Barcelona were executed on December 17, 2004[45] at the Philippine Army Headquarters, clearly ahead of the former. While the AFP's specification of charges were proffered later or in May of 2005,[46] it appears that as early as January 13, 2005,[47] the respondent was already reassigned pending investigation preliminary to court-martial trial proper. The AFP fielded senior military officers to investigate the allegations against respondent and to secure the affidavits of enlisted personnel, officers, and others linked to the controversy.[48] As a result, Lt. Col. Remy R. Maglaya submitted his Investigation Report to the Army Inspector General on

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[42] Separate Opinion of Justice Perez in *Biraogo v. The Phil. Truth Commission of 2010*, 651 Phil. 374, 608 (2010).

[43] *Rollo*, pp. 108-109, 119.

[44] *Id*. at 74.

[45] *Id*. at 112.

[46] *Id*. at 110.

[47] *Id*. at 114.

[48] *Id*.

January 31, 2005.[49] The AFP having first acquired jurisdiction, petitioner should have refrained from further acting on the complaints.

We find that in this case, the AFP General Court Martial's exercise of jurisdiction is to the exclusion of the Ombudsman exercising concurrent jurisdiction. Necessarily, the present petition must be denied.

Even assuming that petitioner validly exercised its jurisdiction, this Court cannot agree that petitioner's Joint Decision was grounded on substantial evidence. We note that petitioner failed to accord respondent administrative due process. There is nothing on the record to show that respondent was furnished with, or had otherwise received a copy of the complaint-affidavits on which petitioner's Joint Decision was based. Thus, it cannot be said that respondent had a fair opportunity to squarely and intelligently answer the accusations therein or to offer any rebuttal evidence thereto.

In *Office of the Ombudsman v. Reyes*,[50] this Court has emphasized that "[a] judgment in an administrative case that imposes the extreme penalty of dismissal must not only be based on substantial evidence but also rendered with due regard to the rights of the parties to due process." Pertinently:

> [D]ue process in administrative proceedings requires compliance with the following cardinal principles: (1) the respondents' right to a hearing, which includes the right to present one's case and submit supporting evidence, must be observed; (2) the tribunal must consider the evidence presented; (3) the decision must have some basis to support itself; (4) there must be substantial evidence; (5) *the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected*; (6) in arriving at a decision, the tribunal must have acted on its own consideration of the law and the facts of the controversy and must not have simply accepted the views of a subordinate; and (7) the

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[49] *Id*.

[50] 674 Phil. 416, 434 (2011).

decision must be rendered in such manner that respondents would know the reasons for it and the various issues involved.[51] (Emphasis in the original)

Petitioner's contention that it may decide cases based solely on the affidavits without need of formal hearing, is correct. However, there is nothing on the record that would refute respondent's assertion that he had not been able to submit counter-affidavit or a position paper to present his side because he was not furnished copies of the complaints despite repeated manifestations and motions. As the opportunity to consider and appreciate the respondent's counter-statement of facts was denied him, the Court agrees that the CA was hard-pressed to consider the evidence against the respondent as substantial.

In *Primo C. Miro v. Maarilyn Mendoza Vda. De Erederos, et al.*,[52] it is settled that:

> [F]indings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence. Their factual findings are generally accorded with great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.
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> x x x x x x x x x
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> This rule on conclusiveness of factual findings, however, is not an absolute one. Despite the respect given to administrative findings of fact, the CA may resolve factual issues, review and re-evaluate the evidence on record and reverse the administrative agency's findings if not supported by substantial evidence. Thus, when the findings of fact by the administrative or quasi-judicial agencies (like the Office of the Ombudsman/Deputy Ombudsman) are not adequately supported by substantial evidence, they shall not be binding upon the courts.[53]

Keeping in mind that:

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[51] *Id*. at 432.

[52] 721 Phil. 772 (2013).

[53] *Id*. at 784.

Under Rule 45 of the Rules of Court, jurisdiction is generally **limited to the review of errors of law committed by the appellate court**. The Supreme Court is not obliged to review all over again the evidence which the parties adduced in the court *a quo*. Of course, the general rule admits of exceptions, such as where the factual findings of the CA and the trial court are conflicting or contradictory.[54] (Emphasis in the original)

The question of whether or not substantial evidence exists to hold the respondent liable for the charge of grave misconduct is one of fact, but a review is warranted considering the conflicting findings of fact of the Deputy Ombudsman and of CA.

Applying the rule on *res inter alios acta alteri nocere non debet*, the CA noted that the petitioner relied solely on the allegations in the complaint-affidavits of the two self-confessed killers-for-hire to implicate respondent as a co-conspirator. This rule prescribes that the act or declaration of the conspirator relating to the conspiracy and during its existence may be given in evidence against co-conspirators provided that the conspiracy is shown by independent evidence aside from the extrajudicial confession.[55] In this case, the CA found no corroborative evidence of conspiracy, direct or circumstantial. Petitioner, on the other hand, argues that its administrative proceedings are not bound by technical rules of procedure and evidentiary rules.

Notably, petitioner's factual conclusions were indeed based solely on the allegations in the complaint-affidavits. Compounding this observation with the fact that respondent was not furnished copies of the complaint-affidavits as would have afforded him the opportunity to present his side, the CA cannot be faulted for concluding that petitioner's Joint Decision was not supported by substantial evidence. Generally, "while administrative or quasi-judicial bodies, such as the Office of the Ombudsman, are not bound by the technical rules of procedure, this rule cannot be taken as a license to disregard

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[54] *Id*. at 787.

[55] *Tamargo v. Awingan, et al.*, 624 Phil. 312, 327 (2010).

fundamental evidentiary rules; the decision of the administrative agencies and the evidence it relies upon must, at the very least, be substantial."[56]

As the Court explained in *Miro v. Mendoza*:

> The evidence presented must at least have a modicum of admissibility for it to have probative value. Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[57]

WHEREFORE, considering the foregoing discussion, the petition is hereby **DENIED**.

SO ORDERED.

Bersamin[*] (*Acting Chairperson*), *del Castillo*, and *Reyes, J. Jr.*,[**] *JJ.*, concur.

Gesmundo,[***] *J.*, on leave.

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[56] *Primo Miro v. Mendoza*, *Supra* note 52 at 796.

[57] *Id.* at 796, citing *Lepanto Consolidated Mining Co. v. Dumapis, et al.*, 584 Phil. 100, 111 (2008).

[*] Designated as Acting Chairperson of the First Division per Special Order No. 2606, dated October 10, 2018.

[**] Designated as Additional Member per Raffle dated September 24, 2018, vice Associate Justice Francis H. Jardeleza.

[***] Designated as Additional Member per Special Order No. 2607, dated October 10, 2018.

FIRST DIVISION

[G.R. No. 214415. October 15, 2018]

IN THE MATTER OF THE INTESTATE ESTATE OF MIGUELITA C. PACIOLES AND EMMANUEL C. CHING, *petitioner, vs.* **EMILIO B. PACIOLES, JR.,** *respondent.*

SYLLABUS

1. MERCANTILE LAW; BANKING LAWS; REPUBLIC ACT NO. 6426 (THE FOREIGN CURRENCY DEPOSIT ACT OF THE PHILIPPINES); SECRECY OF FOREIGN CURRENCY DEPOSITS; ALL FOREIGN CURRENCY DEPOSITS AS DEFINED BY APPLICABLE LAWS ARE NOT SUBJECT TO ANY FORM OF ATTACHMENT, GARNISHMENT, OR ANY OTHER ORDER OR PROCESS OF ANY COURT, LEGISLATIVE BODY, GOVERNMENT AGENCY OR ANY ADMINISTRATIVE BODY.— The rule on foreign currency deposits is embodied in Section 8 of Republic Act No. 6426, also known as the Foreign Currency Deposit Act of the Philippines x x x. This provision was reproduced in Section 87 of the Central Bank of the Philippines Circular No. 1318 series of 1992. In this case, the intestate court's assailed May 31, 2012 Order, ordered the bank and its officers to release the money contained in the subject BPI account x x x. It is apparent that in ordering the branch manager or any representative of BPI to release the money contained in a foreign currency deposit account, the intestate court committed a violation of the law, which expressly provides that all foreign currency deposits as defined by applicable laws are not subject to any form of attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body.

2. ID.; ID.; BANKS; JOINT ACCOUNTS; "AND" JOINT ACCOUNT; THE DEPOSITORS ARE JOINT CREDITORS OF THE BANK AND THE SIGNATURES OF ALL DEPOSITORS ARE NECESSARY TO ALLOW WITHDRAWAL.— [T]he subject BPI account is in the nature of a joint account. "[It] is one that is held jointly by two or

more natural persons, or by two or more juridical persons or entities. Under such setup, the depositors are joint owners or co-owners of the said account, and their share in the deposits shall be presumed equal, unless the contrary is proved." In an "**and**" joint account, as in this case, the depositors are joint creditors of the bank and the signatures of all depositors are necessary to allow withdrawal. Thus, it is indispensable that **all** the persons named as account holders give their consent before any withdrawal could be made. In its disposition, the intestate court simply deemed sufficient the consent of Emilio to allow the withdrawal from the subject BPI account without further reasons therefor x x x. Thus, the intestate court x x x erred in allowing the withdrawal of funds *sans* the consent of a co-depositor. x x x Considering the nature of a joint account, we cannot but adhere to banking laws which [require] the consent of all the depositors before any withdrawal could be made. However, since Emmanuel no longer has a right over the subject joint account in view of his removal as a co-administrator, it is necessary that his name should be removed as an account holder and co-depositor of Emilio in a proper forum for Emilio to be able to completely perform his functions and duties as an administrator.

3. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; AS REGARDS THE PROPER DISPOSITION OF THE ESTATE OF THE DECEASED, THE JURISDICTION OF A TRIAL COURT, SITTING AS AN INTESTATE COURT, CONTINUES UNTIL AFTER THE PAYMENT OF ALL THE DEBTS AND THE REMAINING ESTATE DELIVERED TO THE HEIRS ENTITLED TO RECEIVE THE SAME.—** [E]mphasis must be made on the jurisdiction of a trial court, sitting as an intestate court, as regards the proper disposition of the estate of the deceased. Such jurisdiction continues until after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same. Thus, proper proceedings must be had before the intestate court so that the subject joint account should be administered solely by Emilio, who is the lone administrator.

APPEARANCES OF COUNSEL

Feria Tantoco Robeniol Law Offices for petitioner.
Paul Jomar S. Alcudia for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated February 27, 2014 and the Resolution[3] dated September 4, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 130666, affirming the Orders dated May 31, 2012[4] and September 3, 2012[5] of the Regional Trial Court (RTC) of Quezon City, Branch 224, in SP. Proc. No. Q-92-13155, which ordered the release of funds from a joint foreign currency deposit account.

Facts of the Case

Upon the death of Miguelita Ching Pacioles (Miguelita), she left several real properties, stock investments, bank deposits and interests. She was survived by her husband, respondent Emilio B. Pacioles, Jr. (Emilio), their two minor children, Miguelita's mother, Miguela Chuatoco-Ching (Miguela), now deceased and Miguelita's brother, herein petitioner Emmanuel C. Ching (Emmanuel).[6]

On August 20, 1992, Emilio filed a petition for the settlement of Miguelita's estate with prayer for his appointment as its regular administrator. Thereafter, Emilio and Emmanuel were appointed as co-administrators.[7]

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[1] *Rollo*, pp. 58-83.

[2] Penned by Associate Justice Marlene Gonzales-Sison, concurred in by Associate Justices Rosmari D. Carandang and Edwin D. Sorongon; *id*. at 9-18.

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

[4] Rendered by Presiding Judge Tita Marilyn Payoyo-Villordon; *id*. at 271-272.

[5] *Id*. at 300-301.

[6] *Id*. at 11.

[7] *Id*.

However, the appointment of Emmanuel was nullified in the CA Decision[8] dated July 22, 2002 in CA-G.R. CV No. 46763.

Among the properties left by Miguelita and included in the inventory of her estate were her two dollar accounts with the Bank of the Philippine Islands (BPI)-San Francisco Del Monte (SFDM) Branch (subject BPI account), the subject matter of the instant case.[9]

However, said dollar accounts were closed and consolidated into a single account (consolidated account) which is Account No. 003248-2799-14 under the names of Emilio ***and*** Miguela Chuatoco or Emmanuel upon their written request addressed to the bank.[10]

On September 30, 2011, Emilio filed a motion to allow him to withdraw money from the subject BPI account to defray the cost of property taxes due on the real properties of Miguelita's estate.[11]

Ruling of the RTC

In an Order[12] dated November 28, 2011, the intestate court granted the motion, to wit:

> WHEREFORE, in the interest of substantial justice, the instant Motion to Allow Withdrawal of Bank Deposit filed by the Administrator is partly GRANTED for the sole purpose of paying the subject realty obligation and the costs thereof.
>
> Accordingly, the Branch Manager of the [BPI], Del Monte Branch, or any authorized representative is hereby [o]rdered to immediately RELEASE in favor of the Administrator, [Emilio], the total amount of Four Hundred Thirty Thousand Pesos (Php 430,000.00) from

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[8] *Id*. at 126-134.

[9] *Id*. at 12.

[10] *Id*.

[11] *Id*.

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

Account No. 003248-2799-14 while the difference shall remain in the custody of the said bank under the same type of account until further orders from this court.

Thereafter, the said Branch Manager and the Administrator or any authorized representative are each [o]rdered to SUBMIT to this Court a Compliance/Report with the pertinent document/s on the matter within five (5) days from receipt thereof.

SO ORDERED.[13]

BPI-SFDM, through its bank manager, requested for a clarification on the abovementioned Order and gave an opinion that the subject BPI account is covered by the Foreign Currency Deposit Act of the Philippines. As such, it is exempt from orders of judicial and quasi-judicial bodies and that withdrawals therefrom can only be made with the written consent of the account holders, who are Emilio and Emmanuel.[14]

In an Order[15] dated May 31, 2012, the intestate court held that:

WHEREFORE, premises considered, this Court affirms and reiterates the Order dated November 28, 2011 as substantial justice requires. To further clarify the same, the Administrator, [Emilio], shall personally express his conformity and consent to the Branch Manager of the [BPI], Del Monte Branch, or any authorized representative for the withdrawal of the subject amount of money which shall be deemed sufficient for the purpose.

After such conformity and consent are expressed, the said Branch Manager or any authorized representative is [o]rdered to immediately RELEASE in favor of the said Administrator, [Emilio], the total amount of Four Hundred Thirty Thousand Pesos (Php 430,000.00) from Account No. 003248-2799-14 while the difference shall remain in the custody of the said bank under the same type of account until further orders from this Court.

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[13] *Id*. at 180.

[14] *Id*. at 308-309.

[15] *Id*. at 271-272.

Accordingly, the said Branch Manager and the Administrator or any authorized representative are each [o]rdered to SUBMIT to this Court a Compliance/Report with the pertinent document/s on the matter within five (5) days from receipt thereof.

SO ORDERED.[16]

Emmanuel filed a motion for reconsideration.[17] In his motion, he asserted that the trial court erred in directing the withdrawal of funds from the subject BPI account. Such motion was however denied in an Order[18] dated September 3, 2012.

Undaunted, Emmanuel filed a Petition for *Certiorari*,[19] assailing the abovecited Orders of the trial court, before the CA.

Ruling of the CA

In a Decision[20] dated February 27, 2014, the CA dismissed the petition. The CA found that the intestate court did not err in allowing the withdrawal of funds from the subject BPI account as such court has jurisdiction over the properties of Miguelita until the same have been distributed among the heirs entitled thereto. The *fallo* the Decision reads:

WHEREFORE, premises considered, the instant Petition for *Certiorari* is **DENIED** for lack of merit and the assailed orders of the [RTC] of Quezon City, Branch 224 dated 31 May 2012 and 03 September 2012 are hereby **AFFIRMED**.

SO ORDERED.[21]

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[16] *Id*. at 272.

[17] *Id*. at 273-281.

[18] *Id*. at 300-301.

[19] *Id*. at 302-318.

[20] *Id*. at 9-18.

[21] *Id*. at 17.

A motion for reconsideration[22] filed by Emmanuel was denied by the CA in a Resolution[23] dated September 4, 2014, *viz*.:

WHEREFORE, premises considered, the motion for reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.[24]

Hence, this Petition.

Issue

Essentially, the issue in the present case is whether or not the order of release of funds from a joint foreign currency deposit account without securing the consent of a co-depositor is proper.

Ruling of the Court

We proceed with the nature of the subject BPI account.

It is established that the subject joint account, which involves foreign currency deposits, is under the names of Emilio **and** Miguela (now deceased) or Emmanuel.

The rule on foreign currency deposits is embodied in Section 8 of Republic Act No. 6426,[25] also known as the Foreign Currency Deposit Act of the Philippines, which provides that:

Sec. 8. *Secrecy of foreign currency deposits.* – All foreign currency deposits authorized under this Act, as amended by PD No. 1035, as well as foreign currency deposits authorized under PD No. 1034, are hereby declared as and considered of an absolutely confidential nature and, except upon the written permission of the depositor, in no instance shall foreign currency deposits be examined, inquired or looked into by any person, government official, bureau or office

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[22] *Id*. at 356-370.

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

[24] *Id*. at 20.

[25] AN ACT INSTITUTING A FOREIGN CURRENCY DEPOSIT SYSTEM IN THE PHILIPPINES, AND FOR OTHER PURPOSES. Approved April 4, 1974.

whether judicial or administrative or legislative, or any other entity whether public or private; *Provided, however*, That said foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever. (*As amended by PD No. 1035, and further amended by PD No. 1246, prom. Nov. 21, 1977*.)

This provision was reproduced in Section 87[26] of the Central Bank of the Philippines Circular No. 1318 series of 1992.

In this case, the intestate court's assailed May 31, 2012 Order, ordered the bank and its officers to release the money contained in the subject BPI account, thus:

> [T]he said Branch Manager [of the BPI, Del Monte Branch], or any authorized representative is hereby [o]rdered to immediately RELEASE in favor of the Administrator, [Emilio], the total amount of Four Hundred Thirty Thousand Pesos (Php 430,000.00) from Account No. 003248-2799-14 x x x.[27]

It is apparent that in ordering the branch manager or any representative of BPI to release the money contained in a foreign currency deposit account, the intestate court committed a violation of the law, which expressly provides that all foreign currency deposits as defined by applicable laws are not subject to any form of attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body.

Moreover, the subject BPI account is in the nature of a joint account. "[It] is one that is held jointly by two or more natural persons, or by two or more juridical persons or entities. Under such setup, the depositors are joint owners or co-owners of the said account, and their share in the deposits shall be presumed

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[26] **SEC. 87. Exemption from Court Order or Process.** – Foreign currency deposits shall be exempt from attachment, garnishment, or any other order or process of any court, legislative body, government agency or any administrative body whatsoever.

[27] *Rollo*, p. 272.

equal, unless the contrary is proved."[28] In an "**and**" joint account, as in this case, the depositors are joint creditors of the bank and the signatures of all depositors are necessary to allow withdrawal.[29]

Thus, it is indispensable that **all** the persons named as account holders give their consent before any withdrawal could be made.

In its disposition, the intestate court simply deemed sufficient the consent of Emilio to allow the withdrawal from the subject BPI account without further reasons therefor, to wit:

> It must also be noted that the subject Time Deposit Certificate with Account No. 003248-2799-14 appears to be under the names of herein Administrator and [Miguela] or [Emmanuel], hence the consent or conformity of the depositor or herein Administrator [Emilio] is already deemed sufficient for this purpose. x x x.[30]

Thus, the intestate court likewise erred in allowing the withdrawal of funds *sans* the consent of a co-depositor.

Nevertheless, We recognize the functions and duties of an administrator of an estate. One of which is to administer all goods, chattels, rights, credits, and estate which shall at any time come to his possession or to the possession of any other person for him, and from the proceeds to pay and discharge all debts, legacies, and charges on the same, or such dividends thereon.[31]

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[28] *Apique v. Fahnenstich*, 765 Phil. 915, 922 (2015).

[29] Aquino, Timoteo B., *NOTES AND CASES ON BANKS, NEGOTIABLE INSTRUMENTS AND OTHER COMMERCIAL DOCUMENTS*, First Edition, 2003, p. 592.

[30] *Rollo*, p. 272.

[31] Section 1(b) of Rule 81 of the Rules of Court.

> Sec. 1. *Bond to be given before issuance of letters; Amount; Conditions.* – Before an executor or administrator enters upon the execution of his trust, and letters testamentary or of administration issue, he shall give a bond, in such sum as the court directs, conditioned as follows:
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> x x x x x x x x x

In this case, there were two administrators of Miguelita's estate, *i.e.*, Emilio and Emmanuel. However, it is important to highlight that Emmanuel's appointment was revoked by the CA in its Decision in CA-G.R. CV No. 46763. Necessarily, as the revocation of Emmanuel's appointment as administrator was established, his right over the funds contained in the joint account no longer exists. It must be emphasized that his right over the same merely emanates from his being a co-administrator.

Considering the nature of a joint account, we cannot but adhere to banking laws which requires the consent of all the depositors before any withdrawal could be made. However, since Emmanuel no longer has a right over the subject joint account in view of his removal as a co-administrator, it is necessary that his name should be removed as an account holder and co-depositor of Emilio in a proper forum for Emilio to be able to completely perform his functions and duties as an administrator.

On this note, emphasis must be made on the jurisdiction of a trial court, sitting as an intestate court, as regards the proper disposition of the estate of the deceased. Such jurisdiction continues until after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same.[32] Thus, proper proceedings must be had before the intestate court so that the subject joint account should be administered solely by Emilio, who is the lone administrator.

WHEREFORE, the petition is partly **GRANTED**. Accordingly, the Decision dated February 27, 2014 and the Resolution dated September 4, 2014 of the Court of Appeals in CA-G.R. SP No. 130666 are **REVERSED** and **SET ASIDE**.

(b) To administer according to these rules, and, if an executor, according to the will of the testator, all goods, chattels, rights, credits, and estate which shall at any time come to his possession or to the possession of any other person for him, and from the proceeds to pay and discharge all debts, legacies, and charges on the same, or such dividends thereon as shall be decreed by the court[.]

[32] *Vda. de Gurrea v. Suplico*, 522 Phil. 295, 309 (2006).

The case is remanded to the intestate court for proper proceedings.

SO ORDERED.

Bersamin[*] (*Acting Chairperson*) and *del Castillo, JJ.*, concur.

Jardeleza, J., on official business.

Gesmundo,[**] *J.*, on leave.

SECOND DIVISION

[G.R. No. 225736. October 15, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALGLEN REYES *y* PAULINA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION OR COMPLAINT; EVERY ELEMENT OF WHICH THE OFFENSE IS COMPOSED MUST BE ACCURATELY AND CLEARLY ALLEGED IN THE INFORMATION; RATIONALE.— At the outset, it bears pointing out that the Information filed against Reyes in this case was ***defective***, for which reason alone Reyes should be acquitted. The importance of sufficiency of the Information cannot be more emphasized; it is an essential component of the right to due process in criminal proceedings as the accused

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[*] Designated Acting Chairperson per Special Order No. 2606 dated October 10, 2018.

[**] Designated Additional Member per Special Order No. 2609 dated October 11, 2018.

possesses the right to be sufficiently informed of the cause of the accusation against him. This is implemented through Rule 110, Sections 8 and 9 of the Rules of Court x x x. It is fundamental that every element of which the offense is composed must be alleged in the Information. In other words, no Information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. **The test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law.** In this examination, matters *aliunde* are not considered. The purpose of the law in requiring this is to enable the accused to suitably prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.

2. ID.; ID.; ID.; AN INFORMATION IS FATALLY DEFECTIVE WHEN IT FAILS TO SUFFICIENTLY IDENTIFY THEREIN ALL THE COMPONENTS OF THE ELEMENT OF THE CRIME, THUS, DEPRIVING THE ACCUSED OF HIS RIGHT TO BE INFORMED OF THE OFFENSE CHARGED AGAINST HIM.— Reyes was x x x supposedly charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165 – the prosecution of which requires that the following elements be proven: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. **The Information filed against Reyes, however, makes a conclusion of law** – that he "did x x x sell" dangerous drugs – without specifically stating 1) the identity of the buyer; 2) the amount of dangerous drugs supposedly traded by Reyes; and 3) the consideration for the sale. In *People v. Posada*, the Information filed therein erroneously lumped together the objects of illegal sale and illegal possession of dangerous drugs. In ruling that the said Information was defective, the Court in the said case held that: Indeed, it must be pointed out that the prosecution filed a defective Information. An Information is fatally defective when it is clear that it does not really charge an offense or when an essential element of the crime has not been sufficiently alleged. **In the instant case, while the prosecution was able to allege the identity of the buyer and the seller, it failed to particularly allege or identify**

in the Information the subject matter of the sale or the *corpus delicti*. We must remember that one of the essential elements to convict a person of sale of prohibited drugs is to identify with certainty the *corpus delicti*. *x x x*. To allow the prosecution to do this is to deprive the accused-appellants of their right to be informed, not only of the nature of the offense being charged, but of the essential element of the offense charged; and in this case, the very *corpus delicti* of the crime. In the case at bar, the Information filed against Reyes failed to sufficiently identify therein all the components of the first element of the crime of sale of dangerous drugs, namely: the identity of the buyer, the object, and the consideration. Much similar to the case of *Posada*, therefore, the prosecution in this case likewise deprived Reyes of his right to be informed of the offense charged against him. To repeat, for this reason alone, Reyes should already be acquitted.

3. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; THE STATE BEARS NOT ONLY THE BURDEN OF PROVING THE ELEMENTS, BUT ALSO OF PROVING THE *CORPUS DELICTI* OR THE BODY OF THE CRIME, AND IN DRUG CASES, THE DANGEROUS DRUG ITSELF IS THE VERY *CORPUS DELICTI* OF THE VIOLATION OF THE LAW.—** In cases involving dangerous drugs, the State bears not only the burden of proving [the] elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded.

4. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; CHAIN OF CUSTODY, DEFINED; THE PROHIBITED DRUG CONFISCATED OR RECOVERED FROM THE SUSPECT MUST BE THE VERY SAME SUBSTANCE OFFERED IN COURT AS EXHIBIT, AND THE IDENTITY OF SAID DRUG MUST BE ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUIRED TO MAKE A FINDING OF GUILT.—** In all drugs cases, therefore,

compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.

5. ID.; ID.; SECTION 21 OF RA 9165; MANDATORY REQUIREMENTS OF PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED DRUGS; THREE-WITNESS RULE.— [S]ection 21, Article II of R.A. 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof. This must be so because with "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.

6. ID.; ID.; ID.; ID.; THE PHYSICAL INVENTORY OF THE SEIZED ITEMS AND THE PHOTOGRAPHING OF THE SAME MUST BE MADE IMMEDIATELY AFTER SEIZURE AND CONFISCATION, WHICH IS IMMEDIATELY AFTER, OR AT THE PLACE OF APPREHENSION.— Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately**

after seizure and confiscation. The said inventory must be done **in the presence of the aforementioned required witness,** all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy bust operation is, by its nature, a planned activity.** Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

7. **ID.; ID.; ID.; ID.; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE LAID OUT IN SECTION 21 OF RA 9165 DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID PROVIDED THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND EXPLAINED THE REASONS BEHIND THE PROCEDURAL LAPSES, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat, as the CA itself pointed out, that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses. In the present case, not one of the three required witnesses was present at the time of seizure and apprehension and even during the conduct of the inventory.

8. ID.; ID.; ID.; ID.; RATIONALE FOR THE THREE- WITNESS RULE.— It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*, the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows: The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza,* without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of 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 subject sachet that was evidence of the *corpus delicti,* and thus adversely affected the trustworthiness of the incrimination of the accused. The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest.** It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able to testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165. x x x

9. ID.; ID.; ID.; ID.; JUSTIFIABLE REASONS FOR NON-COMPLIANCE WITH THE THREE-WITNESS RULE.— It bears stressing that the prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*, It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such

as: (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or** (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.**

10. ID.; ID.; ID.; ID.; BREACHES OF THE PROCEDURE CONTAINED IN SECTION 21 OF RA 9165 COMMITTED BY THE POLICE OFFICERS, LEFT UNACKNOWLEDGED AND UNEXPLAINED BY THE STATE, MILITATE AGAINST A FINDING OF GUILT BEYOND REASONABLE DOUBT AGAINST THE ACCUSED AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAD BEEN COMPROMISED.— The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always do so within the bounds of the law. Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence would again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*. Thus, this failure adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody. Concededly, Section 21 of the IRR of RA 9165 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." For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same. Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Alglen Reyes y Paulina (Reyes) assailing the Decision[2] dated September 9, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05890, which affirmed the Decision[3] dated November 29, 2012 of the Regional Trial Court of Lingayen, Pangasinan, Branch 39 (RTC) in Criminal Case No. L-9217, finding Reyes guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise

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[1] See Notice of Appeal dated September 28, 2015, *rollo*, pp. 12-13.

[2] *Rollo*, pp. 2-11. Penned by Associate Justice Melchor Q.C. Sadang with Associate Justices Celia C. Librea-Leagogo and Amy Lazaro-Javier, concurring.

[3] CA *rollo*, pp. 33-41. Penned by Acting Presiding Judge Teodoro C. Fernandez.

[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" (2002).

known as "The Comprehensive Dangerous Drugs Act of 2002," as amended.

The Facts

An Information was filed against Reyes in this case, the accusatory portion of which reads as follows:

> That on or about 12:15 in the early dawn of July 5, 2011 in Brgy. Malindong, Binmaley, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully and unlawfully sell Methamphetamine Hydrochloride or "shabu", a dangerous drug, without any authority to sell the same.
>
> Contrary to Section 5, Article II, of RA 9165.[5]

The prosecution's version, as summarized by the CA, is as follows:

> On the basis of an informant's tip, Police Superintendent/Chief of Police Frankie C. Candelario held a meeting on July 4, 2011 with the intelligence operatives of the Philippine National Police (PNP) Binmaley, Pangasinan to plan a buy-bust operation against the accused. Candelario formed a team with Police Inspector Fernando Jelcano as team leader, PO3 Vaquilar as poseur-buyer, and PO2 Solomon and PO1 Tomagos as back-ups. Inspector Jelcano coordinated with the Philippine Drug Enforcement Agency (PDEA). Candelario gave a ₱500.00 bill to Vaquilar for the operation which the latter marked with his initials "JBV." After recording the operation in the police blotter, the team members, clad in civilian clothes, set out with the informant for the target area at Barangay Malindong, Binmaley, more than a kilometer away. They left the police station at 12:15 AM of July 5, 2011 on board two motorcycles and a Honda Civic car. On reaching the target place, they waited for the accused to arrive. The informant sat inside the car as PO2 Solomon positioned himself behind a waiting shed a few meters away. There being a street light and because he had previously met the accused in a failed drug deal, Vaquilar was able to recognize the accused when he showed up at 1AM. Vaquilar approached the accused, saying: "This is the money, so give me the thing that I will buy." Accused handed to Vaquilar

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

one (1) small plastic sachet containing shabu in exchange for the marked ₱500.00 bill. Thereupon, Vaquilar introduced himself as a police officer, arrested the accused and apprised him of his constitutional rights. Vaquilar raised his right thumb as a signal to his companions that the transaction had been completed. The back-up team approached the accused and introduced themselves to him as police officers. Vaquilar frisked the accused and recovered from his right pocket three (3) plastic sachets containing suspected shabu. Other items confiscated were the marked ₱500.00 bill, five ₱100.00 bills, one ₱50.00 bill, two ₱20.00 bills, one ₱10.00 coin, a key chain with two keys, a lighter, a Nokia cellular phone, and a motorcycle. Vaquilar inscribed his initials "JBV" on the four (4) sachets containing suspected shabu at the place of arrest and immediately after he seized them from accused. He also prepared a Confiscation Receipt. Thereafter, the officers brought the accused to the police station and turned him over, together with the seized items, to the investigator on duty, SPO4 Guillermo Gutierrez. Candelario prepared a request for laboratory examination of the seized specimens and drug test on the person of the accused. The request and the specimens were delivered by Gutierrez to the PNP Crime Laboratory in Urdaneta City on the same day.

Forensic Chemist Roderos testified that she personally received the request for laboratory examination and the specimens from SPO4 Gutierrez. She testified that the items she presented in court are the same items delivered to her by Gutierrez as shown by the markings that she put on each plastic sachet and the markings made by the requesting party. Testifying on her Chemistry Report, Roderas stated that all the specimens were positive for methamphetamine hydrochloride, a dangerous drug.[6]

On the other hand, the version of the defense, similarly summarized by the CA, is as follows:

Accused testified that on July 4, 2011, at around 11 PM to 12 midnight, he was at the Centrum gas station in Malindong to refuel his motorcycle. The gas station was lighted and there were gasoline boys in the area. He had to gas up as he had to go to Lingayen to buy medicine for his grandmother who was having an asthma attack. A gasoline boy was about to fill his gas tank when four men aboard

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[6] *Id*. at 3-4.

two motorcycles arrived and immediately handcuffed him. The four men were in civilian clothes and donned helmets. They searched his body but found nothing illegal from him. He remained silent because he was scared and the men quickly boarded him on a motorcycle without telling him of any charges against him. When he was already on the motorcycle, the men introduced themselves as police officers and brought him to the Municipal Hall of Binmaley. At the Municipal Hall, the men removed their helmets and it was then that he saw their faces. They took his ₱1,000.00 bill from his pocket and locked him up. The next day, he was told that something illegal was found from him but he was not shown anything.

Lina Reyes testified that on July 4, 2011, at 10 PM she asked the accused, her adopted grandson, to buy ventolin tablet because she was having an asthma attack. She gave him ₱1,000.00. She later learned that accused had been arrested when her husband, Abe, told her about it the next morning. Reyes testified that she was not aware as to where the accused actually went after she asked him to buy medicine.[7]

Ruling of the RTC

After trial on the merits, in its Decision dated November 29, 2012, the RTC convicted Reyes of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, the Court finds accused ALGLEN REYES **GUILTY** beyond reasonable doubt for Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and hereby sentences him to **LIFE IMPRISONMENT, and to pay a fine of Five Hundred Thousand Pesos (PhP500,000.00).**

The four heat-sealed transparent plastic sachets of shabu are hereby confiscated in favor of the government to be turned over to the Philippine Drug Enforcement Agency for proper disposition.

The motorcycle and the rest of the items confiscated from the accused must be returned to him.

SO ORDERED.[8]

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

[8] CA *rollo*, p. 40.

The RTC ruled that the prosecution proved all the essential elements of the crimes charged.[9] It held that the prosecution witnesses gave an unequivocal account of the sale, thus proving that the transaction took place. It further traced the chain of custody of the seized items from the apprehending officer, to the officer who conducted the inventory, to the forensic chemist who conducted the examination and subsequently transmitted the said items to the court. The RTC thus concluded that the prosecution was able to establish the identity of the *corpus delicti*, thereby proving Reyes' guilt beyond reasonable doubt.[10] The RTC further held that Reyes' defense of alibi and denial could not overcome the presumption of regularity in the performance of duties afforded the police officers. The RTC therefore convicted Reyes of the crime.

Aggrieved, Reyes appealed to the CA.

Ruling of the CA

In the questioned Decision dated September 9, 2015 the CA affirmed the RTC's conviction of Reyes, holding that the prosecution was able to prove the elements of the crimes charged, namely: (1) the identity of the buyer, as well as the seller, the object, and the consideration of the sale; (2) the delivery of the thing sold and the payment therefor.[11] The CA gave credence to the testimonies of the prosecution witnesses as they are police officers presumed to have performed their duties in a regular manner.

As regards compliance with Section 21, Article II of the Implementing Rules and Regulations (IRR) of RA 9165, the CA held that "non-compliance with Section 21 does not necessarily render the seizure and custody of the items void and invalid, provided that the prosecution recognizes the procedural lapses and thereafter (1) cites justifiable grounds

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[9] *Id*. at 37-38.

[10] *Id*. at 38.

[11] *Rollo*, p. 6.

for such non-compliance and (2) establishes that the integrity and evidentiary value of the seized items were nonetheless properly preserved."[12] It then held that, in this case, the evidence of the prosecution established an unbroken chain of custody wherein the integrity and evidentiary value of the specimens were preserved.

Hence, the instant appeal.

Issue

For resolution of this Court is the issue of whether the RTC and the CA erred in convicting Reyes.

The Court's Ruling

The appeal is meritorious.

At the outset, it bears pointing out that the Information filed against Reyes in this case was ***defective***, for which reason alone Reyes should be acquitted. The importance of sufficiency of the Information cannot be more emphasized; it is an essential component of the right to due process in criminal proceedings as the accused possesses the right to be sufficiently informed of the cause of the accusation against him. This is implemented through Rule 110, Sections 8 and 9 of the Rules of Court, which provide:

SEC. 8. *Designation of the offense.*—The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

SEC. 9. *Cause of the accusation.*— **The acts or omissions complained of as constituting the offense** and the qualifying and aggravating circumstances **must be stated in ordinary and concise language and** not necessarily in the language used in the statute but

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[12] *Id*. at 8, citing *People v. Casabuena*, 747 Phil. 358 (2014), among other cases.

in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment. (Emphasis and underscoring supplied)

It is fundamental that every element of which the offense is composed must be alleged in the Information. In other words, no Information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.[13] **The test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law.**[14] In this examination, matters *aliunde* are not considered.[15] The purpose of the law in requiring this is to enable the accused to suitably prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.[16]

In the present case, the Information filed against Reyes has the following accusatory portion:

That on or about 12:15 in the early dawn of July 5, 2011 in Brgy. Malindong, Binmaley, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, wilfully and unlawfully **sell** Methamphetamine Hydrochloride or "shabu", a dangerous drug, **without any authority to sell the same.**

Contrary to Section 5, Article II, of RA 9165.[17] (Emphasis and underscoring supplied)

Reyes was thus supposedly charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165 – the prosecution of which requires that the following elements be proven: (1) the identity of the

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[13] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 719 (2003).

[14] *Id*.

[15] *Id*.

[16] *Id*.

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

buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[18]

The Information filed against Reyes, however, makes a conclusion of law – that he "did x x x sell" dangerous drugs – without specifically stating 1) the identity of the buyer; 2) the amount of dangerous drugs supposedly traded by Reyes; and 3) the consideration for the sale.

In *People v. Posada*,[19] the Information filed therein erroneously lumped together the objects of illegal sale and illegal possession of dangerous drugs. In ruling that the said Information was defective, the Court in the said case held that:

> Indeed, it must be pointed out that the prosecution filed a defective Information. An Information is fatally defective when it is clear that it does not really charge an offense or when an essential element of the crime has not been sufficiently alleged. **In the instant case, while the prosecution was able to allege the identity of the buyer and the seller, it failed to particularly allege or identify in the Information the subject matter of the sale or the *corpus delicti*. We must remember that one of the essential elements to convict a person of sale of prohibited drugs is to identify with certainty the *corpus delicti*.** Here, the prosecution took the liberty to lump together two sets of *corpora delicti* when it should have separated the two in two different informations. **To allow the prosecution to do this is to deprive the accused-appellants of their right to be informed, not only of the nature of the offense being charged, but of the essential element of the offense charged; and in this case, the very *corpus delicti* of the crime.**[20] (Emphasis and underscoring supplied)

In the case at bar, the Information filed against Reyes failed to sufficiently identify therein all the components of the first element of the crime of sale of dangerous drugs, namely: the identity of the buyer, the object, and the consideration. Much

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[18] *People v. Opiana*, 750 Phil. 140, 147 (2015).

[19] 684 Phil. 20 (2012).

[20] *Id.* at 40.

similar to the case of *Posada*, therefore, the prosecution in this case likewise deprived Reyes of his right to be informed of the offense charged against him. To repeat, for this reason alone, Reyes should already be acquitted.

Even assuming, however, for the sake of argument, that the Information in this case sufficiently informed Reyes of the charge against him, Reyes would still be acquitted on the ground that the prosecution failed to prove his guilt beyond reasonable doubt.

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.[21] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[22] the law nevertheless also requires **strict** compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[23] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that required to make a finding of guilt.[24]

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[21] *People v. Guzon*, 719 Phil. 441, 451 (2013).

[22] *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

[23] *People v. Guzon*, *supra* note 21, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

[24] *Id.*, citing *People v. Remigio*, 700 Phil. 452, 464-465 (2012).

In this connection, Section 21, Article II of RA 9165,[25] the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

This must be so because with "the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."[26]

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[25] The said section reads 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 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[.]

[26] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witness**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the IRR of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[27] In this connection, this also means that the three required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat, as the CA itself pointed out, that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[28] The Court has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.[29]

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[27] IRR of RA 9165, Art. II, Sec. 21(a).

[28] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

[29] *People v. Almorfe*, 631 Phil. 51, 60 (2010); *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Villanueva*, G.R. No. 231792,

In the present case, not one of the three required witnesses was present at the time of seizure and apprehension and even during the conduct of the inventory. As PO3 Jimmy Vaquilar (PO3 Vaquilar), part of the apprehending team, himself testified:

Q Do you remember if there was any incident that requires you to carry on your duties and functions on July 5, 2011 at early dawn?

A We conducted buy bust operation against the person of Alglen Reyes, sir.

Q Prior to the conduct of buy bust operation, what was done in your office?

A On July 4, we gathered information from the Informant that there is a transaction of illegal drugs and so we informed our Chief of Police about it, sir.

Q So what did your Chief of Police do when you informed him of that information that you obtained from the Informant?

A We called all the members of intel-operatives of PNP Binmaley to hold a briefing on the conduct of buy bust operation, sir.

x x x x x x x x x

Q In that briefing, who was delegated to be the poseur-buyer?

A I was the one, sir.

Q How many members of the PNP Binmaley were actually formed?

A Four (4) members, sir.

January 29, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Dionisio*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Sagaunit*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6.

Q Were there other members of any government agency that were made as part of that buy bust operation?

A No more, only the four of us, sir.

x x x x x x x x x

Q You said also that it was Police Officer Elcano who made the necessary coordination?

A Yes, sir.

Q Do you know if he actually coordinated with some government agencies?

A Yes, he coordinated with PDEA at around 8:00 p.m., sir.

Q How do you know that he actually coordinated with PDEA?

A Because I was the one who dialed the number of PDEA when he called-up the said office, sir.

Q <u>Are there any other government agencies that you coordinated with?</u>

A <u>No more, only PDEA, sir.</u>

x x x x x x x x x

Q So after that, what happened next?

A We immediately proceeded to the area to conduct the buy bust operation, sir.

Q So when you said "we", you are referring to you and your other 3 companions?

A Yes, sir.

x x x x x x x x x

Q So when you were able to go near him, what transpired at that moment?

A We exchanged items, sir.

Q What did you tell Alglen, when did he exchange something to you?

A I told him, "This is the money, so give me the thing that I will buy."

Q So what was that thing that you will buy?

A One sachet of suspected shabu, sir.

Q In return to that one sachet that you are referring to, what did you do?

A When the item is already handed to me, I signalled my companions and informed him that I am a police officer.

Q Where was the marked money at that time when Algen (*sic*) handed to you the one sachet of suspected shabu?

A I already gave it to him, sir.

Q So what happened next?

A After I signalled to my companions, I told the accused that I am a police officer, sir.

Q So what happened next after you informed Algen (*sic*) that you are a policeman?

A After frisking his right pocket, we were able to recover another 3 sachets of shabu, sir.

Q What happened next after that?

A We apprised him of his right before bringing him to the police station, sir.

Q If those sachets of shabu will be shown to you, will you be able to identify them?

A Yes, sir.

Q By the way, what did you do with these sachets of shabu right after they were confiscated from the accused?

A I placed my markings on the sachets, sir.

Q Where did you make the markings, Mr. Witness?

A In the area, at barangay Malindong, sir.

Q You are referring to the place where you arrested the accused?

A Yes, sir.[30] (Emphasis and underscoring supplied)

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[30] TSN, August 15, 2011, pp. 3-11.

The foregoing testimony was corroborated by the testimony of PO2 Loidan Solomon who was also part of the apprehending team.[31] None of the prosecution witnesses offered a version that would contradict the same. Neither did they try to offer an explanation as to why not one of the three required witnesses – a representative from the DOJ, a media representative, and an elective official – was present in the buy-bust operation conducted against Reyes. The prosecution did not also address the issue in their pleadings, and the RTC and the CA instead had to rely only on the presumption that police officers performed their functions in the regular manner to support Reyes' conviction.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[32] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[33] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of 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 subject sachet that was evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.
>
> The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless**

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[31] TSN, September 19, 2011, p. 7.

[32] G.R. No. 228890, April 18, 2018.

[33] 736 Phil. 749 (2014).

arrest. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[34]

It is important to point out that the apprehending team in this case had more than ample time to comply with the requirements established by law. As PO3 Vaquilar himself testified, they even tried to coordinate with the Philippine Drug Enforcement Agency (PDEA) four hours before the operation was actually executed.[35] The officers, therefore, could have complied with the requirements of the law had they intended to. However, the apprehending officers in this case did not exert even the slightest of efforts to secure the attendance of any of the three required witnesses. Worse, neither the police officers nor the prosecution – during the trial – offered any explanation for their deviation from the law.

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[34] *People v. Tomawis*, *supra* note 32, at 11-12.

[35] TSN, August 15, 2011, p. 6.

It bears stressing that the prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,[36]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) **their attendance was impossible because the place of arrest was a remote area;** (2) **their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf;** (3) **the elected official themselves were involved in the punishable acts sought to be apprehended;** (4) **earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or** (5) **time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape**[37]

In *People v. Umipang*,[38] the Court dealt with the same issue where the police officers involved did not show any genuine effort to secure the attendance of the required witness before the buy-bust operation was executed. In the said case, the Court held:

> Indeed, the absence of these representatives during the physical inventory and the marking of the seized items does not *per se* render the confiscated items inadmissible in evidence. However, we take

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[36] G.R. No. 231989, September 4, 2018.

[37] *Id*. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17; emphasis in the original and underscoring supplied.

[38] 686 Phil. 1024 (2012).

note that, in this case, the SAID-SOTF did not even attempt to contact the *barangay* chairperson or any member of the *barangay* council. There is no indication that they contacted other elected public officials. Neither do the records show whether the police officers tried to get in touch with any DOJ representative. Nor does the SAID-SOTF adduce any justifiable reason for failing to do so — especially considering that it had sufficient time from the moment it received information about the activities of the accused until the time of his arrest.

Thus, we find that there was no genuine and sufficient effort on the part of the apprehending police officers to look for the said representatives pursuant to Section 21(1) of R.A. 9165. **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. We stress that it is the prosecution who has the positive duty to establish that earnest efforts were employed in contacting the representatives enumerated under Section 21(1) of R.A. 9165, or that there was a justifiable ground for failing to do so.**[39] (Emphasis and underscoring supplied)

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always do so within the bounds of the law.[40] Without the insulating presence of the representative from the media and the DOJ, and any elected public official during the seizure and marking of the sachets of *shabu*, the evils of switching, "planting" or contamination of the evidence would again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachets of *shabu* that were evidence herein of the *corpus delicti*. Thus, this failure adversely affected the trustworthiness of the incrimination of the accused. Indeed, the insulating presence of such witnesses would have preserved an unbroken chain of custody.[41]

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[39] *Id.* at 1052-1053.

[40] *People v. Ramos*, 791 Phil. 162, 175 (2016).

[41] *People v. Mendoza*, *supra* note 33, at 764.

Concededly, Section 21 of the IRR of RA 9165 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." For this provision to be effective, however, the prosecution must first (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.[42] Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.[43] As the Court explained in *People v. Reyes*:[44]

> Under the last paragraph of Section 21(a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal. x x x[45] (Emphasis supplied)

In sum, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. The integrity and evidentiary value

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[42] *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[43] See *People v. Sumili,* 753 Phil. 342 (2015).

[44] 797 Phil. 671 (2016).

[45] *Id*. at 690.

of the *corpus* delicti has thus been compromised. In light of this, Reyes must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated September 9, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 05890 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Alglen Reyes y Paulina is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr.*,* *JJ.*, concur.

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* Designated additional Member per Special Order No. 2587 dated August 28, 2018.

FIRST DIVISION

[G.R. No. 225753. October 15, 2018]

JOSE PAULO LEGASPI *y* NAVERA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. No. 225799. October 15, 2018]

VICTOR DAGANAS *y* JANDOC, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ESTAFA; ELEMENTS.— Criminal fraud resulting to damage capable of pecuniary estimation is punished under Article 315 of the RPC. In general, the elements of *estafa* are: (1) that the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Invariably, unlawful abuse of confidence or deceit is the essence of *estafa*.

2. ID.; ID.; ESTAFA THROUGH MISAPPROPRIATION; ESSENTIAL ELEMENTS; EXISTENCE THEREOF MUST BE PROVED BEYOND REASONABLE DOUBT TO SECURE CONVICTION, FOR ANYTHING LESS THAN ALL THE ELEMENTS OF THE OFFENSE CHARGED NEGATES A FINDING OF GUILT.— [*E*]*stafa* through misappropriation is defined and penalized under Article 315, paragraph 1(b) of the RPC, as amended by Republic Act No. 10951 x x x. The elements of *estafa* through misappropriation under Article 315, paragraph 1(b) are: (a) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (b) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the prejudice of another; and (d) demand by the offended party that the offender return the money or property received. To

secure conviction, it behooves upon the State to prove the existence of all essential elements of the offense charged beyond reasonable doubt. Anything less than all the elements of the offense charged negates a finding of guilt.

3. ID.; ID.; ID.; ID.; ELEMENT OF RECEIPT OF MONEY OR PROPERTY; ACCUSED'S ACQUISITION OF BOTH MATERIAL OR PHYSICAL POSSESSION AND JURIDICAL POSSESSION OF THE THING RECEIVED MUST BE PROVED. — To establish the first element of *estafa* under Article 315, paragraph 1(b), the CA focused on an acknowledgement receipt executed by Legaspi to show that the latter indeed received the amount of ₱9,500,000.00 from private complainant. This observation is, however, inaccurate. For one, Article 315, paragraph 1(b) requires proof of receipt by the offender of the money, goods, or other personal property *in trust* or *on commission,* or *for administration,* or under any other obligation *involving the duty to make delivery* of or to *return* the same. In other words, mere receipt of the money, goods, or personal property does not satisfy the first element, it must be demonstrated that the character of such receipt must either be in trust, on commission or for administration or that the accused has the obligation to deliver or return the same money, goods or personal property received. It is therefore essential to prove that the accused acquired both material or physical possession and juridical possession of the thing received. The Information itself is bereft of any indication that petitioners received private complainant's money in such manner as to create a fiduciary relationship between them. On the contrary, the Information reads that private complainant "invested" his money with iGen-Portal.

4. ID.; ID.; ID.; ID.; ELEMENT OF CONVERSION OR MISAPPROPRIATION; WORDS "CONVERT" AND "MISAPPROPRIATE," DEFINED; IN PROVING THE ELEMENT OF CONVERSION OR MISAPPROPRIATION, A LEGAL PRESUMPTION OF MISAPPROPRIATION ARISES WHEN THE ACCUSED FAILS TO DELIVER THE PROCEEDS OF THE SALE OR TO RETURN THE ITEMS TO BE SOLD AND FAILS TO GIVE AN ACCOUNT OF THEIR WHEREABOUTS.— Anent the second element, the CA relied on a legal presumption of conversion or

misappropriation only because petitioners failed to issue to private complainant the stock certificates for the 2,000 shares of stocks purchased. This reasoning is utterly misplaced. In *Tria v. People*, We defined the second element of conversion or misappropriation as follows: The words "convert" and "misappropriate" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts. Thus, to convert or to misappropriate invariably require that the accused used or disposed the property as if it were his own or devoted the same to an entirely different purpose than that agreed upon. Here, there was not the slightest demonstration that petitioners used the amount of ₱9,500,000.00 at any time after private complainant deposited said money to iGen-Portal. In fact, the CA had to rely on a mere presumption that petitioners coverted or misappropriated said money anchored upon the latter's failure to issue the stock certificate in private complainant's name. We find that the application of said legal presumption is utterly misplaced.

APPEARANCES OF COUNSEL

Defensor Lantion Briones Villamor & Tolentino for petitioner Jose Paulo N. Legaspi.

Fernandez & Associates Law Offices for petitioner Victor J. Daganas.

The Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

Petitioners Jose Paulo Legaspi *y* Navera (Legaspi) and Victor Daganas *y* Jandoc (Daganas) (collectively, the petitioners) assail

through these consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court the Decision[2] dated January 21, 2016 and the subsequent Resolution[3] dated July 13, 2016 of the Court of Appeals in CA-G.R. CR No. 36404. Respondent, through the Office of the Solicitor General (OSG), filed its Comment[4] on the consolidated petitions, to which Legaspi interposed a Reply.[5]

On September 6, 2017, the Court denied the consolidated petitions for failure to show reversible error on the part of the CA as to warrant the exercise of its discretionary appellate jurisdiction.[6] Legaspi and Daganas timely moved for reconsideration[7] and urged a review of the denial of their petitions essentially on the ground that the Information under which they were charged was fatally defective and negates the crime charged therein.[8] The OSG sought the denial of petitioners' motion for reconsideration.

To lend proper context and appropriate review of the instant case, a statement of the facts and the arguments raised by the parties is imperative.

The Facts

Legaspi and Daganas were charged with the crime of estafa committed under Article 315, paragraph 1(b) of the Revised Penal Code (RPC) in an Information[9] which reads:

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[1] *Rollo* (G.R. No. 225753), pp. 30-62; *rollo* (G.R. No. 225799), pp. 12-38.

[2] *Rollo* (G.R. No. 225753), pp. 64-73.

[3] *Id*. at 75-76.

[4] *Id*. at pp. 287-289.

[5] *Rollo* (G.R. No. 225799), pp. 97-103.

[6] *Rollo* (G.R. No. 225753), p. 302.

[7] *Id*. at 304-336 and 339-361.

[8] *Id*. at 311.

[9] *Id*. at 77.

The undersigned State Prosecutor II of the Department of Justice, in his capacity as the Acting City Prosecutor of Pasig City, hereby accuses [Legaspi] and [Daganas] of the crime of estafa under Article 315, par. 1(b) of the [RPC], committed as follows:

That on or about November 15, 2005, in Pasig City and within the jurisdiction of this Honorable Court, the above-named [petitioners], conspiring and confederating together and helping one another, did then and there willfuly, unlawfully and feloniously defraud Fung Hing Kit in the following manner, to wit: the said [petitioners], with abuse of confidence, induced Fung Hing Kit to invest at iGen-Portal, and the latter invested and in fact deposited the amount of 9.5 Million Pesos into the account of iGen-Portal, once in possession of said amount, the said (petitioners], with abuse of confidence, misappropriated, misapplied and converted the said amount to their own and personal use and benefit, to the damage and prejudice of said Fung Hing Kit in the aforesaid amount of 9.5 Million Pesos.

CONTRARY TO LAW.[10]

When arraigned, petitioners pleaded not guilty. At the pre-trial conference, the parties stipulated that Fung Hing Kit (private complainant) remitted, through Express Padala in Hongkong, the amount of ₱9,500,000.00 to iGen-Portal International Corporation (iGen-Portal).[11]

The prosecution presented private complainant and one Marcelina Balisi (Balisi), private complainant's domestic helper in Hongkong.[12] The prosecution's evidence tends to establish the following facts:

Private complainant is a businessman in Hongkong. In May 2005, he met Daganas in Hongkong who then proposed a "joint venture" by buying 10% share of iGen-Portal. Private complainant went to the Philippines in November 2005 where he was presented with iGen-Portal's income analysis, articles of incorporation and projected income analysis. Private

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[10] *Id*.

[11] *Id*. at 79.

[12] *Id*. at 80.

complainant agreed to invest in iGen-Portal upon his return to Hongkong.[13]

Thus, in November 15, 2005, private complainant remitted the amount of ₱9,500,000.00 as payment for the 10% shares of iGen-Portal. Private complainant requested for the issuance of a stock certificate in his name but none was allegedly given.[14]

In January 2006, private complainant met with petitioners in Hongkong. Instead of issuing his stock certificate, petitioners allegedly made new proposals which private complainant turned down.[15]

For their part, petitioners alleged that private complainant wanted to purchase shares of iGen-Portal. However, because there were no more shares available and because private complainant is a foreigner prohibited to engage in retail trade business, petitioners refused. Then, petitioners received a call from Balisi who wanted to buy 2,000 shares of stock of iGen-Portal for ₱9,500,000.00 and that private complainant, on behalf of Balisi, will remit the said amount to iGen-Portal. After some time, private complainant demanded that the shares in the name of Balisi be transferred to his name, explaining that it was he who actually paid for the shares of stock. When the shares could not be transferred to him, private complainant demanded for the return of the ₱9,500,000.00. Eventually, iGen-Portal suffered loss of sales which led to its closure.[16]

On November 14, 2013, the RTC rendered Judgment[17] finding petitioners guilty of the crime of *estafa* and disposed as follows:

WHEREFORE, premises considered, judgment is hereby rendered finding the accused, [**LEGASPI] AND [DAGANAS]**, guilty beyond

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[13] *Id*. at 66.

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

[15] *Id*. at 67.

[16] *Id*. at 67-68.

[17] *Id*. at 131-148.

reasonable doubt of the crime of *estafa* penalized under Article 315, par. 1(b) of the [RPC], without any aggravating or mitigating circumstance, and are accordingly sentenced to suffer the indeterminate penalty of imprisonment ranging from 4 years and 2 months of *prision correccional* as minimum to 20 years of *reclusion temporal* as maximum and to indemnify private complainant, Fung Hing Kit, in the amount of Php9,500,000.00 as well as to pay the costs of suit.

SO ORDERED.[18]

This prompted petitioners to appeal[19] to the CA, essentially arguing that the instant case involves the purchase and sale of shares of stock and as such, there can be no estafa in the absence of a fiduciary relationship between petitioners and private complainant.

The CA, however, affirmed petitioners' conviction in a Decision dated January 21, 2016, as follows:

WHEREFORE, the instant appeal is **DENIED**. The *Decision* dated 14 November 2013 of the Regional Trial Court of Pasig City, Branch 166, in Criminal Case No. 136334 is hereby **AFFIRMED**.

SO ORDERED.[20]

According to the CA, all elements of estafa through conversion or misappropriation are present: (1) money in the amount of ₱9,500,000.00 was received by Legaspi as evidenced by an acknowledgment receipt issued by the latter;[21] (2) there is a legal presumption of conversion or misappropriation when petitioners failed to issue to private complainant the stock certificate evidencing the 2,000 shares which he purchased and when petitioners failed to return the amount of ₱9,500,000.00;[22] (3) private complainant was prejudiced by petitioners'

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[18] *Id*. at 148.

[19] *Id*. at 153-203.

[20] *Id*. at 72.

[21] *Id*. at 70-71.

[22] *Id*. at 71.

misappropriation;[23] and (4) there was demand for the return of private complainant's investment.[24]

Petitioners' motion for reconsideration met similar denial from the CA Resolution[25] dated July 13, 2016. Thus, resort to the present appeal.

The Issue

The core issue to be resolved is whether or not the CA correctly affirmed petitioners' conviction for estafa defined and penalized under Article 315, paragraph 1(b) of the RPC.

Ruling of the Court

We find merit in the motions for reconsideration and accordingly, the Court reconsiders its Resolution dated September 6, 2017.

Criminal fraud resulting to damage capable of pecuniary estimation is punished under Article 315 of the RPC. In general, the elements of *estafa* are: (1) that the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Invariably, unlawful abuse of confidence or deceit is the essence of *estafa*.

In particular, *estafa* through misappropriation is defined and penalized under Article 315, paragraph 1(b) of the RPC, as amended by Republic Act No. 10951,[26] which provides:

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[23] *Id*. at 72.

[24] *Id*.

[25] *Id*. at 75-76.

[26] 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.

Section 85. Article 315 of the same Act, as amended by Republic Act No. 4885, Presidential Decree No. 1689, and Presidential Decree No. 818, is hereby further amended to read as follows:

ART. 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over Two million four hundred thousand pesos (₱2,400,000) but does not exceed Four million four hundred thousand pesos (₱4,400,000), and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional Two million pesos (₱2,000,000); but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

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1. With unfaithfulness or abuse of confidence, namely:

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(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property[.]

The elements of *estafa* through misappropriation under Article 315, paragraph 1(b) are: (a) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (b) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the prejudice

of another; and (d) demand by the offended party that the offender return the money or property received.[27]

To secure conviction, it behooves upon the State to prove the existence of all the essential elements of the offense charged beyond reasonable doubt. Anything less than all the elements of the offense charged negates a finding of guilt.

To establish the first element of *estafa* under Article 315, paragraph 1(b), the CA focused on an acknowledgment receipt executed by Legaspi to show that the latter indeed received the amount of ₱9,500,000.00 from private complainant. This observation is, however, inaccurate.

For one, Article 315, paragraph 1(b) requires proof of receipt by the offender of the money, goods, or other personal property *in trust* or *on commission*, or *for administration*, or under any other obligation *involving the duty to make delivery* of or to *return* the same. In other words, mere receipt of the money, goods, or personal property does not satisfy the first element, it must be demonstrated that the character of such receipt must either be in trust, on commission or for administration or that the accused has the obligation to deliver or return the same money, goods or personal property received.[28] It is therefore essential to prove that the accused acquired both material or physical possession and juridical possession of the thing received.[29]

The Information itself is bereft of any indication that petitioners received private complainant's money in such manner as to create a fiduciary relationship between them. On the contrary, the Information reads that private complainant "invested" his money with iGen-Portal. It is undisputed that at the time material to the instant case, iGen-Portal was a duly-registered corporation engaged in wholesale and retail business,[30]

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[27] *Serona v. Court of Appeals*, 440 Phil. 508, 517 (2002).

[28] *Tanzo v. Hon. Drilon*, 385 Phil. 790, 800 (2000).

[29] See *Santos v. People*, 260 Phil. 519, 526 (1990).

[30] *Rollo* (G.R. No. 225753), p. 137.

the existence of which was never denied by private complainant as he himself admitted having scrutinized iGen-Portal's Articles of Incorporation, income analysis and projected income analysis.[31] Clearly, by the transfer of stocks in exchange for the amount of ₱9,500,000.00, no fiduciary relationship was created between petitioners and private complainant.

However, as the undisputed facts reveal, the shares of stock of Legaspi were transferred to Balisi, a Filipino, instead of to private complainant. This transaction was duly evidenced by a Deed of Sale of Shares of Stock between Legaspi and Balisi. Accordingly, a stock certificate was issued for the 2,000 shares in the name of Balisi which was recorded in the stock and transfer book of iGen-Portal.[32] To be sure, the issue of whether such arrangement was contrary to foreign ownership restrictions or was used to circumvent Commonwealth Act No. 108 or the "Anti-Dummy Law" is not the pressing concern in this *estafa* case. If at all, what this circumstance reveals is that there was no abuse of confidence committed by petitioners nor suffered by private complainant; rather, private complainant voluntarily parted with his money after he was made fully aware of foreign ownership restrictions and then, even acquiesced to having Balisi, private complainant's domestic helper, purchase the stocks albeit the funds therefor would come from him.

It is also revealing that private complainant first demanded for the issuance or transfer of the stock certificate in his name and when said demand was not forthcoming, he demanded for the return of his investment and when that remained unsatisfied, only then did he file the complaint *a quo* for *estafa*. Private complainant's demand for the issuance of a stock certificate in his name in return for his investment negates the claim that petitioners received the money with the obligation to return the same.

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[31] *Id*. at 133.

[32] *Id*. at 139.

For another, the acknowledgment receipt relied upon by the CA unequivocally states that the amount of ₱9,500,000.00 was "for the payment for 2,000 shares of stocks of [i-Gen] Portal." This is consistent with private complainant's allegation in his complaint that he remitted the amount of ₱9,500,000.00 as "payment for the 10% shares of [i-Gen] Portal." At the pre-trial, the prosecution also stipulated that said amount was "received by i-Gen Portal in its account."[33] The Information also charges that private complainant deposited the amount of ₱9,500,000.00 "into the account of [i-Gen] Portal." Such partake of judicial admissions which require no further proof. Thus, the inevitable conclusion is that the sum of ₱9,500,000.00 was not received by petitioners, either materially or juridically, but by iGen-Portal – an entity separate and distinct from individual petitioners which veil of corporate fiction was not pierced.

Anent the second element, the CA relied on a legal presumption of conversion or misappropriation only because petitioners failed to issue to private complainant the stock certificates for the 2,000 shares of stocks purchased. This reasoning is utterly misplaced.

In *Tria v. People*,[34] We defined the second element of conversion or misappropriation as follows:

> The words "convert" and "misappropriate;" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.[35] (Citation omitted)

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[33] *Id*. at 44.

[34] 743 Phil. 441 (2014).

[35] *Id*. at 452.

Thus, to convert or to misappropriate invariably require that the accused used or disposed the property as if it were his own or devoted the same to an entirely different purpose than that agreed upon. Here, there was not the slightest demonstration that petitioners used the amount of ₱9,500,000.00 at any time after private complainant deposited said money to iGen-Portal. In fact, the CA had to rely on a mere presumption that petitioners converted or misappropriated said money anchored upon the latter's failure to issue the stock certificate in private complainant's name.

We find that the application of said legal presumption is utterly misplaced. Under the Corporation Code,[36] shares of stock are personal property and thus may be transferred by delivery of the certificate. For a corporation to be bound, such transfer must be recorded in the stock and transfer book, where the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred are indicated. It is only from this time that the obligation on the part of the corporation to recognize the rights of a transferee as a stockholder arises.[37] Consequently, "without such recording, the transferee may not be regarded by the corporation as one among its stockholders and the

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[36] Sec. 63. *Certificate of stock and transfer of shares*. – The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates endorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation

[37] *Ponce v. Alsons Cement Corp*., 442 Phil. 98, 110 (2002).

corporation may legally refuse the issuance of stock certificates."[38] Thus, private complainant could not have demanded for the issuance of a stock certificate in his name when he acquiesced to having Balisi stand-in for him. As far as i-Gen Portal was concerned, the purchase was made by Balisi and hence, if at all, the transfer ought to be made in her name.

In the absence of the first and second elements, there can be no crime of *estafa*; petitioners' acquittal should follow as a matter of course.

It is apparent that private complainant departed with a considerable amount of money for purposes of investing in iGen-Portal. It is an unfortunate occurrence that after his investment, iGen-Portal suffered successive breakaways of its distributors.[39] But the Court cannot hold petitioners liable, much less criminally, only because of private complainant's unfruitful investment. As succinctly held in *Spouses Pascual v. Ramos*:[40]

> All men are presumed to be sane and normal and subject to be moved by substantially the same motives. When of age and sane, they must take care of themselves. In their relations with others in the business of life, wits, sense, intelligence, training, ability and judgment meet and clash and contest, sometimes with gain and advantage to all, sometimes to a few only, with loss and injury to others. In these contests men must depend upon themselves — upon their own abilities, talents, training, sense, acumen, judgment. The fact that one may be worsted by another, of itself, furnishes no cause of complaint. One man cannot complain because another is more able, or better trained, or has better sense or judgment than he has; and when the two meet on a fair field the inferior cannot murmur if the battle goes against him. The law furnishes no protection to the inferior simply because he *is* inferior, any more than it protects the strong because he *is* strong. The law furnishes protection to both alike — to one no more or less than to the other. It makes no distinction between the wise and the foolish, the great and the small, the strong

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[38] *Id*.

[39] *Rollo* (G.R. No. 225753), p. 49.

[40] 433 Phil. 449 (2002).

and the weak. The foolish may lose all they have to the wise; but that does not mean that the law will give it back to them again. Courts cannot follow one every step of his life and extricate him from bad bargains, protect him from unwise investments, relieve him from one-sided contracts, or annul the effects of foolish acts. Courts cannot constitute themselves guardians of persons who are not legally incompetent. Courts operate not because one person has been defeated or overcome by another, but because he has been defeated or overcome *illegally*. Men may do foolish things, make ridiculous contracts, use miserable judgment, and lose money by then — indeed, all they have in the world; but not for that alone can the law intervene and restore. There must be, in addition, a *violation* of law, the commission of what the law knows as an *actionable wrong*, before the courts are authorized to lay hold of the situation and remedy it.[41] (Citation omitted and italics in the original)

WHEREFORE, the motions for reconsideration are **GRANTED**. The Resolution dated September 6, 2017 is **SET ASIDE**. Instead, a new judgment is rendered **GRANTING** the consolidated petitions. Accordingly, the Decision dated January 21, 2016 and Resolution dated July 13, 2016 of the Court of Appeals in CA-G.R. CR No. 36404 are **REVERSED and SET ASIDE**. The criminal charges against petitioners Jose Paulo Legaspi *y* Navera and Victor Daganas *y* Jandoc, in Criminal Case No. 136334, are **DISMISSED**.

SO ORDERED.

Bersamin[*] (*Acting Chairperson*) and *del Castillo, JJ.*, concur.

Jardeleza, J., on official business.

Gesmundo,[**] *J.*, on leave.

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[41] *Id.* at 460-461, citing *Vales v. Villa*, 35 Phil. 769, 787-788 (1916).

[*] Designated Acting Chairperson per Special Order No. 2606 dated October 10, 2018.

[**] Designated Additional Member per Special Order No. 2607 dated October 10, 2018.

THIRD DIVISION

[G.R. No. 230721. October 15, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MONICA JIMENEZ *y* DELGADO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, AS AMENDED (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF PROHIBITED DRUGS; BUY-BUST OPERATION; A PRIOR SURVEILLANCE, MUCH LESS A LENGTHY ONE, IS NOT NECESSARY, ESPECIALLY WHERE THE POLICE OPERATIVES ARE ACCOMPANIED BY THEIR INFORMANT DURING THE ENTRAPMENT.—** The argument of appellant that the arresting officers illegally arrested her, because they did not have with them any warrant of arrest nor a search warrant, does not serve any merit. Buy-bust operations are legally sanctioned procedures for apprehending drug peddlers and distributors. These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious activities. There is no textbook method of conducting buy-bust operations. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment. Hence, the said buy-bust operation is a legitimate, valid entrapment operation.

2. **ID.; ID.; ID.; ELEMENTS; THE ILLEGAL DRUG MUST BE PRODUCED BEFORE THE COURT AS EXHIBIT AND THAT WHICH WAS EXHIBITED MUST BE THE VERY SAME SUBSTANCE RECOVERED FROM THE SUSPECT.—** Under Section 5, Article II of R.A. No. 9165, or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefore. In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court

and is shown to be the same drugs seized from the accused." In illegal sale, the illicit drugs confiscated from the accused compromise the *corpus delicti* of the charge. In *People v. Gatlabayan*, the Court held that "it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect." Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."

3. ID.; ID.; SECTION 21 OF R.A. NO. 9165; CHAIN OF CUSTODY RULE; PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED DRUGS; THREE-WITNESS RULE; NOT COMPLIED WITH.— Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame-up." *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before their amendment by R.A. No. 10640. In this case, it is undeniable that during the conduct of physical inventory and photograph of the seized items, there were no

representatives from the media and the DOJ, and there was also no elected public official to witness the said inventory.

4. **ID.; ID.; ID.; ID.; THREE WITNESS RULE; JUSTIFIABLE REASONS FOR NON-COMPLIANCE THEREOF.—**The records are also bereft of any indication as to the reason why the witnesses required under the law were dispensed with. In *People v. Romy Lim*, this Court held that the presence of the three witnesses to the physical inventory and photograph must be alleged and proved, thus: It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal Could prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

5. **ID.; ID.; ID.; ID.; THE ABSENCE OF THE REQUIRED WITNESSES DOES NOT PER SE RENDER THE CONFISCATED ITEMS INADMISSIBLE PROVIDED A JUSTIFIABLE REASON FOR SUCH FAILURE BE PROVEN AND THE PROSECUTION HAD SHOWN THAT EARNEST EFFORTS WERE EMPLOYED TO SECURE THE ATTENDANCE OF THE REQUIRED WITNESSES FOR A SHEER STATEMENT THAT THESE WITNESSES WERE UNAVAILABLE WITHOUT SO MUCH AS AN EXPLANATION ON WHETHER SERIOUS ATTEMPTS WERE EMPLOYED TO LOOK FOR THEM, GIVEN THE CIRCUMSTANCES IS TO BE REGARDED AS A FLIMSY EXCUSE. —** Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires: It is well to note that the absence of these required witnesses

does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In People v. Umipang, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified ground for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.

6. **ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO FOLLOW THE MANDATED PROCEDURE MUST BE ADEQUATELY EXPLAINED AND MUST BE PROVEN AS A FACT IN ACCORDANCE WITH THE RULES ON EVIDENCE.—** Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. A stricter

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

7. ID.; ID.; ID.; ID.; IDENTITY OF THE SEIZED ILLEGAL DRUGS NOT ESTABLISHED BEYOND REASONABLE DOUBT IN CASE AT BAR; IF DOUBT SURFACES ON THE SUFFICIENCY OF THE EVIDENCE TO CONVICT REGARDLESS THAT IT DOES ONLY AT THE STAGE OF AN APPEAL, OUR COURTS OF JUSTICE SHOULD NONETHELESS RULE IN FAVOR OF THE ACCUSED, LEST IT BETRAY ITS DUTY TO PROTECT INDIVIDUAL LIBERTIES WITHIN THE BOUNDS OF LAW.— If doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should nonetheless rule in favor of the accused, lest it betray its duty to protect individual liberties within the bounds of law. Absent, therefore, any justifiable reason in this case for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized item has not been established beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

For this Court's resolution is the appeal from the Court of Appeals' (*CA*) Decision[1] dated July 22, 2016 dismissing appellant Monica Jimenez y Delgado's appeal and affirming the Decision[2] dated January 5, 2015 of the Regional Trial Court (*RTC*),

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[1] Penned by Associate Justice Romeo F. Barza, with the concurrence of Presiding Justice (now Associate Justice of the Supreme Court) Andres B. Reyes, Jr. and Associate Justice Agnes Reyes-Carpio; *rollo*, pp. 2-16.

[2] Penned by Presiding Judge Myra B. Quiambao; CA *rollo*, pp. 61-71.

Branch 203, Muntinlupa City, convicting appellant of Violation of Section 5, Article II, Republic Act (*R.A.*) No. 9165.

The facts follow.

Around 10:00 a.m. of August 20, 2009, a confidential informant went to the Philippine National Police (*PNP*) Muntinlupa City, and informed SPO1 Cirilo Zamora, who was then assigned as an anti-drug operative, about illegal drug activities of a certain "Monik" at Lakeview Homes Subdivision, Putatan, Muntinlupa City. The Chief of Police, PSSUPT Elmer Jamias, was immediately informed of the said report. PSSUPT Jamias instructed the police officers to validate the information, and acting on the said directive, the latter immediately validated and found out that the information was indeed true. Thereafter, PSSUPT Jamias instructed SPO1 Brigido Cardiño, the team leader, to conduct a buy-bust operation. They then coordinated with the Philippine Drug Enforcement Agency (*PDEA*) and prepared the Pre-Operational Report signed by their Action Officer, SAID-SOTG, PSUPT Eleazar P. Matta. SPO1 Cardiño gave the buy-bust money of ₱1,000.00 to SPO1 Cirilo Zamora who was tasked as the poseur-buyer. SPO1 Zamora marked the right portion of the ₱1,000.00 bill with the initials "CZ" and took a photograph thereof. A briefing was then conducted by SPO1 Cardiño and the operation was recorded in the police blotter. The team, together with the confidential informant, immediately proceeded to Pasong Makipot, Lakeview Homes Subdivision, Putatan, Muntinlupa City, where alias "Monik" instructed the confidential informant to meet her.

The buy-bust team reached the target area at around 8:15 p.m. of August 20, 2009. SPO1 Zamora and the confidential informant went to the waiting shed and waited for "Monik," while the rest of the team members were scattered within viewing distance. After waiting for more or less five (5) minutes, SPO1 Zamora saw a woman alighting from a tricycle, and immediately the confidential informant told SPO1 Zamora that the said woman was "Monik." "Monik" proceeded to the waiting shed and asked the confidential informant, "*Kanina pa ba kayo diyan kuya*?" The confidential informant replied, "*Hindi naman. Halos*

magkasunod lang tayo." Thereafter, the confidential informant introduced SPO1 Zamora to "Monik" as a seaman who just arrived and the one who will buy the *shabu* that the confidential informant ordered from her. "Monik" said, "*May pupuntahan pa ako kuya. Asan na yung bayad ninyo sa order ninyo*?" SPO1 Zamora immediately gave "Monik" the buy-bust money. After receiving the money, "Monik" turned around and took something from inside her bra, then turned again and handed a transparent plastic sachet containing white crystalline substance to SPO1 Zamora. SPO1 Zamora, thereafter, executed the pre-arranged signal to his teammates by throwing his lighted cigarette to the ground. PO3 Enrile, the immediate back-up, rushed to the place where SPO1 Zamora and "Monik" were standing, and SPO1 Zamora introduced himself to "Monik" as a police officer. SO1 Zamora recovered from "Monik" the buy-bust money that was still in her left hand and explained to her her constitutional rights in Filipino.

Thereafter, the team brought "Monik" and the recovered items to their office. It was SPO1 Zamora who was in possession of the transparent plastic sachet and the buy-bust money from the place of arrest until they reached their office. Upon arrival at the office, SPO1 Zamora immediately marked the transparent plastic sachet with "MDJ," the initials of "Monik," who was later on identified as herein appellant. SPO1 Zamora proceeded to make an inventory and marked the recovered evidence at the office because according to the same police officer, it was already dark and the witnesses were waiting at the office. The inventory was witnessed by Eddie B. Guevara and Jemma V. Gonzales, both Drug Abuse and Prosecution Control Office (*DAPCO*) employees. After the inventory, a Request for Laboratory Examination on Seized Evidence was prepared and signed by SPO1 Cardiño which was delivered, together with the plastic sachet, to the SPD Crime Laboratory by SPO1 Zamora and PO2 Genova. SPO1 Zamora handed the transparent plastic sachet to SPO1 Miriam Santos at the SPD Crime Laboratory. According to SPO1 Zamora, since he left his ID card inside his car during the buy-bust operation, it was PO2 Genova who gave his ID card to SPO1 Santos for recording. Based on the

laboratory examination conducted by Police Chief Inspector (*PCI*) Richard Allan Mangalip, the substance found inside the plastic sachet yielded a positive result for the presence of methylamphetamine hydrochloride, a dangerous drug.

Thus, an Information was filed against the appellant for violation of Section 5, Article II of R.A. No. 9165, the accusatory portion of which reads:

> That on or about the 20th day of August, 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, unlawfully and feloniously sell, deliver and give away to another Methylamphetamine hydrochloride, a dangerous drug, contained in one (1) heat-sealed transparent plastic sachet weighing 0.03 gram, in violation of the above-cited law.
>
> CONTRARY TO LAW.[3]

During arraignment, appellant entered a plea of "not guilty."

The prosecution presented the testimony of SPO1 Zamora. The parties entered into stipulations on the identity of the accused on the jurisdiction of the court over the place where she was arrested and on the existence, due execution and accuracy of Physical Science Report No. D-402-098. The parties also dispensed with the testimonies of Forensic Chemist PCI Mangalip, Receiving Officer SPO1 Santos and Evidence Custodian PO3 Aries Abian.

Appellant denied the allegation against her. According to her, on August 20, 2009, around 4:00p.m., she was on board a tricycle going to Lakeview Homes, *Barangay* Putatan, Muntinlupa City, to visit her boyfriend. When she alighted from the tricycle, there were a lot of people at the waiting shed in the corner of Pasong Makipot, Lakeview Homes. She noticed that there was a commotion and, thereafter, three (3) men approached her and asked if she was from that place, to which she replied in the negative. The men said; "*Isama 'to*." She

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[3] *Rollo*, p. 3.

was not aware if the men were police officers and asked them why they were accosting her. The men told her that they will just inquire if she knows anyone from Pasong Makipot. Appellant answered in the affirmative. The men again said, "*Isama to*," and proceeded to board the appellant inside a white Revo. The men were later on identified as SPO1 Zamora and PO2 Genova. While inside the vehicle, SPO1 Zamora and PO2 Genova asked her name and residence, and if she knew anyone selling drugs, to which she replied in the negative. SPO1 Zamora and PO2 Genova became angry and threatened her that if she did not cooperate, they will detain her. She was brought under the bridge in Alabang, in front of Metropolis, and while inside the vehicle, the two policemen kept asking her about her job and parents. Appellant informed them that her father is already dead and that her mother was jobless, and that the only one working is her brother. The two policemen insisted that she cooperate, which appellant refused to do. Then SPO1 Zamora demanded money from her. Thereafter, the two policemen brought appellant to their headquarters after staying under the bridge in Alabang for 45 minutes. Appellant and SPO1 Zamora stayed at the parking lot of the headquarters, while PO2 Genova alighted from the vehicle upon the other police officer's instruction to check who was inside their office. PO2 Genova returned and informed SPO1 Zamora that PO3 Enrile was inside the office. SPO1 Zamora and the appellant alighted from the vehicle and proceeded to the second floor of the headquarters. SPO1 Zamora, PO2 Genova and another man wearing black were trying to figure out who among them would be the arresting officer. SPO1 Zamora said that he always acts as the arresting officer and it is now the turn of PO2 Genova. PO2 Genova laughed and said that SPO1 Zamora should be the arresting officer, to which the latter agreed, with PO3 Enrile as the back-up. PO2 Genova then asked SPOI Zamora where the drugs and the buy-bust money are. SPO1 Zamora went to a drawer and took out a transparent sachet and a ₱1,000.00 bill. SPO1 Zamora told the appellant that those were the items recovered from her. SPO1 Zamora then asked the man wearing black for a marking pen and proceeded to take photographs of the plastic sachet and the money. PO2

Genova, who was then typing, called appellant and interviewed her. SPO1 Zamora then instructed PO2 Genova to invent a story on how they arrested appellant. Appellant asked that she be allowed to call her family, but she was told to wait. Thereafter, PO3 Enrile approached appellant and asked about her family and also told her to give money in exchange for her release. PO2 Genova eventually allowed appellant to call her mother over the phone. Appellant's mother arrived at the headquarters around 8:00 p.m. Appellant further said that SPO1 Zamora demanded ₱100,000.00 from her mother and when her mother failed to give the money, she was brought to the Fiscal's office the following day.

The RTC found appellant guilty beyond reasonable doubt of the crime charged against her, thus:

> WHEREFORE, premises considered, the Court finds accused Monica Jimenez y Delgado a.k.a. Monik guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and hereby sentences her to life imprisonment and a fine of ₱500,000.00.
>
> The preventive imprisonment undergone by the accused shall be credited in her favor.
>
> The Branch Clerk of Court is directed to turn-over the methylamphetamine hydrochloride and the ₱1,000 buy-bust money subject of this case to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.
>
> SO ORDERED.[4]

As ruled by the RTC, the prosecution was able to establish that there was a buy-bust operation and that appellant was validly arrested during the conduct of the said operation. It was also held that the prosecution was able to prove the presence of all the elements of the crime charged against appellant. Finally, the RTC ruled that less than strict compliance with the procedural aspect of the chain of custody rule does not necessarily render the seized item inadmissible.

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[4] CA *rollo*, p. 71.

The CA affirmed the decision of the RTC, thus:

WHEREFORE, the instant appeal is hereby DISMISSED. The appealed decision of the RTC-Branch 203, Muntinlupa City, in Criminal Case No. 09-744 finding MONICA D. JIMENEZ guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165, and sentencing her to life imprisonment and fine of Php500,000.00 is hereby AFFIRMED.

SO ORDERED.[5]

The CA ruled that all the elements of the offense charged against appellant was duly proven by the prosecution. The appellate court also held that the members of the PNP Muntinlupa City conducted a valid buy-bust operation against appellant, hence, her warrantless arrest cannot be considered as invalid. The same court further ruled that the non-compliance of Section 21 of R.A. No. 9165 is not fatal and will not render appellant's arrest illegal, or make the item seized inadmissible where there is no elected official, representative from the media and the DOJ were present during the inventory; what is of outmost importance is the preservation of the integrity and evidentiary value of the seized item.

Hence, the present appeal.

The errors presented in this appeal are the following:

I.

THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THE ACCUSED-APPELLANT'S WARRANTLESS ARREST AS ILLEGAL.

II.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE POLICE OFFICERS' NON-COMPLIANCE WITH SECTION 21 OF REPUBLIC ACT NO. 9165 AND ITS IMPLEMENTING RULES AND REGULATIONS.

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[5] *Rollo*, p. 15.

III.

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE BROKEN CHAIN OF CUSTODY OF THE ALLEGEDLY CONFISCATED SHABU.[6]

According to appellant, her warrantless arrest is invalid because she was merely alighting from a tricycle and walking a few steps, acts that could not be synonymous with peddling dangerous drugs, when she was accosted for questioning. She further contends that the provisions under Section 21 of R.A. No. 9165 to ensure an unbroken chain of custody was not followed. Appellant insists that the allegedly seized item was not immediately marked, inventoried and photographed upon her supposed apprehension. She also claims that the same was not done in the presence of a representative from the Department of Justice (*DOJ*), the media and any elected official who were required to be present thereon and sign the copies of the inventory and be given a copy thereof.

The Office of the Solicitor General (*OSG*), in its Brief for the Plaintiff-Appellee, argues that appellant's warrantless arrest was validly enforced because the appellant was caught *in flagrante delicto*. The OSG also contends that there was substantial compliance with R.A. No. 9165 and its Implementing Rules with respect to the custody and disposition of the seized dangerous drugs.

There is merit in the appeal.

The argument of appellant that the arresting officers illegally arrested her, because they did not have with them any warrant of arrest nor a search warrant, does not deserve any merit. Buy-bust operations are legally sanctioned procedures for apprehending drug peddlers and distributors. These operations are often utilized by law enforcers for the purpose of trapping and capturing lawbreakers in the execution of their nefarious

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[6] CA *rollo*, pp. 47-49.

activities.[7] There is no textbook method of conducting buy-bust operations. A prior surveillance, much less a lengthy one, is not necessary, especially where the police operatives are accompanied by their informant during the entrapment.[8] Hence, the said buy-bust operation is a legitimate, valid entrapment operation.

This Court, however, finds that the prosecution failed to prove the guilt of the appellant beyond reasonable doubt.

Under Section 5, Article II of R.A. No. 9165, or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

> (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[9]
>
> In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."[10]

In illegal sale, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge.[11] In *People v. Gatlabayan*,[12] the Court held that "it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance

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[7] *People v. Rebotazo*, 711 Phil. 150, 162 (2013).

[8] See *People v. Manlangit,* 654 Phil. 427, 437 (2011).

[9] *People v. Ismael y Raclang*, G.R. No. 208093, February 20, 2017.

[10] *Id*.

[11] *Id*.

[12] 699 Phil. 240, 252 (2011).

recovered from the suspect."[13] Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[14]

To ensure an unbroken chain of custody, Section 21(1) of R.A. No. 9165 specifies:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

Supplementing the above-quoted provision, Section 21(a) of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 provides:

> (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[.]

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[13] *People v. Mirondo*, 711 Phil. 345, 356-357 (2015).

[14] See *People v. lsmael y Radang*, *supra* note 9.

On July 15, 2014, R.A. No. 10640[15] was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

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

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."[16] Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not

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[15] *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."*

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

always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended."[17] In addition, "[t]he requirement that inventory is required to be done in a police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."[18]

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."[19] In his Co-sponsorship Speech, he noted:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.
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> x x x x x x x x x
>
> Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.

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[17] *Id*.

[18] *Id*.

[19] *Id*. at 349.

It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[20]

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, We opined in *People v. Miranda*:[21]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in

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

[21] G.R. No. 229671, January 31, 2018.

Section 21 of RA 9165 and the IRR does not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[22]

Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame-up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[23] Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a representative of the National Prosecution Service **or**

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[22] See also *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; *People v. Jugo*, G.R. No. 231792, January 29, 2018; *People v. Calibod*, G.R. No. 230230, November 20, 2017; *People v. Ching*, G.R. No. 223556, October 9, 2017; *People v. Geronimo*, G.R. No. 225500, September 11, 2017; *People v. Ceralde*, G.R. No. 228894, August 7, 2017; and *People v. Macapundag*, G.R. No. 225965, March 13, 2017.

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

the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 and its IRR shall apply since the alleged crime was committed before their amendment by R.A. No. 10640.

In this case, it is undeniable that during the conduct of physical inventory and photograph of the seized items, there were no representatives from the media and the DOJ, and there was also no elected public official to witness the said inventory. As shown in the Certificate of Inventory, and through the testimony of SPO1 Zamora, aside from the latter and PO3 Enrile, there were only two members of DAPCO who signed the inventory and who were not even present during the buy-bust operation, thus:

> Q: So you said that the witnesses who are members of DAPCO are late in your buy bust operation?
> A: Yes, ma'am.
>
> Q: They signed as witnesses to the inventory but they did not even see how you seized those items from the accused. Am I correct?
> A: Yes, ma'am, because they were late.[24]

The records are also bereft of any indication as to the reason why the witnesses required under the law were dispensed with. In *People v. Romy Lim*,[25] this Court held that the presence of the three witnesses to the physical inventory and photograph must be alleged and proved, thus:

> It must be alleged and proved that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
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> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and

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[24] TSN, February 8, 2011, p. 33.

[25] G.R. No. 231989, September 4, 2018.

> in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal Could prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.

Earnest effort to secure the attendance of the necessary witnesses must be proven. *People v. Ramos* requires:

> It is well to note that the absence of these required witnesses does not per se render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In People v. Umipang, the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time - beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances; their actions were reasonable.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.[26] It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.[27] Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.[28] A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule, since it is highly susceptible to planting, tampering, or alteration.[29]

If doubt surfaces on the sufficiency of the evidence to convict, regardless that it does only at the stage of an appeal, our courts of justice should nonetheless rule in favor of the accused, lest it betray its duty to protect individual liberties within the bounds of law.[30]

Absent, therefore, any justifiable reason in this case for the non-compliance of Section 21 of R.A. No. 9165, the identity of the seized item has not been established beyond reasonable doubt.

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[26] See *People v. Macapundag*, *supra* note 22.

[27] See *People v. Miranda*, *supra* note 21; *People v. Paz*, *supra* note 22; *People v. Mamangon*, *supra* note 22; and *People v. Jugo*, *supra* note 22.

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

[29] See *People v. Abelarde,* G.R. No. 215713, January 22, 2018; *People v. Macud*, G.R. No. 219175, December 14, 2017; *People v. Arposeple*, G.R. No. 205787, November 22, 2017; *Aparente v. People*, G.R. No. 205695, September 27, 2017; *People v. Cabellon*, G.R. No. 207229, September 20, 2017; *People v. Saragena, supra* note 28; *People v. Saunar*, G.R. No. 207396, August 9, 2017; *People v. Sagana, supra* note 23; *People v. Segundo*, G.R. No. 205614, July 26, 2017; and *People v. Jaafar*, 803 Phil. 582, 591 (2017).

[30] *People v. Miranda, supra* note 21.

WHEREFORE, premises considered, the Court of Appeals' Decision dated July 22, 2016, affirming the Decision dated January 5, 2015 of the Regional Trial Court, Branch 203, Muntinlupa City, convicting appellant Monica Jimenez y Delgado of Violation of Section 5, Article II, Republic Act No. 9165, is **REVERSED AND SET ASIDE**. The same appellant is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is **ORDERED IMMEDIATELY RELEASED** from detention, unless she is confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished to the Superintendent of the Correctional Institution for Women, for immediate implementation. Said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Decision the action he/she has taken.

SO ORDERED.

Leonen, Reyes, J. Jr., and *Hernando, JJ.*, concur.

Gesmundo, J., on vacation leave.

SECOND DIVISION

[G.R. No. 237352. October 15, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARICAR ISLA *y* UMALI,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL

SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUGS 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; THREE-WITNESS RULE.— 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. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the Department of Justice (DOJ), and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, 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."

2. ID.; ID.; ID.; 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, BUT 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 THERE IS A JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** 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 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 fully well that they would have to strictly comply with the chain of custody rule. x x x. In this case, as may be gleaned from the Receipt/ Inventory of Property Seized dated November 28, 2010, the inventory of the items purportedly seized from Isla was not conducted in the presence of an elected public official and a DOJ representative, contrary to the afore-described procedure.

4. **ID.; ID.; ID.; UNJUSTIFIED DEVIATION FROM THE CHAIN OF CUSTODY RULE COMPROMISED THE INTEGRITY AND EVIDENTIARY VALUE OF THE ILLEGAL DRUGS PURPORTEDLY SEIZED FROM THE ACCUSED, WARRANTING THE ACQUITTAL THEREOF OF THE CRIME CHARGED.—** [I]t 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. Here, PO3 Valdez did not even attempt to justify the absence of an elected public official and a DOJ representative during the conduct of inventory, and instead, only sheepishly remarked that only the media representative was available at the time. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the item purportedly seized from Isla were compromised, which consequently warrants her acquittal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated November 3, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 08847, which affirmed the Decision[3]dated November 17, 2016 of the Regional Trial Court of Quezon City, Branch 227 (RTC) in Crim. Case No. Q-10-167884, finding accused-appellant Maricar Isla *y* Umali (Isla) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC accusing Isla of violating Section 5, Article II of RA 9165. The prosecution alleged that at around 12:30 in the morning of November 28, 2010, a buy-bust team composed of members of the District Anti-Illegal Drug Special Operations Task Group of the Quezon City Police District conducted a buy-bust operation against Isla, during which a plastic sachet containing white crystalline substance was recovered from her. The buy-bust team, together with Isla, then proceeded to their headquarters,

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[1] See Notice of Appeal dated December 14, 2017; *rollo*, pp. 19-20.

[2] *Id*. at 2-18. Penned by Associate Justice Ramon R. Garcia with Associate Justices Edwin D. Sorongon and Maria Filomena D. Singh, concurring.

[3] CA *rollo*, pp. 57-65. Penned by Presiding Judge Elvira D.C. Panganiban.

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

[5] Dated November 30, 2010. Records, pp. 2-3.

where the seized item was marked, photographed, and inventoried in the presence of Isla and a radio reporter from *DWAD 1098 Radyo Ngayon*. Thereafter, the seized item was brought to the crime laboratory where, after examination,[6] the contents thereof yielded positive for 0.04 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.[7]

In defense, Isla denied the charges against her, claiming instead, that she and her live-in partner were sleeping inside their house when three (3) men in civilian clothes, identifying themselves as police officers, dragged them to the police station wherein they were questioned regarding the identities of a certain "*Bhoy Payat*" and Beth. When she denied knowing these people, a police officer asked for ₱200,000.00 for her release, but since they didn't have that much money, she was criminally charged in court.[8]

In a Decision[9] dated November 17, 2016, the RTC found Isla guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[10] The RTC held that the prosecution had shown that Isla was caught in the act of selling dangerous drugs in the buy-bust operation implemented against her, and that despite certain lapses in compliance with the chain of custody rule, the integrity and evidentiary value of the *corpus delicti* were nevertheless preserved.[11] Aggrieved, Isla appealed[12] the RTC ruling to the CA.

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[6] See Chemistry Report No. D-128-10 dated November 28, 2010; *id*. at 16.

[7] See *rollo*, pp. 5-7.

[8] See *id*. at 7-8.

[9] CA *rollo*, pp. 57-65.

[10] *Id*. at 64.

[11] See *id*. at 62-64.

[12] See Notice of Appeal dated November 21, 2016; *id*. at 9-10.

In a Decision[13] dated November 3, 2017, the CA affirmed the RTC ruling.[14] It held that the prosecution had established all the elements of the crime charged as Isla was caught *in flagrante delicto* to be selling *shabu* during a legitimate buy-bust operation, and that the chain of custody rule was substantially complied with.[15]

Hence, this appeal seeking that Isla's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[16] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[17] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient

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[13] *Rollo*, pp. 2-18.

[14] *Id*. at 17.

[15] See *id*. at 11-17.

[16] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: (*a*) the accused was in possession of an item or object identified as a prohibited drug; (*b*) such possession was not authorized by law; and (*c*) the accused freely and consciously possessed the said drug. (See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 [2015] and *People v. Bio*, 753 Phil. 730, 736 [2015]).

[17] See *People v. Crispo*, *id*.; *People v. Sanchez*, *id*.; *People v. Magsano*, *id*.; *People v. Manansala*, *id*.; *People v. Miranda*, *id*.; and *People v. Mamangon*, *id*. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[18]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized 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

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[18] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[19] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 16; *People v. Sanchez*, *supra* note 16; *People v. Magsano*, *supra* note 16; *People v. Manansala*, *supra* note 16; *People v. Miranda*, *supra* note 16; and *People v. Mamangon*, *supra* note 16. See also *People v. Viterbo*, *supra* note 17.

[20] In this regard, case law recognizes that "[m]arking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." (*People v. Mamalumpon*, 767 Phil. 845, 855 [2015], citing *Imson v. People*, 669 Phil. 262, 270-271 [2011]. See also *People v. Ocfemia*, 718 Phil. 330, 348 [2013], citing *People v. Resurreccion*, 618 Phil. 520, 532 [2009].) Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. (See *People v. Tumulak*, 791 Phil. 148, 160-161 [2016]; and *People v. Rollo*, 757 Phil. 346, 357 [2015].)

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

Department of Justice (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 <u>*OR*</u> the media.[23] 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."[24]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[25] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[26]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[27] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[28] The foregoing is based on the saving

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[22] Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

[23] Section 21, Article II of RA 9165, as amended by RA 10640.

[24] See *People v. Miranda*, *supra* note 16. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[25] See *People v. Miranda*, *id.* See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 18, at 1038.

[26] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, *id*.

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

[28] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

clause found in Section 21 (a),[29] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[30] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[31] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[32]

Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[33] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[34] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment

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[29] Section 21 (a), Article II of the IRR of RA 9165 pertinently states: "***Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.**"

[30] Section 1 of RA 10640 pertinently states: "***Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items**."

[31] *People v. Almorfe*, *supra* note 28.

[32] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[33] See *People v. Manansala*, *supra* note 16.

[34] See *People v. Gamboa*, *supra* note 18, citing *People v. Umipang*, *supra* note 18, at 1053.

they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[35]

Notably, the Court, in *People v. Miranda*,[36] issued a definitive reminder to prosecutors when dealing with drugs cases, imploring that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[37]

In this case, as may be gleaned from the Receipt/Inventory of Property Seized[38] dated November 28, 2010, the inventory of the items purportedly seized from Isla was not conducted in the presence of an elected public official and a DOJ representative, contrary to the afore-described procedure. This was confirmed by no less than the poseur-buyer, Police Officer 3 Rey Valdez (PO3 Valdez) on direct and cross-examination, as follows:

DIRECT EXAMINATION

[Fiscal Mcmc Zulueta (Fiscal Zulueta)]: Although he does not know who signed as the radio reporter, there is here a signature on top of the words Radio Reporter, second line: DWAD AM Radio tapos 1098 KHZ. Now Mr. Witness, if you know why is it that there is just one (1) mandatory witness? How come you do not have witnesses from the DOJ?

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[35] See *People v. Crispo*, *supra* note 16.

[36] *Supra* note 16.

[37] See *id*.

[38] Records, p. 30.

[Atty. Donato Mallabo (Atty. Mallabo)]: Best evidence is the document itself.

Fiscal Zulueta: If he knows Your Honor please.

[PO3 Valdez]: Kasi yan lang po ang mga available.

x x x x x x x x x

Court: The drugs law took effect in 2002 and it's already 2013 and (sic) you have not even complied in these requirements. Put that on record. Okay.[39]

CROSS-EXAMINATION

Atty. Mallabo: Officer Rey Valdez, let's go to your Inventory, the law requires you to prepare the Inventory in the presence of a representative from DOJ, in this case, will you agree with me, there was none?

PO3 Valdez: None, sir.

Atty. Malabo: Not only that, there must be a representative of elected barangay officials, that is mandatory per Sec. 21, [RA] 9165, again, will you agree with me? None?

PO3 Valdez: None, sir.[40]

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. Here, PO3 Valdez did not even attempt to justify the absence of an elected public official and a DOJ representative during the conduct of inventory, and instead, only sheepishly remarked that only the media representative was available at that time. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the item

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[39] TSN, November 28, 2013, pp. 14-15.

[40] TSN, February 10, 2014, p. 13.

purportedly seized from Isla were compromised, which consequently warrants her acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated November 3, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 08847 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Maricar Isla *y* Umali is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 238829. October 15, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CONCEPCION SEMBRANO *y* CRUZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY PROCEDURE; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE

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* Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME, AND 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.— 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. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. To stress, "when the law requires that the drugs be physically inventoried and photographed immediately after seizure, it follows that the drugs so inventoried and photographed should – as a general rule – be the self-same drugs for which the charges against a particular accused would be based. The obvious purpose of the inventory and photography requirements under the law is precisely to ensure that the identity of the drugs seized from the accused are the drugs for which he would be charged. Any discrepancy should therefore be reasonably explained; otherwise the regularity of the entire seizure procedure would be put into question."

2. ID.; ID.; ID.; ID.; 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, BUT 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 THERE IS A JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— 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.; WHERE THE IDENTITY OF THE *CORPUS DELICTI* HAS NOT BEEN PROPERLY PRESERVED AND ESTABLISHED BY THE PROSECUTION, THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEM PURPORTEDLY SEIZED FROM ACCUSED DURING THE BUY-BUST OPERATION WAS THEREFORE COMPROMISED, WHICH CONSEQUENTLY WARRANTS THE ACQUITTAL OF THE ACCUSED.— Notably, the Court, in *People v. Miranda* , issued a definitive reminder to prosecutors when dealing with drug cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction

overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised , become apparent upon further review." x x x. [F]or a successful prosecution of Illegal Sale and/or Illegal Possession of Dangerous Drugs, the prosecution is bound not only to establish the elements of the crime, but also to ensure that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of the said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt. Unfortunately, the latter requirement is found wanting as it is evident from the x x x testimony that the identity of the *corpus delicti* has not been properly preserved and established by the prosecution. Perforce, the Court is constrained to conclude that the integrity and evidentiary value of the item purportedly seized from Sembrano during the buy-bust operation was compromised, which consequently warrants her acquittal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated May 27, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06937, which affirmed the Decision[3] dated June 10, 2014 of the Regional Trial Court of Baguio City, Branch 61 (RTC) in Criminal Case No. 32559-R finding accused-appellant

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[1] See Notice of Appeal dated June 13, 2016; *rollo*, pp. 21-22.

[2] *Id*. at 2-20. Penned by Associate Justice Henri Jean Paul B. lnting with Associate Justices Marlene Gonzales-Sison and Ramon A. Cruz, concurring.

[3] CA *rollo*, pp. 57-73. Penned by Presiding Judge Antonio C. Reyes.

Concepcion Sembrano *y* Cruz (Sembrano) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC accusing Sembrano of violating Section 5, Article II of RA 9165. The prosecution alleged that at around six (6) o'clock in the evening of December 13, 2011, the operatives of the Baguio City Anti-Illegal Drugs – Special Operation Task Group (CAID-SOTG) conducted a test-buy operation to ascertain the veracity of a report regarding Sembrano's alleged illegal drug transactions. In the said operation, the confidential informant was able to acquire a plastic sachet from Sembrano in exchange for ₱5,000.00,[6] which sachet was marked by PO2 Geoffrey Bantule with his initials ***"GBB."*** After the plastic sachet with the "GBB" marking was sent to the crime laboratory and confirmed upon examination[7] to contain methamphetamine hydrochloride or *shabu*, a dangerous drug, the CAID-SOTG conducted a buy-bust operation against Sembrano at around eight (8) o' clock in the evening of even date, wherein the poseur-buyer, SPO1 Reynaldo Badua (SPO1 Badua), was instructed to buy illegal drugs worth ₱7,000.00.[8] As a result, a plastic sachet containing white crystalline substance – later marked by the poseur-buyer, SPO1 Reynaldo Badua (SPO1

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

[5] Dated December 14, 2011. Records, pp. 1-2.

[6] See TSN, December 11, 2012, pp. 10-12.

[7] See Chemistry Report No. D-137-2011 dated December 13, 2011; records, p. 8.

[8] See TSN, December 11, 2012, pp. 12-14.

Badua) with his initials ***"RCB"*** – was recovered from her. The apprehending officers together with Sembrano then proceeded to the CAID-SOTG Office and conducted an inventory and photography of the seized item and marked money which were witnessed by an elected public official and representatives from both the Department of Justice and the media. Thereafter, the seized item was brought to the crime laboratory where it was confirmed to contain *shabu*.[9]

In defense, Sembrano denied the charges against her, claiming instead, that she was on her way with her friend, Bong Ancheta (Bong), to a wake when suddenly, the companion of Bong's friend pointed a gun at them and introduced himself as a police officer. This prompted Bong to run away. She was then brought to the police station where police officers asked money from her. After being detained for hours, she was brought to the hospital to urinate but was unable to do so. This angered a police officer who then ordered her to sign a document, and thereafter, brought her to the city jail.[10]

In a Decision[11] dated June 10, 2014, the RTC found Sembrano guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs, and accordingly, sentenced her to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱5,000,000.00.[12] The RTC held that the prosecution sufficiently established all the elements of the said crime and further ruled that the integrity and evidentiary value of the *corpus delicti* were preserved. On the other hand, it rejected Sembrano's defense of denial for being unsubstantiated by clear and convincing evidence.[13] Aggrieved, Sembrano appealed[14] to the CA.

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[9] See *rollo*, pp. 3-6. See also CA *rollo*, pp. 58-61.

[10] See *rollo*, pp. 6-7. See also CA *rollo*, pp. 61-63.

[11] CA *rollo*, pp. 57-73.

[12] *Id*. at 73.

[13] See *id*. at 63-72.

[14] See Notice of Appeal dated June 24, 2014; *id*. at 29-30.

In a Decision[15] dated May 27, 2016, the CA affirmed the RTC ruling. It held that Sembrano was caught *in flagrante delicto* to be selling *shabu* during a legitimate buy-bust operation, and whatever irregularities attendant to the compliance with the chain of custody rule are not fatal to the case as the integrity and evidentiary value of the seized item were nonetheless preserved.[16]

Hence, this appeal seeking that Sembrano's conviction be overturned.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[17] 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.[18] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient

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[15] *Rollo*, pp. 2-20.

[16] See *id*. at 12-19.

[17] 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].)

[18] 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).

to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[19]

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.[20] 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.[21] To stress, "when the law requires that the drugs be physically inventoried and photographed immediately after seizure, it follows that the drugs so inventoried and photographed should – as a general rule – be the self-same drugs for which the charges against a particular accused would be based. The obvious purpose of the inventory and photography requirements under the law is precisely to ensure that the identity of the drugs seized from the accused are the drugs for which he would be charged. Any discrepancy should

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[19] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[20] 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 18.

[21] 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].)

therefore be reasonably explained; otherwise, the regularity of the entire seizure procedure would be put into question."[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 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 later

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[22] See *People v. Lumaya*, G.R. No. 231983, March 7, 2018.

[23] See *People v. Miranda*, *supra* note 17. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 19, 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[.]**"

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 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]

Notably, the Court, in *People v. Miranda*,[31] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[32]

In this case, while the prosecution presented photographs[33] depicting the post-buy-bust operation inventory which the CAID-SOTG conducted in the presence of the required witnesses, a more circumspect examination of the photographs reveals that the plastic sachet shown therein bears the marking ***"GBB,"***

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[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, Section 1 of which 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.

[30] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[31] *Supra* note 17.

[32] See *id*.

[33] See records, pp. 57-58.

which is the plastic sachet obtained from the test-buy operation; and that the plastic sachet with the marking ***"RCB"*** purportedly seized from the buy-bust operation is not in the photographs. The testimony on cross-examination of no less than the poseur-buyer, SPO1 Badua, is revelatory on this matter, to wit:

[Atty. Immanuel Awisan]: Okay, let us clarify again Officer Badua, these photographs appearing on page 58 consisting of three (3) photographs, all of these were taken during the inventory, is that correct?
[SPO1 Badua]: Yes, sir

Q: You are very sure now?
A: Yes, Sir.

Q: That is your final answer that these photographs were taken during the inventory?
A: Yes, sir.

Q: In the second photograph found on the same page, page 58, there are only five (5) pieces of ₱1,000.00 peso bills depicted here, would you agree with my observation?
A: Yes, sir.

Q: The two (2) other ₱1,000.00 peso bills were not included in this photograph?
A: I think I have committed a mistake again, Sir, because this one the markings is "GBB" these are the ones we used in our test-buy operation and when Officer Bandas took the picture, I don't [know] why she included these ones, the item is supposed to be separated from the...

x x x x x x x x x

Q: And in this first photograph there are only five (5) ₱1,000.00 peso bills depicted, would you agree with my observation?
A: Yes because this was only cut so let us subpoena my Chief to explain this one, Sir.

x x x x x x x x x

Q: So what is this money photographed together with the item subject of the test-buy?
A: You subpoena my Chief so that he will be the one [to] explain this one because they are the ones who took the pictures, Sir.

Q: But you are sure that this item photographed on page 58 the second photograph, that is an item appearing to be a sachet of *shabu*, this is the item subject of the test-buy?
A: Yes, Sir.

Q: You are very sure of that?
A: Because the markings "GBB" but I cannot read the date because the following day, we arrested also... with the same amount, Sir.

Q: We are not concerned with the arrest made the following day...
A: It might be that Alma Bandas must be wrong in giving the pictures, because that operation, Geoffrey Bantule was the one who marked the item, so it might be Alma Bandas who committed a mistake for giving the picture, Sir.

x x x x x x x x x

Q: So what you are saying is, this photograph No. 2 is a photograph of a *shabu* taken after the arrest of Concepcion Sembrano? So this photograph refers to another operation?
A: Yes, what I know is that, Alma Bandas was the one who committed a mistake in giving the picture, Sir.

x x x x x x x x x

Q: On photograph No. 1 you said that this is the photograph taken during the inventory of the items during the buy-bust operation?
A: Yes, Sir.
Q: The *shabu* here is the *shabu* taken during that buy-bust operation?
A: It was cut so I don't know if it's the same *shabu*, Sir.

Q: Althout it was cut[,)]it can be observed here that there are some markings placed and the markings placed are "Exh. A GBB", do you agree with my observation?
A: I think if the marking is "GBB" they committed a mistake for giving the picture because the buy-bust money I was the one who put my initials and signature so the test-buy operation "GBB" so it was Geoffrey Bantule who marked the evidence so they committed a mistake in giving the picture, Sir.

Q: Is there a photograph of that item that was bought during the buy-bust operation?
A: Yes, Sir.

Q: Where is it now?
A: You subpoena our office and they will be the one to bring the picture, Sir.

x x x x x x x x x[34]
(Emphases and underscoring supplied)

Thus, SPO1 Badua readily admitted their mistake in taking pictures of the plastic sachet obtained from the test-buy operation, *i.e.*, the one with the "GBB" marking, instead of the one supposedly recovered from the buy-bust operation, *i.e.*, the one with the "RCB" marking. When pressed to explain such irregularity, SPO1 Badua insisted that photographs containing the latter sachet exists, but was nevertheless evasive and elected instead to require the defense counsel to subpoena his office/ Chief to produce the vital photographs.

To recapitulate, for a successful prosecution of Illegal Sale and/or Illegal Possession of Dangerous Drugs, the prosecution is bound not only to establish the elements of the crime, but also to ensure that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of the said drug be established with the same unwavering exactitude as that requisite to make a finding of guilt.[35] Unfortunately, the latter requirement is found wanting as it is evident from the afore-cited testimony that the identity of the *corpus delicti* has not been properly preserved and established by the prosecution. Perforce, the Court is constrained to conclude that the integrity and evidentiary value of the item purportedly seized from Sembrano during the buy-bust operation was compromised, which consequently warrants her acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated May 27, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06937 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Concepcion Sembrano *y* Cruz is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause her immediate release, unless she is being lawfully held in custody for any other reason.

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[34] TSN, April 15, 2013, pp. 21-22 and 25-28.

[35] See *People v. Bombasi*, 794 Phil. 509, 515 (2016), citing *People v. Ladip*, 729 Phil. 495, 515 (2014).

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa, Reyes, A. Jr.*, and *Reyes, J. Jr.,*[*] *JJ.*, concur.

EN BANC

[G.R. No. 221103. October 16, 2018]

REGINA ONGSIAKO REYES, *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL; COMPOSITION; THE PRESENCE OF THE THREE JUSTICES OF THE SUPREME COURT, AS AGAINST SIX MEMBERS OF THE HOUSE OF REPRESENTATIVES, WAS INTENDED AS AN ADDITIONAL GUARANTEE TO ENSURE IMPARTIALITY IN THE JUDGMENT OF CASES BEFORE IT.— Section 17, Article VI of the 1987 Constitution provides for the composition of the HRET. x x x. In accordance with this organization, where the HRET is composed of three Justices of the Supreme Court and six members of the House of Representatives, it is clear that the HRET is a collegial body with members from two separate departments of the government: the Judicial and the Legislative departments. The intention of the framers of the 1987 Constitution is to make the tribunal an independent, constitutional body subject to constitutional restrictions. The

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

origin of the tribunal can be traced back from the electoral commissions under the 1935 Constitution whose functions were quasi-judicial in nature. The presence of the three Justices, as against six members of the House of Representatives, was intended as an additional guarantee to ensure impartiality in the judgment of cases before it.

2. ID.; ID.; ID.; 2015 HRET RULES, SECTION 6(A) THEREOF; THE PRESENCE OF AT LEAST ONE JUSTICE AND FOUR MEMBERS OF THE TRIBUNAL IS REQUIRED TO CONSTITUTE A QUORUM; RATIONALE.— Rule 6 of the 2015 HRET Rules does not grant additional powers to the Justices but rather maintains the balance of power between the members from the Judicial and Legislative departments as envisioned by the framers of the 1935 and 1987 Constitutions. The presence of the three Justices is meant to tone down the political nature of the cases involved and do away with the impression that party interests play a part in the decision-making process. Rule 6(a) of the 2015 HRET Rules requires the presence of at least one Justice and four members of the Tribunal to constitute a quorum. This means that even when all the Justices are present, at least two members of the House of Representatives need to be present to constitute a quorum. Without this rule, it would be possible for five members of the House of Representatives to convene and have a quorum even when no Justice is present. This would render ineffective the rationale contemplated by the framers of the 1935 and 1987 Constitutions for placing the Justices as members of the HRET. Indeed, petitioner is nitpicking in claiming that Rule 6(a) unduly favors the Justices because under the same rule, it is possible for four members of the House of Representatives and only one Justice to constitute a quorum. Rule 6(a) of the 2015 HRET Rules does not make the Justices indispensable members to constitute a quorum but ensures that representatives from both the Judicial and Legislative departments are present to constitute a quorum. Members from both the Judicial and Legislative departments become indispensable to constitute a quorum. The situation cited by petitioner, that it is possible for all the Justice-members to exercise denial or veto power over the proceedings simply by absenting themselves, is speculative. As pointed out by the HRET, this allegation also ascribes bad faith, without any basis, on the part of the Justices. The last sentence of Section 17, Article VI of the 1987 Constitution also provides that "[t]he

senior Justice in the Electoral Tribunal shall be its Chairman." This means that only a Justice can chair the Electoral Tribunal. As such, there should always be one member of the Tribunal who is a Justice. If all three Justice-members inhibit themselves in a case, the Supreme Court will designate another Justice to chair the Electoral Tribunal in accordance with Section 17, Article VI of the 1987 Constitution.

3. **ID.; ID.; ID.; RULE 6(A) OF THE 2015 HRET RULES REQUIRING THE PRESENCE OF AT LEAST ONE JUSTICE OF THE SUPREME COURT TO CONSTITUTE A QUORUM IS NOT VIOLATIVE OF THE EQUAL PROTECTION CLAUSE; EXPLAINED.—** Contrary to petitioner's allegation, Rule 6 (a) of the 2015 HRET Rules does not violate the equal protection clause of the Constitution. The equal protection clause is embodied in Section 1, Article III of the 1987 Constitution x x x. The Court has explained that the equal protection clause of the Constitution allows classification. The Court stated: x x x. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary. In the case of the HRET, there is a substantial distinction between the Justices of the Supreme Court and the members of the House of Representatives. There are only three Justice-members while there are six Legislator-members of the HRET. Hence, there is a valid classification. The classification is justified because it was placed to ensure the presence of members from both the Judicial and Legislative branches of the government to constitute a quorum. There is no violation of the equal protection clause of the Constitution.

4. **ID.; ID.; ID.; RULE 69 OF THE 2015 HRET RULES; THE SUPREME COURT AND THE HOUSE OF REPRESENTATIVES HAVE THE**

AUTHORITY TO DESIGNATE A SPECIAL MEMBER OR MEMBERS WHO COULD ACT AS TEMPORARY REPLACEMENT OR REPLACEMENTS IN CASES WHERE ONE OR SOME OF THE MEMBERS OF THE TRIBUNAL INHIBIT FROM A CASE OR ARE DISQUALIFIED FROM PARTICIPATING IN THE DELIBERATIONS OF A PARTICULAR ELECTION CONTEST WHEN THE REQUIRED QUORUM CANNOT BE MET.— Petitioner likewise questions Rule 6 in relation to Rule 69 of the 2015 HRET Rules for being ambiguous, questionable, and undemocratic. x x x. The ambiguity referred to by petitioner is absurd and stems from an erroneous understanding of the Rules. As pointed out by the HRET in its Comment, a member of the Tribunal who inhibits or is disqualified from participating in the deliberations cannot be considered present for the purpose of having a quorum. In addition, Rule 69 clearly shows that the Supreme Court and the House of Representatives have the authority to designate a Special Member or Members who could act as temporary replacement or replacements in cases where one or some of the Members of the Tribunal inhibit from a case or are disqualified from participating in the deliberations of a particular election contest when the required quorum cannot be met. There is no basis to petitioner's claim that a member who inhibits or otherwise disqualified can sit in the deliberations to achieve the required quorum.

5. ID.; ID.; ID.; RULE 6(B) AND 6(C) OF THE 2015 HRET RULES; MEMBERS OF THE HRET ACTING AS AN EXECUTIVE COMMITTEE; ANY ACTION OR RESOLUTION OF THE EXECUTIVE COMMITTEE SHALL BE SUBJECT TO THE CONFIRMATION BY THE ENTIRE TRIBUNAL OR AT LEAST FIVE OF ITS MEMBERS WHO CONSTITUTE A QUORUM.— Rule 6(b) and 6(c) of the 2015 HRET Rules provide for instances when the members of the tribunal can constitute themselves as an Executive Committee, thus: Rule 6. *Meetings; Quorum; Executive Committee Actions on Matters in Between Regular Meetings*. – x x x (b) In the absence of a quorum and provided there is at least one Justice in attendance, the Members present, who shall not be less than three (3), may constitute themselves as an Executive Committee to act on the agenda for the meeting concerned, provided, however, that its action shall be subject to confirmation by the Tribunal at any

subsequent meeting where a quorum is present. x x x. The Rules clearly state that any action or resolution of the Executive Committee "shall be included in the order of business of the immediately succeeding meeting of the Tribunal for its confirmation." Hence, even if only three members of the HRET acted as an Executive Committee, and even if all these three members are Justices of the Supreme Court, their actions are subject to the confirmation by the entire Tribunal or at least five of its members who constitute a quorum. The confirmation required by the Rules should bar any apprehension that the Executive Committee would commit any action arbitrarily or in bad faith. In addition, the Rules enumerated the matters, requiring immediate action, that may be acted upon by the Executive Committee. Any other matter that may be delegated to the Executive Committee under Rule 6(c)(3) has to be decided by the entire Tribunal.

6. **ID.; ID.; ID.; JURISDICTION; THE HRET IS THE SOLE JUDGE OF ALL CONTESTS RELATING TO THE ELECTION, RETURNS, AND QUALIFICATIONS OF THE MEMBERS OF THE HOUSE OF REPRESENTATIVES; QUALIFICATIONS OF A MEMBER OF THE HOUSE OF REPRESENTATIVES.—** Under the 2015 HRET Rules, the HRET is the sole judge of all contests relating to the election, returns, and qualifications of the members of the House of Representatives. This is clear under the first paragraph of Rule 15. Rule 15. *Jurisdiction*. – The Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives. To be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation; (2) a proper oath; and (3) assumption of office. HRET's jurisdiction is provided under Section 17, Article VI of the 1987 Constitution which states that "[t]he Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members." There is no room for the COMELEC to assume jurisdiction because HRET's jurisdiction is constitutionally mandated.

7. **ID.; ID.; ID.; RULES 17 AND 18 OF THE 2015 HRET RULES; ELECTION PROTEST OR A PETITION FOR *QUO***

***WARRANTO*, WHEN TO FILE.—** x x x [T]he Court takes judicial notice that in its Resolution No. 16, Series of 2018, dated 20 September 2018, the HRET amended Rules 17 and 18 of the 2015 HRET Rules. As amended, Rules 17 and 18 now read: RULE 17. *Election Protest*. – A verified protest contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office within fifteen (15) days from June 30 of the election year, if the winning candidate was proclaimed on or before said date. However, if the winning candidate was proclaimed after June 30 of the election year, a verified election protest shall be filed within fifteen (15) days from the date of proclamation. x x x RULE 18. *Quo Warranto*. – A verified petition for *quo warranto* on the ground of ineligibility may be filed by any registered voter of the congressional district concerned, or any registered voter in the case of party-list representatives, within fifteen (15) days from June 30 of the election year, if the winning candidate was proclaimed on or before said date. However, if the winning candidate was proclaimed after June 30 of the election year, a verified petition for *quo warranto* shall be filed within fifteen (15) days from the date of proclamation. The party filing the petition shall be designated as the petitioner, while the adverse party shall be known as the respondent. x x x The amendments to Rules 17 and 18 of the 2015 HRET Rules were made "with respect to the reckoning point within which to file an election protest or a petition for *quo warranto*, respectively, in order to further promote a just and expeditious determination and disposition of every election contest brought before the Tribunal[.]" The recent amendments, which were published in The Philippine Star on 26 September 2018 and took effect on 11 October 2018, clarified and removed any doubt as to the reckoning date for the filing of an election protest. The losing candidate can determine with certainty when to file his election protest.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioner.
The Solicitor General for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

In this petition for certiorari filed before this Court, petitioner Regina Ongsiako Reyes challenges the constitutionality of several provisions of the 2015 Revised Rules of the House of Representatives Electoral Tribunal (HRET). In particular, petitioner questions (1) the rule which requires the presence of at least one Justice of the Supreme Court to constitute a quorum; (2) the rule on constitution of a quorum; and (3) the requisites to be considered a member of the House of Representatives.

The Antecedent Facts

Petitioner alleges that she has two pending *quo warranto* cases before the HRET. They are (1) Case No. 13-036 (*Noeme Mayores Tan and Jeasseca L. Mapacpac v. Regina Ongsiako Reyes*) and (2) Case No. 130037 (*Eric D. Junio v. Regina Ongsiako Reyes*).

On 1 November 2015, the HRET published the 2015 Revised Rules of the House of Representatives Electoral Tribunal (2015 HRET Rules).

Petitioner alleges that Rule 6 of the 2015 HRET Rules is unconstitutional as it gives the Justices, collectively, denial or veto powers over the proceedings by simply absenting themselves from any hearing. In addition, petitioner alleges that the 2015 HRET Rules grant more powers to the Justices, individually, than the legislators by requiring the presence of at least one Justice in order to constitute a quorum. Petitioner alleges that even when all six legislators are present, they cannot constitute themselves as a body and cannot act as an Executive Committee without the presence of any of the Justices. Petitioner further alleges that the rule violates the equal protection clause of the Constitution by conferring the privilege of being indispensable members upon the Justices.

Petitioner alleges that the quorum requirement under the 2015 HRET Rules is ambiguous because it requires only the presence of at least one Justice and four Members of the Tribunal. According to petitioner, the four Members are not limited to legislators and may include the other two Justices. In case of inhibition, petitioner alleges that a mere majority of the remaining Members shall be sufficient to render a decision, instead of the majority of all the Members.

Petitioner likewise alleges that Rule 15, in relation to Rules 17 and 18, of the 2015 HRET Rules unconstitutionally expanded the jurisdiction of the Commission on Elections (COMELEC). Petitioner alleges that under Section 17, Article VI of the 1987 Constitution as well as the 2011 Rules of the HRET, a petition may be filed within 15 days from the date of the proclamation of the winner, making such proclamation the operative fact for the HRET to acquire jurisdiction. However, Rule 15 of the 2015 HRET Rules requires that to be considered a Member of the House of Representatives, there should be (1) a valid proclamation; (2) a proper oath; and (3) assumption of office. Further, Rule 17 of the 2015 HRET Rules states that election protests should be filed within 15 days from June 30 of the election year or the date of actual assumption of office, whichever is later, while Rule 18 provides that petitions for *quo warranto* shall be filed within 15 days from June 30 of the election year or the date of actual assumption of office, whichever is later. Petitioner alleges that this would allow the COMELEC to determine whether there was a valid proclamation or a proper oath, as well as give it opportunity to entertain cases between the time of the election and June 30 of the election year or actual assumption of office, whichever is later.

Petitioner alleges that the application of the 2015 HRET Rules to all pending cases could prejudice her cases before the HRET.

The HRET, through the Secretary of the Tribunal, filed its own Comment.[1] Thus, in a Manifestation and

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[1] *Rollo*, pp. 72-104.

Motion[2] dated 13 January 2016, the Office of the Solicitor General (OSG) moved that it be excused from representing the HRET and filing a Comment on the petition. The Court granted the OSG's Manifestation and Motion in its 2 February 2016 Resolution.[3]

The HRET maintains that it has the power to promulgate its own rules that would govern the proceedings before it. The HRET points out that under Rule 6 of the 2015 HRET Rules, a quorum requires the presence of at least one Justice-member and four members of the Tribunal. The HRET argues that the requirement rests on substantial distinction because there are only three Justice-members of the Tribunal as against six Legislator-members. The HRET further argues that the requirement of four members assures the presence of at least two Legislator-members to constitute a quorum. The HRET adds that the requirement of the presence of at least one Justice was incorporated in the Rules to maintain judicial equilibrium in deciding election contests and because the duty to decide election cases is a judicial function. The HRET states that petitioner's allegation that Rule 6 of the 2015 HRET Rules gives the Justices virtual veto power to stop the proceedings by simply absenting themselves is not only speculative but also imputes bad faith on the part of the Justices.

The HRET states that it only has jurisdiction over a member of the House of Representatives. In order to be considered a member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation; (2) a proper oath; and (3) assumption of office. Hence, the requirement of concurrence of these three requisites is within the power of the HRET to make.

The Issue

The issue before this Court is the constitutionality of the following provisions of the 2015 HRET Rules:

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[2] *Id*. at 111-113.

[3] *Id*. at 115-116.

(1) Rule 6(a) requiring the presence of at least one Justice in order to constitute a quorum;
(2) Rule 15, paragraph 2, in relation to Rule 17; and
(3) Rule 6, in relation to Rule 69.

The Ruling of this Court

The petition has no merit.

The pertinent provisions questioned before this Court are the following:

(I) Rule 6(a) and Rule 6, in relation to Rule 69

(1) Rule 6 of the 2015 HRET Rules provides:

Rule 6. *Meetings; Quorum; Executive Committee Actions on Matters in Between Regular Meetings.* –

(a) The Tribunal shall meet on such days and hours as it may designate or at the call of the Chairperson or of a majority of its Members. The presence of at least one (1) Justice and four (4) Members of the Tribunal shall be necessary to constitute a quorum. In the absence of the Chairperson, the next Senior Justice shall preside, and in the absence of both, the Justice present shall take the Chair.

(b) In the absence of a quorum and provided there is at least one Justice in attendance, the Members present, who shall not be less than three (3), may constitute themselves as an Executive Committee to act on the agenda for the meeting concerned, provided, however, that its action shall be subject to confirmation by the Tribunal at any subsequent meeting where a quorum is present.

(c) In between the regular meetings of the Tribunal, the Chairperson, or any three (3) of its Members, provided at least one (1) of them is a Justice, who may sit as the Executive Committee, may act on the following matters requiring immediate action by the Tribunal:

1. Any pleading or motion,

(a) Where delay in its resolution may result in irreparable or substantial damage or injury to the rights of a party or cause delay in the proceedings or action concerned;

(b) Which is urgent in character but does not substantially affect the rights of the adverse party, such as one for extension of time to comply with an order/ resolution of the Tribunal, or to file a pleading which is not a prohibited pleading and is within the discretion of the Tribunal to grant; and

(c) Where the Tribunal would require a comment, reply, rejoinder or any other similar pleading from any of the parties or their attorneys;

2. Administrative matters which do not involve new applications or allocations of the appropriations of the Tribunal; and

3. Such other matters as may be delegated by the Tribunal.

However, any such action/resolution shall be included in the order of business of the immediately succeeding meeting of the Tribunal for its confirmation.

(2) Rule 69 of the 2015 HRET Rules provides:

Rule 69. *Votes Required*. – In resolving all questions submitted to the Tribunal, all the Members present, inclusive of the Chairperson, shall vote.

Except as provided in Rule 5(b) of these Rules, the concurrence of at least five (5) Members shall be necessary for the rendition of decisions and the adoption of formal resolutions, provided that, in cases where a Member inhibits or cannot take part in the deliberations, a majority vote of the remaining Members shall be sufficient.

This is without prejudice to the authority of the Supreme Court or the House of Representatives, as the case may be, to designate Special Member or Members who should act as temporary replacement or replacements in cases where one or some of the Members of the Tribunal inhibits from a case or is disqualified from participating in the deliberations of a particular election contest, provided that:

(1) The option herein provided should be resorted [to] only when the required quorum in order for the Tribunal to proceed with the hearing of the election contest, or in making the final determination of the case, or in arriving at decisions or resolutions thereof, cannot be met; and

(2) Unless otherwise provided, the designation of the Special Member as replacement shall only be temporary and limited only to the specific case where the inhibition or disqualification was made.

(II) Rule 15, paragraph 2, in relation to Rule 17

Rules 15 and 17 of the 2015 HRET Rules provide:

Rule 15. *Jurisdiction.* – The Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives.

To be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation; (2) a proper oath; and (3) assumption of office.

Rule 17. *Election Protest.* – A verified election protest contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who had duly filed a certificate of candidacy and has been voted for the same office, within fifteen (15) days from June 30 of the election year or the date of actual assumption of office, whichever is later.

x x x x x x x x x

We shall discuss issues (1) and (3) together.

Presence of at least one Justice-member to Constitute a Quorum

Petitioner alleges that the requirement under Rule 6 of the 2015 HRET Rules that at least one Justice should be present to constitute a quorum violates the equal protection clause of the 1987 Constitution and gives undue power to the Justices over the legislators.

The argument has no merit.

Section 17, Article VI of the 1987 Constitution provides for the composition of the HRET. It states:

Section 17. The Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members. Each Electoral Tribunal shall be composed of

nine Members, three of whom shall be Justices of the Supreme Court to be designated by the Chief Justice, and all the remaining six shall be Members of the Senate or the House of Representatives, as the case may be, who shall be chosen on the basis of proportional representation from the political parties and the parties or organizations registered under the party-list system represented therein. The senior Justice in the Electoral Tribunal shall be its Chairman.

In accordance with this organization, where the HRET is composed of three Justices of the Supreme Court and six members of the House of Representatives, it is clear that the HRET is a collegial body with members from two separate departments of the government: the Judicial and the Legislative departments. The intention of the framers of the 1987 Constitution is to make the tribunal an independent, constitutional body subject to constitutional restrictions.[4] The origin of the tribunal can be traced back from the electoral commissions under the 1935 Constitution whose functions were quasi-judicial in nature.[5] The presence of the three Justices, as against six members of the House of Representatives, was intended as an additional guarantee to ensure impartiality in the judgment of cases before it.[6] The intentions of the framers of the 1935 Constitution were extensively discussed in *Tañada and Macapagal v. Cuenca*,[7] thus:

Senator Paredes, a veteran legislator and former Speaker of the House of Representatives, said:

> x x x *what was intended in the creation of the electoral tribunal was to create a sort of collegiate court composed of nine members: Three of them belonging to the party having*

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[4] Record of the Constitutional Commission, No. 34, 19 July 1986, p. 111.

[5] Proceedings of the Philippine Constitutional Convention, Vol. IV, p. 505.

[6] See *Tañada and Macapagal v. Cuenco*, 103 Phil. 1051, 1079-1080 (1957).

[7] *Id*. at 1078-1084. Italicization in the original.

> *the largest number of votes, and three from the party having the second largest number of votes so that these members may represent the party, and the members of said party who will sit before the electoral tribunal as protestees. For when it comes to a party, Mr. President, there is ground to believe that decisions will be made along party lines.* (Congressional Record for the Senate, Vol. III, p. 351; italics supplied.)

Senator Laurel, who played an important role in the framing of our Constitution, expressed himself as follows:

> Now, with reference to the protests or contests, relating to the election, the returns and the qualifications of the members of the legislative bodies, I heard it said here correctly that there was a time when that was given to the corresponding chamber of the legislative department. So the election, returns and qualifications of the members of the Congress or legislative body was entrusted to that body itself as the exclusive body to determine the election, returns and qualifications of its members. There was some doubt also expressed as to whether that should continue or not, and the greatest argument in favor of the retention of that provision was the fact that was, among other things, the system obtaining in the United States under the Federal Constitution of the United States, and there was no reason why that power or that right vested in the legislative body should not be retained. But it was thought that that would make the determination of this contest, of this election protest, purely political *as has been observed in the past*. (Congressional Record for the Senate, Vol. III, p. 376; italics supplied.)

It is interesting to note that not one of the members of the Senate contested the accuracy of the views thus expressed.

Referring particularly to the philosophy underlying the constitutional provision quoted above, Dr. Aruego states:

> The defense of the Electoral Commission was based *primarily* upon the hope and belief that the *abolition of party lines because of the equal representation in this body of the majority and the minority parties* of the National Assembly and the intervention of some members of the Supreme Court who, under the proposed constitutional provision, would also be members of the same, would insure greater political justice in the

determination of election contests for seats in the National Assembly than there would be if the power had been lodged in the lawmaking body itself. Delegate Francisco summarized the arguments for the creation of the Electoral Commission in the following words:

> I understand that from the time that this question is placed in the hands of members not only of the majority party but also of the minority party, there is already a condition, a factor which would make protests decided in a non-partisan manner. We know from experience that many times in the many protests tried in the House or in the Senate, *it was impossible to prevent the factor of party from getting in*. From the moment that it is required that *not only the majority but also the minority should intervene in these questions*, we have already enough guarantee that there would be no tyranny on the part of the majority.
>
> But there is another more detail which is the one which satisfies me most, and that is the intervention of three justices. So that with this intervention of three justices if there would be any question as to the justice applied by the majority or the minority, if there would be any fundamental disagreement, or if there would be nothing but questions purely of party in which the members of the majority as well as those of the minority should wish to take lightly a protest because the protestant belongs to one of said parties, we have in this case, *as a check upon the two parties*, the actuations of the three justices. In the last analysis, what is really applied in the determination of electoral cases brought before the tribunals of justice or before the House of Representatives or the Senate? Well, it is nothing more than the law and the doctrine of the Supreme Court. If that is the case, there will be greater skill in the application of the laws and in the application of doctrines to electoral matters having as we shall have three justices who will act impartially in these electoral questions.
>
> I wish to call the attention of my distinguished colleagues to the fact that *in electoral protests it is impossible to set aside party interests*. Hence, the best

> guarantee, I repeat, for the administration of justice to the parties, for the fact that the laws will not be applied improperly or incorrectly as well as for the fact that the doctrines of the Supreme Court will be applied rightfully, *the best guarantee which we shall have, I repeat, is the intervention of the three justices*. And with the formation of the Electoral Commission, I say again, the protestants as well as the protestees could remain tranquil in the certainty that they will receive the justice that they really deserve. If we eliminate from this precept the intervention of the party of the minority and that of the three justices, then *we shall be placing protests exclusively in the hands of the party in power*. And I understand, gentlemen, that in practice that has not given good results. Many *have criticized, many have complained against, the tyranny of the majority in electoral cases* x x x. I repeat that the best guarantee lies in the fact that these questions will be judged not only by three members of the majority but also by three members of the minority, with the additional guarantee of the impartial judgment of three justices of the Supreme Court. (The Framing of the Philippine Constitution by Aruego, Vol. I, pp. 261-263; italics supplied.)

The foregoing was corroborated by Senator Laurel. Speaking for this Court, in Angara *vs*. Electoral Commission (63 Phil. 139), he asserted:

> The members of the Constitutional Convention who framed our fundamental law were in their majority men mature in years and experience. To be sure, many of them were familiar with the history and political development of other countries of the world. When, therefore, they deemed it wise to create an Electoral Commission as a constitutional organ and invested with the exclusive function of passing upon and determining the election, returns and qualifications of the members of the National Assembly, they must have done so not only in the light of their own experience but also having in view the experience of other enlightened peoples of the world. The creation of the Electoral Commission was designed to remedy certain evils of which the framers of our Constitution were cognizant. Notwithstanding the vigorous opposition of some members of the Convention to its creation, the plan, as hereinabove stated,

was approved by that body by a vote of 98 against 58. All that can be said now is that, upon the approval of the Constitution, the creation of the Electoral Commission is the expression of the wisdom 'ultimate justice of the people'. (Abraham Lincoln, First Inaugural Address, March 4, 1861.)

From the deliberations of our Constitutional Convention it is evident that the purpose was to transfer in its totality all the powers previously exercised by the legislature in matters pertaining to contested elections of its members, to an independent and impartial tribunal. It was not so much the knowledge and appreciation of contemporary constitutional precedents, however, as the long felt need of *determining legislative contests devoid of partisan considerations* which prompted the people acting through their delegates to the Convention, to provide for this body known as the Electoral Commission. With this end in view, a composite body in which both the majority and minority parties are equally represented to *off-set partisan influence* in its deliberations was created, and further endowed with judicial temper by including in its membership three justices of the Supreme Court, (Pp. 174-175.)

As a matter of fact, during the deliberations of the convention, Delegates Conejero and Roxas said:

El Sr. CONEJERO. Antes de votarse la enmienda, quisiera pedir informacion del Subcomite de Siete.

El Sr. PRESIDENTE. Que dice el Comite?

El Sr. ROXAS. Con mucho gusto.

"El Sr. CONEJERO. Tal como esta *el draft, dando tres miembros a la mayoria, y otros tres a la minoria y tres a la Corte Suprema*, no cree su Señoria que este equivale practicamente a dejar el asunto a los miembros del Tribunal Supremo?

El Sr. ROXAS. Si y no. Creemos que *si el tribunal a la Comision esta cotistuido en esa forma*, tanto los miembros de la mayoria como los de la minoria asi como los miembros de la Corte Suprema considedaran la cuestion sabre la base de sus meritos, *sabiendo que el partidismo no es suficiente para dar el triunfo.*

> El Sr. CONEJERO. Cree Su Señoria que en un caso como ese, podriamos hacer que tanto los de la mayoria como los de la minoria prescindieran del partidismo?
>
> El Sr. ROXAS. Creo que si, porque el partidismo no les darla el triunfo." (Angara *vs*. Electoral Commission, supra, pp. 168-169; italics supplied.)

It is clear from the foregoing that the main objective of the framers of our Constitution in providing for the establishment, first, of an Electoral Commission, and then of one Electoral Tribunal for each House of Congress, was to insure the exercise of judicial impartiality in the disposition of election contests affecting members of the lawmaking body. To achieve this purpose, two devices were resorted to, namely: (*a*) the party having the *largest* number of votes, and the party having the *second* largest number of votes, in the National Assembly or in each House of Congress, were given the same number of representatives in the Electoral Commission or Tribunal, so that they may realize that partisan considerations could not control the adjudication of said cases, and thus be induced to act with greater impartiality; and (*b*) the Supreme Court was given in said body the same number of representatives as each one of said political parties, so that the influence of the former may be decisive and endow said Commission or Tribunal with judicial temper.

This is obvious from the very language of the constitutional provision under consideration. In fact, Senator Sabido — who had moved to grant to Senator Tañada the "privilege" to make the nominations on behalf of the party having the second largest number of votes in the Senate — agrees with it. As Senator Sumulong inquired:

> x x x. I suppose Your Honor will agree with me that the framers of the Constitution precisely thought of creating this Electoral Tribunal so as *to prevent the majority from ever having a preponderant majority in the Tribunal*. (Congressional Record for the Senate, Vol. III, p. 330; italics supplied.)

Senator Sabido replied:

> That is so, x x x. (*Id*., p. 330.)

Upon further interpretation, Senator Sabido said:

> x x x *the purpose of the creation of the Electoral Tribunal and of its composition is to maintain a balance between the*

two parties and make the members of the Supreme Court the controlling power so to speak of the Electoral Tribunal or hold the balance of power. That is the ideal situation. (Congressional Record for the Senate, Vol. III, p. 349; italics supplied.)

Senator Sumulong opined along the same line. His words were:

x x x. The intention is that when the three from the majority and the three from the minority become members of the Tribunal *it is hoped* that they will become aware of their judicial functions, not to protect the protestants or the protestees. It is hoped that they will act as judges because to decide election cases is a judicial function. But the framers of the Constitution besides being learned were *men of experience*. They knew that even Senators like us are not angels, that we are human beings, that if we should be chosen to go to the Electoral Tribunal *no one can say that we will entirely be free from partisan influence to favor* our party, so that in case that hope that the three from the majority and the three from the minority who will act as Judges should result in disappointment, in case they do not act as judges but they go there and vote along party lines, still there is the guarantee that they will offset each other and the result will be that *the deciding vote will reside in the hands of the three Justices who have no partisan motives* to favor either the protestees or the protestants. In other words, *the whole idea is to prevent the majority from controlling* and dictating the decisions of the Tribunal and to make sure that *the decisive vote will be wielded not by the Congressmen or Senators who are members of the Tribunal but will be wielded by the Justices who*, by virtue of their judicial offices, will have no partisan motives to serve, either protestants or protestees. That is my understanding of the intention of the framers of the Constitution when they decided to create the Electoral Tribunal.

x x x x x x x x x

My idea is that the intention of the framers of the constitution in creating the Electoral Tribunal is to insure *impartiality and independence in its decision*, and that is sought to be done by never *allowing the majority party to control the Tribunal*, and secondly by seeing to it that *the decisive vote in the Tribunal will be left in the hands of persons who have no*

> *partisan interest or motive to favor either protestant or protestee*. (Congressional Record for the Senate, Vol. III, pp. 362-363, 365-366; italics supplied.)

Rule 6 of the 2015 HRET Rules does not grant additional powers to the Justices but rather maintains the balance of power between the members from the Judicial and Legislative departments as envisioned by the framers of the 1935 and 1987 Constitutions. The presence of the three Justices is meant to tone down the political nature of the cases involved and do away with the impression that party interests play a part in the decision-making process.

Rule 6(a) of the 2015 HRET Rules requires the presence of at least one Justice and four members of the Tribunal to constitute a quorum. This means that even when all the Justices are present, at least two members of the House of Representatives need to be present to constitute a quorum. Without this rule, it would be possible for five members of the House of Representatives to convene and have a quorum even when no Justice is present. This would render ineffective the rationale contemplated by the framers of the 1935 and 1987 Constitutions for placing the Justices as members of the HRET. Indeed, petitioner is nitpicking in claiming that Rule 6(a) unduly favors the Justices because under the same rule, it is possible for four members of the House of Representatives and only one Justice to constitute a quorum. Rule 6(a) of the 2015 HRET Rules does not make the Justices indispensable members to constitute a quorum but ensures that representatives from both the Judicial and Legislative departments are present to constitute a quorum. Members from both the Judicial and Legislative departments become indispensable to constitute a quorum. The situation cited by petitioner, that it is possible for all the Justice-members to exercise denial or veto power over the proceedings simply by absenting themselves, is speculative. As pointed out by the HRET, this allegation also ascribes bad faith, without any basis, on the part of the Justices.

The last sentence of Section 17, Article VI of the 1987 Constitution also provides that "[t]he senior Justice in the

Electoral Tribunal shall be its Chairman." This means that only a Justice can chair the Electoral Tribunal. As such, there should always be one member of the Tribunal who is a Justice. If all three Justice-members inhibit themselves in a case, the Supreme Court will designate another Justice to chair the Electoral Tribunal in accordance with Section 17, Article VI of the 1987 Constitution.

Contrary to petitioner's allegation, Rule 6(a) of the 2015 HRET Rules does not violate the equal protection clause of the Constitution. The equal protection clause is embodied in Section 1, Article III of the 1987 Constitution which provides:

> Section 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

The Court has explained that the equal protection clause of the Constitution allows classification. The Court stated:

> x x x. A law is not invalid because of simple inequality. The very idea of classification is that of inequality, so that it goes without saying that the mere fact of inequality in no manner determines the matter of constitutionality. All that is required of a valid classification is that it be reasonable, which means that the classification should be based on substantial distinctions which make for real differences; that it must be germane to the purpose of the law; that it must not be limited to existing conditions only; and that it must apply equally to each member of the class. This Court has held that the standard is satisfied if the classification or distinction is based on a reasonable foundation or rational basis and is not palpably arbitrary.[8]

In the case of the HRET, there is a substantial distinction between the Justices of the Supreme Court and the members of the House of Representatives. There are only three Justice-members while there are six Legislator-members of the HRET. Hence, there is a valid classification. The classification is justified because it was placed to ensure the presence of members from both the Judicial and Legislative branches of the government

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[8] *Garcia v. Judge Drilon*, 712 Phil. 44, 90-91 (2013).

to constitute a quorum. There is no violation of the equal protection clause of the Constitution.

Ambiguity of Rule 6 in relation to Rule 69

Petitioner likewise questions Rule 6 in relation to Rule 69 of the 2015 HRET Rules for being ambiguous, questionable, and undemocratic. Petitioner alleges:

> x x x while the general rule requires that the "concurrence of at least five (5) Members shall be necessary for the rendition of decisions . . ." in cases where a "member inhibits or cannot take part in the deliberations," a mere "majority of those remaining Members shall be sufficient."
>
> Thus, in case where there are only 5 constituting a quorum whereby at least 1 of the Members present thereat inhibit, a majority of the remaining four may validly render a decision. In an extreme case where the 4 of the 5 present inhibit, the Rule allows that the decision of the remaining 1 member shall be the decision of the Tribunal.
>
> Applied to Petitioner in the cases against her pending with the HRET whereby 2 justices inhibited themselves, in the event the 2 inhibiting justices are present together with another justice and 2 other legislator-members, these may qualify as a valid quorum because under Rule 6, their mere "presence" is the only requirement. Therefore, the majority of the remaining 3 members may vote and their decision shall be considered the decision of the Tribunal. In case 1 of the remaining 3 opposes the measure, only 2 votes actually represent the decision of the Tribunal. This may happen even if those absent four (4) members may actually be against the decision, but due to their absence, they were not able to vote.[9]

The ambiguity referred to by petitioner is absurd and stems from an erroneous understanding of the Rules. As pointed out by the HRET in its Comment, a member of the Tribunal who inhibits or is disqualified from participating in the deliberations cannot be considered present for the purpose of having a quorum. In addition, Rule 69 clearly shows that the Supreme Court and the House of Representatives have the authority to designate

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[9] *Rollo*, p. 20.

a Special Member or Members who could act as temporary replacement or replacements in cases where one or some of the Members of the Tribunal inhibit from a case or are disqualified from participating in the deliberations of a particular election contest when the required quorum cannot be met. There is no basis to petitioner's claim that a member who inhibits or otherwise disqualified can sit in the deliberations to achieve the required quorum.

Actions of the Executive Committee

Rule 6(b) and 6(c) of the 2015 HRET Rules provide for instances when the members of the tribunal can constitute themselves as an Executive Committee, thus:

Rule 6. *Meetings; Quorum; Executive Committee Actions on Matters in Between Regular Meetings.* –

x x x x x x x x x

(b) In the absence of a quorum and provided there is at least one Justice in attendance, the Members present, who shall not be less than three (3), may constitute themselves as an Executive Committee to act on the agenda for the meeting concerned, provided, however, that its action shall be subject to confirmation by the Tribunal at any subsequent meeting where a quorum is present.

(c) In between the regular meetings of the Tribunal, the Chairperson, or any three (3) of its Members, provided at least one (1) of them is a Justice, who may sit as the Executive Committee, may act on the following matters requiring immediate action by the Tribunal:

1. Any pleading or motion,

(a) Where delay in its resolution may result in irreparable or substantial damage or injury to the rights of a party or cause delay in the proceedings or action concerned;

(b) Which is urgent in character but does not substantially affect the rights of the adverse party, such as one for extension of time to comply with an order/resolution of the Tribunal, or to file a pleading which is not a prohibited pleading and is within the discretion of the Tribunal to grant; and

(c) Where the Tribunal would require a comment, reply, rejoinder or any other similar pleading from any of the parties or their attorneys;

2. Administrative matters which do not involve new applications or allocations of the appropriations of the Tribunal; and

3. Such other matters as may be delegated by the Tribunal.

However, any such action/resolution shall be included in the order of business of the immediately succeeding meeting of the Tribunal for its confirmation.

The Rules clearly state that any action or resolution of the Executive Committee "shall be included in the order of business of the immediately succeeding meeting of the Tribunal for its confirmation." Hence, even if only three members of the HRET acted as an Executive Committee, and even if all these three members are Justices of the Supreme Court, their actions are subject to the confirmation by the entire Tribunal or at least five of its members who constitute a quorum. The confirmation required by the Rules should bar any apprehension that the Executive Committee would commit any action arbitrarily or in bad faith. In addition, the Rules enumerated the matters, requiring immediate action, that may be acted upon by the Executive Committee. Any other matter that may be delegated to the Executive Committee under Rule 6(c)(3) has to be decided by the entire Tribunal.

Qualifications of a Member of the House of Representatives and Date of Filing of Election Protest

Petitioner alleges that the HRET unduly expanded the jurisdiction of the COMELEC. Petitioner states that Section 17, Article VI of the 1987 Constitution provides that the HRET shall be the sole judge of all contests relating to the election, returns, and qualifications of the members of the House of Representatives. According to petitioner, Rule 15 of the 2015 HRET Rules provides for the requisites to be considered a member of the House of Representatives, as follows: (1) a valid proclamation; (2) a proper oath; and (3) assumption of office. In addition to these requisites, Rule 17 fixed the time

for the filing of an election protest within 15 days from June 30 of the election year or the date of actual assumption of office, whichever is later. Petitioner alleges that these Rules will allow the COMELEC to assume jurisdiction between the time of the election and within 15 days from June 30 of the election year or the date of actual assumption of office, whichever is later. Further, the requirements of a valid proclamation and a proper oath will allow the COMELEC to look into these matters until there is an actual assumption of office.

Under the 2015 HRET Rules, the HRET is the sole judge of all contests relating to the election, returns, and qualifications of the members of the House of Representatives. This is clear under the first paragraph of Rule 15.

> Rule 15. *Jurisdiction.* – The Tribunal is the sole judge of all contests relating to the election, returns, and qualifications of the Members of the House of Representatives.
>
> To be considered a Member of the House of Representatives, there must be a concurrence of the following requisites: (1) a valid proclamation; (2) a proper oath; and (3) assumption of office.

HRET's jurisdiction is provided under Section 17, Article VI of the 1987 Constitution which states that "[t]he Senate and the House of Representatives shall each have an Electoral Tribunal which shall be the sole judge of all contests relating to the election, returns, and qualifications of their respective Members." There is no room for the COMELEC to assume jurisdiction because HRET's jurisdiction is constitutionally mandated.

The reckoning event under Rule 15 of the 2015 HRET Rules, being dependent on the taking of oath and the assumption of office of the winning candidate, is indeterminable. It is difficult, if not impossible, for the losing candidate who intends to file an election protest or a petition for *quo warranto* to keep track when the winning candidate took his oath of office or when he assumed office. The date, time, and place of the taking of oath depend entirely upon the winning candidate. The winning candidate may or may not publicize his taking of oath and thus any candidate intending to file a protest will be in a dilemma when to file the protest. The taking of oath can happen any

day and any time after the proclamation. As to the assumption of office, it is possible that, for one reason or another, the winning candidate will not assume office at the end of the term of his predecessor but on a later date that is unknown to the losing candidate.

However, the Court takes judicial notice that in its Resolution No. 16, Series of 2018, dated 20 September 2018,[10] the HRET amended Rules 17 and 18 of the 2015 HRET Rules. As amended, Rules 17 and 18 now read:

RULE 17. *Election Protest*. – A verified protest contesting the election or returns of any Member of the House of Representatives shall be filed by any candidate who has duly filed a certificate of candidacy and has been voted for the same office within fifteen (15) days from June 30 of the election year, if the winning candidate was proclaimed on or before said date. However, if the winning candidate was proclaimed after June 30 of the election year, a verified election protest shall be filed within fifteen (15) days from the date of proclamation.

x x x x x x x x x

RULE 18. *Quo Warranto*. – A verified petition for *quo warranto* on the ground of ineligibility may be filed by any registered voter of the congressional district concerned, or any registered voter in the case of party-list representatives, within fifteen (15) days from June 30 of the election year, if the winning candidate was proclaimed on or before said date. However, if the winning candidate was proclaimed after June 30 of the election year, a verified petition for *quo warranto* shall be filed within fifteen (15) days from the date of proclamation. The party filing the petition shall be designated as the petitioner, while the adverse party shall be known as the respondent.

x x x x x x x x x

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[10] Signed by Associate Justices Diosdado M. Peralta (Chairperson), Mariano C. Del Castillo, Marvic M.V.F. Leonen and Representatives Jorge T. Almonte, Rodel M. Batocabe, Abigail Faye C. Ferriol-Pascual, and Joaquin M. Chipeco, Jr.

The amendments to Rules 17 and 18 of the 2015 HRET Rules were made "with respect to the reckoning point within which to file an election protest or a petition for *quo warranto*, respectively, in order to further promote a just and expeditious determination and disposition of every election contest brought before the Tribunal[.]"[11] The recent amendments, which were published in The Philippine Star on 26 September 2018 and took effect on 11 October 2018, clarified and removed any doubt as to the reckoning date for the filing of an election protest. The losing candidate can determine with certainty when to file his election protest.

WHEREFORE, we **DISMISS** the petition.

SO ORDERED.

Del Castillo, Perlas-Bernabe, Leonen, Caguioa, Tijam, Reyes, A. Jr., Reyes, J. Jr., and *Hernando, JJ.*, concur.

Peralta[*] and *Bersamin*, *JJ.*, no part due to prior participation in the HRET.

Jardeleza, J., on official business.

Gesmundo, J., on leave.

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[11] Fourth WHEREAS clause of Resolution No. 16, Series of 2018.

[*] Members of the HRET who approved the 2015 Revised Rules of the House of Representatives Electoral Tribunal.

FIRST DIVISION

[A.C. No. 11486. October 17, 2018]
(Formerly CBD No. 13-3899)

FERNANDO A. FLORA III, *complainant, vs.* **ATTY. GIOVANNI A. LUNA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS ARE PROHIBITED TO ENGAGE IN ANY FORM OF MISCONDUCT.— The Court has not been remiss in reminding members of the Bar to refrain from any act or omission which tends to degrade the trust and confidence reposed by the public in the legal profession. It is imperative that lawyers, at all times, maintain a high standard of legal proficiency, and devote their undivided attention, skill, and competence to every case they accept. The lawyer-client relationship is one imbued with utmost trust and confidence. Clients could thus understandably expect that their attorney would accordingly exercise the required degree of diligence in handling their legal dilemmas. An overriding prohibition against any form of misconduct is enshrined in Rule 1.01, Canon 1 of the CPR which provides that: 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. Accordingly, any specie of refractory behavior by a lawyer in fulfilling his duties must necessarily subject him to disciplinary action. "While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation."

2. ID.; ID.; UNJUSTIFIED REFUSAL TO RETURN THE MONEY RECEIVED FROM THE CLIENT, COMMITTED; THREE (3) MONTH-SUSPENSION FROM THE PRACTICE OF LAW, IMPOSED.— x x x [I]t is beyond cavil that respondent received from complainant the amount of ₱43,500.00 as payment for his supposed legal services. But, as it turned out, no actual case was filed in court, for they were settled at the *barangay* level. Therefore, and as the IBP-CBD

had correctly pointed out, there was no reason at all for respondent to retain the money, or even ask for it in the first place, because during the mediation proceedings at the *barangay*, the parties need not be represented by lawyers. Worse, when asked to return the money, herein respondent reportedly shouted at complainant that the amount of ₱43,500.00 was not even enough for his services. x x x In other words, respondent not only unjustifiably refused to return the money but also verbally abused complainant in the process. Respondent's unseemly behavior is a blot on the legal profession. x x x [R]espondent Atty. Giovanni A. Luna is **SUSPENDED** from the practice of law for three (3) months effective from finality of this Decision for violating the Code of Professional Responsibility.

3. ID.; ID.; ID.; ID.; RESTITUTION OF THE AMOUNT PAID BY COMPLAINANT WITH 6% LEGAL INTEREST, ORDERED.— In regard to the restitution of the amount paid to respondent by complainant, the Court has allowed the return of acceptance fees when a lawyer completely fails to render legal service. While an acceptance fee is generally non-refundable, this presupposes that the lawyer has rendered legal service to his client. Here, not having rendered any legal service, respondent had no right to retain complainant's payment. x x x He is also ordered to **RETURN** to complainant the amount of ₱43,500.00 with 6% legal interest from the date of finality of this judgment until full payment.

D E C I S I O N

DEL CASTILLO, *J.*:

The complainant Fernando A. Flora III (complainant) filed this administrative complaint against Atty. Giovanni A. Luna (respondent) for unethical conduct.

Factual Antecedents

On July 22, 2013, the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) received the Complaint-Affidavit[1] executed by herein complainant alleging

[1] *Rollo*, pp. 3-4.

that he engaged the legal services of respondent relative to certain criminal cases for grave threats, grave coercion, grave oral defamation and unjust vexation which he intended to file against an Indian national; that in connection therewith, respondent charged complainant ₱40,000.00 as acceptance fee and ₱3,500.00 as appearance fee; that complainant paid respondent a total of ₱43,500.00;[2] that the criminal cases did not materialize because these were amicably settled at the *barangay* level;[3] that, for this reason, he demanded that respondent return the amount of ₱43,500.00 because the cases were settled without the latter's participation, and no complaint was actually filed in court; but that, instead of heeding his demand, respondent replied in anger and shouted at him (complainant), saying that the ₱43,500.00 complainant gave him was not enough for his services.

IBP-CBD Proceedings

Acting on the complaint, the IBP-CBD ordered[4] respondent to file his Answer within 15 days from receipt. However, respondent did not file any Answer, nor did he appear in any of the mandatory conference and hearings.[5]

IBP-CBD Report and Recommendation[6]

The IBP-CBD, through Commissioner Christian D. Villagonzalo (Commissioner Villagonzalo), found respondent liable for violation of the Code of Professional Responsibility (CPR) *viz.*:

> In this case, respondent not only employed trickery by luring the complainant into parting with his money, but also unjustly enriched himself at complainant's expense for refusing to return the sum without any justification.

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[2] See Acknowledgement Receipt dated August 13, 2012; *id*. at 6.

[3] See *Barangay* Certification dated March 26, 2013; *id*. at 7.

[4] *Id*. at 10.

[5] See Minutes of Hearings and Orders; *id*. at 12-16.

[6] *Id*. at 40-47.

It was improper for respondent to have obtained the payment of legal fees simply because there was no need for his services at the barangay level where the appearance of lawyers is not required. That respondent insisted on collecting the fees was not only absurd, but also unjust.

x x x x x x x x x

Respondent disrespected the complainant as a client. When asked to return the money, respondent even had the temerity to shout and raise his voice saying, "the payment was not even enough for [my] services."

Respondent had every opportunity to redeem himself but simply did not act like a well-meaning lawyer should. Certainly, we cannot ascribe good faith to those who have not shown any willingness to make good their obligation.

In view thereof, Commissioner Villagonzalo recommended that respondent be suspended from the practice of law for one year.

IBP Board of Governors

The IBP Board of Governors resolved to adopt the said recommendation.[7]

Issue

Whether the allegations in the complaint-affidavit established enough ground to hold respondent administratively liable.

Our Ruling

At the outset, the Court notes that, because of respondent's failure to file an answer and to attend the mandatory hearings set by the IBP-CBD, the allegations of herein complainant against him must be deemed to have remained uncontroverted.

The Court has not been remiss in reminding members of the Bar to refrain from any act or omission which tends to degrade the trust and confidence reposed by the public in the legal

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[7] See Notice of Resolution dated February 25, 2016; *id*. at p. 38.

profession. It is imperative that lawyers, at all times, maintain a high standard of legal proficiency, and devote their undivided attention, skill, and competence to every case they accept.[8] The lawyer-client relationship is one imbued with utmost trust and confidence.[9] Clients could thus understandably expect that their attorney would accordingly exercise the required degree of diligence in handling their legal dilemmas.

An overriding prohibition against any form of misconduct is enshrined in Rule 1.01, Canon 1 of the CPR which provides that:

> 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.

Accordingly, any specie of refractory behavior by a lawyer in fulfilling his duties must necessarily subject him to disciplinary action. "While such negligence or carelessness is incapable of exact formulation, the Court has consistently held that the lawyer's mere failure to perform the obligations due his client is *per se* a violation."[10]

Here, it is beyond cavil that respondent received from complainant the amount of ₱43,500.00 as payment for his supposed legal services. But, as it turned out, no actual case was filed in court, for they were settled at the *barangay* level. Therefore, and as the IBP-CBD had correctly pointed out, there was no reason at all for respondent to retain the money, or even ask for it in the first place, because during the mediation proceedings at the *barangay*, the parties need not be represented by lawyers. Worse, when asked to return the money, herein respondent reportedly shouted at complainant that the amount

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[8] *Balingit v. Atty. Cervantes*, 799 Phil. 1, 8 (2016).

[9] *Ramirez v. Atty. Buhayang-Margallo*, 752 Phil. 473, 480 (2015).

[10] *Caranza v. Atty. Cabanes, Jr.*, 713 Phil. 530, 538 (2013).

of ₱43,500.00 was not even enough for his services. In *Spouses Nuezca v. Atty. Villagarcia*,[11] the Court held that:

> Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. The use of intemperate language and unkind ascriptions has no place in the dignity of judicial forum. Language abounds with countless possibilities for one to be emphatic but respectful, convincing but not derogatory, and illuminating but not offensive. In this regard, all lawyers should take heed that they are licensed officers of the courts who are mandated to maintain the dignity of the legal profession, hence, they must conduct themselves honorably and fairly. x x x

In other words, respondent not only unjustifiably refused to return the money but also verbally abused complainant in the process. Respondent's unseemly behavior is a blot on the legal profession.

Sadly enough, respondent's recalcitrant behavior did not stop there. In the proceedings before the IBP-CBD, respondent did not even deign to file an answer. Respondent's failure or refusal to answer the complaint against him plus his failure or refusal to appear at the mandatory hearings are evidence of his contumacious attitude toward lawful orders of the court and illustrate his meagre regard for his oath of office, both of which are offensive to Section 3, Rule 138, Rules of Court.[12]

In disbarment proceedings, such as this one, the real question for determination is whether the erring attorney is still fit to continue enjoying the privilege of being a member of the bar. The Court finds that in this particular case, considering the above-mentioned circumstances, the penalty of disbarment is too excessive, however. The Court has held[13] that suspension for a period of two years is appropriate for lawyers who did not render any legal service yet retained the amount they received

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[11] 792 Phil. 535, 540 (2016).

[12] *Id*. citing *Ngayan v. Atty. Tugade*, 271 Phil. 654, 659 (1991).

[13] *Jinon v. Atty. Jiz,* 705 Phil. 321 (2013) and *Agot v. Atty. Rivera*, 740 Phil. 393 (2014).

in connection therewith. However, given the fact that it is herein respondent's first offense, the Court believes that a suspension for three months[14] from the practice of law is in order.

In regard to the restitution of the amount paid to respondent by complainant, the Court has allowed the return of acceptance fees when a lawyer completely fails to render legal service.[15] While an acceptance fee is generally non-refundable, this presupposes that the lawyer has rendered legal service to his client.[16] Here, not having rendered any legal service, respondent had no right to retain complainant's payment.

WHEREFORE, respondent Atty. Giovanni A. Luna is **SUSPENDED** from the practice of law for three (3) months effective from finality of this Decision for violating the Code of Professional Responsibility. He is also ordered to **RETURN** to complainant the amount of ₱43,500.00 with 6% legal interest from the date of finality of this judgment until full payment.[17] He is further **DIRECTED** to submit to this Court proof of payment of the amount within ten (10) days from payment. Respondent is also **STERNLY WARNED** that repetition of the same or similar act shall be dealt with more severely.

Let copies of this Decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Office of the Court Administrator.

SO ORDERED.

Bersamin[*] (*Acting Chairperson*) and *Tijam, JJ.,* concur.

Jardeleza, J., on official leave.

Gesmundo,[**] *J.*, on leave.

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[14] *Spouses San Pedro v. Atty. Mendoza*, 749 Phil. 540 (2014).

[15] *Martin v. Atty. Dela Cruz*, A.C. No. 9832, September 4, 2017.

[16] *Id*.

[17] *Spouses San Pedro v. Atty. Mendoza*, *supra* at 550.

[*] Per Special Order No. 2606 dated October 10, 2018.

[**] Per Special Order No. 2607 dated October 10, 2018.

FIRST DIVISION

[A.M. No. 13-8-185-RTC. October 17, 2018]

RE: REPORT ON THE JUDICIAL AUDIT CONDUCTED IN THE REGIONAL TRIAL COURT BRANCH 24, CEBU CITY

SYLLABUS

1. LEGAL ETHICS; JUDGES; THE CODE OF JUDICIAL CONDUCT; JUDGES SHALL DISPOSE OF THE COURT'S BUSINESS PROMPTLY AND DECIDE CASES WITHIN THE REQUIRED PERIODS; FAILURE TO DECIDE CASES AND OTHER MATTERS WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS INEFFICIENCY WHICH WARRANTS THE IMPOSITION OF ADMINISTRATIVE SANCTION AGAINST THE ERRING MAGISTRATE. — It has been "consistently held that failure to decide cases and other matters within the reglementary period constitutes gross inefficiency [which] warrants the imposition of administrative sanction against the erring magistrate." The rules prescribing the time within which the judicial duty to decide and resolve cases are mandatory in nature. Section 15(1) of the 1987 Constitution states that cases or matters must be decided or resolved within three months for the lower courts. Under Canon 3, Rule 3.05 of the Code of Judicial Conduct, judges shall dispose of the court's business promptly and decide cases within the required periods. Also, under Canon 6, Section 5 of the New Code of Judicial Conduct for the Philippine Judiciary, judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness. It is axiomatic that "the honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved."

2. ID.; ID.; ID.; ID.; JUDGES MAY SEASONABLY FILE REQUESTS FOR EXTENSIONS OF TIME TO DECIDE CASES FROM THE COURT; PENALTY OF FINE IN THE AMOUNT OF ₱20,000.00 IMPOSED FOR UNDUE DELAY IN RENDERING DECISIONS AND ORDERS.— It goes

without saying that this Court, "in its pursuit of speedy dispensation of justice, is not unmindful of circumstances that may delay the disposition of the cases assigned to judges. It remains sympathetic to seasonably filed requests for extensions of time to decide cases." Here, however, despite the availability of the remedy which consists in simply asking for an extension of time from the Court, Judge Sarmiento altogether passed up this opportunity. We thus find no reason to exonerate him. However, considering Judge Sarmiento's two decades of service in the Judiciary, and his uncontroverted manifestation that he helped Judge Himalaloan in the preparation of the draft decisions for the undecided cases, we deem the penalty of fine in the amount of ₱20,000.00 appropriate.

D E C I S I O N

DEL CASTILLO, *J.*:

"Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case. Not only does it magnify the cost of seeking justice, it undermines the people's faith and confidence in the judiciary, lowers its standards, and brings it to disrepute."[1]

The Facts

From September 24-28, 2012, the Office of the Court Administrator (OCA) conducted a judicial audit in Branch 24 of the Regional Trial Court of Cebu City in view of the application for optional retirement of Presiding Judge Olegario B. Sarmiento, Jr. (Judge Sarmiento) effective September 14, 2012. Judge Sarmiento was already on terminal leave beginning July 12, 2012 and ceased to report for office. Judge James Stewart Ramon E. Himalaloan (Judge Himalaloan) was designated to be the Acting Presiding Judge of said Branch 24 under Administrative Order No. 150-2012 dated October 3, 2012.

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[1] *Office of the Court Administrator v. Judge Garcia-Blanco*, 522 Phil. 87, 99 (2006).

In its Report[2] dated October 19, 2012, the judicial audit team reported that the court under Judge Sarmiento had a total pending caseload of 519, *i.e.*, 308 pending criminal and 211 pending civil cases. Out of the total caseload: (a) 42 cases were deemed submitted for decision, 21 of which were already beyond the 90-day reglementary period to decide; (b) 46 cases were with pending incidents/motions for resolution, 6 of which were already beyond the 90-day reglementary period to resolve; (c) 10 cases which have no further action and/or cases with orders that have not been complied with, after a lapse of a considerable length of time; (d) 5 criminal cases with no initial action taken from the time they were raffled/re-raffled to the branch; and (e) 18 cases have no further settings/proceedings.

The audit team also found, upon verification with the OCA's Docket and Clearance Division, that Judge Sarmiento never ever asked for extension of time to decide/resolve these cases.

The audit team thus recommended *viz*.:

1. This matter be considered/treated as an administrative case against **Judge OLEGARIO B. SARMIENTO, JR.** and that he be fined the amount of fifty thousand (50,000.00) pesos for his failure to decide forty-two (42) cases, twenty-one (21) of which are beyond the reglementary period to decide and for his failure to resolve pending motions and or incidents in forty-six (46) cases.

2. **Acting Presiding Judge JAMES STEWART RAMON E. HIMALALOAN** (designated under A.O. No. 150-2012 dated October 3, 2012) be directed to:

    2.1 **DECIDE** with **DISPATCH** the forty (42) cases listed in **Table I** of this Report, giving priority to the Criminal Cases with detention prisoners and also taking into consideration the [aging] of cases, furnishing this Office with copies of such decisions;

    2.2 **RESOLVE** the pending motions/incidents in the forty-six (46) cases listed in **Table II** of this Report,

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[2] *Rollo*, pp. 13-24.

giving priority to those which are already beyond the reglementary period, furnishing this Office with copies of such resolutions; and

3. **Branch Clerk of Court ATTY. VIRGINIA VIVENCITA L. MONTECLAR** be directed to:

3.1.1 **TAKE APPROPRIATE ACTION** on the five (5) cases with **no initial action** since they were raffled/ re-raffled to this Branch as listed in **Table IV** of this Report.

3.1.2 **TAKE APPROPRIATE ACTION/INCLUDE IN THE COURT'S CALENDAR** (if she has not yet done so) the eighteen (18) cases which have **no further setting/proceedings** when audited, as listed in **Table III and V** of this Report.

3.2 **INSTRUCT** the Interpreter to henceforth cause the accused and their respective counsel/s to sign the Certificates of Arraignment;

3.3 **CAUSE** the Stenographers concerned to complete their respective TSNs, particularly in cases submitted for decision[.]

In the meantime, the OCA directed Judge Himalaloan to decide the 42 cases and resolve the 46 motions/incidents. As acknowledged by the OCA in its April 8, 2013 Memorandum, Judge Himalaloan had already complied with the directive.

The OCA's Recommendation

In its January 6, 2014 Memorandum,[3] the OCA recommended to this Court that:

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2. the administrative case against Judge Olegario B. Sarmiento, Jr., Branch 24, Regional Trial Court, Cebu City, Cebu be RE-DOCKETED as a regular administrative matter;

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[3] *Id*. at 28-30.

3. respondent Judge Olegario B. Sarmiento, Jr. be imposed a FINE of FIFTY THOUSAND PESOS (Php50,000.00) for his failure to decide forty-two (42) cases, twenty-one (21) of which were already beyond the reglementary period to decide, and for his failure to resolve pending motions and incidents in forty-six (46) cases; and,

4. the Fiscal Management Office (FMO) be DIRECTED to DEDUCT the amount of FIFTY THOUSAND PESOS (Php50,000.00) from the retirement benefits of Judge Sarmiento, Jr.[4]

In his "Respectful Request for Early Resolution"[5] and letter[6] dated April 21, 2015, Judge Sarmiento mentioned that he served the judiciary for almost 20 years; that aware of the administrative case brought about by his undecided cases, he reported to the court despite his retirement "until December of 2012 and finished writing the drafts of the decisions which x x x may be adapted by the succeeding judge."[7] Judge Sarmiento also stated that his court docket reached 1,400 but he successfully de-clogged the same so much so that he was cited as a top performing judge in 2006 by a national civic organization.[8]

Our Ruling

It has been "consistently held that failure to decide cases and other matters within the reglementaty period constitutes gross inefficiency [which] warrants the imposition of administrative sanction against the erring magistrate."[9]

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[4] *Id*. at 29-30.

[5] *Id*. at 31-32.

[6] *Id*. at 33-35.

[7] *Id*. at 34.

[8] *Id*.

[9] *Re: Findings on the Judicial Audit Conducted in Regional Trial Court, Branch 8, La Trinidad, Benguet*, A.M. Nos. 14-10-339-RTC and RTJ-16-2246, March 7, 2017, 819 SCRA 274, 307.

The rules prescribing the time within which the judicial duty to decide and resolve cases are mandatory in nature. Section 15(1) of the 1987 Constitution states that cases or matters must be decided or resolved within three months for the lower courts. Under Canon 3, Rule 3.05 of the Code of Judicial Conduct, judges shall dispose of the court's business promptly and decide cases within the required periods. Also, under Canon 6, Section 5 of the New Code of Judicial Conduct for the Philippine Judiciary, judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness. It is axiomatic that "the honor and integrity of the judicial system is measured not only by the fairness and correctness of decisions rendered, but also by the efficiency with which disputes are resolved."[10]

It goes without saying that this Court, "in its pursuit of speedy dispensation of justice, is not unmindful of circumstances that may delay the disposition of the cases assigned to judges. It remains sympathetic to seasonably filed requests for extensions of time to decide cases."[11] Here, however, despite the availability of the remedy which consists in simply asking for an extension of time from the Court, Judge Sarmiento altogether passed up this opportunity. We thus find no reason to exonerate him. However, considering Judge Sarmiento's two decades of service in the Judiciary, and his uncontroverted manifestation that he helped Judge Himalaloan in the preparation of the draft decisions for the undecided cases, we deem the penalty of fine in the amount of ₱20,000.00 appropriate.

WHEREFORE, the Court finds retired Judge Olegario B. Sarmiento Jr., former Presiding Judge of the Regional Trial Court, Branch 24, Cebu City, **GUILTY** of undue delay in rendering decisions and orders, and imposes upon him a **FINE**

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[10] *Id.*, *Office of the Court Administrator v. Judge Casalan*, 785 Phil. 350, 359 (2016).

[11] *Report on the Judicial Audit Conducted in the Regional Trial Court, Branch 8, Cebu City*, 498 Phil. 478, 487 (2005).

of ₱20,000.00, to be deducted from his retirement benefits. The Financial Management Office is hereby **DIRECTED** to immediately release the balance of Judge Sarmiento's retirement benefits after the said amount of ₱20,000.00 has been deducted therefrom.

SO ORDERED.

Bersamin[*] (*Acting Chairperson*) and *Tijam, JJ.*, concur.

Jardeleza, J., on official leave.

Gesmundo,[**] *J.*, on leave.

THIRD DIVISION

[G.R. No. 185622. October 17, 2018]

INTERNATIONAL CONTAINER TERMINAL SERVICES, INC., *petitioner, vs.* **THE CITY OF MANILA; LIBERTY M. TOLEDO, IN HER CAPACITY AS TREASURER OF MANILA; GABRIEL ESPINO, IN HIS CAPACITY AS RESIDENT AUDITOR OF MANILA; AND THE CITY COUNCIL OF MANILA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DOCKET FEES; PAYMENT OF PRESCRIBED DOCKET FEES IS ESSENTIAL FOR A COURT TO ACQUIRE JURISDICTION OVER A CASE; GUIDING PRINCIPLES IN THE PAYMENT OF DOCKET FEES FOR INITIATORY

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[*] Per Special Order No. 2606 dated October 10, 2018.

[**] Per Special Order No. 2607 dated October 10, 2018.

PLEADINGS.— It is an established rule that the payment of the prescribed docket fees is essential for a court to acquire jurisdiction over a case. Nonetheless, in *Sun Insurance Office*, this Court laid down the principles concerning the payment of docket fees for initiatory pleadings: Nevertheless, petitioners contend that the docket fee that was paid is still insufficient considering the total amount of the claim. This is a matter which the clerk of court of the lower court and/or his duly authorized docket clerk or clerk in-charge should determine and, thereafter, i[f] any amount is found due, he must require the private respondent to pay the same. Thus, the Court rules as follows: 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period. 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period. 3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.

2. ID.; ID.; ID.; IF A PARTY PAYS THE CORRECT AMOUNT OF DOCKET FEES FOR ITS ORIGINAL INITIATORY PLEADING, BUT LATER AMENDS THE PLEADING AND INCREASES THE AMOUNT PRAYED FOR, THE FAILURE TO PAY THE CORRESPONDING DOCKET FEES FOR THE INCREASED AMOUNT SHOULD NOT BE DEEMED TO HAVE CURTAILED THE COURT'S JURISDICTION, PROVIDED IT IS NOT SHOWN THAT THE PARTY DELIBERATELY INTENDED TO DEFRAUD THE COURT OF THE FULL PAYMENT OF DOCKET

FEES, AND MANIFESTS ITS WILLINGNESS TO ABIDE BY THE RULES BY PAYING ADDITIONAL DOCKET FEES WHEN REQUIRED BY THE COURT.— Should the docket fees paid be found insufficient considering the value of the claim, the filing party shall be required to pay the deficiency, but jurisdiction is not automatically lost. The clerk of court involved, or his or her duly authorized deputy, is responsible for making the deficiency assessment. If a party pays the correct amount of docket fees for its original initiatory pleading, but later amends the pleading and increases the amount prayed for, the failure to pay the corresponding docket fees for the increased amount should not be deemed to have curtailed the court's jurisdiction. x x x. When it is not shown that the party deliberately intended to defraud the court of the full payment of docket fees, the principles enumerated in *Sun Insurance* should apply. In *United Overseas Bank*: x x x . All told, the rule is clear and simple. In case where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in Sun Insurance and not the strict regulations set in *Manchester* will apply. Here, contrary to the findings of the Court of Tax Appeals *En Banc*, the circumstances dictate the application of *Sun Insurance*.

3. **ID.; ID.; ID.; ESTOPPEL WILL SET IN WHERE A PARTY FAILS TO SEASONABLY RAISE THE OTHER PARTY'S FAILURE TO PAY SUFFICIENT DOCKET FEES.—** [I]t is clear that respondents never assailed petitioner's insufficient payment of docket fees before the Regional Trial Court and the Court of Tax Appeals Second Division. They only raised this issue in their October 25, 2008 Comment to petitioner's Motion for Reconsideration of the September 5, 2008 Decision of the Court of Tax Appeals En Banc. Respondents have not denied this. If a party fails to seasonably raise the other party's failure to pay sufficient docket fees, then estoppel will set in. x x x. In this case, respondents failed to explain why they belatedly raised the issue of insufficient payment of docket fees before the Court of Tax Appeals *En Banc* in 2008, even though the issue arose as early as 2003, when petitioner filed its Amended and Supplemental Petition. As such, they are now estopped from assailing the jurisdiction of the Regional Trial Court due to petitioner's insufficient payment of docket fees.

4. ID.; ID.; ID.; ANY ADDITIONAL DOCKET FEES SHALL CONSTITUTE A LIEN ON THE JUDGMENT THAT MAY BE AWARDED.— [T]here is no showing that petitioner intended to deliberately defraud the court when it did not pay the correct docket fees for its Amended and Supplemental Petition. Respondents have not provided any proof to substantiate their allegation that petitioner purposely avoided the payment of the docket fees for its additional claims. On the contrary, petitioner has been consistent in its assertion that it will undertake to pay any additional docket fees that may be found due by this Court. Further, it is well settled that any additional docket fees shall constitute a lien on the judgment that may be awarded.

5. POLITICAL LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; TAX ASSESSMENT AND REFUND; REMEDIES OF A TAXPAYER FOR TAXES COLLECTED BY LOCAL GOVERNMENT UNITS, EXCEPT FOR REAL PROPERTY TAXES, UNDER SECTIONS 195 AND 196 OF THE LOCAL GOVERNMENT CODE, DISTINGUISHED.— Sections 195 and 196 of the Local Government Code govern the remedies of a taxpayer for taxes collected by local government units, except for real property taxes: x x x. If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code. Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest. In this case, as no tax was paid, there is no claim for refund in the appeal. If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid. "Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer." On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge,

or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.

6. ID.; ID.; ID.; ID.; THE APPROPRIATE REMEDY IS DETERMINED NOT BY THE TAXPAYER PAYING THE TAX AND THEN CLAIMING A REFUND, BUT BY THE LOCAL GOVERNMENT'S BASIS FOR THE COLLECTION OF THE TAX.— The nature of an action is determined by the allegations in the complaint and the character of the relief sought. Here, petitioner seeks a refund of taxes that respondents had collected. Following *City of Manila*, refund is available under both Sections 195 and 196 of the Local Government Code: for Section 196, because it is the express remedy sought, and for Section 195, as a consequence of the declaration that the assessment was erroneous or invalid. Whether the remedy availed of was under Section 195 or Section 196 is not determined by the taxpayer paying the tax and then claiming a refund. What determines the appropriate remedy is the local government's basis for the collection of the tax. It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state "the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties." x x x. No such precondition is necessary for a claim for refund pursuant to Section 196. Here, no notice of assessment for deficiency taxes was issued by respondent City Treasurer to petitioner for the taxes collected after the first three (3) quarters of 1999. x x x. The "assessments" from the fourth quarter of 1999 onwards were Municipal License Receipts; Mayor's Permit, Business Taxes, Fees & Charges Receipts; and Official Receipts issued by the Office of the City Treasurer for local business taxes, which must be paid as prerequisites for the renewal of petitioner's business permit in respondent City of Manila. While these receipts state the amount and nature of the tax assessed, they do not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner. They cannot be considered the "notice of assessment" required under Section 195 of the Local Government Code.

7. ID.; ID.; ID.; ID.; TO BE ENTITLED TO A REFUND UNDER SECTION 196 OF THE LOCAL GOVERNMENT CODE, THE TAXPAYER MUST FILE A WRITTEN CLAIM FOR

REFUND OR CREDIT WITH THE LOCAL TREASURER, AND FILE A JUDICIAL CASE FOR REFUND WITHIN TWO (2) YEARS FROM THE PAYMENT OF THE TAX, FEE, OR CHARGE, OR FROM THE DATE WHEN THE TAXPAYER IS ENTITLED TO A REFUND OR CREDIT.— A tax refund or credit is in the nature of a tax exemption, construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. Claimants of a tax refund must prove the factual basis of their claims with sufficient evidence. To be entitled to a refund under Section 196 of the Local Government Code, the taxpayer must comply with the following procedural requirements: *first*, file a written claim for refund or credit with the local treasurer; and *second*, file a judicial case for refund within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.

8. ID.; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; DISCUSSED.— The doctrine of exhaustion of administrative remedies requires recourse to the pertinent administrative agency before resorting to court action. This is under the theory that the administrative agency, by reason of its particular expertise, is in a better position to resolve particular issues: One of the reasons for the doctrine of exhaustion is the separation of powers, which enjoins upon the Judiciary a becoming policy of non-interference with matters coming primarily (albeit not exclusively) within the competence of the other departments. The theory is that the administrative authorities are in a better position to resolve questions addressed to their particular expertise and that errors committed by subordinates in their resolution may be rectified by their superiors if given a chance to do so. A no less important consideration is that administrative decisions are usually questioned in the special civil actions of certiorari, prohibition and mandamus, which are allowed only when there is no other plain, speedy and adequate remedy available to the petitioner. It may be added that strict enforcement of the rule could also relieve the courts of a considerable number of avoidable cases which otherwise would burden their heavily loaded dockets. When there is an adequate remedy available with the administrative remedy, then courts will decline to interfere when the party refuses, or fails, to avail of it.

9. ID.; ID.; ID.; EXCEPTIONS TO THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES.— [T]he failure to exhaust administrative remedies is not always fatal to a party's cause. This Court has admitted of several exceptions to the doctrine: As correctly suggested by the respondent court, however, there are a number of instances when the doctrine may be dispensed with and judicial action validly resorted to immediately. Among these exceptional cases are: 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; 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 the controversy is private land; and 10) in quo warranto proceedings.

10. ID.; ID.; ID.; ID.; THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDY WILL NOT APPLY IF THE PARTY CAN PROVE THAT THE RESORT TO THE ADMINISTRATIVE REMEDY WOULD BE AN IDLE CEREMONY SUCH THAT IT WILL BE ABSURD AND UNJUST FOR IT TO CONTINUE SEEKING RELIEF THAT EVIDENTLY WILL NOT BE GRANTED TO IT.— If the party can prove that the resort to the administrative remedy would be an idle ceremony such that it will be absurd and unjust for it to continue seeking relief that evidently will not be granted to it, then the doctrine would not apply. In *Central Azucarera*: On the failure of the appellee to exhaust administrative remedies to secure the refund of the special excise tax on the second importation sought to be recovered, we are of the same opinion as the trial court that it would have been an idle ceremony to make a demand on the administrative officer and after denial thereof to appeal to the Monetary Board of the Central Bank after the refund of the first excise tax had been denied. As correctly pointed out by petitioner, the filing of written claims with respondent City Treasurer for every collection of tax under Section 21(A) of Manila Ordinance No. 7764, as amended by Section 1(G) of Ordinance No. 7807, would have yielded the same result every time. This is bolstered by respondent City Treasurer's September 1, 2005 Letter, in which it stated that it could not act favorably on petitioner's claim for refund until

there would have been a final judicial determination of the invalidity of Section 21(A).

11. ID.; ID.; ID.; ID.; THERE IS NO NEED TO EXHAUST ADMINISTRATIVE REMEDIES WHEN THE ISSUE RAISED BY THE TAXPAYER IS PURELY LEGAL AND THERE IS NO QUESTION CONCERNING THE REASONABLENESS OF THE AMOUNT ASSESSED.— [T]he issue at the core of petitioner's claims for refund, the validity of Section 21(A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807, is a question of law. When the issue raised by the taxpayer is purely legal and there is no question concerning the reasonableness of the amount assessed, then there is no need to exhaust administrative remedies. Thus, petitioner's failure to file written claims of refund for all the taxes under Section 21(A) with respondent City Treasurer is warranted under the circumstances.

12. POLITICAL LAW; LOCAL GOVERNMENT CODE; LOCAL TAXATION; TAX ASSESSMENT AND REFUND; CLAIM FOR REFUND PURSUANT TO SECTION 196 OF THE LOCAL GOVERNMENT CODE, REQUIREMENTS THEREOF COMPLIED WITH IN CASE AT BAR.— Petitioner complied with the second requirement under Section 196 of the Local Government Code that it must file its judicial action for refund within two (2) years from the date of payment, or the date that the taxpayer is entitled to the refund or credit. Among the reliefs it sought in its Amended and Supplemental Petition before the Regional Trial Court is the refund of any and all subsequent payments of taxes under Section 21(A) from the time of the filing of its Petition until the finality of the case: x x x. As acknowledged by the respondent City Treasurer in her September 1, 2005 Letter, petitioner's entitlement to the refund would only arise upon a judicial declaration of the invalidity of Section 21(A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No 7807. This only took place when the Court of Tax Appeals En Banc dismissed respondents' Petition for Review of the May 17, 2006 Decision of the Court of Tax Appeals Second Division, rendering the judgment on the invalidity of Section 21(A) final and executory on July 2, 2007. Therefore, the judicial action for petitioner's claim for refund had not yet expired as of the filing of the Amended and Supplemental Petition.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De los Angeles for petitioner.

Neil L. Salcedo for respondents.

D E C I S I O N

LEONEN, *J.*:

If a party can prove that the resort to an administrative remedy would be an idle ceremony such that it will be absurd and unjust for it to continue seeking relief that evidently will not be granted to it, then the doctrine of exhaustion of administrative remedies will not apply.

This is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the September 5, 2008 Decision[2] and December 12, 2008 Resolution[3] of the Court of Tax Appeals En Banc in C.T.A. EB No. 277. The Court of Tax Appeals En Banc dismissed the Petition for Review[4] filed by International Container Terminal Services, Inc. (International Container), and affirmed the May 17, 2006 Decision[5] and

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[1] *Rollo*, pp. 11-57.

[2] *Id*. at 59-77. The Decision was penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez. Associate Justices Casanova and Palanca-Enriquez filed separate concurring and dissenting opinions.

[3] *Id*. at 101-106. The Resolution was penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez.

[4] *Id*. at 494-528.

[5] *Id*. at 401-423. The Decision, docketed as C.T.A. AC No. 11, was penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez.

February 22, 2007 Resolution[6] of the Court of Tax Appeals Second Division.

The Court of Tax Appeals Second Division found that the City of Manila committed direct double taxation when it imposed a local business tax under Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Ordinance No. 7807, in addition to the business tax already imposed under Section 18 of Manila Ordinance No. 7794, as amended.[7] It ordered a partial refund of ₱6,224,250.00, representing the erroneously paid business taxes for the third quarter of taxable year 1999. However, it did not order the City of Manila to refund the business taxes paid by International Container subsequent to the first three (3) quarters of 1999.[8]

International Container, a corporation with its principal place of business in Manila, renewed its business license for 1999. It was assessed for two (2) business taxes: one for which it was already paying, and another for which it was newly assessed. It was already paying a local annual business tax for contractors equivalent to 75% of 1% of its gross receipts for the preceding calendar year pursuant to Section 18 of Manila Ordinance No. 7794. The newly assessed business tax was computed at 50% of 1% of its gross receipts for the previous calendar year, pursuant to Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807. It paid the additional assessment, but filed a protest letter[9] dated July 15, 1999 before the City Treasurer of Manila.[10]

When the City Treasurer failed to decide International Container's protest within 60 days from the protest, International

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[6] *Id*. at 483-493. The Resolution was penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justice Juanito C. Castañeda, Jr. Associate Justice Olga Palanca-Enriquez was on leave.

[7] *Id*. at 417-420.

[8] *Id*. at 422.

[9] *Id*. at 108-113.

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

Container filed before the Regional Trial Court of Manila its Petition for Certiorari and Prohibition with Prayer for the Issuance of a Temporary Restraining Order against the City Treasurer and Resident Auditor of Manila.[11] The City Treasurer and the Resident Auditor of Manila moved for the dismissal[12] of the Petition for Certiorari and Prohibition on the ground that International Container had no cause of action, since it had failed to comply with the requirements of Section 187 of Republic Act No. 7160, otherwise known as the Local Government Code of 1991.[13]

The Regional Trial Court granted the City Treasurer and the Resident Auditor's motion and dismissed International Container's Petition for Certiorari and Prohibition.[14] International Container appealed the dismissal to the Court of Appeals, which set aside the Regional Trial Court's dismissal and ordered the case remanded to the Regional Trial Court for further proceedings.[15]

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[11] *Id.* at 114-124.

[12] *Id.* at 308-311.

[13] LOCAL GOV'T. CODE, Sec. 187 states:

Section 187. Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings. — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That 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.

[14] *Rollo*, pp. 312-314.

[15] *Id.* at 315-329.

While the Petition for Certiorari and Prohibition was pending, the City of Manila continued to impose the business tax under Section 21 (A), in addition to the business tax under Section 18, on International Container so that it would be issued business permits. On June 17, 2003, International Container sent a letter[16] addressed to the City Treasurer of Manila, reiterating its protest to the business tax under Section 21 (A) and requesting for a refund of its payments in the amount of ₱27,800,674.36 "in accordance with Section 196 of the Local Government Code,"[17] which states:

> Section 196. Claim for Refund of Tax Credit. — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

On July 11, 2003, International Container filed an Amended and Supplemental Petition,[18] alleging, among others, that since the payment of both business taxes was a pre-condition to the renewal of International Container's business permit, it was compelled to pay, and had been paying under protest. It amended its prayer to include not only the refund of business taxes paid for the first three (3) quarters of 1999, but also the taxes continuously paid afterwards.[19] The Regional Trial Court admitted its Amended and Supplemental Petition.[20]

In its February 28, 2005 Decision,[21] the Regional Trial Court dismissed the Amended and Supplemental Petition, again finding

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[16] *Id*. at 137-139.

[17] *Id*. at 139.

[18] *Id*. at 143-162.

[19] *Id*. at 159.

[20] *Id*. at 636.

[21] *Id*. at 213-218. The Decision, docketed as Civil Case No. 99-95092, was penned by Judge Concepcion S. Alarcon-Vergara of Branch 49, Regional Trial Court, Manila.

that International Container failed to comply with the requirements of Section 195 of the Local Government Code. It found that when the City Treasurer failed to act on International Container's protest and continued to collect the business tax under Section 21 (A), it could be determined that the protest was denied. Under Section 195 of the Local Government Code, International Container had 60 days to appeal the denial to a competent court. However, instead of appealing the denial, it resorted to a Petition for Certiorari and Prohibition, which was not a remedy prescribed under Section 195 of the Local Government Code. By failing to avail of the proper remedy, the assessments made against it became conclusive and unappealable.[22]

International Container filed a Petition for Review[23] against the City of Manila, its City Treasurer, its Resident Auditor, and its City Council (the City of Manila and its Officials) before the Court of Tax Appeals, docketed as C.T.A. AC No. 11. It prayed that the Court of Tax Appeals set aside the Regional Trial Court February 28, 2005 Decision, and order the City of Manila and its Officials to refund the business taxes assessed, demanded, and collected under Section 21 (A) in the amount of ₱39,268,772.41. This amount corresponded to the periods from 1999 to the first quarter of 2004 plus any and all subsequent payments until the case would have been finally decided. Finally, it prayed that the Court of Tax Appeals order the City of Manila and its Officials to desist from imposing and collecting the business tax under Section 21 (A), and to pay attorney's fees.[24]

On August 18, 2005, International Container sent another letter[25] addressed to the City Treasurer of Manila, reiterating its protest against the business tax under Section 21 (A), and claiming a refund for the third quarter of 2003 up to the second quarter of 2005.

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[22] *Id*. at 217.

[23] *Id*. at 219-250.

[24] *Id*. at 247-248.

[25] *Id*. at 618-619.

The Court of Tax Appeals Second Division issued its May 17, 2006 Decision[26] setting aside the Regional Trial Court February 28, 2005 Decision and partially granting International Container's prayer for a refund. It found that imposing the business tax under Section 21 (A) in addition to the contractors' tax under Section 18 constituted direct double taxation.[27] It ordered the City of Manila and its Officials to refund the amount of ₱6,224,250.00, representing the additional taxes paid for the first three (3) quarters of 1999. The claims corresponding to the subsequent periods were denied, since the Court of Tax Appeals Second Division found that International Container failed to substantiate its claims and to comply with Section 195 of the Local Government Code. It found that International Container failed to submit to the court its protest dated June 17, 2003, and thus, the court could not verify the total amount of taxes paid and the taxing period covered in this protest.[28]

International Container moved to partially reconsider[29] the May 17, 2006 Decision, praying, among others, that the Court of Tax Appeals Second Division elevate the records of the case so that it may verify the June 17, 2003 protest. It further argued that Section 196 of the Local Government Code should be applied to its claim, and not Section 195. The City of Manila and its Officials filed their own Motion for Reconsideration.[30] The Court of Tax Appeals Second Division directed the elevation of the records.[31]

International Container sent a letter[32] dated January 10, 2007 addressed to the City Treasurer of Manila, reiterating its protest,

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[26] *Id*. at 401-423.

[27] *Id*. at 417-419.

[28] *Id*. at 421-422.

[29] *Id*. at 424-440.

[30] *Id*. at 455-465.

[31] *Id*. at 478-481.

[32] *Id*. at 482.

this time, covering the period from the third quarter of 2005 to the fourth quarter of 2006.

On February 22, 2007, the Court of Tax Appeals Second Division denied the parties' respective Motions for Reconsideration.[33] It found that International Container raised the applicability of Section 196 of the Local Government Code for the first time on appeal. Further, it held that International Container's failure to file a written protest for each assessment in the mayor's permit after the first three (3) quarters of 1999 rendered these assessments final and executory.

International Container filed a Petition for Review with Prayer for Temporary Restraining Order and/or Preliminary Injunction before the Court of Tax Appeals En Banc.[34] It argued that the Court of Tax Appeals Second Division should have applied Section 196 of the Local Government Code for the payments that it had made subsequent to the third quarter of 1999, pointing out that it had prayed for a refund as early as the proceedings in the Regional Trial Court.[35] Moreover, Sections 195 and 196 pertain to separate and independent remedies; to resort to Section 195 as a condition precedent to availing of the remedy under Section 196 was illogical.[36]

On June 22, 2007, International Container filed an Urgent Motion to Suspend Collection,[37] claiming that the City of Manila and its Officials still collected the business tax under Section 21 (A) despite the Court of Tax Appeals Second Division May 17, 2006 Decision. The Urgent Motion was granted by the Court of Tax Appeals En Banc to preserve the status quo and upon the filing by International Container of a surety bond.[38]

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[33] *Id*. at 484-493.

[34] *Id*. at 494-532.

[35] *Id*. at 505-506.

[36] *Id*. at 515-518.

[37] *Id*. at 533-539.

[38] *Id*. at 546-551.

On September 5, 2008, the Court of Tax Appeals En Banc issued its Decision,[39] dismissing the Petition for Review for lack of merit. Contrary to the claim of International Container, the Court of Tax Appeals En Banc found that International Container's causes of action in the Regional Trial Court and Court of Tax Appeals Second Division were different from each other. In the Regional Trial Court, International Container's action was for the annulment of the assessment and collection of additional local business tax. In its Amended and Supplemental Petition, International Container discussed the propriety of the imposition of the business tax under Section 21 (A) to support the annulment of the assessment.[40] According to the Court of Tax Appeals En Banc, this meant that International Container chose to protest the assessment pursuant to Section 195 of the Local Government Code, and not to request for a refund as provided by Section 196.[41] Notably, International Container prayed for, and was granted, the opportunity to amend its Petition for Certiorari and Prohibition, but still failed to include an argument in support of its alleged claim under Section 196 of the Local Government Code.

The Court of Tax Appeals En Banc further found that Sections 195 and 196 of the Local Government Code are two (2) separate and distinct remedies granted to taxpayers, with different requirements and conditions. International Container cannot merely claim that by complying with the reglementary period of protesting an assessment under Section 195, it had already complied with the two (2)-year period stated in Section 196. The Court of Tax Appeals found that since International Container paid the taxes under the assessment, its claim for refund assumed that the assessment was wrong. The claim for refund should be understood as a logical and necessary consequence of the allegedly improper assessment such that if the assessment were cancelled, the taxes paid under it should

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[39] *Id.* at 59-77.

[40] *Id.* at 69.

[41] *Id.* at 71.

be refunded. This should not be understood as the claim for refund under Section 196 of the Local Government Code.[42]

Moreover, even if the applicability of Section 195 did not preclude the availability of Section 196 as a remedy, International Container only made its protest to the City Treasurer's assessment without expressly stating that it intended to claim a refund under Section 196 for taxes paid after the first three (3) quarters of 1999. As pointed out by the Court of Tax Appeals Second Division, its attempt to invoke Section 196 on appeal was due to its failure to recover under Section 195, not having made timely written protests of the assessments made against it.[43]

Having found that only Section 195 applied, the Court of Tax Appeals En Banc found that it was no longer necessary to determine whether International Container complied with the requirements of Section 196 for the periods after the first three (3) quarters of 1999. It reiterated the Court of Tax Appeals Second Division's ruling that International Container should have filed a written protest within 60 days from receipt of each and every assessment made by the City of Manila and its Officials, as embodied in the Mayor's Permit, regardless of its belief that the written protest would have been futile. Writing "paid under protest" on the face of municipal license receipts upon payment of the taxes is not the administrative protests contemplated by law.[44]

Court of Tax Appeals Associate Justice Caesar A. Casanova (Associate Justice Casanova) wrote a Concurring and Dissenting Opinion.[45] He noted that the notice of assessment in Section 195 of the Local Government Code was the same as

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[42] *Id*. at 71-74.

[43] *Id*. at 74-76.

[44] *Id*. at 75-76.

[45] *Id*. at 78-88. Likewise, Associate Justice Ola Palanca-Enriquez filed a Concurring and Dissenting Opinion, stating that there was no direct double taxation in this case, and thus, International Container was not entitled to the partial refund (*Rollo*, pp. 89-100).

a notice of assessment under Section 228 of the 1997 National Internal Revenue Code. He opined that no notice for deficiency taxes subsequent to the third quarter of 1999 up to the present was ever issued by the City of Manila and its Officials; thus, Section 195 of the Local Government Code did not apply.[46]

Moreover, according to Associate Justice Casanova, International Container partially complied with the requirements of Section 196 of the Local Government Code, from the third quarter of 2001 up to the fourth quarter of 2006. Following its July 15, 1999 protest for the first three (3) quarters of 1999, it filed claims for refund before the City Treasurer on June 17, 2003, August 19, 2005, and January 11, 2007. The payments from October 19, 1999 to April 19, 2001, in the total amount of ₱15,539,727.90, could no longer be refunded as the period to claim the refund had prescribed since its earliest claim was on June 17, 2003. Similarly, the claim for refund for the first and second quarters of 2007 could not be allowed since it did not file a claim with the City Treasurer. Associate Justice Casanova voted to partially grant the petition and to order the City of Manila and its Officials to refund ₱44,134,449.68 in its favor.[47]

On December 12, 2008, the Court of Tax Appeals En Banc denied International Container's Motion for Reconsideration[48] for lack of merit.[49] In its Resolution, it addressed the City of Manila and its Officials' claim in their Comment to the Motion for Reconsideration[50] that the Court of Tax Appeals had no jurisdiction over International Container's claim for refund from the fourth quarter of 1999 onwards due to non-payment of docket fees before the Regional Trial Court.[51] It noted that in *Sun*

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[46] *Id*. at 80-82.

[47] *Id*. at 85-88.

[48] *Id*. at 579-599.

[49] *Id*. at 101-106.

[50] *Id*. at 605-607.

[51] *Id*. at 103.

Insurance Office, Ltd. v. Asuncion,[52] the error of non-payment or insufficiency of docket fees may be rectified by the payment by the filing party of the correct amount within a reasonable time but in no case beyond the applicable prescriptive or reglementary period. However, it held that *Sun Insurance* was inapplicable to this case, as there was no showing that International Container had paid the additional docket fees. The applicable ruling should be *Manchester Development Corp. v. Court of Appeals*,[53] which held that the non-payment or insufficiency of docket fees would result in the court not acquiring jurisdiction over the case, rendering void the ruling of the Regional Trial Court on the additional claims of International Container.[54]

On December 24, 2008, International Container filed a Motion for Extension of Time to file Petition for Review[55] with this Court, praying for an additional 30 days, or until February 2, 2009 within which to file its Petition for Review. This Court granted the Motion for Extension in its January 14, 2009 Resolution.

On February 2, 2009, International Container filed its Petition for Review on Certiorari under Rule 45 of the Rules of Court, assailing the September 5, 2008 Decision and December 12, 2008 Resolution of the Court of Tax Appeals En Banc.[56]

In its Petition for Review, International Container claims that it is entitled to a refund of ₱6,224,250.000 plus ₱57,865,901.68 in payments of taxes under Section 21 (A) of Manila Ordinance No. 7764, as amended by Section 1(G) of Manila Ordinance No. 7807.[57]

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[52] 252 Phil. 280 (1989) [Per *J.* Gancayco, *En Banc*].

[53] 233 Phil. 579 (1987) [Per *J.* Gancayco, *En Banc*].

[54] *Rollo*, pp. 104-105.

[55] *Id*. at 3-6.

[56] *Id*. at 11-58.

[57] *Id*. at 51.

First, it argues that it raised the issue of the refund at the earliest possible instance at the administrative level, and later, before the Regional Trial Court, and not only on appeal. It points out that in its July 15, 1999 Letter to the City of Manila and its Officials, it requested that if the questioned assessment had already been paid, then the amount paid should be refunded. For the amounts paid for the fourth quarter of 1999 up to the second quarter of 2003, it demanded a refund and expressly cited Section 196 of the Local Government Code in its June 17, 2003 Letter. The City Treasurer, in its September 1, 2005 Letter, even acknowledged that International Container had made a claim for refund or tax credit.[58]

Petitioner included prayers for refund of the taxes paid under protest both in its original Petition for Certiorari and Prohibition, and in its Amended and Supplemental Petition before the Regional Trial Court.[59]

Second, petitioner argues that when it filed its Petition before the Regional Trial Court, it availed of two (2) remedies: a protest under Section 195 of the Local Government Code for the assessments made by the City of Manila and its Officials for the first three (3) quarters of 1999, and a refund under Section 196 of the Local Government Code for its subsequent payments.[60]

The ₱6,224,250.00 ordered refunded by the Court of Tax Appeals Second Division represented the taxes that petitioner paid under the assessment issued not only for the taxes for the third quarter of 1999, but also back taxes for the first and second quarters of 1999. Since the assessment was issued on July 5, 1999, after the taxes for these quarters were already due, then the assessment was for deficiency tax assessments. According to petitioner, this was within the scope of Section 195 of the Local Government Code, which it claims covers only deficiency tax assessments.[61]

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[58] *Id*. at 27-30.

[59] *Id*. at 31.

[60] *Id*. at 34.

[61] *Id*. at 37.

As for the additional business taxes paid by petitioner, these were not deficiency taxes, but taxes due for the current taxable periods. Since these taxes were required for the issuance of its business permit, it was forced to pay the assessments under protest. This was the situation contemplated by Section 196 of the Local Government Code, which involves the recovery of any tax, fee, or charge erroneously or illegally collected.[62]

Petitioner argues that it complied with the requirements of Section 196, namely, that it filed the requisite written claims for refund, and the judicial claim was filed within two (2) years from payment or from the date of entitlement to the refund or credit.[63]

For the amounts paid after the third quarter of 1999 up to the second quarter of 2003, petitioner filed a claim for refund before the City Treasurer in its June 17, 2003 Letter. Then, it filed its Amended and Supplemental Petition before the Regional Trial Court, among the prayers of which was the recovery of all payments made under Section 21 (A) of Manila Ordinance No. 7794 subsequent to the first three (3) quarters of 1999. It also filed claims for refund for the third quarter of 2003 up to the second quarter of 2005 on August 19, 2005, and from the third quarter of 2005 up to the fourth quarter of 2006 on January 11, 2007.[64]

Petitioner claims that there was no longer a need to make separate written claims for the taxes paid but not covered by these claims for refund. Citing *Central Azucarera Don Pedro v. Central Bank*,[65] it points out that this Court has previously dispensed with the filing of the subsequent claims because it would have been an exercise in futility since the claims were based on common grounds that the taxing authority had already rejected. Moreover, as petitioner's basis for its claims for refund

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[62] *Id*. at 38.

[63] *Id*. at 39.

[64] *Id*. at 40.

[65] 104 Phil. 598 (1958) [Per *J*. Padilla, *En Banc*].

is a pure question of law, there is no need for it to exhaust its administrative remedies.[66]

As for the prescriptive period, petitioner avers that it became entitled to a refund or credit only on July 2, 2007, when the dismissal of its appeal of the May 17, 2006 Decision and February 22, 2007 Resolution of the Court of Tax Appeals Second Division became final and executory. It points out that these judgments declared that Section 21 (A) of Manila Ordinance No. 7764 was illegal double taxation. Thus, it had until July 2, 2009 to file its judicial claim for refund for its payments. While it agrees with some portions of Justice Casanova's Concurring and Dissenting Opinion in the Court of Tax Appeals En Banc September 5, 2008 Decision, it argues that all of its payments were covered by its claims for refund since the two (2)-year period for a judicial refund ended on July 2, 2009 and the administrative claim may be dispensed with.[67]

Third, petitioner asserts that the joinder of its protest to the deficiency tax assessment and the refund of its tax payments are in accordance with the Rules of Court. Since both are premised on the same cause of action, namely, the illegal collection of business taxes under Section 21 (A) of Manila Ordinance No. 7794, to file separate cases would be to split this cause of action and would produce a multiplicity of suits.[68]

Finally, petitioner claims that when it filed its Amended and Supplemental Petition, it was not ordered by the Regional Trial Court to pay additional docket and filing fees. Citing *Lu v. Lu Ym*,[69] it argues that cases should not be automatically dismissed when there is no showing of bad faith on the part of the filing party when insufficient docket fees were paid. In any event, it

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[66] *Rollo*, pp. 40-42.

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

[68] *Id.* at 45-46.

[69] 585 Phil. 251 (2008) [Per *J.* Nachura, Third Division].

undertakes to pay any additional docket fees that may be found due by this Court.[70]

On February 18, 2009,[71] this Court ordered respondents to comment on the Petition for Review, with which they complied on April 16, 2009.[72]

In their Comment, respondents argue that the Regional Trial Court did not acquire jurisdiction over this case because petitioner failed to pay the docket fees for the additional claims within the reglementary period. They claim that petitioner purposefully avoided paying these docket fees.[73]

On August 26, 2009, petitioner filed its Reply to the Comment,[74] in compliance with this Court's July 1, 2009 Resolution.[75]

In its Reply, petitioner reiterates its argument that the insufficiency of the docket fees paid for the Amended and Supplemental Petition does not warrant its dismissal. Citing *United Overseas Bank (formerly Westmont Bank) v. Ros*,[76] it argues that a case should not be dismissed simply because a party failed to file the docket fees, if no bad faith is shown.[77] It claims that it did not act with malice or deliberately intend to evade payment of docket fees.[78] Moreover, it points out that respondents raised the issue of insufficient docket fees for the first time in its October 25, 2008 Comment before the Court of Tax Appeals En Banc. Respondents should be deemed estopped

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[70] *Rollo*, pp. 47-51.

[71] *Id*. at 637.

[72] *Id*. at 653-661.

[73] *Id*. at 655-656.

[74] *Id*. at 669-687.

[75] *Id*. at 662.

[76] 556 Phil. 178 (2007) [Per *J*. Chico-Nazario, Third Division].

[77] *Rollo*, p. 671.

[78] *Id*. at 672-673.

from questioning the jurisdiction of the Regional Trial Court and of the Court of Tax Appeals.[79]

On December 9, 2009, the parties were ordered to submit their respective memoranda.[80] Petitioner filed its Memorandum on April 5, 2010,[81] while respondents filed their Memorandum on June 10, 2010.[82]

In their Memorandum, respondents argue that petitioner invoked Section 195 of the Local Government Code when it filed its original action, and only belatedly introduced its cause of action under Section 196 before the Court of Tax Appeals. Moreover, even if it may validly invoke Section 196, it failed to comply with the requirement of filing a written claim prior to the institution of its action with the Regional Trial Court since it already filed the case for refund even before it paid the taxes owed to respondents beginning the fourth quarter of 1999. Finally, it claims that not only is there non-payment of docket fees, petitioner is already barred from paying the deficiency docket fees, since the period within which to pay is only within the applicable prescriptive or reglementary period, which has already lapsed.[83]

The issues for this Court's resolution are:

First, whether or not the Regional Trial Court has jurisdiction over petitioner International Container Terminal Services, Inc.'s claims for refund from the fourth quarter of 1999 onwards, despite its non-payment of additional docket fees to the Regional Trial Court;

Second, whether or not Section 195 or Section 196 of the Local Government Code govern petitioner International

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[79] *Id*. at 676.

[80] *Id*. at 689-690.

[81] *Id*. at 704-759.

[82] *Id*. at 766-780.

[83] *Id*. at 774-778.

Container Terminal Services, Inc.'s claims for refund from the fourth quarter of 1999 onwards; and

Finally, whether or not petitioner International Container Terminal Services, Inc. complied with the requirements that would entitle it to the refund it claims.

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It is an established rule that the payment of the prescribed docket fees is essential for a court to acquire jurisdiction over a case.[84] Nonetheless, in *Sun Insurance Office*,[85] this Court laid down the principles concerning the payment of docket fees for initiatory pleadings:

> Nevertheless, petitioners contend that the docket fee that was paid is still insufficient considering the total amount of the claim. This is a matter which the clerk of court of the lower court and/or his duly authorized docket clerk or clerk in-charge should determine and, thereafter, i[f] any amount is found due, he must require the private respondent to pay the same.
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> Thus, the Court rules as follows:
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> 1. It is not simply the filing of the complaint or appropriate initiatory pleading, but the payment of the prescribed docket fee, that vests a trial court with jurisdiction over the subject matter or nature of the action. Where the filing of the initiatory pleading is not accompanied by payment of the docket fee, the court may allow payment of the fee within a reasonable time but in no case beyond the applicable prescriptive or reglementary period.
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> 2. The same rule applies to permissive counterclaims, third-party claims and similar pleadings, which shall not be considered filed until and unless the filing fee prescribed therefor is paid. The court may also allow payment of said fee within a reasonable time but also in no case beyond its applicable prescriptive or reglementary period.

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[84] *Manchester Development Corp. v. Court of Appeals*, 233 Phil. 579 (1987) [Per *J.* Gancayco, *En Banc*].

[85] 252 Phil. 280 (1989) [Per *J.* Gancayco, *En Banc*].

3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment. It shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee.[86]

Should the docket fees paid be found insufficient considering the value of the claim, the filing party shall be required to pay the deficiency, but jurisdiction is not automatically lost. The clerk of court involved, or his or her duly authorized deputy, is responsible for making the deficiency assessment.[87]

If a party pays the correct amount of docket fees for its original initiatory pleading, but later amends the pleading and increases the amount prayed for, the failure to pay the corresponding docket fees for the increased amount should not be deemed to have curtailed the court's jurisdiction. In *PNOC Shipping and Transport Corp. v. Court of Appeals*:[88]

With respect to petitioner's contention that the lower court did not acquire jurisdiction over the amended complaint increasing the amount of damages claimed to ₱600,000.00, we agree with the Court of Appeals that the lower court acquired jurisdiction over the case when private respondent paid the docket fee corresponding to its claim in its original complaint. Its failure to pay the docket fee corresponding to its increased claim for damages under the amended complaint should not be considered as having curtailed the lower court's jurisdiction. Pursuant to the ruling in *Sun Insurance Office, Ltd. (SIOL) v. Asuncion*, the unpaid docket fee should be considered as a lien on the judgment even though private respondent specified the amount of ₱600,000.00 as its claim for damages in its amended complaint.[89] (Citation omitted)

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[86] *Id.* at 291-292.

[87] *Rivera v. Del Rosario*, 464 Phil. 783 (2004) [Per J. Quisumbing, Second Division].

[88] 358 Phil. 38 (1998) [Per J. Romero, Third Division].

[89] *Id.* at 62.

When it is not shown that the party deliberately intended to defraud the court of the full payment of docket fees, the principles enumerated in Sun Insurance should apply. In *United Overseas Bank*:[90]

> This Court is not inclined to adopt the petitioner's piecemeal construction of our rulings in *Manchester* and *Sun Insurance*. Its attempt to strip the said landmark cases of one or two lines and use them to bolster its arguments and clothe its position with jurisprudential blessing must be struck down by this Court.
>
> All told, the rule is clear and simple. In case where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in Sun Insurance and not the strict regulations set in *Manchester* will apply.[91]

Here, contrary to the findings of the Court of Tax Appeals En Banc, the circumstances dictate the application of *Sun Insurance*.

First, it is undisputed that petitioner paid the correct amount of docket fees when it filed its original Petition for Certiorari and Prohibition before the Regional Trial Court. It was when it filed its Amended and Supplemental Petition, where it prayed for refund of all the tax payments it had made and would make after the first three (3) quarters of 1999,[92] that the issue of deficient payment of docket fees arose.

As pointed out by petitioner, in its July 18, 2003 Order admitting the Amended and Supplemental Petition, the Regional Trial Court did not order petitioner to pay any additional docket fees corresponding to its amended prayer:

> The Court admits the Amended and Supplemental Petition. The respondents are ordered to file their responsive pleading to said

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[90] 556 Phil. 178 (2007) [Per *J.* Chico-Nazario, Third Division].

[91] *Id*. at 197.

[92] *Rollo*, p. 159.

Amended Petition. In view of this development, respondents are given a new period of ten (10) days from receipt of this Order, to submit said responsive pleading.

SO ORDERED.[93]

Notably, as argued by petitioner, the amount it claims under its amended prayer for refund in the Amended and Supplemental Petition cannot be determined with absolute certainty, as it continued to pay the taxes due to respondents during the course of the proceedings.[94]

Second, it is clear that respondents never assailed petitioner's insufficient payment of docket fees before the Regional Trial Court and the Court of Tax Appeals Second Division. They only raised this issue in their October 25, 2008 Comment to petitioner's Motion for Reconsideration[95] of the September 5, 2008 Decision of the Court of Tax Appeals En Banc. Respondents have not denied this.

If a party fails to seasonably raise the other party's failure to pay sufficient docket fees, then estoppel will set in. In *Lu v. Lu Ym, Sr*:[96]

> Assuming arguendo that the docket fees were insufficiently paid, the doctrine of estoppel already applies.
>
> The assailed August 4, 2009 Resolution cited *Vargas v. Caminas* on the non-applicability of the *Tijam* doctrine where the issue of jurisdiction was, in fact, raised before the trial court rendered its decision. Thus the Resolution explained:
>
> > Next, the Lu Ym father and sons filed a motion for the lifting of the receivership order, which the trial court had issued in the interim. David, et al., brought the matter up to the CA even before the trial court could resolve the motion. Thereafter, David,

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[93] *Id*. at 636.

[94] *Id*. at 59.

[95] *Id*. at 605-607.

[96] 658 Phil. 156 (2011) [Per *J*. Carpio-Morales *En Banc*].

at al., filed their Motion to Admit Complaint to Conform to the Interim Rules Governing Intra-Corporate Controversies. It was at this point that the Lu Ym father and sons raised the question of the amount of filing fees paid. They also raised this point again in the CA when they appealed the trial court's decision in the case below.

We find that, in the circumstances, the Lu Ym father and sons are not estopped from challenging the jurisdiction of the trial court. They raised the insufficiency of the docket fees before the trial court rendered judgment and continuously maintained their position even on appeal to the CA. Although the manner of challenge was erroneous—they should have addressed this issue directly to the trial court instead of the OCA—they should not be deemed to have waived their right to assail the jurisdiction of the trial court.

Lu Ym father and sons did not raise the issue before the trial court. The narration of facts in the Court's original decision shows that Lu Ym father and sons merely inquired from the Clerk of Court on the amount of paid docket fees on January 23, 2004. They thereafter still "speculat[ed] on the fortune of litigation." Thirty-seven days later or on March 1, 2004 the trial court rendered its decision adverse to them.

Meanwhile, Lu Ym father and sons attempted to verify the matter of docket fees from the Office of the Court Administrator (OCA). In their Application for the issuance [of] a writ of preliminary injunction filed with the Court of Appeals, they still failed to question the amount of docket fees paid by David Lu, et al. It was only in their Motion for Reconsideration of the denial by the appellate court of their application for injunctive writ that they raised such issue.

Lu Ym father and sons' further inquiry from the OCA cannot redeem them. A mere inquiry from an improper office at that, could not, by any stretch, be considered as an act of having raised the jurisdictional question prior to the rendition of the trial court's decision. In one case, it was held:

Here it is beyond dispute that respondents paid the full amount of docket fees as assessed by the Clerk of Court of the Regional Trial Court of Malolos, Bulacan, Branch 17, where they filed the complaint. If petitioners believed that the assessment was incorrect, they should have questioned it before the trial court.

> Instead, petitioners belatedly question the alleged underpayment of docket fees through this petition, attempting to support their position with the opinion and certification of the Clerk of Court of another judicial region. Needless to state, such certification has no bearing on the instant case.
>
> The inequity resulting from the abrogation of the whole proceedings at this late stage when the decision subsequently rendered was adverse to the father and sons is precisely the evil being avoided by the equitable principle of estoppel.[97] (Emphasis supplied, citations omitted)

In this case, respondents failed to explain why they belatedly raised the issue of insufficient payment of docket fees before the Court of Tax Appeals En Banc in 2008, even though the issue arose as early as 2003, when petitioner filed its Amended and Supplemental Petition. As such, they are now estopped from assailing the jurisdiction of the Regional Trial Court due to petitioner's insufficient payment of docket fees.

Finally, there is no showing that petitioner intended to deliberately defraud the court when it did not pay the correct docket fees for its Amended and Supplemental Petition. Respondents have not provided any proof to substantiate their allegation that petitioner purposely avoided the payment of the docket fees for its additional claims. On the contrary, petitioner has been consistent in its assertion that it will undertake to pay any additional docket fees that may be found due by this Court. Further, it is well settled that any additional docket fees shall constitute a lien on the judgment that may be awarded.[98]

II

Sections 195 and 196 of the Local Government Code govern the remedies of a taxpayer for taxes collected by local government units, except for real property taxes:

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[97] *Id.* at 184-185.

[98] *Sun Insurance Office, Ltd. v. Asuncion*, 252 Phil. 280 (1989) [Per *J.* Gancayco, *En Banc*]; *PNOC Transport and Shipping Corp. v. Court of Appeals*, 358 Phil. 38 (1998) [Per *J.* Romero, Third Division]; *Lu v. Lu Ym, Sr.*, 658 Phil. 156 (2011) [Per *J.* Carpio Morales, *En Banc*].

Section 195. Protest of Assessment. — When the local treasurer or his duly authorized representative finds that correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty (60)-day period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

Section 196. Claim for Refund of Tax Credit. — No case or proceeding shall be maintained in any court for the recovery of any tax, fee, or charge erroneously or illegally collected until a written claim for refund or credit has been filed with the local treasurer. No case or proceeding shall be entertained in any court after the expiration of two (2) years from the date of the payment of such tax, fee, or charge, or from the date the taxpayer is entitled to a refund or credit.

In *City of Manila v. Cosmos Bottling Corp.*,[99] this Court distinguished between these two (2) remedies:

The first provides the procedure for contesting an assessment issued by the local treasurer; whereas, the second provides the procedure for the recovery of an erroneously paid or illegally collected tax, fee or charge. Both Sections 195 and 196 mention an administrative remedy that the taxpayer should first exhaust before bringing the appropriate action in court. In Section 195, it is the written protest with the local treasurer that constitutes the administrative remedy; while in Section 196, it is the written claim for refund or credit with the

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[99] G.R. No. 196681, June 27, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/196681.pdf > [Per J. Martires, Third Division].

same office. As to form, the law does not particularly provide any for a protest or refund claim to be considered valid. It suffices that the written protest or refund is addressed to the local treasurer expressing in substance its desired relief. The title or denomination used in describing the letter would not ordinarily put control over the content of the letter.

Obviously, the application of Section 195 is triggered by an assessment made by the local treasurer or his duly authorized representative for nonpayment of the correct taxes, fees or charges. Should the taxpayer find the assessment to be erroneous or excessive, he may contest it by filing a written protest before the local treasurer within the reglementary period of sixty (60) days from receipt of the notice; otherwise, the assessment shall become conclusive. The local treasurer has sixty (60) days to decide said protest. In case of denial of the protest or inaction by the local treasurer, the taxpayer may appeal with the court of competent jurisdiction; otherwise, the assessment becomes conclusive and unappealable.

On the other hand, Section 196 may be invoked by a taxpayer who claims to have erroneously paid a tax, fee or charge, or that such tax, fee or charge had been illegally collected from him. The provision requires the taxpayer to first file a written claim for refund before bringing a suit in court which must be initiated within two years from the date of payment. By necessary implication, the administrative remedy of claim for refund with the local treasurer must be initiated also within such two-year prescriptive period but before the judicial action.

Unlike Section 195, however, Section 196 does not expressly provide a specific period within which the local treasurer must decide the written claim for refund or credit. It is, therefore, possible for a taxpayer to submit an administrative claim for refund very early in the two-year period and initiate the judicial claim already near the end of such two-year period due to an extended **inaction** by the local treasurer. In this instance, the taxpayer cannot be required to await the decision of the local treasurer any longer, otherwise, his judicial action shall be barred by prescription.

Additionally, Section 196 does not expressly mention an assessment made by the local treasurer. This simply means that its applicability does not depend upon the existence of an assessment notice. By consequence, a taxpayer may proceed to the remedy of refund of taxes even without a prior protest against an assessment that was

not issued in the first place. This is not to say that an application for refund can never be precipitated by a previously issued assessment, for it is entirely possible that **the taxpayer, who had received a notice of assessment, paid the assessed tax, fee or charge believing it to be erroneous or illegal**. Thus, under such circumstance, **the taxpayer may subsequently direct his claim pursuant to Section 196 of the LGC**.[100] (Emphasis in the original, citation omitted)

If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Section 195 of the Local Government Code.[101] Thus, it must file a written protest with the local treasurer within 60 days from the receipt of the assessment. If the protest is denied, or if the local treasurer fails to act on it, then the taxpayer must appeal the assessment before a court of competent jurisdiction within 30 days from receipt of the denial, or the lapse of the 60-day period within which the local treasurer must act on the protest.[102] In this case, as no tax was paid, there is no claim for refund in the appeal.[103]

If the taxpayer opts to pay the assessed tax, fee, or charge, it must still file the written protest within the 60-day period, and then bring the case to court within 30 days from either the decision or inaction of the local treasurer. In its court action, the taxpayer may, at the same time, question the validity and correctness of the assessment and seek a refund of the taxes it paid.[104] "Once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer."[105]

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

[101] *Id*.

[102] LOCAL GOV'T. CODE, Sec. 195.

[103] *City of Manila v. Cosmos Bottling Corp*., G.R. No. 196681, June 27, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/196681.pdf > [Per *J*. Martires, Third Division].

[104] *Id*.

[105] *Id*.

On the other hand, if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Section 196 applies.[106]

Here, there is no dispute on the refund of ₱6,224,250.00, representing the additional taxes paid for the first three (3) quarters of 1999, as ordered by the Court of Tax Appeals Second Division in its May 17, 2006 Decision on the basis that there was direct double taxation. The controversy here pertains to petitioner's entitlement to a refund of the taxes paid subsequent to the third quarter of 1999, which was denied by the Court of Tax Appeals Second Division on the ground that petitioner failed to comply with the requirements of Section 195.

When petitioner raised the applicability of Section 196 to the claim for refund of these subsequent payments, the Court of Tax Appeals Second Division, as affirmed by the Court of Tax Appeals En Banc, held that Section 196 cannot apply as petitioner previously anchored its claims under Section 195. As ruled by the Court of Tax Appeals En Banc:

> Unmistakably, Section 195 and Section 196 of the LGC are two separate and diverse remedies granted to taxpayers, calling for different requirements and conditions for their application. Considering so, petitioner should have been clear on the basis of its action. It cannot be allowed to resort to an *all-encompassing remedy* so that in case it is disqualified under once, it can immediately shift to the other.

When petitioner appealed to the Second Division, the following issues were raised:

1. Whether or not the Petition of petitioner were prematurely filed, or, whether or not the said petition is the "appeal" contemplated in Section 195 of the Local Government Code.

2. Whether or not petitioner is taxable under Section 21 (A) of Manila Ordinance No. 7794, as amended by Manila Ordinance No. 7807, given the fact that it is already taxed as a contractor under Section 18 of the same ordinance.

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[106] *Id*.

Again, a cursory reading of the above as well as the arguments, discussions and theories in the *Petition for Review* and *Memorandum* filed before the Second Division shows that petitioner's argument/theory on the applicability of Section 196 to its claim after the first three quarters of 1999 was not ascertainable. In contrast, the petition is enclosed with supporting arguments on petitioner's protest to the imposition of the additional local business tax. There was no mention or discussion of Section 196.

From the RTC until the filing of a petition before the Second Division, **emphasis** had been given on petitioner's arguments questioning the assessment.[107] (Emphasis in the original)

The nature of an action is determined by the allegations in the complaint and the character of the relief sought.[108] Here, petitioner seeks a refund of taxes that respondents had collected. Following *City of Manila*,[109] refund is available under both Sections 195 and 196 of the Local Government Code: for Section 196, because it is the express remedy sought, and for Section 195, as a consequence of the declaration that the assessment was erroneous or invalid. Whether the remedy availed of was under Section 195 or Section 196 is not determined by the taxpayer paying the tax and then claiming a refund.

What determines the appropriate remedy is the local government's basis for the collection of the tax. It is explicitly stated in Section 195 that it is a remedy against a notice of assessment issued by the local treasurer, upon a finding that the correct taxes, fees, or charges have not been paid. The notice of assessment must state "the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties."[110] In *Yamane v. BA Lepanto Condominium Corp.*:[111]

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[107] *Rollo*, pp. 71-72.

[108] *Sunny Motors Sales, Inc. v. Court of Appeals*, 415 Phil. 515 (2001) [Per *J.* Pardo, First Division].

[109] G.R. No. 196681, June 27, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/196681.pdf> [Per *J.* Martires, Third Division].

[110] LOCAL GOV'T. CODE, Sec. 195.

[111] 510 Phil. 750 (2005) [Per *J.* Tinga, Second Division].

Ostensibly, the notice of assessment, which stands as the first instance the taxpayer is officially made aware of the pending tax liability, should be sufficiently informative to apprise the taxpayer the legal basis of the tax. Section 195 of the Local Government Code does not go as far as to expressly require that the notice of assessment specifically cite the provision of the ordinance involved but it does require that it state the nature of the tax, fee or charge, the amount of deficiency, surcharges, interests and penalties. In this case, the notice of assessment sent to the Corporation did state that the assessment was for business taxes, as well as the amount of the assessment. There may have been *prima facie* compliance with the requirement under Section 195. However in this case, the Revenue Code provides multiple provisions on business taxes, and at varying rates. Hence, we could appreciate the Corporation's confusion, as expressed in its protest, as to the exact legal basis for the tax. Reference to the local tax ordinance is vital, for the power of local government units to impose local taxes is exercised through the appropriate ordinance enacted by the *sanggunian*, and not by the Local Government Code alone. What determines tax liability is the tax ordinance, the Local Government Code being the enabling law for the local legislative body.[112] (Citations omitted)

No such precondition is necessary for a claim for refund pursuant to Section 196.[113]

Here, no notice of assessment for deficiency taxes was issued by respondent City Treasurer to petitioner for the taxes collected after the first three (3) quarters of 1999. As observed by Court of Tax Appeals Justice Casanova in his Concurring and Dissenting Opinion to the September 5, 2008 Decision:

In order to apply Section 195 of the LGC, there is a need for the issuance of a notice of assessment stating the nature of the tax, fee or charge, the amount of deficiency, the surcharges, interests and penalties. It is only upon receipt of this notice of assessment that a taxpayer is required to file a protest within sixty (60) days from receipt thereof.

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[112] *Id*. at 770.

[113] *City of Manila v. Cosmos Bottling, Corp*., G.R. No. 196681, June 27, 2018 < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/196681.pdf > [Per *J*. Martires, Third Division].

Given the nature of a notice of assessment, it is my opinion that no notice pertaining to deficiency taxes for the periods subsequent to the 3rd Quarter of 1999 up to the present were ever issued or sent by respondents to ICTSI.

In ICTSI's case, as correctly found by the *Second Division*, *viz*:

> "Records disclose in the instant case that petitioner filed a protest pursuant to Section 195 of the LGC only with respect to the assessment of the amount of ₱6,224,250.00, which covers the [first three quarters] of 1999. Petitioner protested the said assessment on July 15, 1999 and paid the same amount under protest. This is not controverted by the respondents."

Hence, Section 195 of the LGC cannot apply to the period subsequent to the 3rd Quarter of 1999 because ICTSI did not receive any notice of assessment thereafter that states the nature of the tax[,] amount of deficiency[,] and charges.[114]

The "assessments" from the fourth quarter of 1999 onwards were Municipal License Receipts; Mayor's Permit, Business Taxes, Fees & Charges Receipts; and Official Receipts issued by the Office of the City Treasurer for local business taxes, which must be paid as prerequisites for the renewal of petitioner's business permit in respondent City of Manila.[115] While these receipts state the amount and nature of the tax assessed, they do not contain any amount of deficiency, surcharges, interests, and penalties due from petitioner. They cannot be considered the "notice of assessment" required under Section 195 of the Local Government Code.

When petitioner paid these taxes and filed written claims for refund before respondent City Treasurer, the subsequent denial of these claims should have prompted resort to the remedy laid down in Section 196, specifically the filing of a judicial case for the recovery of the allegedly erroneous or illegally collected tax within the two (2)-year period.

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[114] *Rollo*, pp. 81-82.

[115] *Id*. at 444-454.

Petitioner appealed the denial of the protest against respondent City Treasurer's assessment and the action against the denial of its claims for refund. For both issues, petitioner's arguments are based on the common theory that the additional tax under Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807, is illegal double taxation. Hence, their joinder in one (1) suit was legally appropriate and avoided a multiplicity of suits.[116]

III

A tax refund or credit is in the nature of a tax exemption,[117] construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[118] Claimants of a tax refund must prove the factual basis of their claims with sufficient evidence.[119]

To be entitled to a refund under Section 196 of the Local Government Code, the taxpayer must comply with the following procedural requirements: *first*, file a written claim for refund or credit with the local treasurer; and *second*, file a judicial case for refund within two (2) years from the payment of the tax, fee, or charge, or from the date when the taxpayer is entitled to a refund or credit.[120]

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[116] See *Commissioner of Internal Revenue v. Court of Appeals*, 304 Phil. 518 (1994) [Per *J.* Regalado, Second Division].

[117] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317 (2005) [Per *J.* Panganiban, Third Division].

[118] *Commissioner of Internal Revenue v. Manila Mining Corp.*, 505 Phil. 650 (2005) [Per *J.* Carpio Morales, Third Division]; *Metro Manila Shopping Mecca Corp. v. Toledo*, 710 Phil. 375 (2013) [Per *J.* Perlas- Bernabe, Second Division].

[119] *Commissioner of Internal Revenue v. Seagate Technology (Philippines)*, 491 Phil. 317 (2005) [Per *J.* Panganiban, Third Division]; *Paseo Realty & Development Corp. v. Court of Appeals*, 483 Phil. 254 (2004) [Per *J.* Tinga, Second Division]; *KEPCO Philippines Corp. v. Commissioner of Internal Revenue*, 656 Phil. 68 (2011) [Per *J.* Mendoza, Second Division].

[120] *Metro Manila Shopping Mecca Corp. v. Toledo*, 710 Phil. 375 (2013) [Per *J.* Perlas-Bernabe, Second Division].

As to the first requirement, the records show that the following written claims for refund were made by petitioner:

In its June 17, 2003 Letter to the City Treasurer, it claimed a refund of ₱27,800,674.36 for taxes paid from the fourth quarter of 1999 up to the second quarter of 2003.[121]

In its August 18, 2005 Letter to the City Treasurer, it claimed a refund of ₱14,190,092.90 for taxes paid for the third quarter of 2003 up to the second quarter of 2005.[122]

In her September 1, 2005 Response[123] to the August 18, 2005 Letter, City Treasurer Liberty M. Toledo denied the claim, stating in part:

> With respect to the alleged final and executory decision of the Regional Trial Court, Branch 21, Manila in Civil Case No. 00-97081, please be informed that as of this writing, there is no decision yet rendered by the Supreme [Court] on the appeal made by the City. Hence, the decision has not attained finality.
>
> In view thereof and considering that the issue on whether or not Golden Arches is liable under Section 21 or not and that the same constitute double taxation is sub-judice due to the case filed in court by your company, this Office, cannot, much to our regret, act favorably on your claim for refund or credit of the tax collected as mentioned above. Rest assured that upon receipt of any decision from the Supreme Court declaring Section 21 illegal and unconstitutional, this Office shall act accordingly.[124]

Thereafter, petitioner sent its January 10, 2007 Letter to the City Treasurer claiming a refund of taxes paid for the third quarter of 2005 until the fourth quarter of 2006, pursuant to the Court of Tax Appeals Second Division May 17, 2006 Decision.[125]

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[121] *Rollo*, pp. 137-139.

[122] *Id*. at 618-619.

[123] *Id*. at 620-621.

[124] *Id*. at 621.

[125] *Id*. at 482.

As for the taxes paid thereafter and were not covered by these letters, petitioner readily admits that it did not make separate written claims for refund, citing that "there was no further necessity"[126] to make these claims. It argues that to file further claims before respondent City Treasurer would have been "another exercise in futility"[127] as it would have merely raised the same grounds that it already raised in its June 17, 2003 Letter:

> In the present controversy, it can be gleaned from the foregoing discussion that to file a written claim before the Respondent City Treasurer would have been another exercise in futility because the grounds for claiming a refund for the subsequent years would have been the very same grounds cited by petitioner in support of its 17 June 2003 letter that was not acted upon by Respondent City Treasurer. Thus, it would have been reasonable to expect that any subsequent written claim would have likewise been denied or would similarly not be acted upon. This is bolstered by the fact that during the pendency of the instant case, from its initial stages before the Regional Trial Court up to the present, Respondents have continued and unceasingly assessed and collected the questioned local business tax. . . .[128]

The doctrine of exhaustion of administrative remedies requires recourse to the pertinent administrative agency before resorting to court action.[129] This is under the theory that the administrative agency, by reason of its particular expertise, is in a better position to resolve particular issues:

> One of the reasons for the doctrine of exhaustion is the separation of powers, which enjoins upon the Judiciary a becoming policy of non-interference with matters coming primarily (albeit not exclusively) within the competence of the other departments. The theory is that the administrative authorities are in a better position to resolve questions addressed to their particular expertise and that errors committed by subordinates in their resolution may be rectified by

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[126] *Id.* at 40.

[127] *Id.* at 41.

[128] *Id.*

[129] *Sunville Timber Products, Inc. v. Abad*, 283 Phil. 400 (1992) [Per *J.* Cruz, First Division].

their superiors if given a chance to do so. A no less important consideration is that administrative decisions are usually questioned in the special civil actions of certiorari, prohibition and mandamus, which are allowed only when there is no other plain, speedy and adequate remedy available to the petitioner. It may be added that strict enforcement of the rule could also relieve the courts of a considerable number of avoidable cases which otherwise would burden their heavily loaded dockets.[130] (Citation omitted)

When there is an adequate remedy available with the administrative remedy, then courts will decline to interfere when the party refuses, or fails, to avail of it.[131]

Nonetheless, the failure to exhaust administrative remedies is not always fatal to a party's cause. This Court has admitted of several exceptions to the doctrine:

As correctly suggested by the respondent court, however, there are a number of instances when the doctrine may be dispensed with and judicial action validly resorted to immediately. Among these exceptional cases are: 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; 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 the controversy is private land; and 10) in quo warranto proceedings.[132] (Citations omitted)

If the party can prove that the resort to the administrative remedy would be an idle ceremony such that it will be absurd and unjust for it to continue seeking relief that evidently will not be granted to it, then the doctrine would not apply. In *Central Azucarera*:[133]

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[130] *Id.* at 406.

[131] *Abe-Abe v. Manta*, 179 Phil. 417 (1979) [Per J. Aquino, Second Division].

[132] *Sunville Timber Products, Inc. v. Abad*, 283 Phil. 400, 407 (1992) [Per J. Cruz, First Division].

[133] 104 Phil. 598 (1958) [Per J. Padilla, *En Banc*].

On the failure of the appellee to exhaust administrative remedies to secure the refund of the special excise tax on the second importation sought to be recovered, we are of the same opinion as the trial court that it would have been an idle ceremony to make a demand on the administrative officer and after denial thereof to appeal to the Monetary Board of the Central Bank after the refund of the first excise tax had been denied.[134]

As correctly pointed out by petitioner, the filing of written claims with respondent City Treasurer for every collection of tax under Section 21 (A) of Manila Ordinance No. 7764, as amended by Section 1(G) of Ordinance No. 7807, would have yielded the same result every time. This is bolstered by respondent City Treasurer's September 1, 2005 Letter, in which it stated that it could not act favorably on petitioner's claim for refund until there would have been a final judicial determination of the invalidity of Section 21 (A).

Further, the issue at the core of petitioner's claims for refund, the validity of Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807, is a question of law.[135] When the issue raised by the taxpayer is purely legal and there is no question concerning the reasonableness of the amount assessed, then there is no need to exhaust administrative remedies.[136]

Thus, petitioner's failure to file written claims of refund for all of the taxes under Section 21 (A) with respondent City Treasurer is warranted under the circumstances.

Similarly, petitioner complied with the second requirement under Section 196 of the Local Government Code that it must file its judicial action for refund within two (2) years from the

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[134] *Id*. at 602-603.

[135] *Pepsi-Cola Bottling Company of the Philippines, Inc. v. Municipality of Tanauan, Leyte*, 161 Phil. 591 (1976) [Per *J*. Martin, *En Banc*].

[136] *Ty v. Trampe*, 321 Phil. 81 (1995) [Per *J*. Panganiban, Second Division]; *City of Lapu-Lapu v. Philippine Economic Zone Authority*, 748 Phil. 473 (2014) [Per *J*. Leonen, Second Division].

date of payment, or the date that the taxpayer is entitled to the refund or credit. Among the reliefs it sought in its Amended and Supplemental Petition before the Regional Trial Court is the refund of any and all subsequent payments of taxes under Section 21 (A) from the time of the filing of its Petition until the finality of the case:

> WHEREFORE, premises considered, it is respectfully prayed –
>
> . . . . . .
>
> c) after trial, a decision be rendered ordering the respondents to refund the local business taxes assessed, demanded and collected by them and paid under protest by petitioner, in the amount of ₱6,224,250.00, corresponding to the first three (3) quarters of 1999 plus any and all subsequent payments of taxes under Section 21 (A) of Manila Ordinance No. 7794, as amended, made by petitioner from the time of the filing of this Petition until this case is finally decided, together with legal interest thereon, as well as the attorney's fees and costs of suit.[137]

As acknowledged by respondent City Treasurer in her September 1, 2005 Letter, petitioner's entitlement to the refund would only arise upon a judicial declaration of the invalidity of Section 21 (A) of Manila Ordinance No. 7794, as amended by Section 1(G) of Manila Ordinance No. 7807. This only took place when the Court of Tax Appeals En Banc dismissed respondents' Petition for Review of the May 17, 2006 Decision of the Court of Tax Appeals Second Division, rendering the judgment on the invalidity of Section 21 (A) final and executory on July 2, 2007.[138] Therefore, the judicial action for petitioner's claim for refund had not yet expired as of the filing of the Amended and Supplemental Petition.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The September 5, 2008 Decision and December 12,

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

[138] *Id*. at 529.

2008 Resolution of the Court of Tax Appeals En Banc in C.T.A. EB No. 277 are hereby **REVERSED** and **SET ASIDE**. The Court of Tax Appeals En Banc is **DIRECTED** to proceed with the resolution on the merits of C.T.A. EB No. 277 with due and deliberate dispatch.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, J. Jr.*, and *Hernando, JJ.*, concur.

Gesmundo, J., on leave.

SECOND DIVISION

[G.R. No. 194126. October 17, 2018]

INDUSTRIAL PERSONNEL AND MANAGEMENT SERVICES, INC., *petitioner, vs.* **COUNTRY BANKERS INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; AUTONOMY OF CONTRACTS; THE CONTRACTING PARTIES MAY ESTABLISH SUCH STIPULATIONS, CLAUSES, TERMS AND CONDITIONS AS THEY MAY DEEM CONVENIENT, PROVIDED THEY ARE NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS, PUBLIC ORDER OR PUBLIC POLICY; CASE AT BAR.— At the onset, it is important to note that according to the autonomy characteristic of contracts, **the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law,** morals, good customs, public order, or public policy. The stipulation of the MOA at issue is the provision enumerating requirements (Requirements for Claim Clause) that

must be presented by petitioner IPAMS in order to make a valid claim against the surety bond. x x x As to why the parties agreed on the sufficiency of the listed requirements under the MOA goes into the motives of the parties, which is not hard to understand, considering that the covered transactions, *i.e.*, the processing of applications of nurses in the U.S., are generally not subject to the issuance of official receipts by the U.S. government and its agencies. Considering the foregoing, the question is crystallized: Can the parties stipulate on the requirements that must be presented in order to claim against a surety bond? And the answer is a definite YES, pursuant to the autonomy characteristic of contracts, they can. In an insurance contract, founded on the autonomy of contracts, the parties are generally not prevented from imposing the terms and conditions that determine the contract's obligatory force.

2. ID.; DAMAGES; ACTUAL AND COMPENSATORY DAMAGES; THE REQUIREMENT OF PROVIDING ACTUAL PROOF FOR THE RECOVERY OF ACTUAL AND COMPENSATORY DAMAGES MAY BE DISPENSED WITH, WHEN THERE IS A STIPULATION TO THAT EFFECT MADE BY THE PARTIES; PRESENT IN CASE AT BAR.— [Article 2199 of the Civil Code] is clear and unequivocal when it states that one is entitled to adequate compensation for pecuniary loss for such losses as he has duly proved **EXCEPT:** (1) **when the law provides otherwise,** or (2) **by stipulation of the parties.** Otherwise stated, the amount of actual damages is limited to losses that were actually incurred and proven, except when the law provides otherwise, or when the parties stipulate that actual damages are not limited to the actual losses incurred or that actual damages are to be proven by specific documents agreed upon. *The submission of official receipts and other pieces of evidence as a prerequisite for the payment of claims is excused by stipulation of the parties: and in lieu thereof, the presentation of statement of accounts with detailed expenses, demand letters, and affidavits is, by express stipulation, sufficient evidence for the payment of claims.* To reiterate, Article 2199 of the Civil Code explicitly provides that the prerequisite of proof for the recovery of actual damages is not absolute. This was illustrated in *People of the Philippines v. Jonjie Eso y Hungoy, et al.,* wherein this Court held that the requirement of providing actual proof found under Article 2199 for the recovery of actual and compensatory damages (in that

case, funeral expenses) may be dispensed with, considering that there was a stipulation to that effect made by the parties. In the instant case, it is not disputed by any party that in the MOA entered into by the petitioner IPAMS and respondent Country Bankers, the parties expressly agreed upon a list of requirements to be fulfilled by the petitioner in order to claim from respondent Country Bankers under the surety bond. Hence, it is crystal clear that the petitioner IPAMS and respondent Country Bankers, **by express stipulation,** agreed that in order for the former to have a valid claim under the surety bond, the only requirements that need to be submitted are the two demand letters, an Affidavit stating reason of any violation to be executed by responsible officer of the Recruitment Agency, a Statement of Account detailing the expenses incurred, and the Transmittal Claim Letter. **Evidently, the parties did not include as preconditions for the payment of claims the submission of official receipts or any other more direct or concrete piece of evidence to substantiate the expenditures of petitioner IPAMS.**

3. MERCANTILE LAW; INSURANCE CODE; A CONTRACT OF SURETYSHIP SHALL BE DEEMED AN INSURANCE CONTRACT WITHIN THE CONTEMPLATION OF THE INSURANCE CODE IF MADE BY A SURETY WHICH IS DOING AN INSURANCE BUSINESS; CASE AT BAR.— The subject agreement of the parties indubitably contemplates a surety agreement, which is governed mainly by the Insurance Code, considering that a contract of suretyship shall be deemed an insurance contract within the contemplation of the Insurance Code if made by a surety which is doing an insurance business. In this case, the surety, *i.e.*, respondent Country Bankers, is admittedly an insurance company engaged in the business of insurance. In fact, the CA itself in its assailed Decision mentioned that a contract of suretyship is defined and covered by the Insurance Code. Moreover, the Insurance Code specifically provides applicable provisions on suretyship, stating that pertinent provisions of the Civil Code shall only apply *suppletorily* whenever necessary in interpreting the provisions of a contract of suretyship. Jurisprudence also holds that a specific law should prevail over a law of general character. Hence, in the resolution of the instant case, the CA erred in not considering the applicable provisions under the Insurance Code on the required proof of loss and when such requirement is waivable.

Therefore, Section 92 of the Insurance Code must be taken into consideration. The said provision states that all defects in the proof of loss, which the insured might remedy, are **waived as grounds for objection** when the insurer omits to specify to him without unnecessary delay. It is the duty of the insurer to indicate the defects on the proofs of loss given, so that the deficiencies may be supplied by the insured. When the insurer recognizes his liability to pay the claim, there is waiver by the insurer of any defect in the proof of loss.

4. REMEDIAL LAW; EVIDENCE; FACTUAL FINDINGS OF ADMINISTRATIVE AGENCY; THE FINDINGS OF FACT OF AN ADMINISTRATIVE AGENCY MUST BE RESPECTED AS LONG AS THEY ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, EVEN IF SUCH EVIDENCE MIGHT NOT BE OVERWHELMING OR EVEN PREPONDERANT; APPLICATION IN CASE AT BAR.— [F]actual findings of three separate administrative agencies, **which were not at all reversed or refuted by the CA in its assailed Decision,** should not be perturbed by the Court without any compelling countervailing reason. The Court has continuously adopted the policy of respecting the findings of facts of specialized administrative agencies. In *Villafor v. Court of Appeals*, the Court held that the findings of fact of an administrative agency must be respected as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant, because it is not the task of an appellant court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect of sufficiency of evidence. Hence, considering that the IC, through the Insurance Commissioner, is particularly tasked by the Insurance Code to issue such rulings, instructions, circulars, orders and decisions as may be deemed necessary to secure the enforcement of the provisions of the law, to ensure the efficient regulation of the insurance industry, and considering that there are no compelling reasons provided by respondent Country Bankers to overthrow the IC's factual findings, the Court upholds the findings of the IC, as concurred in by both the DOF and OP, that respondent Country Bankers committed certain acts constituting a waiver of its right to require the presentation of additional documents to prove the expenses incurred by petitioner IPAMS. Accordingly, under Section 92

of the Insurance Code, the failure to attach official receipts and other documents evidencing the expenses incurred by petitioner IPAMS, even assuming that it can be considered a defect on the required proof of loss, is therefore considered waived as ground for objecting the claims of petitioner IPAMS.

APPEARANCES OF COUNSEL

The Law Office of Fabian A. Gappi for petitioner.
Nelson H. Manalili for respondent.

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court filed by petitioner Industrial Personnel and Management Services, Inc. (IPAMS) assailing the Decision[2] dated October 14, 2010 (assailed Decision) of the Court of Appeals (CA) Eleventh Division in CA-G.R. SP No. 114683, which reversed and set aside the following rulings:

1. the Resolution[3] dated June 26, 2007 and Order[4] dated December 4, 2007 issued by the Insurance Commission (IC);
2. the Decision[5] dated September 17, 2008 and Resolution[6] dated April 29, 2009 issued by the Department of Finance (DOF); and

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[1] *Rollo*, Vol. I , pp. 3-71.

[2] *Id*. at 73-86. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Noel G. Tijam (now a member of this Court) and Marlene Gonzales-Sison concurring.

[3] *Id*. at 199-237.

[4] *Id*. at 239-242.

[5] *Id*. at 244-253.

[6] *Id*. at 255-256.

3. the Decision[7] dated January 8, 2010 and Resolution[8] dated June 1, 2010 issued by the Office of the President (OP).

These issuances upheld the ruling of the IC that respondent Country Bankers Corporation (Country Bankers) shall be subjected to disciplinary action pursuant to Section 241 (now Section 247) and Section 247 (now Section 254) of the Insurance Code, as amended,[9] if respondent Country Bankers does not settle the subject claims presented by petitioner IPAMS.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision, the essential facts and antecedent proceedings of the instant case are as follows:

> In 2000, Industrial Personnel and Management Services, Inc. (IPAMS) began recruiting registered nurses for work deployment in the United States of America (U.S.). It takes eighteen (18) to twenty four (24) months for the entire immigration process to complete. As the process requires huge amounts of money, such amounts are advanced [to] the nurse applicants.
>
> By reason of the advances made to the nurse applicants, the latter were required to post surety bond. The purpose of the bond is to guarantee the following during its validity period: (a) that they will comply with the entire immigration process, (b) that they will complete the documents required, and (c) that they will pass all the qualifying examinations for the issuance of immigration visa. The Country Bankers Insurance Corporation (Country Bankers for brevity) and IPAMS agreed to provide bonds for the said nurses. [Under the agreement of IPAMS and Country Bankers, the latter will provide

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[7] *Id*. at 276-279.

[8] *Id*. at 281-283.

[9] Republic Act No. 1060: AN ACT STRENGTHENING THE INSURANCE INDUSTRY, FURTHER AMENDING PRESIDENTIAL DECREE NO. 612, OTHERWISE KNOWN AS THE INSURANCE CODE, AS AMENDED BY PRESIDENTIAL DECREE NOS. 1141, 1280, 1455, 1460, 1814 AND 1981, AND BATAS PAMBANSA BLG. 874, AND FOR OTHER PURPOSES [INSURANCE CODE].

surety bonds and the premiums therefor were paid by IPAMS on behalf of the nurse applicants.[10]

[The surety bonds issued specifically state that the liability of the surety company, *i.e.*, respondent Country Bankers, "shall be limited only to actual damages arising from Breach of Contract by the applicant."[11]]

A Memorandum of Agreement (MOA) was executed by the said parties on February 1, 2002 [which stipulated the various requirements for collecting claims from Country Bankers, namely:

B. REQUIREMENTS FOR CLAIM

Requirements are as follows:

SURETY BOND:

A. 1st demand letter requiring his/her to submit complete documents.
B. 2nd Demand letter (follow up of above).
C. Affidavit stating reason of any violation to be executed by responsible officer of Recruitment Agency;
D. Statement of Account (detailed expenses).
E. Transmittal Claim Letter.[12] (Emphasis and underscoring in the original)]

[On the basis of the MOA, IPAMS submitted its claims under the surety bonds issued by Country Bankers. For its part, Country Bankers, upon receipt of the documents enumerated under the MOA, paid the claims to IPAMS.[13]] According to IPAMS, starting 2004, some of its claims were not anymore settled by Country Bankers.

[In 2004, Country Bankers was not able to pay six (6) claims of IPAMS. The claims were not denied by Country Bankers, which instead asked for time within which to pay the claims, as it alleged to be cash- strapped at that time. Thereafter, the number of unpaid claims increased. By February 16, 2007, the total amount of unpaid claims was ₱11,309,411.56.

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[10] *Rollo*, p. 245.

[11] *Id*. at 95.

[12] *Id*. at 92.

[13] *Id*. at 246.

IPAMS took the matter up with the General Manager of Country Bankers, Mr. Ignacio Ong (Ong). In response, Country Bankers, through its letter[14] dated November 14, 2005 signed by Mr. Ong, acknowledged the obligations of Country Bankers, apologized for the delay in the payment of claims, and proposed to amortize the settlement of claims by paying a semi-monthly amount of ₱850,000.00. In addition, Country Bankers promised to pay future claims within a ninety (90)-day period. That commitment made by Country Bankers was not fulfilled and IPAMS had to deal with Country Bankers' new General Manager, Ms. Tess Valeriano (Valeriano). Ms. Valeriano assured IPAMS that the obligations of Country Bankers would be paid promptly.

However, the counsel of Country Bankers, Atty. Marisol Caleja, started to oppose the payment of claims and insisted on the production of official receipts of IPAMS on the expenses it incurred for the application of nurses. IPAMS opposed this, saying that the Country Bankers' insistence on the production of official receipts was contrary to, and not contemplated in, the MOA and was an impossible condition considering that the U.S. authorities did not issue official receipts. In lieu of official receipts, IPAMS submitted statements of accounts, as provided in the MOA.[15]]

Then, [in a letter[16] dated August 22, 2006,] Country Bankers limited the authority of its agent [assigned to the accounts of IPAMS,] Mr. Jaime C. Lacaba [(Lacaba),] to transact business with IPAMS.

[Due to the unwillingness of Country Bankers to settle the claims of IPAMS, the latter sought the intervention of the IC, through a letter-complaint dated February 9, 2007.[17]]

Country Bankers on the other hand alleged that until the third quarter of 2006, it never received any complaint from IPAMS. Due to remarkable high loss ratio of IPAMS, the latter's accounts were evaluated and audited by the Country Bankers. The IPAMS was informed of the same problem. Instead of complying with the

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[14] *Id*. at 103.

[15] *Id*. at 246.

[16] *Id*. at 105.

[17] *Id*. at 246.

requirements for claim processes, IPAMS insisted that the supporting documents cannot be produced.

[The] [c]ontending parties went to a series of conferences to settle the differences but to no avail. The [IC] therefore ordered the parties to submit [their] respective Position Papers.[18] On June 26, 2007, the Claims Division of the [IC] [issued] a [R]esolution[19] declaring the following:

> "IN VIEW OF THE FOREGOING, this Commission believes and so holds that there is no ground for the refusal of CBIC to pay the claims of IPAMS. Its failure to settle the claim after having entered into an Agreement with the complainant, IPAMS, demonstrates respondent's bad faith in the fulfillment of their obligation, to the prejudice of the complainant.
>
> Accordingly, we find the insurance company liable to settle the subject claim otherwise, this Commission shall be constrained to take disciplinary action pursuant to Sections 241 and 247 of the Insurance Code, as amended." (Underscoring supplied)

The move by Country Bankers to reconsider the above resolution was denied by the [IC] in an [O]rder[20] dated December 4, 2007.

Country Bankers made an appeal before the [DOF]. The [DOF] decided to affirm the assailed orders of the [IC]. The dispositive portion of the said [D]ecision[21] [dated September 30, 2008] reads:

> "WHEREFORE, foregoing premises considered, the questioned Resolution of the Commission dated June 26, 2007, as reiterated in its Order dated December 7, 2007, is hereby AFFIRMED and that the same be implemented in accordance with Sec. 241, in relation to Sec. 247 of the Insurance Code and other pertinent rules and regulations on the matter."

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[18] *Id*. at 107-183, 185-197.

[19] *Id*. at 199-237.

[20] *Id*. at 239-242.

[21] *Id*. at 244-253.

A motion to reconsider the x x x aforementioned decision was filed but was denied [by the DOF in its Resolution[22] dated] April 29, 2009.

On appeal to the [OP], the ruling of the [DOF] was affirmed in a [D]ecision[23] docketed as O.P. Case No. 09-E-190 and dated January 8, 2010[:

> WHEREFORE, herein appeal is DISMISSED for lack of merit. The Decision of the Secretary of Finance dated September 17, 2008 and its Resolution dated April 29, 2009 are hereby AFFIRMED.][24]

A subsequent motion to reconsider the same was denied by the said office in its [R]esolution[25] dated June 1, 2010.

Hence, [the] instant [P]etition [for Review filed by respondent Country Bankers before the CA under Rule 43 of the Rules of Court.][26]

The Ruling of the CA

In its assailed Decision, the CA granted the Rule 43 Petition filed by respondent Country Bankers, reversing and setting aside the rulings of the IC, DOF, and OP, the dispositive portion of which states:

WHEREFORE, premises considered, the petition is **GRANTED** and the following issuances are hereby **REVERSED and SET ASIDE**:

1. June 1, 2010 decision of the Office of the President in O.P. Case No. 09-E-190;
2. January 8, 2010 decision of the Office of the President in O.P. Case No. 09-E-190;
3. Department of Finance resolution dated April 29, 2009;

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[22] *Id*. at 255-256.

[23] *Id*. at 276-279.

[24] *Id*. at 279.

[25] *Id*. at 281-283.

[26] *Id*. at 74-77.

4. Department of Finance decision dated September 17, 2008;
5. Insurance Commission order dated December 4, 2007; and the
6. Insurance Commission resolution dated June 26, 2007.

SO ORDERED.[27] (Emphasis in the original)

The CA held that respondent Country Bankers was justified in delaying the payment of the claims to petitioner IPAMS because of the purported lack of submission by petitioner IPAMS of official receipts and other "competent proof"[28] on the expenses incurred by petitioner IPAMS in its recruitment of nurse applicants. The CA held that Section 241 (now Section 247) of the Insurance Code, which defines an unfair claim settlement practice, and Section 247 (now Section 254), which provides for the suspension or revocation of the insurer's authority to conduct business, should not be made to apply to respondent Country Bankers because of the failure of petitioner IPAMS to provide competent proof of its claims.

Instead of filing a motion for reconsideration, petitioner IPAMS decided to directly file the instant Petition[29] dated November 2, 2010 on November 4, 2010 before the Court.

On April 4, 2011, respondent Country Bankers filed its Comment (To Petition for Review on Certiorari dated November 2, 2010).[30] On August 18, 2011, petitioner IPAMS filed its Reply.[31]

Issue

Stripped to its core, the present Petition asks the Court to resolve whether the CA erred in issuing its assailed Decision

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[27] *Id*. at 85.

[28] *Id*. at 81.

[29] *Id*. at 3-71.

[30] *Id*. at 506-564.

[31] *Id*. at 1227-1266.

which reversed and set aside the rulings of the IC, DOF, and OP, which found that respondent Country Bankers has no ground to refuse the payment of petitioner IPAMS' claims and shall accordingly be subjected to disciplinary action pursuant to Sections 241 (now Section 247) and 247 (now Section 254) of the Insurance Code if the latter does not settle the subject claims of petitioner IPAMS.

The Court's Ruling

The appeal is partly meritorious.

In reversing and setting aside the rulings of the IC, DOF, and OP, the CA, in the main, found that as provisions of applicable law are deemed written into contracts, Article 2199 of the Civil Code[32] should be applied regarding the MOA between petitioner IPAMS and respondent Country Bankers. The CA reasoned that since "[c]ompetent proof x x x must be presented to justify award for actual damages,"[33] respondent Country Bankers was correct in not paying the subject claims of petitioner IPAMS because the latter failed to present official receipts and other "competent" evidence establishing the actual costs and expenses incurred by petitioner IPAMS.

Apparently, the CA concurred with the reason posited by respondent Country Bankers for not paying the claims presented by petitioner IPAMS, *i.e.*, the failure of petitioner IPAMS to present official receipts of expenses it incurred. Consequently, the CA found that mere Statements of Accounts with detailed expenses, without accompanying official receipts or any other "competent" evidence, cannot prove actual expenses. Hence, respondent Country Bankers was supposedly justified in not paying the claims of petitioner IPAMS.

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[32] Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[33] *Rollo*, p. 81.

Autonomy of Contracts

At the onset, it is important to note that according to the autonomy characteristic of contracts, **the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law**, morals, good customs, public order, or public policy.[34]

The stipulation of the MOA at issue is the provision enumerating requirements (Requirements for Claim Clause) that must be presented by petitioner IPAMS in order to make a valid claim against the surety bond. To reiterate, the Requirements for Claim Clause provides:

> **B. REQUIREMENTS FOR CLAIM**
>
> Requirements are as follows:
>
> **SURETY BOND**:
>
> F. 1st demand letter requiring his/her to submit complete documents.
> G. 2nd Demand letter (follow up of above).
> H. Affidavit stating reason of any violation to be executed by responsible office of Recruitment Agency;
> I. Statement of Account (detailed expenses).
> J. Transmittal Claim Letter.[35] (Emphasis and underscoring in the original)

Petitioner IPAMS and respondent Country Bankers in essence made a stipulation to the effect that mere demand letters, affidavits, and statements of accounts are enough proof of actual damages — that more direct and concrete proofs of expenditures by the petitioner such as official receipts have been dispensed with in order to prove actual losses.

As to why the parties agreed on the sufficiency of the listed requirements under the MOA goes into the motives of the parties,

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[34] CIVIL CODE, Art. 1306; *William Golanco Construction Corporation v. Philippine Commercial International Bank,* 520 Phil. 167, 171 (2006).

[35] *Rollo*, p. 92.

which is not hard to understand, considering that the covered transactions, *i.e.*, the processing of applications of nurses in the U.S., are generally not subject to the issuance of official receipts by the U.S. government and its agencies.[36]

Considering the foregoing, the question is crystallized: Can the parties stipulate on the requirements that must be presented in order to claim against a surety bond? And the answer is a definite YES, pursuant to the autonomy characteristic of contracts, they can. In an insurance contract, founded on the autonomy of contracts, the parties are generally not prevented from imposing the terms and conditions that determine the contract's obligatory force.[37]

Thus, the view posited by the CA that the Requirements for Claim Clause is contrary to law because it is incongruent with Article 2199 of the Civil Code and, therefore, an exception to the rule on autonomy of contracts is erroneous. A more thorough examination of Article 2199 does not support the CA's view.

Article 2199 of the Civil Code states:

> Article 2199. **Except as provided by law or by stipulation**, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages. (Emphasis and underscoring supplied)

The law is clear and unequivocal when it states that one is entitled to adequate compensation for pecuniary loss only for such losses as he has duly proved **EXCEPT:** (1) **when the law provides otherwise**, or (2) **by stipulation of the parties**. Otherwise stated, the amount of actual damages is limited to losses that were actually incurred and proven, except when the law provides otherwise, or when the parties stipulate that actual damages are not limited to the actual losses incurred or that

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[36] *Id*. at 279.

[37] See Dissenting Opinion of Associate Justice Jose C. Vitug in *Sps. Tibay v. Court of Appeals*, 326 Phil. 931, 954 (1996).

actual damages are to be proven by specific documents agreed upon.

> *The submission of official receipts and other pieces of evidence as a prerequisite for the payment of claims is excused by stipulation of the parties; and in lieu thereof, the presentation of statement of accounts with detailed expenses, demand letters, and affidavits is, by express stipulation, sufficient evidence for the payment of claims.*

To reiterate, Article 2199 of the Civil Code explicitly provides that the prerequisite of proof for the recovery of actual damages is not absolute. This was illustrated in *People of the Philippines v. Jonjie Eso y Hungoy, et al.*,[38] wherein this Court held that the requirement of providing actual proof found under Article 2199 for the recovery of actual and compensatory damages (in that case, funeral expenses) may be dispensed with, considering that there was a stipulation to that effect made by the parties.

In the instant case, it is not disputed by any party that in the MOA entered into by the petitioner IPAMS and respondent Country Bankers, the parties expressly agreed upon a list of requirements to be fulfilled by the petitioner in order to claim from respondent Country Bankers under the surety bond.

Hence, it is crystal clear that the petitioner IPAMS and respondent Country Bankers, by **express stipulation**, agreed that in order for the former to have a valid claim under the surety bond, the only requirements that need to be submitted are the two demand letters, an Affidavit stating reason of any violation to be executed by responsible officer of the Recruitment Agency, a Statement of Account detailing the expenses incurred, and the Transmittal Claim Letter. **Evidently, the parties did**

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[38] 631 Phil. 547 (2010).

not include as preconditions for the payment of claims the submission of official receipts or any other more direct or concrete piece of evidence to substantiate the expenditures of petitioner IPAMS. If the parties truly had the intention of treating the submission of official receipts as a requirement for the payment of claims, they would have included such requirement in the MOA. But they did not.

It is elementary that when the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be no evidence on such terms other than the contents of the written agreement.[39] Further, when the terms of the contract are clear and leave no doubt upon the intention of the contracting parties, the stipulations of the parties are controlling.[40]

In the case at hand, respondent Country Banker failed to present any compelling evidence that convinces the Court that the parties had the intention of adding requirements other than the five requirements for payment of claims enumerated in the Requirements for Claim Clause. On the contrary, several circumstances show that the submission of official receipts was really NOT intended by the parties to be a precondition for the payment of claims.

As found by the OP in its Decision dated January 8, 2010, respondent Country Bankers "knew as a matter of IPAMS' regular course of business that these covered transactions are generally not issued official receipts by US government and its agencies and the US based professional organizations and institutions involved to complete the requirements for the issuance of an immigrant visa."[41]

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[39] RULES OF COURT, Rule 130, Sec. 9.

[40] CIVIL CODE, Art. 1370.

[41] *Rollo*, p. 279.

Further, as found by the IC in its Resolution dated June 26, 2007, which the CA did not controvert in its assailed Decision, respondent Country Bankers had previously admitted liability and promised to make payment on similar claims under the surety agreement even without the submission of official receipts.[42] In fact, respondent Country Bankers had previously paid similar claims made by petitioner IPAMS on the basis of the same set of documents, even without the submission of official receipts and other pieces of evidence.

As the contemporaneous and subsequent acts of the contracting parties shall be principally considered in determining the intention of the parties,[43] and that, by virtue of estoppel, an admission or representation is rendered conclusive upon the person making it and cannot be denied or disproved as against the person relying thereon,[44] the prior actuations of respondent Country Bankers clearly establish that it did not intend the submission of official receipts to be a prerequisite for the payment of claims. Respondent Country Bankers is therefore estopped from claiming that the submission of official receipts and other "competent proof" is a further requirement for the payment of claims.

Hence, the Court finds that, by stipulation of petitioner IPAMS and respondent Country Bankers in their MOA, the parties waived the requirement of actually proving the expenses incurred by petitioner IPAMS through the submission of official receipts and other documentary evidence. Thus, respondent Country Bankers was not justified in denying the payment of claims presented by petitioner IPAMS based on the lack of official receipts.

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[42] *Id*. at 232-237.

[43] CIVIL CODE, Art. 1371.

[44] CIVIL CODE, Art. 1431.

Under the Insurance Code, all defects in the proof of loss, which the insured might remedy, are waived as grounds for objection when the insurer omits to specify to him without unnecessary delay.

While placing utmost concentration on Article 2199 of the Civil Code in ruling that competent proof is required for the payment of the subject claims, the assailed Decision of the CA failed to take into consideration the applicable provisions of the Insurance Code.

The subject agreement of the parties indubitably contemplates a surety agreement,[45] which is governed mainly by the Insurance Code, considering that a contract of suretyship shall be deemed an insurance contract within the contemplation of the Insurance Code if made by a surety which is doing an insurance business.[46] In this case, the surety, *i.e.*, respondent Country Bankers, is admittedly an insurance company engaged in the business of insurance. In fact, the CA itself in its assailed Decision mentioned that a contract of suretyship is defined and covered by the Insurance Code.[47]

Moreover, the Insurance Code[48] specifically provides applicable provisions on suretyship, stating that pertinent provisions of the Civil Code shall only apply *suppletorily* whenever necessary in interpreting the provisions of a contract

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[45] Section 177. A contract of suretyship is an agreement whereby a party called the surety guarantees the performance by another party called the principal or obligor of an obligation or undertaking in favor of a third party called the obligee. It includes official recognizances, stipulations, bonds or undertakings issued by any company by virtue of and under the provisions of Act No. 536, as amended by Act No. 2206.

[46] INSURANCE CODE, Sec. 2 (a).

[47] *Rollo*, p. 78.

[48] Title 4 of the INSURANCE CODE.

of suretyship.[49] Jurisprudence also holds that a specific law should prevail over a law of general character.[50]

Hence, in the resolution of the instant case, the CA erred in not considering the applicable provisions under the Insurance Code on the required proof of loss and when such requirement is waivable.

Therefore, Section 92[51] of the Insurance Code must be taken into consideration. The said provision states that all defects in the proof of loss, which the insured might remedy, are **waived as grounds for objection** when the insurer omits to specify to him without unnecessary delay. It is the duty of the insurer to indicate the defects on the proofs of loss given, so that the deficiencies may be supplied by the insured. When the insurer recognizes his liability to pay the claim, there is waiver by the insurer of any defect in the proof of loss.[52]

In the instant case, it must be emphasized that respondent Country Bankers, through its General Manager, Mr. Ong, issued a letter dated November 14, 2005 which readily acknowledged the obligations of Country Bankers under the surety agreement, apologized for the delay in the payment of claims, and proposed to amortize the settlement of claims by paying a semi-monthly amount of ₱850,000.00.[53] In addition, Country Bankers promised to pay future claims within a 90-day period:

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[49] INSURANCE CODE, Sec. 180.

[50] *Valera v. Tuason, Jr.*, 80 Phil. 823, 827-828 (1948).

[51] Section 92. All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

[52] HECTOR S. DE LEON AND HECTOR M. DE LEON, JR., THE INSURANCE CODE OF THE PHILIPPINES ANNOTATED, 294-295 (2010 Edition).

[53] *Rollo*, p. 103.

First of all, allow us to apologize for the delay in our response to you considering that we still had to do some reconciliation of our records with that of Mr. Lacaba. After evaluating the total number of claims filed by IPAMS, we have come up with the final figure of ₱20,575,492.25.

In this regard, we wish to propose to amortize the settlement of the said amount by paying you the semi-monthly amount of ₱850,000.00 until the entire amount of ₱20,575,492.25 is fully paid. With respect to future claims (after the cut-off date, October 28, 2005), we shall see to it that they are settled within the 90 days time frame allowed us.[54]

It bears stressing that respondent Country Bankers, after undergoing an evaluation of the total number of claims of petitioner IPAMS, undertook the settlement of such claims even ***WITHOUT*** the submission of official receipts.

In fact, respondent Country Bankers raised up the issue on the missing official receipts and other evidence to prove the expenses incurred by petitioner IPAMS only when the latter requested the intervention of the IC in 2007. If respondent Country Bankers truly believed that the submission of official receipts was critical in providing proof as to petitioner IPAMS' claims, then it would have raised the issue on the lack of official receipts at the earliest possible opportunity. This only shows that the argument of respondent Country Bankers on the lack of official receipts was a mere afterthought to evade its obligation to pay the claims presented by petitioner IPAMS.

While not denying the existence of the said letter, respondent Country Bankers attempts to downplay it by arguing that the claims covered by the letter and the claims raised by petitioner IPAMS before the IC are different and distinct from each other. Such argument deserves scant consideration.

While the claims in the said letter may be different from the specific claims presented before the IC, both sets of claims were similarly made under the same suretyship agreement

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[54] *Id*.

between the parties. Thus, the fact still remains that respondent Country Bankers had previously acknowledged the validity of a set of claims under a surety bond within the purview of the Requirements for Claim Clause despite the lack of official receipts and other pieces of evidence aside from the required documents enumerated in the MOA. To be sure, it must also be pointed out that the representations of respondent Country Bankers in the said letter likewise refer to future and similar claims of petitioner IPAMS. Hence, respondent Country Bankers' attempt to downplay the ramifications of its letter dated November 14, 2005 is puerile.

Also, it must be emphasized that the IC, after holding a series of conferences between the parties and after the assessment of the respective position papers and evidence from both parties, made the factual finding in its Resolution dated June 26, 2007 that respondent Country Bankers committed certain acts constituting a waiver of its right to require the presentation of additional documents to prove the expenses incurred by petitioner IPAMS, such as the issuance of the letter dated November 14, 2005 and the acceptance by respondent Country Bankers of reimbursement from the nurse applicants of petitioner IPAMS on the basis of the Statements of Accounts presented, even without any official receipt attached.[55] **In fact, the records show that respondent Country Bankers does not deny the fact that it accepted the reimbursements from the nurse applicants based on the Statements of Accounts of petitioner IPAMS**.[56]

Furthermore, the DOF likewise factually determined that respondent Country Bankers, through its new General Manager, Ms. Valeriano, had assured IPAMS that the obligations of Country Bankers would be paid promptly, again, even without the submission of official receipts and other pieces of evidence.[57]

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[55] *Id*. at 232-237.

[56] *Id*. at 304.

[57] *Id*. at 246.

The DOF similarly found that the proposal by respondent Country Bankers to amortize the settlement of petitioner IPAMS' claims by paying the latter the semi-monthly amount of ₱850,000.00 and respondent Country Bankers' acceptance of reimbursements from the nurse-applicants based on the mere Statements of Accounts submitted by petitioner IPAMS are tantamount to an acknowledgment on the part of respondent Country Bankers of its liability for claims under the surety bonds.

Moreover, the OP also factually found that respondent Country Bankers "knew as a matter of IPAMS' regular course of business that these covered transactions are generally not issued official receipts by US government and its agencies and the US based professional organizations and institutions involved to complete the requirements for the issuance of an immigrant visa."[58]

These factual findings of three separate administrative agencies, **which were not at all reversed or refuted by the CA in its assailed Decision**, should not be perturbed by the Court without any compelling countervailing reason. The Court has continuously adopted the policy of respecting the findings of facts of specialized administrative agencies.

In *Villafor v. Court of Appeals*,[59] the Court held that the findings of fact of an administrative agency must be respected as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant, because it is not the task of an appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect of sufficiency of evidence.[60]

Hence, considering that the IC, through the Insurance Commissioner, is particularly tasked by the Insurance Code to issue such rulings, instructions, circulars, orders and decisions

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[58] *Id*. at 279.

[59] 345 Phil. 524, 562 (1997).

[60] *Id*.

as may be deemed necessary to secure the enforcement of the provisions of the law, to ensure the efficient regulation of the insurance industry, and considering that there are no compelling reasons provided by respondent Country Bankers to overthrow the IC's factual findings, the Court upholds the findings of the IC, as concurred in by both the DOF and OP, that respondent Country Bankers committed certain acts constituting a waiver of its right to require the presentation of additional documents to prove the expenses incurred by petitioner IPAMS.

Accordingly, under Section 92 of the Insurance Code, the failure to attach official receipts and other documents evidencing the expenses incurred by petitioner IPAMS, even assuming that it can be considered a defect on the required proof of loss, is therefore considered waived as ground for objecting the claims of petitioner IPAMS.

For the foregoing reasons, the ruling of the CA, which sets aside the rulings of the IC, DOF, and OP, which found that respondent Country Bankers has no ground to refuse the payment of petitioner IPAMS' claims and shall accordingly be subjected to disciplinary action pursuant to Sections 241 (now Section 247) and 247 (now Section 254) of the Insurance Code if the latter does not settle the subject claims of petitioner IPAMS, should be reversed.

Be that as it may, despite the reversal of the CA's assailed Decision, petitioner IPAMS' prayers for (1) the suspension/revocation of the license of respondent Country Bankers due to its commission of an unfair claim settlement practice for unreasonable delay in paying petitioner IPAMS' claim for the total amount of ₱21,230,643.19; (2) awarding of a total amount of ₱21,230,643.19 and 20% thereof; and (3) awarding of moral and exemplary damages, as well as attorney's fees and judicial costs, are denied.

It must be stressed that the instant case resolved by the Court is not a claims adjudication case. The subject Resolution and Order of the IC that was concurred in by the DOF and OP, which the Court now reinstates, were issued in the IC's capacity

as a regulator and not as an adjudicator of claims, as admitted by the IC itself.[61] Hence, while the Court herein reinstates the IC's Resolution finding that disciplinary action is warranted in the eventuality that respondent Country Bankers continues to delay settling the claims of petitioner IPAMS, the matter should be referred back to the IC so that it could determine the remaining amount and extent of the liability that should be settled by respondent Country Bankers in order to avoid the IC's disciplinary action.

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Decision dated October 14, 2010 issued by the Court of Appeals in CA-G.R. SP No. 114683 is **REVERSED AND SET ASIDE**. The Resolution dated June 26, 2007 and Order dated December 4, 2007 issued by the Insurance Commission, the Decision dated September 17, 2008 and Resolution dated April 29, 2009 issued by the Department of Finance, and the Decision dated January 8, 2010 and Resolution dated June 1, 2010 issued by the Office of the President are **REINSTATED** and **AFFIRMED**.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr.*,[*] *JJ.*, concur.

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[61] *Rollo*, p. 241.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. Nos. 205904-06. October 17, 2018]

GWENDOLYN F. GARCIA, *petitioner, vs.* **HONORABLE SANDIGANBAYAN, and PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO TRAVEL; THE RIGHT TO TRAVEL MAY BE IMPAIRED, IF NECESSARY, IN THE INTEREST OF NATIONAL SECURITY, PUBLIC SAFETY OR PUBLIC HEALTH.— [T]he right to travel, while a fundamental right, is not absolute. x x x Based on Section 6, Article III of the 1987 Constitution, the right to travel may be impaired, if necessary, in interest of national security, public safety or public health. Apart from the presence of these exclusive grounds, there is a further requirement that there must be a law authorizing the impairment. The requirement for a law ensures that the necessity for the impairment has undergone the validation and deliberation of Congress before its enactment. The strict requirement for the concurrence of these two elements are formidable enough to serve as safeguard in the full enjoyment of the right to travel.

2. ID.; ID.; ID.; ID.; STATUTORY LIMITATIONS ON THE RIGHT TO TRAVEL, ENUMERATED.— In *Leave Division, Office of the Administrative Services (OAS)-Office of the Court Administrator (OCA) v. Wilma Salvacion P. Heusdens*, the Court enumerated some of the statutory limitations on the right to travel, to wit: 1] *The Human Security Act of 2010 or [R.A.] No. 9372*. The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail. 2] *The Philippine Passport Act of 1996 or R.A. No. 8239.* Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen. 3] *The "Anti-Trafficking in Persons Act of 2003" or R.A. No. 9208.* Pursuant to the provisions thereof, the [BI], in order to manage migration and curb trafficking in persons, issued

Memorandum Order Radir No. 2011-011, allowing its Travel Control and Enforcement Unit to "offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from our ports. 4] *The Migrant Workers and Overseas Filipinos Act of 1995 or R.A. No. 8042, as amended by R.A. No. 10022.* In enforcement of said law, the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country. 5] *The Act on Violence against Women and Children or R.A. No. 9262*. The law restricts movement of an individual against whom the protection order is intended. 6] *Inter-Country Adoption Act of 1995 or R.A. No. 8043.* Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel "to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child."

3. ID.; ID.; ID.; ID.; THE POWER TO ISSUE HOLD DEPARTURE ORDER (HDO) IS AN EXERCISE OF THE COURT'S INHERENT POWER TO PRESERVE AND TO MAINTAIN THE EFFECTIVENESS OF ITS JURISDICTION OVER THE CASE AND THE PERSON OF THE ACCUSED; SUSTAINED.— [T]he power to issue HDO is an exercise of the court's inherent power to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused. Inherent powers are innate and essential faculties that are fundamental to the constitution of an effective judicial system. They are integral to the creation of courts. They do not require legislative conferment or constitutional recognition; they co-exist with the grant of judicial power. Broadly defined, they "consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the court exists." x x x Verily, inherent powers are brought into existence by the grant of judicial power to the courts to in Section 1, Article 8 of the 1987 Constitution "to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the

part of any branch or instrumentality of the government." As with other jurisdictions, "[t]he Constitution does not circumscribe the means that the courts may invoke on their own initiative to facilitate their exercise of judicial power. Thus, the courts may regularly apply their "inherent powers" to take some action that has not been specifically authorized by the Constitution, written rule, or statute." Necessarily included in the grant of jurisdiction is the power to ensure that its exercise shall be effective. "When by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer." Inherent powers, in effect, facilitate and reinforce the court's exercise of its specific powers. As vital components of jurisdiction, they fortify the court's jurisdiction through processes that ensure its full disposition. And, while not enumerated in the Constitution or statute, they are considered part and parcel of the grant of authority to courts. The power to issue hold departure order is properly subsumed under the inherent power of the courts because it is an implement by which the jurisdiction of the court is preserved.

4. ID.; ID.; ID.; ID.; A PERSON FACING A CRIMINAL INDICTMENT AND PROVISIONALLY RELEASED ON BAIL DOES NOT HAVE AN UNRESTRICTED RIGHT TO TRAVEL, THE REASON BEING THAT A PERSON'S RIGHT TO TRAVEL IS SUBJECT TO THE USUAL CONSTRAINTS IMPOSED BY THE VERY NECESSITY OF SAFEGUARDING THE SYSTEM OF JUSTICE.— Upon posting bail, the accused subjects himself to the jurisdiction of the court and may validly be restricted in his movement and prohibited from leaving this jurisdiction. He cannot leave the country without the permission of the court where his case is pending. Remember that the grant of bail merely secures provisional or temporary liberty under conditions set by the court. The court may recall said grant and return the accused to detention should he violate the conditions for his temporary liberty or when reasons for the lifting of his bail arise. x x x The rule is that "a person facing a criminal indictment and provisionally released on bail does not have an unrestricted right to travel, the reason being that a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice." The issuance of the HDO is a process complementary to the granting of bail since it puts

the Bureau of Immigration on notice that a certain person is charged before the courts of law and must not be allowed to leave our jurisdiction without the permission of the court. After all, the granting of bail does not guaranty compliance by the accused of the conditions for his temporary liberty, particularly, his presence at every stage of the proceedings. Some, if not all, maybe tempted to jump bail and leave the country. This is what the HDO seeks to avoid by keeping the accused within the territory where court processes and dispositions may be enforced and implemented.

5. ID.; ACCOUNTABILITY OF PUBLIC OFFICERS; OFFICE OF THE OMBUDSMAN; THE OFFICE OF THE OMBUDSMAN IS EMPOWERED TO DETERMINE, IN THE EXERCISE OF ITS DISCRETION, WHETHER PROBABLE CAUSE EXISTS, AND TO CHARGE THE PERSON BELIEVED TO HAVE COMMITTED THE CRIME AS DEFINED BY LAW; CASE AT BAR.— In *People v. Borje*, the Court stressed that as far as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause during the preliminary investigation, or reinvestigation for that matter, is a function that belongs to the Office of the Ombudsman. The said office is empowered to determine, in the exercise of its discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law." In deference to the independent nature of this office, this Court has almost always adopted, quite aptly, a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers." x x x In the present case, the investigating prosecutor of the OMB found probable cause to indict the petitioner for violation of Sections 3(e) and 3(g) of R.A. No. 3019 and Article 220 of the Revised Penal Code, and his findings and recommendation to file the corresponding informations before the Sandiganbayan were approved by the Ombudsman. From the filing of information, the Sandiganbayan acquires jurisdiction over the case and the authority to control the conduct of the proceedings until its disposition.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De los Angeles for petitioner.

Office of the Special Prosecutor for respondents.

D E C I S I O N

A. REYES, JR., *J.*:

This is a petition for *certiorari* filed by Gwendolyn F. Garcia (petitioner) assailing the Resolution[1] dated January 2, 2013 and the three (3) Hold Departure Orders (HDOs)[2] dated July 24, 2012 issued by the Sandiganbayan in Criminal Case Nos. SB-12-CRM-0175 to 0177.

Factual Antecedents

Sometime in 1970, Luis Balili (Luis) acquired free patents over 10 parcels of land situated in Naga, Cebu, measuring 247,317 square meters (sq ms), more or less. In addition to the mentioned lots, he also made a claim over a parcel of land in Tina-an, Naga, Cebu, with an approximate area of 1,929 sq ms. These properties constitute the Balili Estate, more particularly described as follows:[3]

TITLE/LEGAL DOCUMENT	LOT NUMBER	AREA (in sq. m.)
OCT-15311	1, SP-07-01-000062	5,825
OCT-15893	PSU-07-01-002299	2,484
OCT-58357	39-C-4-A	21,566
OCT-15313	2, SP-07-01-000062	26,231
OCT-15328	SP-07-01-000048	142,734
OCT-15012	1, SP-07-01-000047 2, SP-07-01-000047	9,914 27,737
OCT-15894	1, SP-07-01-002298 SP-07-01-002298	2,093 3,253
OCT-15312	2, SP-07-01-000063	5,480
		TOTAL 247,317
TD 01-30-008592	Cad. Lot No. 6009	1,929

[1] *Rollo*, pp. 29-36.

[2] *Id*. at 353, 355 and 357.

[3] *Id*. at 175.

Upon Luis' death, Romeo Balili (Romeo), his nephew, was appointed as executor. As he was authorized to sell or dispose of the properties belonging to the estate of Luis, he engaged the services of several real estate brokers, one of them is Lumen Durano (Durano).[4]

In 2006, Durano learned that the Provincial Government of Cebu was planning to put up an international seaport. He approached Juan Bolo (Bolo), a member of Sangguniang Panlalawigan of Cebu and the Chairman of the Committee on Provincial Properties, and offered to sell the Balili Estate. Bolo communicated the offer to the petitioner, then governor of Cebu, who thereafter instructed him to inquire on the selling price of the property and to have the same appraised by the Appraisal Committee.

In a Letter[5] dated June 26, 2007, Bolo requested Engr. Anthony Sususco (Engr. Sususco) to appraise the fair market value of the Balili Estate. A team, which was headed by Assistant Provincial Assessor Mariflor Vera (Vera), together with Michelle Languido (Languido) and Roger Dumayac (Dumayac), was sent to the area to conduct an ocular inspection, appraise the property and gather opinion values.[6]

On July 6, 2007, Languido and Dumayac submitted a report to Engr. Sususco, together with the following data and/or attachments: (1) Zonal valuation from the Office of the Bureau of Internal Revenue-South District; (2) Vicinity map; (3) Lot description; (4) Opinion values; (5) Tax declarations from the Office of the Municipal Assessor of Naga, and; (6) titles.[7] The report noted that the property, consisting of an area of 24 hectares, more or less, has a generally flat topography, with a portion thereof being utilized as a fishpond. It also mentioned the

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[4] *Id*.

[5] *Id*. at 81.

[6] *Id*. at 176.

[7] *Id*. at 83.

existence of a non-operational resort on the property and a three-meter wide right-of-way by the seaside, adjacent to the port of APO Cement Corporation, which serves as an access road to the national highway.[8]

On July 10, 2007, the Cebu Provincial Appraisal Committee headed by Engr. Sususco, with Roy Salubre (Salubre) and Eloguio Pelayre (Pelayre) as members, issued Resolution No. 23,[9] pegging the base unit market value of the subject property to ₱610.00 per sq m. On the basis of said resolution, Bolo authored Resolution No. 187-2008[10] dated January 14, 2008, authorizing the petitioner to execute and sign, for and in behalf of the Province of Cebu, the Memorandum of Agreement (MOA) for the sale of ten parcels of land composing the Balili Estate, with the purchase price pegged at ₱434.00 per sq m. He justified the acquisition in that the subject property, which was classified under industrial/recreational category, will provide a good opportunity for the province to develop and cater to the needs of interested investors.[11] The said resolution was duly attested by Vice Governor Gregorio Sanchez, Jr. (Vice Gov. Sanchez, Jr.) and approved on April 4, 2008.

Following the approval of Resolution No. 187-2008, the MOA for the Sale of Eleven Parcels of Land was executed on April 21, 2008.[12] Noticeably, however, the memorandum pertained to the purchase of eleven parcels of land at ₱400.00 per sq m, including the untitled lot being claimed by Luis, even when Resolution No. 187-2008 authorized only the purchase of ten parcels of land. Despite the discrepancy, the memorandum was signed by Garcia, in behalf of the Province of Cebu, and the representatives of the Balili Estate.[13]

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[8] *Id*. at 85.

[9] *Id*. at 92-95.

[10] *Id*. at 96-98.

[11] *Id*. at 97.

[12] *Id*. at 99-101.

[13] *Id*. at 178.

To remedy the discrepancy, Bolo authored Resolution No. 1781-2008[14] dated April 21, 2008, proposing to amend Resolution No. 187-2008 specifically to authorize the petitioner to purchase eleven parcels of land, instead of only ten, to include the untitled parcel of land over which Luis also had a claim of ownership. This is to make the petitioner's authority conform to the signed MOA dated April 21, 2008 which pertained to the acquisition of eleven lots by the Province of Cebu.

As stipulated in the MOA, the Province of Cebu tendered the first installment payment of ₱49,849,200.00 thru Landbank of the Philippines Check No. 218470 dated April 28, 2008,[15] with Romeo as payee.[16] On June 11, 2008, a Deed of Absolute Sale[17] was executed, transferring the ownership of the eleven parcels of land, including one untitled lot, to the Province of Cebu. Subsequently, transfer certificates of title pertaining to the ten titled properties were issued in the name of the Province of Cebu. Thereafter, the second installment in the amount of ₱49,077,600.00 was settled, again with Romeo, not the estate of Luis, as payee. Significantly, the payments made by the Province of Cebu were taken out of the treasury of the provincial government without any resolution effecting appropriation and payment of the purchase price.[18] Further, there was discrepancy in the two (2) disbursement vouchers for the installment payments as the first one stated that it pertained to "50% of payment of eleven parcels of land situated in Naga City, Cebu, with a total area of 249,246 sq. meters,"[19] while the second one stated that it is in "full payment of ten parcels of land situated in Naga City, Cebu, with a total area of 247,317 sq. meters."[20]

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[14] *Id*. at 103-105.

[15] *Id*. at 179.

[16] *Id*. at 106.

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

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

[19] *Id*. at 106.

[20] *Id*. at 125.

The transaction attracted media attention which prompted the provincial government to conduct a survey of the subject property. It was discovered by the provincial surveyor that a large portion of the property, more or less 80,124 sq ms, was submerged in water and that another portion thereof, approximately 14,402 sq ms; was a mangrove area. Thus, the Officer-in-Charge of the Cebu Provincial Legal Office, Marino E. Martinquilla, wrote a Letter[21] dated August 14, 2009 to Romeo, informing him of the facts gathered during the survey and telling him that a sizable portion of the Balili Estate was beyond the commerce of man. He also demanded, in behalf of the Province of Cebu, for a reimbursement of the amount of ₱37,810,400.00, pertaining to the amount paid for submerged and mangrove areas, plus legal interest computed from the time of payment.

Following the controversial transaction, the Public Assistance and Corruption Prevention Office – Visayas (PACPO-Visayas) conducted a fact-finding investigation on the matter. On September 2-3, 2009, representatives from the Department of Environment and Natural Resources (DENR) and the Office of the Ombudman-Visayas (OMB-Visayas) conducted a verification survey on the area. The team discovered that 202,456-sq m portion of the 247,317-sq m property was classified as timberland. Further, 196,696-sq m portion thereof was underwater.[22]

It was likewise discovered that the appropriation for the purchase of the lots was classified as "Site Development and Housing Program" but no item enumerated thereon included site/land acquisition. Apart from this irregularity, it was learned that there was also a question on the legality of Luis' acquisition of ownership over the subject lots and that the DENR proposed that they be subjected to reversion proceedings.[23]

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[21] *Id*. at 346-347.

[22] *Id*. at 180.

[23] *Id*.

Subsequently, the OMB-Visayas, through PACPO-Visayas initiated the filing of criminal and administrative charges against the accountable public officials and employees pursuant to a letter of complaint from an anonymous letter-sender, to wit:

1) Criminal Complaint for Violation of Section 3(g) of Republic Act No. 3019 (R.A. 3019), otherwise known as the "Anti-Graft and Corrupt Practices Act," against the petitioner, as governor of the Province of Cebu;

2) Criminal Complaint for Violation of Section 3(e) of R.A. No. 3019 against Bolo, as Provincial Board Member, and the members of the Provincial Appraisal Committee, namely, Engr. Sususco, Salubre and Pelayre; Members of the Technical Working Group, namely, Vero, Languido, Dumayac and Pilar Yburan (Yburan), and; Romeo and Amparo Balili, for conspiring and confederating with each other in the purchase of a property, with an area of 202,456 sq ms classified as timberland and another portion measuring 196,696 sq ms submerged in water, thereby causing undue injury to the government in the amount of ₱80,982,400.00 and ₱78,678,400.00, respectively;

3) Criminal Case for Violation of Section 3(e) of R.A. No. 3019 against the petitioner, Vice Gov. Sanchez, Jr., members of the provincial board, among others, for gross inexcusable negligence in immediately approving the purchase of the property in question; and,

4) Administrative Complaint for Grave Misconduct as defined under Rules IV, Section 52(a)(3) of the Civil Service Commission Uniform Rules on Administrative Cases (CSC Resolution No. 991936) against Engr. Sususco, Salubre, Pelayre, Vero, Languido, Dumayac, Yburan and Emme Gingoyon (Gingoyon).[24]

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

Thereafter, another Letter-Complaint dated December 23, 2010 was filed by a certain Manuel T. Manuel, questioning the provincial government's purchase of the Balili Estate and requesting that the concerned officials be investigated for violation of the Section 3(a) of R.A. No. 3019.[25]

This was followed by Letter-Complaint dated December 8, 2010 filed by Crisologo V. Saavedra, likewise assailing as illegal the provincial government's purchase of the Balili Estate and requesting that the petitioner be investigated for the commission of the crime of plunder and violations of Section 3(e) and (g) of R.A. No. 3019.[26]

In a Resolution dated August 26, 2011,[27] the OMB-Office of the Overall Deputy Ombudsman found probable cause to indict the petitioner for violation of Sections 3(e) and 3(g) of R.A. No. 3019, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, we found the following respondents, namely: GWENDOLYN F. GARCIA, JUAN V. BOLO, ANTHONY D. SUSUSCO, ROY G. SALUBRE, EULOGIO B. PELAYRE and EMME T. GINGOYON together with private respondents ROMEO J. BALILI and AMPARO G. BALILI, probably guilty of violation of Section 3(e) of Republic Act 3019. We likewise found GWENDOLYN F. GARCIA probably guilty of violation of Section 3(g) of Republic Act 3019.

The charges of Plunder (Republic Act 7080) and Violation of Section 3(a) of Republic Act 3019 against the respondents are hereby dismissed for insufficiency of evidence.

The charges against respondents: MARIFLOR D. VERO, PILAR C. YBURAN, MICHELLE V. LANGUIDO, ROGER L. DUMAYAC, VICTOR A. MAAMBONG, JULIAN DAAN, AGNES A. MAGPALE, JOSE MARIA S. GASTARDO, WILFREDO CAMINERO, PETER JOHN CALDERON, JOVEN MONDIGO JR., TERESITA D. CELES, ROSEMARIE D. DURANO, WENCESLAO GAKIT, ALFRED

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[25] *Id*. at 171.

[26] *Id*. at 172.

[27] *Id*. at 167-214.

FRANCIS M. OUANO, AND BEA MERCEDS A. CALDERON are hereby dismissed for insufficiency of evidence. The charges against GREGORIO SANCHEZ JR., on account of his death, are hereby DISMISSED.

Let the herein appended Information for Violation of Section 3(e) of Republic Act 3019 and the Information for Violation of Section 3(g) of Republic Act 3019 against the above-named respondents be filed before the Sandiganbayan.

x x x x x x x x x

SO ORDERED.[28]

In an Addendum to the Resolution[29] dated July 10, 2012, then Ombudsman Conchita Carpio Morales held that, in addition to the disposition in the Resolution dated August 26, 2011, there is also evidence to engender a well-founded belief that the petitioner committed or is probably guilty of the crime of Technical Malversation, defined and penalized under Article 220 of the Revised Penal Code (RPC). She pointed out that the petitioner used the funds specifically appropriated for Site Development and Housing Program in the amount of ₱50,000,000.00 provided under Appropriation Ordinance No. 2007-15 in order to settle the first installment payment of the Balili Estate in the amount of ₱49,849,200.00, when the said fund was exclusively intended for acquisition and development of real property for the furtherance of the province's housing program. In view of said circumstance, an information for the commission of technical malversation was likewise ordered to be filed against the petitioner.

On July 19, 2012, informations[30] charging Garcia, among others, for violation of Sections 3(e) and 3(g) of R.A. No. 3019 and Article 220 of the RPC were filed before the Sandiganbayan and were docketed as Criminal Case Nos. SB12 CRM 0175, SB12 CRM 0176 and SB12 CRM 0177, respectively.

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[28] *Id*. at 211-212.

[29] *Id*. at 217-219.

[30] *Id*. at 221-223, 225-226, 228-229.

Subsequently, on July 24, 2014, the Sandiganbayan issued three (3) (HDOs) against the petitioner and her co-accused, to wit:

CRIM. CASES NOS. **SB12 CRM 0175**[31]

HOLD DEPARTURE ORDER

The above-entitled case/s having been filed against accused: **GWENDOLYN F. GARCIA; JUAN V. BOLO; ANTHONY D. SUSUSCO; ROY G. SALUBRE; EULOGIO B. PELAYRE; EMME T. GINGOYON; AMPARO G. BALILI; and ROMEO J. BALILI,** this Court, in the exercise of its inherent power to use all means necessary to carry its orders into effect, more specifically, to preserve and maintain the effectiveness of its jurisdiction over the case/s and the person/s of the accused so as to render accused at all times amenable to its writs and processes (Section 6, Rule 135; Section 23, Rule 114 of the Rules of Court; Santiago v. Vasquez, et al., 217 SCRA 633), **HEREBY ORDERS** the Bureau of Immigration and Deportation to hold the departure from the Philippines of the above-named accused and to include the names of said accused/s in the Hold Departure List of said Bureau.

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CRIM. CASES NOS. **SB12 CRM 0176**[32]

HOLD DEPARTURE ORDER

The above-entitled case/s having been filed against accused: **GWENDOLYN F. GARCIA**; this Court, in the exercise of its inherent power to use all means necessary to carry its orders into effect, more specifically, to preserve and maintain the effectiveness of its jurisdiction over the case/s and the person/s of the accused so as to render accused at all times amenable to its writs and processes (Section 6, Rule 135; Section 23, Rule 114 of the Rules of Court; Santiago v. Vasquez, et al., 217 SCRA 633), **HEREBY ORDERS** the Bureau of Immigration and Deportation to hold the departure from the Philippines of the above-named accused and to include the name of said accused/s in the Hold Departure List of said Bureau.

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[31] *Id*. at 353.

[32] *Id*. at 355.

CRIM. CASES NOS. **SB12 CRM 0177**[33]

HOLD DEPARTURE ORDER

The above-entitled case/s having been filed against accused: **GWENDOLYN F. GARCIA**, this Court, in the exercise of its inherent power to use all means necessary to carry its orders into effect, more specifically, to preserve and maintain the effectiveness of its jurisdiction over the case/s and the person/s of the accused so as to render accused at all times amenable to its writs and processes (Section 6, Rule 135; Section 23, Rule 114 of the Rules of Court; Santiago v. Vasquez, et al., 217 SCRA 633), **HEREBY ORDERS** the Bureau of Immigration and Deportation to hold the departure from the Philippines of the above-named accused and to include the name of said accused/s in the Hold Departure List of said Bureau.

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In the meantime, on July 20, 2012, the petitioner, who was based in Cebu, voluntarily surrendered to Judge Soliver C. Peras (Judge Peras), First Vice Executive Judge of Cebu City, and made three separate cash deposits of ₱30,000.00 as bail for her provisional liberty corresponding to the three cases filed against her. Accordingly, Judge Peras issued three separate orders of release.[34]

On July 25, 2012, the petitioner filed a Motion for Reconsideration/Reinvestigation[35] of the Resolution dated August 26, 2011, praying for a reinvestigation of the case and reversal of the finding of probable cause against her for violations of Section 3(e) and 3(g) of R.A. No. 3019 and Article 220 of the RPC. She argued that before there could be a valid prosecution of a purported violation of Section 3(e) of R.A. No. 3019, there must be a *prima facie* evidence of actual injury or damage to the government and, on the other hand, a gross and manifest disadvantage to the government for supposed violation of

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[33] *Id*. at 357.

[34] *Id.* at 32.

[35] *Id*. at 231-257.

Section 3(g) of the same law. Both standards were not met.[36] Further, she claimed that there was no technical malversation when the purchase of the Balili Estate was classified as an item falling under Site Development and Housing Program since the Province of Cebu, as a local government unit vested with corporate powers, has the authority to determine on its own accord the projects and programs for which funds from the provincial coffers would be utilized. Moreover, the item "Site Development and Housing. Program" is broad enough to cover projects that fall under "Site Development" or "Housing Program" and that the province cannot be limited by the OMB in its utilization of general items in its own annual budget.[37]

On the same day, the petitioner filed a Motion for Leave to File Motion for Reconsideration with the OMB with Motion for Suspension of Proceedings. On August 3, 2012 after hearing the motion, the Sandiganbayan issued an order, holding in abeyance further proceedings in the cases with respect to the petitioner and ordering the OMB to take cognizance of the motion for reconsideration she filed before the said office.[38]

On September 4, 2012, the petitioner received a Notice of HDO along with the three (3) HDOs issued against her. She thereafter filed a Motion for Reconsideration (with prayer to lift or set aside prematurely-issued HDOs),[39] arguing that the HDOs cannot be issued without a final determination of probable cause. She claimed that the HDOs were violative of her constitutional right to travel, which may be impaired only in the interest of national security, public safety, or public health, as maybe provided by law.[40] She asseverated that the only apparent reason that can prevent her from traveling abroad is

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[36] *Id*. at 235-236.

[37] *Id*. at 250.

[38] *Id*. at 360-361.

[39] *Id*. at 359-367.

[40] *Id*. at 361.

the pendency of a criminal case. Citing *Mupas v. Español*[41] (A.M. No. RTCJ-04-1850, 14 July 2004), she argued that there should be an actual case "filed and pending" with the Court before an HDO can be issued. Since there was no final resolution yet on her motion for reconsideration, it cannot be said that there is already a pending criminal case against her. The issuance of the HDOs, therefore, was premature.[42]

In its Comment/Opposition,[43] the prosecution dismissed the petitioner's arguments and argued that the Resolution dated August 26, 2011 was, for all intents and purposes, a final determination of probable cause against her as it bore the signature of the Ombudsman who signified her review and approval thereof.[44] There was likewise no premature issuance of HDOs since the Sandiganbayan had already acquired jurisdiction over the case when the informations were filed before the Sandiganbayan.[45] It also pointed out that *Mupas* was inapplicable since in the mentioned case the criminal complaint was still on the investigation stage and still subject to the review of the provincial prosecutor prior to the filing of information in court.[46]

Ruling of the Sandiganbayan

On January 2, 2013, the Sandiganbayan issued a Resolution,[47] denying the motion filed by the petitioner, the pertinent portions of which read as follows:

There is nothing premature in, and no legal impediment whatsoever to, the issuance of HDOs in these cases by the Court following a

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[41] 478 Phil. 396, 405 (2004).

[42] *Rollo*, pp. 363-364.

[43] *Id*. at 372-381.

[44] *Id*. at 373.

[45] *Id*. at 379-380.

[46] *Id*. at 376.

[47] *Id*. at 29-36.

valid judicial determination of probable cause to hold movant for trial, The Court issued orders of arrest against movant. It would be illogical to order her arrest but freely allow her to depart for abroad.

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Finally, the contention of movant that there is no case against her "filed and pending" before the Court because the Court suspended the proceedings to allow the Office of the Ombudsman to resolve her Motion for Reconsideration/Reinvestigation is untenable. Such action of the Court did not oust it of jurisdiction over the cases and over the person of the accused. Movant remains charged before the Court with the offenses described in the Informations filed.

WHEREFORE, premises considered, the Motion for Reconsideration (with prayer to lift or set aside prematurely-issued Hold Departure Orders) dated September 12, 2012, filed by [petitioner] Gwendolyn Fiel Garcia, through counsel, is hereby denied.

SO ORDERED.[48]

On March 11, 2013, the petitioner filed the instant petition for *certiorari*, praying that the Resolution dated January 2, 2013 be reversed and set aside and that the HDOs dated July 24, 2012 be lifted and set aside. She raised the following grounds in support of the petition:

1. The Sandiganbayan acted with grave of abuse of discretion amounting to lack or excess of jurisdiction, when it issued the HDOs in the absence of any law, governmental regulation or guidelines authorizing its issuance.
2. The Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the HDOs without sufficient justification for curtailing the constitutionally-guaranteed right to travel.
3. The Sandiganbayan acted with grave abuse of discretion amounting to lack or excess of jurisdiction when it issued the HDOs despite a pending motion for reconsideration before the OMB.[49]

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[48] *Id*. at 34-36.

[49] *Id*. at 8.

The petitioner argues that the Sandiganbayan does not have the authority of any law or governmental regulation to issue an HDO. She points out that the Supreme Court Circular No. 39-97 (SC Circular No. 39-97) dated June 19, 1997 provides that only Regional Trial Courts (RTCs) can issue HDOs and nowhere does it recognize a similar authority of the Sandiganbayan to issue the same. With the omission of the Sandiganbayan in the circular, there is no legal basis for said special court to issue HDOs.[50]

The petitioner further contends that the issuance of HDOs against her was violative of her fundamental right to travel which may only be impaired in the interest of national security, public safety or public health, as maybe provided by law. Since the Sandiganbayan was not given the express authority by a law to issue an HDO, its act of restraining her liberty of movement through the issuance of HDOs is a grave and continuing threat to her constitutional right to travel.[51]

Finally, the petitioner argues that the HDOs were prematurely-issued since she has yet to exhaust all her legal remedies. Specifically, the HDOs were issued before there had been a final determination of probable cause against her by the Ombudsman since she had a pending motion for reconsideration before the said office, which was promptly filed before the expiration of the prescribed period.[52]

Ruling of the Court

The power to issue HDO is an inherent power belonging to the courts

The petitioner argues that the absence of a law granting the Sandiganbayan the express authority to issue HDOs only translates to its lack of power to do so. She then referred to the

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[50] *Id*. at 9.

[51] *Id*. at 12.

[52] *Id*. at 22.

SC Circular No. 39-97 which grants the power to issue HDOs to the RTCs and argues that the omission of the Sandiganbayan in the guidelines means that it does not have the authority to make such an issuance.

To further illustrate her point, she cites the Department of Justice (DOJ) Circular No. 41 (DOJ Circular No. 41) which grants the Secretary of the DOJ the authority to issue HDOs and claims that the Sandiganbayan had not been given a similar authority.

The petitioner's argument lacks merit.

It bears emphasizing that in *Genuino v. De Lima*,[53] the Court already declared as unconstitutional DOJ Circular No. 41 on the ground that it has no legal basis and held, thus:

> x x x To begin with, there is no law particularly providing for the authority of the secretary of justice to curtail the exercise of the right to travel, in the interest of national security, public safety or public health. As it is, the only ground of the former DOJ Secretary in restraining the petitioners, at that time, was the pendency of the preliminary investigation of the Joint DOJ-COMELEC Preliminary Investigation Committee on the complaint for electoral sabotage against them.
>
> To be clear, DOJ Circular No. 41 is not a law. It is not a legislative enactment which underwent the scrutiny and concurrence of lawmakers, and submitted to the President for approval. It is a mere administrative issuance apparently designed to carry out the provisions of an enabling law which the former DOJ Secretary believed to be Executive Order (E.O.) No. 292, otherwise known as the "Administrative Code of 1987." x x x
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> x x x x x x x x x

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[53] *Efraim C. Genuino, et al. v. Hon. Leila M. de Lima, in her capacity as Secretary of Justice, et al./ Ma. Gloria Macapagal-Arroyo v. Hon. Leila M. de Lima, as Secretary of the Department of Justice, et al./Jose Miguel T. Arroyo v. Hon. Leila M. de Lima, as Secretary of the Department of Justice, et al*., G.R. No. 197930, April 17, 2018.

The questioned circular does not come under the inherent power of the executive department to adopt rules and regulations as clearly the issuance of HDO and WLO is not the DOJ' s business. As such, it is a compulsory requirement that there be an existing law, complete and sufficient in itself, conferring the expressed authority to the concerned agency to promulgate rules. On its own, the DOJ cannot make rules, its authority being confined to execution of laws. This is the import of the terms "when expressly provided by law" or "as may be provided by law" stated in Sections 7(4) and 7(9), Chapter 2, Title III, Book IV of E.O. 292. The DOJ is confined to filling in the gaps and the necessary details in carrying into effect the law as enacted.[54] Without a clear mandate of an existing law, an administrative issuance is *ultra vires*.

Consistent with the foregoing, there must be an enabling law from which DOJ Circular No. 41 must derive its life. Unfortunately, all of the supposed statutory authorities relied upon by the DOJ did not pass the completeness test and sufficient standard test. The DOJ miserably failed to establish the existence of the enabling law that will justify the issuance of the questioned circular.

That DOJ Circular No. 41 was intended to aid the department in realizing its mandate only begs the question. The purpose, no matter how commendable, will not obliterate the lack of authority of the DOJ to issue the said issuance. Surely, the DOJ must have the best intentions in promulgating DOJ Circular No. 41, but the end will not justify the means. To sacrifice individual liberties because of a perceived good is disastrous to democracy. x x x[55]

In view of the foregoing, DOJ Circular No. 41 is no longer relevant in the present discussion.

On the other hand, SC Circular No. 39-97, admittedly, does not mention of Sandiganbayan. Following the argument of the petitioner, however, would mean that the issuance of HDO is a power pertaining to the RTCs alone, to the exclusion of all other courts. This is an inaccurate interpretation of the guidelines.

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[54] *Manila Electric Company v. Spouses Edito and Felicidad Chua*, 637 Phil. 80, 98 (2010).

[55] *Supra* note 53.

The rationale for the issuance of SC Circular No. 39-97 was "to avoid the indiscriminate issuance of HDO resulting in inconvenience to the parties affected, the same being tantamount to an infringement of the right and liberty of an individual to travel." It is in view of the perceived unnecessary impairment on the right to travel in certain instances that the guidelines for the issuance of HDOs were issued. It bears emphasis, however, that the circular was not meant to declare the RTC as the sole and exclusive authority in the issuance of HDOs. It only recognizes that the power exists in courts and, at the same time, seeks to temper its breadth by excluding criminal offenses cognizable by the first level courts, *i.e.* Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, and the Municipal Circuit Trial Courts. The Court elucidated on this point in *Genuino v. De Lima*,[56] thus:

> Contrary to the understanding of the DOJ, the Court intentionally held that the issuance of HDOs shall pertain only to criminal cases within the exclusive jurisdiction of the RTC, to the exclusion of criminal cases falling within the jurisdiction of the MTC and all other cases. The intention was made clear with the use of the term "only." The reason lies in seeking equilibrium between the state's interest over the prosecution of the case considering the gravity of the offense involved and the individual's exercise of his right to travel. Thus, the circular permits the intrusion on the right to travel only when the criminal case filed against the individual is within the exclusive jurisdiction of the RTC, or those that pertains to more serious crimes or offenses that are punishable with imprisonment of more than six years. The exclusion of criminal cases within the jurisdiction of the MTC is justified by the fact that they pertain to less serious offenses which is not commensurate with the curtailment of a fundamental right. Much less is the reason to impose restraint on the right to travel of respondents of criminal cases still pending investigation since at that stage no information has yet been filed in court against them. It is for these reasons that Circular No. 39-97 mandated that HDO may only be issued in criminal cases filed with the RTC and withheld the same power from the MTC.[57]

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[56] *Id*.

[57] *Id*.

As gathered from the foregoing, the point of distinction in the guidelines is not on the type of court that may issue an HDO but the kind of cases involved. Thus, the first paragraph of the SC Circular 39-97 was worded as follows:

> 1. Hold-Departure Orders shall be issued **only in criminal cases within the exclusive jurisdiction** of the Regional Trial Courts;
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> x x x x x x x x x
> (Emphasis ours)

Notably, the language of the circular places emphasis on criminal cases that warrant the issuance of an HDO, specifically the graver or more serious transgressions of the law that are punishable with imprisonment of more than six years, which incidentally are within the exclusive jurisdiction of the RTCs. The circular was not meant to exclude all other courts from issuing HDO but, more accurately, seeks to make a distinction among the types of criminal offenses by excluding less grave and light offenses from the instances when an HDO may be validly issued. This is to avoid unnecessary restraint on the right to travel especially in instances when the gravity of the offense is not serious enough to warrant a restriction. Thus, the Court issued the circular as a means of regulating its own power pursuant to its authority to "promulgate rules concerning the protection and enforcement of constitutional rights."[58]

That the Sandiganbayan was not mentioned in the circular only means it is given the full disposition of all the powers inherent in all courts of justice in order to effectuate the exercise of its jurisdiction, including the issuance of HDOs, if in its good judgment, it finds necessary in the administration of justice. It bears emphasizing that the Sandiganbayan is a special court tasked to hear and decide cases against public officers and employees and entrusted with the difficult task of policing and ridding the government ranks of the dishonest and corrupt. "The Constitution specifically made mention of the creation of this court precisely in response to a problem, the urgency of which

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[58] Section 5(5), Article VIII, 1987 Constitution.

cannot be denied, namely, dishonesty in the public service."[59] Confronted with the heavy responsibility of restoring "public office as a public trust,"[60] the Sandiganbayan will need all means within its powers in order to hold erring public officials accountable for their misdeeds.

The petitioner then proceeds to argue that the lack of a law that specifically grants the Sandiganbayan the authority to issue HDOs and its continued practice to do the same amounts to an unreasonable curtailment of the right to travel. What the petitioner misses, however, is that the right to travel, while a fundamental right, is not absolute.

Section 6, Article III of the 1987 Constitution states:

SEC. 6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. **Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.**(Emphasis supplied)

Based on the foregoing, the right to travel may be impaired, if necessary, in interest of national security, public safety or public health. Apart from the presence of these exclusive grounds, there is a further requirement that there must be a law authorizing the impairment. The requirement for a law ensures that the necessity for the impairment has undergone the validation and deliberation of Congress before its enactment. The strict requirement for the concurrence of these two elements are formidable enough to serve as safeguard in the full enjoyment of the right to travel.

In *Silverio v. Court of Appeals*,[61] the Court explained, thus:

Article III, Section 6 of the 1987 Constitution should be interpreted to mean that while the liberty of travel may be impaired even without

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[59] *Rufino V. Nuñez v. Sandiganbayan*, 197 Phil. 407, 424 (1982).

[60] *City Mayor of Zamboanga v. Court of Appeals*, 261 Phil. 936, 945 (1990).

[61] 273 Phil. 128 (1991).

court order, the appropriate executive officers or administrative authorities are not armed with arbitrary discretion to impose limitations. They can impose limits only on the basis of national security, public safety, or public health and as may be provided by law, a limitive phrase which did not appear in the 1973 text (The Constitution, Bernas, Joaquin G., S.J., Vol. I, First Edition, 1987, p. 263). Apparently, the phraseology in the 1987 Constitution was a reaction to the ban on international travel imposed under the previous regime when there was a Travel Processing Center, which issued certificates of eligibility to travel upon application of an interested party.[62]

The petitioner may be correct in arguing that there is no law particularly vesting the Sandiganbayan the authority to issue HDOs but this is precisely because the same is not necessary for it to exercise this power.

It bears reiterating that apart from constitutional limitations, there are also statutory and inherent limitations on the right to travel. In *Leave Division, Office of the Administrative Services (OAS)—Office of the Court Administrator (OCA) v. Wilma Salvacion P. Heusdens*,[63] the Court enumerated some of the statutory limitations on the right to travel, to wit:

1] *The Human Security Act of 2010 or [R.A.] No. 9372*. The law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail.

2] *The Philippine Passport Act of 1991 or R.A. No. 8239.* Pursuant to said law, the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen.

3] *The "Anti-Trafficking in Persons Act of 2003" or R.A. No. 9208.* Pursuant to the provisions thereof, the [BI], in order to manage migration and curb trafficking in persons, issued Memorandum Order Radir No. 2011-011, allowing its Travel Control and Enforcement Unit to "offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from our ports.

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[62] *Id*. at 134.

[63] 678 Phil. 328 (2011).

4] *The Migrant Workers and Overseas Filipinos Act of 1995 or R.A. No. 8042, as amended by R.A. No. 10022.* In enforcement of said law, the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country.

5] *The Act on Violence against Woman and Children or R.A. No. 9262.* The law restricts movement of an individual against whom the protection order is intended.

6] *Inter-Country Adoption Act of 1995 or R.A. No. 8043.* Pursuant thereto, the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel "to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child."[64]

On the other hand, the power to issue HDO is an exercise of the court's inherent power to preserve and to maintain the effectiveness of its jurisdiction over the case and the person of the accused.[65]

Inherent powers are innate and essential faculties that are fundamental to the constitution of an effective judicial system. They are integral to the creation of courts. They do not require legislative conferment or constitutional recognition; they co-exist with the grant of judicial power.[66] Broadly defined, they "consist of all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the court exists."[67]

In other words, this authority flows from the powers possessed by a court simply because it is a court; it is an authority that

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[64] *Id.* at 339-340.

[65] *Miriam Defensor-Santiago v. Conrado M. Vasquez*, 291 Phil. 664, 680 (1993).

[66] *Efraim C. Genuino v. Hon. Leila M. De Lima*, *supra* note 53.

[67] *Bankers Trust Co. v. Braten,* 420 N.Y.S.2d 584, 590 (Sup. Ct. 1979).

inheres in the very nature of a judicial body and requires no grant of power other than that which creates the court and gives it jurisdiction.[68]

Verily, inherent powers are brought into existence by the grant of judicial power to the courts to in 1 Section 1, Article 8 of the 1987 Constitution "to settle actual controversies involving rights which are legally demandable and enforceable and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government." As with other jurisdictions, "[t]he Constitution does not circumscribe the means that the courts may invoke on their own initiative to facilitate their exercise of judicial power. Thus, the courts may regularly apply their "inherent powers" to take some action that has not been specifically authorized by the Constitution, written rule, or statute."[69]

In *Santiago v. Vasquez*,[70] the Court explained the nature of the inherent powers of the courts, thus:

> Courts possess certain inherent powers which may be said to be implied from a general grant of jurisdiction, in addition to those expressly conferred on them. These inherent powers are such powers as are necessary for the ordinary and efficient exercise of jurisdiction; or essential to the existence, dignity and functions of the courts, as well as to the due administration of justice; or are directly appropriate, convenient and suitable to the execution of their granted powers; and include the power to maintain the court's jurisdiction and render it effective in behalf of the litigants.
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> Therefore, while a court may be expressly granted the incidental powers necessary to effectuate its jurisdiction, a grant of jurisdiction, in the absence of prohibitive legislation, implies the necessary and

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[68] Daniel J. Meador, *Inherent Judicial Authority in the Conduct of Civil Litigation*, 73 Tex. L. Rev. 1805 (1995).

[69] Joseph J. Anclien, *Broader is Better: The Inherent Powers of Federal Courts*, 64 N.Y.U. Ann. Surv. Am. L. 37, (2008).

[70] *Supra* note 65.

usual incidental powers essential to effectuate it, and, subject to existing laws and constitutional provisions, every regularly constituted court has the power to do all things that are reasonably necessary for the administration of justice within the scope of its jurisdiction. Hence, demands, matters, or questions ancillary or incidental to, or growing out of, the main action, and coming within the above principles, may be taken cognizance of by the court and determined, since such jurisdiction is in aid of its authority over the principal matter, even though the court may thus be called on to consider and decide matters which, as original causes of action, would not be within its cognizance.[71]

Necessarily included in the grant of jurisdiction is the power to ensure that its exercise shall be effective. "When by law, jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer."[72] Inherent powers, in effect, facilitate and reinforce the court's exercise of its specific powers. As vital components of jurisdiction, they fortify the court's jurisdiction through processes that ensure its full disposition. And, while not enumerated in the Constitution or statute, they are considered part and parcel of the grant of authority to courts. The power to issue hold departure order is properly subsumed under the inherent power of the courts because it is an implement by which the jurisdiction of the court is preserved.

Contrary to the allegation of the petitioner, the issuance of HDOs is not a mere practice that has ripened into a law or rule. The Sandiganbayan issues HDO because it has the authority to do so and this attaches from the moment it acquired jurisdiction over the case and over the person. In this case, jurisdiction over the case was acquired when the Informations against the petitioner were filed with the Sandiganbayan on July 19, 2012. Thereafter, the petitioner voluntarily submitted herself to the jurisdiction of the court by posting bail of ₱30,000.00 for each of the cases filed against her.

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[71] *Id.* at 679-680.

[72] Rules of Court, Section 6, Rule 135.

The implication of posting of a bond was well-explained in *Manotoc v. Court of Appeals*,[73] viz.:

> A court has the power to prohibit a person admitted to bail from leaving the Philippines. This is a necessary consequence of the nature and function of a bail bond.
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> Rule 114, Section 1 of the Rules of Court defines bail as the security required and given for the release of a person who is in the custody of the law, that he will appear before any court in which his appearance may be required as stipulated in the bail bond or recognizance.
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> > Its object is to relieve the accused of imprisonment and the state of the burden of keeping him, pending the trial, and at the same time, to put the accused as much under the power of the court as if he were in custody of the proper officer, and to secure the appearance of the accused so as to answer the call of the court and do what the law may require of him.
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> The condition imposed upon petitioner to make himself available at all times whenever the court requires his presence operates as a valid restriction on his right to travel. As we have held in People vs. Uy Tuising, 61 Phil. 404 (1935).
>
> > ... the result of the obligation assumed by appellee (surety) to hold the accused amenable at all times to the orders and processes of the lower court, was to prohibit said accused from leaving the jurisdiction of the Philippines, because, otherwise, said orders and processes will be nugatory, and inasmuch as the jurisdiction of the courts from which they issued does not extend beyond that of the Philippines they would have no binding force outside of said jurisdiction.[74]

Upon posting bail, the accused subjects himself to the jurisdiction of the court and may validly be restricted in his movement and prohibited from leaving this jurisdiction. He cannot leave the country without the permission of the court where his case is pending. Remember that the grant of bail

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[73] 226 Phil. 75 (1986).

[74] *Id*. at 82.

merely secures provisional or temporary liberty under conditions set by the court. The court may recall said grant and return the accused to detention should he violate the conditions for his temporary liberty or when reasons for the lifting of his bail arise. Thus, it is not entirely correct for the petitioner to argue that the issuance of HDOs amounted to an unreasonable restriction on her liberty of movement or right to travel. The truth of the matter is that she was already under restricted right to travel when she submitted to the jurisdiction of the Sandiganbayan by posting bail. The rule is that "a person facing a criminal indictment and provisionally released on bail does not have an unrestricted right to travel, the reason being that a person's right to travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice."[75] The issuance of the HDO is a process complementary to the granting of bail since it puts the Bureau of Immigration on notice that a certain person is charged before the courts of law and must not be allowed to leave our jurisdiction without the permission of the court. After all, the granting of bail does not guaranty compliance by the accused of the conditions for his temporary liberty, particularly, his presence at every stage of the proceedings. Some, if not all, maybe tempted to jump bail and leave the country. This is what the HDO seeks to avoid by keeping the accused within the territory where court processes and dispositions may be enforced and implemented.

As to the question on the determination of the necessity of the issuance of HDOs, it is largely dependent on the good judgment of the Sandiganbayan. It is worth reiterating that it is a special court tasked with a particular undertaking of hearing and deciding "criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office.[76] It is of the same level as the Court of Appeals and possesses all the inherent

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[75] *Eduardo Cojuangco, Jr. v. Sandiganbayan*, 360 Phil. 559, 589 (1998).

[76] *People of the Philippines v. Sandiganbayan*, 491 Phil. 591, 597 (2005).

powers of a court of justice.[77] Considering the complexity of its tasks which was made even more complicated by the fact that it is dealing with high-ranking public officials and employees, it is given the wide latitude of resorting to the exercise of its express and implied powers for the proper determination of the fitting recompense for the injury done to the government.

The indispensable necessity of the resort to the inherent power to issue HDO was epitomized in *Genuino*, which led this Court to issue A.M. No. 18-07-05-SC pertaining to the Rule on Precautionary Hold Departure Order, a remedy formulated to fill in the vacuum created by the declaration of nullity of DOJ Circular No. 41, the provisions of which are quoted as follows:

RULE ON PRECAUTIONARY HOLD DEPARTURE ORDER

Section 1. *Precautionary Hold Departure Order.* – is an order in writing issued by a court commanding the Bureau of Immigration to prevent any attempt by a person suspected of a crime to depart from the Philippines, which shall be issued *ex-parte* in cases involving crimes where the minimum of the penalty prescribed by law is at least six (6) years and one (1) day or when the offender is a foreigner regardless of the imposable penalty.

Section 2. *Where filed*. – The application for a precautionary hold departure order may be filed by a prosecutor with any regional trial court within whose territorial jurisdiction the alleged crime was committed: *Provided*, that for compelling reason, it can be filed with any regional trial court within the judicial region where the crime was committed if the place of the commission of the crime is known; *Provided, further*, that the regional trial courts in the City of Manila, Quezon City, Cebu City, Iloilo City, Davao City, and Cagayan de Oro City shall also have the authority to act on applications filed by the prosecutor based on complaints instituted by the National Bureau of Investigation, regardless where the alleged crime was committed.

Section 3. *Finding of probable cause*. – Upon motion by the complainant in a criminal complaint filed before the office of the city or provincial prosecutor, and upon a preliminary determination of probable cause based on the complaint and attachments, the

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[77] Section 1, Presidential Decree No. 1606, as amended.

investigating prosecutor may file an application in the name of the People of the Philippines for a precautionary hold order (PHDO) with the proper regional trial court. The application shall be accompanied by the complaint-affidavit and its attachments, personal details, passport number and a photograph of the respondent, if available.

Section 4. ***Grounds for issuance***. – A precautionary hold departure order shall not issue except upon determination by the judge, in whose court the application is filed, that probable cause exists, and there is a high probability that respondent will depart from the Philippines to evade arrest and prosecution of crime against him or her. The judge shall personally examine under oath or affirmation, in the form of searching questions and answers in writing, the applicant and the witnesses he or she may produce on facts personally known to them and attaching to the record their sworn statements.

If the judge finds that probable cause exists and there is a high probability that the respondent will depart, he or she shall issue the PHDO and direct the Bureau of Immigration to hold and prevent the departure of the respondent at any Philippine airport or ports. Otherwise, the judge shall order the dismissal of the application.

Section 5. ***Preliminary finding of probable cause***. – Since the finding of probable cause by the judge is solely based on the complaint and is specifically issued for the purpose of issuing the PHDO, the same shall be without prejudice to the resolution of the prosecutor of the criminal complaint considering the complaint-affidavit, counter-affidavit, reply-affidavit, and the evidence presented by both parties during the preliminary investigation. If the prosecutor after preliminary investigation dismisses the criminal complaint for lack of probable cause then the respondent may use the dismissal as a ground for the lifting of the PHDO with the regional trial court that issued the order. If the prosecutor finds probable cause and files the criminal information, the case with the court that issued the PHDO, on motion of the prosecutor shall be consolidated with the court where the criminal information is filed.

Section 6. ***Form and validity of the precautionary hold departure order***. – The precautionary hold departure order shall indicate the name of the respondent, his or her alleged crime, the time and place of its commission, and the name of the complainant. (See Annex "A" herein). A copy of the application, personal details, passport number, photograph of the respondent, if available, shall be appended to the

order. The order shall be valid until lifted by the issuing court as may be warranted by the result of the preliminary investigation. The court shall furnish the Bureau of Immigration with a duly certified copy of the hold departure order within twenty-four (24) hours from issuance.

Section 7. ***Lifting of the Order***. – The respondent may file a verified motion before the issuing court for the temporary lifting of PHDO on meritorious ground; that, based on the complaint-affidavit and the evidence that he or she will present, there is doubt that probable cause exists to issue the PHDO or it is shown that he or she is not a flight risk: *Provided*, that the respondent posts a bond; *Provided, further*, that the lifting of the PHDO is without prejudice to the resolution of the preliminary investigation against the respondent.

Section 8. ***Bond***. – Respondent may ask the issuing court to allow him or her to leave the country upon posting of a bond in an amount to be determined by the court subject to the conditions set forth in the Order granting the temporary lifting of the PHDO.

Section 9. ***Effectivity***. – This Rule shall take effect within fifteen (15) days following its publication in two (2) newspapers of general circulation in the Philippines.

With the declaration of nullity of DOJ Circular No. 41 which stripped off the Secretary of Justice of self-imposed authority to issue HDOs, it becomes more imperative for the courts to use their inherent powers to prevent miscarriage of justice. It was in response to this need that A.M. No. 18-07-05-SC was issued. Specifically, it authorizes the issuance of a precautionary HDO even prior to the filing of an information in court when justified under the circumstances. This recognizes the fact that the processes leading to the filing of a case usually take a while before they are concluded such that by the time the information is filed in court, the accused may have already left the country and is now beyond the reach of courts. This renders futile the processes taken up prior to the filing of information and stalls the administration of justice until the accused is brought to the jurisdiction of the court. The issuance of a precautionary HDO cures this predicament.

Public officials and employees are a class of their own

Still, the petitioner laments the fact that the Sandiganbayan issues HDO regardless of the nature and gravity of the offense charged, the official charged and the nature of his responsibilities. This, she argues, is unlike SC Circular No. 39-97 which limits the issuance of HDOs to criminal cases within the exclusive jurisdiction of the RTCs, pertaining to offenses punishable by more than six (6) years of imprisonment.[78]

The implication of the petitioner's argument is that the Sandiganbayan indiscriminately issues HDOs without distinction as to the offense and the offender. The point is that it is a superfluity to draw further distinction since the Sandiganbayan is precisely constituted as a special court for cases of graft and corruption and other cases committed by public officials and employees. This has been recognized in the 1973 and 1987 Constitutions, which classified public officers and employees as a class of their own from whom is required the highest degree of responsibility and integrity. To be specific, Section 1, Article XIII of the 1973 Constitution reads:

ARTICLE XIII
Accountability of Public Officers

Section 1. Public office is a public trust. Public officers and employees shall serve with the highest degree of responsibility, integrity, loyalty, and efficiency, and shall remain accountable to the people.

A similar provision in Section 1 Article XI of the 1987 Constitution states, thus:

ARTICLE XI
Accountability of Public Officers

Section 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

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[78] *Rollo*, p. 19.

Both constitutions mandated for the creation of a special court that shall have jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offenses committed by public officers and employees in relation to their office.[79] Thus, the Sandiganbayan was constituted by Presidential Decree No. 1486 which, through the years, had undergone several revisions and amendments. This only demonstrates that public officers and employees are a class of their own in that they are reposed with public trust and must be accountable to the people at all times, hence, the higher standards of conduct and integrity. In a similar way, violations committed by public officers and employees in relation to office are treated differently from all other offenses. After all, betrayal of public trust, dishonesty and dereliction of official duties are serious transgressions which should not be taken lightly. More than that, public officials and employees are required, at all times, "to uphold the Constitution and put loyalty to country above loyalty to persons or party."[80] Thus, there are special laws governing the (1) conduct of public officers and employees; (2) acts and omissions that are considered as misconduct in public office; and (3) penalties that are especially imposable to erring public officials and employees. These are based on substantial distinctions and do not amount to an unreasonable classification or unfair treatment.

At any rate, it bears pointing out that, notwithstanding the issuance of HDOs, the petitioner is not absolutely prohibited from travelling abroad. She was only restricted from leaving the country as this would place her beyond the jurisdiction of our courts and might render nugatory the processes and proceedings being conducted in the cases against her. Nonetheless, she may, at any time, request for permission to travel abroad, citing grounds for its necessity. The Sandiganbayan, in numerous instances, had been liberal in granting permissions based on meritorious grounds, sometimes

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[79] Section 5, Article XIII, 1973 Constitution; Section 4, Article XI, 1987 Constitution.

[80] Section 4 (g), Republic Act No. 6713.

even for humanitarian considerations, for as long as certain conditions are complied with. Based on the records and allegations of the parties, however, there has yet an instance when the petitioner asked permission to travel from the Sandiganbayan and was denied of it.

The petitioner misappreciated the ruling of this Court in *Cojuangco v. Sandiganbayan*[81] which, in fact, reiterates our disposition that the Sandiganbayan may issue HDO in the exercise of its inherent powers. In the said case, an HDO was issued against petitioner therein, Eduardo Cojuangco (Cojuangco), after he was charged for violation of R.A. No. 3019 before the Sandiganbayan. The HDO would later be lifted, albeit temporarily, after the invalidation of the warrant of arrest issued against him on the ground that the Sandiganbayan failed to abide by the constitutional mandate of personally determining the existence of probable cause before issuing the same. Even then, the lifting of the HDO was intended for a single occasion and only for a period of three months counted from the finality of the decision. Subsequent requests during the pendency of the case before the Sandiganbayan were still subject to the discretion of the said court. The relevant portion of the disposition in *Cojuangco* reads:

> Meanwhile, the Resolution of the Sandiganbayan (First Division), dated February 20, 1995, imposing a ban on petitioners travel abroad without its prior approval pending the resolution of Criminal Case No. 22018 is, for the reasons heretofore advanced, **hereby LIFTED for a period of three (3) months counted from the finality of this decision. Any similar request during the pendency of said case before the Sandiganbayan shall be addressed to that court**.[82] (Emphasis ours)

The said temporary lifting of the HDO was granted after Cojuangco had asked the permission of the court to travel and demonstrated that there is a very lean probability that he will

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[81] 360 Phil. 559 (1998).

[82] *Id*. at 590-591.

not comply to the conditions that will be set by the court. On the other hand, the petitioner had never asked for a permission to travel abroad from the Sandiganbayan nor alleged circumstances in her pleadings before the said court to justify the lifting of the TRO. When she filed a motion for reconsideration and prayed for the lifting of the HDOs, she argued against its validity on the ground of prematurity and that the Sandiganbayan has no authority to issue the same. She never questioned the necessity or sufficiency of the basis of its issuance. Being the party seeking relief, it is incumbent upon the petitioner to prove and allege circumstances that would warrant the granting of her prayer. This, she failed to do.

The HDOs were not prematurely-issued

The petitioner questions the validity of the HDOs against her on the ground that they were issued before she was able to exhaust her legal remedies and even before there was a final determination of probable cause against her. She asseverates that the HDOs were issued on July 24, 2012, before the lapse of the period when she may file a motion for reconsideration of the finding of probable cause against her, or until July 25, 2012.[83] For this reason, she argues that the HDOs were void.

The argument lacks merit.

In *People v. Borje*,[84] the Court stressed that as far as crimes cognizable by the Sandiganbayan are concerned, the determination of probable cause during the preliminary investigation, or reinvestigation for that matter, is a function that belongs to the Office of the Ombudsman.[85] The said office is empowered to determine, in the exercise of its discretion, whether probable cause exists, and to charge the person believed to have committed the crime as defined by law."[86] In deference

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[83] *Rollo*, p. 21.

[84] 749 Phil. 719 (2014).

[85] *Id*. at 727.

[86] *Sen. Jinggoy Ejercito Estrada v. Office of the Ombudsman*, G.R. Nos. 212761-62, July 31, 2018.

to the independent nature of this office, this Court has almost always adopted, quite aptly, a policy of non-interference in the exercise of the Ombudsman's constitutionally mandated powers."[87] The rationale behind the policy was discussed in *Ocampo v. Ombudsman*,[88] thus:

> The rule is based not only upon respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the courts will be grievously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court, or dismiss a complaint by a private complainant.[89]

In the present case, the investigating prosecutor of the OMB found probable cause to indict the petitioner for violation of Sections 3(e) and 3(g) of R.A. No. 3019 and Article 220 of the Revised Penal Code, and his findings and recommendation to file the corresponding informations before the Sandiganbayan were approved by the Ombudsman. From the filing of information, the Sandiganbayan acquires jurisdiction over the case and the authority to control the conduct of the proceedings until its disposition. In *Ocampo*, the Court declared:

> [W]hile it is the Ombudsman who has the full discretion to determine whether or not a criminal case should be filed in the Sandiganbayan, once the case has been filed with said court, it is the Sandiganbayan, and no longer the Ombudsman, which has full control of the case so much so that the informations may not be dismissed without the approval of the said court.[90]

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[87] *Venancio R. Nava v. Commission on Audit*, 419 Phil. 544, 553 (2001).

[88] 296-A Phil. 770 (1993).

[89] *Id*. at 775.

[90] *Id*.

Verily, "once jurisdiction attaches, it shall not be removed from the court until the termination of the case."[91] This was reiterated in *Fuentes v. Sandiganbayan*,[92] in an enumeration of cases emphasizing this doctrine, *viz.*:

> As early as *US v. Valencia*, this Court, through Justice Charles A. Willard, ruled that once an Information has been filed in court, the latter acquires jurisdiction over the case; and, accordingly, it is the court, not the fiscal, which has control over it. In *US v. Barredo*, this Court explained that fiscals are not clothed with the power to dismiss or *nolle prosequi* criminal actions once these have been instituted, for the power to dismiss is solely vested in the court. The *Barredo* doctrine has continuously been applied through the years. In other words, once a court acquires jurisdiction, the same continues until the termination of the case. **The rule, therefore, in this jurisdiction is that once a complaint or information is filed in court, any disposition of the case, whether it be dismissal or the conviction or the acquittal of the accused, rests in the sound discretion of the court.** The only qualification to this exercise of the judicial prerogative is that the substantial rights of the accused must not be impaired nor the People be deprived of the right to due process.[93] (Emphasis ours)

Further, in *Crespo v. Mogul*,[94] the Court explained, thus:

> The preliminary investigation conducted by the fiscal for the purpose of determining whether a *prima facie* case exists warranting the prosecution of the accused is terminated upon the filing of the information in the proper court. In turn, as above stated, the filing of said information sets in motion the criminal action against the accused in Court. Should the fiscal find it proper to conduct a reinvestigation of the case, at such stage, the permission of the Court must be secured. After such reinvestigation the finding and recommendations of the fiscal should be submitted to the Court for

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[91] *Ambassador Hotel, Inc. v. Social Security System*, G.R. No. 194137, June 21, 2017.

[92] 527 Phil. 58 (2006).

[93] *Id.* at 64.

[94] 235 Phil. 465 (1987).

appropriate action. While it is true that the fiscal has the *quasi judicial* discretion to determine whether or not a criminal case should be filed in court or not, once the case had already been brought to Court whatever disposition the fiscal may feel should be proper in the case thereafter should be addressed for the consideration of the Court.[95]

From the filing of information, any disposition of the case such as its dismissal or its continuation rests on the sound discretion of the court, which becomes the sole judge on what to do with the case before it.[96] Pursuant to said authority, the court takes full authority over the case, including the manner of the conduct of litigation and resort to processes that will ensure the preservation of its jurisdiction. Thus, it may issue warrants of arrest, HDOs and other processes that it deems warranted under the circumstances.

In this case, the Sandiganbayan acted within its jurisdiction when it issued the HDOs against the petitioner. That the petitioner may seek reconsideration of the finding of probable cause against her by the OMB does not undermine nor suspend the jurisdiction already acquired by the Sandiganbayan. There was also no denial of due process since the petitioner was not precluded from filing a motion for reconsideration of the resolution of the OMB. In addition, the resolution of her motion for reconsideration before the OMB and the conduct of the proceedings before the Sandiganbayan may proceed concurrently.

Moreover, the Rules of Procedure of the Office of the Ombudsman expressly provides that the filing of a motion of reconsideration does not prevent the filing of information. Section 7, Rule II of Administrative Order No. 07 reads:

Section 7. Motion for reconsideration

a) Only one motion for reconsideration or reinvestigation of an approved order or resolution shall be allowed, the same to be filed within five (5) days from notice thereof with the Office of the

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[95] *Id.* at 474-475.

[96] *Mustapha M. Gandarosa v. Evaristo Flores*, 554 Phil. 636, 651 (2007).

Ombudsman, or the proper Deputy Ombudsman as the case may be, with corresponding leave of court in cases where information has already been filed in court;

b) **The filing of a motion for reconsideration/reinvestigation shall not bar the filing of the corresponding information in Court on the basis of the finding of probable cause in the resolution subject of the motion.** (As amended by Administrative Order No. 15, dated February 16, 2000) (Emphasis ours)

As can be understood from the foregoing, an information may be filed even before the lapse of the period to file a motion for reconsideration of the finding of probable cause. The investigating prosecutor need not wait until the resolution of the motion for reconsideration before filing the information with the Sandiganbayan especially that his findings and recommendation already carry the stamp of approval of the Ombudsman. In any case, the continuation of the proceedings is not dependent on the resolution of the motion for reconsideration by the investigating prosecutor. In the event that, after a review of the case, the investigating prosecutor was convinced that there is no sufficient evidence to warrant a belief that the accused committed the offense, his resolution will not result to the automatic dismissal of the case or withdrawal of information already filed before the Sandiganbayan. The matter will still depend on the sound discretion of the court. Having acquired jurisdiction over the case, the Sandiganbayan is not bound by such resolution but is required to evaluate it before proceeding further with the trial and should embody such assessment in the order disposing the motion.[97] Thus, in *Fuentes v. Sandiganbayan*,[98] the Court emphasized:

The court is not limited to the mere approval or disapproval of the stand taken by the prosecution. The court must itself be convinced that there is indeed no sufficient evidence against the accused and

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[97] *Ark Travel Express, Inc. v. Hon. Zeus Abrogar*, 457 Phil. 189, 203 (2003).

[98] *Sen. Jinggoy Ejercito Estrada v. Office of the Ombudsman*, *supra* note 86.

this conclusion can only be reached after an assessment of the evidence in the possession of the prosecution. What is required is the court's own assessment of such evidence.[99]

All told, the Sandiganbayan did not commit abuse of discretion, much less grave, in denying the motion for reconsideration and the prayer for the lifting of the HDOs issued against the petitioner. The HDOs were validly issued pursuant to its inherent powers as a court of justice.

WHEREFORE, the petition is **DISMISSED** for lack of merit.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Reyes, J. Jr.*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 208956. October 17, 2018]

REPUBLIC OF THE PHILIPPINES represented by the Department of Public Works and Highways (DPWH), *petitioner, vs.* **HEIRS OF ELIGIO CRUZ, represented by CRISANTA OLIQUINO, and HEIRS OF ELIGIO CRUZ, represented by MAXIMINO AGALABIA,** *respondents.*

SYLLABUS

CIVIL LAW; SPECIAL CONTRACTS; COMPROMISES; JUDICIAL COMPROMISE; APPROVAL THEREOF

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[99] *Id*.

[*] Designated additional Member per Special Order No. 2587, dated August 28, 2018.

REQUIRES THE COURT STRICTLY SCRUTINIZE THE SAME AND ENSURE THAT THE COMPROMISE AND ITS EXECUTION ARE COMPLIANT WITH THE LAW AND CONSISTENT WITH THE PROCEDURAL RULES.— Article 2028 of the Civil Code defines a compromise as a "contract whereby the parties, by making reciprocal concessions, avoid x x x litigation or put an end to one already commenced." A compromise intended to resolve a matter under litigation is referred to as a *judicial* compromise. The effect of a judicial compromise is well established: x x x Once stamped with judicial *imprimatur*, [a compromise agreement] becomes more than a mere contract binding upon the parties; having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any other judgment. It has the effect and authority of *res judicata*, although **no execution may issue until it would have received the corresponding approval of the court where the litigation pends and its compliance with the terms of the agreement is thereupon decreed**. x x x Before approving a compromise, courts are thus bound to strictly scrutinize the same to ensure that the compromise *and* its execution are compliant with the law and consistent with procedural rules.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Palabasan Taala & Associates Law Office for Heirs of Eligio Cruz represented by Crisanta Oliquino.

Renta Pe Causing Sabarre Castro & Pelagio for Heirs of Eligio Cruz represented by Maximino Agalabia.

D E C I S I O N

CAGUIOA, *J.*:

The Case

This is a Petition for Review on *Certiorari*[1] (Petition) filed under Rule 45 of the Rules of Court against the

[1] *Rollo*, pp. 10-56, excluding Annexes.

Decision[2] dated March 12, 2013 (Assailed Decision) and Resolution[3] dated September 5, 2013 (Assailed Resolution) in CA-G.R. SP. No. 123203 rendered by the Court of Appeals (CA), Sixteenth Division.

The Assailed Decision and Resolution stem from the Omnibus Order[4] dated July 25, 2011 (July 2011 Omnibus Order) and Order[5] dated November 28, 2011 (November 2011 Order) issued by the Regional Trial Court (RTC) of Quezon City, Branch 222 in an action for interpleader (Interpleader) filed by the Republic of the Philippines (Republic) and docketed as Special Civil Action No. Q09-65409.[6]

The Interpleader was filed by the Republic in connection with the payment of just compensation corresponding to specific portions of Lot 643, a 41,745-square meter property situated in Quezon City.[7]

The Facts

Sometime in 1977, the Department of Public Works and Highways (DPWH), then Ministry of Public Highways; conducted the widening of Visayas Avenue, Quezon City.[8]

The construction encroached upon a 4,757-square meter portion (Disputed Portion) of Lot 643, identified as follows:

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[2] *Id*. at 57-71. Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor P. Punzalan Castillo and Amy C. Lazaro-Javier concurring.

[3] *Id*. at 72-74.

[4] *Id*. at 161 to 163-A. Penned by Judge Edgar Dalmacio Santos.

[5] *Id*. at 190-193.

[6] Also appears as Q-09-65409 in some parts of the *rollo*.

[7] *Rollo*, p. 58.

[8] *Id*. at 59.

Lot	Area in square meters	Registered Owner
Lot 643-A-2	1,822	Virginia B. Uichanco
Lot 643-A-3	1,047	Julita B. Uichanco-Denoga
Lot 643-B	1,888	Eligio Cruz[9]

The Disputed Portion was subdivided, and thereafter registered in the name of the Republic. However, no payment of just compensation was made.[10]

RTC Proceedings

Subsequently, a certain Crisanta Oliquino (Oliquino) filed with the DPWH a claim for payment of just compensation for and on behalf of several heirs of Eligio Cruz, namely, Nieves Cruz, Gregorio Cruz, Ester Cruz-Bernardino and Remigio Cruz (the Oliquino group).[11]

Oliquino demanded just compensation for the Disputed Portion at the rate of Php15,000.00 per square meter, and engaged the services of Atty. Maximo Borja (Atty. Borja) to facilitate the claim.[12]

In exchange for Atty. Borja's services, Oliquino executed a Deed of Assignment ceding in his favor the amount of Php14,000,000.00 out of the Php71,355,000.00 she expected to receive from the Republic.[13] However, for reasons not apparent in the records, Oliquino later repudiated the deed, prompting the Republic to release the partial payment of Php39,533,239.13 in Oliquino's favor.[14]

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[9] *Id*. at 60.

[10] *Id*.

[11] *Id*.

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

[13] *Id*. at 61.

[14] *Id*.

Confronted with conflicting claims of ownership over the Disputed Portion of Lot 643 left unpaid, the Republic withheld further payments and demanded the claimants to settle their opposing claims through litigation.[15] Since the claimants failed to do so, the Republic was constrained to file the Interpleader, impleading as defendants the following claimants:

1. **The Oliquino group**, as heirs of Eligio Cruz;
2. Emilia Cruz-Agalabia represented by Diosdado C. Agalabia (**the Agalabia group**), as heirs of Eligio Cruz;
3. The estate and/or heirs of Virginia Uichanco (**Estate of V. Uichanco**); and
4. **Atty. Borja.**

Subsequently, Inisetas De Leon, Narciso Ignacio and Rebecca Basilio (**the De Leon group**) filed a *Motion for Intervention*, also claiming just compensation as heirs of Eligio Cruz. Said motion was granted by the RTC in its Order dated September 9, 2010.[16]

Thereafter, Atty. Desiderio Pagui (Atty. Pagui) filed a *Motion for Summary Judgment*, for and on behalf of the Estate of V. Uichanco.[17]

The case was later referred to the Philippine Mediation Center upon the manifestation of the Oliquino and Agalabia groups.[18]

After termination of the mediation, the Oliquino group presented before the RTC a Compromise Agreement for approval. **While said agreement allocated the remaining balance of just compensation corresponding to the Disputed Portion among the defendants in the Interpleader, only the Oliquino and Agalabia groups agreed upon the allocation.**[19]

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[15] See *id*. at 19.

[16] *Id*. at 61.

[17] *Id*.

[18] *Id*. at 20, 61.

[19] See *id*. at 21.

The approval of the Compromise Agreement was opposed by the De Leon group and Atty. Borja.[20] Notwithstanding such opposition, the RTC issued a *Partial Judgment Based on Compromise Agreement* (*Partial Judgment*) on April 18, 2011 approving the terms of the Compromise Agreement. Consequently, a *Writ of Execution* and *Order of Delivery of Money* were issued, followed by a *Notice of Garnishment* directed to the Development Bank of the Philippines.[21]

The De Leon group and Atty. Borja filed their respective motions for reconsideration of the *Partial Judgment*,[22] while the Estate of V. Uichanco filed a *Motion to Dismiss*.[23]

On the other hand, the Oliquino and Agalabia groups filed a *Motion for Issuance of Writ of Execution*.[24]

In the July 2011 Omnibus Order, the RTC ruled in favor of the Oliquino and Agalabia groups, thus:

> WHEREFORE, the several motions for reconsideration and motion to dismiss are hereby DENIED.
>
> **The motion for execution is hereby GRANTED.**
>
> **Accordingly, let a writ of execution issue for the implementation of the aforesaid judgment based on Compromise Agreement dated April18, 2011.**
>
> SO ORDERED.[25] (Emphasis supplied)

The Republic filed several motions[26] to avert execution.

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[20] See *id*.

[21] *Id*. at 63.

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

[23] *Id*. at 22.

[24] See *id*.

[25] *Id*. at 163-A.

[26] *Id*. at 64-65, 164-169 and 175-188. *Motion for Reconsideration (on the Omnibus Order dated July 25, 2011), Motion to Quash (Writ of Execution and Order of Delivery of Money), and Motion to Lift Notice of Garnishment.*

On November 28, 2011, the RTC rendered the November 2011 Order, the dispositive portion of which reads, in part:

> WHEREFORE, premises considered, the motions filed by [the Republic] and the [De Leon group] are hereby DENIED, for lack of merit.[27]

CA Proceedings

Aggrieved, the Republic filed before the CA a *Petition for Certiorari with Prayer for Issuance of Writ of Preliminary Injunction and Temporary Restraining Order*[28] (petition for *certiorari*). Said petition for *certiorari* imputed grave abuse of discretion to the RTC for rendering the July 2011 Omnibus Order and November 2011 Order.[29]

In said petition for *certiorari*, the Republic averred that the orders directing the execution of the Partial Judgment are premature and were issued without legal basis,[30] since the Partial Judgment "did not adjudicate nor (sic) settle the conflicting adversarial claims of the other impleaded defendants who are not parties to the [Compromise Agreement],"[31] namely, Atty. Borja and the De Leon group.

On March 12, 2013, the CA issued the Assailed Decision dismissing the Republic's petition for *certiorari* for lack of merit.[32] In so ruling, the CA held that since the *Partial Judgment* had attained finality, it may neither be amended nor corrected. Hence, "[t]he final and only action to be taken is to have the judgment executed in accordance with Rule 39 of the Rules of Court."[33] According to the CA, it is "immaterial" that the issue

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[27] *Id*. at 192.

[28] *Id*. at 194-231.

[29] See *id*. at 65-66.

[30] *Id*.

[31] *Id*. at 219.

[32] *Id*. at 70.

[33] *Id*. at 67.

raised in the Interpleader has yet to be resolved,[34] as "[t]his does not derogate the judgment's susceptibility to execution."[35]

The Republic filed a motion for reconsideration, which was denied by the CA in the Assailed Resolution.[36]

The Republic received a copy of the Assailed Resolution on September 16, 2013.[37]

On September 25, 2013, the Republic filed a motion for extension before the Court, seeking an additional period of thirty (30) days from October 1, 2013, or until October 31, 2013 within which to file its Petition.[38]

On October 31, 2013, the Republic filed the present Petition.[39]

The Oliquino and Agalabia groups filed their respective comments to the Petition on February 14, 2014 and June 1, 2015.[40] Accordingly, the Republic filed its Reply on June 13, 2017.[41]

The Issue

The sole issue for the Court's resolution is whether the CA erred when it affirmed the validity of the July 2011 Omnibus Order and November 2011 Order directing the immediate execution of the *Partial Judgment*.

The Court's Ruling

The Petition is impressed with merit.

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[34] *Id*.

[35] *Id*.

[36] *Id*. at 72-74.

[37] *Id*. at 11.

[38] *Id*. at 2-6, 11.

[39] *Id*. at 10.

[40] *Id*. at 335-344, 358-364.

[41] *Id*. at 398-408.

Article 2028 of the Civil Code defines a compromise as a "contract whereby the parties, by making reciprocal concessions, avoid x x x litigation or put an end to one already commenced."

A compromise intended to resolve a matter under litigation is referred to as a *judicial* compromise.[42] The effect of a judicial compromise is well established:

> x x x Once stamped with judicial *imprimatur*, [a compromise agreement] becomes more than a mere contract binding upon the parties; having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any other judgment. It has the effect and authority of *res judicata*, although **no execution may issue until it would have received the corresponding approval of the court where the litigation pends and its compliance with the terms of the agreement is thereupon decreed**. x x x[43] (Emphasis supplied)

Before approving a compromise, courts are thus bound to strictly scrutinize the same to ensure that the compromise *and* its execution are compliant with the law and consistent with procedural rules.[44]

The Court finds that the RTC failed to exercise the degree of scrutiny required by law and jurisprudence when it ordered the immediate execution of the Compromise Agreement. Consequently, the CA erred when it dismissed the Republic's petition for *certiorari* and affirmed the July 2011 Omnibus Order and November 2011 Order issued by the RTC.

To recall, the Compromise Agreement divides the Republic's **entire remaining balance** between and among the defendants, in accordance with the terms agreed upon by the Oliquino and Agalabia groups. **The allocation of the remaining balance**

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[42] *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals*, 370 Phil. 150, 163 (1999).

[43] *Id*. at 163.

[44] *Fil-Estate Properties, Inc. v. Reyes*, G.R. Nos. 152797, 189315 & 200684, October 21, 2015 (Unsigned Resolution).

was determined <u>without</u> the participation of all other claimants who likewise stand as parties to the Interpleader.

The relevant terms of the Compromise Agreement read:

The parties, particularly, [the Agalabia group], [the Oliquino group], x x x **entered into a COMPROMISE AGREEMENT** dated March 24, 2011 hereunder quoted to read as follows:

x x x x x x x x x

WHEREAS, x x x **the above-listed parties, being the present immediate relatives of the late [Eligio Cruz]**, who were impleaded as defendants or have filed for intervention in [the Interpleader], **have agreed to settle the proceeds of the remaining portions amounting to Php31,821,760.87**.

NOW THEREFORE, for and in consideration of the above premises, the following are hereby stipulated:

GROUP I

1. The [h]eirs of Emilia Cruz represented by Maximino C. Agalabia shall receive the amount of ELEVEN MILLION FIVE HUNDRED THOUSAND PESOS (Php11,500,000.00);

GROUP II

2. The [h]eirs of Victorina Cruz will receive as follows:

2.1 The family of the late ESTHER CRUZ represented by [CRISANTA OLIQUINO] who shall receive the amount of [TWO MILLION TWO HUNDRED THOUSAND PESOS (Php2,200,000.00)]. Said amount to be equally divided by them.

2.2 The family of the late REMIGIO CRUZ, the first group is represented by [CRISANTA OLIQUINO] who shall receive the amount of [TWO MILLION TWO HUNDRED THOUSAND PESOS (Php2,200,000.00)]. Said amount to be equally shared by them.

2.3 The family of the late NIEVES CRUZ of the first group is represented by MILAGROS PASCO who shall receive the amount of [TWO MILLION TWO HUNDRED THOUSAND PESOS (Php2,200,000.00)]. Said amount to be equally shared by them.

2.4 BELEN CRUZ SINGH and MA. LOURDES CRUZ shall receive the amount of [ONE MILLION FOUR HUNDRED SIXTY SIX THOUSAND SIX HUNDRED SIXTY SIX AND 67/100] (Php1,466,666.67). Said amount to be equally shared by them.

3. The remaining balance to be collected from the DPWH less the foregoing respective shares of the respective groups shall cover the taxes, attorney's fees, legal fees and other past and present expenses which were fully explained to the parties in the mediation proceedings and which they agreed to be likewise settled and released to [CRISANTA OLIQUINO].

4. Relative to the claims of [the Estate of V. Uichanco] and [Atty. Borja], the two groups of heirs[45] agreed as follows:

a) To deposit in [c]ourt the amount of [ONE MILLION TWO HUNDRED THOUSAND PESOS] (Php1,200,000.00), representing the claim of [the Estate of V. Uichanco] pending determination of [its] claim.

b) **To deposit in [c]ourt the amount of [TWO HUNDRED THOUSAND PESOS] (Php200,000.00) representing the claim of [Atty. Borja] based on the principle of *quantum meruit*.** x x x

c) **And likewise relative to the claim of [the De Leon group], the two (2) groups of heirs further agreed to deposit the amount of [SEVEN HUNDRED THIRTY THREE THOUSAND THREE HUNDRED THIRTY THREE AND 33/100] (Php733,333.33) representing their share**[.][46] (Emphasis and underscoring supplied)

Clearly, the immediate execution of the Partial Judgment approving the Compromise Agreement facilitates the premature distribution of the Republic's remaining balance without affording the De Leon group and Atty. Borja of the opportunity to establish their entitlement, if any, to compensation beyond the amounts unilaterally set by the Oliquino and Agalabia groups.

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[45] The Oliquino and Agalabia groups.

[46] *Rollo*, pp. 61-63.

This defeats the very purpose for which the Republic's Interpleader had been filed, as it opens the portals to protracted litigation not only among the opposing claimants, but also between said claimants and the Republic.

The Court's ruling in *Armed Forces of the Philippines Mutual Benefit Association, Inc. v. Court of Appeals*[47] lends guidance:

> Adjective law governing judicial compromises annunciate that once approved by the court, a judicial compromise is not appealable and it thereby becomes immediately executory but **this rule must be understood to refer and apply only to those who are bound by the compromise and, on the assumption that they are the only parties to the case**, the litigation comes to an end except only as regards to its compliance and the fulfillment by the parties of their respective obligations thereunder. x x x
>
> **Where there are, along with the parties to the compromise, other persons involved in the litigation who have not taken part in concluding the compromise agreement but are adversely affected or feel prejudiced thereby, should not be precluded from invoking in the same proceedings an adequate relief therefor.** A motion to set aside the judgment to the extent he might feel aggrieved, or might justifiably fear to be at risk by acquiescence unless timely invoked, is such a remedy. A denial of the motion to set aside the judgment on the compromise agreement opens the door for its possible elevation to a higher court. If the motion is denied, he may, considering the special finality feature of the compromise judgment, *albeit* partial, and its susceptibility to execution, take an appeal from the order of denial under Rule 45 or even, when circumstances particularly warrant, the extraordinary remedy prescribed in Rule 65, of the Rules of Court. That appeal notwithstanding, the main case still subsists allowing him to have continued *locus standi*.[48] (Emphasis and underscoring supplied)

By affirming the July 2011 Omnibus Order and November 2011 Order, the CA erroneously exposed the Republic to the very risk against which it sought protection through its Interpleader.

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[47] *Supra* note 42.

[48] *Id*. at 164-165.

The risk of protracted litigation becomes even more apparent in light of the letter-communication dated February 19, 2013 sent by Rodolfo M. Ordanes (OIC Ordanes), Officer-in-Charge of the Quezon City Assessor's Office to Atty. Carlo Alcantara, Register of Deeds of Quezon City, a copy of which had been appended[49] to the Republic's Petition. Thereunder, OIC Ordanes makes the following certification which casts doubt on the Oliquino and Agalabia groups' claim of ownership:

> x x x **Prior to the death of Eligio Cruz** on April 19, 1983, i.e., from 1950 to [the] present, **all derivative lots of Lot 643 had already been sold and undergone several changes/transfer of names or ownerships (sic) and nothing was left to Eligio Cruz**. All 41,745 [square meters] which are derivatives of Lot 643 Piedad Estate were already declared for realty tax purposes.[50] (Emphasis and underscoring supplied)

WHEREFORE, the Petition is **GRANTED**. The Decision and Resolution respectively dated March 12, 2013 and September 5, 2013 issued by the Court of Appeals Sixteenth Division in CA-G.R. SP. No. 123203 are **REVERSED** and **SET ASIDE**.

The Omnibus Order dated July 25, 2011 and Order dated November 28, 2011 issued by the Regional Trial Court of Quezon City, Branch 222 (RTC) in Special Civil Action No. Q09-65409 are hereby declared **NULL** and **VOID**.

The case is **REMANDED** to the RTC for proper disposition and determination of the issue raised in the Complaint-in-Interpleader filed by the Republic of the Philippines.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr.*,* *JJ.*, concur.

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[49] Annex "CC", *rollo*, p. 325.

[50] *Id.* at 48, 325.

* Designated additional Member per Special Order No. 2587 dated August 28, 2018.

THIRD DIVISION

[G.R. No. 209359. October 17, 2018]

METROHEIGHTS SUBDIVISION HOMEOWNERS ASSOCIATION, INC., *petitioner, vs.* **CMS CONSTRUCTION AND DEVELOPMENT CORPORATION, TOMASITO T. CRUZ, TITA F. CRUZ, SIMONETTE F. CRUZ, ANGEL T. CRUZ, ERNESTO T. CRUZ and METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM (MWSS),** *respondents.*

SYLLABUS

1. CIVIL LAW; THE NEW CIVIL CODE; PRINCIPLE OF ABUSE OF RIGHTS; ELEMENTS; WHERE A PERSON EXERCISES HIS RIGHTS BUT DOES SO ARBITRARILY OR UNJUSTLY OR PERFORMS HIS DUTIES IN A MANNER THAT IS NOT IN KEEPING WITH HONESTY AND GOOD FAITH, HE OPENS HIMSELF TO LIABILITY.— Article 19 of the New Civil Code deals with the principle of abuse of rights x x x. Art. 19. Every 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. "The principle of abuse of rights x x x departs from the classical theory that 'he who uses a right injures no one.' The modern tendency is to depart from the classical and traditional theory, and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit." "Article 19 [of the New Civil Code] was intended to expand the concept of torts by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to provide[,] specifically in statutory law. If mere fault or negligence in one's acts can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable. The absence of good faith is essential to abuse of right. Good faith is an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would

render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs." "While Article 19 [of the New Civil Code] may have been intended as a mere declaration of principle, the 'cardinal law on human conduct' expressed in said article has given rise to certain rules, *e.g.* that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another."

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE PARTIES MAY RAISE ONLY QUESTIONS OF LAW BECAUSE THE SUPREME COURT IS NOT A TRIER OF FACTS EXCEPT WHEN THE FINDINGS OF FACT BY THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT.— The CA found that the rehabilitation project was not undertaken without notice to petitioner, which was contrary to the RTC's finding that there was no notice given to petitioner. The matter of whether there was notice to petitioner is factual. It is elementary that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45 of the Rules of Court. The parties may raise only questions of law because the Supreme Court is not a trier of facts. However, we may review the findings of fact by the CA when they are contrary to those of the trial court, as in this case.

3. CIVIL LAW; THE NEW CIVIL CODE; PRINCIPLE OF ABUSE OF RIGHTS; RESPONDENTS SHOULD BE HELD LIABLE FOR DAMAGES FOR THE CUTTING OFF, DISCONNECTION AND TRANSFER OF PETITIONER'S WATER SERVICE CONNECTION WITHOUT THE LATTER'S CONSENT AND NOTIFICATION WHICH RESULTED TO STOPPAGE OF WATER SUPPLY IN PETITIONER'S AREA.— [R]espondents admitted in their respective Comments that the inconvenience of the temporary stoppage of water supply in petitioner's area was highly inevitable in the process of changing petitioner's water pipe size crossing the bridge up to Visayas Avenue where the tapping source is

connected. Notwithstanding, respondents proceeded with the cutting off and disconnection of petitioner's water connection without the latter's consent and notification thereby causing prejudice or injury to the petitioner's members because of the unexpected water loss for three (3) days. Respondents' actions were done in total disregard of the standards set by Article 19 of the New Civil Code which entitles petitioner to damages. In *MWSS v. Act Theater, Inc.*, we held that petitioner's act of cutting off respondents' water service connection without prior notice was arbitrary, injurious and prejudicial to the latter, justifying the award of damages under Article 19 of the New Civil Code.

4. ID.; ID.; ID.; HAVING THE RIGHT SHOULD NOT BE CONFUSED WITH THE MANNER BY WHICH SUCH RIGHT IS TO BE EXERCISED, AS THE EXERCISE OF A RIGHT ENDS WHEN THE RIGHT DISAPPEARS, AND IT DISAPPEARS WHEN IT IS ABUSED, ESPECIALLY TO THE PREJUDICE OF OTHERS.— We do not agree with the CA's finding that respondents' actions were merely consequential to the exercise of their rights and obligations to manage and maintain the water supply system. "Having the right should not be confused with the manner by which such right is to be exercised." Article 19 of the New Civil Code sets the standard in the exercise of one's rights and in the performance of one's duties, *i.e.*, he must act with justice, give everyone his due, and observe honesty and good faith. "The exercise of a right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of social law." Here it was established, x x x, that respondents indeed abused their right.

5. COMMERCIAL LAW; CORPORATIONS; DIRECTORS OR OFFICERS WHEN PERSONALLY LIABLE FOR THE DEBTS OF THE CORPORATION.— We find that respondents MWSS and CMS Construction should be held liable for damages to petitioner but not the Cruzes who are the directors and stockholders of respondent CMS Construction. Section 31 of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation, to wit: Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently

unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons. We find that petitioner failed to show that the Cruzes committed any of those above-quoted acts to make them personally liable.

6. CIVIL LAW; THE CIVIL CODE; DAMAGES; ACTUAL OR COMPENSATORY DAMAGES; CANNOT BE PRESUMED, BUT MUST BE DULY PROVED, AND PROVED WITH A REASONABLE DEGREE OF CERTAINTY. — Petitioner is entitled to the award of actual damages. Petitioner alleged that it had spent ₱190,000.00 for the transfer location of tapping/change size of the water service connection, which was unilaterally cut off, disconnected and transferred by respondents. However, only the amount of ₱161,541.85 was duly proved by the checks, which petitioner had paid to their contractor, thus, such amount should be awarded. "Actual or compensatory damages cannot be presumed, but must be duly proved, and proved with a reasonable degree of certainty."

7. ID.; ID.; ID.; EXEMPLARY DAMAGES MAY BE IMPOSED BY WAY OF EXAMPLE OR CORRECTION FOR THE PUBLIC GOOD WHILE ATTORNEY'S FEES MAY BE AWARDED WHERE PETITIONER WAS COMPELLED TO LITIGATE TO PROTECT ITS INTEREST BY REASON OF THE UNJUSTIFIED ACT OF RESPONDENTS.— Petitioner is also entitled to the award of exemplary damages in the amount of ₱100,000.00. Exemplary damages may be imposed by way of example or correction for the public good. We also award the amount of ₱50,000.00 as attorney's fees as petitioner was compelled to litigate to protect its interest by reason of the unjustified act of respondents.

8. ID.; ID.; ID.; NOMINAL DAMAGES CANNOT BE AWARDED WHEN THERE IS AN AWARD OF ACTUAL DAMAGES, AS NOMINAL DAMAGES CANNOT CO-EXIST WITH ACTUAL OR COMPENSATORY DAMAGES; 6% LEGAL INTEREST PER ANNUM IMPOSED ON THE MONETARY AWARDS.— We find no basis to award nominal damages since there is an award of

actual damages. "Nominal damages cannot co-exist with actual or compensatory damages." [I]n line with prevailing jurisprudence, legal interest at the rate of 6% per annum is imposed on the monetary awards computed from the finality of this Decision until full payment.

APPEARANCES OF COUNSEL

Reyes Francisco Tecson & Associates for petitioner.
Anabella S. Altuna for respondent MWSS.
CRC Law Firm for respondent CMS Construction.

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] and the Resolution[2] of the Court of Appeals (CA), dated October 10, 2012 and September 30, 2013, respectively, in CA-G.R. CV No. 89085.

On June 29, 1992, petitioner Metroheights Subdivision Homeowners Association, Inc. filed with the Regional Trial Court (RTC)[3] of Quezon City a complaint[4] for damages with prayer for a temporary restraining order and/or writ of preliminary injunction and writ of preliminary mandatory injunction against respondents CMS Construction and Development Corporation (CMS Construction), Tomasito Cruz, Tita Cruz, Simonette Cruz, Angel Cruz, Ernesto Cruz (the Cruzes), and Metropolitan Waterworks and Sewerage System (MWSS).

Petitioner alleged, among others, that it sought the assistance of respondent MWSS to address the insufficient supply of water

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[1] Penned by Justice Vicente S.E. Veloso, and concurred in by Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr.; *rollo*, pp. 45-66.

[2] *Id*. at 94.

[3] Raffled off to Branch 77, docketed as Civil Case No. Q-92-12601.

[4] *Rollo*, pp. 106-116.

in its subdivision to which the latter advised the improvement and upgrading of its private internal water distribution lines, foremost of which was the transfer or change in the location of its tapping source and the change in size of its water service line from the old line tapped at Sanville Subdivision to a new tapping source on Visayas Avenue, Quezon City; that on November 16, 1990, petitioner entered into a contract with respondent MWSS for the new water service connection, and respondent MWSS awarded the project to a contractor which implemented the same, the cost of which was solely shouldered by contribution from petitioner's members amounting to ₱190,000.00, inclusive of labor, materials, and respondent MWSS' fees and charges; and that since then, there was already sufficient and strong water pressure twenty-four (24) hours a day in the petitioner's subdivision.

However, sometime in April 1992, respondent CMS Construction made diggings and excavations, and started to lay water pipes along Fisheries Street and Morning Star Drive in Sanville Subdivision, Quezon City, petitioner's neighboring subdivision; that in the process, respondent CMS Construction, with the knowledge and consent of respondent MWSS but without petitioner's knowledge and consent, unilaterally cut-off and disconnected the latter's new and separate water service connection on Visayas Avenue; that on May 28, 1992, petitioner's members were waterless, which lasted for three (3) days, and that petitioner's polyvinyl chloride (PVC) pipes and radius elbow, valued at around ₱30,000.00, were stolen by respondent CMS Construction's workers; that when petitioner's officers discovered the illegal cutting of the water connection on May 30, 1992, they immediately complained to the respondents and demanded for the restoration of their water line; that respondent CMS Construction only made a temporary reconnection with the use of a 2-inch rubber hose to the new water line it constructed at Sanville Subdivision; and that despite petitioner's verbal and written demands, respondents have failed to restore petitioner's water line connection in its original state and to return the missing PVC pipes and radius elbow.

In its Answer with Counterclaim, respondent MWSS averred, among others, that on August 16, 1991, it entered into a contract with respondent CMS Construction for the mainlaying and rehabilitation of the existing water main and appurtenances, and the installation/replacement of water service connection at Sanville Subdivision, Quezon City; that in connection with the said undertaking, it necessitated the creek crossing of a 150 mm cast iron pipe to be placed alongside the bridge situated along Morning Star Drive in Quezon City; that alongside the said bridge, there existed two pipes with casings, one of which was owned by petitioner; that it designed the placing of the 150 mm cast iron pipe alongside the above-stated bridge and the design included the interconnection of the two existing pipes; that the aforementioned interconnection features the use of split tap tees, one of which was for the 100 mm pipe allegedly owned by petitioner; and that the infrastructure project aimed to improve the water pressure of eight (8) subdivisions in Tandang Sora which included Metroheights Subdivision.

On the other hand, respondents CMS Construction and the Cruzes claimed that they were awarded by respondent MWSS a contract for the latter's Manila Water Supply Rehabilitation Project II, covering the Tandang Sora area, to provide an improved and equitable water distribution to eight (8) subdivisions located therein; that its proposed working drawings had been reviewed and approved by respondent MWSS; that it is not true that it started laying water pipes along the Morning Star Drive water pipeline by unilaterally cutting off and disconnecting petitioner's existing water pipeline measuring 100-mm (4-inches) in diameter along the said creek as the same was replaced with a PVC water pipe measuring 150-mm in diameter; that the alleged cutting off, disconnection and replacement of petitioner's pipeline bigger in diameter took only three to four hours, and the resumption of the water flow after replacement could not have rendered the homeowners waterless for three (3) days; and that the officers and engineers of petitioner were previously consulted on the rehabilitation project.

On March 30, 1999, the RTC rendered a Decision,[5] the dispositive portion of which provides:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff. Defendants are hereby ordered to jointly and severally pay plaintiff the sum of:
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> 1. ₱190,000.00 as and by way of actual damages;
> 2. ₱100,000.00 as and by way of nominal damages;
> 3. ₱100,000.00 as and by way of exemplary damages;
> 4. ₱50,000.00 as and by way of attorney's fees; and
> 5. The costs of this [s]uit.
>
> SO ORDERED[.][6]

The RTC found, among others, that respondents did not have the authority to simply cut, disconnect and transfer petitioner's water supply with impunity, without notice to or without getting its consent; and that respondents acted in concert and in bad faith, which made them jointly and severally liable for damages.

Respondent MWSS filed its notice of appeal while respondents CMS Construction and the Cruzes filed a motion for new trial which the RTC granted.

On May 18, 2006, the RTC issued a Decision[7] which affirmed its earlier Decision dated March 30, 1999.

The RTC found that respondents' claim of *damnum absque injuria* was not tenable. Under the principle of *damnum absque injuria*, the legitimate exercise of a person's right, even if it causes loss to another, does not automatically result in an actionable injury and the law does not prescribe a remedy for the loss. However, this principle admits of exception as when there is an abuse of a person's right. The exercise of one's right should be done in a manner that will not cause injustice to another. Since water is a basic necessity, the lack thereof

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[5] *Id*. at 237-245; per Judge Vivencio S. Baclig.

[6] *Id*. at 245.

[7] *Id*. at 246-252.

not only caused inconvenience but posed health concerns as well. Notice to petitioner of the interruption of the water supply should have been made prior to the implementation of the project.

Respondents' motion for reconsideration was denied.

Respondents filed their appeal with the CA. On October 10, 2012, the CA issued its assailed decision, the decretal portion of which reads:

> WHEREFORE, the appeal is GRANTED. The Decision dated May 18, 2006, as well as the Decision dated March 30, 1999 of the Regional Trial Court of Quezon City are REVERSED and SET ASIDE. The complaint below is hereby DISMISSED for lack of merit.[8]

The CA found that the respondents' rehabilitation project was not undertaken without any notice at all; that respondents' actions were merely consequential to the exercise of their rights and obligations to manage and maintain the water supply system, an exercise which includes water rehabilitation and improvement within the area, pursuant to a prior agreement for the water supply system; and that the alleged abuse of right was not sufficiently established.

Petitioner's motion for reconsideration was denied by the CA in a Resolution dated September 30, 2013.

Hence, this petition for review on *certiorari* filed by petitioner, raising the following issues:

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THERE WAS PRIOR NOTICE UPON THE PETITIONER OF THE REHABILITATION PROJECT BEFORE IT WAS UNDERTAKEN BY THE RESPONDENTS;

WHETHER OR NOT THE COURT OF APPEALS CANNOT BE HELD LIABLE UNDER ARTICLE 19 OF THE CIVIL CODE;

WHETHER OR NOT THE COURT OF APPEALS ERRED IN FINDING THAT THE ABUSE OF RIGHT OF THE RESPONDENTS WAS NOT SUFFICIENTLY ESTABLISHED;

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[8] *Id*. at 65.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISMISSING THE COMPLAINT AND ABSOLVING RESPONDENTS OF ANY CIVIL LIABILITY IN FAVOR OF THE PETITIONER.[9]

The issue for resolution is whether the respondents should be held liable for damages for the cutting off, disconnection and transfer of petitioner's existing separate water service connection on Visayas Avenue without the latter's knowledge and consent which also resulted in petitioner's subdivision being waterless.

To begin with, to address the perennial problem of insufficient supply of water in Metroheights Subdivision, petitioner had filed its application for transfer location of tapping/change size of the water service connection on Visayas Avenue with respondent MWSS, which the latter approved and implemented; thus, petitioner had uninterrupted water supply. On August 16, 1991, respondent MWSS entered into a contract with respondent CMS Construction for the mainlaying and rehabilitation of existing water main and appurtenances, and the installation/ replacement of water service connection at Sanville Subdivision, Quezon City. In the process, petitioner's existing water service connection on Visayas Avenue was cut-off, disconnected and transferred by respondents, and petitioner's homeowners experienced loss of water supply for three (3) days.

The RTC found respondents liable for damages on the basis of abuse of right under Article 19 of the New Civil Code, giving credence to petitioner's claim that there was no notice to it prior to the implementation of respondents' project. The CA reversed the RTC and found that there was no abuse of right committed by the respondents, as the project was not undertaken without notice to petitioner.

We reverse the CA.

Article 19 of the New Civil Code deals with the principle of abuse of rights, thus:

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[9] *Id*. at 19.

Art. 19. Every 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.

"The principle of abuse of rights x x x departs from the classical theory that 'he who uses a right injures no one.' The modern tendency is to depart from the classical and traditional theory, and to grant indemnity for damages in cases where there is an abuse of rights, even when the act is not illicit."[10]

"Article 19 [of the New Civil Code] was intended to expand the concept of torts by granting adequate legal remedy for the untold number of moral wrongs which is impossible for human foresight to provide[,] specifically in statutory law. If mere fault or negligence in one's acts can make him liable for damages for injury caused thereby, with more reason should abuse or bad faith make him liable. The absence of good faith is essential to abuse of right. Good faith is an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of the law, together with an absence of all information or belief of fact which would render the transaction unconscientious. In business relations, it means good faith as understood by men of affairs."[11]

"While Article 19 [of the New Civil Code] may have been intended as a mere declaration of principle, the 'cardinal law on human conduct' expressed in said article has given rise to certain rules, *e.g.* that where a person exercises his rights but does so arbitrarily or unjustly or performs his duties in a manner that is not in keeping with honesty and good faith, he opens himself to liability. The elements of an abuse of rights under Article 19 are: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another."[12]

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[10] *Sea Commercial Company, Inc. v. Court of Appeals*, 377 Phil. 221, 229 (1999), citing I. Tolentino, *Civil Code of the Philippines*, p. 60 *et seq*.

[11] *Id*. at 229-230. (Citations omitted)

[12] *Id*. at 230. (Citations omitted)

Here, it was admitted by Engr. Victor Cariaga,[13] an MWSS consultant, and Mr. Tomasito Cruz,[14] respondent CMS Construction's President, that petitioner has its own pipeline or source of water coming from Visayas Avenue. Respondents also admitted that because of the rehabilitation project they were undertaking, petitioner's water pipeline, measuring 100 mm in diameter along the side of the creek, was replaced with a PVC plastic pipe 150 mm in diameter; and that petitioner's water line had to be transferred, and in the process of transferring, petitioner's existing water line had to be cut off. Considering that respondents would disconnect and change petitioner's existing water line tapped from Visayas Avenue to another tapping source, good faith and prudence dictate that petitioner should be informed or notified of such actions, as respondents admitted that prior notice to affected areas is a standard operating procedure. More so, petitioner's members had spent their own money to pay for their existing water connection on Visayas Avenue to address the perennial problem of the lack of water supply in their area.

The CA found that the rehabilitation project was not undertaken without notice to petitioner, which was contrary to the RTC's finding that there was no notice given to petitioner. The matter of whether there was notice to petitioner is factual. It is elementary that a question of fact is not appropriate for a petition for review on *certiorari* under Rule 45 of the Rules of Court. The parties may raise only questions of law because the Supreme Court is not a trier of facts. However, we may review the findings of fact by the CA when they are contrary to those of the trial court, as in this case.[15]

In finding that there was notice given by the respondents to petitioner, the CA relied on the testimonies of Tomasito Cruz, President of respondent CMS Construction, that prior to the

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[13] *Rollo*, p. 330; TSN, October 18, 2000, p. 19.

[14] *Id*. at 282; TSN, November 29, 2000, p. 30.

[15] *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990).

actual implementation of the project, permissions from the Office of the City Engineer and the affected homeowners' associations were sought; and that of Engr. Victor Cariaga, consultant of respondent MWSS, saying that it is an operating procedure to give letters to the homeowners, as well as to the barangays affected, notifying them of the objective of the project and requesting for meetings.

Notably, however, the CA failed to consider that Tomasito Cruz testified during his cross-examination that there was no notice to petitioner coming from their company, to wit:

Q: Now, do I get from you that CMS or any of its officers including you did not personally give a written notice to the plaintiff prior to the implementation of this water rehab project?

A: Our company...that is not our responsibility. Because the one who owns the project is MWSS and they are the ones who asked for permission.

ATTY. REYES, JR.: Okay.

Q: In other words, you agree with me that there is no such notice coming from your party CMS? There is no such notice?

A: From our company, none, sir.

Q: Now, is it your assumption that there was such a notice given by MWSS?

A: From what I know there was a notice. In fact, there was even a meeting, sir.

Q: Did you happen to see a copy of this written notice from the MWSS?

A: No, sir.

Q: Since 1992, when the contract was awarded and then later implemented up to this present time, did you ever have an occasion to go to MWSS and ask for a copy of that alleged written notice to the plaintiff?

A: I did not ask for that, sir. Because from what I know, because there was a meeting, there was already an agreement.

Q: In short, Mr. witness at present you cannot produce any documentary proof of that allege[d] notice coming from MWSS?

A: None, sir.[16]

The alleged meetings, claimed by Tomasito Cruz to have taken place to show that petitioner had already been notified of the rehabilitation project, were not substantiated at all. Even Engr. Cariaga's assertion that it is an operating procedure to give letters to the homeowners, as well as the barangays affected, regarding the objective of the project and calling for meetings was not also established by any documentary evidence. It is, therefore, established that there was no notice, not even a generalized notice, given by respondents to petitioner regarding the rehabilitation project.

In *Manila Gas Corporation v. Court of Appeals*, [17] we held:

What is peculiar in the stand of Defendant is that while it would insist on the giving of notices and warnings, it did not have any competent and sufficient evidence to prove the same. Demands in open were made by Plaintiff counsel whether Defendant could show any written evidence showing that notices and warnings were sent to Plaintiff. Not a single piece of evidence was produced. Normally, if a notice is refused, then the original and its copies would still be in the hands of the public utility concerned. In the instant case, it has to be repeated, not a single copy, original or duplicate, triplicate, etc. of any notice to pay or warning of disconnection was produced in court. The court cannot believe that Defendant, as what the testimonies of its witnesses would like to impress upon this Court, conducts its business that way. Defendant is a big business concern and it cannot be said that it treats its business as a joke. Its personnel should realize this, for only with such an awareness can they respond faithfully to their responsibilities as members of a big business enterprise imbued with public interest over which the Philippine Government is concerned.[18]

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[16] *Rollo*, pp. 280-281; TSN, November 29, 2000, pp. 28-29.

[17] 188 Phil. 582 (1980).

[18] *Id*. at 595.

In fact, it was only after petitioner's officer investigated the reason behind the loss of water supply in their subdivision that it was learned that their existing line was cut-off and transferred by respondents. Also, it was only when petitioner's officer went to the office of respondent CMS Construction and complained about the loss of water supply in their subdivision that petitioner's homeowners' water line was temporarily reconnected with a 2-inch rubber hose. The testimony of respondent CMS Construction's President revealed this matter on cross-examination, to wit:

COURT: So, you are saying Mr. witness that you visited [the] site on the very day when the officers of the association came to your office and complained that they have no water?

A: Yes, Your HONOR.

ATTY. REYES, JR.: Okay.

Q: And you claimed that you went to the site on the same day, you saw that there was already a connection of the water supply line of the plaintiff to the new line that you installed and you claimed that there was water on the line but it cannot reach plaintiff?

A: Yes, sir.

ATTY. REYES, JR.: Okay.

Q: Was the connection between the water line system of plaintiff to the new line that you installed at that time when you visited through a temporary rubber hose?

A: The reason why we put the rubber hose just like in electricity it is like a "jumper". Because of their complaint that they had no water. That was the idea of the project engineer of MWSS, sir.

x x x x x x x x x

Q: Therefore, it is correct to say that without the temporary connection made through a rubber hose there would be no water for the plaintiff since the time of disconnection?

A: Well, sir, it did not help.

x x x x x x x x x

Q: So, in short, you are claiming that whether or not the connection was made there was no water, is that what you are claiming?

A: There was water, but it was weak flow.[19]

Clearly, had petitioner's officer not complained about the water service interruption in their subdivision and the rubber hose connection was not made to temporarily fix petitioner's concern, petitioner's homeowners would have continuously suffered loss of water service.

Notably, respondents admitted in their respective Comments that the inconvenience of the temporary stoppage of water supply in petitioner's area was highly inevitable in the process of changing petitioner's water pipe size crossing the bridge up to Visayas Avenue where the tapping source is connected. Notwithstanding, respondents proceeded with the cutting off and disconnection of petitioner's water connection without the latter's consent and notification thereby causing prejudice or injury to the petitioner's members because of the unexpected water loss for three (3) days. Respondents' actions were done in total disregard of the standards set by Article 19 of the New Civil Code which entitles petitioner to damages.

In *MWSS v. Act Theater, Inc.*,[20] we held that petitioner's act of cutting off respondents' water service connection without prior notice was arbitrary, injurious and prejudicial to the latter, justifying the award of damages under Article 19 of the New Civil Code, thus:

> When a right is exercised in a manner which discards these norms (set under Art. 19) resulting in damage to another, a legal wrong is committed for which actor can be held accountable. In this case, the petitioner failed to act with justice and give the respondent what is due to it when the petitioner unceremoniously cut off the respondent's water service connection. As correctly found by the appellate court:

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[19] *Rollo*, pp. 292-294; TSN, November 29, 2000, pp. 40-42.

[20] 476 Phil. 486 (2004).

While it is true that MWSS had sent a notice of investigation to plaintiff-appellee prior to the disconnection of the latter's water services, this was done only a few hours before the actual disconnection. Upon receipt of the notice and in order to ascertain the matter, Act sent its assistant manager Teodulo Gumalid, Jr. to the MWSS office but he was treated badly on the flimsy excuse that he had no authority to represent Act. Act's water services were cut at midnight of the day following the apprehension of the employees. Clearly, the plaintiff-appellee was denied due process when it was deprived of the water services. As a consequence thereof, Act had to contract another source to provide water for a number of days. Plaintiff-appellee was also compelled to deposit with MWSS the sum of ₱200,000.00 for the restoration of their water services.[21]

We do not agree with the CA's finding that respondents' actions were merely consequential to the exercise of their rights and obligations to manage and maintain the water supply system. "Having the right should not be confused with the manner by which such right is to be exercised."[22] Article 19 of the New Civil Code sets the standard in the exercise of one's rights and in the performance of one's duties, *i.e.*, he must act with justice, give everyone his due, and observe honesty and good faith. "The exercise of a right ends when the right disappears, and it disappears when it is abused, especially to the prejudice of others. The mask of a right without the spirit of justice which gives it life is repugnant to the modern concept of social law."[23] Here it was established, as shown by the above discussions, that respondents indeed abused their right.

We find that respondents MWSS and CMS Construction should be held liable for damages to petitioner but not the Cruzes who are the directors and stockholders of respondent CMS Construction. Section 31 of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation, to wit:

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[21] *Id.* at 491-492. (Citations omitted)

[22] *Id.* at 491. (Citation omitted)

[23] *De Guzman v. NLRC*, 286 Phil. 885, 893 (1992).

Sec. 31. *Liability of directors, trustees or officers.* — Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons.

We find that petitioner failed to show that the Cruzes committed any of those above-quoted acts to make them personally liable.

Petitioner is entitled to the award of actual damages. Petitioner alleged that it had spent ₱190,000.00 for the transfer location of tapping/change size of the water service connection, which was unilaterally cut off, disconnected and transferred by respondents. However, only the amount of ₱161,541.85 was duly proved by the checks, which petitioner had paid to their contractor, thus, such amount should be awarded. "Actual or compensatory damages cannot be presumed, but must be duly proved, and proved with a reasonable degree of certainty."[24]

Petitioner is also entitled to the award of exemplary damages in the amount of ₱100,000.00. Exemplary damages may be imposed by way of example or correction for the public good. We also award the amount of ₱50,000.00 as attorney's fees as petitioner was compelled to litigate to protect its interest by reason of the unjustified act of respondents.

We find no basis to award nominal damages since there is an award of actual damages. "Nominal damages cannot co-exist with actual or compensatory damages."[25]

Finally, in line with prevailing jurisprudence, legal interest at the rate of 6% per annum is imposed on the monetary

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[24] See *Dee Hua Liong Electrical Equipment Corp. v. Reyes*, 230 Phil. 101, 106 (1986).

[25] *Dr. Armovit v. Court of Appeals*, 263 Phil. 412, 421 (1990).

awards computed from the finality of this Decision until full payment.[26]

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated October 10, 2012 and the Resolution dated September 30, 2013 of the Court of Appeals in CA-G.R. CV No. 89085 are hereby **REVERSED** and **SET ASIDE**. The Decisions, dated March 30, 1999 and May 18, 2006, of the Regional Trial Court, Branch 77, of Quezon City are hereby **AFFIRMED** with **MODIFICATION**.

Thus, as modified, the Decision dated March 30, 1999 of the Regional Trial Court is as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Metroheights Subdivision Homeowners Association, Inc. Defendants Metropolitan Waterworks and Sewerage System and CMS Construction and Development Corporation are hereby ordered to jointly and severally pay plaintiff the sum of:
>
> (a) ₱161,541.85 as and by way of actual damages;
> (b) ₱100,000.00 as and by way of exemplary damages;
> (c) ₱50,000.00 as and by way of attorney's fees; and
> (d) The costs of this suit.
>
> All damages awarded shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Leonen, Reyes, J. Jr., and *Hernando, JJ.*, concur.

Gesmundo, J., on vacation leave.

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[26] *Nacar v. Gallery Frames, et al.*, 716 Phil. 267 (2013).

SECOND DIVISION

[G.R. No. 217336. October 17, 2018]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SPS. ILDEFONSO ALEJANDRE and ZENAIDA FERRER ALEJANDRE,** *respondents.*

SYLLABUS

1. **CIVIL LAW; THE CIVIL CODE; PROPERTY AND OWNERSHIP; PROPERTY OF PUBLIC DOMINION AND PATRIMONIAL PROPERTY OF THE STATE, DISTINGUISHED.—** Pursuant to Article 419 of the Civil Code, property, in relation to the person to whom it belongs, is either of public dominion or of private ownership. As such, properties are owned either in a public capacity (*dominio publico*) or in a private capacity (*propiedad privado*). There are three kinds of property of public dominion: (1) those intended for public use; (2) those intended for some public service; and (3) those intended for the development of national wealth. This is provided in Article 420 of the Civil Code x x x. With respect to provinces, cities and municipalities or local government units (LGUs), property for public use "consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities." In turn, the Civil Code classifies property of private ownership into three categories: (1) patrimonial property of the State under Articles 421 and 422; (2) patrimonial property of LGUs under Article 424; and (3) property belonging to private individuals under Article 425.

2. **ID.; ID.; ID.; PATRIMONIAL PROPERTY OF THE STATE; CLASSIFICATION.—** [P]roperty of private ownership or patrimonial property of the State may be sub-classified into: (1) "By nature or use" or those covered by Article 421, which are *not* property of public dominion or imbued with public purpose based on the State's current or intended use; and (2) "By conversion" or those covered by Article 422, which previously assumed the nature of property of public dominion by virtue of the State's use, but which are no longer being used or intended for said purpose. Since those properties could **only**

come from property of public dominion as defined under Article 420, "converted" patrimonial property of the State are separate from and not a subset of patrimonial property "by nature or use" under Article 421. Section 3, Article XII of the 1987 Constitution, which embodies the *Regalian doctrine*, classifies lands of the public domain into five categories – agricultural lands, forest lands, timber lands, mineral lands, and national parks. x x x.

3. ID.; ID.; ID.; PROPERTIES OF PUBLIC DOMINION; CHARACTERISTICS; UPON CONVERSION OF LAND OF THE PUBLIC DOMAIN INTO ALIENABLE AND DISPOSABLE LAND, THE LAND CEASES TO POSSESS THE CHARACTERISTICS INHERENT IN PROPERTIES OF PUBLIC DOMINION AND ASSUME THE NATURE OF PATRIMONIAL PROPERTY OF THE STATE THAT IS PROPERTY OWNED BY THE STATE IN ITS PRIVATE CAPACITY.— Section 3 mandates that only lands classified as agricultural may be declared *alienable*, and thus susceptible of private ownership. As the connotative term suggests, the conversion of land of the public domain into alienable and disposable opens the latter to private ownership. At that point (*i.e.*, upon the declaration of alienability and disposability), the land ceases to possess the characteristics inherent in properties of public dominion that they are outside the commerce of man, cannot be acquired by prescription, and cannot be registered under the land registration law, and accordingly assume the nature of patrimonial property of the State that is property owned by the State in its private capacity. As noted by Justice Edgardo L. Paras: It is believed that forest and mining lands are properties of public dominion of the third class, *i.e.*, properties for the development of the national wealth. Upon the other hand, the public agricultural lands before being made available to the general public should also be properties of public dominion for the development of the national wealth (and as such may not be acquired by prescription); **but after being made so *available*, they become *patrimonial* property of the State, and therefore subject to prescription. Moreover, once already acquired by private individuals, they become private property**. x x x.

4. ID.; ID.; LAND REGISTRATION; PROPERTY REGISTRATION DECREE (PRESIDENTIAL DECREE

1529); PUBLIC LANDS NOT SHOWN TO HAVE BEEN CLASSIFIED, RECLASSIFIED OR RELEASED AS ALIENABLE AGRICULTURAL LAND OR ALIENATED TO A PRIVATE PERSON BY THE STATE REMAIN PART OF THE INALIENABLE LANDS OF PUBLIC DOMAIN, THE *ONUS* TO OVERTURN, BY INCONTROVERTIBLE EVIDENCE, THE PRESUMPTION THAT THE LAND SUBJECT OF AN APPLICATION FOR REGISTRATION IS ALIENABLE AND DISPOSABLE RESTS WITH THE APPLICANT.— [T]he subject of the land registration application under Section 14 of PD 1529 is either alienable and disposable land of public domain or private land. While Section 14(4) does not describe or identify the kind of land unlike in (1) which refer to "alienable and disposable lands of the public domain;" (2) which refer to "private lands"; and (3) "private lands or abandoned river beds," the land covered by (4) cannot be other than alienable and disposable land of public domain, *i.e.*, public agricultural lands and private lands or lands of private ownership in the context of Article 435. This premise proceeds from the well-entrenched rule that all lands not appearing to be clearly of private dominion or ownership presumptively belong to the State. **Accordingly, public lands not shown to have been classified, reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable lands of public domain. Therefore, the onus to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant.** Respondents, based on the evidence that they adduced, are apparently claiming ownership over the land subject of their application for registration by virtue of tradition, as a consequence of the contract of sale, and by succession in so far as their predecessors-in-interest are concerned. Both modes are derivative modes of acquiring ownership. **Yet, they failed to prove the nature or classification of the land.** The fact that they acquired the same by sale and their transferor by succession is not incontrovertible proof that it is of private dominion or ownership. In the absence of such incontrovertible proof of private ownership, the well--entrenched presumption arising from the *Regalian doctrine* that the subject land is of public domain or dominion must be overcome. Respondents failed to do this.

5. ID.; ID.; ID.; ID.; ID.; REAL PROPERTY TAX DECLARATIONS, DEED OF ABSOLUTE SALE, AND TECHNICAL DESCRIPTIONS OF THE PROPERTY ARE INSUFFICIENT EVIDENCE TO OVERCOME THE PRESUMPTION THAT THE LAND SUBJECT OF THE REGISTRATION IS INALIENABLE LAND OF PUBLIC DOMAIN OR DOMINION. — The real property tax declarations (Exhibits "L" and "M"), the Deed of Absolute Sale dated June 20, 1990 (Exhibit "K" to "K5"), and the technical descriptions of the subject property (Exhibit "J") are insufficient evidence to overcome the presumption that the land subject of the registration is inalienable land of public domain or dominion. Thus, respondents' application for land registration should not have been granted.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Public Attorney's Office for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the Decision[2] dated February 27, 2015 (Decision) of the Court of Appeals[3] (CA) in CA-G.R. CV No. 101259, which sustained the Amended Decision[4] dated June 12, 2008 of the Regional Trial Court of Bangued, Abra, Branch 2 (RTC) in LRC Case No. N-20, which granted the respondents' application for registration of Lot 6487, Cad. 536, Ap-CAR-000007, with an

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[1] *Rollo*, pp. 18-50, excluding Annexes.

[2] *Id*. at 52-60. Penned by Associate Justice Socorro B. Inting, with Associate Justices Hakim S. Abdulwahid and Priscilla J. Baltazar-Padilla concurring.

[3] Fourth Division.

[4] *Rollo*, pp. 61-63. Penned by Judge Corpus B. Alzate.

area of 256 square meters located at Barrio Poblacion, Municipality of Bangued, Province of Abra.

The Facts

The CA Decision narrates the antecedents as follows:

On July 18, 1991, Spouses Alejandre (applicants-spouses, for brevity) filed an application for the registration of Lot No. 6487 under P.D. No. 1529, described in plan Ap-CAR-000007, Cad-536, with an area of 256 square meters. They alleged that they are the owners of the subject property by virtue of a deed of sale or conveyance; that the subject property was sold to them by its former owner Angustia Lizardo Taleon by way of a Deed of Absolute Sale executed on June 20, 1990; that the said land is presently occupied by the applicants-spouses.

On September 16, 1991, the Office of the Solicitor General, as counsel for the Republic, entered its appearance.

On November 12, 1991, the Land Registration Authority (LRA, for brevity) submitted a Report noting that there were discrepancies in the plan submitted by the applicant spouses, which discrepancies were referred to the Lands Management Sector for verification and correction.

On January 30, 1992, the trial court issued an order of general default and allowed the applicants-spouses to present their evidence.

On July 20, 1992, the trial court granted the applicant spouses' motion to submit original tracing cloth plan and technical description for purposes of facilitating the approval of the re-surveyed plans as well as the submission of the new plan for the scrutiny and approval of the LRA.

On August 10, 1992, the applicants-spouses filed their Formal Offer of Evidence. On April 26, 1993, they submitted the corrected advance plan and technical description to the trial court.

On August 20, 1993, the LRA submitted its Supplementary Report stating that the "polygon does not close" even after the corrections effected on the bearings and distances of the technical description were made. Hence, the LRA requested for reverification and correction.

In an Order dated December 10, 1997, the trial court deemed the case submitted for decision.

Subsequently, or on April 15, 1998, the LRA submitted its Final Report stating that it applied the corrected technical description of the subject lot and no more discrepancy exists, however, the area was increased by six (6) meters. As such, on August 24, 1998, the trial court ordered the submission of publication of the amended or new technical description. On May 6, 2000, the trial court issued another Notice setting the case for Initial Hearing on July 25, 2000.

On June 1, 2000, the Republic filed its *Opposition* to the application based on the following grounds: (1) that neither the applicants nor their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of the land in question since June 12, 1945 or earlier as required by Section 48 (b) of Commonwealth Act No. 141 (CA 141), x x x as amended by Presidential Decree No. 1073 (PD 1073); (2) that applicants failed to adduce any muniment of title and/or the tax declarations with the petition to evidence *bona fide* acquisition of the land applied for or of its open, continuous, exclusive and notorious possession and occupation thereof in the concept of an owner since 12 June 1945 or earlier; that the tax declaration adverted to in the petition does not appear to be genuine and the tax declaration indicates pretended possession of applicants to be of recent vintage[;] and (3) that the subject property applied for is a portion of the public domain belonging to the Republic of the Philippines which is not subject to private appropriation.

After trial, the trial court rendered its *Decision* dated March 31, 2006 granting the application for registration of title, the dispositive portion of which reads:

> "WHEREFORE, premises considered, the Court finds the application to be well-taken and the same is hereby granted.
>
> Let a copy of this decision be furnished the Land Registration Authority, Office of the Solicitor General and Bureau of Lands.
>
> SO ORDERED."

On June 12, 2008, the trial court issued the Amended Decision which increased the area subject for land registration to two hundred sixty-two square meters (262 sqm) from two hundred fifty-six square meters (256 sqm) from the original decision.

Disagreeing with the trial court's grant of the application for land registration, the Republic interposed [an] appeal [to the CA].[5]

Ruling of the CA

The CA in its Decision[6] dated February 27, 2015 denied the appeal of the Republic. The dispositive portion thereof states:

WHEREFORE, premises considered, the present appeal is **DENIED**. Accordingly, the Amended Decision of the Regional Trial Court of Bangued, Abra, Branch 2, is **SUSTAINED**.

SO ORDERED.[7]

The CA justified that based on the allegations of the applicants-spouses Ildefonso Alejandre and Zenaida Ferrer Alejandre (respondents) in their application for land registration and subsequent pleadings, they come under paragraph 4 of Section 14, Presidential Decree No. (PD) 1529[8] – those who have acquired ownership of lands in any manner provided for by law – because they acquired the land in question by virtue of a Deed of Absolute Sale executed on June 20, 1990[9] from Angustia Alejandre Taleon who acquired the land from her mother by inheritance.[10]

The Republic filed the instant Petition without filing a motion for reconsideration with the CA on the ground that the CA decided the Republic's appeal in gross disregard of the law and in a manner not in accordance with the applicable decisions of the Court.[11]

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[5] *Id*. at 52-54.

[6] *Id*. at 52-60.

[7] *Id*. at 59.

[8] AMENDING AND CODIFYING THE LAWS RELATIVE TO REGISTRATION OF PROPERTY AND FOR OTHER PURPOSES, otherwise known as the "PROPERTY REGISTRATION DECREE."

[9] Also appears as June 28, 1990 in the RTC Decision and Amended Decision; see *rollo*, pp. 62 & 109.

[10] *Rollo*, p. 56.

[11] *Id*. at 19.

Respondents filed their "Comment and Compliance"[12] dated July 18, 2016. The Republic filed a Reply[13] dated March 3, 2017.

The Issue

The Petition raises this sole issue: whether the CA seriously misappreciated the facts as well as made findings which are inconsistent with, or not supported by, the evidence on record; and gravely misapplied the applicable laws and jurisprudence.[14]

The Court's Ruling

The Petition is impressed with merit.

The RTC Amended Decision justified the granting of the application for land registration under the Property Registration Decree (PD 1529) on these factual findings:

> It appears from the evidence presented that the applicants acquired the property sought to be registered by means of a Deed of Absolute Sale [dated June 20, 1990 (Exh. "K" to "K5")] executed by Angustia Alejandre Taleon as vendor in favor of the petitioners spouses Ildefonso Alejandre and Zenaida F. Alejandre as vendees. Said property was previously inherited by the vendor from her late mother Angustia Alejandre who inherited the same property from Don Santiago Alejandre, the grandfather of the applicant Dr. Ildefonso Alejandre.[15]

The CA sustained the RTC Amended Decision in this wise:

> Under Section 14 of PD No. 1529, there are four (4) types of applicants who may apply for registration of title to land[,] viz[.]:
>
> **Section 14.** Who may apply. The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

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[12] *Id*. at 158-168.

[13] *Id*. at 181-188.

[14] *Id*. at 26.

[15] *Id*. at 62.

(1) *Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership since June 12, 1945, or earlier.*

(2) Those who have acquired ownership of private lands by prescription under the provision of existing laws.

(3) Those who have acquired ownership of private lands or abandoned river beds by right of accession or accretion under the existing laws.

(4) ***Those who have acquired ownership of land in any other manner provided for by law.*** (Italics and Emphasis Ours)

In the case at bar, basing from the allegations of the applicants-spouses in their application for land registration and subsequent pleadings, clearly, they come under Paragraph 4 of the quoted section and not under Paragraph 1 of the same section. It is undisputed that they acquired the land in question by virtue of a Deed of Absolute Sale executed on June 20, 1990 from Angustia Alejandre Taleon who acquired the land from her mother by inheritance. In other words, the applicant spouses acquired ownership over Lot 6487 through a contract of sale, which is well within the purview of Paragraph 4 of Section 14 of P.D. No. 1529.

As a consequence, the requirement of open, continuous, exclusive and notorious possession and/or occupation in the concept of an owner has no application in the case at bar. Not even the requirement that the land applied for should have been declared disposable and alienable applies considering that this is just one of the requisites to be proven when applicants for land registration fall under Paragraph 1 of Section 14 of P.D. No. 1529, which is not the case at bar.[16]

The Republic argues that under the law, citing Section 24 of PD 1529 and Section 48(b) of Commonwealth Act No. 141,[17]

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

[17] AN ACT TO AMEND AND COMPILE THE LAWS RELATIVE TO LANDS OF THE PUBLIC DOMAIN, otherwise known as the "PUBLIC LAND ACT."

as amended by Section 4 of PD 1073,[18] before an applicant can register his title over a particular parcel of land, he must show that: (a) he, by himself or through his predecessors-in-interest, has been in open, continuous, exclusive and notorious possession and occupation of the subject land under a *bona fide* claim of ownership since June 12, 1945, or earlier; and (b) the subject land falls within the alienable and disposable portion of the public domain.[19]

The Republic also argues, citing *Republic v. Sayo*,[20] *Director of Lands v. IAC*[21] and *Director of Lands v. Aquino*,[22] that in land registration proceedings, the applicant has the burden of overcoming the presumption that the land sought to be registered belongs to the public domain or the presumption of State ownership of the lands of the public domain.[23]

Citing *Bracewell v. Court of Appeals*,[24] the Republic further posits that to prove that the subject land is alienable, the applicant must establish the existence of a positive act of the government, such as a presidential proclamation or an executive order, an administrative action, investigation reports of Bureau of Land investigators, and a legislative act or a statute, declaring the land as already alienable and disposable.[25]

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[18] EXTENDING THE PERIOD OF FILING APPLICATIONS FOR ADMINISTRATIVE LEGALIZATION (FREE PATENT) AND JUDICIAL CONFIRMATION OF IMPERFECT AND INCOMPLETE TITLES TO ALIENABLE AND DISPOSABLE LANDS OF THE PUBLIC DOMAIN UNDER CHAPTER VII AND CHAPTER VIII OF COMMONWEALTH ACT NO. 141, AS AMENDED, FOR ELEVEN (11) YEARS COMMENCING JANUARY 1, 1977.

[19] *Rollo*, p. 27.

[20] 269 Phil. 74 (1990).

[21] 292 Phil. 341 (1993).

[22] 270 Phil. 392 (1990).

[23] *Rollo*, p. 28.

[24] 380 Phil. 156 (2000).

[25] *Rollo*, p. 28.

Pursuant to Article 419 of the Civil Code, property, in relation to the person to whom it belongs, is either of public dominion or of private ownership. As such, properties are owned either in a public capacity (*dominio publico*) or in a private capacity (*propiedad privado*).[26]

There are three kinds of property of public dominion: (1) those intended for public use; (2) those intended for some public service; and (3) those intended for the development of national wealth. This is provided in Article 420 of the Civil Code, to wit:

ART. 420. The following things are property of public dominion:

(1) Those intended for public use, such as roads, canals, rivers, torrents, ports and bridges constructed by the State, banks, shores, roadsteads, and others of similar character;

(2) Those which belong to the State, without being for public use, and are intended for some public service or for the development of the national wealth.

With respect to provinces, cities and municipalities or local government units (LGUs), property for public use "consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities."[27]

In turn, the Civil Code classifies property of private ownership into three categories: (1) patrimonial property of the State under Articles 421 and 422; (2) patrimonial property of LGUs under Article 424; and (3) property belonging to private individuals under Article 425, hence:

ART. 421. All other property of the State, which is not of the character stated in the preceding article, is patrimonial property.

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[26] II Edgardo L. Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, p. 40 (17th ed. 2013).

[27] CIVIL CODE, Art. 424, first par.

ART. 422. Property of public dominion, when no longer intended for public use or for public service, shall form part of the patrimonial property of the State.

x x x x x x x x x

ART. 424. Property for public use, in the provinces, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.

All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws.

ART. 425. Property of private ownership, besides the patrimonial property of the State, provinces, cities, and municipalities, consists of all property belonging to private persons, either individually or collectively.

From the foregoing, property of private ownership or patrimonial property of the State may be sub-classified into:

(1) "By nature or use" or those covered by Article 421, which are *not* property of public dominion or imbued with public purpose based on the State's current or intended use; and

(2) "By conversion" or those covered by Article 422, which previously assumed the nature of property of public dominion by virtue of the State's use, but which are no longer being used or intended for said purpose. Since those properties could **only** come from property of public dominion as defined under Article 420, "converted" patrimonial property of the State are separate from and not a subset of patrimonial property "by nature or use" under Article 421.

With respect to lands, which are immovable property pursuant to Article 415(1) of the Civil Code, they can either be lands of public dominion or of private ownership following the general classification of property under Article 419.

Section 3, Article XII of the 1987 Constitution, which embodies the *Regalian doctrine*, classifies lands of the public

domain into five categories – agricultural lands, forest lands, timber lands, mineral lands, and national parks. The provision states:

> SEC. 3. Lands of the public domain are classified into agricultural, forest or timber, mineral lands, and national parks. Agricultural lands of the public domain may be further classified by law according to the uses to which they may be devoted. **Alienable lands of the public domain shall be limited to agricultural lands.** x x x (Emphasis supplied)

Section 3 mandates that only lands classified as agricultural may be declared *alienable*, and thus susceptible of private ownership. As the connotative term suggests, the conversion of land of the public domain into alienable and disposable opens the latter to private ownership.[28] At that point (*i.e.*, upon the declaration of alienability and disposability), the land ceases to possess the characteristics inherent in properties of public dominion that they are outside the commerce of man, cannot be acquired by prescription, and cannot be registered under the land registration law,[29] and accordingly assume the nature of patrimonial property of the State that is property owned by the State in its private capacity.

As noted by Justice Edgardo L. Paras:

> It is believed that forest and mining lands are properties of public dominion of the third class, *i.e.*, properties for the development of the national wealth. Upon the other hand, the public agricultural lands before being made available to the general public should also be properties of public dominion for the development of the national wealth (and as such may not be acquired by prescription); **but after being made so *available*, they become *patrimonial* property of the State, and therefore subject to prescription. Moreover, once already acquired by private individuals, they become private property**. x x x[30] (Emphasis and underscoring supplied)

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[28] Such as a patent, the latter being a contract between the State and the grantee.

[29] II Edgardo L. Paras, *supra* note 26, at 47-48.

[30] *Id*. at 55; citation omitted.

Thus, it can be gathered from the foregoing that the subject of the land registration application under Section 14 of PD 1529 is either alienable and disposable land of public domain or private land. While Section 14(4) does not describe or identify the kind of land unlike in (1), which refer to "alienable and disposable lands of the public domain;" (2), which refer to "private lands"; and (3) "private lands or abandoned river beds," the land covered by (4) cannot be other than alienable and disposable land of public domain, *i.e.*, public agricultural lands[31] and private lands or lands of private ownership in the context of Article 435.

This premise proceeds from the well-entrenched rule that all lands not appearing to be clearly of private dominion or ownership presumptively belong to the State.[32] **Accordingly, public lands not shown to have been classified, reclassified or released as alienable agricultural land or alienated to a private person by the State remain part of the inalienable lands of public domain.**[33] **Therefore, the onus to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant.**[34]

Respondents, based on the evidence that they adduced, are apparently claiming ownership over the land subject of their application for registration by virtue of tradition, as a consequence of the contract of sale, and by succession in so far as their predecessors-in-interest are concerned. Both modes are derivative modes of acquiring ownership. **Yet, they failed to prove the nature or classification of the land.** The fact that they acquired

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[31] Defined as those alienable portions of the public domain which are neither timber nor mineral lands. *Id*., citing *Alba Vda. De Raz v. CA*, 372 Phil. 710, 736 (1999).

[32] *Republic v. T.A.N. Properties, Inc.*, 578 Phil. 441, 450 (2008), citing *Republic v. Naguiat*, 515 Phil. 560, 565 (2006).

[33] *Republic v. Naguiat*, *id*. at 565, citing *Menguito v. Republic*, 401 Phil. 274, 277 & 287 (2000).

[34] *Republic v. T.A.N. Properties, Inc., supra* note 32, at 450, citing *Republic v. Naguiat*, *id*.

the same by sale and their transferor by succession is not incontrovertible proof that it is of private dominion or ownership. In the absence of such incontrovertible proof of private ownership, the well-entrenched presumption arising from the *Regalian doctrine* that the subject land is of public domain or dominion must be overcome. Respondents failed to do this.

The real property tax declarations (Exhibits "L" and "M"), the Deed of Absolute Sale dated June 20, 1990 (Exhibit "K" to "K5"), and the technical descriptions of the subject property (Exhibit "J") are insufficient evidence to overcome the presumption that the land subject of the registration is inalienable land of public domain or dominion. Thus, respondents' application for land registration should not have been granted.

WHEREFORE, the Petition is hereby **GRANTED**. The Decision dated February 27, 2015 of the Court of Appeals in CA-G.R. CV No. 101259 and the Amended Decision dated June 12, 2008 of the Regional Trial Court of Bangued, Abra, Branch 2 in LRC Case No. N-20 are **REVERSED** and **SET ASIDE**. Respondents' application for registration in LRC Case No. N-20 is **DISMISSED** without prejudice.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr.*,[*] *JJ.*, concur.

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[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 218702. October 17, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PATRICK JOHN MERCADO *y* ANTICLA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; EXCEPTIONS TO THE HEARSAY RULE; DYING DECLARATION; REQUISITES.—** As an exception to the hearsay rule, a dying declaration is admissible as evidence because it is "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation." Accordingly, Section 37, Rule 130 of the Rules of Court provides: x x x For a "dying declaration" to be admissible in court, the following requisites must concur: (a) That the declaration must concern the cause and surrounding circumstances of the declarant's death; (b) That at the time the declaration was made, the declarant was under a consciousness of an impending death; (c) That the declarant is competent as a witness; and (d) That the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.

2. **ID.; ID.; ID.; ID.; PART OF THE *RES GESTAE*; THE TEST OF ADMISSIBILITY OF EVIDENCE AS A PART OF THE *RES GESTAE* IS WHETHER THE ACT, DECLARATION, OR EXCLAMATION IS SO INTIMATELY INTERWOVEN OR CONNECTED WITH THE PRINCIPAL FACT OR EVENT THAT IT CHARACTERIZES AS TO BE REGARDED AS PART OF THE TRANSACTION ITSELF, AND ALSO WHETHER IT CLEARLY NEGATIVES ANY PREMEDITATION OR PURPOSE TO MANUFACTURE TESTIMONY; CASE AT BAR.—** A declaration made spontaneously after a startling occurrence is deemed as part of the *res gestae* when (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements concern the occurrence in question and its immediately attending circumstances. x x x The rule on *res gestae*

encompasses the exclamations and statements made by either the participants, *victims*, or spectators to a crime immediately before, during, or immediately after the commission of the crime when the circumstances are such that the statements were made as a *spontaneous* reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement. **The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation** is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it **clearly negatives any premeditation or purpose to manufacture testimony**. Applying the foregoing to the present case, the statements of Evelyn were clearly part of the *res gestae*. The fire – which caused severe injuries on her body, destroyed her house, and killed her live-in partner – was undeniably a startling occurrence. Evelyn's statements were made immediately after she was rescued, and when she was clearly suffering from the pain caused by her injuries, thereby negating any possibility of her contriving or manufacturing a lie. The statements were also undoubtedly about the startling occurrence as Evelyn repeatedly claimed that Mercado was the one who attacked her and Alicia, and thereafter set the house on fire. The statements were thus certainly part of the *res gestae*.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; THE TEST OF SUFFICIENCY OF AN INFORMATION IS WHETHER IT ENABLES A PERSON OF COMMON UNDERSTANDING TO KNOW THE CHARGE AGAINST HIM, AND THE COURT TO RENDER JUDGMENT PROPERLY.—** The test of sufficiency of an Information is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly. The rule is that qualifying circumstances must be properly pleaded in the Information in order not to violate the accused's constitutional right to be properly informed of the nature and cause of the accusation against him. The Information is sufficient as long as the qualifying circumstance is recited in the Information, regardless of whether designated as aggravating or qualifying, or whether written separately in another paragraph or lumped together with the general averments in a single paragraph. The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial.

4. CRIMINAL LAW; REVISED PENAL CODE; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; ELEMENTS.— Relevant is the ruling of the Court in *People v. Saul*: x x x For voluntary surrender to mitigate the offense, the following elements must be present: (a) the offender has not actually been arrested; (b) the offender surrendered himself to a person in authority; and (c) the surrender must be voluntary. A surrender, to be voluntary must be spontaneous, *i.e*., there must be an intent to submit oneself to authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses in capturing him. x x x

5. ID.; ID.; COMPLEX CRIME; IN A COMPLEX CRIME, ALTHOUGH TWO OR MORE CRIMES ARE ACTUALLY COMMITTED, THEY CONSTITUTE ONLY ONE CRIME IN THE EYES OF THE LAW AS WELL AS IN THE CONSCIENCE OF THE OFFENDER, HENCE, THERE IS ONLY ONE PENALTY IMPOSED FOR THE COMMISSION OF A COMPLEX CRIME.— The correct penalty on Mercado was imposed by the RTC as the crime committed is a complex crime, there being only a single criminal act that resulted in the commission of multiple crimes. Article 48 of the Revised Penal Code provides: x x x **In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law as well as in the conscience of the offender. Hence, there is only one penalty imposed for the commission of a complex crime.** There are two kinds of complex crime. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other. x x x Applying the foregoing to the case at bar, the CA thus incorrectly modified the penalty to impose on Mercado two counts of *reclusion perpetua* because there were two victims. The Court must perforce modify the penalty once again to conform with Article 48 of the Revised Penal Code. Mercado is thus liable only for a single count of *reclusion perpetua* for both of the deaths of Evelyn and Alicia.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Patrick John Mercado y Anticla (Mercado) assailing the Decision[2] dated June 20, 2014 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 05604, which affirmed the Decision[3] dated February 24, 2012 of Regional Trial Court of Malolos City, Third Judicial Region, Branch 78 (RTC) in Criminal Case No. 3222-M-2007, finding Mercado guilty beyond reasonable doubt of the crime of Double Murder.

The Facts

An Information was filed against Mercado for the murders of his aunt Alicia Mercado-Lusuriaga (Alicia) and her live-in partner, Evelyn Santos (Evelyn), the accusatory portion of which reads:

> "That on or about the 15th day of October, 2007, in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a baseball bat and with intent to kill Alicia Mercado-Lusuriaga and Evelyn Santos, live-in partners, with evident premeditation, treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hit them with the said baseball bat and pour gasoline into their bodies and light them thereby causing upon them third degree burns which directly caused their instantaneous death and the burning of [the] victim's house.
>
> Contrary to law."[4]

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[1] See Notice of Appeal dated July 9, 2014; *rollo*, pp. 24-25.

[2] *Rollo*, pp. 2-23. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Magdangal M. De Leon and Ramon A. Cruz, concurring.

[3] CA *rollo*, pp. 49-61. Penned by Judge Gregorio S. Sampaga.

[4] *Rollo*, p. 3.

The version of the prosecution, as summarized in its Appellee's Brief,[5] is as follows:

The victims, Evelyn Santos ("Evelyn") and Alicia Mercado ("Alicia"), are partners who lived together in a house located at Block 6 Lot 2, Belmont Parc Subdivision, Purok 4, Caypombo, Sta. Maria, Bulacan. Appellant was the nephew of Alicia. He was enrolled at the nearby STI College in Sta. Maria, Bulacan, and used to live in the same house.

It appears that around 11:00 PM of October 14, 2007, appellant was already inside the house, having come home from school. Records show that around 2:00 AM of October 15, 2007, the house of Evelyn and Alicia was reported to be on fire. While the house was burning, Evelyn and appellant were observed on the terrace supposedly trying to find a way to escape the blaze.

Eventually, through the help of neighbors, Evelyn and appellant were brought out of the burning house. Evelyn looked weak and unable to walk as she was badly burnt. She also had blood oozing out of the right side of her head.

Witnesses declared that as soon as Evelyn was carried out to safety, she promptly accused and pointed to appellant as the person responsible for attacking her and Alicia as well as for setting the house on fire. Specifically, Evelyn claimed that appellant hit her and [Alicia] with a baseball [bat] then set them on fire. One witness heard Evelyn say: "*ilayo ninyo sa akin yang si Patrick* [Mercado] *dahil siya ang pumalo sa aking ulo at nagsunog ng bahay*." Another witness stated hearing the following utterances from Evelyn: "*Kuya, wag mo akong iwan papatayin ako ng pamangkin ko*," referring to appellant, and "*ilayo nyo sa akin si Patrick* [Mercado] *dahil yan ang papatay sa amin*." Still, another witness claimed to have heard Evelyn say: "*Ilayo nyo sa akin yan batang yan. Yan ang papatay sa akin. Yan ang sumunog sa amin. Yan ang pumalo sa ulo namin.*"

While on board the ambulance on the way to the hospital, Evelyn repeated the name of appellant as the culprit who caused their injuries and burned the house. Thus, she uttered: "*Te, si Patrick* [Mercado] *ang may gawa*," "*Si Patrick* [Mercado] *sinunog kami*," and "S*i Patrick ang pumalo sa akin. Si Patrick* [Mercado] *ang sumunog sa amin, pati sa bahay*."

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[5] CA *rollo*, pp. 68-91.

Despite medical attention, Evelyn succumbed to her injuries and died on November 2, 2007 at the UST Hospital. Based on the declarations of Evelyn, appellant was charged for the killing of Evelyn and Alicia.[6]

On the other hand, the version of the defense, as summarized in the Appellant's Brief,[7] is as follows:

Patrick John Mercado, vehemently denied the charge against him.

He averred that on October 15, 2007, he was inside his room at the first floor reviewing for his quarterly final examination and preparing his school project when a fire broke out between 2:00 to [2:30] o' clock early morning of the said date. He heard that the door on the terrace (second floor) was opened by someone and he thought that it was [either] his deceased Aunt Alice Mercado or Evelyn Santos who usually collects the laundry hanging on the terrace very early in the morning. Afterwards, he heard some noises and a commotion ensued that prompted him to rush upstairs where a fire had suddenly ignited and he saw a man coming out from the terrace. He went down and summoned for help from two (2) women. When he rushed back to render assistance, he saw Evelyn about to jump from the terrace. Thus, he pulled her back while he continued shouting for help. A ladder was [then] provided by the neighbors. He then positioned himself at the ladder while he was assisting Evelyn in going down. Evelyn was boarded into a van en route to a hospital. He did not leave the place and stayed in a nearby house while watching their house being engulfed by fire. While watching, a person approached and handcuffed him.

On October 15, 2007, **Dan Dacallos**, a neighbor of Patrick John testified that, he was sleeping when he heard someone shouting "sunog". He checked and saw a smoke coming out from the house of Patrick John and also saw an unidentified bloodied man coming out. He then saw Patrick John throwing water on the burning house while at the terrace. He did not report having seen the bloodied man to the authorities because of his minority and since his parents did not want him to get involved.[8]

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

[7] *Id*. at 25-48.

[8] *Id*. at 30.

Mercado was arraigned on November 22, 2007, in which he pleaded "not guilty" to the crime charged.[9] Pre-trial and trial thereafter ensued.

Ruling of the RTC

After trial on the merits, in its Decision dated February 24, 2012 the RTC convicted Mercado of the crime of Double Murder. The dispositive portion of the said Decision reads:

> ***WHEREFORE***, the foregoing considered, this Court hereby finds accused Patrick John Mercado ***GUILTY*** of the crime of Double Murder penalized under the provisions of Art. 248 of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of ***RECLUSION PERPETUA*** and to indemnify the heirs of each of the two victims: a. ₱75,000.00 as civil indemnity for their death and b. ₱50,000.00 as moral damages and c. ₱30,000.00 as exemplary damages.
>
> In the service of his sentence accused who is a detention prisoner shall be credited with the entire period he has undergone preventive imprisonment.
>
> **SO ORDERED**.[10]

The RTC held that although the evidence of the prosecution relied heavily on what appears to be hearsay evidence, the testimonies of the prosecution witnesses were still admissible because they were the dying declarations of Evelyn, and these were admissible under Section 37, Rule 130 of the Rules of Court. The RTC added that assuming that the testimonies were inadmissible under the rule on dying declaration, the same would nevertheless be admissible as it was part of the *res gestae*, allowed in evidence by virtue of Rule 130, Section 42 of the Rules of Court.

The RTC further held that the crime committed was Double Murder, as the killing was attended by the qualifying circumstance of the use of fire. The RTC ruled that the crime committed

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[9] *Rollo*, p. 3.

[10] CA *rollo*, p. 61.

was the complex crime of Double Murder – instead of two counts of Murder – and sentenced him with the penalty of *reclusion perpetua*.

Aggrieved, Mercado appealed to the CA.

Ruling of the CA

In the assailed Decision dated June 20, 2014, the CA affirmed the RTC's finding that Mercado was the perpetrator of the crime.

The CA affirmed the RTC's ruling that the evidence of the prosecution were admissible under the rule on dying declaration or, in any case, under the rule on *res gestae*.[11] Further, the CA ruled that Mercado's defense of denial – anchored on the testimony of Dan Dacallos (Dacallos) that there was a bloodied man who came out of the house while it was on fire – could not overcome the probative value of the dying declaration of Evelyn.[12]

As Mercado put in issue the fact that the RTC did not consider in his favor the mitigating circumstance of voluntary surrender, the CA ruled that the RTC was correct in doing so. The CA ratiocinated that Mercado failed to show that there was a voluntary and conscious effort on his end to surrender.[13]

Mercado also questioned the RTC's appreciation of the qualifying circumstance of use of fire in raising the offense to Murder. He argued that the same was not alleged in the Information, and that only the circumstances of treachery, abuse of superior strength, and evident premeditation were raised therein. To this, however, the CA held that the RTC correctly appreciated the qualifying circumstance of the use of fire as it was sufficiently alleged in the Information.[14]

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[11] *Rollo*, pp. 8-13.

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

[13] *Id*. at 14-16.

[14] *Id*. at 16-18.

Finally, Mercado questioned his conviction as the prosecution supposedly failed to prove his guilt beyond reasonable doubt. He averred that the prosecution's failure to present the baseball bat he supposedly used, or prove the presence of gasoline used to set the fire, amounted to reasonable doubt that necessitated his acquittal. As regards this issue, the CA held that the aforementioned pieces of evidence were unnecessary or immaterial to his conviction, as the dying declarations of Evelyn, as proved by the testimonies of the numerous prosecution witnesses, were more than sufficient to establish his guilt beyond reasonable doubt.[15]

The CA, however, modified the penalty imposed on Mercado from a single count of *reclusion perpetua* imposed by the RTC to two counts of *reclusion perpetua* for each of the murders he committed.

Hence, the instant appeal.

Issue

For resolution of this Court are the following issues submitted by Mercado:

(1) Whether the CA erred in convicting Mercado despite the prosecution's failure to prove his guilt beyond reasonable doubt;

(2) Whether the CA erred in upholding the RTC's appreciation of the qualifying circumstance of use of fire;

(3) Whether the CA erred in not appreciating the mitigating circumstance of voluntary surrender.[16]

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

[16] *Id*. at 7-8.

The Court's Ruling

The appeal is unmeritorious. The Court, however, modifies the penalty imposed on Mercado to a single penalty of *reclusion perpetua* only.

First Issue: On whether the prosecution proved Mercado's guilt beyond reasonable doubt

In questioning his conviction, Mercado harps on his defense of denial, and the supposed weakness of the evidence of the prosecution. He argues that the testimony of Dacallos that there was a bloodied man who came out of the house as it was on fire should be believed over the testimonies of the prosecution witnesses as to Evelyn's dying declarations. He likewise reiterates his plea that the prosecution's failure to present the baseball bat and to prove the presence of gasoline amounts to reasonable doubt that requires his acquittal.

The arguments fail to convince.

With regard to this issue, the Court quotes with approval the following disquisitions by the CA:

> Accused-appellant desperately tried to anchor his defense on denial but failed to prove the same despite the presentation of an alleged eyewitness, Dan Emmanuel Dacallos. His testimony failed to overcome the credibility and probative value of the dying declarations and/or part of the *res gestae* of Evelyn Santos which were recounted by several witnesses.
>
> Time and again, this Court has ruled that denial is the weakest of all defenses. **It easily crumbles in the face of positive identification of the accused as the perpetrator of the crime. A denial, like other defenses, remains subject to the strength of the prosecution evidence which is independently assessed. When the evidence for the prosecution convincingly connects the crime and the culprit, the probative value of the denial is negligible.**
>
> x x x x x x x x x
>
> The failure of the prosecution to present the baseball bat allegedly used and to prove the presence of the gasoline is of no moment.

The evidence presented and the testimonies of the prosecution's witnesses were more than sufficient to establish accused-appellant's guilt for the crime charged. These testimonies specifically recounted the dying declarations/part of the *res gestae* of Evelyn Santos which prove that accused-appellant hit the victims with a baseball bat before placing them and the house on fire. Furthermore, the failure to present the baseball bat actually did not, in any way affect[,] the strength of the prosecution's evidence.[17] (Emphasis and underscoring supplied)

In this connection, both the RTC and CA correctly held that the evidence of the prosecution – as independently assessed – sufficiently established the guilt of Mercado.

As an exception to the hearsay rule, a dying declaration is admissible as evidence because it is "evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation."[18] Accordingly, Section 37, Rule 130 of the Rules of Court provides:

> SEC. 37. *Dying declaration*.—The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

For a "dying declaration" to be admissible in court, the following requisites must concur:

(a) That the declaration must concern the cause and surrounding circumstances of the declarant's death;

(b) That at the time the declaration was made, the declarant was under a consciousness of an impending death;

(c) That the declarant is competent as a witness; and

(d) That the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.[19]

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[17] *Id*. at 13-20.

[18] *People v. Maglian*, 662 Phil. 338, 346 (2011).

[19] *People v. Elizaga*, 249 Phil. 470, 474-475 (1988).

The Court, in *People v. Umapas*,[20] explained and expounded on how each of the four requisites is to be understood. Thus:

> Four requisites must concur in order that a dying declaration may be admissible, thus: *First*, the declaration must concern the cause and surrounding circumstances of the declarant's death. This refers not only to the facts of the assault itself, but also to matters both before and after the assault having a direct causal connection with it. Statements involving the nature of the declarant's injury or the cause of death; those imparting deliberation and willfulness in the attack, indicating the reason or motive for the killing; justifying or accusing the accused; or indicating the absence of cause for the act are admissible. *Second*, at the time the declaration was made, the declarant must be under the consciousness of an impending death. The rule is that, in order to make a dying declaration admissible, a fixed belief in inevitable and imminent death must be entered by the declarant. It is the belief in impending death and not the rapid succession of death in point of fact that renders the dying declaration admissible. It is not necessary that the approaching death be presaged by the personal feelings of the deceased. The test is whether the declarant has abandoned all hopes of survival and looked on death as certainly impending. *Third*, the declarant is competent as a witness. The rule is that where the declarant would not have been a competent witness had he survived, the proffered declarations will not be admissible. Thus, in the absence of evidence showing that the declarant could not have been competent to be a witness had he survived, the presumption must be sustained that he would have been competent. *Fourth*, the declaration must be offered in a criminal case for homicide; murder, or parricide, in which the declarant is the victim.[21]

The first and fourth requisites are undoubtedly present in this case. With regard to the third requisite, since there was no evidence presented to show that Evelyn could not have been competent to be a witness had she survived, the presumption that she would have been competent would be sustained in accordance with the foregoing rule discussed in *Umapas*. The

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[20] 807 Phil. 975 (2017).

[21] *Id*. at 985-986.

Court holds, therefore, that the third requisite is sufficiently met.

With regard to the second requisite, the Court in *Umapas* considered the severity of the declarant's wounds to reasonably presume that she uttered her words under the belief that her own death was already imminent. The Court therein held that "[t]here is ample authority for the view that the declarant's belief in the imminence of her death can be shown by the declarant's own statements or from circumstantial evidence, **such as the nature of her wounds**, statements made in her presence, or by the opinion of her physician."[22] Dealing with a declarant that was similarly severely burnt in a fire, the Court reasoned:

> x x x. While more than 12 hours has lapsed from the time of the incident until her declaration, it must be noted that Gemma was in severe pain during the early hours of her admission. Dr. Tamayo even testified that when she saw Gemma in the hospital, she was restless, in pain and incoherent considering that not only was she mauled, but **57% of her body was also burned**. She also underwent operation and treatment, and was under medication during the said period. Given the circumstances Gemma was in, even if there was sufficient lapse of time, we could only conclude that at the time of her declaration, she feared that her death was already imminent. **While suffering in pain due to thermal burns, she could not have used said time to contrive her identification of Umapas as her assailant. There was, thus, no opportunity for Gemma to deliberate and to fabricate a false statement**.[23] (Emphasis and underscoring supplied)

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[22] *Id*. at 987, citing *People v. Salafranca*, 682 Phil. 470, 482 (2012), which, in turn, cited M. Graham, *Federal Practice and Procedure: Evidence* § 7074, Interim Edition, Vol. 30B, 2000, West Group, St. Paul, Minnesota, citing *Shepard v. United States*, 290 US 96, 100; *Mattox v. United States*, 146 US 140, 151 (**sense of impending death may be made to appear "from the nature and extent of the wounds inflicted, being obviously such that he must have felt or known that he could not survive."**); *Webb v. Lane*, 922 F.2d 390, 395-396 (7th Cir. 1991); *United States v. Mobley*, 491 F.2d 345 (5th Cir. 1970); emphasis supplied.

[23] *Id*.

In the present case, Evelyn made the declarations just as she was pulled out of the fire, with blood coming out of her forehead, when she was having difficulty breathing, and **with second and third degree burns affecting 74% of the total surface area of her body**.[24] Considering the foregoing facts – along with the principle enunciated in *Umapas* that the declarant's belief in the imminence of her death can be shown by the nature and severity of the declarant's wounds – then the Court is convinced that the second requisite for a dying declaration is sufficiently met.

Without doubt, therefore, the dying declarations of Evelyn to numerous witnesses that it was Mercado who had attacked her and her partner and eventually set their house on fire are admissible in evidence.

In any event, even if the statements of Evelyn would not qualify as dying declarations, they are nevertheless admissible in evidence because they are part of the *res gestae*. Section 42, Rule 130 of the Rules of Court provides:

> SEC. 42. *Part of the res gestae*.— Statements made by a person while a startling occurrence is taking place or immediately prior or subsequent thereto with respect to the circumstances thereof, may be given in evidence as part of the *res gestae*. So, also, statements accompanying an equivocal act material to the issue, and giving it a legal significance, may be received as part of the *res gestae*.

A declaration made spontaneously after a startling occurrence is deemed as part of the *res gestae* when (1) the principal act, the *res gestae*, is a startling occurrence; (2) the statements were made before the declarant had time to contrive or devise; and (3) the statements concern the occurrence in question and its immediately attending circumstances.[25] The Court, in the early case of *People v. Nartea*,[26] clarified when a statement may be deemed part of the *res gestae*:

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[24] CA *rollo*, p. 58.

[25] *People v. Peña*, 427 Phil. 129, 137 (2002).

[26] 74 Phil. 8 (1942).

The term "*res gestae*" comprehends a situation which presents a startling or unusual occurrence sufficient to produce a spontaneous and instinctive reaction, during which interval certain statements are made under such circumstances as to show lack of forethought or deliberate design in the formulation of their content. Whether a declaration is a part of the *res gestae* depends upon whether the declaration was the facts talking through the party or the party talking about the facts. (20 Am. Jur., Evidence, sec. 662, pp. 553, 556.) While as a general rule the declaration sought to be proved as part of the *res gestae* must be contemporaneous with the event established as the principal act, no fixed time from the main occurrence can be arbitrarily set in order to determine what shall be part of the *res gestae*. The factual situation in each instance will set its own pattern of time in this respect. (Id., sec. 669; *see also* Moran, Law of Evidence, revised and enlarged edition, pp. 295-296.) "The marked trend of decisions is to extend, rather than narrow, the scope of the doctrine admitting declarations as part of the *res gestae*. Whether specific statements are admissible as part of the *res gestae* is a matter within the sound discretion of the trial court, the determination of which is ordinarily conclusive upon appeal, in the absence of a clear abuse of discretion." (20 Am. Jur., sec. 663, p. 557.)[27]

The rule on *res gestae* encompasses the exclamations and statements made by either the participants, *victims*, or spectators to a crime immediately before, during, or immediately after the commission of the crime when the circumstances are such that the statements were made as a *spontaneous* reaction or utterance inspired by the excitement of the occasion and there was no opportunity for the declarant to deliberate and to fabricate a false statement.[28] **The test of admissibility of evidence as a part of the *res gestae* is, therefore, whether the act, declaration, or exclamation** is so intimately interwoven or connected with the principal fact or event that it characterizes as to be regarded as a part of the transaction itself, and also whether it **clearly negatives any premeditation or purpose to manufacture testimony**.[29]

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[27] *Id*. at 10.

[28] *People v. Salafranca*, *supra* note 22, at 483-484.

[29] *Id*. at 484.

Applying the foregoing to the present case, the statements of Evelyn were clearly part of the *res gestae*. The fire – which caused severe injuries on her body, destroyed her house, and killed her live-in partner – was undeniably a startling occurrence. Evelyn's statements were made immediately after she was rescued, and when she was clearly suffering from the pain caused by her injuries, thereby negating any possibility of her contriving or manufacturing a lie. The statements were also undoubtedly about the startling occurrence as Evelyn repeatedly claimed that Mercado was the one who attacked her and Alicia, and thereafter set the house on fire. The statements were thus certainly part of the *res gestae*.

Bearing in mind that a dying declaration is considered as "evidence of the highest order," and that, in any event, the statements were part of the *res gestae*, as well as the principle that denial is an inherently weak defense,[30] the Court thus holds that the CA did not err in affirming Mercado's conviction, as his guilt was proved beyond reasonable doubt. It is well to stress that the positive identification of the eyewitnesses carries more weight than an accused's defense of denial.[31] Mercado must thus be held liable for the killing of Evelyn and Alicia.

Second Issue: Appreciation of the Qualifying Circumstance of Use of Fire

Mercado faults both the RTC and the CA for raising the crime to Murder by appreciating the qualifying circumstance of use of fire. He asserts that only the qualifying circumstances of treachery, abuse of superior strength, and evident premeditation were alleged in the Information. Thus, the courts erred in appreciating the qualifying circumstance of use of fire.

The argument deserves scant consideration.

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[30] *People v. Gaborne*, 791 Phil. 581, 596 (2016).

[31] *Id.*

The test of sufficiency of an Information is whether it enables a person of common understanding to know the charge against him, and the court to render judgment properly.[32] The rule is that qualifying circumstances must be properly pleaded in the Information in order not to violate the accused's constitutional right to be properly informed of the nature and cause of the accusation against him.[33] The Information is sufficient as long as the qualifying circumstance is recited in the Information, regardless of whether designated as aggravating or qualifying, or whether written separately in another paragraph or lumped together with the general averments in a single paragraph.[34] The purpose is to allow the accused to fully prepare for his defense, precluding surprises during the trial.[35]

With the foregoing legal principles in mind, it is necessary then to determine whether the Information in this case sufficiently informed the accused of the accusation against him. To recall, the accusatory portion of the Information states:

> "That on or about the 15th day of October, 2007, in the municipality of Sta. Maria, province of Bulacan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a baseball bat and with intent to kill Alicia Mercado-Lusuriaga and Evelyn Santos, live-in partners, with evident premeditation, treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously attack, assault, hit them with the said baseball bat and **pour gasoline into their bodies and light them thereby causing upon them third degree burns which directly caused their instantaneous death and the burning of [the] victim's house.**
>
> Contrary to law."[36] (Emphasis and underscoring supplied)

A reading of the afore-quoted portion of the Information readily reveals that while the "use of fire" was not explicitly

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[32] *People of the Philippines v. Lab-eo*, 424 Phil. 482, 497 (2002).

[33] *Id.*

[34] *Id.* at 488.

[35] *Id.* at 497.

[36] *Rollo*, p. 3.

mentioned as a qualifying circumstance, the Information nevertheless narrate with sufficiency that Mercado was being accused of "causing x x x third degree burns [against the victims] which directly caused their instantaneous death." It escapes the mind of the Court how one could be accused of "causing x x x third degree burns" without necessarily saying that he or she used fire in the process.

The RTC and the CA thus correctly held that the crime committed was Murder instead of merely Homicide. Article 248 of the Revised Penal Code provides:

> ART. 248. *Murder*.— Any person who, not falling within the provisions of article 246 **shall kill another**, shall be guilty of murder and shall be punished by *reclusion perpetua* to death if committed with any of the following attendant circumstances:
>
> 1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
> 2. In consideration of a price, reward or promise.
> 3. **By means of** inundation, **fire**, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
> 4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or other public calamity.
> 5. With evident premeditation.
> 6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Emphasis and underscoring supplied)

The crime was therefore correctly qualified to Murder.

Third Issue: Appreciation of the Mitigating Circumstance of Voluntary Surrender

Mercado asserts that the RTC and the CA erred in not appreciating in his favor the mitigating circumstance of voluntary

surrender. He argues that because he did not resist when he was arrested by the *barangay tanod* shortly after Evelyn was brought to the hospital, then the mitigating circumstance should have been appreciated in his favor.

Mercado's argument is misplaced. Relevant is the ruling of the Court in *People v. Saul*:[37]

> x x x For voluntary surrender to mitigate the offense, the following elements must be present: (a) the offender has not actually been arrested; (b) the offender surrendered himself to a person in authority; and (c) the surrender must be voluntary. A surrender, to be voluntary must be spontaneous, *i.e.*, there must be an intent to submit oneself to authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses in capturing him. x x x[38]

In the present case, Mercado did not actually surrender. Instead, he simply did not offer any resistance when so arrested. The records of the case reveal that when Evelyn was transported to the hospital, Mercado stayed in a nearby house where he watched as their house was engulfed in flames.[39] While he was observing the fire, someone approached him and handcuffed him – to which act he did not resist.[40] In this connection, the Court quotes with approval the following ratiocination by the CA:

> Indeed, there was no spontaneity in the alleged surrender. It will be observed that accused-appellant had no conscious effort to surrender. In fact, had accused-appellant not been arrested, he would not have surrendered himself to the authorities. The mere fact that accused-appellant did not resist his arrest cannot be equated with voluntary surrender. For, as the Supreme Court has ruled, to be voluntary, a surrender must be spontaneous and deliberate; that is,

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[37] 423 Phil. 924 (2001).

[38] *Id.* at 936.

[39] *Rollo*, p. 15.

[40] *Id.*

there must be an intent to submit oneself unconditionally to the authorities.[41]

Imposable Penalty on Mercado

Although the Court affirms the conviction of Mercado, it nevertheless deems it proper to modify the penalty to be imposed on him. The RTC convicted him of the complex crime of Double Murder and imposed on him the penalty of *reclusion perpetua*.[42] The CA, on the other hand, modified the penalty and reasoned as follows:

> We, however, find that the penalty imposed by the trial court is inaccurate with the offense committed by the accused-appellant. He was convicted of the crime of Double Murder but the sanction, particularly the imprisonment imposed by the trial court, is only for a single crime of murder. Hence, We modify the penalty and sentence accused-appellant Patrick John Mercado to suffer the penalty of *Reclusion Perpetua* for each Murder he committed.[43]

The ruling of the CA is erroneous. The correct penalty on Mercado was imposed by the RTC as the crime committed is a complex crime, there being only a single criminal act that resulted in the commission of multiple crimes. Article 48 of the Revised Penal Code provides:

> ART. 48. *Penalty for complex crimes*.— When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

In *People v. Gaffud, Jr.*,[44] the accused therein burned the house of another person, thereby killing the latter and the latter's daughter. The Court therein held that the accused was guilty

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[41] *Id*. at 15-16.

[42] CA *rollo*, p. 61.

[43] *Rollo*, p. 21.

[44] 587 Phil. 521 (2008).

of the complex crime of Double Murder and ratiocinated as follows:

In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law as well as in the conscience of the offender. Hence, there is only one penalty imposed for the commission of a complex crime.

There are two kinds of complex crime. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other.

The classic example of the first of kind is when a single bullet results in the death of two or more persons. A different rule governs where separate and distinct acts result in a number killed. Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes.

In the landmark case ***People v. Guillen***, the Court held that the single act of throwing a grenade at President Roxas resulting in the death of another person and injuring four others produced the complex crime of murder and multiple attempted murders. Under Article 248 of the RPC, murder is committed when a person is killed by means of explosion. Applying Article 48 of the RPC, the penalty for the crime committed is death, the maximum penalty for murder, which is the graver offense.

More recently, in ***People v. Carpo et al***., we held that the single act of hurling a grenade into the bedroom of the victims causing the death of three persons and injuries to one person constituted the complex crime of multiple murder and attempted murder. Also, in ***People v. Comadre***, we held:

The underlying philosophy of complex crimes in the Revised Penal Code, which follows the *pro reo* principle, is intended to favor the accused by imposing a single penalty irrespective of the crimes committed. The rationale being, that the accused who commits two crimes with single criminal impulse demonstrates lesser perversity than when the crimes are committed by different acts and several criminal resolutions.

The single act by appellant of detonating a hand grenade may quantitatively constitute a cluster of several separate and distinct offenses, yet these component criminal offenses should be considered

only as a single crime in law on which a single penalty is imposed because the offender was impelled by a "single criminal impulse" which shows his lesser degree of perversity.

In light of these precedents, we hold that the single act of accused-appellant — burning the house of Manuel Salvador, with the main objective of killing the latter and his daughter, Analyn Salvador, resulting in their deaths — resulted in the complex crime of double murder. Under Article 248 of the RPC, murder is committed by means of fire. Since the maximum penalty imposed for murder was death, when the case was pending in the CA, the CA correctly imposed the penalty of death for the complex crime of double murder instead of the two death penalties imposed by the RTC for two counts of murder. In view, however, of the passage of Republic Act No. 9346 (otherwise known as "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*"), we reduce the penalty of death to *reclusion perpetua* with no eligibility for parole.[45] (Emphasis and underscoring supplied)

Applying the foregoing to the case at bar, the CA thus incorrectly modified the penalty to impose on Mercado two counts of *reclusion perpetua* because there were two victims. The Court must perforce modify the penalty once again to conform with Article 48 of the Revised Penal Code. Mercado is thus liable only for a single count of *reclusion perpetua* for both of the deaths of Evelyn and Alicia.

Finally, in view of the Court's ruling in *People v. Jugueta*,[46] the damages awarded in the questioned Decision are hereby modified to ₱100,000.00 each representing civil indemnity, moral damages, and exemplary damages, in addition to ₱50,000.00 representing temperate damages for each of the deaths of Evelyn and Alicia.

WHEREFORE, in view of the foregoing, the appeal is hereby **DENIED**. The Court **DECLARES** accused-appellant Patrick John Mercado y Anticla **GUILTY** of **DOUBLE MURDER**,

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[45] *Id*. at 533-535.

[46] 783 Phil. 806 (2016).

for which he is sentenced to suffer the penalty of *reclusion perpetua* without the eligibility for parole.[47] He is further ordered to pay each of the heirs of Evelyn Santos and Alicia Mercado-Lusuriaga the amounts of One Hundred Thousand Pesos (₱100,000.00) as civil indemnity, One Hundred Thousand Pesos (₱100,000.00) as moral damages, One Hundred Thousand Pesos (₱100,000.00) as exemplary damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr.,*[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 219491. October 17, 2018]

STEPHEN Y. KU, *petitioner, vs.* **RCBC SECURITIES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; THE NATURE OF AN ACTION, AS WELL AS WHICH COURT OR

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[47] 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."

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

BODY HAS JURISDICTION OVER IT, IS DETERMINED BASED ON THE ALLEGATIONS CONTAINED IN THE COMPLAINT OF THE PLAINTIFF.— The settled rule is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint, which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff. The averments in the complaint and the character of the relief sought are the ones to be consulted. Once vested by the allegations in the complaint, jurisdiction also remains vested, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.

2. MERCANTILE LAW; REPUBLIC ACT NO. 8799 (THE SECURITIES REGULATION CODE); INTRA-CORPORATE CONTROVERSIES; JURISDICTION OVER INTRA-CORPORATE CONTROVERSIES IS TRANSFERRED BY LAW FROM THE SECURITIES AND EXCHANGE COMMISSION TO THE REGIONAL TRIAL COURTS IN GENERAL, BUT THE AUTHORITY TO EXERCISE SUCH JURISDICTION IS GIVEN BY THE SUPREME COURT, IN THE EXERCISE OF ITS RULE-MAKING POWER UNDER THE CONSTITUTION, TO REGIONAL TRIAL COURTS WHICH ARE SPECIFICALLY DESIGNATED AS SPECIAL COMMERCIAL COURTS.— As it now stands, jurisdiction over the cases enumerated under Section 5 of PD 902-A, collectively known as intra-corporate controversies or disputes, now falls under the jurisdiction of the RTCs. x x x In short, jurisdiction over intra-corporate controversies is transferred by law (RA 8799) from the SEC to the RTCs in general, but the authority to exercise such jurisdiction is given by the Supreme Court, in the exercise of its rule-making power under the Constitution, to RTCs which are specifically designated as Special Commercial Courts. On the other hand, the cases enumerated under Section 19 of BP 129, as amended, are taken cognizance of by the RTCs in the exercise of their general jurisdiction. Thus, based on the allegations in petitioner's Complaint, in relation to the above provisions of law, there is no dispute that the case falls under the jurisdiction of the RTC. However, whether or not the RTC shall take cognizance of the case in the exercise

of its general jurisdiction, or as a special commercial court, is another matter. In resolving this issue, what needs to be determined, at the first instance, is the nature of petitioner's complaint.

3. ID.; ID.; ID.; THE TWO TESTS IN DETERMINING WHETHER A DISPUTE CONSTITUTES AN INTRA-CORPORATE CONTROVERSY ARE THE RELATIONSHIP TEST AND THE NATURE OF THE CONTROVERSY TEST; NOT ESTABLISHED IN CASE AT BAR.— In the case of *Medical Plaza Makati Condominium Corporation v. Cullen*, this Court held as follows: In determining whether a dispute constitutes an intra-corporate controversy, the Court uses two tests, namely, the relationship test and the nature of the controversy test. An intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. Thus, under the relationship test, the existence of any of the above intra-corporate relations makes the case intra-corporate. Under the nature of the controversy test, "the controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation." In other words, jurisdiction should be determined by considering both the relationship of the parties as well as the nature of the question involved. Applying the above tests, the Court finds, and so holds, that the case is not an intra-corporate dispute and, instead, is an ordinary civil action. There are no intra-corporate relations between the parties. Petitioner is neither a stockholder, partner, member or officer of respondent corporation. The parties' relationship is limited to that of an investor and a securities broker. Moreover, the questions involved neither pertain to the parties' rights and obligations under the Corporation Code, if any, nor to matters directly relating to the regulation of the corporation.

4. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PAYMENT OF INSUFFICIENT DOCKET FEES; WHERE THE PARTY DOES NOT DELIBERATELY INTEND TO DEFRAUD THE COURT IN PAYMENT OF DOCKET FEES, AND MANIFEST WILLINGNESS TO ABIDE BY THE RULES BY PAYING ADDITIONAL DOCKET FEES WHEN REQUIRED BY THE COURT, THE LIBERAL DOCTRINE AND NOT THE STRICT REGULATIONS WILL APPLY; APPLICATION IN CASE AT BAR.— With respect to petitioner's payment of insufficient docket fees, this Court's ruling in *The Heirs of the Late Ruben Reinoso, Sr. v. Court of Appeals, et al.*, is instructive, to wit: x x x in the more recent case of *United Overseas Bank v. Ros*, the Court explained that where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in *Sun Insurance Office, Ltd.*, and not the strict regulations set in *Manchester*, will apply. It has been on record that the Court, in several instances, allowed the relaxation of the rule on non-payment of docket fees in order to afford the parties the opportunity to fully ventilate their cases on the merits. x x x Indeed, this Court has held that the ruling in *Manchester* does not apply to cases where insufficient filing fees were paid based on the assessment made by the clerk of court, and there was no intention to defraud the government. It was further held that the filing of the complaint or appropriate initiatory pleading and the payment of the prescribed docket fee vest a trial court with jurisdiction over the subject matter or nature of the action. If the amount of docket fees paid is insufficient considering the amount of the claim, the clerk of court of the lower court involved or his duly-authorized deputy has the responsibility of making a deficiency assessment. The party filing the case will be required to pay the deficiency, but jurisdiction is not automatically lost. x x x In a number of cases, this Court has ruled that the plaintiff's payment of the docket fees based on the assessment made by the docket clerk negates bad faith or intent to defraud the government. There is, likewise, no dispute that, subsequently, when ordered by Branch 149 to pay additional docket fees corresponding to the value of the shares of stocks being recovered, petitioner immediately paid an additional sum of ₱464,535.83. Moreover, unlike in *Manchester* where the complainant specified in the body of

the complaint the amount of damages sought to be recovered but omitted the same in its prayer, petitioner in the instant case consistently indicated both in the body of his Complaint and in his prayer, the number of shares sought to be recovered, albeit without their corresponding values. The foregoing circumstances would show that there was no deliberate intent to defraud the court in the payment of docket fees.

APPEARANCES OF COUNSEL

Magno Sardillo Aguilar Litonjua Law Offices for petitioner.
Villaraza & Angangco for RSEC.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking the reversal and setting aside of the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), promulgated on October 9, 2014 and July 14, 2015, respectively, in CA-G.R. SP No. 132816. The assailed CA Decision reversed and set aside the: (1) September 12, 2013 Order[3] of the Regional Trial Court (*RTC*) of Makati City, Branch 63 which directed the re-raffle of the Complaint filed by petitioner Stephen Y. Ku; and (2) October 25, 2013 Order[4] of the RTC of Makati City, Branch 149, which denied respondent RCBC Securities, Inc.'s Motion to Dismiss and ordered petitioner to pay the docket fees based on the value of the shares of stocks which he prays to be returned to him.

The facts are as follows:

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[1] Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Mario V. Lopez and Ramon A. Cruz, concurring; Annex "B" to Petition, *rollo*, pp. 47-58.

[2] Annex "A" to Petition; *id.* at 45-46.

[3] Penned by Judge Tranquil P. Salvador, Jr.; *id.* at 89.

[4] Penned by Judge Cesar O. Untalan; *id.* at 90-94.

Respondent RCBC Securities, Inc. is a corporation duly organized and existing under the laws of the Philippines. It is primarily engaged in the brokerage business, specifically for the purpose of buying and selling any and all kinds of shares, bonds, debentures, securities, products, commodities, gold bullion, monetary exchange, and any and all other kinds of properties in the Philippines or in any foreign country. Petitioner Stephen Y. Ku, on the other hand, opened an account with respondent on June 5, 2007, for the purchase and sale of securities.

On February 22, 2013, petitioner filed with the RTC of Makati a Complaint for Sum of Money and Specific Performance with Damages against respondent. Pertinent portions of his allegations read as follows:

x x x x x x x x x

3. Sometime in June 2007, plaintiff [herein petitioner] opened a trade account with RSEC [herein respondent] for the purpose of buying and selling securities as evidenced by the Customer Account Information Form and Agreement dated 05 June 2007.

x x x x x x x x x

4. Unknown to plaintiff, the name of M.G. Valbuena ("MGV") was deliberately inserted beside the name of Ivan L. Zalameda as one of the agents **after** plaintiff completed and signed the Agreement.

5. As to when the fraudulent insertion was made, plaintiff has no idea. Plaintiff only discovered this anomaly when plaintiff recently requested for a copy of his Account Information.

6. In the course of plaintiff's trading transactions with RSEC, MGV represented herself as a Sales Director of RSEC, duly authorized to transact business on behalf of the latter.

x x x x x x x x x

7. With this representation, plaintiff continued to transact business with RSEC through MGV, on the honest belief that the latter **was acting for and in behalf of RSEC**.

8. In the beginning, plaintiff's dealings with RSEC through MGV went on smoothly.

9. Every time plaintiff authorized a trade, plaintiff would be furnished with a Trade Confirmation by RSEC. Having successfully and profitably managed plaintiff's account, or as so represented to plaintiff, MGV was able to gain the trust and confidence of plaintiff.

10. In addition to acting as broker for plaintiff's trading account, investment in ARPO was also successfully solicited by plaintiff.

11. ARPO, as represented to plaintiff, is an investment arm of RSEC that offers considerably higher interest rate of return as compared to any other financing company.

12. Thus, sometime in November 2007, plaintiff agreed to invest in ARPO funds, which continued to run for more than two (2) years, the total of which amounted to Php38,300,205.00. x x x.

13. Sometime in January 2012, it came to the knowledge of plaintiff that his account with RSEC was subject of mismanagement. MGV was blacklisted by RSEC due to numerous fraudulent and unauthorized transactions committed by the former. Worse, MGV allegedly was able to divert investments made by "high networth" clients of RSEC into some other accounts.

14. On 17 January 2012, plaintiff was furnished by RSEC of a copy of an undated audit report (sometimes referred to as "ledger") principally showing that the total claim of plaintiff with RSEC amounts to Php77,561,602.75

x x x x x x x x x

15. On 18 January 2012, plaintiff wrote RSEC informing the latter that simultaneous to RSEC's audit, plaintiff likewise is in the process of conducting an independent audit of his own account in order to validate the amount claimed by RSEC.

16. In the same letter, plaintiff made clear to RSEC that it has never authorized a discretionary account with MGV and requested for all documents relative to plaintiff's audit.

x x x x x x x x x

17. After audit, plaintiff has conclusively determined that there were FOUR HUNDRED SIXTY-SEVEN (467) unauthorized transactions in his account. A review of the said transactions would show that multiple buying and selling transactions on the same day were repeatedly done over a period of four (4) years.

18. Being unauthorized, plaintiff also never received any document confirming any of the said transactions. Worse, plaintiff was given and is in the possession of fabricated confirmation statements for trades he actually authorized, but were not, in reality executed.

19. After evaluation and audit, and after exclusion of all the unauthorized trades, plaintiff should have remaining cash in his trade account in the amount of Php992,970.78 and the following stock position under his trade account to date:

Stock Symbol	Qty
AGI	500,000
COL	50,000
EG	57,940
GERI	400,000
IP	50,000
KPP	400,000
LC	3,000,000
LR	100,000
MA	50,000,000
MEG	2,215,000
PA	3,100,000
SHNG	143
SLI	1,000,000

x x x x x x x x x

38. In summary, plaintiff's audit report would show that RSEC owes plaintiff the total amount of Php70,064,426.88 as of 31 October 2012, broken down as follows:

a. Php992,970.78, representing remaining cash in plaintiff's trade account;
b. Php15,166,251.10, representing unaccounted for and/or wrongfully credited payments to plaintiff's trade account;
c. Php38,300,205.00 representing total principal investment in ARPO; and
d. Php15,605,000.00 as unpaid ARPO interests as of 31 October 2012.

x x x x x x x x x

39. Deeply bothered by the turn of events, plaintiff wrote RSEC on 10 May 2012 and demanded payment for the said amounts. Plaintiff also demanded return of the shares of stocks identified in Paragraph 16 hereof.

x x x x x x x x x

40. However, despite the detailed presentation of plaintiff's payments to RSEC, RSEC, in its letter-reply dated 29 May 2012, only made categorical denials of its relationship with ARPO and failed to sufficiently explain what happened to plaintiff's account or where did all of plaintiff's money intended for ARPO go.

x x x x x x x x x

41. Not satisfied, plaintiff again wrote RSEC to reiterate its (sic) request for documents in support of RSEC's defense. Plaintiff also made it clear to RSEC that dealings of plaintiff with MGV were all made in trust and confidence and on honest belief that MGV was vested with apparent authority from RSEC to transact business on the latter's behalf.

x x x x x x x x x

42. After completing the audit report x x x, plaintiff sent a demand letter dated 11 January 2013 to RSEC, x x x.

43. Without any valid and justifiable reason, however, RSEC refused and still continues to refuse to heed plaintiff's demand.

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

Petitioner prayed for the payment of the amounts mentioned in Paragraph 38 of the Complaint as well as the shares of stocks enumerated in Paragraph 19 of the said Complaint. Petitioner also sought the recovery of treble damages, exemplary damages and attorney's fees.

The Complaint, docketed as Civil Case No. 13-171, was raffled-off to Branch 63, RTC of Makati.

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[5] *Rollo*, pp. 111-118.

On May 29, 2013, respondent filed a Motion to Dismiss[6] contending that: (1) the RTC of Makati did not acquire jurisdiction over the subject matter of the case because petitioner deliberately evaded the payment of the correct docket fees; (2) the Complaint stated no cause of action for its failure to state with particularity the circumstances constituting fraud, in violation of the Rules of Court, as well as for failing to allege the basis of petitioner's cause of action for the amounts claimed as principal investment and unpaid interest in ARPO, an investment arm owned and managed by respondent; and (3) petitioner has waived, abandoned or otherwise extinguished his claims after he failed to raise any objection, with respect to his statements of account, within the prescriptive period to do so under the parties' agreement.

Petitioner filed his Comment/Opposition to the Motion to Dismiss.[7] Subsequently, respondent filed its Reply.[8]

After conducting several hearings on the Motion to Dismiss, the RTC of Makati, Branch 63, issued its questioned Order dated September 12, 2013, to wit:

x x x x x x x x x

After going over plaintiff's [herein petitioner's] Complaint and defendant's [herein respondent's] Motion to Dismiss and the Reply that followed, the Court is of the considered view that this case involves trading of securities. Consequently, the case should be heard and tried before a Special Commercial Court.

Accordingly, the Court's Branch Clerk of Court is forthwith directed to forward the entire record of the case to the Office of the Clerk of Court for re-raffle.

SO ORDERED.

x x x x x x x x x.[9]

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[6] *Id.* at 241-273.

[7] *Id.* at 297-306.

[8] *Id.* at 307-339.

[9] *Id.* at 89.

The case was, subsequently, re-raffled to Branch 149 of the RTC of Makati.

Thereafter, in its Order[10] dated October 25, 2013, the RTC of Makati, Branch 149, denied the Motion to Dismiss for lack of merit. It held that petitioner's payment of insufficient docket fees does not warrant the dismissal of the Complaint and that the trial court still acquires jurisdiction over the case subject to the payment of the deficiency assessment. The RTC, thus, ordered petitioner "to pay the docket fees on the value of the shares of stocks being prayed to be returned to him, within thirty (30) days from receipt" of the said Order. As to petitioner's alleged failure to state a cause of action, Branch 149 ruled that an examination of the Complaint would show that "certain allegations of fraud therein [are] sufficiently pleaded x x x." With respect to the alleged waiver, abandonment or extinguishment of petitioner's claims, Branch 149 held that the parties presented conflicting assertions, the resolution of which should be properly made in a full-blown trial.

Aggrieved, respondent filed with the CA a petition for *certiorari* under Rule 65 of the Rules of Court, imputing grave abuse of discretion upon Judges Tranquil P. Salvador, Jr. and Cesar O. Untalan by reason of their issuance of the said Orders in their respective capacities as Presiding Judges of the RTC of Makati City, Branches 63 and 149.

On October 9, 2014, the CA promulgated its assailed Decision by disposing as follows:

WHEREFORE, premises considered, the instant Petition for *Certiorari* is **GRANTED** and the assailed Orders dated 12 September 2013 and 25 October 2013 issued by the Regional Trial Court of Makati City, Branches 63 and 149, respectively, are hereby **REVERSED** and **SET ASIDE**. Concomitantly, Civil Case No. 13-171, entitled *Stephen K. Yu (sic) v. RCBC Securities, Inc.* is **DISMISSED** for lack of jurisdiction. Finally, the Urgent Verified Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction is **DENIED** for being moot and academic.

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[10] *Id.* at 90-94.

SO ORDERED.[11]

The CA held that, based on the language of the Order of September 12, 2013, the RTC of Makati, Branch 63, has acknowledged that it has no jurisdiction over the subject matter of the case; and having acknowledged its lack of jurisdiction, Branch 63 should have dismissed the Complaint, instead of having it re-raffled to another Branch. Thus, the CA ruled that Judge Salvador, Jr. of Branch 63 committed grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the re-raffle of the case. The CA further ruled that, as a consequence, "all the proceedings undertaken [by Branch 149 of the same RTC] under Judge Untalan, who received the case after the questionable re-raffle, are utterly null and void, including, but not limited to, the issuance of the [Order dated October 25, 2013]."

Petitioner filed a Motion for Reconsideration, but the CA denied it in its Resolution dated July 14, 2015.

Hence, the present petition based on the following Assignment of Errors:

A.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT FOUND THAT THE ORDERS WERE ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS [OF] JURISDICTION.

B.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT FOUND THAT THE HONORABLE JUDGE TRANQUIL SALVADOR, JR. ACKNOWLEDGED THE ABSENCE OF JURISDICTION OF HIS REGULAR COURT OVER THE CASE.

C.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT FOUND THAT BOTH HONORABLE TRIAL COURTS,

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[11] *Id.* at 47-58. (Emphasis in the original)

BRANCHES 63 AND 149, HAVE NO JURISDICTION OVER THE INSTANT CASE DUE TO THE INSUFFICIENT PAYMENT OF DOCKET FEES.

D.

THE HONORABLE COURT OF APPEALS GRIEVOUSLY ERRED WHEN IT FOUND THAT A MOTION FOR RECONSIDERATION BEFORE THE FILING OF THIS PETITION CAN BE DISPENSED WITH.[12]

The issue which confronts this Court in the instant case is whether the CA erred in granting herein respondent's petition for *certiorari*, and reversing and setting aside the September 12, 2013 and October 25, 2013 Orders of the RTC of Makati City, Branches 63 and 149, respectively.

The petition is meritorious.

The basic question that should be resolved is: which court has jurisdiction over the complaint filed by petitioner?

The settled rule is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint, which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action.[13] The nature of an action, as well as which court or body has jurisdiction over it, is determined based on the allegations contained in the complaint of the plaintiff.[14] The averments in the complaint and the character of the relief sought are the ones to be consulted.[15] Once vested by the allegations in the complaint, jurisdiction also remains vested, irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[16]

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

[13] *Padlan v. Sps. Dinglasan*, 707 Phil. 83, 91 (2013); *De Vera, et al. v. Santiago, et al.*, 761 Phil. 90, 101 (2015).

[14] *Id.*; *Id.*

[15] *Id.*; *Id.*

[16] *Id.*; *Id.*

In the present case, the provisions of law which need to be examined are Republic Act No. 8799[17] (*RA 8799*), Presidential Decree No. 902-A[18] (*PD 902-A*) and Batas Pambansa Blg. 129[19] (*BP 129*), as amended by Republic Act No. 7691 (*RA 7691*).

Section 5.2 of RA 8799 provides:

The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over the cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of 30 June 2000 until finally disposed.

In relation to the above provision, Section 5 of PD 902-A states that:

In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving.

(a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

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[17] The Securities Regulation Code.

[18] The Reorganization Act of 1980.

[19] *Reorganization Of The Securities And Exchange Commission With Additional Power And Placing The Said Agency Under The Administrative Supervision Of The Office Of The President.*

(b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity; and

(c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

On the other hand, Section 19(1) and (8) of BP 129, as amended, provides:

> Regional Trial Courts shall exercise exclusive original jurisdiction:
>
> (1) In all civil actions in which the subject of the litigation is incapable of pecuniary estimation;
>
> x x x x x x x x x
>
> (8) In all other cases in which the demand, exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs or the value of the property in controversy exceeds Three hundred thousand pesos (₱300,000.00) or, in such other cases in Metro Manila, where the demand exclusive of the above-mentioned items exceeds Four hundred thousand pesos (₱400,000.00).

As it now stands, jurisdiction over the cases enumerated under Section 5 of PD 902-A, collectively known as intra-corporate controversies or disputes, now falls under the jurisdiction of the RTCs.

In this regard, it is worthy to reiterate this Court's ruling in *Gonzales, et al. v. GJH Land, Inc., et al.*[20] which characterizes and explains the transfer of jurisdiction of all cases enumerated under Section 5 of PD 902-A from the Securities and Exchange Commission (*SEC*) to the RTCs. In the said Decision, which was promulgated subsequent to the issuance of the questioned

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[20] 772 Phil. 483 (2015).

RTC Orders in the present case, this Court made a distinction between a court's "subject matter jurisdiction" and its "exercise of jurisdiction." Pertinent portions of the said ruling provide, thus:

As a basic premise, let it be emphasized that a court's acquisition of jurisdiction over a particular case's subject matter is different from incidents pertaining to the exercise of its jurisdiction. Jurisdiction over the subject matter of a case is **conferred by law**, whereas a court's **exercise of jurisdiction**, unless provided by the law itself, is governed by the Rules of Court or by the orders issued from time to time by the Court. In *Lozada v. Bracewell*, it was recently held that **the matter of whether the RTC resolves an issue in the exercise of its general jurisdiction or of its limited jurisdiction as a special court is only a matter of procedure and has nothing to do with the question of jurisdiction**.

Pertinent to this case is RA 8799 which took effect on August 8, 2000. By virtue of said law, jurisdiction over cases enumerated in Section 5 of Presidential Decree No. 902-A was transferred from the Securities and Exchange Commission (SEC) to **the RTCs, being court of general jurisdiction**. x x x

x x x x x x x x x

The legal attribution of **Regional Trial Courts as courts of general jurisdiction** stems from Section 19 (6), Chapter II of Batas Pambansa Bilang (BP) 129, known as "The Judiciary Reorganization Act of 1980":

x x x x x x x x x

Therefore, one must be disabused of the notion that the transfer of jurisdiction was made only in favor of particular RTC branches, and not the RTCs in general.

x x x x x x x x x

x x x Harkening back to the statute that had conferred subject matter jurisdiction, two things are apparently clear: (*a*) that the SEC's **subject matter jurisdiction** over intra-corporate cases under Section 5 of Presidential Decree No. 902-A was transferred to the Courts of general jurisdiction, *i.e.*, the appropriate Regional Trial Courts; and (*b*) the designated branches of the Regional Trial Court, as per the rules promulgated by the Supreme Court, shall **exercise jurisdiction** over such cases. x x x.

x x x x x x x x x

For further guidance, the Court finds it apt to point out that the same principles **apply to the inverse situation of ordinary civil cases filed before the proper RTCs but wrongly raffled to its branches designated as Special Commercial Courts.** In such a scenario, the **ordinary civil case should then be referred to the Executive Judge for re-docketing as an ordinary civil case; thereafter, the Executive Judge should then order the raffling of the case to all branches of the same RTC, subject to limitations under existing internal rules, and the payment of the correct docket fees in case of any difference.** Unlike the limited assignment raffling of a commercial case only to branches designated as Special Commercial Courts in the scenarios stated above, the re-raffling of an ordinary civil case in this instance to all courts is permissible due to the fact that a particular branch which has been designated as a Special Commercial Court does not shed the RTC's general jurisdiction over ordinary civil cases under the imprimatur of statutory law, *i.e.*, Batas Pambansa Bilang (BP) 129. To restate, the designation of Special Commercial Courts was merely intended as a procedural tool to expedite the resolution of commercial cases in line with the court's **exercise of jurisdiction**. This designation was not made by statute but only by an internal Supreme Court rule under its authority to promulgate rules governing matters of procedure and its constitutional mandate to supervise the administration of all courts and the personnel thereof. Certainly, an internal rule promulgated by the Court cannot go beyond the commanding statute. But as a more fundamental reason, the designation of Special Commercial Courts is, to stress, merely an incident related to the court's exercise of jurisdiction, which, as first discussed, is distinct from the concept of jurisdiction over the subject matter. The RTC's general jurisdiction over ordinary civil cases is therefore not abdicated by an internal rule streamlining court procedure.

x x x x x x x x x.[21]

In short, jurisdiction over intra-corporate controversies is transferred by law (RA 8799) from the SEC to the RTCs in general, but the authority to exercise such jurisdiction is given by the Supreme Court, in the exercise of its rule-making power under the Constitution, to RTCs which are specifically designated

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[21] *Id.* at 505-517. (Emphasis supplied)

as Special Commercial Courts. On the other hand, the cases enumerated under Section 19 of BP 129, as amended, are taken cognizance of by the RTCs in the exercise of their general jurisdiction.

Thus, based on the allegations in petitioner's Complaint, in relation to the above provisions of law, there is no dispute that the case falls under the jurisdiction of the RTC. However, whether or not the RTC shall take cognizance of the case in the exercise of its general jurisdiction, or as a special commercial court, is another matter. In resolving this issue, what needs to be determined, at the first instance, is the nature of petitioner's complaint. Is it an ordinary civil action for collection, specific performance and damages as would fall under the jurisdiction of regular courts or is it an intra-corporate controversy or of such nature that it is required to be heard and tried by a special commercial court?

Petitioner contends that the allegations in his Complaint indicate that it is an action for collection of a sum of money and specific performance with damages and, as such, it falls under the general jurisdiction of the RTC.

The CA, on the other hand, did not directly resolve the issue as to the nature of the complaint and, instead, proceeded to decide the case by working on the premise that Branch 63 has acknowledged its lack of jurisdiction over the subject matter of petitioner's complaint and, as such, should have dismissed the same and not order its re-raffle to another branch.

The Court agrees with petitioner.

In the case of *Medical Plaza Makati Condominium Corporation v. Cullen*,[22] this Court held as follows:

> In determining whether a dispute constitutes an intra-corporate controversy, the Court uses two tests, namely, the relationship test and the nature of the controversy test.

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[22] 720 Phil. 732 (2013).

An intra-corporate controversy is one which pertains to any of the following relationships: (1) between the corporation, partnership or association and the public; (2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; (3) between the corporation, partnership or association and its stockholders, partners, members or officers; and (4) among the stockholders, partners or associates themselves. Thus, under the relationship test, the existence of any of the above intra-corporate relations makes the case intra-corporate.

Under the nature of the controversy test, "the controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation." In other words, jurisdiction should be determined by considering both the relationship of the parties as well as the nature of the question involved.[23]

Applying the above tests, the Court finds, and so holds, that the case is not an intra-corporate dispute and, instead, is an ordinary civil action. There are no intra-corporate relations between the parties. Petitioner is neither a stockholder, partner, member or officer of respondent corporation. The parties' relationship is limited to that of an investor and a securities broker. Moreover, the questions involved neither pertain to the parties' rights and obligations under the Corporation Code, if any, nor to matters directly relating to the regulation of the corporation.

On the basis of the foregoing, since the Complaint filed by petitioner partakes of the nature of an ordinary civil action, it is clear that it was correctly raffled-off to Branch 63. Hence, it is improper for it (Branch 63) to have ordered the re-raffle of the case to another branch of the Makati RTC. Nonetheless, the September 12, 2013 Order of Branch 63, although erroneous, was issued in the valid exercise of the RTC's jurisdiction. Such mistaken Order can, thus, be considered as a mere procedural lapse which does not affect the jurisdiction which the RTC of Makati had already acquired. Moreover, while designated as

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[23] *Id.* at 742-743.

a Special Commercial Court, Branch 149, to which it was subsequently re-raffled, retains its general jurisdiction to try ordinary civil cases such as petitioner's Complaint. In addition, after its re-raffle to Branch 149, the case remained docketed as an ordinary civil case. Thus, the Order dated October 12, 2013 was, likewise issued by Branch 149 in the valid exercise of the RTC's jurisdiction. In sum, it is error to conclude that the questioned Orders of Branches 63 and 149 are null and void on the ground of lack of jurisdiction, because, in fact, both branches of the Makati RTC have jurisdiction over the subject matter of petitioner's Complaint.

Hence, considering that the RTC of Makati has jurisdiction over the subject matter of petitioner's complaint, and that Branch 149 continued and continues to exercise jurisdiction over the case during the pendency of the proceedings leading to this petition and, thus, has presumably conducted hearings towards the resolution of petitioner's complaint, this Court, in the interest of expediency and in promoting the parties' respective rights to a speedy disposition of their case, finds it proper that Civil Case No. 13-171 should remain with Branch 149, instead of being remanded to Branch 63 or re-raffled anew among all courts of the same RTC.

With respect to petitioner's payment of insufficient docket fees, this Court's ruling in *The Heirs of the Late Ruben Reinoso, Sr. v. Court of Appeals, et al.*,[24] is instructive, to wit:

> The rule is that payment in full of the docket fees within the prescribed period is mandatory. In *Manchester v. Court of Appeals* [233 Phil 579, (1987)], it was held that a court acquires jurisdiction over any case only upon the payment of the prescribed docket fee. The strict application of this rule was, however, relaxed two (2) years after in the case of *Sun Insurance Office, Ltd. v. Asuncion*, wherein the Court decreed that where the initiatory pleading is not accompanied by the payment of the docket fee, the court may allow payment of the fee within a reasonable period of time, but in no case beyond the applicable prescriptive or reglementary period. This ruling was

[24] 669 Phil. 272 (2011).

made on the premise that the plaintiff had demonstrated his willingness to abide by the rules by paying the additional docket fees required. Thus, in the more recent case of *United Overseas Bank v. Ros*, the Court explained that where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in *Sun Insurance Office, Ltd.*, and not the strict regulations set in *Manchester*, will apply. It has been on record that the Court, in several instances, allowed the relaxation of the rule on non-payment of docket fees in order to afford the parties the opportunity to fully ventilate their cases on the merits. In the case of *La Salette College v. Pilotin*, the Court stated:

> Notwithstanding the mandatory nature of the requirement of payment of appellate docket fees, we also recognize that its strict application is qualified by the following: *first,* failure to pay those fees within the reglementary period allows only discretionary, not automatic, dismissal; *second*, such power should be used by the court in conjunction with its exercise of sound discretion in accordance with the tenets of justice and fair play, as well as with a great deal of circumspection in consideration of all attendant circumstances.

While there is a crying need to unclog court dockets on the one hand, there is, on the other, a greater demand for resolving genuine disputes fairly and equitably, for it is far better to dispose of a case on the merit which is a primordial end, rather than on a technicality that may result in injustice.[25]

Indeed, this Court has held that the ruling in *Manchester* does not apply to cases where insufficient filing fees were paid based on the assessment made by the clerk of court, and there was no intention to defraud the government.[26] It was further held that the filing of the complaint or appropriate initiatory pleading and the payment of the prescribed docket fee vest a trial court with jurisdiction over the subject matter or nature of

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[25] *Id.* at 280-281. (Citations omitted)

[26] *Fil-Estate Golf and Development, Inc. v. Navarro*, 553 Phil. 48, 57 (2007).

the action.[27] If the amount of docket fees paid is insufficient considering the amount of the claim, the clerk of court of the lower court involved or his duly-authorized deputy has the responsibility of making a deficiency assessment.[28] The party filing the case will be required to pay the deficiency, but jurisdiction is not automatically lost.[29]

In the present case, the Court does not agree with the CA when it ruled that "the intention of [petitioner] Ku to evade payment of the correct filing fees[,] if not to mislead the docket clerk in the assessment of the filing fees[,] is manifest." The fact alone that petitioner failed to indicate in the body of his Complaint as well as in his prayer, the value of the shares of stocks he wishes to recover from respondent is not sufficient proof of a deliberate intent to defraud the court in the payment of docket fees. On the contrary, there is no dispute that upon filing of his Complaint, petitioner paid docket fees amounting to ₱1,465,971.41, which was based on the assessment made by the clerk of court. In a number of cases,[30] this Court has ruled that the plaintiff's payment of the docket fees based on the assessment made by the docket clerk negates bad faith or intent to defraud the government. There is, likewise, no dispute that, subsequently, when ordered by Branch 149 to pay additional docket fees corresponding to the value of the shares of stocks being recovered, petitioner immediately paid an additional sum of ₱464,535.83. Moreover, unlike in *Manchester* where the complainant specified in the body of the complaint the amount of damages sought to be recovered but omitted the same in its prayer, petitioner in the instant case consistently indicated both in the body of his Complaint and in his prayer, the number of shares sought to be recovered, albeit without their corresponding

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[27] *Id.* at 58.

[28] *Id.*

[29] *Id.*

[30] *Intercontinental Broadcasting Corporation v. Hon. Legasto, et al.*, 521 Phil. 469, 480 (2006); *Fedman Development Corporation v. Agcaoili*, 672 Phil. 20, 30 (2011); *Lu v. Lu Ym, Sr., et al.*, 585 Phil. 251, 276 (2008).

values. The foregoing circumstances would show that there was no deliberate intent to defraud the court in the payment of docket fees.

WHEREFORE, the instant petition for review on *certiorari* is **GRANTED**. The Decision and Resolution of the Court of Appeals promulgated on October 9, 2014 and July 14, 2015, respectively, in CA-G.R. SP No. 132816, are **REVERSED and SET ASIDE**. Civil Case No. 13-171, entitled *Stephen Y. Ku v. RCBC Securities, Inc.*, is hereby **REINSTATED** and the Regional Trial Court of Makati City, Branch 149, is **DIRECTED** to **PROCEED WITH THE HEARING** of the case, with utmost dispatch, until its termination.

SO ORDERED.

Leonen, Reyes, J. Jr., and *Hernando, JJ.*, concur.

Gesmundo, J., on vacation leave.

SECOND DIVISION

[G.R. No. 219548. October 17, 2018]

GERARDA H. VILLA, *petitioner, vs.* **STANLEY FERNANDEZ, FLORENTINO AMPIL, JR., and NOEL CABANGON,** *respondents.*

SYLLABUS

REMEDIAL LAW; CRIMINAL PROCEDURE; RIGHTS OF THE ACCUSED; RIGHT TO HAVE A SPEEDY, IMPARTIAL, AND PUBLIC TRIAL; THE RIGHT TO SPEEDY TRIAL IS DEEMED VIOLATED WHEN THE PROCEEDING IS ATTENDED BY VEXATIOUS, CAPRICIOUS AND OPPRESSIVE DELAYS.—

> An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2) of Article III of the 1987 Constitution. Its salutary objective being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his or her guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he or she may interpose. Thus, the right to speedy trial is deemed violated when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed to elapse without the party having one's case tried. Equally applicable is the balancing test used to determine whether a person has been denied the right to speedy trial, in which the conduct of both the prosecution and the defendant is weighed, and such factors as length of the delay, reason for the delay, the assertion or non-assertion of the right, and prejudice resulting from the delay, are considered.

APPEARANCES OF COUNSEL

Baterina Baterina Casals Lozada & Tiblani Law Office for petitioner.

M.M. Lazaro & Associates for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before us is a Petition for Review on Certiorari[1] filed by petitioner Gerarda H. Villa (Villa) seeking to reverse the Decision[2] dated 13 February 2015 and the Resolution[3] dated

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[1] *Rollo*, pp. 28-76.

[2] *Id*. at 11-23. Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Magdangal M. de Leon and Jane Aurora C. Lantion concurring.

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

23 July 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 127891, which dismissed Criminal Case No. C-38340 against respondents Stanley Fernandez (Fernandez), Florentino Ampil, Jr.[4] (Ampil), and Noel Cabangon (Cabangon).

The Facts

The present case stemmed from the death of Leonardo "Lenny" H. Villa, a neophyte-participant at the initiation rites of the Aquila Legis Fraternity (Aquila) in 1991.

Because of his death, an Amended Information charging 35 members of the Aquila with the crime of Homicide was filed on 15 November 1991. Out of the 35 members, 26 members were charged with homicide in Criminal Case No. C-38340(91), while 9 members were charged with homicide in Criminal Case No. C-38340. The 26 members were jointly tried, while the trial against the remaining 9 members was held in abeyance.

After the promulgation of the decision against the 26 members who were tried separately, the Regional Trial Court of Caloocan City (RTC), Branch 121, ordered for: (a) the issuance of warrants of arrest against five of the nine members, namely: Enrico de Vera III (de Vera), Anselmo Adriano (Adriano), Marcus Joel Ramos (Ramos), Fernandez, and Cabangon; and (b) the arraignment of four of the nine members, namely: Crisanto Saruca, Jr. (Saruca), Manuel Escalona II (Escalona), Reynaldo Concepcion (Concepcion), and Ampil on 24 November 1993.[5] A few days after, all of the nine members entered a plea of not guilty.

On 5 August 2002, the RTC Branch 130 granted the Motion to Dismiss Criminal Case No. C-38340 against Concepcion, upon finding that the failure of the prosecution to prosecute the case for an unreasonable period of time violated his right to speedy trial.[6]

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[4] Sometimes referred to as "Florentino Ampil" in the records.

[5] *Rollo*, p. 250.

[6] *Id*. at 329-330.

On the other hand, on 29 October 2003, the RTC Branch 130 denied the separate Motions to Dismiss filed by Saruca, Escalona, and Adriano. On 18 January 2005, the RTC Branch 130 also denied the Motion to Dismiss filed by Ramos. The RTC Branch 130 reasoned out that the trial against the remaining eight members could now proceed, since the prosecution could already obtain the original records of the case from the CA, which already decided the appeal of the 26 members.[7] Upon denial of their motions to dismiss, Ramos, Saruca, Escalona, and Adriano appealed to the CA.

Meanwhile, on 8 March 2005, the RTC Branch 130 denied: (1) the "Motion to Quash Amended Information" filed by Ampil on 10 October 1994; and (2) the "Urgent Omnibus Motion (a) To Adopt the Motion to Quash Amended Information of Accused Florentino L. Ampil; and (b) To Quash Amended Information" filed by Fernandez on 19 October 1994.[8]

On 25 October 2006, the CA granted the appeal of Ramos, Saruca, Escalona, and Adriano and dismissed Criminal Case No. C-38340 against them after finding that their right to speedy trial was violated.

On 5 December 2006, Fernandez, Ampil, and Cabangon filed a Joint Motion to Dismiss[9] with the RTC Branch 130, alleging that: (1) their constitutional right to a speedy trial was violated because the suit has been pending for more than 15 years, or since the filing of the Amended Information on 15 November 1991; (2) the CA's Decision dismissing Criminal Case No. C-38340 against Ramos, Saruca, Escalona, and Adriano due to the violation of their right to speedy trial should also apply to them because they are similarly situated with Ramos, Saruca, Escalona, and Adriano; and (3) their participation in the initial stages of the trial did not preclude the filing of a motion to dismiss on the ground of violation of their right to speedy trial.

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[7] *Id*. at 333.

[8] *Id*. at 257.

[9] *Id*. at 123-154.

In its Comment and/or Opposition,[10] the private prosecutor alleged that: (1) Fernandez, Ampil, and Cabangon are not similarly situated with Ramos, Saruca, Escalona, and Adriano, because they only raised the alleged violation of their right to speedy trial after the promulgation of the CA Decision dismissing Criminal Case No. C-38340 against Ramos, Saruca, Escalona, and Adriano; and (2) considering that Fernandez, Ampil and Cabangon did not promptly raise the issue of the alleged violation of their right to speedy trial, they are deemed to have waived and abandoned their right.

On 1 February 2012, the Court, in *Villareal v. People of the Philippines (Villareal)*,[11] convicted 5 of the 26 members of Aquila charged in Criminal Case No. C-3 8340(91) with reckless imprudence resulting in homicide, and affirmed the acquittal of 20 of the 26 members. The case against one of the 26 members was closed and terminated due to his death during the pendency of the case. In the same case, the Court affirmed the dismissal of Criminal Case No. C-38340 against Ramos, Saruca, Escalona, and Adriano due to violation of the right to speedy trial.[12]

The Decision of the RTC

Meanwhile, on 9 January 2012, the RTC Branch 130 issued an Order denying the Joint Motion to Dismiss filed by Fernandez, Ampil, and Cabangon.

The RTC Branch 130 explained that the following incidents caused the slow progress of Criminal Case No. C-38340: (1) Presiding Judge Jaime T. Hamoy (Judge Hamoy), who handled the case, was dismissed from the service; (2) while Acting Presiding Judge Luisito Sardillo (Judge Sardillo) continued the proceedings of the case, nothing much was accomplished as he had to attend to both the proceedings in this sala as well

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[10] *Id*. at 155-172.

[11] 680 Phil. 527 (2012).

[12] *Id*. at 607-608.

as that of in his own sala; (3) another accused in this case filed a petition for certiorari before the CA, and the CA issued a restraining order enjoining the trial court from proceeding with the hearing of the case; and (4) the private prosecutor filed a Motion for Transfer of Trial Venue and Motion for Inhibition. Finding that the pending incidents were already resolved, the RTC Branch 130 held that it can now continue with the trial of the case. The dispositive portion of its Order reads:

> WHEREFORE, premises considered, the Motion to Dismiss filed by accused Farley (sic) Ampil, Stanley Fernandez and Noel Cabangon is hereby DENIED for lack of merit. The Motion for Inhibition filed by the Private Prosecutor is likewise ordered DENIED for lack [of] merit.
>
> In the meantime the continuation of the prosecution evidence is hereby set on February 9 and 24, and March 2, 9, and 23, 2012 at 8:30 o'clock in the morning.
>
> Notify all the parties concerned thru the Sheriff of this Court with proper return.
>
> SO ORDERED.[13]

Thereafter, the RTC Branch 130, in another Order[14] dated 18 September 2012, denied the Motion for Partial Reconsideration filed by Fernandez, Ampil, and Cabangon.

The Decision of the CA

In a Decision dated 13 February 2015, the CA reversed the findings of the RTC Branch 130 and dismissed Criminal Case No. C-38340 against Fernandez, Ampil, and Cabangon. The CA held that the RTC Branch 130 committed grave abuse of discretion in denying the Joint Motion to Dismiss filed by Fernandez, Ampil, and Cabangon, because it failed to recognize and uphold their constitutional right to speedy trial. The CA found that the delays in the proceedings against Fernandez,

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[13] *Rollo*, p. 175.

[14] *Id.* at 188.

Ampil, and Cabangon were unjustified and not attributable to them. The CA also held that their active participation in the initial stages of trial was not deemed a waiver of their right to speedy trial.

The CA also found that Fernandez, Ampil, and Cabangon are similarly situated with Ramos, Saruca, Escalona, and Adriano, since they all experienced the same delay in the proceedings in Criminal Case No. C-38340. Thus, since the Court in *Villareal* already dismissed Criminal Case No. C-38340 against Ramos, Saruca, Escalona, and Adriano for violation of their right to speedy trial, Criminal Case No. C-38340 against Fernandez, Ampil, and Cabangon should also be dismissed applying the principle of equal protection of the law.

In a Resolution dated 23 July 2015, the CA denied Villa's motion for reconsideration, upon finding that there is no valid ground to modify, reverse, or set aside its decision. The CA also held that Villa has no personality to move for a reconsideration, because it is only the Solicitor General who may bring or defend actions on behalf of the State in all criminal proceedings before the appellate courts.

The Issues

Villa raises the following issues for resolution:

I.

WITH ALL DUE RESPECT, THE COURT OF APPEALS COMMITTED GRAVE, SERIOUS AND REVERSIBLE ERRORS IN FINDING THAT THE DELAY IN THE PROCEEDINGS IN CRIMINAL CASE NO. 38340 IS OF SUCH NATURE THAT VIOLATES THE RIGHT OF RESPONDENTS TO SPEEDY TRIAL.

II.

WITH ALL DUE RESPECT, THE COURT OF APPEALS COMMITTED GRAVE, SERIOUS AND REVERSIBLE ERRORS IN FINDING THAT RESPONDENTS ARE SIMILARLY SITUATED WITH THEIR FORMER CO-ACCUSED REYNALDO CONCEPCION, MANUEL ESCALONA II, MARCUS JOEL RAMOS, CRISANTO SARUCA, JR., AND ANSELMO ADRIANO, WHOSE CASES, IN CRIMINAL CASE NO.

C-38340, WERE DISMISSED BY THE COURT OF APPEALS IN ITS DECISION IN CA G.R. S.P. NO. 89060 AND S.P. NO. 901532, ON THE GROUND OF VIOLATION OF THEIR RIGHT TO SPEEDY TRIAL.[15]

The Ruling of the Court

We do not find merit in the petition.

An accused's right to "have a speedy, impartial, and public trial" is guaranteed in criminal cases by Section 14(2) of Article III of the 1987 Constitution.[16] Its salutary objective being to assure that an innocent person may be free from the anxiety and expense of a court litigation or, if otherwise, of having his or her guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he or she may interpose.[17] Thus, the right to speedy trial is deemed violated when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured; or when without cause or justifiable motive a long period of time is allowed to elapse without the party having one's case tried.[18] Equally applicable is the balancing test used to determine whether a person has been denied the right to speedy trial, in which the

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[15] *Id*. at 46-47.

[16] Section 14(2) of the 1987 Constitution of the Philippines states: "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable."

[17] *Almeda v. Office of the Ombudsman*, 791 Phil. 129, 143 (2016), citing *Coscolluela v. Sandiganbayan*, 714 Phil. 55 (2013); *Tan v. People of the Philippines*, 604 Phil. 68, 78-79 (2009).

[18] *Almeda v. Office of the Ombudsman*, *supra*, citing *Gonzales v. Sandiganbayan*, 276 Phil. 323 (1991).

conduct of both the prosecution and the defendant is weighed, and such factors as length of the delay, reason for the delay, the assertion or non-assertion of the right, and prejudice resulting from the delay, are considered.[19]

In *Villareal*, we held that the right to speedy trial of Ramos, Saruca, Escalona, and Adriano was violated, because the prosecution failed to comply with the Orders of the trial court requiring it to secure certified true copies of the records of the case from the CA and there was no action at all on the part of the trial court for a period of almost seven years. We also pointed out that: "on 10 January 1992, the final amended Information was filed against Escalona, Ramos, Saruca, Ampil, S. Fernandez, Adriano, Cabangon, Concepcion, and De Vera. On 29 November 1993, they were all arraigned. Unfortunately, the initial trial of the case did not commence until 28 March 2005 or almost 12 years after arraignment."[20]

In the present petition, Villa insists that the right to speedy trial of Fernandez, Ampil, and Cabangon was not violated because the reasons for the delay were attributable to them, and they failed to timely invoke their right, unlike Ramos, Saruca, Escalona, and Adriano.

Contrary to Villa's assertion, the CA's ruling, as supported by the records, reveals that the following circumstances delayed the proceedings against Fernandez, Ampil, and Cabangon: (1) the prosecution failed to comply with the Order of the RTC Branch 130 dated 21 September 1995, reiterated in another Order dated 27 December 1995, requiring it to secure the records of Criminal Case No. 38340(91) from the CA; (2) from Ampil's and Cabangon's arraignment on 29 November 1993 and Fernandez's arraignment on 3 December 1993, the initial trial of the case commenced only on 28 March 2005, or more than 11 years later; (3) the RTC Branch 130 resolved Ampil's motion

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[19] *Id*.; *Tan v. People of the Philippines*, *supra*, at 80, citing *Corpuz v. Sandiganbayan*, 484 Phil. 899 (2004).

[20] *Supra* note 11, at 554.

to quash filed on 10 October 1994, and Fernandez's omnibus motion filed on 19 October 1994, only on 8 March 2005 or more than 10 years after the motions were filed; and (4) the RTC Branch 130 resolved Fernandez, Ampil, and Cabangon's Joint Motion to Dismiss filed on 5 December 2006, only on 9 January 2012, or more than five years after the motion was filed. Moreover, the RTC Branch 130, in its Order, stated the reasons for the delay of the proceedings before it, such as: (1) the dismissal from the service of Judge Hamoy; (2) Judge Sardillo's heavy workload; (3) the CA's order restraining the proceeding of the case; and (4) the Motion for Transfer of Trial Venue and the Motion for Inhibition filed by the prosecution. Clearly, the reasons for the delay of the proceedings against Fernandez, Ampil, and Cabangon are not attributable to them.

Moreover, the reasons for the delay in the proceedings against Ramos, Saruca, Escalona, and Adriano are similar to the reasons for the delay in the proceedings against Fernandez, Ampil, and Cabangon. In *Villareal*, we held that the prosecution's failure to comply with the Orders of the trial court and the inaction of the trial court for almost seven years amount to a violation of the right to speedy trial of Ramos, Saruca, Escalona, and Adriano. In this case, not only were the reasons for the delay in the proceedings against Ramos, Saruca, Escalona, and Adriano present as to Fernandez, Ampil, and Cabangon, but also more unjustifiable circumstances added delay to the proceedings against them, such as the RTC's delayed resolution of the motions to quash and motion to dismiss. Thus, there is more reason to apply our ruling in *Villareal* to Fernandez, Ampil, and Cabangon, and find that their right to speedy trial has been violated.

Furthermore, contrary to Villa's contention that Fernandez, Ampil, and Cabangon failed to invoke their right, Villa's petition before us states that: "[o]n 19 April 2005, Ampil filed a Manifestation vehemently objecting to the indefinite suspension of the pre-trial and trial proceedings of the case, xxx. On 09 May 2005, Fernandez, and Cabangon filed their Manifestation posting no objection to the Manifestation and/or Motion for

Resumption of Hearing."[21] Moreover, Fernandez, Ampil, and Cabangon filed with RTC Branch 130 on 5 December 2006 the Joint Motion to Dismiss invoking violation of their right to speedy trial, which Motion to Dismiss was resolved only on 9 January 2012 or five years later. In *Almeda v. Office of the Ombudsman*,[22] we held that petitioner's letter and manifestations seeking the immediate resolution of her case cannot be considered late, and no waiver of her right to speedy trial or acquiescence may be attached to the same, as she was not required as a rule to follow up on her case; instead, it is the State's duty to expedite the same. Similarly in this case, we find that Fernandez, Ampil, and Cabangon timely invoked and did not waive their right to speedy trial.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 13 February 2015 and the Resolution dated 23 July 2015 of the Court of Appeals in CA-G.R. SP No. 127891.

SO ORDERED.

Leonen,[*] *Caguioa, Reyes, A. Jr.*, and *Reyes, J. Jr.,*[**] *JJ.*, concur.

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[21] *Rollo*, pp. 41-42.

[22] *Supra* note 17.

[*] Designated additional member per Raffle dated 17 October 2018.

[**] Designated additional member per Special Order No. 2587 dated 28 August 2018.

SECOND DIVISION

[G.R. No. 219884. October 17, 2018]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL A. BELLUDO and JOHN DOE,** *accused*. **MICHAEL A. BELLUDO,** *accused-appellant*.

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— The elements of murder that the prosecution must establish are (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 (RPC); and (4) that the killing is not parricide or infanticide. Treachery was alleged in the information as qualifying circumstance for the charge of murder.

2. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; FOR TREACHERY TO BE APPRECIATED AS A QUALIFYING CIRCUMSTANCE, IT MUST BE SHOWN TO HAVE BEEN PRESENT AT THE INCEPTION OF THE ATTACK; ELEMENTS; NOT ESTABLISHED IN CASE AT BAR.— Well-settled is the rule that treachery must be proved by clear and convincing evidence as conclusively as the killing itself. For treachery to be appreciated as a qualifying circumstance, it must be shown to have been present at the inception of the attack. Two elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted. x x x The fact that a gun was fired does not mean that the mode of attack was consciously and deliberately employed. The use of a gun, by itself, does not necessarily imply treachery. It must also be observed that except for the RTC's presumption that Belludo was behind Ojeda at the time of the shooting due to the location of the gunshot wound he sustained, no other proof was submitted and considered by the trial court before drawing the conclusion that treachery was employed in Ojeda's killing. x x x

Verily, the gap in the prosecution's evidence cannot be substituted by mere suppositions, as the trial court apparently did. Treachery cannot be appreciated absent any particulars as to the manner in which the aggression commenced or how the act unfolded and resulted in the death of the victim. Treachery cannot be presumed, but must be proven positively. Any doubt as to its existence must be resolved in favor of accused-appellant.

3. ID.; ID.; HOMICIDE; WITH THE REMOVAL OF THE QUALIFYING CIRCUMSTANCE OF TREACHERY, THE COURT DOWNGRADES THE CONVICTION TO THE CRIME OF HOMICIDE; IMPOSABLE PENALTY.— Thus, with the removal of the qualifying circumstance of treachery, the Court downgrades the conviction to the crime of homicide. The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years. The Court thus imposes imprisonment from eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.

4. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; DENIAL AND ALIBI; POSITIVE IDENTIFICATION THAT IS CATEGORICAL, CONSISTENT AND UNTAINTED BY ANY ILL MOTIVE ON THE PART OF THE EYEWITNESS PREVAILS OVER DENIAL AND ALIBI.— Belludo's defenses of denial and alibi cannot be sustained as they failed to outweigh a positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter. Likewise, as pointed out by the trial court, Belludo failed to prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of the commission.

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

A. REYES, JR., *J.*:

Nature of the Case

Before this Court is an appeal[1] from the August 14, 2014 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR HC No. 05937, which affirmed with modification the October 24, 2012 Decision[3] of the Regional Trial Court (RTC), Branch 27 of Naga City, in Criminal Case No. 2008-0412, finding accused-appellant Michael A. Belludo (Belludo) guilty beyond reasonable doubt of the crime of Murder.

The Facts

In an Information dated November 27, 2008, Belludo was charged with Murder of one Francisco "Paco" Ojeda (Ojeda) committed as follows:

> That on or about August 12, 2008, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named [accused-appellant] with intent to kill, with treachery, did, then and there, willfully, unlawfully and feloniously shoot with a handgun FRANCISCO "PACO" OJEDA while the latter was walking near BBS Radio Station, Balatas, Naga City, thereby hitting his head and inflicting upon him serious mortal and fatal wounds which directly caused his instantaneous death, to the damage and prejudice of herein complaining witness ARLENE P. RODRIGUEZ, common law wife of the deceased and his other heirs.
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> ACTS CONTRARY TO LAW.[4]

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[1] *Rollo*, pp. 27-28.

[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Noel G. Tijam and Agnes Reyes Carpio, Sixth (6th) Division; *rollo*, pp. 2-26.

[3] Penned by Judge Leo L. Intia; CA *rollo*, pp. 55-69.

[4] As cited in the CA decision; *rollo*, p. 3.

Upon motion of the public prosecutor, the case was submitted for reinvestigation regarding the inclusion of an additional accused, the motorcycle driver who allegedly participated in the commission of the offense charged. On February 28, 2009, the prosecution filed a Manifestation with Motion to Admit Amended Information which the trial court admitted in its Order dated April 29, 2009.[5] The Amended Information reads thusly:

> That on or about August 12, 2008, in the City of Naga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, Michael A. Belludo, conspiring and confederating with his co--accused John Doe, with intent to kill, and with treachery, did, then and there, willfully, unlawfully and feloniously shoot with a handgun FRANCISCO "PACO" OJEDA while the latter was walking near BBS Radio Station, Balatas, Naga City, thereby hitting his head and inflicting upon him serious mortal and fatal wounds which directly caused his instantaneous death, and thereafter escape aboard a waiting motorcycle being driven by his co-accused John Doe, to the damage and prejudice of herein complaining witness ARLENE P. RODRIGUEZ, common law wife of the deceased, and his other heirs.
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> ACTS CONTRARY TO LAW.[6]

As John Doe's identity and whereabouts remained unknown, only Belludo stood trial. Upon arraignment, he pleaded not guilty. Thereafter, trial on the merits ensued.

Version of the Prosecution

During trial, the prosecution presented an eyewitness, Allan Ladia (Ladia), Arlene Rodriguez (Rodriguez), who is the common-law wife of the victim, and members of the Philippine National Police (PNP) who conducted the investigation of the case and arrested Belludo.

The prosecution's version may be synthesized as follows:

On August 12, 2008 at around 3:00 a.m., Ladia and his son Albert were collecting scraps near BBS radio station along

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[5] *Id*.

[6] *Id*. at 4.

Balatas Road, Naga City, when they suddenly heard a gunshot. Right away, his son pointed his finger in front of them and told him: "*Pa, may binadil sa inutan*" ("Pa, someone has just been shot in front of us"). Ladia immediately looked up and saw a man, approximately fifteen to twenty meters away, tucking a gun on his waist. The man then boarded a motorcycle being driven by another person wearing a helmet. The motorcycle turned around fronting Ladia and his son then quickly proceeded towards Magsaysay Street which was in the opposite direction from where they were located at that time. When the man and the driver of the motorcycle passed by them, his son uttered: "*Pa, iyo nayan ang nagbadil*" ("That is the man who fired the shot"). At once, Ladia told his son to keep quiet. He then saw the victim lying on the side of the road near an acacia tree. Thereafter, they directly went home and told his wife what he witnessed.[7] Ladia recognized the person whom he saw on August 12, 2008 tucking a gun on his waist and identified him in court as herein accused-appellant, Belludo.[8]

Meanwhile, Rodriguez was awakened by the horrible news that her common-law husband, Ojeda, was shot near BBS radio station in Balatas Road. Rodriguez immediately proceeded to the said place where she saw Ojeda lying prostate on the ground, his head oozing with blood. When she embraced the unmoving body of Ojeda, she knew that it was too late for medical intervention.[9]

On even date, Police Officer 3 Rodel Llamado (PO3 Llamado) of the Philippine National Police Peñafrancia Precinct No. 2 received a phone call that there was a shooting incident in front of BBS radio station. Accordingly, he went to the crime scene and conducted his investigation. He interviewed possible witnesses and according to a radio announcer of BBS radio station, he heard a gunshot and when he went outside, he saw

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[7] *Id*. at 16.

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

[9] CA *rollo*, p. 40.

a person about to board a motorcycle near the victim. PO3 Llamado also received a call from a concerned citizen informing him that he witnessed the incident and that the police should investigate a person called *alyas* "Odo." Upon following-up on the lead, PO3 Llamado verified that "Odo" resides in Barangay Lerma, Naga City and ascertained the latter's identity who turned out to be Belludo.[10]

PO3 Jose Luis Caparroso (PO3 Caparroso) of Naga City Police Station IV testified that he talked to Ladia who positively identified Belludo in a police line-up as the perpetrator of the crime. A separate police line-up was viewed by Ladia's son who also pointed to Belludo as the culprit.[11]

Based on the post-mortem examination conducted on the victim's body by Dr. Vito Borja (Dr. Borja), the health officer of Naga City, the immediate cause of death was cardiac pulmonary arrest, secondary to the laceration of the occipital lobe of the brain, left side and secondary to gunshot wound. Dr. Borja also testified that he found pellets and one plastic remnant which is part of a bullet on the base of Ojeda's head.[12]

Version of the Defense

As for the defense, it presented Belludo as its sole witness whose defenses were predicated on denial and alibi. His version of the events is that at the date material to this case, he was at the billiard hall located at the Central Business District of Naga City where he worked as a spotter. He opened the hall for business at 5:00am until 10:00 pm of the same day.

In October 2008, he was arrested by a police officer at the billiard hall regarding a complaint of a Barangay Kagawad that he allegedly punched. To his shock, however, upon arrival at the police station, he was shown ammunitions and was told that they were found in his possession. At this point, he was

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[10] *Id*. at 6-7.

[11] *Id*. at 7.

[12] *Id*. at 6.

being forced to confess to the killing of Ojeda. Subsequently, he was included in a police line-up wherein a man wearing a helmet pointed at him. He was then brought to Tabuco police station where he was charged with the killing of Ojeda.[13]

The Ruling of the RTC

On October 24, 2012, the RTC rendered a Decision finding Belludo guilty as charged. It gave full credence to Ladia's testimony finding that his identification of Belludo is positive, straightforward, and unequivocal.[14] As for Belludo's defenses of denial and alibi, the trial court brushed them aside as they were not supported by any other evidence and did not outweigh the positive evidence established by the prosecution.[15]

Furthermore, the RTC ruled that the victim's killing was attended by the qualifying circumstance of treachery because the gunshot wound was located at the back of his head.[16] The dispositive portion of the RTC decision reads:

> WHEREFORE, the prosecution having proven the guilt of the [accused-appellant] MICHAEL A BELLUDO beyond reasonable doubt for the felony of Murder, he is hereby CONVICTED and sentenced to suffer the penalty of of (*sic*) *reclusion perpetua* – imprisonment for twenty years and one day to forty years. The accused is further directed to pay the heirs of the victim Francisco "Paco" Ojeda the following amount: Pesos: Seventy Five Thousand (₱75,000) as civil indemnity for the death of the victim; Pesos: Fifty Thousand as moral damages; Pesos: One Hundred Nine Thousand Six Hundred Sixty (₱109,660) as actual damages; and the cost of suit.
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> SO ORDERED.[17]

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

[14] CA *rollo*, p. 68.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 69.

Belludo thereafter interposed an appeal, arguing that the trial court erred in convicting him of the crime of Murder despite the prosecution's failure to prove his guilt beyond reasonable doubt.[18]

The Ruling of the CA

In its August 14, 2014 Decision, the CA affirmed the decision of the RTC with modification as regards the amount of damages awarded. It rejected the twin defense of denial and alibi raised by Belludo finding that the totality of the prosecution's evidence had sufficiently established his guilt beyond reasonable doubt.[19]

The CA further ruled that treachery was correctly appreciated by the trial court, noting that "in shooting the victim near his head at a close range, appellant clearly purposely employed it to insure the latter's death."[20] The CA, thus, disposed of the case as follows:

> **WHEREFORE**, in the light of all the foregoing, the herein impugned Decision is hereby **AFFIRMED** subject to the following **MODIFICATION**: (1) the amount of moral damages in increased from [₱]50,000.00 to [₱]75,000.00; and (2) that temperate damages and exemplary damages are awarded to the heirs of the victim in the amounts of [₱]25,000.00 and [₱]30,000.00, respectively.
>
> The damages herein awarded are subject to the legal interest of 6% per annum from the date of finality of this Decision until fully paid.
>
> The rest of the assailed Decision stands.
>
> **SO ORDERED.**[21]

Aggrieved, Belludo brought the case before Us, raising the same arguments he had at the CA.

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[18] *Id*. at 38.

[19] *Rollo*, pp. 19-20.

[20] *Id*. at 18.

[21] *Id*. at 25.

The Issue

The sole issue in this case is whether the CA erred in affirming Belludo's conviction for the crime of Murder.

The Ruling of the Court

The appeal is partly meritorious.

The elements of murder that the prosecution must establish are (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 (RPC); and (4) that the killing is not parricide or infanticide.[22] Treachery was alleged in the information as qualifying circumstance for the charge of murder.

Belludo's appeal mainly hinges on his argument that the prosecution failed to sufficiently establish his identity as the culprit who killed the victim, Ojeda.[23] In this regard however, both the trial court and the CA correctly ruled that Belludo's culpability was sufficiently established.

The prosecution was able to prove beyond reasonable doubt that Ojeda was killed and that it was Belludo who killed him. Ladia did not waver in his identification of Belludo and was able to give a detailed narration of what he saw during the incident. As aptly noted by the appellate court:

> Applying the totality of circumstances test, this Court has no reason to doubt the correctness of Allan Ladia's identification of accused. His view towards the accused during the incident was unobstructed. He was fifteen meters away from the accused and the accused went nearer to the witness after tucking the gun at his waist. He had no ill-motive to falsely testify against the accused. His testimony during the trial is straightforward and he was unshaken by the cross-examination of the defense counsel. He never wavered

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[22] *People of the Philippines v. Roger Racal @ Rambo*, G.R. No. 224886, September 4, 2017.

[23] CA *rollo*, pp. 50-51.

in his identification of the accused and even when asked clarificatory questions by the court.[24]

Belludo's defenses of denial and alibi cannot be sustained as they failed to outweigh a positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter.[25] Likewise, as pointed out by the trial court, Belludo failed to prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of the commission.[26]

Nevertheless, while We agree with the RTC and the CA that Belludo killed the victim, We do not, however, concur in their ruling that treachery was present as said finding is not supported by evidence.

Well-settled is the rule that treachery must be proved by clear and convincing evidence as conclusively as the killing itself.[27] For treachery to be appreciated as a qualifying circumstance, it must be shown to have been present at the inception of the attack.[28] Two elements must concur: (1) the employment of means of execution that gives the person attacked no opportunity to defend himself or to retaliate; and (2) the means of execution was deliberate or consciously adopted.[29]

In the case at bar, no circumstantial evidence has been shown to prove that the attack on the victim came without warning, and that he had absolutely no opportunity to defend himself or to escape.[30] The lower court failed to consider that Ladia had

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[24] *Id*. at 67.

[25] *People v. Baldomar*, 683 Phil. 393, 397 (2012).

[26] CA *rollo*, p. 68.

[27] *Cirera v. People*, 739 Phil. 25, 45 (2014), and *People v. Paracale*, 442 Phil. 32, 51 (2002).

[28] *People v. Paracale*, 442 Phil. 32, 52 (2002).

[29] *People v. Lagman,* 685 Phil. 733, 745 (2012) and *People v. Torres*, 671 Phil. 482, 489 (2011).

[30] *Supra* note 28, at 52.

no knowledge of how the attack had been initiated or carried out. The crime was already a *fait accompli* when he saw Belludo tucking a gun to his waist.[31]

Furthermore, evidence on record does not prove that there was any conscious or deliberate effort on the part of Belludo to adopt any particular means, method or form of attack to ensure the commission of the crime without affording the victim any means to defend himself. The fact that a gun was fired does not mean that the mode of attack was consciously and deliberately employed. The use of a gun, by itself, does not necessarily imply treachery.[32]

It must also be observed that except for the RTC's presumption that Belludo was behind Ojeda at the time of the shooting due to the location of the gunshot wound he sustained, no other proof was submitted and considered by the trial court before drawing the conclusion that treachery was employed in Ojeda's killing. In fact, the RTC did not fully discuss its appreciation of the circumstance of treachery. It merely held:

> The gunshot wound as reflected in the Autopsy Report and as testified by Dr. Borja is at the "left Occipital bone of the skull lacerating the Occipital lobe of the brain." This means that when the accused shoot the victim, he was positioned behind or at the rear of the victim, thus, considering that the [victim] was jogging and unarmed, he was not able to put up a defense.[33]

Verily, the gap in the prosecution's evidence cannot be substituted by mere suppositions, as the trial court apparently did. Treachery cannot be appreciated absent any particulars as to the manner in which the aggression commenced or how the act unfolded and resulted in the death of the victim. Treachery cannot be presumed, but must be proven positively. Any doubt as to its existence must be resolved in favor of accused-appellant.[34]

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[31] CA *rollo*, pp. 60-61.

[32] *Supra* note 28, at 53.

[33] CA *rollo*, p. 68.

[34] *People v. Paracale*, 442 Phil. 32, 54 (2002).

Thus, with the removal of the qualifying circumstance of treachery, the Court downgrades the conviction to the crime of homicide. The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* with a range of six (6) years and one (1) day to twelve (12) years.[35]

The Court thus imposes imprisonment from eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.[36]

Anent the civil liabilities, consistent with the Court's pronouncement in *People vs. Jugueta*,[37] the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each. Lastly, as correctly ruled by the CA, all the monetary awards shall earn an interest at the legal rate of six percent (6%) per *annum* from the date of finality of the Court's Resolution until fully paid.

IN VIEW OF THE FOREGOING, the appeal is **PARTLY GRANTED** and the Court of Appeals' Decision dated August 14, 2014 in CA-G.R. CR HC No. 05937 is hereby **MODIFIED**.

Accused-appellant **MICHAEL A. BELLUDO** is found guilty beyond reasonable doubt of **HOMICIDE**, and **SENTENCES** him to suffer the indeterminate penalty of **EIGHT YEARS AND ONE DAY OF *PRISION MAYOR***, as minimum, to **14 YEARS, EIGHT MONTHS AND ONE DAY OF *RECLUSION TEMPORAL***, as maximum; to pay to the heirs

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[35] *People of the Philippines v. Duran, Jr. y Mirabueno*, G.R. No. 215748, November 20, 2017.

[36] *People of the Philippines v. Nestor "Tony" Caliao*, G.R. No. 226392, July 23, 2018.

[37] 784 Phil. 806, 852-853 (2016).

of the late Francisco "Paco" Ojeda: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages; and (c) ₱50,000.00 as temperate damages, plus interest on all damages hereby awarded at the rate of 6% *per annum* from the finality of the decision until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Reyes, J. Jr.*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 222678. October 17, 2018]

JOANNE KRISTINE G. PIMENTEL, *petitioner, vs.* **REYNALDO ADIAO, CRISTY[•] ADIAO-NIERVES and CHRISTIAN ADIAO,** *respondents.*

SYLLABUS

REMEDIAL LAW; RULES OF COURT; LIBERAL CONSTRUCTION OF THE RULES; THE RULES SHALL BE LIBERALLY CONSTRUED IN ORDER TO PROMOTE THEIR OBJECTIVE OF SECURING A JUST, SPEEDY AND INEXPENSIVE DISPOSITION ON EVERY ACTION AND PROCEEDING; APPLICATION IN CASE AT BAR.— Section 6, Rule 1 of the Rules mandates that "[t]hese Rules shall be **liberally** construed in order to promote their objective of securing a **just**, speedy and inexpensive disposition of every action and proceeding." Given the realities obtaining in this case, the liberal construction of the Rules will promote and secure a just determination of

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[*] Designated additional Member per Special Order No. 2587, dated August 28, 2018.

[•] Also Christy in other parts of the *rollo*.

the parties' causes of action against each other. As the court of the last resort, justice should be the paramount consideration when the Court is confronted with an issue on the interpretation of the Rules, subject to the petitioner's burden to convince the Court that enough reasons obtain to warrant the suspension of a strict adherence to procedural rules. The Court is convinced with the explanations of Joanna for her plea to relax the application of the Rules in her case. The Court notes that, like *BPI*, the untimely filing of her PT brief was so far the only procedural lapse that she committed. She had been diligent in the prosecution of her cause against respondents, and had not demonstrated a proclivity to delay the proceedings. As she pointed out, several matters that would be taken up in the PT hearing had actually already been accomplished in the PC. In fact, even the trial dates had been agreed upon by the parties. In turn, as Joanna correctly observes, respondents were themselves not fully compliant with the Rules as observed by the RTC, and to the Court's mind, they will not suffer substantial prejudice if the case is litigated on the merits. Adopting the language of *BPI*, accordingly, the ends of justice and fairness would be best served if the parties are given the full opportunity to thresh out the real issues and litigate their claims in a full-blown trial. Besides, respondents would not be prejudiced should the RTC proceed with the hearing on the merits, as they are not stripped of any affirmative defenses nor deprived of due process of law.

APPEARANCES OF COUNSEL

Edwin V. Patricio for petitioner.
Public Attorney's Office for respondents.

R E S O L U T I O N

CAGUIOA, *J.*:

This is a Petition for Review on *Certiorari*[1] (Petition) under Rule 45 of the Rules of Court (Rules) assailing the

[1] *Rollo*, pp. 8-29, excluding Annexes.

Decision[2] dated August 5, 2015 and Resolution[3] dated January 26, 2016 of the Court of Appeals[4] (CA) in CA-G.R. CV No. 102602. The CA Decision denied the appeal and affirmed the Order dated March 17, 2014 of the Regional Trial Court, Branch 255, Las Piñas City (RTC) in Civil Case No. LP-13-0029. The CA Resolution denied the Motion for Reconsideration filed by petitioner Joanne Kristine G. Pimentel (Joanne).

Facts and Antecedent Proceedings

On April 19, 2013, Joanne filed with the RTC a complaint for damages against respondents Reynaldo Adiao (Reynaldo), Christian Adiao (Christian) and Cristy Adiao-Nierves (Cristy). Joanne alleged that on October 6, 2011 she entered into a Construction Agreement with Reynaldo and Christian whereby Reynaldo, as contractor, agreed to undertake the renovation of Joanne's bungalow house situated at BF Resort Village, Pamplona, Las Piñas City (BF Resort) for the consideration of ₱1,150,000.00 with a completion period of 180 working days.[5] In the event that Reynaldo would be rendered incapable to perform his responsibilities under the contract, Christian was designated as the successor with the obligation to finish the renovation.[6] Joanna paid to Reynaldo and Christian a total amount of ₱1,200,000.00 with a down payment of ₱345,000.00 made in December 2011.[7] On April 6, 2012, Joanna paid an additional amount of ₱30,000.00 for the repair of her other house situated at *Mataas na Kahoy*.[8] Cristy allegedly conformed with the

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[2] *Id*. at 31-44. Penned by Associate Justice Ramon R. Garcia, with Associate Justices Leoncia R. Dimagiba and Ramon Paul L. Hernando (now a Member of this Court) concurring.

[3] *Id*. at 46-47.

[4] Fifteenth Division and Former Fifteenth Division, respectively.

[5] *Id*. at 31-32.

[6] *Id*. at 32.

[7] *Id*.

[8] *Id*.

obligations of Reynaldo and Christian with respect to the renovation and repair of the two houses by signing her name in the acknowledgment receipt of the ₱30,000.00.[9]

The complaint further alleged that Reynaldo, in violation of their agreement, did not complete the renovation of Joanna's house and left the project unfinished.[10] Joanna wrote a demand letter to Reynaldo to complete the work but the latter refused to do so.[11] She also made verbal demands upon Cristy and Christian to comply with their obligation but they did not heed her demands.[12] Joanna took the position that their failure to complete the renovation and repair of her houses constitutes a breach of the construction agreement, and having incurred in delay, Reynaldo, Christian and Cristy are to indemnify her ₱1,000.00 per day.[13] She prayed for ₱330,000.00 representing damages for the delay in the performance of the contract; ₱150,000.00 representing the amount that she spent to complete the renovation; and ₱150,000.00 representing damages for breach of contract.[14] She attached to the complaint, among others, a list of the alleged unfinished portions of the renovation project.[15]

Reynaldo and Christian alleged that Joanna has no cause of action against them because Reynaldo was able to complete the renovation of her house at BF Resort in accordance with the construction agreement and the comparative material specification executed between him and Joanna.[16] Reynaldo also addressed each of the unfinished items listed by Joanna and explained why they should not be considered as a breach

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[9] *Id*.

[10] *Id*.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Id*. at 33.

of his obligation under the construction agreement.[17] Christian, for his part, alleged that his obligation was suspensive in nature and would arise only in the event that Reynaldo was rendered physically unfit to fulfill his obligations under the agreement.[18] It was further alleged that the contract cost of ₱1,150,000.00 was way below the actual cost of materials and labor used, which amounted to ₱1,352,256.42, and despite this, Reynaldo proceeded with the project using his own funds.[19] Thus, they prayed for the complaint's dismissal.[20]

Cristy, for her part, alleged that she is not signatory to the Construction Agreement dated October 6, 2011 and has no knowledge of its terms and conditions.[21] She signed the receipt dated April 6, 2012 because her father, Reynaldo, told her to sign the same as a witness to the fact that Reynaldo borrowed ₱30,000.00 from Joanna's parents in order to defray additional expenses for the project; and the loan, plus the interest of ₱3,000.00, was already paid by Reynaldo.[22]

On January 29, 2014, the RTC issued a Notice of Preliminary Conference[23] (Notice of PC) which set the case for preliminary conference (PC) on February 14, 2014 and required the parties to file their respective pre-trial (PT) briefs and serve the same on the adverse party in such manner as to ensure the latter's receipt thereof at least three days before the scheduled date.[24] A Notice of Pre-Trial[25] (Notice of PT) was also issued on

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[17] *Id*.

[18] *Id*.

[19] *Id*.

[20] *Id*.

[21] *Id*.

[22] *Id*.

[23] *Id*. at 61.

[24] *Id*. at 33.

[25] *Id*. at 62.

January 30, 2014 setting the case for PT on March 17, 2014 and the directive anent the filing of the PT brief was reiterated.[26]

On February 12, 2014, Cristy filed her PT brief and furnished Joanna a copy thereof by registered mail.[27] During the PC held on February 14, 2014, all the parties and their counsels appeared.[28] Reynaldo and Christian filed their PT brief and furnished Joanna a copy thereof on the said date.[29] The parties pre-marked their respective exhibits.[30]

On March 17, 2014, the PT hearing was held and attended by the parties and their respective counsels.[31] Joanna filed her PT brief, which was objected to by the counsels of the other parties for being filed late.[32] Atty. Edwin V. Patricio (Atty. Patricio), Joanna's counsel, explained that the pre-marking of exhibits was done only on February 14, 2014 and was of the belief that the pre-marking of exhibits was not yet terminated.[33] He also said that he planned to file a motion for extension of time to submit the PT brief.[34]

The RTC in its Order dated March 17, 2014 dismissed the case because Atty. Patricio violated the mandate found in Section 6, Rule 18 of the Rules in relation to Section 5 of the same Rule, and in view of the manifestations by the other counsels that they would no longer pursue the counterclaims of their clients.[35]

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

[27] *Id*. at 34.

[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] *Id*.

[32] *Id*.

[33] *Id*.

[34] *Id*.

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

Joanna filed a motion for reconsideration, alleging that her counsel received on February 12, 2014 a copy of the Notice of PC and the Notice of PT and it was improbable for Joanna's counsel to submit the PT brief at least three days prior to February 14, 2014.[36] While Joanna was unable to file her PT brief on the said date, she and her counsel were present and actively participated therein with her counsel provisionally marking the photographs to be presented as evidence subject to her counsel's request to mark the originals thereof on March 17, 2014.[37] Given the circumstances, Joanna's counsel honestly believed that the pre-marking of exhibits or the PC was not yet terminated and planned to submit a motion for extension of time to file the PT brief.[38] On March 17, 2014, Joanna filed with the RTC her PT brief and furnished the other parties copies thereof.[39] Joanna claimed that given the foregoing series of events, she did not willfully commit an act that constituted an utter disregard of the Rules or orders of the RTC.[40] Joanna pleaded that the rule on the timely submission of the PT brief be interpreted liberally in her favor and that the adverse parties also violated Section 6, Rule 18 in that they failed to attach relevant documents thereto and were late in filing their PT briefs.[41]

The RTC denied Joanna's motion for reconsideration in its Order dated May 2, 2014.[42]

Joanna appealed the dismissal of the case to the CA. The CA in its Decision[43] dated August 5, 2015, denied the appeal and affirmed the RTC Order dated March 17, 2014.

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[36] *Id*. at 35.

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

[38] *Id*. at 36.

[39] *Id*.

[40] *Id*.

[41] *Id*.

[42] *Id*.

[43] *Id*. at 31-44.

Hence, the instant Petition. Respondents filed their Comment[44] dated November 7, 2016. Joanna filed a Reply[45] dated May 2, 2017.

Issues

The Petition essentially raises the following issue:

> Whether the CA erred in dismissing the complaint for Joanna's failure to file her PT brief on time, given that respondents also violated Sections 5 and 6 of Rule 18.

The Court's Ruling

In fine, Joanna implores the benevolence and understanding of the Court to consider the following circumstances as justifiable grounds to relax the application of the Rules:

1. Given that Joanna's counsel received the Notice of PC only on February 12, 2014, it was improbable for her to file her PT brief at least three days prior to February 14, 2014, the date of the PC.

2. Cristy filed her PT brief on February 12, 2014 but furnished Joanna a copy thereof only on February 14, 2014. Reynaldo and Christian filed their PT brief only on February 14, 2014 during the PC. Thus, respondents likewise failed to comply with the mandate of the Notice of PC and Section 6, Rule 18.

3. Joanna and her counsel actively participated during the PC wherein Exhibits "A" to "E" were marked and photocopies of photographs were provisionally marked as Exhibits "F", "F-1" to "F-53". Her counsel requested that the original photographs (55 pieces) be marked on March 17, 2014, the PT hearing date. The counsel for Reynaldo and Christian had Exhibits "1" to "19" marked while Cristy's counsel had Exhibits "1" to "7" marked. The witnesses for each party were identified and the trial dates were fixed. Thus, most of the matters to

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[44] *Id*. at 83-94.

[45] *Id*. at 100-102.

be taken during the PT hearing were already done and accomplished.

4. Joanna's counsel was under the impression that the pre-marking of documentary exhibits had not been terminated inasmuch as the Branch Clerk of Court granted the request to mark the original photographs on March 17, 2014.

5. Joanna's PT brief was filed on March 17, 2014, the PT hearing date.

6. Joanna had been actively prosecuting her case, including her attendance in the mediation and judicial dispute resolution proceedings, and she never caused any delay in the proceedings.

Sections 5 and 6, Rule 18 on **Pre-Trial** of the Rules provide:

SEC. 5. *Effect of failure to appear*. — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

SEC. 6. *Pre-trial brief*. — The parties shall file with the court and serve on the adverse party, in such manner as shall ensure their receipt thereof at least three (3) days before the date of the pre-trial, their respective pre-trial briefs which shall contain, among others:

(a) A statement of their willingness to enter into amicable settlement or alternative modes of dispute resolution, indicating the desired terms thereof;

(b) A summary of admitted facts and proposed stipulation of facts;

(c) The issues to be tried or resolved;

(d) The documents or exhibits to be presented, stating the purpose thereof;

(e) A manifestation of their having availed or their intention to avail themselves of discovery procedures or referral to commissioners; and

(f) The number and names of the witnesses, and the substance of their respective testimonies.

Failure to file the pre-trial brief shall have the same effect as failure to appear at the pre-trial.

The Court in *Bank of the Philippine Islands v. Dando*[46] (*BPI*), where the issue concerned the application of Section 6 in relation to Section 5 of Rule 18 regarding the effect of the failure to file the PT brief and serving on the adverse party in such manner as to ensure the latter's receipt thereof at least three days before the date of the PT, laid down the following:

It is a basic legal construction that where words of command such as "shall," "must," [and] "ought" are employed, they are generally and ordinarily regarded as mandatory. Thus, where, as in Rule 18, Sections 5 and 6 of the Rules of Court, the word "shall" is used, a mandatory duty is imposed, which the courts ought to enforce.[47]

The Court is fully aware that procedural rules are not to be belittled or simply disregarded for these prescribed procedures insure an orderly and speedy administration of justice. However, it is equally true that litigation is not merely a game of technicalities. Law and jurisprudence grant to courts the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to put an end to litigation speedily and the parties' right to an opportunity to be heard.[48]

This is not to say that adherence to the Rules could be dispensed with. However, exigencies and situations might occasionally demand flexibility in their application.[49] In not a few instances, the Court relaxed the rigid application of the rules of procedure to afford the parties the opportunity to fully ventilate their cases on the merit. This is in line with the time-honored principle that cases should be

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[46] 614 Phil. 553 (2009).

[47] *Id*. at 562, citing *Spouses Mirasol v. Court of Appeals*, 403 Phil. 760, 772 (2001).

[48] *Id*. at 562-563, citing *Barranco v. Commission on the Settlement of Land Problems*, 524 Phil. 533, 543 (2006), further citing *Reyes v. Sps. Torres*, 429 Phil. 95, 101 (2002).

[49] *Id*. at 563, citing *Polanco v. Cruz*, 598 Phil. 952, 960 (2009).

decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as basis of decisions. In that way, the ends of justice would be better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.[50]

In *Sanchez v. Court of Appeals*,[51] the Court restated the reasons that may provide justification for a court to suspend a strict adherence to procedural rules, such as: (a) matters of life, liberty, honor or property; (b) the existence of special or compelling circumstances; (c) the merits of the case; (d) a cause not entirely attributable to the fault or negligence of the party favored by the suspension of the rules; (e) a lack of any showing that the review sought is merely frivolous and dilatory; and (f) the fact that the other party will not be unjustly prejudiced thereby.[52]

The Court noted in *BPI* that the failure of the plaintiff bank to file its PT brief with the trial court therein and provide Domingo Dando (Dando) with a copy thereof within the prescribed period was the first and only procedural lapse committed by the bank and it did not manifest an evident pattern or scheme to delay the disposition of the case or a wanton failure to observe a mandatory requirement of the Rules. Furthermore, the bank, for the most part, exhibited diligence and reasonable dispatch in prosecuting its claim against Dando.[53]

In *Sps. Diaz v. Diaz*,[54] the Court, in taking the liberal interpretation of the Rules approach, observed:

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[50] *Id*., citing *Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista*, 491 Phil. 476, 484 (2005).

[51] 452 Phil. 665 (2003).

[52] *Bank of the Philippine Islands v. Dando, supra* note 46, at 563, citing *Sanchez v. Court of Appeals*, *id*. at 674; *Macasasa v. Sicad*, 524 Phil. 673, 690 (2006), further citing *Barnes v. Padilla*, 482 Phil. 903, 915 (2004); and *Barranco v. Commission on the Settlement of Land Problems*, *supra* note 48, at 543.

[53] *Id*. at 564-565.

[54] 387 Phil. 314 (2000).

This notwithstanding, we note that the emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Hence, in [*Ginete*] *v. Court of Appeals*,[55] we stressed that:

> The Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. That is precisely why courts, in rendering justice have always been, as they in fact ought to be, conscientiously guided by the norm that on the balance, technicalities take a backseat to substantive rights, and not the other way around. As applied to [the] instant case, in the language of Justice Makalintal, technicalities "should give way to the realities of the situation."[56]

Suits should as much as possible be decided on the merits and not on technicalities.[57] In this regard, we have often admonished courts to be liberal in setting aside orders of default as default judgments are frowned upon and not looked upon with favor for they may amount to a positive and considerable injustice to the defendant and the possibility of such serious consequences necessitates a careful examination of the grounds upon which the defendant asks that it be set aside.[58] Since rules of procedure are mere tools designed to facilitate the attainment of justice, it is well recognized that this Court is empowered to suspend its operation, or except a particular case from its operation, when the rigid application thereof tends to frustrate rather than promote the ends of justice.[59] We are not unmindful of the fact that during the pendency of the instant petition, the trial

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[55] 357 Phil. 36 (1998).

[56] *Sps. Diaz v. Diaz*, *supra* note 54, at 335-336, citing *Ginete v. Court of Appeals*, *id*. at 52.

[57] *Id*. at 336, citing *Gerales v. Court of Appeals*, 291-A Phil. 674, 682 (1993).

[58] *Id*., citing *Montinola, Jr. v. Republic Planters Bank*, 244 Phil. 49, 59 (1988).

[59] *Id*., citing *Ramos v. Court of Appeals*, 336 Phil. 33, 48 (1997).

court has rendered judgment against petitioners. However, being the court of last resort, we deem it in the best interest that liberality and relaxation of the Rules be extended to petitioners by setting aside the order of default issued by the trial court and the consequent default judgment; otherwise, great injustice would result if petitioners are not afforded an opportunity to prove their claims.[60]

Section 6, Rule 1 of the Rules mandates that "[t]hese Rules shall be **liberally** construed in order to promote their objective of securing a **just**, speedy and inexpensive disposition of every action and proceeding."[61]

Given the realities obtaining in this case, the liberal construction of the Rules will promote and secure a just determination of the parties' causes of action against each other. As the court of the last resort, justice should be the paramount consideration when the Court is confronted with an issue on the interpretation of the Rules, subject to the petitioner's burden to convince the Court that enough reasons obtain to warrant the suspension of a strict adherence to procedural rules.

The Court is convinced with the explanations of Joanna for her plea to relax the application of the Rules in her case. The Court notes that, like *BPI*, the untimely filing of her PT brief was so far the only procedural lapse that she committed. She had been diligent in the prosecution of her cause against respondents, and had not demonstrated a proclivity to delay the proceedings. As she pointed out, several matters that would be taken up in the PT hearing had actually already been accomplished in the PC. In fact, even the trial dates had been agreed upon by the parties. In turn, as Joanna correctly observes, respondents were themselves not fully compliant with the Rules as observed by the RTC, and to the Court's mind, they will not suffer substantial prejudice if the case is litigated on the merits.

Adopting the language of *BPI*, accordingly, the ends of justice and fairness would be best served if the parties are given the

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[60] *Id*. at 336-337.

[61] Emphasis and underscoring supplied.

full opportunity to thresh out the real issues and litigate their claims in a full-blown trial. Besides, respondents would not be prejudiced should the RTC proceed with the hearing on the merits, as they are not stripped of any affirmative defenses nor deprived of due process of law.[62]

WHEREFORE, the Petition is hereby **GRANTED**. The Court of Appeals Decision dated August 5, 2015 and Resolution dated January 26, 2016 in CA-G.R. CV No. 102602 are **REVERSED** and **SET ASIDE**. The Complaint filed by petitioner Joanne Kristine G. Pimentel against respondents Reynaldo Adiao, Cristy Adiao-Nierves and Christian Adiao is **REINSTATED**. The Regional Trial Court of Las Piñas City, Branch 255 is **DIRECTED** to continue with the hearing of Civil Case No. LP-13-0029 with utmost dispatch, until its termination. No costs.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr.*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 222886. October 17, 2018]

HONORABLE LEILA M. DE LIMA, in her capacity as Secretary of Justice, *petitioner, vs.* **CITY OF MANILA, represented by MAYOR JOSEPH EJERCITO ESTRADA,** *respondent.*

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[62] See *Bank of the Philippine Islands v. Dando, supra* note 46, at 565, citing *Polanco v. Cruz*, *supra* note 49, at 960.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

SYLLABUS

1. **TAXATION; LOCAL GOVERNMENT CODE (LGC); TAX ORDINANCES OR REVENUE MEASURES; THE LOCAL GOVERNMENT CODE SETS FORTH THE APPROPRIATE PROCEDURE AND TIME LIMITATIONS THAT MUST BE FOLLOWED IN ASSAILING TAX ORDINANCES OR REVENUE MEASURES; EXPLAINED.—** The Court in *Reyes v. CA* explained that the aforementioned provision sets forth "three separate periods" that are mandatory in nature, in that compliance therewith is a prerequisite before an aggrieved party could seek relief from the courts. They are as follows: *first*, an appeal questioning the constitutionality or legality of a tax ordinance or revenue measure must be filed before the Secretary of Justice within **30 days** from effectivity thereof. *Then,* from the receipt of the decision of the Secretary of Justice, the aggrieved party has a period of **30 days** within which to file an appeal before the courts. However, when the Secretary of Justice fails to act on the appeal, after the lapse of **60 days**, a party could already proceed and seek relief in court. In *Hagonoy Market Vendor Association v. Municipality of Hagonoy*, the Court explained the importance of observing the timeframe provided for under Section 187 of the LGC and emphasized that the same is not a mere technicality that can easily be brushed aside by the parties. The Court enunciated the purpose of the said periods within the context of the nature and relevance of revenue measures and tax ordinances, x x x Simply, as the revenue measures are the source of funds that give life and support the operations of the local government, it is imperative that any question as to its validity must be resolved with utmost dispatch. Towards this end therefore, the LGC has set limits which the parties must strictly comply with.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE REMEDY OF *CERTIORARI* UNDER RULE 65 ACCORDS UPON THE COURT AN EXPANDED JURISDICTION TO CORRECT THE EXERCISE OF GOVERNMENTAL FUNCTIONS OF WHATEVER NATURE; CASE AT BAR.—** By definition, as provided for under Section 1, Rule 65 of the Rules of Court, the special civil action of *certiorari* is an extraordinary remedy that is available only upon showing that

a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. The writ is designed to correct grave errors of jurisdiction- x x x Nonetheless, the Court clarified in *Araullo, et al. v. President Aquino III, et al.*, that the remedy of *certiorari* under Rule 65 accords upon it an expanded jurisdiction to correct the exercise of governmental functions of whatever nature, x x x Clearly therefore, the petitioner cannot claim that *certiorari* is not the proper remedy simply on the basis of the nature of the power exercised by the Secretary of Justice. When *properly* called upon by the interested or affected parties to exercise its duty under the remedy of a special civil action of *certiorari*, the Court cannot refrain as it is in fact, both its duty and obligation to determine the validity of any legislative or executive action, consistent with the republican system of checks and balances.

3. ID.; JURISDICTION; REGIONAL TRIAL COURT; THE REGIONAL TRIAL COURT CANNOT AT FIRST INSTANCE RULE UPON THE CONSTITUTIONALITY OR LEGALITY OF TAX ORDINANCES AND REVENUE MEASURES BY VIRTUE OF THE MANDATORY PROCEDURE SET FORTH UNDER SECTION 187 OF THE LOCAL GOVERNMENT CODE, WHICH VESTS UPON THE SECRETARY OF JUSTICE THE JURISDICTION OVER THE SAME.— It is settled that jurisdiction over the subject matter is conferred by law and the allegations of the complaint or in case of appeals, the nature and origin of the resolution questioned. In this regard, appellate jurisdiction over the resolution of the Secretary of Justice is determined by the nature of the power exercised by the latter under Section 187 of the LGC, pursuant to which she has issued the resolution that is subject of the petition for review *ad cautelam*. The RTC, by virtue of a specific grant by the 1987 Constitution has the jurisdiction to resolve the constitutionality of a statute, presidential decree, executive order, or administrative regulation. Nonetheless, it cannot be said that the RTC acted pursuant to such jurisdiction when it entertained the petition for review *ad cautelam*, as the issue involved therein is not directly an issue of constitutionality but whether the Secretary of Justice committed grave abuse of discretion

in issuing the subject resolution. Otherwise stated, considering that the manner in which the RTC took cognizance of this case is not by virtue of its original but that of its appellate jurisdiction, it is not to be construed as an exercise by the RTC pursuant to the aforementioned constitutionally vested jurisdiction. At any rate, the RTC cannot at first instance, rule upon the constitutionality or legality of tax ordinances and revenue measures by virtue of the mandatory procedure set forth under Section 187 of the LGC, which vests upon the Secretary of Justice the jurisdiction over the same.

4. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AN APPEAL THROUGH A PETITION FOR REVIEW UNDER RULE 43 OF THE RULES OF COURT IS THE PROPER REMEDY IN CASE AT BAR, SINCE THE SUBJECT MATTER OF REVIEW IS AN EXERCISE OF QUASI-JUDICIAL POWER BY THE SECRETARY OF JUSTICE, WHICH IS THE LATTER'S DECISION ON THE LEGALITY OR CONSTITUTIONALITY OF TAX ORDINANCES AND REVENUE MEASURES UNDER SECTION 187 OF THE LOCAL GOVERNMENT CODE.— As a rule, appeals from the judgment or final rulings of quasi-judicial agencies are appealable to the CA *via* petition for review under Rule 43 of the Rules of Court. While the enumeration of such agencies provided for under Section 1 of the said Rule is not exclusive, the Court had the occasion to rule in *Orosa v. Roa* that the exclusion of the Department of Justice (DOJ) from the list is a deliberate one, in consonance with the doctrine of exhaustion of administrative remedies. As a rule therefore, the Court held that "recourse from the decision of the Secretary of Justice should be to the President." In subsequent cases, however, the Court has been consistent in ruling that the remedy of a party from an adverse resolution of the Secretary of Justice is a petition for *certiorari* under Rule 65. It must be pointed out that in the foregoing, the subject matter of appeal is the decision of the Secretary of Justice evaluating a prosecutor's determination of probable cause, a function that does not involve the exercise of quasi-judicial powers by the DOJ, that is covered by appeals under Rule 43. In contrast, in the case at bar, the subject matter of review is the decision of the Secretary of Justice evaluating

the legality or constitutionality of a local revenue ordinance, an act which is quasi-judicial in nature, and therefore may be the subject of an appeal through a petition for review under Rule 43. x x x The proper venue for the foregoing actions however is the CA and not the RTC in accordance with Section 4, Rule 65 of the Rules of Court. In the consolidated cases of *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*, the Court emphasized that the "acts or omissions by quasi-judicial agencies, regardless of whether the remedy involves a Rule 43 appeal or a Rule 65 petition for *certiorari*, is cognizable by the CA."

5. **POLITICAL LAW; ADMINISTRATIVE AGENCIES; QUASI-JUDICIAL OR ADMINISTRATIVE ADJUDICATORY POWER; QUASI-JUDICIAL OR ADMINISTRATIVE ADJUDICATORY POWER IS THAT WHICH VESTS UPON THE ADMINISTRATIVE AGENCY THE AUTHORITY TO ADJUDICATE THE RIGHTS OF PERSONS BEFORE IT; EXPLAINED.—** Quasi-judicial or administrative adjudicatory power is that which vests upon the administrative agency the authority to adjudicate the rights of persons before it. It involves the power to hear and determine questions of fact and decide in accordance with the standards laid down by law issues which arise in the enforcement and administration thereof. Likewise, the performance "in a judicial manner of an act that is essentially of an executive or administrative in nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted" to the public officer or administrative agency. In the performance of judicial or quasi-judicial acts, there must be a law that gives rise to some specific rights of persons or property from which the adverse claims are rooted, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the right of the contending parties.

6. **REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; THREE WAYS TO COMMIT FORUM SHOPPING, ENUMERATED.—** Forum shopping can be committed in three ways: *first*, in case of *litis pendentia* or the filing of multiple cases with the same cause of action and seeking the same relief,

in which the previous case remains pending; *second*, in case of *res judicata*, or the filing of multiple cases involving similar cause of action and relief, in which the previous case has been resolved; and *last*, in case of splitting of causes of action or the filing of multiple cases involving different reliefs although based on the same cause of action, where the ground for dismissal is either *litis pendentia* or *res judicata*. Proceeding from jurisprudential rulings, forum shopping is present when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in another, as there is a) identity of parties or where the parties represent the same interests in both actions, b) identity of rights or causes of actions, and c) identity of relief sought in the cases that are pending.

7. ID.; ID.; ID.; ID.; THE MERE PROPER EXECUTION OF A CERTIFICATE AGAINST FORUM SHOPPING DOES NOT AUTOMATICALLY ABSOLVE A PARTY WHO HAS OTHERWISE COMMITTED FORUM SHOPPING; RATIONALE.— [T]he fact that the respondent has disclosed and attached a copy of its Motion for Reconsideration does not negate actual forum shopping. This is because the essence of forum shopping is not on the non-disclosure of pending "identical" actions, but in the institution thereof. As explained by the Court in *Spouses Melo v. CA*, compliance with the rule on certification against forum shopping is "separate from, and independent of, the avoidance of forum shopping itself." Thus, the variance with respect to imposable sanctions in case of violation - "[t]he former is merely a cause for the dismissal, without prejudice, of the complaint or initiatory pleading, while the latter is a ground for summary dismissal thereof and constitutes direct contempt." Consequently, the mere proper execution of a certification against non-forum shopping does not automatically absolve a party who has otherwise committed forum shopping. Ultimately, on the issue of forum shopping, primary consideration is given as to whether the filing of these actions would result in the very evil the rule on forum shopping seeks to prevent, that is, the rendition of conflicting decisions by different tribunals.

D E C I S I O N

A. REYES, JR., *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 139281 dated July 9, 2015, and its Resolution[3] dated January 8, 2016, denying the motion for reconsideration thereof.

The Antecedent Facts

On November 26, 2013, the City Council of Manila passed Ordinance No. 8331, entitled "*An Ordinance Enacting the 2013 Omnibus Revenue Code of the City of Manila*." It was approved by Mayor Joseph Ejercito Estrada on December 3, 2013, and thereafter published in the *Manila Times* and *Manila Standard* on December 6, 7, and 8, 2013.[4] The Ordinance took effect on December 9, 2013 and implemented by the City of Manila (respondent) on January 2, 2014.[5]

On January 6, 2014, operators of retail businesses in the City of Manila-Mandurriao Star, Inc., Metro Manila Shopping Mecca Corporation, SM Mart, Inc., Supervalue, Inc., and Super Shopping Market, Inc. (hereinafter referred to as retail business operators) filed an *Appeal* before Secretary of Justice Leila M. De Lima (petitioner). Therein, the retail business operators claimed that Section 104 of Ordinance No. 8331, which imposed percentage tax on gross sales of retailers from 1% to 3%, is unconstitutional for being violative of Section 5, Article X of

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[1] *Rollo*, pp. 3-5.

[2] Penned by Associate Justice Remedios Salazar-Fernando, with Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting, concurring; *id*. at 53-66.

[3] *Id*. at 26-29.

[4] *Id*. at 12.

[5] *Id*. at 34.

the Constitution, and illegal for being excessive and contrary to limitations set forth under Sections 130, 186, and 191 of the Local Government Code of 1991 (LGC).[6]

Specifically, the retail business operators alleges that the respondent increased the local business tax rates from 0.20% to 3% and 1%, which is beyond the 10% limit on increase provided for under Section 191 of the LGC.[7]

Per the petitioner's Order dated February 3, 2014, the respondent filed its Comment, whereby it submits that Ordinance No. 8331 was enacted in compliance with the procedural requirements under the law and therefore has in its favor the presumption of validity. Moreover, the respondent argued that its imposition of retail tax under the Ordinance is a valid exercise of its power to impose rates which are within the limits provided for under Section 143(d), and as such, must be sustained.[8]

On April 7, 2014, the petitioner issued a Resolution[9] declaring Section 104 of Ordinance No. 8331 void for being contrary to Section 191 of the LGC, *viz.*:

> WHEREFORE, premises considered, Section 104 of Ordinance No. 8331, series of 2013, of the City of Manila is HEREBY DECLARED VOID for being contrary to Section 191 of the [LGC].
>
> SO ORDERED.[10]

In its Resolution, the petitioner explained that under the LGC, the respondent has the power to impose local business taxes and determine accordingly the rates to be levied, through the adoption of revenue ordinance. But after a revenue ordinance has been enacted, the succeeding amendments increasing the

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

[7] *Id*. at 13.

[8] *Id*.

[9] *Id*. at 76-85.

[10] *Id*. at 84.

rates therein specified would have to be in accordance with the limitations set forth under Section 191 of the LGC.[11]

In the case of the respondent, the petitioner found that it has elected to exercise such power when it enacted Ordinance No. 7794 in 1993 and its amendment passed two months thereafter – Ordinance No. 7807.[12] In this light, the petitioner ratiocinated that any further amendment of the tax rates through the enactment of a new revenue ordinance would have to comply with the 10% maximum ceiling of increase under the LGC. The petitioner adjudged that the adjustment of tax rates from Ordinance Nos. 7794 and 7807 to Ordinance No. 8331 violates the said ceiling and as such is invalid.[13]

On April 24, 2014, the respondent filed a Motion for Reconsideration[14] of the petitioner's Resolution dated April 7, 2014.

Without awaiting for the petitioner's action on its Motion, the respondent filed a Petition for Review *Ad Cautelam*[15] before the Regional Trial Court (RTC) of Manila on May 15, 2014. In its petition, the respondent sought to annul the petitioner's Resolution dated April 7, 2014 for having been issued with grave abuse of discretion and to declare Section 104 of Ordinance No. 8331 as valid and enforceable.

On May 19, 2014, the RTC issued an Order[16] treating the Petition for Review *Ad Cautelam* as a petition for *certiorari* under Rule 65 of the Rules of Court.

After the parties filed their respective Comment and Reply, the RTC rendered its Decision on July 25, 2014 dismissing the petition in this wise:

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[11] *Id*. at 81.

[12] *Id*.

[13] *Id*. at 83.

[14] *Id*. at 72-74.

[15] *Id*. at 86-95.

[16] *Id*. at 98.

WHEREFORE, premises considered, the Petition for Review Ad Cautelam is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.[17]

The Motion for Reconsideration of the Decision dated July 25, 2014 having been denied by the RTC through its Order[18] dated October 30, 2014, the respondent elevated the matter to the CA *via certiorari* on appeal.

On July 9, 2015, the CA rendered the herein assailed Decision,[19] the dispositive portion of which reads:

WHEREFORE, premises considered, the assailed Decision dated July 25, 2014 and Order dated October 30, 2014 of the RTC, Branch 7, Manila in Civil Case No. 14-131817 are hereby **SET ASIDE**. Let the case be **REMANDED** to the RTC, Branch 7, Manila to conduct further proceedings with dispatch.

SO ORDERED.[20]

In its decision, the CA held that the RTC committed reversible error in dismissing the Petition for Review *Ad Cautelam* for lack of jurisdiction, considering that the LGC does not require the prior filing of a motion for reconsideration before the Secretary of Justice nor the elevation of the case to the Office of the President.[21]

Anent the issues relating to the validity and enforceability of Section 104 of Ordinance No. 8331, the CA refused to make any ruling, finding that these matters should be first threshed out before the RTC. Considering that the RTC dismissed the Petition for Review *Ad Cautelam* solely on the basis of

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[17] *Id*. at 54.

[18] *Id*. at 99-100.

[19] *Id*. at 53-66.

[20] *Id*. at 65.

[21] *Id*. at 64.

technicality, the CA ordered the case to be remanded for further proceedings.[22]

On January 8, 2016, the CA, acting on the petitioner's Motion for Reconsideration and the retail business operators' Motion for Partial Reconsideration, issued a Resolution,[23] as follows:

> In fine, there being no substantial argument which would warrant the modification much less the reversal of this Court's July 9, 2015 Decision, [petitioner's] Motion for Reconsideration and [retail business operators'] Motion for Partial Reconsideration are hereby **DENIED** for lack of merit.
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> SO ORDERED.[24]

Thus, the instant petition for review on *certiorari* whereby the petitioner raises the following for the Court's consideration:

I.

THE CA COMMITTED REVERSIBLE ERROR IN RULING THAT THE RTC ERRED IN DISMISSING RESPONDENT'S PETITION FOR REVIEW *AD CAUTELAM* FOR LACK OF JURISDICTION.

1.) A petition for *certiorari* before the RTC is not the proper remedy to question a decision of the Secretary of Justice on the constitutionality of a tax ordinance.

2.) A motion for reconsideration of the assailed resolution is required before the respondent may file a petition for *certiorari* before the RTC.

II.

THE CA COMMITTED REVERSIBLE ERROR IN NOT AFFIRMING THE DISMISSAL OF RESPONDENT'S PETITION FOR REVIEW *AD CAUTELAM* ON THE GROUND OF FORUM SHOPPING. RESPONDENT FILED ITS PETITION FOR REVIEW *AD CAUTELAM*

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[22] *Id*.

[23] *Id*. at 68-71.

[24] *Id*. at 71.

BEFORE THE RTC WHILE ITS MOTION FOR RECONSIDERATION WAS PENDING BEFORE PETITIONER.[25]

The issues raised by the petitioner are essentially procedural, namely: *first*, whether the CA erred in ruling that the RTC has the jurisdiction to resolve an appeal from the resolution of the Secretary of Justice; and *second*, whether the CA erred ruling that the respondent did not commit forum shopping.

Ruling of the Court

The petition is ***partly meritorious***.

The resolution of the first issue necessitates that the Court deal with two matters - *first*, the timeliness of the appeal, and *second*, the proper action to be filed.

The appeal before the RTC has been timely filed.

Section 187 of the LGC sets forth the appropriate procedure and time limitations that must be followed in assailing tax ordinances or revenue measures, *viz.*:

SEC. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings*. – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: Provided, further, That 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 Ours)

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[25] *Id.* at 105.

The Court in *Reyes v. CA*[26] explained that the aforementioned provision sets forth "three separate periods" that are mandatory in nature, in that compliance therewith is a prerequisite before an aggrieved party could seek relief from the courts. They are as follows: *first*, an appeal questioning the constitutionality or legality of a tax ordinance or revenue measure must be filed before the Secretary of Justice within **30 days** from effectivity thereof. *Then*, from the receipt of the decision of the Secretary of Justice, the aggrieved party has a period of **30 days** within which to file an appeal before the courts. However, when the Secretary of Justice fails to act on the appeal, after the lapse of **60 days**, a party could already proceed and seek relief in court.[27]

In *Hagonoy Market Vendor Association v. Municipality of Hagonoy*,[28] the Court explained the importance of observing the timeframe provided for under Section 187 of the LGC and emphasized that the same is not a mere technicality that can easily be brushed aside by the parties.[29] The Court enunciated the purpose of the said periods within the context of the nature and relevance of revenue measures and tax ordinances, thus:

> Ordinance No. 28 is a revenue measure adopted by the municipality of Hagonoy to fix and collect public market stall rentals. Being its lifeblood, collection of revenues by the government is of paramount importance. The funds for the operation of its agencies and provision of basic services to its inhabitants are largely derived from its revenues and collections. Thus, it is essential that **the validity of revenue measures is not left uncertain for a considerable length of time**. Hence, the law provided a time limit for an aggrieved party to assail the legality of revenue measures and tax ordinances.[30] (Citation omitted and emphasis in the original)

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[26] 378 Phil. 232 (1999).

[27] *Id.* at 237.

[28] 426 Phil. 769 (2002).

[29] *Id.* at 778.

[30] *Id.*

Simply, as the revenue measures are the source of funds that give life and support the operations of the local government, it is imperative that any question as to its validity must be resolved with utmost dispatch. Towards this end therefore, the LGC has set limits which the parties must strictly comply with.

Preliminarily, the Court notes that contrary to the respondent's submission in its petition for review *ad cautelam*, the appeal before the RTC could not be anchored on *inaction* as in fact, the petitioner, *acted* on the appeal. While ideally, "action upon the appeal" would mean issuance of a final disposition upon the dispute, the urgency presented by questions regarding revenue measures must be balanced with the dictates of due process and that of achieving a full ventilation of the issues presented for review. With this, the Court finds that the petitioner has *acted upon the appeal* when it issued an Order on February 3, 2014, requiring the respondent to file its Comment.

In this controversy, Ordinance No. 8331 of the respondent was passed by the City Council on November 26, 2013, and subsequently published in the *Manila Times* and *Manila Standard* on December 6, 7, and 8, 2013. Herein involved retail business operators filed an appeal questioning the constitutionality and legality of the subject ordinance before the petitioner on January 6, 2014, within the 30-day period fixed by law. The petitioner then issued her Resolution on April 7, 2014, which the respondent **received on April 15, 2014.** The respondent then **filed before the RTC a Petition for Review *Ad Cautelam* assailing the Resolution dated April 7, 2014 of the petitioner on May 15, 2014.**[31]

As the petition for review *ad cautelam* before the RTC assails the petitioner's Resolution dated April 7, 2014, the applicable period in determining the timeliness of the appeal before the RTC is 30 days from the respondent's receipt of the petitioner's resolution. With this, the appeal before the RTC has been timely filed, the action having been instituted exactly 30 days from the respondent's receipt of the petitioner's resolution.

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[31] *Rollo*, pp. 14, 35.

The determination by the petitioner of the constitutionality or legality of the subject ordinance involves an exercise of quasi-judicial power that is the proper subject of a Special Civil Action for Certiorari cognizable by the CA.

The petitioner argues that the remedy of *certiorari* is not available as the questioned resolution does not involve an exercise of quasi-judicial function by the Secretary of Justice. The petitioner cites in support of its argument the case of *Hon. Drilon v. Mayor Lim*,[32] whereby the Court ruled that the Secretary of Justice does not exercise discretion under Section 187 of the LGC, "but merely ascertain the constitutionality or legality of the tax measure."[33]

Preliminarily, it must be stated that although denominated as "Petition for Review *Ad Cautelam*" the allegations and grounds raised in the pleading filed by the respondent before the RTC shows that it is in the nature of a special civil action for *certiorari*.[34]

The nature and the relief sought by the petitioner specifically indicates that it is within the purview of *certiorari* under Rule 65 of the Rules of Court, in that the petitioner committed *grave abuse of discretion amounting to lack or excess of jurisdiction* in rendering her Resolution dated April 7, 2014, and as such should be nullified and set aside.

By definition, as provided for under Section 1, Rule 65 of the Rules of Court, the special civil action of *certiorari* is an extraordinary remedy that is available only upon showing that a tribunal, board, or officer exercising judicial or quasi-judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of

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[32] 305 Phil. 146 (1994).

[33] *Rollo*, p. 38.

[34] *Id*. at 86-87, 89-90.

jurisdiction. The writ is designed to correct grave errors of jurisdiction–

> [W]hich means either that the judicial or quasi-judicial power was exercised in an arbitrary or despotic manner by reason of passion or personal hostility, or that the respondent judge, tribunal or board evaded a positive duty, or virtually refused to perform the duty enjoined or to act in contemplation of law, such as when such judge, tribunal or board exercising judicial or quasi-judicial powers acted in a capricious or whimsical manner as to be equivalent to lack of jurisdiction.[35]

Nonetheless, the Court clarified in *Araullo, et al. v. President Aquino III, et al.*,[36] that the remedy of *certiorari* under Rule 65 accords upon it an expanded jurisdiction to correct the exercise of governmental functions of whatever nature, thus, it elucidated:

> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition **may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions.** This application is expressly authorized by the text of the second paragraph of Section 1, supra.
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> Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.[37] (Emphasis and underscoring Ours)

Clearly therefore, the petitioner cannot claim that *certiorari* is not the proper remedy simply on the basis of the nature of

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[35] *Sps. Delos Santos v. Metropolitan Bank and Trust Company*, 698 Phil. 1, 16 (2012).

[36] 737 Phil. 457 (2014).

[37] *Id.* at 531.

the power exercised by the Secretary of Justice. When *properly* called upon by the interested or affected parties to exercise its duty under the remedy of a special civil action of *certiorari*, the Court cannot refrain as it is in fact, both its duty and obligation to determine the validity of any legislative or executive action, consistent with the republican system of checks and balances.[38]

Nevertheless, as will be elaborated further, while respondent's resort to the remedy of *certiorari* is proper the same has been erroneously lodged before the RTC instead of the CA.

It is settled that jurisdiction over the subject matter is conferred by law and the allegations of the complaint or in case of appeals, the nature and origin of the resolution questioned. In this regard, appellate jurisdiction over the resolution of the Secretary of Justice is determined by the nature of the power exercised by the latter under Section 187 of the LGC, pursuant to which she has issued the resolution that is subject of the petition for review *ad cautelam*.

The RTC, by virtue of a specific grant by the 1987 Constitution has the jurisdiction to resolve the constitutionality of a statute, presidential decree, executive order, or administrative regulation.[39] Nonetheless, it cannot be said that the RTC acted pursuant to such jurisdiction when it entertained the petition for review *ad cautelam*, as the issue involved therein is not directly an issue of constitutionality but whether the Secretary of Justice committed grave abuse of discretion in issuing the subject resolution. Otherwise stated, considering that the manner in which the RTC took cognizance of this case is not by virtue of its original but that of its appellate jurisdiction, it is not to be construed as

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[38] *Id*. See *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al*., 802 Phil. 116, 135 (2016), where the Court impliedly recognized the availability of a petition for *certiorari* for acts of administrative agencies committed with grave abuse of discretion, regardless of whether the same concerns a quasi-judicial, or quasi-legislative function, or is purely regulatory.

[39] 1987 CONSTITUTION, Article VIII, Section 5 (2a).

an exercise by the RTC pursuant to the aforementioned constitutionally vested jurisdiction.

At any rate, the RTC cannot at first instance, rule upon the constitutionality or legality of tax ordinances and revenue measures by virtue of the mandatory procedure set forth under Section 187 of the LGC, which vests upon the Secretary of Justice the jurisdiction over the same.[40]

As a rule, appeals from the judgment or final rulings of quasi-judicial agencies are appealable to the CA *via* petition for review under Rule 43 of the Rules of Court. While the enumeration of such agencies provided for under Section 1 of the said Rule is not exclusive, the Court had the occasion to rule in *Orosa v. Roa*[41] that the exclusion of the Department of Justice (DOJ) from the list is a deliberate one, in consonance with the doctrine of exhaustion of administrative remedies.[42] As a rule therefore, the Court held that "recourse from the decision of the Secretary of Justice should be to the President."[43] In subsequent cases,[44] however, the Court has been consistent in ruling that the remedy of a party from an adverse resolution of the Secretary of Justice is a petition for *certiorari* under Rule 65.

It must be pointed out that in the foregoing, the subject matter of appeal is the decision of the Secretary of Justice evaluating a prosecutor's determination of probable cause, a function that does not involve the exercise of quasi-judicial powers by the DOJ,[45] that is covered by appeals under

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[40] *Cagayan Electric Power v. City of Cagayan De Oro*, 698 Phil. 788, 792 (2012).

[41] 527 Phil. 347 (2006).

[42] *Id*. at 353-354.

[43] *Id*.

[44] *Brgy. Dasmariñas v. Creative Play Corner School, et al.*, 655 Phil. 285, 297 (2011), citing *Levi Strauss (Phils.), Inc. v. Lim*, 593 Phil. 435, 439 (2008).

[45] *Sec. De Lima, et al. v. Reyes*, 776 Phil. 623, 634 (2016).

Rule 43.[46] In contrast, in the case at bar, the subject matter of review is the decision of the Secretary of Justice evaluating the legality or constitutionality of a local revenue ordinance, an act which is quasi-judicial in nature, and therefore may be the subject of an appeal through a petition for review under Rule 43.

Quasi-judicial or administrative adjudicatory power is that which vests upon the administrative agency the authority to adjudicate the rights of persons before it.[47] It involves the power to hear and determine questions of fact and decide in accordance with the standards laid down by law issues which arise in the enforcement and administration thereof. Likewise, the performance "in a judicial manner of an act that is essentially of an executive or administrative in nature, where the power to act in such manner is incidental to or reasonably necessary for the performance of the executive or administrative duty entrusted" to the public officer or administrative agency.[48]

In the performance of judicial or quasi-judicial acts, there must be a law that gives rise to some specific rights of persons or property from which the adverse claims are rooted, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the right of the contending parties.[49]

Preliminarily, it must be stated that the case of *Hon. Drilon v. Mayor Lim*[50] did not squarely rule on the nature of the power exercised by the Secretary of Justice under the aforesaid provision and as such cannot be used as authority therefore. The main

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[46] **Section 1.** *Scope*. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its **quasi-judicial functions**. x x x. (Emphasis Ours)

[47] *Bedol v. COMELEC*, 621 Phil. 498, 511 (2009).

[48] *The Chairman and Executive Director, Palawan Council for Sustainable Development, et al. v. Lim*, 793 Phil. 690, 698 (2016).

[49] *Ferrer, Jr. v. Mayor Bautista, et al.*, 762 Phil. 233, 244 (2015).

[50] 305 Phil. l46 (1994).

issue in *Hon. Drilon* is the constitutionality of Section 187 of the LGC. In resolving the issue, the Court did not characterize whether the power exercised by the Secretary of Justice under the said provision of the LGC is ministerial, administrative or executive, or quasi-judicial. Rather, the Court merely dealt with whether the exercise of such discretion by the Secretary of Justice is tantamount to an exercise of the power of control over local government units (LGUs), in direct violation of the Constitutional policy granting LGUs autonomy and the power to tax. Clearly therefore, the case cannot be used as authority to make a conclusion as to the nature of the power exercised by the Secretary of Justice under Section 187 of the LGC.

Contrary to the petitioner's submission, in the instant controversy, the evaluation of the *appeal* lodged by the retail business operators involves an exercise of quasi-judicial power by the Secretary of Justice. In deciding the same, the Secretary of Justice must ascertain the existence of factual circumstances specifically, whether Section 104 of Ordinance No. 8331 was passed in accordance with the procedure and the limitations set forth by the LGC. And from there make a conclusion as to the validity and applicability of the same to the retail business operators of Manila.[51]

Considering that the subject matter of review is an exercise of quasi-judicial power by the Secretary of Justice, the latter's decision on the legality or constitutionality of tax ordinances and revenue measures under Section 187 of the LGC is a proper subject of appeal through a petition for review under Rule 43.[52]

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[51] *Tabigue, et al. v. International Copra Export Corporation (INTERCO)*, 623 Phil. 866, 872-873 (2009). See *Galicto v. H.E. President Aquino III, et al.*, 683 Phil. 141, 167 (2012), whereby the Court ruled that Quasi-judicial function is "a term which applies to the actions, discretion, *etc*., of public administrative officers or bodies x x x required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature."

[52] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association. Inc., et al*., *supra* note 38, at 162.

In the same light, as aforestated, the same decision, when tainted with grave abuse of discretion amounting to lack or excess of jurisdiction, may be elevated to the courts through a special civil action for *certiorari* under Rule 65, to correct errors of jurisdiction. The availability of a special civil action for *certiorari* under Rule 65 as a remedy is justified by the fact that the constitutionality of a governmental act, in the form of Ordinance No. 8331 by the City Council of Manila, is questioned. As in that case, the questioned act or exercise of functions are automatically regarded to have been committed with grave abuse of discretion for being acts undertaken outside the contemplation of the Constitution.[53]

The proper venue for the foregoing actions however is the CA and not the RTC in accordance with Section 4,[54] Rule 65 of the Rules of Court. In the consolidated cases of *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*,[55] the Court emphasized that the "acts or omissions by quasi-judicial agencies, regardless of whether the remedy involves a

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[53] *Id.* at 148.

[54] **Sec. 4.** *When and where petition filed.* — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. **If it involves the acts or omissions of a quasi-judicial agency, unless otherwise provided by law or these Rules, the petition shall be filed in and cognizable only by the Court of Appeals.**

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days. (Emphasis Ours)

[55] 802 Phil. 116 (2016).

Rule 43 appeal or a Rule 65 petition for *certiorari*, is cognizable by the CA."

Simply, the CA is the court vested with ***exclusive original*** jurisdiction to entertain a petition for *certiorari* under Rule 65 of the Rules of Court questioning the acts of quasi-judicial agencies. The RTC was then correct in dismissing the petition for review *ad cautelam*, which by its nature is a petition for *certiorari*, for having been filed before the wrong court. The CA, on the other hand, erred in ordering the case to be remanded to the RTC as it has the power to take cognizance of the same.

The imposition of tax on retailers under Ordinance No. 8331 is partially invalid as it goes beyond the 10% limitation on adjustment mandated by the LGC.

With the dismissal of the petition on procedural grounds, no resolution has been made on the substantive issue of the case, namely, whether the subject revenue ordinance by the City Council of Manila is, indeed, invalid for being contrary to the limitations set forth by Section 191 of the LGC and violative of the Constitution. Considering the importance of the subject matter of this controversy and the period of time that this case has been pending, the Court finds it fitting to address this issue once and for all.

Section 143, in relation to Section 151, of the LGC allows the imposition of tax by the local government on retailers provided that the same are in accordance with the following:

SEC. 143. *Tax on Business* – The municipality may impose taxes on the following business:

a. On retailers,	
With gross sales or receipts for the Preceding calendar year of:	Rate of Tax Per Annum
₱400,000.00 or less	2%
More than ₱400,000.00	1%

Provided, however, That Barangays shall have the exclusive power to levy taxes, as provided under Section 152 hereof, on gross sales or receipts of the preceding calendar year of Fifty thousand pesos (₱50,000.00) or less in the case of municipalities.

x x x x x x x x x

Sec. 151. *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose: Provided, however, That the taxes, fees and charges levied and collected by highly urbanized and independent component cities shall accrue to them and distributed in accordance with the provisions of this Code.

The rates of taxes that the city may levy may exceed the maximum rates allowed for the province or municipality by not more than fifty percent (50%) except the rates of professional and amusement taxes.

SEC. 191. *Authority of Local Government Units to Adjust Rates of Tax Ordinances.* – Local government units shall have the authority to adjust the tax rates as prescribed herein not oftener than once every five (5) years, but in no case shall such adjustment exceed ten percent (10%) of the rates fixed under this Code.

With the foregoing provisions, the LGC sets the minimum rate of tax that may be imposed depending on the amount of gross sales. Accordingly, local governments may impose tax provided that the same is less than, or equal to the rates therein provided. Any corresponding increase thereafter would have to comply with the frequency and rate of adjustment provided for under Section 191 of the LGC.

The Court in *Mindanao Shopping Destination Corporation, et al. v. Hon. Rodrigo R. Duterte, et al.*,[56] ruled that the application of Section 191 requires the concurrence of two elements: (1) there is a tax ordinance that already imposes a tax in accordance with the provisions of the LGC; and (2) there is a second tax ordinance that made adjustment on the tax rate fixed by the first tax ordinance.[57]

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[56] G.R. No. 211093, June 6, 2017.

[57] *Id.*

With both of herein subject ordinances having been enacted during the effectivity of the LGC on January 1, 1992, the Court finds basis to apply the aforestated elements for the application of Section 191, which it finds to be present in the case at bar.[58]

Anent the first requirement, the respondent has already imposed a tax in accordance with the provisions of the LGC when it enacted Ordinance No. 7794 in 1993 and its amendment passed two months thereafter – Ordinance No. 7807. The amendment introduced by Section 17[59] of Ordinance No. 7807 imposes local business taxes on retailers as follows:

With gross receipts or sales for the preceding calendar year in the amount of:	Amount of Tax	
	Annually	Quarterly
Over 50,000 but less than 75,000		
₱75,000 or more but less than ₱100,000	1,485	371.25
₱100,000 or more but less than ₱150,000	1,980	495
₱150,000 or more but less than ₱200,000	2,805	701.25
₱200,000 or more but less than ₱300,000	3,630	907.5
₱300,000 or more but less than ₱400,000	4,950	1,237.5
₱400,000 or more but less than ₱500,000	6,600	1,650.00
₱500,000 or more but less than ₱750,000	9,900	2,475.00
₱750,000 or more but less than ₱1,000,000	13,200	3,300.00
₱1,000,000 up to P 2,000,000	15,000	3,750.00
₱2,000,000 up to P3,000,000	₱15,000 plus 75% of 1% in excess of ₱2,000,000	
₱3,000,000 up to ₱5,000,000	₱22,500 plus 50% of 1% in excess of ₱3,000,000	
Over ₱5,000,000	₱32,000 plus 20% of 1% in excess of ₱5,000,000	

[58] *Id.*

[59] *Rollo*, p. 80.

Ordinance No. 7807 is the respondent's initial implementation of the tax provisions of the LGC, considering that the same has been passed after the Code's effectivity and that the imposition are within the rates therein prescribed.[60] It is of no moment that the ordinance imposes lower rates and provides for a different mode of tax application and tax base classification than what is provided for under the LGC as these aspects are matters which are within the discretion and power of the LGUs to determine and impose.

As the Court explained in *National Power Corporation v. City of Cabanatuan*,[61] the LGC, in granting powers upon LGUs the power to tax, does not dictate the tax rate to be imposed by the LGUs but merely sets the minimum or the maximum, leaving upon the respective *sanggunian* the determination of the actual rates to be imposed in accordance with their needs and capabilities.

The second element for the application of Section 191 is also met with the enactment of Ordinance No. 8331, which amended the retail tax to be imposed,[62] *viz*.:

Section 104. *Tax on retailers*. A percentage tax is hereby imposed on retailers:

GROSS SALES	**Amount of Tax**	
	Annually	Quarterly
Over 50,000 but less than Php 400,000.00	3%	.75%
Over Php 400,000.00	1%	.25%

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[60] *Cf. Mindanao Shopping Destination Corporation, et al. v. Hon. Rodrigo R. Duterte, et al*., *supra* note 56.

[61] 449 Phil. 233 (2003).

[62] *Rollo*, p. 80.

Since the respondent has already exercised its taxing power under the LGC with the enactment of Ordinance No. 7807, any subsequent increase would therefore have to comply with Section 191 which limits the amount of adjustment to not more than ten percent (10%) of the rates fixed under the LGC and should be no more frequent than once every five (5) years.

With the rates set by Section 143, upon tax on gross sales, the maximum *adjusted* tax rate that can be imposed after the initial implementation of the LGC,[63] taking into consideration Section 191, would be as follows:

With gross sales or receipts for the Preceding calendar year of:	Rate of Tax Per Annum
₱50,001 up to ₱400,000.00	2.20%
More than ₱400,000.00	1.10%

Clearly therefore, Ordinance No. 8331 is invalid insofar as it imposes more than the allowed adjustment for gross receipts or sales amounting to Php 50,000.00 up to Php 400,000.00.

The Court is mindful that the interval of time between the two ordinances is 20 years, Ordinance No. 7807 having been enacted in 1993, and Ordinance No. 8331 in 2013. However, this does not justify the accumulation of allowable increases and then their subsequent one-time imposition. The option to increase the tax rates under the LGC arises every five (5) years reckoned from the enactment of the ordinance sought to be adjusted. The decision of whether or not to exercise such option falls upon the LGU, through their respective *sanggunian* taking into consideration the status of each industry balanced with the needs of their respective territory.

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[63] See *Mindanao Shopping Destination Corporation, et al. v. Hon. Rodrigo R. Duterte, et al.*, *supra* note 56, where the Court stated that the interest of the LGU and the taxpayers should be balanced. And that it is but fair and reasonable that in the initial implementation of the LGC, the rates set under Section 143 should be imposed as it is only in that sense that the imposition of tax on retailers will not be considered as confiscatory or oppressive.

In the event that the LGU fails to make such adjustment within the five (5)-year period, the option to increase the prevailing ordinance remains open until such right is exercised, at which point, the five (5)-year period of limitation starts to run again.

On the other hand, were the LGU decides to make such adjustment, the basis for the increase would be the prevailing tax rate. Foreseeing that the compounding of interest would invite fear that its eventual accumulation would become unduly burdensome, the taxpayers should be reassured of the built-in measures under the LGC to restrict the power of the LGUs in this regard.

While the LGUs are granted with a wide latitude to determine the classification, tax base, tax rate and its corresponding increase, apart from the aforestated restrictions, the taxing powers of the LGU must be exercised in accordance with fundamental principles set forth under Section 130[64] of the LGC, and is subjected to the common limitations found under

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[64] Section 130. *Fundamental Principles*.– The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:

(a) Taxation shall be uniform in each local government unit;

(b) Taxes, fees, charges and other impositions shall:

(1) be equitable and based as far as practicable on the taxpayer's ability to pay;
(2) be levied and collected only for public purposes;
(3) not be unjust, excessive, oppressive, or confiscatory;
(4) not be contrary to law, public policy, national economic policy, or in restraint of trade;

(c) The collection of local taxes, fees, charges and other impositions shall in no case be let to any private person;

(d) The revenue collected pursuant to the provisions of this Code shall inure solely to the benefit of, and be subject to the disposition by, the local government unit levying the tax, fee, charge or other imposition unless otherwise specifically provided herein; and,

(e) Each local government unit shall, as far as practicable, evolve a progressive system of taxation.

Section 133[65] and specific restrictions under Section 186[66] of the same code. With these, the respondent is strictly reminded

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[65] Section 133. *Common Limitations on the Taxing Powers of Local Government Units.* – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

(a) Income tax, except when levied on banks and other financial institutions;

(b) Documentary stamp tax;

(c) Taxes on estates, inheritance, gifts, legacies and other acquisitions *mortis causa*, except as otherwise provided herein;

(d) Customs duties, registration fees of vessel and wharfage on wharves, tonnage dues, and all other kinds of customs fees, charges and dues except wharfage on wharves constructed and maintained by the local government unit concerned;

(e) Taxes, fees, and charges and other impositions upon goods carried into or out of, or passing through, the territorial jurisdictions of local government units in the guise of charges for wharfage, tolls for bridges or otherwise, or other taxes, fees, or charges in any form whatsoever upon such goods or merchandise;

(f) Taxes, fees or charges on agricultural and aquatic products when sold by marginal farmers or fishermen;

(g) Taxes on business enterprises certified to by the Board of Investments as pioneer or non-pioneer for a period of six (6) and four (4) years, respectively from the date of registration;

(h) Excise taxes on articles enumerated under the National Internal Revenue Code, as amended, and taxes, fees or charges on petroleum products;

(i) Percentage or value-added tax (VAT) on sales, barters or exchanges or similar transactions on goods or services except as otherwise provided herein;

(j) Taxes on the gross receipts of transportation contractors and persons engaged in the transportation of passengers or freight by hire and common carriers by air, land or water, except as provided in this Code;

(k) Taxes on premiums paid by way of reinsurance or retrocession;

(l) Taxes, fees or charges for the registration of motor vehicles and for the issuance of all kinds of licenses or permits for the driving thereof, except tricycles;

(m) Taxes, fees, or other charges on Philippine products actually exported, except as otherwise provided herein;

(n) Taxes, fees, or charges, on Countryside and Barangay Business Enterprises and cooperatives duly registered under R.A. No. 6810 and

of, in making subsequent adjustments of its tax ordinances or in enacting new revenue measures.

The respondent is not guilty of forum shopping.

Going now to the second and last issue in this appeal, the petitioner claims that the respondent committed forum shopping when it filed its Petition for Review *ad cautelam* before the RTC while its motion for reconsideration is still pending, thus warranting the outright dismissal of the case.

In *Chua, et al. v. Metropolitan Bank and Trust Co., et al.*,[67] the Court defined forum shopping as that which:

[E]xists when a party repeatedly avails himself of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court.[68]

Forum shopping can be committed in three ways: *first*, in case of *litis pendentia* or the filing of multiple cases with the

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Republic Act Numbered Sixty-nine hundred thirty-eight (R.A. No. 6938) otherwise known as the "Cooperative Code of the Philippines" respectively; and

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

[66] Section 186. *Power To Levy Other Taxes, Fees or Charges*. – Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further*, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose.

[67] 613 Phil. 143 (2009).

[68] *Id.* at 153.

same cause of action and seeking the same relief, in which the previous case remains pending; *second*, in case of *res judicata*, or the filing of multiple cases involving similar cause of action and relief, in which the previous case has been resolved; and *last*, in case of splitting of causes of action or the filing of multiple cases involving different reliefs although based on the same cause of action, where the ground for dismissal is either *litis pendentia* or *res judicata*.[69]

Proceeding from jurisprudential rulings, forum shopping is present when the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in another, as there is a) identity of parties or where the parties represent the same interests in both actions, b) identity of rights or causes of actions, and c) identity of relief sought in the cases that are pending.[70]

In the case at bar, the respondent filed a Motion for Reconsideration of the petitioner's Resolution dated April 7, 2014 on April 24, 2014. Thereafter, without awaiting the result of its motion, the respondent filed a Petition for Review *ad cautelam* before the RTC on May 15, 2014.

Nonetheless, the CA found that the respondent is not guilty of forum shopping. In so ruling, the CA gave weight to the fact that the respondent duly disclosed and even attached in its Petition for Review *ad cautelam* a copy of its Motion for Reconsideration pending before the petitioner. Moreover, the CA opined that there is no forum shopping where "the dispute is not being presented in the same manner before both fora, but through appeal or *certiorari* from one to the other."[71]

On this matter, it must be clarified that contrary to the opinion of the CA, the fact that the respondent has disclosed and attached

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[69] *Heirs of Marcelo Sotto v. Palicte*, 726 Phil. 651, 662-663 (2014), citing *Rev. Ao-as v. CA*, 524 Phil. 645, 660 (2006).

[70] *Spouses Melo v. CA*, 376 Phil. 204, 211 (1999), citing *Valencia v. CA*, 331 Phil. 590, 603 (1996).

[71] *Rollo*, p. 28.

a copy of its Motion for Reconsideration does not negate actual forum shopping.[72] This is because the essence of forum shopping is not on the non-disclosure of pending "identical" actions, but in the institution thereof.

As explained by the Court in *Spouses Melo v. CA*,[73] compliance with the rule on certification against forum shopping is "separate from, and independent of, the avoidance of forum shopping itself."[74] Thus, the variance with respect to imposable sanctions in case of violation – "[t]he former is merely a cause for the dismissal, without prejudice, of the complaint or initiatory pleading, while the latter is a ground for summary dismissal thereof and constitutes direct contempt."[75] Consequently, the mere proper execution of a certification against non-forum shopping does not automatically absolve a party who has otherwise committed forum shopping.

Ultimately, on the issue of forum shopping, primary consideration is given as to whether the filing of these actions would result in the very evil the rule on forum shopping seeks to prevent, that is, the rendition of conflicting decisions by different tribunals.[76]

Pertinent to this controversy, this issue must be viewed in light of the requirement of *certiorari* under Rule 65 of the Rules of Court that there be no other plain, speedy, and adequate remedy in the ordinary course of law. Thus, under the attendant circumstances, the Court perceives that in determining whether the respondent is guilty of forum shopping, it must first rule whether under the premises, a motion for reconsideration before the Secretary of Justice is necessary or is an available administrative remedy under Section 187 of the LGC.

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[72] *Heirs of Marcelo Sotto v. Palicte*, *supra* note 69, at 653-654.

[73] 376 Phil. 204 (1999).

[74] *Id*. at 213-214.

[75] *Id*.

[76] *Phil. Postal Corp. v. CA, et al.*, 722 Phil. 860, 877 (2013).

A ruling that a motion for reconsideration is necessary prior to the filing of a petition for *certiorari* would mean that the petition for review *ad cautelam* has been prematurely filed, and that the Secretary of Justice maintains jurisdiction over the action. Consequently, under the same scenario, forum shopping would exist as there is a possibility of having two conflicting rulings, one from the Secretary of Justice acting on the Motion for reconsideration, and another from the RTC acting on the petition for review *ad cautelam*.

An examination of Section 187 of the LGC, which outlines the procedure in assailing tax ordinances or revenue measures, makes no mention of the remedy of a motion for reconsideration. On the contrary, a statement in the said provision "[t]hat within thirty (30) days after receipt of the decision, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction" indicates that the filing of a motion for reconsideration is superfluous, the proper remedy being the elevation of the dispute before the courts of law.

The words in foregoing provision are simple and admits no further statutory construction.[77] A motion for reconsideration before the Secretary of Justice is a remedy not available within the purview of Section 187 of the LGC. Thus, the filing of the same motion by the respondent before the petitioner in the instant case is ineffectual, as the jurisdiction over the appeal belongs to courts of competent jurisdiction. Accordingly, the respondent cannot be adjudged guilty of forum shopping.

WHEREFORE, in view of the foregoing disquisitions, the Decision dated July 9, 2015 and Resolution dated January 8, 2016 of the Court of Appeals in CA-G.R. SP No. 139281 are

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[77] See *Barcellano v. Bañas*, 673 Phil. 177, 187 (2011), where the Court reiterated the basic principles of statutory construction, *viz*.: "where the law speaks in clear and categorical language, there is no room for interpretation. There is only room for application. Where the language of a statute is clear and unambiguous, the law is applied according to its express terms, and interpretation should be resorted to only where a literal interpretation would be either impossible or absurd or would lead to an injustice."

hereby **REVERSED AND SET ASIDE**, insofar as it ordered the case remanded to the Regional Trial Court for further proceedings.

In lieu thereof, judgment is hereby rendered **DECLARING** Section 104 of Ordinance No. 8331, series of 2013, **NULL** and **VOID** insofar as it imposes more than 2.20% tax rate on gross receipts on sales amounting to Php 50,000.00 up to Php 400,000.00.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Reyes, J. Jr.*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 224825. October 17, 2018]

CITY OF CAGAYAN DE ORO, *petitioner, vs.* **CAGAYAN ELECTRIC POWER & LIGHT CO., INC. (CEPALCO),** *respondent.*

SYLLABUS

1. TAXATION; LOCAL GOVERNMENT CODE (LGC); CONSISTENT WITH THE PROVISION OF THE CONSTITUTION, LGC WAS ENACTED TO GIVE EACH

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[*] Designated as additional Member per Special Order No. 2587 dated August 28, 2018.

LOCAL GOVERNMENT UNIT THE POWER TO CREATE ITS OWN SOURCE OF REVENUE AND TO LEVY TAXES, FEES, AND CHARGES SUBJECT TO STATUTORY GUIDELINES AND LIMITATIONS; TAXES AND FEES, DISTINGUISHED.— Unlike the national government, local government units have no inherent power to tax. They merely derive the power from Article X, Section 5 of the 1987 Constitution. Consistent with this provision, the Local Government Code was enacted to give each local government unit the power to create its own sources of revenue and to levy taxes, fees, and charges subject to statutory guidelines and limitations. The term "taxes" has been defined by case law as "the enforced proportional contributions from persons and property levied by the state **for the support of government and for all public needs**." While, under the Local Government Code, a "fee" is defined as "any charge fixed by law or ordinance **for the regulation or inspection of a business or activity**." From the foregoing jurisprudential and statutory definitions, it can be gleaned that the **purpose of an imposition will determine its nature as either a tax or a fee**. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax. On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated. Stated otherwise, if generation of revenue is the primary purpose, the imposition is a tax but, if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee.

2. ID.; ID.; APPEAL OF TAX ORDINANCE OR REVENUE MEASURE; THE REVIEW BY THE SECRETARY OF JUSTICE IS MANDATORY ONLY WHEN WHAT IS BEING QUESTIONED IS A TAX ORDINANCE OR REVENUE MEASURE, THE SAME IS NOT REQUIRED WHEN THE PARTIES ASSAIL ORDINANCES IMPOSING REGULATORY FEES.— [T]he Court rules that **ordinances that impose regulatory fees do not need to be challenged before the Secretary of Justice**. x x x Section 187 of the Local Government Code, which outlines the administrative procedure for questioning the constitutionality or legality of a tax ordinance or revenue measure, does not find application in cases where the imposition is in the nature of a regulatory fee. The provision

requires that an appeal of a tax ordinance or revenue measure should be made to the Secretary of Justice within thirty (30) days from the effectivity of the ordinance, x x x It can be gleaned from the provision that **review by the Secretary of Justice is mandatory only when what is being questioned is a tax ordinance or revenue measure. Section 187 does not require the same from parties who assail ordinances imposing regulatory fees**. Stated otherwise, the procedure found in Section 187 must be followed when an ordinance imposes a tax; the institution of an action in court without complying with the requirements of the provision will lead to the dismissal of the case on the ground of non-exhaustion of administrative remedies. However, when an ordinance imposes a fee, direct recourse to the courts may be had without prior protest before the Secretary of Justice. Simply put, fees are not subject to the procedure outlined under Section 187. x x x To be consistent with the rule that the imposition's purpose determines whether it is a tax or a fee, the Court rules that the word "or," which the legislature placed in between the phrases "tax ordinances" and "revenue measures," should not be used in its regular disjunctive sense. x x x Hence, the word "or" in Section 187 should be used in a non-disjunctive sense. It should be construed in a way that the phrase "revenue measures" is read as another way of expressing "tax ordinances." Both refer to one and the same thing. After all, the Court has consistently held that a tax ordinance is primarily designed to raise revenue.

3. ID.; ID.; ORDINANCES; REQUISITES OF A VALID ORDINANCE; ENUMERATED.— Few things are more established in this jurisdiction than the requisites of a valid ordinance. In order for an ordinance to be valid in substance, it (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit, but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable. Equally established, however, is the presumption of validity in favor of all laws, which extends to ordinances. Nonetheless, the presumption, being just that, may be set aside when invalidity or unreasonableness (1) appears on the face of the ordinance; or (2) is established by proper evidence.

4. ID.; ID.; ID.; ORDINANCES ARE PRESUMED CONSTITUTIONAL AND CONSISTENT WITH THE LAW; RATIONALE.— The presumption of validity is a corollary of the presumption of constitutionality, a legal theory of common-law origin developed by courts to deal with cases challenging the constitutionality of statutes. The presumption of constitutionality, in its most basic sense, only means that courts, in passing upon the validity of a law, will afford some deference to the statute and charge the party assailing it with the burden of showing that the act is incompatible with the constitution. The doctrine comes into operation when a party comes to court praying that a law be set aside for being unconstitutional. In effect, it places a heavy burden on the act's assailant to prove invalidity beyond reasonable doubt; it commands the clearest showing of a constitutional infraction. Thus, before a law may be struck down as unconstitutional, courts must be certain that there exists a clear and unequivocal breach of the constitution, and not one that is speculative or argumentative. To doubt, it has been said, is to sustain. x x x For the same reason, the presumption extends to legislative acts of local governments, as well. Thus, ordinances too are presumed constitutional, and, in addition, they are also presumed consistent with the law. This is necessary because one of the requisites of a valid ordinance is that it does not contravene any statute. An ordinance that is incompatible with the law is *ultra vires* and hence null and void. x x x Local governments are allowed wide discretion in determining the rates of imposable fees. In the absence of proof of unreasonableness, courts are bound to respect the judgment of the local authorities. Any undue interference with their sound discretion will imperatively warrant review and correction.

APPEARANCES OF COUNSEL

Cagayan De Oro, City Legal Office for petitioner.
Buñag and Lotilla Law Offices for respondent.

D E C I S I O N

A. REYES, JR., *J.*:

Ordinances, like laws, enjoy a presumption of validity. However, this presumption may be rendered naught by a clear demonstration that the ordinance is irreconcilable with a constitutional or legal provision, that it runs afoul of morality or settled public policy, that it prohibits trade, or that it is oppressive, discriminatory, or unreasonable.[1] *Thus, unless invalidity or unreasonableness is ostensibly apparent,*[2] *one seeking a judicial declaration of the invalidity of an ordinance is duty-bound to adduce evidence that is convincingly indicative of its infirmities or defects. Courts must exercise the highest degree of circumspection when called upon to strike down an ordinance; for, to invalidate legislation on baseless suppositions would be, to borrow the words of a former Chief Justice, "an affront to the wisdom not only of the legislature that passed it, but also of the executive that approved it.*[3]"

In this petition for review on *certiorari*,[4] the City of Cagayan de Oro (petitioner) seeks the reversal of the Court of Appeals' (CA) Decision[5] dated June 10, 2015 in CA-G.R. CV No. 02771-MIN, which set aside the Resolution[6] dated February 8, 2008 of Branch 17 of the Regional Trial Court of Cagayan de Oro City (Cagayan RTC) in Civil Case No. 2005-206.

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[1] *City of Manila v. Hon. Laguio*, 495 Phil. 289, 337 (2005).

[2] *Balacuit v. Court of First Instance of Agusan del Norte and Butuan City, Branch II*, 246 Phil. 189, 200 (1988).

[3] *ABAKADA Guro Party-list v. Purisima*, 584 Phil. 246, 291 (2008).

[4] *Rollo*, pp. 28-54.

[5] Penned by Associate Justice Edward B. Contreras and concurred in by Associate Justices Henri Jean Paul B. Inting and Pablito A. Perez; *id*. at 55-63.

[6] *Id*. at 159-162.

The Factual Antecedents

On January 24, 2005, the petitioner, through its local legislative council, enacted Ordinance No. 9527-2005,[7] which imposed an annual Mayor's Permit Fee of Five Hundred Pesos (₱500.00) on every electric or telecommunications post belonging to public utility companies operating in the city.[8] The ordinance reads:

AN ORDINANCE IMPOSING A MAYOR'S PERMIT FEE ON ELECTRIC AND/OR TELECOMMUNICATION POLES/POSTS OWNED BY PUBLIC UTILITY COMPANIES WHICH ARE ERECTED ON GOVERNMENT AND/OR PRIVATE LOTS ALONG GOVERNMENT STREETS, ROADS, HIGHWAYS AND/OR ALLEYS AT THE RATE OF FIVE HUNDRED PESOS (₱500.00) PER POST PER YEAR, AND FOR OTHER PURPOSES

BE IT ORDAINED by the City Council (*Sangguniang Panlungsod*) of the City of Cagayan de Oro in session assembled that:

Whereas, electric and/or telecommunication poles, posts and towers are sprouting everywhere in the City;

Whereas, such poles or posts pose hazard to traffic and safety of the public if they are not well maintained, and even as nuisance to the panorama or skyline of the City;

Whereas, it is for this reason that the City Government imposes some form of regulation thereon;

Whereas, the City Government under the Local Government Code is vested with authority to impose regulatory fees and charges for activities and undertakings being done in the City;

BE IT ORDAINED by the City Council (*Sangguniang Panlungsod*) that:

SECTION 1. There shall be imposed a Mayor's Permit Fee on electric and/or telecommunication poles/posts owned by public utility companies which are erected on government and/or private lots along government streets, roads, highways and/or alleys at the rate of Five Hundred Pesos (₱500.00) per post per year.

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[7] *Id*. at 232.

[8] *Id*. at 56.

SECTION 2. For this purpose, the City Engineer shall conduct a regular inventory of all electric and telecommunication poles, posts and towers in the City, indicating the respective owners thereof, and submit the same to the City Treasurer for purposes of imposing the fee under this Ordinance.

SECTION 3. The provision of Section 1 hereof shall not apply to poles, posts or towers erected or owned by the national government, its instrumentalities and other local government units.

SECTION 4. The pertinent provisions of Ordinance No. 8847-2003, otherwise known as the 2003 Revenue Code, covering the imposition of Mayor's Permit Fee and other appropriate administrative provisions thereof shall apply in the imposition of the fee under this Ordinance.

SECTION 5. This Ordinance shall take effect after 15 days following its publication in a local newspaper of general circulation for at least three (3) consecutive issues.

UNANIMOUSLY APPROVED.[9]

The respondent, Cagayan Electric Power & Light Co., Inc. (CEPALCO) is a public utility engaged in the distribution of electric power and the owner of an estimated 17,000 utility poles erected within Cagayan de Oro City. The ordinance entailed that the electricity distributor would have to pay an annual Mayor's Permit Fee of ₱8,500,000.00.[10]

CEPALCO thus filed a Petition for Declaratory Relief with Damages & Prayer for Temporary Restraining Order & Preliminary Injunction[11] dated September 30, 2005 before the Cagayan RTC assailing the ordinance's validity. CEPALCO contended that the imposition, in the guise of police power, was unlawful for violating the fundamental principle that fees, charges, and other impositions shall not be unjust, excessive, oppressive, or confiscatory.[12] Additionally, CEPALCO argued

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[9] *Id*. at 232.

[10] *Id*. at 55-57.

[11] *Id*. at 71-80.

[12] *Id*. at 57.

that, assuming the imposition was a valid regulatory fee, it violated the legislative franchise that specifically exempted the electricity distributor from taxes or fees assessed by Cagayan de Oro City.[13]

On November 7, 2005, the city filed its Answer with Affirmative/Special Defenses and Compulsory Counterclaim.[14] It countered that the ordinance was a valid exercise of its powers vested by the applicable provisions of the Constitution, the Local Government Code, and other laws. Also, the city maintained that Section 9 of CEPALCO's legislative franchise expressly subjected the latter to taxes, duties, fees, or charges.[15]

On May 5, 2006, pending the determination of the ordinance's validity, the Cagayan RTC issued a writ of preliminary injunction.[16]

The RTC's Ruling

On February 8, 2008, the Cagayan RTC issued a Resolution dismissing the petition for declaratory relief due to CEPALCO's failure to exhaust administrative remedies. The *fallo* reads:

> WHEREFORE, premises considered, the Court hereby dismissed the petition for failure of petitioner CEPALCO to exhaust administrative remedies pursuant to Sec. 187, RA 7160 and for being time-barred under the circumstances. The writ of preliminary injunction issued on May 5, 2006 is hereby dissolved.
>
> SO ORDERED.

The Cagayan RTC stated that it found the tax excessive, but could not interfere with the decision-making of the government agency concerned. It declared that the issue on excessiveness

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[13] *Id*.

[14] *Id*. at 99-109.

[15] *Id*. at 57.

[16] *Id*.

was a question best addressed to the sound discretion of the city council of Cagayan de Oro. Nonetheless, for CEPALCO's neglect to appeal the ordinance to the Secretary of Justice, the trial court dismissed the case and ruled that the electricity distributor failed to exhaust administrative remedies.[17]

Aggrieved, CEPALCO elevated the case to the CA.[18]

The CA's Ruling

On June 10, 2015, the CA promulgated the herein assailed decision, granting CEPALCO's appeal. The dispositive portion reads:

WHEREFORE, the Appeal is **GRANTED**. The assailed Resolution dated February 8, 2008 of the Regional Trial Court, Branch 17, Cagayan de Oro City is hereby **REVERSED** and **SET ASIDE**. The City Ordinance No. 9527-2005 is declared void.

SO ORDERED.

The CA declared the ordinance void for being exorbitant and unreasonable. It held that, since the city failed to include a discussion on how the members of the city council arrived at the amount of ₱500.00 per pole, CEPALCO could not be appraised of the logistics of and reasons behind the imposition. According to the CA, the city should have explained how the sum would be accounted for, stating the probable expenses of regulating and inspecting each of the poles.[19] The appellate court additionally held that the doctrine of exhaustion of administrative remedies was inapplicable considering the case involved a regulatory fee and not a tax measure.[20]

The foregoing ultimately led to the filing of the instant petition before this Court.

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[17] *Id*. at 58.

[18] *Id*.

[19] *Id*. at 62.

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

The Issues

In its petition, the petitioner raises issues that may be summed up as: (1) whether or not CEPALCO should have exhausted administrative remedies by challenging Ordinance No. 9527-2005 before the Secretary of Justice prior to instituting the present action; and (2) whether or not the amount of the Mayor's Permit Fee is excessive, unreasonable, and exorbitant.

This Court's Ruling

The petition is partly meritorious.

Anent the issue on exhaustion of administrative remedies, petitioner argued that CEPALCO should have raised the ordinance's alleged excessiveness before the Secretary of Justice because it imposes a tax.[21] Hence, the city maintained that the case should have been dismissed at the first instance for failure to exhaust administrative remedies.[22]

CEPALCO countered that the doctrine of exhaustion of administrative remedies applies only to taxes and other revenue measures, and not to regulatory fees.[23]

Before delving into the parties' arguments, the Court deems it necessary to ascertain the nature of the Mayor's Permit Fee.

Unlike the national government, local government units have no inherent power to tax.[24] They merely derive the power from Article X, Section 5 of the 1987 Constitution.[25] Consistent with this provision, the Local Government Code was enacted to give each local government unit the power to create its own sources

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[21] *Id*. at 45.

[22] *Id*. at 46.

[23] *Id*. at 291.

[24] *Film Development Council of the Philippines v. Colon Heritage Realty Corporation*, 760 Phil. 519, 537 (2015).

[25] **Section 5.** Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees and charges subject to

of revenue and to levy taxes, fees, and charges subject to statutory guidelines and limitations.[26]

The term "taxes" has been defined by case law as "the enforced proportional contributions from persons and property levied by the state **for the support of government and for all public needs**.[27]" While, under the Local Government Code, a "fee" is defined as "any charge fixed by law or ordinance **for the regulation or inspection of a business or activity**.[28]"

From the foregoing jurisprudential and statutory definitions, it can be gleaned that **the purpose of an imposition will determine its nature as either a tax or a fee**. If the purpose is primarily revenue, or if revenue is at least one of the real and substantial purposes, then the exaction is properly classified as an exercise of the power to tax.[29] On the other hand, if the purpose is primarily to regulate, then it is deemed an exercise of police power in the form of a fee, even though revenue is incidentally generated.[30] Stated otherwise, if generation of revenue is the primary purpose, the imposition is a tax but, if regulation is the primary purpose, the imposition is properly categorized as a regulatory fee.[31]

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such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local government.

[26] LOCAL GOVERNMENT CODE, Sec. 129.

[27] *Republic v. Philippine Rabbit Bus Lines, Inc.*, 143 Phil. 158, 163 (1970).

[28] **Section 131**. *Definition of Terms*. – When used in this Title, the term:

x x x x x x x x x

(1) "Fee" means a charge fixed by law or ordinance for the regulation or inspection of a business or activity;

x x x x x x x x x

[29] *Philippine Airlines, Inc. v. Edu*, 247 Phil. 283, 292 (1988).

[30] *Chevron Philippines, Inc. v. Bases Conversion Development Authority*, 645 Phil. 84, 91 (2010).

[31] *Gerochi v. Department of Energy*, 554 Phil. 563, 580 (2007).

In *Smart Communications, Inc. v. Municipality of Malvar*,[32] the Municipality of Malvar enacted Ordinance No. 18, entitled "An Ordinance Regulating the Establishment of Special Projects." By reason of the ordinance, Smart was assessed ₱389,950.00 on a telecommunications tower that it erected within the municipality. This prompted Smart to challenge the validity of the ordinance and the consequent assessment before the RTC of Batangas. When the case reached the Court, one of the issues raised was: *whether the ordinance imposed a tax or a fee*. The Court was able to address the issue after a simple reading of the ordinance's whereas clauses, which revealed that the primary purpose of the ordinance was to regulate cell sites or telecommunications towers, including Smart's. Thus, since the whereas clauses showed that the ordinance served a regulatory purpose, it was ruled that the case involved a fee and not a tax.

In the case at bar, the CA, adhering to the course of action taken in *Smart Communications*, concluded that the Mayor's Permit Fee serves a regulatory purpose.[33] The appellate court properly took into account the whereas clauses of the ordinance, which read:

> *Whereas*, electric and/or telecommunication poles, posts and towers are sprouting everywhere in the City;
>
> *Whereas*, such poles or posts pose hazard to traffic and safety of the public if they are not well maintained, and even as nuisance to the panorama or skyline of the City;
>
> *Whereas*, it is for this reason that the City Government **imposes some form of regulation** thereon;
>
> *Whereas*, the City Government under the Local Government Code is vested with authority to impose regulatory fees and charges for activities and undertakings being done in the City; (Emphasis and underscoring supplied)[34]

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[32] 727 Phil. 430, 434 (2014).

[33] *Rollo*, p. 60.

[34] *Id*. at 232.

A cursory reading of the whereas clauses makes it is apparent that **the purpose of the ordinance is to regulate the construction and maintenance of electric and telecommunications posts** erected within Cagayan de Oro City.

On account of the foregoing, it is clear that the ordinance in this case serves a regulatory purpose and is, hence, an exercise of police power. Nowhere in the text of the ordinance is it shown that it was enacted to raise revenue. On the contrary, the third whereas clause expressly states the city's need to impose some form of regulation on the construction of electric and telecommunications poles. As in *Smart Communications*, the fee is not imposed on the structure itself, but on the activity subject of government regulation, which is the installation and establishment of utility posts. Thus, it can be concluded without argument that **the ordinance imposes a fee since it was enacted pursuant to the city's police power and serves to regulate, not to raise revenue**.

Proceeding to the question of non-exhaustion, the Court rules that **ordinances that impose regulatory fees do not need to be challenged before the Secretary of Justice**.

To be sure, this is not a novel issue. Section 187 of the Local Government Code, which outlines the administrative procedure for questioning the constitutionality or legality of a tax ordinance or revenue measure, does not find application in cases where the imposition is in the nature of a regulatory fee.[35] The provision requires that an appeal of a tax ordinance or revenue measure should be made to the Secretary of Justice within thirty (30) days from the effectivity of the ordinance,[36] *viz*:

Section 187. *Procedure for Approval and Effectivity of Tax, Ordinances and Revenue Measures; Mandatory Public Hearings.* – The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code:

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[35] *Supra* note 32, at 443-444.

[36] *Alta Vista Golf and Country Club v. The City of Cebu*, 778 Phil. 685, 701 (2016).

Provided, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, **That 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 x x x. (Emphasis and underscoring supplied)

It can be gleaned from the provision that **review by the Secretary of Justice is mandatory only when what is being questioned is a tax ordinance or revenue measure. Section 187 does not require the same from parties who assail ordinances imposing regulatory fees**. Stated otherwise, the procedure found in Section 187 must be followed when an ordinance imposes a tax; the institution of an action in court without complying with the requirements of the provision will lead to the dismissal of the case on the ground of non-exhaustion of administrative remedies.[37] However, when an ordinance imposes a fee, direct recourse to the courts may be had without prior protest before the Secretary of Justice. Simply put, fees are not subject to the procedure outlined under Section 187.

CEPALCO additionally argued that, assuming that the ordinance does not impose a tax, it is still a revenue measure, which Section 187 expressly subjects to the exhaustion doctrine.[38]

The argument is speculative.

For clarity, that portion of Section 187 referred to by CEPALCO, as quoted above, states:

x x x *Provided, further*, That 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 x x x (Emphasis and underscoring supplied)

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[37] *Aala v. Hon. Uy, et al.*, 803 Phil. 36, 59 (2017).

[38] *Rollo*, p. 45.

To be consistent with the rule that the imposition's purpose determines whether it is a tax or a fee,[39] the Court rules that the word "or," which the legislature placed in between the phrases "tax ordinances" and "revenue measures," should not be used in its regular disjunctive sense.

Ordinarily, the use of "or" connects a series of words or propositions indicating that the various members of the enumeration are to be taken separately.[40] The term usually signifies disassociation and independence of one thing from each of the other things enumerated.[41]

However, jurisprudence has given the word another interpretation. In *Gonzales v. GJH Land, Inc.*,[42] the Court ruled:

> To clarify, the word "or" x x x was intentionally used by the legislature to particularize that [an antecedent phrase is the equivalent of a subsequent phrase]. This interpretation is supported by *San Miguel Corp. v. Municipal Council*, wherein the Court held that:
>
> The word "or" may be used as the equivalent of "that is to say" and gives that which precedes it the same significance as that which follows it. It is not always disjunctive and is sometimes interpretative or expository of the preceding word.[43] (Citations omitted)

Hence, the word "or" in Section 187 should be used in a non-disjunctive sense. It should be construed in a way that the phrase "revenue measures" is read as another way of expressing "tax ordinances." Both refer to one and the same thing. After all, the Court has consistently held that a tax ordinance is primarily designed to raise revenue.[44]

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[39] *Gerochi v. Department of Energy*, 554 Phil. 563, 580 (2007).

[40] *Vargas v. Cajucom*, 761 Phil. 43, 61 (2015).

[41] *Id*.

[42] 772 Phil. 483 (2015).

[43] *Id*. at 507.

[44] *Philippine Airlines, Inc. v. Edu*, 247 Phil. 283, 293 (1988).

Considering the foregoing, there was no procedural barrier preventing CEPALCO from instituting the instant petition for declaratory relief before the RTC at the first instance.

On the issue of the ordinance's substantive validity, petitioner maintained that the CA erred when it declared the fee exorbitant and unreasonable. The city posited that CEPALCO had the burden to prove the unreasonableness of the exaction.[45] Since the electricity distributor failed to present any evidence on the propriety of the amount, the city continued, the ordinance should be upheld, as it enjoys the presumption of validity.[46]

CEPALCO, on the other hand, submitted that the CA correctly declared the ordinance void, the amount of the Mayor's Permit Fee being unjust, excessive, oppressive, and confiscatory.[47] Since it owns 17,000 poles, more or less, the amount it will have to pay annually as its Mayor's Permit Fee alone will reach ₱8,500,000.00.[48] This, as argued by the electricity distributor, is by all reasonable and judicious standards shockingly unconscionable considering it is substantially in excess of the costs of regulation and inspection.[49]

The city's contention is impressed with merit.

At the outset, it is apt to state that the Court takes judicial notice of the practice of regulating the construction and installation of utility poles, which are not only eyesores when ill-maintained but, just as well, pose a serious threat to the safety of the general public. Local governments such as the petitioner, as well as the cities of Bacoor[50] and

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[45] *Rollo*, p. 37.

[46] *Id*. at 38.

[47] *Id*. at 286.

[48] *Id*. at 287.

[49] *Id*. at 288.

[50] *See:* Ordinance No. 2013-051, which amended Ordinance No. 6, Series of 2009, entitled "An Ordinance Regulating the Installation and Maintenance of Distribution Lines of Various Public Utilities in the Municipality of Bacoor."

Angeles[51] and the Municipality of Kalibo,[52] curb the indiscriminate erection and establishment of electricity and telecommunications poles by levying regulatory fees from service providers that use such poles as an indispensable part of their business. These fees are imposed pursuant to the delegated legislative power of local government units, exercised through duly enacted ordinances.

Few things are more established in this jurisdiction than the requisites of a valid ordinance. In order for an ordinance to be valid in substance, it (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit, but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.[53]

Equally established, however, is the presumption of validity in favor of all laws, which extends to ordinances.[54]

Nonetheless, the presumption, being just that, may be set aside when invalidity or unreasonableness (1) appears on the face of the ordinance; or (2) is established by proper evidence.[55]

In *Balacuit v. Court of First Instance*,[56] the Court, without examining matters of fact, struck down a Butuan City ordinance

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[51] *See:* Ordinance No. 442, Series of 2017, entitled "An Ordinance Regulating the Installation, Operation and Maintenance of Telecommunication Cables, Telecommunication Towers, Building Electronics Systems, Structured Cabling, Mobile Cellsites, Cable TV Facilities for Service Providers and Electronic Equipment, Providing Penalties for Violation Thereof and For Other Purposes."

[52] *See:* Ordinance No. 2012-009, entitled "An Ordinance Regulating the Installation, Rehabilitation and Maintenance of Telecommunication, Power/ Electrical Lines/Wires, Cables and the Like Within the Municipality of Kalibo, Province of Aklan and Prescribing Penalties for Violation Thereof."

[53] *City of Batangas v. Philippine Shell Petroleum Corporation*, G.R. No. 195003, June 7, 2017.

[54] *Social Justice Society v. Atienza*, 568 Phil. 658, 683 (2008).

[55] *Balacuit v. Court of First Instance*, *supra* note 2, at 205.

[56] *Id*. at 200.

requiring theaters to sell tickets to children (between seven [7] and twelve [12] years of age) at half price. In that case, the ordinance was merely examined under the lens of police power, *sans* the need to take into account facts showing invalidity. The Court nullified the ordinance because, on its face, it offended the elementary tenets of due process.

More recently, in *City of Manila v. Hon. Laguio, Jr.*,[57] the Court annulled an ordinance prohibiting the establishment of certain businesses such as clubs, parlors, and inns, which were considered "houses of ill-repute." The ordinance was invalidated, *inter alia*, because it failed to meet the requisites for a valid exercise of police power, as it substantially curtailed property and personal rights of Manila's citizenry. Again, no evidence on extrinsic facts was needed to show the ordinance's invalidity; all the Court needed to do was analyze it in the light of the extent of a municipal corporation's police power and settled due process precepts.

The ordinances in *Balacuit* and *Laguio, Jr.* served as prime examples of facially apparent invalidity. In those cases, the Court did not need to make any fact-based appraisals to reach the conclusion that, as a matter of law, the ordinances had to be struck down. Their provisions were merely scrutinized against settled jurisprudential doctrines on the police power of local government units; save for the ordinances themselves and the circumstances of their enactment, nothing needed to be proved.

On the other hand, in *Morcoin Co., Ltd. v. City of Manila*,[58] an ordinance that sought to regulate coin-operated apparatuses, such as juke boxes and pinball machines, was held to be invalid only after an examination of proof showing unreasonableness. The Court in that case struck down an ordinance, which imposed an annual license fee of ₱300.00 on every coin-operated contraption, after a juke box operator was able to show that his machines had a yearly income of only around ₱211.00. It was

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[57] *City of Manila v. Hon. Laguio*, *supra* note 1, at 315.

[58] 110 Phil. 921, 924 (1961).

held that such a showing of excessiveness invariably warranted the nullification of the ordinance.

Unlike in *Balacuit* and *Laguio, Jr.*, the alleged invalidity of the ordinance involved here is not apparent on its face. CEPALCO has not shown that the Mayor's Permit Fee ostensibly contravenes any constitutional or statutory provision or settled public policy, or is *per se* unreasonable, oppressive, discriminatory, or in restraint of trade. Hence, it is only logical that the Court adheres to the methodology used in *Morcoin*, and thus evaluate the ordinance in the light of the evidence presented by CEPALCO to reach a conclusive determination of the fee's excessiveness.

CEPALCO contended that the ordinance was null and void due to the unjust, excessive, and confiscatory nature of the Mayor's Permit Fee.[59] In line with this contention, the electricity distributor now bears the burden of showing that the ordinance violates Sections 130, 147, and 186 of the Local Government Code.

Section 130 lays down several underlying axioms that must be adhered to by all fiscal impositions levied by municipal corporations, thus:

Section 130. *Fundamental Principles.* – The following fundamental principles shall govern the exercise of the taxing and other revenue-raising powers of local government units:

x x x x x x x x x

(b) Taxes, fees, charges and other impositions shall:

(1) be equitable and based as far as practicable on the taxpayer's ability to pay;

(2) be levied and collected only for public purposes;

(3) **not be unjust, excessive, oppressive, or confiscatory**;

(4) not be contrary to law, public policy, national economic policy, or in the restraint of trade; (Emphasis and underscoring supplied)

x x x x x x x x x

[59] *Rollo*, p. 287.

The tenor of paragraph (b) (3) of Section 130 is reiterated in Section 186, which reads:

Section 186. *Power To Levy Other Taxes, Fees or Charges.* – Local government units may exercise the power to levy taxes, fees or charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, That the **taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy** x x x. (Emphasis and underscoring supplied)

On the other hand, Section 147, when read in conjunction with Section 151,[60] places a general limitation on the amount levied by regulatory fees imposed by cities, thus:

Section 147. *Fees and Charges*. – The municipality may impose and collect such reasonable fees and charges on business and occupation and, except as reserved to the province in Section 139 of this Code, on the practice of any profession or calling, **commensurate with the cost of regulation, inspection and licensing** before any person may engage in such business or occupation, or practice such profession or calling. (Emphasis and underscoring supplied)

It can be gleaned from the foregoing that if a regulatory fee produces revenue in excess of the cost of the regulation, inspection, and licensing, it will be considered excessive, and hence fail the test of judicial scrutiny.[61]

Thus, the Court is faced with the question:

Whether or not the amount of ₱500.00 collected annually on a per post basis violated Sec. 147 of the Local Government Code, which provides that fees must be commensurate with the cost of regulation, inspection, and licensing[62]

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[60] **Section 151.** *Scope of Taxing Powers.* – Except as otherwise provided in this Code, the city, may levy the taxes, fees, and charges which the province or municipality may impose x x x

[61] *Ferrer v. Bautista*, 762 Phil. 233, 283 (2015).

[62] *Rollo*, p. 36.

For CEPALCO's failure to establish excessiveness, the Court rules in the negative. A judicious perusal of the record fails to reveal anything definitively showing the ordinance's unreasonable, excessive, oppressive, or confiscatory nature; hence, because it enjoys the presumption of validity, the Court is constrained to reverse the decision of the CA.

The presumption of validity is a corollary of the presumption of constitutionality, a legal theory of common-law origin developed by courts to deal with cases challenging the constitutionality of statutes.[63]

The presumption of constitutionality, in its most basic sense, only means that courts, in passing upon the validity of a law, will afford some deference to the statute and charge the party assailing it with the burden of showing that the act is incompatible with the constitution.[64] The doctrine comes into operation when a party comes to court praying that a law be set aside for being unconstitutional.[65] In effect, it places a heavy burden on the act's assailant to prove invalidity beyond reasonable doubt;[66] it commands the clearest showing of a constitutional infraction.[67] Thus, before a law may be struck down as unconstitutional, courts must be certain that there exists a clear and unequivocal breach of the constitution, and not one that is speculative or argumentative.[68] To doubt, it has been said, is to sustain.[69]

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[63] Shuwakitha Chadrasekaran, "The Doctrine of Presumption of Constitutionality in Interpretation of Statutes in India – Addressing the Repercussions by Tracing the Judicial Pronouncements," *The World Journal on Juristic Polity*, Vol. 3, no. 3 (2017).

[64] Edward Dawson, "Adjusting the Presumption of Constitutionality Based on Margin of Statutory Passage," *Journal of Constitutional Law*, Vol. 16, no. 1 (2013).

[65] See: *ABAKADA Guro Party List v. Purisima*, 584 Phil. 246, 266 (2008).

[66] *Victoriano v. Elizalde Rope Workers' Union*, 158 Phil. 60, 74 (1974).

[67] *Drilon v. Lim*, 305 Phil. 146, 150 (1994).

[68] *Garcia v. Executive Secretary,* 602 Phil. 64, 82 (2009).

[69] *Id*.

The United States Supreme Court expressed the rationale for the presumption in *Ogden v. Saunders*,[70] thus: "**it is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body by which any law is passed to presume in favor of its validity** x x x.[71]"

For the same reason, the presumption extends to legislative acts of local governments, as well. Thus, ordinances too are presumed constitutional,[72] and, in addition, they are also presumed consistent with the law. This is necessary because one of the requisites of a valid ordinance is that it does not contravene any statute.[73] An ordinance that is incompatible with the law is *ultra vires* and hence null and void.[74]

To this end, when an action assailing an ordinance is brought before a court, the judge must, as a rule, presume that the ordinance is valid and therefore charge the plaintiff with the burden of showing otherwise. In *U.S. v. Salaveria*,[75] the Court, speaking through Justice Malcolm, laid down the basis for the presumption in this wise:

> The presumption is all in favor of validity x x x. The action of the elected representatives of the people cannot be lightly set aside. The councilors must, in the very nature of things, be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. The local legislative body, by enacting the ordinance, has in effect given notice that the regulations are essential to the well-being of the people x x x.[76]

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[70] 25, U.S. 213 (1827).

[71] *Id*. at 270.

[72] *Social Justice Society v. Atienza*, *supra* note 53, at 683-684.

[73] *White Light Corporation, et al. v. Manila*, 596 Phil. 444, 459 (2009).

[74] *City of Batangas v. Philippine Shell Petroleum Corporation*, *supra* note 52.

[75] 39 Phil. 102 (1918), cited in *Ermita-Malate Hotel and Motel Operators Association, Inc. v. City Mayor of Manila*, 127 Phil. 306, 314-315 (1967).

[76] *Id*. at 111.

In the case at bar, the CA annulled Ordinance No. 9527-2005 for being exorbitant, unreasonable, and for lacking a basis. The appellate court held that the ordinance's enactment was tainted with legal infirmities. According to the CA, the city council should not have enacted the ordinance without divulging the method it used to arrive at the amount of the Mayor's Permit Fee. The city should have justified the ordinance by making known the parameters, guidelines, and computations it employed to set the fee at ₱500.00. In addition, it was ruled that the city was bound to explain how it would account for the proceeds collected by reason of the ordinance thus stating the probable expenses for the regulation and inspection of utility poles. This, the CA held, was necessary to inform electricity distributors like CEPALCO of the reasons of the fee. On this logic, the appellate court struck down the ordinance.

By holding that the city council should have explained the reasons for the ordinance's enactment, the CA effectively reversed the presumption of validity. In essence, the appellate court shifted the burden to Cagayan de Oro to show that the ordinance was reasonable and that the amount of the Mayor's Permit Fee was not excessive. Verily, no law requires that local governments justify the ordinances they pass by setting forth the grounds for their enactment. Thus, the CA's nullification of the ordinance was done in a manner contrary to principles established in jurisprudence.

After a meticulous scrutiny of the records, the Court finds that, in the proceedings *a quo*, the ordinance was never shown to be violative of the rule that fees must be commensurate with the cost of regulation, inspection, and licensing.

A review of the proceedings before the trial court shows that the allegation of the fee's unreasonableness was never substantiated. In fact, the memorandum[77] CEPALCO filed before the trial court is bereft of any allegations showing the impropriety of the amount exacted by the ordinance. Besides the self-serving statement that the sum of ₱500.00 was

[77] *Rollo*, pp. 146-159.

disproportionate to the cost of regulation and inspection of utility poles, CEPALCO showed nothing tending to prove the fee's excessiveness. The electricity distributor simply maintained that the amount was confiscatory,[78] and prayed that the ordinance be struck down for being unlawful and unjustified. The RTC, for its part, never ruled that the ordinance was void because the amount of the Mayor's Permit Fee was excessive. Instead, it dismissed the case for failure to exhaust administrative remedies.[79] Moreover, according to the trial court, the city had the discretion to determine the amount of the exaction.[80]

So, too, the record is devoid of any indication that the fee's excessiveness was established on appeal. CEPALCO never pointed out the particulars of the fee's unreasonableness. While it stated that the ordinance only ordered the inspection and inventory of electric poles erected in the city,[81] it never even bothered to allege, much less prove, the cost of such inspection and inventory. It merely argued that the simple and repetitive work that would be undertaken by reason of the ordinance would require minimal expenses on the city's part.[82] The CA agreed. However, the appellate court never stated why it found the amount excessive. Instead, as mentioned earlier, the CA simply held that the city should have discussed the amount's basis so that public utility companies would be informed of the rationale of the fee's imposition and how the funds levied by the ordinance would be accounted for.[83]

Being a public utility engaged in the distribution of electricity and the owner of around 17,000 poles, CEPALCO could have certainly adduced evidence on maintenance, inspection, and inventory expenses. As an electricity distributor, CEPALCO

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[78] *Id*. at 152.

[79] *Id*. at 162.

[80] *Id*. at 161.

[81] *Id*. at 192.

[82] *Id*.

[83] *Id*. at 62.

is charged with keeping its utility posts well-preserved and in good condition. Necessarily, the cost of maintaining and inspecting such posts is well within its cognizance. Clearly, it had proof of such costs in its possession. Thus, CEPALCO could have easily showed that the annual exaction of ₱500.00 per post was in excess of the cost of regulation and, therefore, fee is excessive and unreasonable.

However, CEPALCO failed to do so. It simply maintained that the annual payment of ₱8,500,000.00 was, "by any fairly judicious standards, shocking to the conscience of man.[84]" The electricity distributor could have compared the fee with the annual costs it incurs on the preservation and inventory of its posts or, as in *Morcoin*, showed that the annual fee imposed on a single pole was greater than the same pole's yearly income. This would have readily shown the fee's alleged excessiveness. The record, nevertheless, fails to reveal that the imposition was not commensurate with the actual cost of regulation and inspection. Besides CEPALCO's bare, self-serving, and unsubstantiated allegations, nothing even remotely suggests the fee's excessiveness.

Without evidence indicating that the amount of the Mayor's Permit Fee is disproportionate to the cost of regulation, inspection, and licensing of utility poles located in Cagayan de Oro City, the Court cannot agree with the CA's invalidation of the ordinance.

Local governments are allowed wide discretion in determining the rates of imposable fees. In the absence of proof of unreasonableness, courts are bound to respect the judgment of the local authorities. Any undue interference with their sound discretion will imperatively warrant review and correction.

In this case, as the party assailing the ordinance, it was CEPALCO's responsibility to prove the amount's excessiveness; it had the burden to show that the fee was not commensurate with the cost of regulation, inspection, and licensing. Nevertheless, for the reasons discussed above, it failed to

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[84] *Id*. at 287.

dismantle the presumption of validity because it never established that the city council abused its discretion in setting the amount of the fee at ₱500.00.

Thus, the CA erred in declaring the ordinance invalid. Courts, as a rule, must refrain from interfering with legislative acts, lest they stray into the realm of policy decision-making.[85] The public interest is best served by allowing the political processes to operate without undue interference.[86]

On a final note, the Court deems it appropriate to reiterate its ruling in *Victorias Milling Co., Inc. v. Municipality of Victorias*,[87] to wit:

> An ordinance carries with it the presumption of validity. The question of reasonableness though is open to judicial inquiry. Much should be left thus to the discretion of municipal authorities. Courts will go slow in writing off an ordinance as unreasonable unless the amount is so excessive as to be prohibitive, arbitrary, unreasonable, oppressive, or confiscatory. x x x

WHEREFORE, the petition is **GRANTED**. The Decision of the Court of Appeals dated June 10, 2015 in CA-G.R. CV No. 02771-MIN is **REVERSED** and **SET ASIDE**. City Ordinance No. 9527-2005 of Cagayan de Oro City is hereby declared valid and constitutional.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Reyes, J. Jr.,*[*] *JJ.*, concur.

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[85] *Bureau Veritas v. Office of the President*, 282 Phil. 734, 747 (1992).

[86] *Sinaca v. Mula*, 373 Phil. 896, 912 (1999).

[87] 134 Phil. 180 (1968), as cited in *Progressive Development Corporation v. Quezon City*, 254 Phil. 635, 646 (1989) and *Smart Communications, Inc. v. Malvar*, 727 Phil. 430, 446 (2014).

[*] Designated additional Member per Special Order No. 2587, dated August 28, 2018.

SECOND DIVISION

[G.R. No. 226467. October 17, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **XXX,**[*] *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE, AS AMENDED; RAPE; ELEMENTS.— In rape cases in general, the prosecution has the burden to conclusively prove the two elements of the crime – *viz*.: (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation. On the other hand, to convict an accused for Statutory Rape, the prosecution has the burden of proving only 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. Statutory Rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. What differentiates it with other instances of rape is that, proof of force, intimidation

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[*] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. (RA) 7610, entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, AND FOR OTHER PURPOSES," approved on June 17, 1992; RA 9262, entitled "AN ACT DEFINING VIOLENCE AGAINST WOMEN AND THEIR CHILDREN, PROVIDING FOR PROTECTIVE MEASURES FOR VICTIMS, PRESCRIBING PENALTIES THEREFORE, AND FOR OTHER PURPOSES," approved on March 8, 2004; and Section 40 of A.M. No. 04-10-11-SC, otherwise known as the "Rule on Violence against Women and Their Children" (November 15, 2004). (See footnote 4 in *People v. Cadano, Jr.*, 729 Phil. 576, 578 [2014], citing *People v. Lomaque*, 710 Phil. 338, 342 [20I3]. 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); *People v. XXX*, G.R. No. 235652, July 9, 2018.

or consent is unnecessary, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act.

2. ID.; ID.; ID.; IN RAPE CASES, THE ACCUSED MAY BE CONVICTED ON THE BASIS OF THE LONE, UNCORROBORATED TESTIMONY OF THE RAPE VICTIM, PROVIDED THAT THE TESTIMONY IS CLEAR, CONVINCING, AND OTHERWISE CONSISTENT WITH HUMAN NATURE; GUIDING PRINCIPLE IN REVIEWING RAPE CASES, ENUMERATED.— In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance. However, it is equally true that in reviewing rape cases, the Court observes the following guiding principles: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime where only two persons are usually involved, **the testimony of the complainant must be scrutinized with extreme caution**; (3) **the evidence for the prosecution must stand or fall on its own merits**, and cannot be allowed to draw strength from the weakness of the evidence for the defense. This must be so as the guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there should be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it. Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict. Again, these basic postulates assume that the court and others at the trial are able to comprehend the testimony of witnesses, particularly of the victim herself if she is presented and testified under oath.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; AN ESSENTIAL COMPONENT OF THE RIGHT TO DUE PROCESS IN CRIMINAL PROCEEDINGS IS THE RIGHT OF THE ACCUSED TO BE SUFFICIENTLY INFORMED OF THE CAUSE OF THE ACCUSATION AGAINST HIM; NOT ESTABLISHED IN CASE AT BAR.— To reiterate, one of the guiding principles to be followed by the courts in determining the guilt of an accused in a rape case is that the **evidence for the prosecution must stand or fall on its own merits**. On its own, the testimony of AAA, as shown above, establishes that what happened "sometime in July 2003" was that XXX put her hand on his penis. She likewise testified that nothing else happened as X X X was interrupted because BBB already arrived from the market. **Thus, the prosecution's evidence failed to establish the most crucial element of the crime of Rape – that is, the sexual intercourse between the accused and the complainant**. Neither could XXX be convicted through his admission that he had sexual intercourse with AAA in 2007. This is because the Information filed in this case accused XXX of having sexual intercourse with AAA "sometime in July 2003." While it is true, as the RTC and the CA held, that the exact place and time of the commission of the crime is not an element of the crime of Rape, XXX still could not be convicted of the crime for to do so would be to offend the basic tenets of due process in criminal prosecutions. An essential component of the right to due process in criminal proceedings is the right of the accused to be sufficiently informed of the cause of the accusation against him. This is implemented through Section 9, Rule 110 of the Rules of Court.

4. ID.; ID.; ID.; NO INFORMATION FOR A CRIME WILL BE SUFFICIENT IF IT DOES NOT ACCURATELY AND CLEARLY ALLEGE THE ELEMENTS OF THE CRIME CHARGED; CASE AT BAR.— It is fundamental that every element of which the offense is composed must be alleged in the Information. No Information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged. The test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered. The purpose

of the law in requiring this is to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense. In the present case, again, the Information specifically accused XXX of having sexual intercourse with AAA "sometime in July 2003." The date, in this case, is essential because in July 2003, AAA was only 10-years old; thus, making the accusation against him that for Statutory Rape instead of Simple Rape – which, as previously discussed, imposes on the prosecution different elements to prove. x x x Thus, the prosecution only needs to prove the age of the victim, and the fact that sexual intercourse happened. In contrast, in Simple Rape, the prosecution has the burden of proving another element, namely, that the accused employed force and intimidation, for example, in order to have sexual intercourse with the victim. Therefore, as the two crimes have different elements – and would therefore entail different defenses on the part of the accused – the courts cannot thus equate one with the other. To do so would be to offend the due process rights of the accused. Applying the foregoing to the present case, the Court cannot therefore use the "admission" by XXX, as his admission pertains to his having sexual intercourse with AAA in 2007, or when AAA was already 14 years old – beyond the age set for Statutory Rape. x x x Again, the Information charges the accused for the events in 2003, not 2007. It cannot therefore offer evidence for events other than what happened in 2003.

5. CRIMINAL LAW; REVISED PENAL CODE, AS AMENDED; ACTS OF LASCIVIOUSNESS; ELEMENTS; CASE AT BAR.— The elements of acts of lasciviousness are: (1) that the offender commits **any act of lasciviousness or lewdness**; (2) that it is done under any of the following circumstances: (a) by using force or intimidation, (b) when the offended party is deprived of reason or otherwise unconscious; or (c) **when the offended party is under twelve (12) years of age**. Applied in this case, what the testimony of AAA proves is that, when she was 10 years old, XXX got a hold of her hand and placed it on top of his penis. Undoubtedly then, the established facts in this case complies with the elements needed to be proved to reach a conviction for acts of lasciviousness, specifically, that there is an act of lasciviousness or lewdness committed against a person who is under 12 years old.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant XXX assailing the Decision[2] dated March 1, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06918, which affirmed the Decision[3] dated April 2, 2014 of the CCC, Regional Trial Court (RTC) in Criminal Case No. C-78912, finding XXX guilty beyond reasonable doubt of rape.

The Facts

An Information[4] was filed against XXX for the rape of AAA, which reads:

> That on or about or sometime in July 2003 and immediately thereafter, at [CCC] and within the jurisdiction of this Honorable Court, the above-named accused, being the biological father of [AAA], a 10 year old minor, with lewd design and by means of force, violence and intimidation, did then and there willfully, unlawfully and feloniously have sexual intercourse with said [AAA], against her will and without her consent, which acts of the accused adversely affected the normal growth and development of the minor complainant.
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> CONTRARY TO LAW.[5]

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[1] See Notice of Appeal dated March 10, 2016, *rollo*, pp. 18-19.

[2] *Rollo*, pp. 2-17. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang, concurring.

[3] CA *rollo*, pp. 47-55. Penned by Presiding Judge Raymundo G. Vallega.

[4] Records, p. 1.

[5] *Id*.

During the trial, the prosecution presented, among others, AAA and Police Senior Inspector Marianne Ebdane (P/Sr. Insp. Ebdane), the medico-legal officer of the Eastern Police District, as witnesses. AAA's testimony, as summarized by the CA, was as follows:

> Sometime in July 2003, around 8:30 in the morning, while she was inside their house in xxxx [CCC], appellant raped her by inserting his penis into her vagina. She was 10 years old at that time. She was lying on the bed when appellant arrived and laid beside her. Appellant embraced her while his hands touched her body. She was afraid and immobilized. Appellant asked her to give him a massage on his chest, but she refused. As result, appellant pulled her left hand and placed it on his chest as if massaging it, then pulled it down further to his penis. Appellant only stopped when he heard her mother arrive from the market. He stood from the bed and told her to fix her appearance. It took her a long time to report the incident because appellant threatened her mother and older sister.
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> In 2007, when she was already in 3rd year high school, she could no longer take appellant's abuses so she told her Technology, Livelihood, and Economic (TLE) teacher Deogracias Yuson about it. Her teacher reported it to the school's guidance counselor who, in turn, relayed it to the police station. Thereafter, she went home and learned that a commotion took place when appellant evaded arrest.[6]

Meanwhile, P/Sr. Insp. Ebdane testified as to the medico-legal findings. She testified that AAA suffered deep healed lacerations showing clear evidence of blunt force or penetrating trauma to the hymen.[7]

On the other hand, the evidence of the defense is based on the lone testimony of XXX, who testified as follows:

> Sometime between August and September 2007, several men went to their house at xxxx [CCC] to arrest him. He thought he was being arrested for his illegal electrical connection and, thus, he decided to leave and temporarily stay at Maysan, Valenzuela. In 2008, he was arrested for allegedly raping his daughter AAA based on the complaint

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[6] *Rollo*, p. 4.

[7] *Id*. at 6-7.

filed by his wife. While admitting that something happened between him and his daughter, he insisted that the same was consensual and it was even her daughter who initiated their sexual congress by guiding his hand to her vagina. He assailed the date of commission of the alleged crime claiming that the incident actually complained of happened in 2007. The year 2003 was intentionally placed in the information charging him to aggravate the crime to statutory rape. He likewise questioned the unreasonable delay in reporting the alleged rape incident.[8]

Ruling of the RTC

After trial on the merits, in its Decision dated April 2, 2014, the RTC convicted XXX of the crime of Statutory Rape. The dispositive portion of the said Decision reads:

WHEREFORE, the foregoing considered, this Court hereby finds accused **[XXX],** ***GUILTY*** beyond reasonable doubt of the crime of rape defined and penalized under Article 266-A, paragraph 1 (a) and (d) of Republic Act No. 8353 in relation to Republic Act No. 7610 and sentences him to suffer penalty of **Reclusion Perpetua** and to pay the complainant **AAA** the amount of **Seventy Five Thousand Pesos** *(Php 75,000.00)* as civil indemnity; **Seventy Five Thousand Pesos** *(Php 75,000.00)* as moral damages and **Thirty Thousand Pesos** *(Php 30,000.00)* as exemplary damages.

x x x x x x x x x

SO ORDERED.[9]

Relying on AAA's direct testimony, the RTC held that it was convinced that XXX was guilty of having carnal knowledge of AAA by means of force and intimidation "sometime in July 2003."[10] The RTC likewise ruled that since XXX admitted that he did have sexual intercourse with his daughter – although he claimed that it happened in 2007, instead of 2003 – sufficed to convict him of the crime charged. As to the discrepancy in the dates, the RTC held:

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[8] *Id.* at 7.

[9] CA *rollo*, pp. 54-55.

[10] *Id.* at 51.

Moreover, the precise time of the commission of the rape is not an essential element of the crime of rape. Neither is the exact date of commission of rape an element of the crime for the gravamen of the offense of rape is sexual intercourse without consent. In this case, accused candidly admitted having sexual intercourse with her daughter. Hence[,] whether it was perpetuated in 2003 or in 2007, the fact remains that he had carnal knowledge with this minor daughter and that it was done sans the latter's consent and, through violence and intimidation.[11]

Aggrieved, XXX appealed to the CA. In the appeal, XXX reiterated his claim for innocence for the crime charged. According to him, the evidence on record indicates that he did not have carnal knowledge of the victim "sometime in July 2003" – as stated in the information – and that instead it happened in 2007 and the same was consensual.[12]

Ruling of the CA

In the questioned Decision dated March 1, 2016, the CA affirmed the RTC's conviction of XXX.

The CA held that the exact date or place of the commission of the rape is not an element of the crime, and that what is decisive is that the act was committed. It ratiocinated that the exact place and time are minor matters which do not delve into the elements of the crime.[13]

Hence, the instant appeal.

Issue

Proceeding from the foregoing, for resolution of this Court is the issue of whether the RTC and the CA erred in convicting XXX.

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[11] *Id*. at 53.

[12] Brief for the Accused-Appellant, *id*. at 39-42.

[13] *Rollo*, p. 15.

The Court's Ruling

The appeal is partially meritorious. The Court modifies the conviction of XXX from Statutory Rape to Acts of Lasciviousness in relation to Section 5(b) of Republic Act No. 7610 (R.A. 7610), as the prosecution was unable to prove that he committed the crime charged beyond reasonable doubt.

In rape cases in general, the prosecution has the burden to conclusively prove the two elements of the crime – *viz*.: (1) that the offender had carnal knowledge of the girl, and (2) that such act was accomplished through the use of force or intimidation.[14] On the other hand, to convict an accused for Statutory Rape, the prosecution has the burden of proving only 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.[15]

Statutory Rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act.[16] What differentiates it with other instances of rape is that, proof of force, intimidation or consent is unnecessary, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12.[17] At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act.[18]

The Information in this case accuses XXX of committing Statutory Rape for having sexual intercourse with his then 10-year old daughter "sometime in 2003." The RTC and the CA convicted him of the crime charged essentially for the same reasons, to wit: (1) carnal knowledge was sufficiently proved

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[14] *People v. Soronio*, 281 Phil. 820, 824 (1991).

[15] *People v. Manaligod*, G.R. No. 218584, April 25, 2018, p. 4.

[16] *Id*.

[17] *Id*.

[18] *Id*.

as XXX himself admitted having had sexual intercourse with AAA, albeit in 2007; and (2) the discrepancy as to the date was immaterial as the exact time and place of the commission of the crime is not an element of the offense.

While the Court denounces XXX's acts – he himself having admitted to engaging in sexual intercourse with his minor daughter – the Court has no choice but to modify the conviction of XXX on the ground that the prosecution failed to sufficiently establish the elements of the crime of Rape, whether statutory or otherwise.

In rape cases, the accused may be convicted on the basis of the lone, uncorroborated testimony of the rape victim, provided that her testimony is clear, convincing, and otherwise consistent with human nature. This is a matter best assigned to the trial court which had the first-hand opportunity to hear the testimonies of the witnesses and observe their demeanor, conduct, and attitude during cross-examination. Hence, the trial court's findings carry very great weight and substance.[19]

However, it is equally true that in reviewing rape cases, the Court observes the following guiding principles:

> (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the person accused, though innocent, to disprove;
>
> (2) in view of the intrinsic nature of the crime where only two persons are usually involved, **the testimony of the complainant must be scrutinized with extreme caution**;
>
> (3) **the evidence for the prosecution must stand or fall on its own merits**, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[20]

This must be so as the guilt of an accused must be proved beyond reasonable doubt. Before he is convicted, there should

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[19] *People v. Alemania*, 440 Phil. 297, 304-305 (2002).

[20] *People v. Lumibao*, 465 Phil. 771, 780 (2004).

be moral certainty — a certainty that convinces and satisfies the reason and conscience of those who are to act upon it.[21] Absolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must, at least, be moral certainty on each element essential to constitute the offense and on the responsibility of the offender. Proof beyond reasonable doubt is meant to be that, all things given, the mind of the judge can rest at ease concerning its verdict.[22] Again, these basic postulates assume that the court and others at the trial are able to comprehend the testimony of witnesses, particularly of the victim herself if she is presented and testified under oath.[23]

With the foregoing principles in mind, the Court holds that there exists reasonable doubt that XXX committed the crime charged against him. To reiterate, XXX was charged with Statutory Rape for allegedly having sexual intercourse with his then 10-year old daughter "sometime in 2003." **The records would reveal, however, that the evidence presented by the prosecution failed to establish that he indeed had sexual intercourse with AAA in 2003, or at the time she was still 10 years old.** On cross-examination, AAA testified as follows:

Q: And according to the Information that alleged act of rape began sometime in July 2003, am I correct?

A: Yes, sir.

Q: And how old were you then?

A: 10 years old.

x x x x x x x x x

Q: Miss [AAA], were you studying back then?

A: Yes, sir.

Q: And you are studying in what school if you could recall?

A: Bagong Silang, Caloocan High School.

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[21] *Id*. at 781.

[22] *Id*.

[23] *Id*.

Q: You are in what year level then?

A: Third year High School during that time of the incident, sir.

Q: But is it not that the incident occurred when you were still 10 years old?

A: Sorry sir, First Year High School

Q: When you said the time of the incident I am referring to the date of sometime July 2003, is that clear to you?

A: Yes, sir.

Q: And according to you, you were only 10 years old then, correct?

A: Yes, sir.

x x x x x x x x x

Q: So are you trying to tell me that your father was already there at the time that you are lying on the bed during the day time?

A: Yes, sir.

Q: Where is your mother then?

A: She was at the market.

Q: How about your older sister?

A: She was with my mother, sir.

Q: Could you recall for how long were they away just to buy at the market?

A: Around one hour, sir.

Q: Just as you were lying on the bed what happened next?

A: He embraced me, sir. (Witness crying)

Q: Was that the first time that your father embraced you?

A: Yes, sir.

Q: When you were growing up is it unusual for you to hug by your parent?

A: It was not normal to us.

Q: When you were growing up is it normal to you to kiss and hug by your parents?

A: It's not the usual thing in our family sir, it's not quiet (*sic*) normal to us.

x x x x x x x x x x x x

Q: And what did he do next after he embraced you?

A: He asked me to massage his chest, sir.

Court to the witness:

Q: What did you do?

A: I declined, I said I do not like. Your Honor.

x x x x x x x x x x x x

Court to the Witness:

Q: Was it the first time that your father entered the room and embraced you?

A: Yes, Your Honor.

Atty. Kuong:

Q: And considering that it is the first time you already felt that there is something wrong, am I correct?

A: Yes, sir.

Court to the Witness:

Q: What did you do?

A: "Sinabi ko po na inaantok pa po ako pero ang sabi niya hilutin mo na ako sandali lang naman."

Q: And what did he do next after you told him that you are still half a sleep (*sic*)?

A: He pulled my hands sir.

x x x x x x x x x x x x

Q: What happened afterwards?

A: After that he placed my hand down to his penis.

Q: What hand?

A: The same hand, Your Honor, my left hand but at that time I was already seating on the bed.

x x x x x x x x x

Q: So, how long did he place your hand to his private area when you're seating already?

A: "Saglit lang po kasi dumating na ang Mommy ko."

Q: so (*sic*), what did he do upon seeing that your mother arrived?

A: He did not see my mother coming but he heard the opening of the gate.

Q: So, did he continue doing it after you already heard the gate opened?

A: No, sir.

Court to the witness:

Q: Meaning he placed your right hand or left hand to his penis?

A: Yes, my left hand, Your Honor.

Court to the Witness:

Q: So meaning, he continue doing it after you heard that the gate opened?

A: Not anymore, sir.

Q: But your father was still wearing shorts?

A: Yes, Your Honor.

Q: So, your left hand was placed to his penis on top of his shorts?

A: Yes, Your Honor.

x x x x x x x x x

Q: After your mother already arrived did he stand up afterwards?

A: Yes, sir.

Q: And what did you do after he already stood up?

A: I lied down and continued crying and my father proceeded to the comfort room and when he saw me crying he told me to wipe my tears and "minura po niya ako."

Q: So, nothing more happened on that particular day, am I correct?

A: None other, sir.

Q: And that particular day that you are referring to happened sometime in July 2003, am I correct?

A: Yes, sir.

SP Latosa:

May I move for continuance, Your Honor.[24] (Emphasis supplied)

During the redirect examination, the prosecution tried to re-establish that sexual intercourse happened between AAA and XXX. However, on re-cross examination, AAA's testimony again revealed that no sexual intercourse happened in July 2003:

ATTY. KUONG:

Recross, your Honor.

Miss Witness, a while ago you restated that the accused placed your left hand on his penis and such lasted for about three (3) minutes, am I correct?

A: Yes, sir.

Q: And in those three (3) minutes that elapse (*sic*) did you do anything?

A: Wala po Umiiyak lang po ako.

Q: So you remain lying on the bed crying is that correct?

A: Yes, sir.

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[24] TSN, April 27, 2011, pp. 3-18.

Q: And the accused remain lying as well am I correct?

A: Yes, sir.

ATTY. KUONG:

That will be all your Honor.[25]

The "admission" relied upon by the RTC and the CA in convicting the accused-appellant was XXX's admission that he indeed had sexual intercourse with AAA, but that the same happened in 2007 and that it was consensual.[26]

The lower courts, however, erred in relying on the said "admission."

To reiterate, one of the guiding principles to be followed by the courts in determining the guilt of an accused in a rape case is that the **evidence for the prosecution must stand or fall on its own merits**.[27] On its own, the testimony of AAA, as shown above, establishes that what happened "sometime in July 2003" was that XXX put her hand on his penis. She likewise testified that nothing else happened as XXX was interrupted because BBB already arrived from the market. **Thus, the prosecution's evidence failed to establish the most crucial element of the crime of Rape – that is, the sexual intercourse between the accused and the complainant**.

Neither could XXX be convicted through his admission that he had sexual intercourse with AAA in 2007. This is because the Information filed in this case accused XXX of having sexual intercourse with AAA "sometime in July 2003." While it is true, as the RTC and the CA held, that the exact place and time of the commission of the crime is not an element of the crime of Rape, XXX still could not be convicted of the crime for to do so would be to offend the basic tenets of due process in criminal prosecutions.

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[25] TSN, February 20, 2012, pp. 24-25.

[26] TSN, November 12, 2013, pp. 11, 13-15.

[27] *People v. Lumibao*, *supra* note 20, at 780.

An essential component of the right to due process in criminal proceedings is the right of the accused to be sufficiently informed of the cause of the accusation against him. This is implemented through Section 9, Rule 110 of the Rules of Court, which states:

> SEC. 9. *Cause of the Accusation*.—The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

It is fundamental that every element of which the offense is composed must be alleged in the Information. No Information for a crime will be sufficient if it does not accurately and clearly allege the elements of the crime charged.[28] The test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law. In this examination, matters *aliunde* are not considered.[29] The purpose of the law in requiring this is to enable the accused suitably to prepare his defense, as he is presumed to have no independent knowledge of the facts that constitute the offense.[30]

In the present case, again, the Information specifically accused XXX of having sexual intercourse with AAA "sometime in July 2003." The date, in this case, is essential because in July 2003, AAA was only 10-years old; thus, making the accusation against him that for Statutory Rape instead of Simple Rape – which, as previously discussed, imposes on the prosecution different elements to prove. To repeat, in cases of Statutory Rape, the element of proving force and intimidation is dispensed with considering that the absence of free consent is conclusively

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[28] *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 719 (2003).

[29] *Id*.

[30] *Id*.

presumed when the victim is below the age of 12.[31] Thus, the prosecution only needs to prove the age of the victim, and the fact that sexual intercourse happened. In contrast, in Simple Rape, the prosecution has the burden of proving another element, namely, that the accused employed force and intimidation, for example,[32] in order to have sexual intercourse with the victim.

Therefore, as the two crimes have different elements – and would therefore entail different defenses on the part of the accused – the courts cannot thus equate one with the other. To do so would be to offend the due process rights of the accused.

Applying the foregoing to the present case, the Court cannot therefore use the "admission" by XXX, as his admission pertains to his having sexual intercourse with AAA in 2007, or when AAA was already 14 years old – beyond the age set for Statutory Rape. Consequently, for this act to be considered Rape, the prosecution needed to prove that XXX employed force and intimidation to cow AAA into submission. The prosecution, however, was unable to do so simply because it was not legally allowed to do so. Again, the Information charges the accused for the events in 2003, not 2007. It cannot therefore offer evidence for events other than what happened in 2003. Recognizing this, the RTC Judge even correctly limited the inquiry of the prosecution during AAA's redirect examination:

Q: Miss Witness, in what other ways if any were you sexually abused by the accused...

ATTY. KUONG:

Objection your Honor.

COURT:

What we are trying here is the case on July 2003.

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[31] *People v. Manaligod*, *supra* note 15, at 4.

[32] Because Rape may also be committed when the victim was deprived of reason (Article 266-A(1)(b), RPC) or through fraudulent machinations or grave abuse of authority (Article 266-A(1)(c), RPC).

ATTY. ABQUINA:

> I was referring on the same day your Honor by way of reaction the witness answered three (3) minutes. I was asking at that direction.

COURT:

> Witness may answer.

[AAA]:

> After he placed my left palm to his penis he suddenly pushed me on the bed and it made me lie down and he on top of me, and he pulled down my shorts and he inserted his penis, sir.

ATTY. KUONG:

> May we moved (*sic*) that the same be striken (*sic*) out your Honor.

COURT:

> Strike out.

SP. II LATOSA:

> So what happened after the accused put down your shorts?

ATTY. KUONG:

> We object to that your Honor, misleading as it was not discuss (*sic*) during the cross, the witness answered that none other happened.

COURT:

> Sustained, sustained.[33] (Emphasis supplied)

The RTC and the CA thus erred in convicting XXX for Statutory Rape.

This is not to say, however, that the Court is acquitting XXX.

Similar to the Court's disquisition in the case of *People v. Caoili*,[34] the Court is applying the variance doctrine under

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[33] TSN, February 20, 2012, pp. 19-21.

[34] G.R. Nos. 196342 & 196848, August 8, 2017, 835 SCRA 107.

Section 4, in relation to Section 5 of Rule 120 of the Rules of Court. XXX can thus be held guilty of the lesser crime of Acts of Lasciviousness, defined and punished under Article 336 of the Revised Penal Code, in relation to R.A. 7610, as a charge of acts of lasciviousness is necessarily included in a complaint for rape.[35]

The elements of acts of lasciviousness are: (1) that the offender commits **any act of lasciviousness or lewdness**; (2) that it is done under any of the following circumstances: (a) by using force or intimidation, (b) when the offended party is deprived of reason or otherwise unconscious; or (c) **when the offended party is under twelve (12) years of age**.[36]

Applied in this case, what the testimony of AAA proves is that, when she was 10 years old, XXX got a hold of her hand and placed it on top of his penis. Undoubtedly then, the established facts in this case complies with the elements needed to be proved to reach a conviction for acts of lasciviousness, specifically, that there is an act of lasciviousness or lewdness committed against a person who is under 12 years old.

The crime committed would thus be Acts of Lasciviousness, in relation to Section 5(b), R.A. 7610, as the current prevailing jurisprudence holds that the said law "finds application when the victims of abuse, exploitation or discrimination are children."[37] Such is the designation of the crime following the guidelines laid down by the Court in *Caoili,* to wit:

> Accordingly, for the guidance of public prosecutors and the courts, the Court takes this opportunity to prescribe the following guidelines in designating or charging the proper offense in case lascivious conduct is committed under Section 5(b) of R.A. No. 7610, and in determining the imposable penalty:
>
> 1. The age of the victim is taken into consideration in designating or charging the offense, and in determining the imposable penalty.

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[35] *People v. Poras*, 626 Phil. 526 (2010).

[36] *Id*. at 547.

[37] *People v. Caoili*, *supra* note 34, at 144.

2. If the victim is under twelve (12) years of age, the nomenclature of the crime should be "Acts of Lasciviousness under Article 336 of the Revised Penal Code in relation to Section 5(b) of R.A. No. 7610." Pursuant to the second *proviso* in Section 5(b) of R.A. No. 7610, the imposable penalty is *reclusion temporal* in its medium period.

3. If the victim is exactly twelve (12) years of age, or more than twelve (12) but below eighteen (18) years of age, or is eighteen (18) years old or older but is unable to fully take care of herself/himself or protect herself/himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition, the crime should be designated as "Lascivious Conduct under Section 5(b) of R.A. No. 7610," and the imposable penalty is *reclusion temporal* in its medium period to *reclusion perpetua*.[38] (Emphasis and underscoring supplied)

At this juncture, the Court takes .the opportunity to remind public prosecutors of their crucial role in drafting criminal complaints or Informations.[39] They have to be more judicious and circumspect in preparing the Information since a mistake or defect therein may not render full justice to the State, the offended party and even the offender.[40]

Finally, while the Court denounces XXX's act in 2007 which he admitted doing, it is well to clarify that the Court is **not** adjudging him guilty of any crime for the said act. The Court recognizes that sex with one's own child, especially a minor, is *per se* abhorrent.[41] Yet, the Court equally recognizes that its solemn power and duty is limited to the interpretation and application of the law in a specific set of facts. XXX's act of having sexual intercourse with his 14-year old daughter – while undoubtedly deplorable – is not the subject matter of this case. It is, therefore, incumbent upon the prosecutorial arm of the government to determine whether it believes that XXX committed

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[38] *Id.* at 153-154.

[39] *Id*. at 143.

[40] *Id*.

[41] *People v. Silvano*, 368 Phil. 676, 703 (1999).

a crime in 2007, and thus should stand to be indicted regarding the said act.

In this regard, the Clerk of Court is hereby directed to forward a copy of the records of this case to the Department of Justice for appropriate action in relation to XXX's admission on the events in 2007. The Court reserves its judgment on his guilt until such time that the said case, if it becomes one, reaches the Court.

Finally, with regard to the amount of damages, the Court deems it proper to impose damages in light of the gravity and the seriousness of the offense. In consonance with prevailing jurisprudence,[42] XXX is hereby ordered to pay AAA the amounts of fifty thousand pesos (₱50,000.00) as civil indemnity, fifty thousand pesos (₱50,000.00) as moral damages, and fifty thousand pesos (₱50,000.00) as exemplary damages. Interest at the rate of 6% *per annum* on the monetary awards reckoned from the finality of this decision is likewise imposed to complete the quest for justice and vindication on the part of AAA.[43]

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Court **DECLARES** accused-appellant XXX **GUILTY** of **ACTS OF LASCIVIOUSNESS, IN RELATION TO SECTION 5(B) OF R.A. NO. 7610,** for which he is sentenced to suffer the penalty of *reclusion temporal* in its medium period. The Decision dated March 1, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 06918 is further modified by decreasing the awards for civil indemnity and moral damages to fifty thousand pesos (₱50,000.00) each and increasing the exemplary damages to fifty thousand pesos (₱50,000.00) consistent with prevailing jurisprudence.

Let a copy of this Decision and a copy of the records of this case be forwarded to the Department of Justice for appropriate action.

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[42] Applying by analogy the imposition by *People v. Jugueta*, [783 Phil. 806 (2016)] of the same amounts when the crime committed is attempted qualified rape.

[43] *People v. Arcillas*, 692 Phil. 40, 54 (2012).

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[**] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 231111. October 17, 2018]

CHRISTIAN ALBERT A. CARIÑO, *petitioner, vs.* **MAINE MARINE PHILS., INC., MISUGA KAIUN CO. LTD., and CORAZON GUESE-SONGCUYA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE TASK OF THE SUPREME COURT IS GENERALLY TO REVIEW ONLY ERRORS OF LAW; EXCEPTIONS.— As a rule, "[i]n appeals by *certiorari* under Rule 45 of the Rules of Court, the task of the Court is generally to review only errors of law since it is not a trier of facts, a rule which definitely applies to labor cases." As the Court ruled in *Scanmar Maritime Services, Inc. v. Conag*: "But while the NLRC and the LA are imbued with expertise and authority to resolve factual issues, the Court has in exceptional cases delved into them where there is insufficient evidence to support their findings, or too much is deduced from the bare facts submitted by the parties, or the LA and the NLRC came up with conflicting findings x x x."

2. LABOR AND SOCIAL LEGISLATION; 2010 POEA-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); COMPENSATION AND BENEFITS; THE EMPLOYER

[**] Designated additional member per Special Order No. 2587 dated August 28, 2018.

HAS THE DUTY TO PROVIDE ALL THE MEDICAL TREATMENT TO A MEDICALLY REPATRIATED SEAFARER AND TO PAY SICKNESS ALLOWANCE BASED ON HIS DAILY WAGE UNTIL THE SEAFARER IS DECLARED FIT.— The employer has the duty to provide all the medical treatment to a medically repatriated seafarer. It also has to pay the sickness allowance based on his daily wage until the seafarer is declared fit. This is clear from Section 20(A)(2) and (3) of the POEA-SEC. Section 20(A) of the POEA-SEC x x x. In fact, in *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, the Court ruled that the POEA-SEC contemplates three liabilities of the employer when a seafarer is medically repatriated: (a) payment of medical treatment of the employee, (b) payment of sickness allowance, both until the seafarer is declared fit to work or when his disability rating is determined, and (c) payment of the disability benefit (total or partial), in case the seafarer is not declared fit to work after being treated by the company-designated physician.

3. ID.; ID.; ID.; THE DUTY OF THE SEAFARER TO BE PRESENT DURING APPOINTMENTS WITH THE COMPANY-DESIGNATED PHYSICIAN SHOULD BE VIEWED TOGETHER WITH THE DUTY OF THE EMPLOYER TO PROVIDE MEDICAL TREATMENT AND PAY THE SICKNESS ALLOWANCE OF THE SEAFARER; CASE AT BAR.— As a principle, the POEA-SEC is imbued with public interest; and "its provisions must be construed fairly, reasonably and liberally in favor of the seafarer in the pursuit of his employment on board ocean-going vessels." In reading the provisions of POEA-SEC, the full protection of labor, both local and overseas must be guaranteed. Thus, following the foregoing, the provision of Section 20(A) of the POEA-SEC should be read reasonably and favorably in favor of the seafarer. The duty of the seafarer to be present during the appointments with the company-designated physician should be viewed together with the duty of the employer to provide medical treatment and pay the sickness allowance of the seafarer. Here, Cariño had a reason for his failure to appear during the scheduled check-up on September 17, 2013: he had no money to pay for his travel expenses from La Union to Manila as Maine Marine had not paid his sickness allowance, and based on his conversation with Talavera, Maine Marine had yet to

approve his treatment with the company-designated physician. Cariño had also consistently followed-up with Talavera and even wrote the letter to Maine Marine requesting for the payment of his sickness allowance and the approval of his treatment. Far from abandoning his treatment, he made every effort to ensure his treatment would continue. It was Maine Marine that failed to pay his sickness allowance and to ensure he received medical treatment. x x x It is therefore imperative that companies like Maine Marine provide medical treatment and reimburse medical expenses as soon as possible following the POEA-SEC. The sickness allowance should also be timely and regularly paid while the seafarer is sick as this takes the place of the seafarer's wages. To delay in providing the foregoing would be tantamount to a breach of the employer's obligations under the POEA-SEC, especially if this delay is the very reason for a seafarer's failure to attend a scheduled appointment with the company-designated physician. x x x The company-designated physician and the employer cannot therefore use Cariño's non-appearance during the September 17, 2013 appointment as an excuse for failing to arrive at an assessment within 120 days from the time Cariño reported for assessment. Following *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, the company-designated physician's failure to arrive at a final assessment is considered without any justifiable reason, making Cariño's disability total and permanent.

4. ID.; NATIONAL LABOR RELATIONS COMMISSION (NLRC); THE DOCUMENTS SUBMITTED FOR THE FIRST TIME ON APPEAL BEFORE THE NLRC MAY BE GIVEN EVIDENTIARY WEIGHT SINCE TECHNICAL RULES OF EVIDENCE ARE NOT BINDING IN LABOR CASES.— The issue of submitting evidence for the first time on appeal before the NLRC has already been settled in *Andaya v. National Labor Relations Commission*, where the Court held that documents submitted for the first time on appeal before the NLRC may be given evidentiary weight since technical rules of evidence are not binding and that "[l]abor officials are encouraged to use all reasonable means to ascertain the facts speedily and objectively, with little resort to technicalities of law or procedure, all in the interest of substantial justice."

APPEARANCES OF COUNSEL

Bulseco & Vargas Law Office for petitioner.
Del Rosario & Del Rosario for respondents.

D E C I S I O N

CAGUIOA, *J.*:

Petitioner Christian Albert A. Cariño (Cariño) filed a petition for review on *certiorari*[1] (Petition) under Rule 45 of the Rules of Court assailing the Decision[2] dated December 16, 2016 and Resolution[3] March 30, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 141797. The CA dismissed the petition for *certiorari* and affirmed the National Labor Relations Commission (NLRC)'s Resolution[4] dated April 17, 2015 which ruled that Cariño was not entitled to disability benefits and other money claims. The NLRC reversed and set aside the Labor Arbiter's (LA) Decision[5] dated January 13, 2015 which awarded permanent and total disability benefits, sickness allowances, moral and exemplary damages, and attorney's fees.

Facts

The CA summarized the antecedents as follows:

A complaint for permanent and total disability benefits, payment of sickness allowance, reimbursement of medical and related expenses, damages and attorney's fees was filed by Christian Albert Cariño,

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[1] *Rollo* (Vol. I), pp. 36-83, excluding Annexes.

[2] *Rollo* (Vol. II), pp. 520-543. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Maria Elisa Sempio Diy concurring.

[3] *Id*. at 556-557.

[4] Records (Vol. I), pp. 273-291. Penned by Commissioner Alan A. Ventura, with Presiding Commissioner Gregorio O. Bilog, III and Commissioner Erlinda T. Agus concurring.

[5] *Id*. at 258-270. Penned by Executive Labor Arbiter Irenarco R. Rimando.

(Cariño, for short), as complainant, against Maine Marine Philippines, Inc., Misuga Kaiun Co., Ltd. and Corazon Guese-Songcuya, as respondents, before the labor arbiter, docketed as NLRC Case No. RAB-1 (OFW-S) 03-1039-14 (LU-2).

In his Position Paper, Complainant Cariño alleged that he was hired by respondents as deck boy aboard "M/V Raga" with a basic monthly salary of US$235.00 and for a duration of nine (9) months; he underwent a pre-employment medical examination and was declared as fit to work; his primary task was to clean the deck area and deck fittings; on August 9, 2013, while performing his duties, he accidentally slipped into a manhole; due to said accident, he experienced severe pain [in] his right ankle and was immediately brought to the ship hospital; he was given a cold pack to reduce the swelling of his ankle and feet and thereafter, his ankle was bandaged; pain relievers [were] likewise given to him to alleviate the pain; thereafter, on August 14, 2013, he was brought to Vishwa Sanjivani Health Center in Mormogao, India for medical treatment; his x-ray examination showed that he sustained multiple fractures on his right fibula and malleolar fracture of right ankle, thus, he underwent an emergency operation wherein a steel plate and screws were embedded in the affected areas of his right foot and a cast was placed to immobilize the affected area; he was discharged [on] August 15, 2013 and was advised to rest at the ship's cabin; he was repatriated for medical reasons on August 17, 2013; after his arrival, he was referred to Dr. Tacata of Manila Doctors Hospital who merely removed the suture from [the] operation and advised him of the next schedule for a follow-up; on September 10, 2013, he reported to the NGC Medical Clinic and his feet [were] cleaned and [the] dressing changed; during said visit, he was informed by NGC Medical Clinic that Respondent Maine Marine withheld approval of further treatment and was advised to await approval; despite his persistent demands and repeated follow-ups, the schedule of his next treatment never came; he sent a Letter dated October 28, 2013 to Respondent [Maine Marine] requesting for approval of further treatment and release of his sickness allowance; as result of respondents' continuing refusal to provide him medical attention, he was constrained to consult an independent doctor, Dr. Nicanor F. Escutin, a Specialist on Orthopedic Surgery, to assess his condition; Dr. Nicanor F. Escutin issued an Orthopedic Evaluation dated March 5, 2014 stating that due to a problem [with] his right ankle, he cannot perform strenuous and vigorous activities of a seaman therefore, he is unfit to be a seaman in whatever capacity; as his

injury is work-related and given the failure of the company-designated physician to make an assessment of his condition after the lapse of 120 days, he is entitled to permanent and total disability benefits, sickness allowance, damages and attorney's fees.

On the other hand, respondents, in their Position Paper, argued that they provided the necessary medical attention to complainant as evidenced by the 1st Medical Report and 2nd Medical Report; his next appointment was on September 17, 2013 but complainant no longer reported back for further treatment as evidenced by the Medical Report dated September 30, 2013 issued by the company-designated physician; on December 27, 2013, instead of getting himself treated, complainant filed a complaint for disability benefits but was later withdrawn; thereafter, on March 13, 2014, complainant filed this complaint; complainant is not entitled to permanent and total disability benefits because he abandoned his medical treatment with the company-designated physician; the Medical Advice dated September 2, 2013 showed that complainant's condition is good and that he will be declared fit to work after treatment; complainant's claim for damages is unjustified and without basis as they have complied in good faith with their contractual obligations.

In his Reply, complainant denied abandoning his medical treatment and presented the series of conversations (SMS and facebook chat conversations) between him and a certain Yhang Talavera, a personnel of Respondent Maine Marine, from September 12, 2013 to October 17, 2013. He further alleged that since the approval of medical treatment and replacement of the cast never came, he wrote a formal letter requesting for treatment as his condition has worsened but respondents never replied; he also had the right to seek the care of a physician of his choice in view of respondents' abdication of their duty to provide him medical treatment.

Respondents, in their Reply, countered that complainant is not entitled to disability compensation as he failed to present the purported CBA. Moreover, the findings of complainant's own physician is (sic) unreliable. In fact, his own physician failed to assign a disability grade. They reiterated that complainant abandoned his treatment, thus, he had forfeited his right to claim disability benefits.[6]

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[6] *Id*. at 521-523.

LA's Decision

In his Decision, the LA ruled in Cariño's favor, and found that: (a) his employment contract, which was approved by the Philippine Overseas Employment Administration (POEA), specifically stated that it is covered by the IBF JSU/AMOSUP-IMMAJ[7] Collective Bargaining Agreement (CBA);[8] (b) Cariño did not abandon his medical treatment but rather the respondent Maine Marine Phils., Inc. (Maine Marine) ignored his plea for medical examination as seen through the exchange of messages between Cariño and Yhang Talavera (Talavera), where it was revealed that Cariño had been consistently inquiring as to when would his continued medical examination be approved, considering that he also had to rely on Maine Marine for travel expenses from La Union to Manila for treatment, but Maine Marine ignored his requests, thus negating Maine Marine's allegation that Cariño had abandoned his medical treatment;[9] (c) from his medical repatriation on August 16, 2013[10] until the last hearing with the LA on November 18, 2014, he needed a pair of crutches to move from one place to another, which meant that he was obviously unfit for sea duty;[11] and (d) respondents were liable for moral and exemplary damages and attorney's fees for giving Cariño a run around for which he was compelled to engage the services of a counsel.[12]

The dispositive portion of the LA's Decision reads:

IN VIEW THEREOF, judgment is hereby rendered directing MAINE MARINE PHILIPPINES, INC. and CORAZON GUESE-

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[7] All Japan Seamen's Union/Associated Marine Officers' and Seamen's Union of the Philippines-International Mariners Management Association of Japan; see CA *rollo*, p. 276. Also referred to as IBF-JSU/AMOSUP-IMMAJ in some parts of the records.

[8] Records (Vol. I), p. 266.

[9] See *id*. at 266-267.

[10] *Id*. at 1 and 261.

[11] *Id*. at 267.

[12] *Id*. at 269.

SONGCUYA, to jointly and severally pay the claims of complainant as follows:

1. Permanent and Total Disability Benefits – US$100,000.00
2. Sickness Allowance for 120 days – US$939.60
3. Moral damages – ₱50,000.00
4. Exemplary damages – ₱50,000.00

plus 10% of the monetary award as attorney's fees.

SO ORDERED.[13]

NLRC's Resolution

On appeal by Maine Marine, the NLRC reversed the LA's Decision, thus:

WHEREFORE, the Motion to Suspend the Proceedings and to Order Complainant-Appellee to report to the Company-Designated Doctor filed by respondents Maine Marine Philippines, Inc., Misuga Kaiun Co. Ltd., and Corazon Guese-Songcuya, is **DENIED** for lack of merit. On the other hand, the appeal filed by respondents is **GRANTED**. The *Decision* dated 13 January 2015 is **REVERSED** and **SET ASIDE** and a new one is hereby entered **DISMISSING** the complaint for total and permanent disability compensation and all other money claims.

SO ORDERED.[14]

The NLRC held that: (a) Cariño failed to observe the mandatory procedures under the 2010 POEA-Standard Employment Contract[15] (POEA-SEC) when the company-designated physicians were deprived of the opportunity to determine his fitness to work when he failed to appear during his scheduled treatment;[16] (b) Cariño had prematurely filed the

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[13] *Id*. at 270.

[14] *Id*. at 290-291.

[15] AMENDED STANDARD TERMS AND CONDITIONS GOVERNING THE OVERSEAS EMPLOYMENT OF FILIPINO SEAFARERS ON-BOARD OCEAN-GOING SHIPS.

[16] Records (Vol. I), pp. 283-285.

complaint with the NLRC, having been filed only 198 days from reporting to the company-designated physician on August 27, 2013;[17] and (c) the medical certificate of Cariño's doctor, Dr. Nicanor Escutin[18] (Dr. Escutin), was based only on his medical history, and not on a thorough examination conducted by Dr. Escutin himself, and that it failed to provide Cariño's disability grade.[19]

CA's Decision

On *certiorari* by Cariño, the CA affirmed the NLRC's Resolution, thus:

> **WHEREFORE,** premises considered, the petition is **DISMISSED**. The assailed (i) Resolution dated April 17, 2015 and the subsequent (ii) Resolution dated June 16, 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000174-15/NLRC RAB I (OFW-S) 03-1039-14 (LU-2) are **AFFIRMED**.
>
> **SO ORDERED.**[20]

The CA ruled that Cariño himself deprived the company-designated physician the opportunity to assess whether he was fit to work or his disability rating when he failed to report to the doctor on the scheduled check-up date on September 17, 2013.[21] For the CA, even though Cariño presented the messages between him and Talavera, there was nothing in the conversation that signified that he was no longer subject to evaluation or treatment by the company-designated physician.[22] Therefore, the failure to arrive at an assessment was not the fault of the company-designated physician but because of Cariño's refusal to cooperate and undergo further treatment.[23]

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[17] *Id*. at 286.

[18] Also referred to as Dr. Esculin in some parts of the records.

[19] Records (Vol. I), pp. 288-289.

[20] *Rollo* (Vol. II), p. 540.

[21] *Id*. at 534.

[22] *Id*.

[23] See *id*. at 534-535.

Hence, this Petition.

Issue

Whether the CA erred in ruling that Cariño had abandoned his treatment with the company-designated physician so as to deny him permanent and total disability benefits.

The Court's Ruling

The Petition is granted.

As a rule, "[i]n appeals by *certiorari* under Rule 45 of the Rules of Court, the task of the Court is generally to review only errors of law since it is not a trier of facts, a rule which definitely applies to labor cases."[24] As the Court ruled in *Scanmar Maritime Services, Inc. v. Conag*[25]: "But while the NLRC and the LA are imbued with expertise and authority to resolve factual issues, the Court has in exceptional cases delved into them where there is insufficient evidence to support their findings, or too much is deduced from the bare facts submitted by the parties, or the LA and the NLRC came up with conflicting findings x x x."[26]

Here, the factual findings of the LA vis-a-vis the NLRC as confirmed by the CA are conflicting. Further, there was insufficient evidence to support the factual findings of the NLRC and CA. The foregoing warrants a review of the factual findings of the NLRC and CA.

Petitioner did not abandon his medical treatment.

Both the NLRC and CA ruled that Cariño violated Section 20(A) of the POEA-SEC when he failed to appear during his September 17, 2013 schedule with the company-designated

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[24] *Scanmar Maritime Services, Inc. v. Conag*, 784 Phil. 203, 212 (2016).

[25] *Id*.

[26] *Id*.

physician. On the other hand, the LA found that Cariño had fervently and consistently requested for approval of his request for approval of his medical procedures, but his requests were ignored. The Court agrees with the LA.

Indeed, Cariño failed to appear during his September 17, 2013 appointment with the company-designated physician. But, as shown below, he cannot be faulted for this because it was his employer that failed to pay his sickness allowance and to confirm the approval of his medical treatment, causing him to fail to appear during the September 17, 2013 appointment.

The employer has the duty to provide all the medical treatment to a medically repatriated seafarer. It also has to pay the sickness allowance based on his daily wage until the seafarer is declared fit. This is clear from Section 20(A)(2) and (3) of the POEA-SEC. Section 20(A) of the POEA-SEC states:

SECTION 20. COMPENSATION AND BENEFITS

A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

> 1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;
>
> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. **However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.**
>
> **3. In addition to the above obligation of the employer to provide medical attention, the seafarer shall also receive sickness allowance from his employer in an amount equivalent to his basic wage computed from the time he signed off until he is declared fit to work or the degree of**

> **disability has been assessed by the company-designated physician. The period within which the seafarer shall be entitled to his sickness allowance shall not exceed 120 days. Payment of the sickness allowance shall be made on a regular basis, but not less than once a month.**
>
> **The seafarer shall be entitled to reimbursement of the cost of medicines prescribed by the company-designated physician. In case treatment of the seafarer is on an out-patient basis as determined by the company-designated physician, the company shall approve the appropriate mode of transportation and accommodation. The reasonable cost of actual traveling expenses and/or accommodation shall be paid subject to liquidation and submission of official receipts and/or proof of expenses.**
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. **In the course of the treatment, the seafarer shall also report regularly to the company-designated physician specifically on the dates as prescribed by the company-designated physician and agreed to by the seafarer.** Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Additional emphasis supplied)

In fact, in *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*,[27] the Court ruled that the POEA-SEC contemplates three liabilities of the employer when a seafarer is medically repatriated: (a) payment of medical treatment of the employee, (b) payment of sickness allowance, both until the seafarer is

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[27] 738 Phil. 374 (2014).

declared fit to work or when his disability rating is determined, and (c) payment of the disability benefit (total or partial), in case the seafarer is not declared fit to work after being treated by the company-designated physician. Thus:

Accordingly, Section 20-B **(2)**, **paragraph 2**, of the POEA-SEC imposes on the employer the liability to provide, at its cost, for **the medical treatment of the repatriated seafarer for the illness or injury that he suffered on board** the vessel until the seafarer is declared fit to work or the degree of his disability is finally determined by the company-designated physician. This liability for medical expenses is conditioned upon the seafarer's compliance with his own obligation to report to the company-designated physician within three (3) days from his arrival in the country for diagnosis and treatment. The medical treatment is aimed at the speedy recovery of the seafarer and the restoration of his previous healthy working condition.

Since the seafarer is repatriated to the country to undergo treatment, his inability to perform his sea duties would normally result in depriving him of compensation income. To address this contingency, Section 20-B **(3), paragraph 1**, of the POEA-SEC imposes on the employer the obligation to provide the seafarer with **sickness allowance that is equivalent to his basic wage** until the seafarer is declared fit to work or the degree of his permanent disability is determined by the company-designated physician. The period for the declaration should be made within the period of 120 days or 240 days, as the case may be.

Once a finding of permanent (total or partial) disability is made either within the 120-day period or the 240-day period, Section 20-B **(6)** of the POEA-SEC requires the employer to pay the seafarer **disability benefits for his permanent total or partial disability** caused by the work related illness or injury. In practical terms, a finding of permanent disability means a permanent reduction of the earning power of a seafarer to perform future sea or on board duties; permanent disability benefits look to the future as a means to alleviate the seafarer's financial condition based on the level of injury or illness he incurred or contracted.

The separate treatment of, and the distinct considerations in, these three kinds of liabilities under the POEA-SEC can only mean that the POEA-SEC intended to make the employer liable for each of these three kinds of liabilities. In other words, employers must: (1) pay the seafarer sickness allowance equivalent to his basic wage

in addition to the medical treatment that they must provide the seafarer with at their cost; ***and*** (2) compensate the seafarer for his permanent total or partial disability as finally determined by the company-designated physician.[28]

Here, the LA was correct that even though the company-designated physician scheduled a check-up on September 17, 2013, Cariño's failure to attend the same was not because he abandoned his treatment; rather, it was because Maine Marine, as confirmed by Talavera, had not approved his medical examination and the reimbursement of expenses. As the LA found:

> The claim of respondents that complainant abandoned his medical treatment on 17 September 2013 is not true. The claim of respondents is belied by the fact that Christian Albert Cariño had been asking Yhang Talavera, through his facebook account as to when will his medical examination be approved (Note: gandang gabi po maam tanong ko lang po maam kung kailan po ma approve yung cast po para sa paa ko maam. Sent 9/9 5:38p.m. The reply of Yhang Talavera was: Hi sir. Naku everyday ko din po iniisip yan. Andami din pong nagfafollow up sa akin. Pacensya na po. Don't (*sic*) [p]ag nagreply na po tawagan po kita agad pasensya na po talaga. Thank you - sent 9/18 - 5:40pm.) (See page 220, records).
>
> Complainant did not receive any message from respondents as to when he shall be scheduled for medical examination. Thus, on 23 September 2013 at 2:18p.m. he sent a text message to Yhang Talavera, to ask: "[kailan] po ma approve yon cast ng paa? Y[han]g Talavera's reply was [Hi] sir, pasensya ka na wala pa din po e. wag ka po mag alala aa[p]prove naman po yun wait lang po tayo. Matagal po talaga approval - sent 9:23, 2:28pm. (See page 220, records).
>
> The exchange of communications between Christian Albert Cariño and Yhang Talavera continued on 9 October 2013, when the latter replied: "Hi sir good morning kaka follow up ko lang, wala pa din daw. Sabihan po kita agad pag okay na pasensya na po sir. On 10 October 2013, Yhang Talavera, made the following reply: Hi sir good morning kakafollow up [k]o lang wala pa din daw. Sabihan kita agad pag okay na pasensya na po sir. Thank you po (See page 222, records).

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[28] *Id.* at 387-388.

On 14 October 2013, Yhang Talavera gave complainant the following reply: Hi sir good afternoon kaka follow up ko lang po wala pa din pong reply si Club kay insurance pasensya na po. [L]agi ko po pina follow up kaso wala pa din po. Wag po kayo mag alala babalitaan po kita kaagad. Than[k] you po (See page 223, records).

These facts show that there was no basis for NGC Medical [C]linic to conclude that complainant abandoned his medical treatment (See page 275, records).

x x x x x x x x x

It was the local agency that ignored his plea that his medical examination should be continued to determine his fitness or unfitness to work.[29]

Cariño even sent a letter dated October 28, 2013 to Maine Marine where he informed Maine Marine that he needed the sickness allowance to cover the expenses of his travel to go to Manila, and that Maine Marine should approve the continuation of his treatment. His letter states:

Pagdating ko dito sa Pilipinas, ako ay natingnan ni Dr. Tacata sa Manila Doctors ngunit tinanggal lang po ang suture sa aking binti at inischedule para sa follow up at para na rin mapalitan and Walking Cast ko.

Ngunit, noong September 10, pumunta po ako sa NGC. Tiningnan po ng doktor doon ang paa ko at nilinisan and inayos lang ang dressing.

Subalit, tinawagan ng doctor ng NGC ang inyong opisina kung pwede na akong magpawalking cast. Pero ang sabi daw po sa inyong opisina ay wala pa kayong approval kaya hindi nanaman natuloy at aking pagpapagamot.

Sa kasalukuyan ay hindi na po ako ipinapagamot ng Maine Marine, sa kabila ng aking malalang pinsala na natamo sa aking binti, ako ay nagpapagamot at gumagastos para sa aking sarili na walang suportang natatanggap mula sa Maine Marine.

Maliban sa ₱4,000.00 na naibigay sa akin noong Agosto, hindi pa ibinibigay ng inyong opisina ang aking sickness allowance at

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[29] Records (Vol. I), pp. 266-267.

transportation at medical expenses mula ng ako ay marepatriate. Kailangan ko sana ang sickness allowance para masuportahan ang aking pangangailangan habang ako ay maysakit at ang transportation at medical allowance upang ako ay makapunta sa Maynila upang makapagpagamot at makabili ng mga resetang gamot.

Bilang Manning Agency, sa tingin ko po ay dapat ipagpatuloy ang pagpapagamot sa akin at hindi na lamang basta pabayaan kahit na alam naman ng Maine Marine na hindi pa ako lubusan na magaling buhat sa nangyaring aksidente sa barko.

x x x x x x x x x

Ako rin po ay nakikiusap na maibigay ang aking sickness allowance at transportation at iba pang gastusin sa lalong madaling panahon dahil ako at ang aking pamilya ay hirap na hirap na.[30]

Respondents' only argument against the foregoing, which the NLRC and CA agreed with, was that Cariño failed to appear during the scheduled check-up on September 17, 2013, thus waiving his right to claim disability benefits.[31] This is egregious error.

As a principle, the POEA-SEC is imbued with public interest; and "its provisions must be construed fairly, reasonably and liberally in favor of the seafarer in the pursuit of his employment on board ocean-going vessels."[32] In reading the provisions of POEA-SEC, the full protection of labor, both local and overseas must be guaranteed.[33] Thus, following the foregoing, the provision of Section 20(A) of the POEA-SEC should be read reasonably and favorably in favor of the seafarer.

The duty of the seafarer to be present during the appointments with the company-designated physician should be viewed together with the duty of the employer to provide medical

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

[31] *Id.* at 127-128.

[32] *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, *supra* note 27, at 388-389.

[33] *Id.* at 389.

treatment and pay the sickness allowance of the seafarer. Here, Cariño had a reason for his failure to appear during the scheduled check-up on September 17, 2013: he had no money to pay for his travel expenses from La Union to Manila as Maine Marine had not paid his sickness allowance, and based on his conversation with Talavera, Maine Marine had yet to approve his treatment with the company-designated physician. Cariño had also consistently followed-up with Talavera and even wrote the letter to Maine Marine requesting for the payment of his sickness allowance and the approval of his treatment. Far from abandoning his treatment, he made every effort to ensure his treatment would continue. It was Maine Marine that failed to pay his sickness allowance and to ensure he received medical treatment.

The effect of the NLRC and CA's ruling would put seafarers at the mercy of companies like Maine Marine and effectively violates the Constitution's guarantee of the full protection of labor. Following their ruling, the employers may delay the release of sickness allowance, the reimbursement of expenses, and the provision of medical treatment, and when seafarers fail to appear during the scheduled appointments primarily because they could not afford the expenses in going to the company-designated physicians, they will then be deemed to have abandoned their treatment. This is unjust.

Seafarers like Cariño and their families rely heavily on their basic wages. When the seafarers are medically repatriated, this source of income is put on hold. The payment of the sickness allowance and the reimbursement of medical expenses and the provision of medical treatment were provided in the POEA-SEC precisely to address these difficult and uncertain times for the seafarers and their families.

It is therefore imperative that companies like Maine Marine provide medical treatment and reimburse medical expenses as soon as possible following the POEA-SEC. The sickness allowance should also be timely and regularly paid while the seafarer is sick as this takes the place of the seafarer's wages. To delay in providing the foregoing would be tantamount to a

breach of the employer's obligations under the POEA-SEC, especially if this delay is the very reason for a seafarer's failure to attend a scheduled appointment with the company-designated physician.

What is apparent from the record is that Maine Marine's failure to provide Cariño's sickness allowance, to reimburse his medical expenses, and to ensure that he would be treated, was the reason he failed to appear during the appointment. Cariño could not risk travelling to Manila after having been informed by Talavera that his treatment had yet to be approved, and without any money because of the non-payment of his sickness allowance. To fault him for this, despite all his efforts before and after September 17, 2013 to get approval of his treatment and for the payment of his sickness allowance, is oppressive and unjust.

The company-designated physician and the employer cannot therefore use Cariño's non-appearance during the September 17, 2013 appointment as an excuse for failing to arrive at an assessment within 120 days from the time Cariño reported for assessment. Following *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*,[34] the company-designated physician's failure to arrive at a final assessment is considered without any justifiable reason, making Cariño's disability total and permanent, thus.:

> 1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;
>
> **2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total[.]**[35] (Emphasis supplied)

Cariño is entitled to benefits under the CBA.

As stated above, following Section 20(A)(3) of the POEA-SEC, a seafarer is entitled to sickness allowance equivalent to

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[34] 765 Phil. 341 (2015).

[35] *Id*. at 362-363.

his basic daily wage until he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician.

Here, it is also beyond dispute that Maine Marine had not paid Cariño's sickness allowance. For purposes of computing his sickness allowance, Cariño is entitled to sickness allowance for 120 days, as after the lapse thereof, his disability became total and permanent because of the company-designated physician's failure to issue an assessment of his fitness to work or degree of permanent disability. The Court finds that the LA correctly computed the sickness allowance of Cariño for 120 days at US$939.60, or at a rate of US$7.83 per day.[36]

Further, since Cariño's disability is deemed total and permanent, he is also entitled to the total and permanent disability benefit following the CBA of the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP).

The CA ruled that Cariño cannot claim under the CBA of the AMOSUP as he failed to prove that he was a member of it,[37] thus:

> x x x There is dearth of evidence showing that he is a member of the Associated Marine Officer's and Seamen's Union of the Philippines (AMOSUP). Also, while petitioner alleged that a CBA supplemented the Contract of Employment, he however failed to present the same to the labor arbiter. A copy thereof was in fact only presented and submitted on appeal. To Our mind, the belated submission of the said CBA without any valid explanation casts doubt on its credibility, specially so when the same is not a newly discovered evidence.[38]

The CA again egregiously erred.

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[36] Jonathan's basic monthly salary was US$235.00, divided by 30 days, is equal to US$7.83; see records (Vol. 1), p. 38.

[37] *Rollo* (Vol. II), p. 539.

[38] *Id*.

The issue of submitting evidence for the first time on appeal before the NLRC has already been settled in *Andaya v. National Labor Relations Commission*,[39] where the Court held that documents submitted for the first time on appeal before the NLRC may be given evidentiary weight since technical rules of evidence are not binding and that "[l]abor officials are encouraged to use all reasonable means to ascertain the facts speedily and objectively, with little resort to technicalities of law or procedure, all in the interest of substantial justice,"[40] thus:

> The fact that the payroll and the CBA were submitted for the first time on appeal before the NLRC does not mean that they cannot be given evidentiary weight. In labor cases, technical rules of evidence are not binding. Labor officials are encouraged to use all reasonable means to ascertain the facts speedily and objectively, with little resort to technicalities of law or procedure, all in the interest of substantial justice. Thus, even if the evidence was not submitted to the labor arbiter, the fact that it was duly introduced on appeal to respondent commission was enough basis for it to admit them.[41]

Given the foregoing, the CBA submitted by Cariño before the NLRC should have been considered. The CA and Maine Marine cannot use technicalities to bar Cariño from claiming under the CBA when Cariño's Contract of Employment[42] — which Maine Marine does not contest, and which it even submitted as one of its evidence before the LA — clearly states that Cariño was covered by the CBA of IBF JSU/AMOSUP-IMMAJ. To allow Maine Marine to escape liability on the simple ground that the CBA had been belatedly submitted, when the employment contract which it also signed clearly states that Cariño is covered by the CBA, would be the height of injustice.

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[39] 502 Phil. 151 (2005).

[40] *Id*. at 158.

[41] *Id*.

[42] Records (Vol. I), p. 71.

Following the CBA,[43] since Cariño's accident resulting in permanent and total disability happened in 2013, he is entitled to US$93,154.00[44] as permanent and total disability benefit.

Damages and attorney's fees

In awarding moral and exemplary damages and attorney's fees, the LA ruled as follows:

> Respondents gave complainant [Cariño] a run around when, Ms. Yhang Talavera, a crew personnel of respondents continuously promised to him that she will be informing him of the schedule of his treatment. The promise never came. Complainant was totally dependent on respondents because he did not have the financial resources to travel to Manila for the continuation of his treatment. They used this handicap of complainant in taking advantage of his situation that led them to conclude later that he abandoned his treatment. This act of respondents smacks of bad faith. Hence, they are adjudged to pay complainant ₱50,000.00 as moral damages.
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> Complainant repeatedly demanded from Ms. Yhang Talavera, that he should [be] informed of the approval of his medical examination. His request was ignored. His demand was met with an unexpected notice from [t]he NGC Medical Specialist Clinic on 30 September [2]013 that he did not report to the clinic for his treatment (see page 75, records)[.] Respondents neglected, nay reneged on [their] obligation to provide complainant with further medical treatment. He is entitled to recover ₱50,000.00 as exemplary damages.
>
> Complainant was compelled to engage the services of a lawyer to protect his rights as a worker. Hence, he is entitled to recover 10% of the judgment award as attorney's fees.[45]

The Court agrees with the LA but increases the moral and exemplary damages to ₱100,000.00 each because of Maine Marine's incredibly callous treatment of Cariño's situation. Indeed, Maine Marine reneged on its obligation to pay Cariño's

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[43] CA *rollo*, pp. 276-319.

[44] *Id*. at 308.

[45] Records (Vol. I), p. 269.

sickness allowance, and failed to provide medical treatment, even if Cariño was medically repatriated due to an accident that occurred during the existence of an employment contract with Maine Marine. Cariño repeatedly asked Maine Marine to approve his treatment, but this never came. Worse, despite reneging on its obligation to pay sickness allowance, Maine Marine feigned ignorance of the applicability of the AMOSUP's CBA despite the clear stipulation in Cariño's employment contract. As the Court similarly ruled in *Orient Hope Agencies, Inc. v. Jara*[46]:

> In this case, respondent's travails started when, due to no fault of his, petitioners' ship sunk. Respondent did not receive any disability rating from the company-designated physician despite the lapse of more than seven (7) months of treatment. He demanded disability benefits from petitioners, considering that he had not yet fully recovered from his knee injury, but his demands were unheeded. The uncertainty of his medical condition caused his anxiety about his future as a seafarer.
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> Indeed, petitioners only submitted the medical report with the Grade 11 disability rating when they filed their Position Paper dated May 27, 2008 with the Labor Arbiter and, accordingly, expressed their willingness to pay disability benefits equivalent only to Grade 11 disability. This reveals petitioners' disregard of respondent's unfortunate plight. Petitioners' bad faith is further evident when they tried to invalidate respondent's complaint for his supposed failure to move for the appointment of a third-party physician as required by the POEA-SEC, when they knew that no prognosis whatsoever was issued by the company-designated physician other than the medical report dated May 29, 2008.
>
> Considering the blithe manner in which petitioners dealt with respondent's condition and the rulings in *Sharp Sea* and *Magsaysay Maritime*, the amount of ₱100,000.00 as moral damages would be commensurate to the anxiety and inconvenience suffered by respondent. Exemplary damages of ₱100,000.00 is also granted by way of example or correction for the public good.[47]

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[46] G.R. No. 204307, June 6, 2018.

[47] *Id*. at 21.

Again, in work-related injuries resulting in a medical repatriation, companies such as Maine Marine should consider the significance of the payment of sickness allowance and the medical treatment of the seafarer. These benefits are to aid a seafarer whose source of income is cut short because of an event that is usually beyond their control. Companies like Maine Marine should strictly comply with their contractual obligations and not give seafarers the run-around, as what happened in this case. Given Cariño's injury and the manner by which he was treated by Maine Marine, he is entitled to moral and exemplary damages.

As the LA correctly ruled, Cariño is likewise entitled to attorney's fees at ten percent (10%) of the total monetary awards following Article 2208 of the New Civil Code, "which allows its recovery in actions for recovery of wages of laborers and actions for indemnity under the employer's liability laws."[48]

Finally, Maine Marine is likewise liable for legal interest at the rate of six percent (6%) per annum from the finality of this Decision until full satisfaction.

Following Section 10[49] of the Migrant Workers and Overseas Filipinos Act of 1995, as amended,[50] respondents are jointly and severally liable for the foregoing monetary awards.

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[48] See *Nazareno v. Maersk Filipinas Crewing, Inc.*, 704 Phil. 625, 639 (2013).

[49] SEC. 10. *Money Claims.* — x x x.

The liability of the principal/employer and the recruitment/placement agency for any and all claims under this section shall be joint and several. This provision shall be incorporated in the contract for overseas employment and shall be a condition precedent for its approval. The performance bond to be filed by the recruitment/placement agency, as provided by law, shall be answerable for all money claims or damages that may be awarded to the workers. If the recruitment/placement agency is a juridical being, the corporate officers and directors and partners as the case may be, shall themselves be jointly and solidarily liable with the corporation or partnership for the aforesaid claims and damages.

[50] Republic Act No. (RA) 8042, as amended by RA 10022.

WHEREFORE, premises considered, the Petition is **GRANTED**. The Decision dated December 16, 2016 and Resolution dated March 30, 2017 of the Court of Appeals in CA-G.R. SP No. 141797 are **REVERSED AND SET ASIDE**. Respondents are jointly and severally liable to pay Christian Albert A. Cariño the following:

(a) Permanent and total disability benefit in the amount of US$93,154.00, or its peso equivalent at the time of payment;

(b) Sickness allowance for 120 days in the amount of US$939.60, or its peso equivalent at the time of payment;

(c) Moral damages in the amount of ₱100,000.00; and,

(d) Exemplary damages in the amount of ₱100,000.00;

plus ten percent (10%) of the monetary awards as attorney's fees.

Respondents are likewise liable for legal interest of six percent (6%) per annum of the foregoing monetary awards computed from the finality of this Decision until full satisfaction.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.*, and *Reyes, J. Jr.*[*], *JJ.*, concur.

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[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 234161. October 17, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LUDIVICO PATRIMONIO BANDOJO, JR. and KENNY JOY VILLACORTA ILETO,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9208 (ANTI-TRAFFICKING IN PERSONS ACT OF 2003); TRAFFICKING IN PERSONS; ELEMENTS.— In *People v. Casio*, the Court defined the elements of trafficking in persons, as derived from Section 3(a) of R.A. No. 9208, to wit: (1) The ***act*** **of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent** or knowledge, within or across national borders." (2) The ***means*** **used** which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, **taking advantage of the vulnerability of the person**, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another;["]and (3) The ***purpose*** of trafficking **is exploitation** which includes "exploitation or **the prostitution of others** or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." The crime is further qualified under Section 6(a) of R.A. No. 9208 when the trafficked person is a child.

2. ID.; ID.; ID.; CONSENT OF MINOR IS NOT A DEFENSE FOR THE CRIME; RATIONALE.— *Consent of the minor is not a defense under R.A. No. 9208* Contrary to the accused-appellants' submission, the fact that AAA had asked Kenny Joy for a *raket* and that she visited the said accused-appellant in prison does not negate their criminal liability. As previously cited, Section 3(a) of R.A. No. 9208 clearly states that trafficking in persons may be committed with or without the victim's consent or knowledge. Furthermore, in *Casio*, the Court ruled that the victim's consent is rendered meaningless due to the coercive,

abusive, or deceptive means employed by perpetrators of human trafficking. Even without the use of coercive, abusive, or deceptive means, a minor's consent is not given out of his or her own free will.

3. ID.; ID.; ID.; KNOWLEDGE OF THE ACCUSED WITH REGARD TO COMPLAINANT'S MINORITY IS IMMATERIAL WITH RESPECT TO QUALIFYING THE CRIME OF TRAFFICKING IN PERSONS.— *Knowledge of private complainant's minority is immaterial* Accused-appellants likewise argue that the prosecution failed to prove their knowledge of AAA's minority at the time the crime was committed. As observed by the CA, under Section 6(a) of R.A. No. 9208, Trafficking in Persons automatically becomes qualified upon proof that the trafficked person is a minor or a person below 18 years of age. Evidently, knowledge of the accused-appellants with regard to AAA's minority is inconsequential with respect to qualifying the crime of Trafficking in Persons. Accordingly, the Court finds that all elements of the crime of Violation of Section 4(a), in relation to Section 6(a), of R.A. No. 9208 were duly established by the prosecution.

4. ID.; CONSPIRACY; ELEMENTS; EXPLAINED.— The elements of conspiracy are the following: (1) two or more persons came to an agreement, (2) the agreement concerned the commission of a felony, and (3) the execution of the felony was decided upon. Proof of the conspiracy need not be based on direct evidence, because it may be inferred from the parties' conduct indicating a common understanding among themselves with respect to the commission of the crime. Neither is it necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or objective to be carried out. The conspiracy may be deduced from the mode or manner in which the crime was perpetrated; it may also be inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.

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

A. REYES, JR., *J.*:

This is an appeal[1] from the Decision[2] dated May 15, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08276, which affirmed the conviction of Ludivico Patrimonio Bandojo, Jr. (Ludivico) and Kenny Joy Villacorta Ileto (Kenny Joy) (collectively referred to as the accused-appellants) for violation of Section 4(a), in relation to Section 6(a), of Republic Act (R.A.) No. 9208, otherwise known as "*The Anti-Trafficking in Persons Act of 2003*."

Factual Antecedents

The accused-appellants were charged before the Regional Trial Court (RTC) of Manila, Branch 29 in two separate Informations with the crimes of Qualified Trafficking in Persons[3] and Trafficking in Persons[4] docketed as Criminal Cases Nos. 12-293693 and 12-293694. The accusatory portions of the said Informations state:

In Criminal Case No. 12-293693:

That on or about and sometime prior to **November 8, 2012**, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each another [sic], did then and there willfully, unlawfully and knowingly, recruit and hire **[AAA],[5] a 17[-]year[-]old minor** to engage in sexual intercourse

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[1] CA *rollo*, pp. 199-201.

[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Amy C. Lazaro-Javier and Pedro B. Corales concurring; *id*. at 125-158.

[3] RTC records, pp. 2-3.

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

[5] The real name of the victim, her personal circumstances and other information which tend to establish or compromise her identity, as well as those of her immediate family, or household members, shall not be disclosed

with a police officer and other male clients for monetary consideration, by means of taking advantage of her vulnerability and for the purpose of prostitution and sexual exploitation.

Contrary to law.[6]

In Criminal Case No. 12-293694:

That on or about and sometime prior to **November 8, 2012**, in the City of Manila, Philippines, the said accused, conspiring and confederating together and mutually helping each another [sic], did then and there willfully, unlawfully and knowingly, recruit and hire **[BBB]** to engage in sexual intercourse with male clients for monetary consideration, by means of taking advantage of her vulnerability and for the purpose of prostitution and sexual exploitation.

Contrary to law.[7]

Upon arraignment, both accused-appellants pleaded not guilty to the crimes charged. A pre-trial conference was subsequently conducted and concluded. Thereafter, trial on the merits ensued.[8]

The private complainant, AAA, was born on April 9, 1995. At the time the crime was committed on November 8, 2012, she was 17 years old. She is the second child among four children and since her father has no regular income while her mother earns only Php 200.00 per day tending to their store, her parent's income is not sufficient to meet their family's daily sustenance.[9]

On March 2, 2012, AAA was about to graduate from high school when she met Christian Ileto (Christian), the brother of accused-appellant Kenny Joy. Sometime in August 2012, AAA and Christian, together with their friends, went to Padi's Point.

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to protect her privacy, and fictitious initial shall, instead, be used, in accordance with *People v. Cabalquinto* (533 Phil. 703 [2006]) and the Amended Administrative Circular No. 83-2015 dated September 5, 2017.

[6] RTC records, p. 2.

[7] *Id*. at 5.

[8] CA *rollo*, p. 127.

[9] *Id*. at 59.

They were having drinks thereat when Christian asked her, "*Be, gusto mo ng raket?*" Thinking that "*raket*" simply means chatting with men, she agreed and gave her cellular phone number to him.[10]

The following day, AAA received a text message from Kenny Joy who introduced herself to her as "Cherish." Kenny Joy asked if AAA needed a *raket* and because she needed the money, she replied in the affirmative. She was then asked to describe herself and was later informed of the basic rules of the trade. Kenny Joy told her that the minimum fee is Php 1,500.00, depending on AAA "if it is one (1) pop or two (2) pops." After inquiring on what the terms mean, she was told she will have sex and one (1) pop is one (1) *putok* and two (2) pops are "*dalawang beses na putok.*" With the information given, AAA did not reply to Kenny Joy's message.[11]

Unfortunately, due to financial difficulties and to help her parents, as well as to buy some gadgets for herself, AAA texted Kenny Joy on September 4, 2012 and requested for a *raket*. The following day, AAA was booked to a British National. AAA met with Kenny Joy in a bus terminal in Quezon City where they proceeded to a condominium in Makati City. Thereat, the condominium attendant called the subject and they eventually proceeded to the unit. In the condominium unit, the British man had a short conversation with AAA and subsequently brought her inside his room while Kenny Joy waited in the living room. Inside the room, AAA had sexual intercourse with the said man and thereafter, she was paid the amount of Php 5,000.00.[12]

Sometime in the third week of October, Kenny Joy sent another text message to AAA, giving her another *raket*. Although reluctant, AAA agreed and met Kenny Joy at a convenience store in Quezon City. This time, Kenny Joy introduced AAA

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[10] *Id*.

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

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

to a customer who is also a police officer. After talking briefly, AAA and the police officer proceeded to a motel while Kenny Joy waited at the convenience store. For a fee of Php 3,000.00, AAA had sexual intercourse with the police officer. From her fee, AAA gave an amount of Php 500.00 to Kenny Joy.[13]

Meanwhile, on October 21, 2012, the National Bureau of Investigation (NBI), through Arnold Mallari, received information from Ms. Pinky Webb of ABS-CBN regarding the account name "Under One Roof" on the social media networking website Facebook which allegedly offers sexual services of minors. To infiltrate the aforementioned account, Agent Francis Señora (Agent Señora) created a Facebook account in the name of "*Prettyvoy Gasgas*." Through the latter account, he conducted technical surveillance on Under One Roof and came across the account of one of its members, Jhanne David (later identified as accused-appellant Ludivico), whose wall contains, "*SA MGA MY WANT NYO NG WALK SEE MY ALBUM PILI NA LANG KAYO NG WANT NYO GUYS TEXT KAYO PAG MAY WANT NA KAYO OK*." Clicking the account of Jhanne David revealed photographs of different ladies and one of them is AAA.[14]

Agent Señora contacted Jhanne David (Ludivico) through the cellular numbers posted on the latter's account. From their text messages, it appears that Jhanne David (Ludivico) is a male and the handler of the ladies who provide different sexual services for a fee which, ranges from Php 3,000.00 to Php 5,000.00. The terms of payment include a 50% down payment with the balance to be given to the girl. Later, Jhanne David (Ludivico) agreed to provide Agent Señora with two girls for sexual services who will be brought to a hotel in Manila for the amount of Php 3,000.00 each.[15]

On November 7, 2012, AAA received another text message from Kenny Joy wherein she was informed that the latter's friend

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[13] *Id*. at 61.

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

[15] *Id*. at 62.

needs girls and that she was included among them. The *raket* will be in Manila and the price would be Php 3,000.00 per head. The following day, AAA and Kenny Joy headed for a mall where they met Ludivico. From the FX terminal, they proceeded to the hotel.[16]

The NBI, on the other hand, made the necessary preparations for the entrapment operation. Armed with four pieces of Php 500.00 bills dusted with fluorescent powder, the NBI operatives proceeded to the hotel at around 3:00 p.m. of November 8, 2012. Not long after, Ludivico arrived together with AAA and another woman, BBB. After he received the down payment from Agent Señora, Ludivico entrusted the women to the NBI operatives. As soon as the operatives went to the rooms, the women asked for their payments and after the agents acceded, they introduced themselves as NBI officers.[17]

Ludivico and Kenny Joy were arrested at the coffee shop where the four pieces of Php 500.00 bills were recovered from the former. After a Fluorescent Powder Examination, Ludivico and the peso bills retrieved in the possession of the accused-appellants were found to be positive for the presence of fluorescent powder, while the examination on Kenny Joy yielded negative results.[18]

During trial, the accused-appellants denied the accusation against them. They denied knowing BBB prior to their arrest and claimed they only came to know her at the NBI. They have not seen BBB after their arrest nor did she appear in court to testify. They also denied knowing each other prior to the incident.[19]

Kenny Joy claimed that she is a food vendor selling snacks like *ginataang bilo-bilo, maruya*, and banana *cue* in front of

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[16] *Id.* at 63.

[17] *Id.*

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

[19] *Id.* at 64.

her house and that AAA is her customer. Kenny Joy alleges that AAA asked her company in going to a mall in Manila, because the latter needed to get her things from somewhere in the area. While she refused the invitation at first, she eventually agreed and the two of them went to the mall on November 8, 2012.[20]

At around 2:00 p.m., Kenny Joy and AAA arrived at the mall where they proceeded to a restaurant to eat. After leaving the restaurant, Kenny Joy claimed to have overheard AAA talking on the phone and looking for a particular place. Thereafter, they went out of the mall where AAA left Kenny Joy on the street and entered a building. After a while, AAA exited the building with Ludivico, who walked behind her carrying bags.[21]

Upon seeing AAA and Ludivico, Kenny Joy crossed the street to meet them. When she got hold of AAA's things, 15 men ran towards them. These men arrested Kenny Joy and Ludivico and brought them to the NBI while AAA was separated from the group. While she was detained at the Manila City Jail (MCJ), Kenny Joy was visited by AAA where the latter allegedly begged the former for forgiveness saying, "*Ate pasensiya na ito talaga ang gawain ko*." AAA allegedly told Kenny Joy that she cannot do anything at the NBI except to act as a complainant.[22]

One Senior Jail Officer 1 Robert Parel corroborated Kenny Joy's testimony only insofar as the record of the Bureau of Jail Management and Penology (BJMP) indicates that a certain AAA visited the said accused-appellant at the MCJ.[23]

On the other hand, Ludivico claimed he was a freelance computer graphic artist and not a pimp. He also denied having offered the sexual services of AAA for a fee. According to Ludivico, AAA had entrusted a bag to him. On the date he was

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

[21] *Id*. at 65.

[22] *Id*.

[23] *Id*. at 66.

arrested, AAA asked him to go to her ex-boyfriend's place in Manila as the said bag belongs to the latter. Thus, Ludivico met AAA in a coffee shop inside a hotel in Manila. When he gave AAA the said bag, AAA's ex-boyfriend, who was seated in a different table, tapped Ludivico and surreptitiously gave him money under the table while he was having his coffee. He was then shocked when people ran after them as they left the coffee shop. They were arrested and ushered inside a red Revo vehicle. Meanwhile, AAA and her ex-boyfriend had disappeared. Ludivico further claimed that there is neither reason nor prior misunderstanding with NBI agents who arrested them.[24]

Ruling of the RTC

On April 26, 2016, the RTC rendered its Joint Decision,[25] convicting the accused-appellants for violation of Section 4(a), in relation to Section 6(a), of R.A. No. 9208 in Criminal Case No. 12-293693. However, the RTC acquitted them in Criminal Case No. 12-293694 for failure of the prosecution to establish their guilt beyond reasonable doubt. The dispositive portion of the said decision provides:

> WHEREFORE, premises considered, this Court finds [the accused-appellants] guilty beyond reasonable doubt, for the crime of Violation of Section 4 (a) in relation to Section 6 (a) of R.A. 9208 in Criminal Case 12-293693 and hereby imposes a penalty of life imprisonment without the benefit of parole and to pay a fine of Two Million Pesos (₱2,000,000.00). In addition, [the accused-appellants] is further ordered to indemnify the private complainant Five Hundred Thousand Pesos (₱500,000.00) as moral damages and Two Hundred Thousand Pesos (₱200,000.00) as exemplary damages.
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> In Criminal Case No. 12-293694, the prosecution having failed to establish the guilt of the accused, [the accused-appellants] are hereby acquitted.
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> No costs.

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[24] *Id*.

[25] Rendered by Judge Roberto P. Quiroz; *id*. at 57-76.

SO ORDERED.[26]

Aggrieved, the accused-appellants elevated the case before the CA through a Joint Notice of Appeal[27] dated May 4, 2016.

Ruling of the CA

In the assailed Decision[28] dated May 15, 2017, the CA denied the accused-appellants' appeal and affirmed the decision of the RTC with modifications, to wit:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Joint Decision dated 26 April 2016 of the [RTC] of Manila, Branch 29 in *Crim. Case No. 12-293693*, finding [the accused-appellants] guilty beyond reasonable doubt of the crime of qualified trafficking in persons under Section 4(a) in relation to Section 6(a) of [R.A.] No. 9208, as amended by [R.A.] No. 10364, sentencing accused-appellants to suffer the penalty of life imprisonment without eligibility for parole, to pay a fine of Two Million Pesos (Php2,000,000.00), and to pay the victim AAA Five Hundred Thousand Pesos (Php500,000.00) as moral damages is **AFFIRMED** with **MODIFICATIONS** in that **each** of the accused-appellants shall suffer the said penalty of life imprisonment and pay a fine of Php2,000,000.00; and accused-appellants shall jointly and severally pay the victim Php500,000.00 as moral damages, and the reduced amount of Php100,000.00 as exemplary damages, with interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid.
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> **SO ORDERED.**[29]

Hence, this appeal.

The Issues

Based on the parties' averments before the CA, the issues raised for resolution before this Court are: (1) whether the

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[26] *Id*. at 75-76.

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

[28] *Id*. at 125-158.

[29] *Id*. at 155.

prosecution was able to prove beyond reasonable doubt the guilt of the accused-appellants for the crime of human trafficking; (2) whether the RTC erred in finding the presence of conspiracy; and (3) whether the RTC erred in disregarding the accused-appellants' defense of denial.

The plaintiff-appellee, through the Office of the Solicitor General (OSG), maintains that, as established during trial, Kenny Joy recruited and hired AAA, a 17-year-old girl, to prostitute herself to paying customers, taking advantage of the latter's minority, lack of discernment, and financial hardships. Thus, the prosecution was able to prove beyond reasonable doubt the existence of all the elements constituting a violation of Section 4(a), in relation to Section 10(a), of R.A. No. 9208.[30] The plaintiff-appellee further submits that the allegation that AAA was not recruited as it was the latter who asked for a *raket* is of no moment, as consent of the victim is not a defense when the vulnerability of the trafficked person is taken advantage of. Maintaining that the crime was committed with conspiracy, the plaintiff-appellee argues that there was overwhelming proof presented during the trial to show accused-appellants' concerted action for a common end. Lastly, the plaintiff-appellee contends that the trial court properly rejected the accused-appellants' denial as the same cannot prevail over the positive testimony of a witness.[31]

On the other hand, the accused-appellants argue that the prosecution failed to prove that they were engaged in any activity which would constitute human trafficking. They maintain that it was AAA who asked Kenny Joy for a *raket*. The trial court also failed to consider the statement made by AAA to Kenny Joy when the latter was arrested as well as her act of visiting said accused-appellant while she was detained at the MCJ. Such a revelation only proves that AAA was not recruited, much less threatened, forced, or coerced by the accused-appellants

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[30] *Id*. at 101-108.

[31] *Id*. at 108-109.

to engage in prostitution. Arguing against the existence of conspiracy between the two of them, the accused-appellants submit that there was no proof showing that they came to an agreement to commit human trafficking. Furthermore, accused--appellants contend that while it was proved during the trial that AAA was only 17 years old at the time she was allegedly rescued, the prosecution failed to prove that they had full knowledge of the same. Lastly, considering the weakness of the prosecution's evidence, accused-appellants argue that the trial court erred in dismissing their defense of denial.[32]

Ruling of the Court

The Court affirms the accused-appellants' conviction.

The elements of the crime charged

Pertinent to this case are Sections 4(a) and 6(a) of R.A. No. 9208, to wit:

Section 4. *Acts of Trafficking in Persons*. – It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

(a) To **recruit, transport, transfer; harbor, provide, or receive a person by any means**, including those done under the pretext of domestic or overseas employment or training or apprenticeship, **for** the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage[.]

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Section 6. *Qualified Trafficking in Persons*. – The following are considered as **qualified trafficking**:

(a) When the trafficked person is a child[.] (Emphasis Ours)

Meanwhile, Section 3, paragraphs (a) and (b) of the same statute define the terms "trafficking in persons" and "child," *viz*.:

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[32] *Id*. at 49-52.

Section 3. *Definition of Terms*. – As used in this Act:

(a) ***Trafficking in Persons*** – refers to the **recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent** or knowledge, within or across national borders **by means of** threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, **taking advantage of the vulnerability of the person**, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person **for the purpose of exploitation** which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph.

(b) ***Child*** - refers to **a person below eighteen (18) years of age** or one who is over eighteen (18) but is unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition. (Emphasis Ours)

While R.A. No. 9208 has been recently amended by R.A. No. 10364,[33] the old law still applies in the instant case, considering that the crime was committed on November 8, 2012 or before R.A. No. 10364 was approved on February 6, 2013.

In *People v. Casio*,[34] the Court defined the elements of trafficking in persons, as derived from Section 3(a) of R.A. No. 9208, to wit:

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[33] AN ACT EXPANDING REPUBLIC ACT NO. 9208, ENTITLED "AN ACT TO INSTITUTE POLICIES TO ELIMINATE TRAFFICKING IN PERSONS ESPECIALLY WOMEN AND CHILDREN, ESTABLISHING THE NECESSARY INSTITUTIONAL MECHANISMS FOR THE PROTECTION AND SUPPORT OF TRAFFICKED PERSONS, PROVIDING PENALTIES FOR ITS VIOLATIONS AND FOR OTHER PURPOSES". Approved on February 6, 2013.

[34] 749 Phil. 458 (2014).

(1) The ***act*** **of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent** or knowledge, within or across national borders."

(2) The ***means*** **used** which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, **taking advantage of the vulnerability of the person**, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another;["] and

(3) The ***purpose*** of trafficking **is exploitation** which includes "exploitation or **the prostitution of others** or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs."[35] (Emphasis Ours and italics in the original)

The crime is further qualified under Section 6(a) of R.A. No. 9208 when the trafficked person is a child.

In the instant case, the prosecution was able to establish the presence of all the elements of the crime by testimonial and documentary evidence.

As to the first element and third elements, the testimony of AAA established that it was Kenny Joy who recruited her to engage in prostitution by offering her *rakets* where she could earn money by having sexual relations with clients the latter had found.[36] AAA further averred that Kenny Joy accompanied her to meet such clients, waited for her, and received money after her relations with the clients concluded.[37] Meanwhile, the testimony of NBI Agent Señora established that Ludivico (under the name Jhanne David), provides the sexual services of women through a Facebook account. It was Ludivico, together with Kenny Joy, who brought AAA to meet Agent Señora during the entrapment operation. The down payment, consisting of

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[35] *Id.* at 472-473.

[36] CA *rollo*, pp. 59-61.

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

four Php 500.00 bills dusted with fluorescent powder, was paid by Agent Señora to Ludivico.[38] During the latter's arrest, the said entrapment money was recovered from him as evidenced by the results of the Fluorescent Powder Examination where Ludivico and the bills were found positive for the presence of fluorescent powder.[39]

As to the second element, while AAA did not immediately accede to the proposition initially made by Kenny Joy, she eventually yielded and asked for a *raket* because she needed the money. It is, thus, apparent that the accused-appellants took advantage of AAA's and her family's abject poverty in recruiting her to engage in prostitution.

Lastly, AAA's Certificate of Live Birth evidenced the fact that she was born on April 9, 1995[40] and was only 17 years old, a minor, at the time the crime was committed on November 8, 2012.

Consent of the minor is not a defense under R.A. No. 9208

Contrary to the accused-appellants' submission, the fact that AAA had asked Kenny Joy for a *raket* and that she visited the said accused-appellant in prison does not negate their criminal liability.

As previously cited, Section 3(a) of R.A. No. 9208 clearly states that trafficking in persons may be committed with or without the victim's consent or knowledge.

Furthermore, in *Casio*,[41] the Court ruled that the victim's consent is rendered meaningless due to the coercive, abusive, or deceptive means employed by perpetrators of human trafficking. Even without the use of coercive, abusive, or

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[38] *Id.* at 61-63.

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

[40] *Id.* at 59.

[41] *Supra* note 33.

deceptive means, a minor's consent is not given out of his or her own free will.[42]

Knowledge of private complainant's minority is immaterial

Accused-appellants likewise argue that the prosecution failed to prove their knowledge of AAA's minority at the time the crime was committed.

As observed by the CA, under Section 6(a) of R.A. No. 9208, Trafficking in Persons automatically becomes qualified upon proof that the trafficked person is a minor or a person below 18 years of age. Evidently, knowledge of the accused-appellants with regard to AAA's minority is inconsequential with respect to qualifying the crime of Trafficking in Persons.

Accordingly, the Court finds that all elements of the crime of Violation of Section 4(a), in relation to Section 6(a), of R.A. No. 9208 were duly established by the prosecution.

Proof of conspiracy need not be based on direct evidence; it may be inferred from the conduct of the parties

Anent the second issue, the accused-appellants contend that the prosecution's evidence was bereft of any proof showing that they came to an agreement to commit human trafficking. They maintain that they met each other only on the day they were arrested. Therefore, they could not have conspired together to supposedly recruit AAA since they were practically strangers to each other prior to their arrest.

The Court disagrees.

The elements of conspiracy are the following: (1) two or more persons came to an agreement, (2) the agreement concerned the commission of a felony, and (3) the execution of the felony was decided upon. Proof of the conspiracy need not be based on direct

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[42] *Id*. at 475-476.

evidence, because it may be inferred from the parties' conduct indicating a common understanding among themselves with respect to the commission of the crime. Neither is it necessary to show that two or more persons met together and entered into an explicit agreement setting out the details of an unlawful scheme or objective to be carried out. The conspiracy may be deduced from the mode or manner in which the crime was perpetrated; it may also be inferred from the acts of the accused evincing a joint or common purpose and design, concerted action and community of interest.[43] (Citation omitted)

Here, testimonial evidence of the prosecution established that Agent Señora, after conducting technical surveillance on Ludivico's Facebook account, contacted the latter where they agreed that sexual services will be provided by two girls at a hotel on November 8, 2012 for the price of Php 3,000.00 each. Meanwhile, Kenny Joy contacted AAA regarding the said transaction. AAA then met with Kenny Joy and Ludivico before proceeding to the hotel where the latter obtained the down payment consisting of the entrapment money. After the NBI agents identified themselves, both Ludivico and Kenny Joy were arrested while they were waiting for the girls. The entrapment money was likewise recovered and the same, along with Ludivico, tested positive for the presence of fluorescent powder.

Taken all together, the foregoing circumstances reveal a joint purpose, design, and concerted action in committing the crime of qualified trafficking in persons. Through their concerted efforts, the accused-appellants facilitated the prostitution of AAA, a minor, where she was made to render sexual services in exchange for monetary consideration.

Positive identification of the accused-appellants prevails over denial

Anent the third issue, the accused-appellants aver that the RTC erred in simply dismissing their defense of denial despite what they consider as weaknesses in the prosecution's evidence.

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[43] *People v. Lago*, 411 Phil. 52, 59 (2001).

They contend that not all denials are fabricated, and if an accused is truly innocent, he can have no other defense other than denial.

The Court is unconvinced.

> A categorical and consistent positive identification which is not accompanied by ill motive on the part of the eyewitness prevails over mere denial. Such denial, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law. It cannot be given a greater evidentiary value over the testimony of credible witnesses who testify on affirmative matters.[44] (Citation omitted)

Here, both the accused-appellants were positively identified in open court by AAA,[45] with Kenny Joy as the one who recruited and accompanied her when she had to engage in sexual activities in exchange for money and Ludivico as the one who accompanied her when they proceeded to the hotel for the same kind of illicit transaction. They were likewise identified in open court by Agent Señora,[46] with Ludivico as the person who arranged for the prostitution activity at the hotel. Moreover, neither Ludivico nor Kenny Joy could ascribe any ill motive on the part of AAA or Agent Senora for testifying against them. Verily, the accused-appellants' unsubstantiated denial over the positive identification of the prosecution's witnesses cannot stand.

All told, the Court finds that the prosecution was able to establish the accused-appellants' guilt beyond reasonable doubt of the crime of Qualified Trafficking in Persons under Section 4(a), in relation to Section 6(a), of R.A. 9208. Thus, the Court finds no reason to overturn the judgment of conviction rendered by the RTC.

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[44] *Eduardo Quimvel y Braga v. People of the Philippines*, G.R. No. 214497, April 18, 2017.

[45] CA *rollo*, p. 73.

[46] *Id*.

The penalty for the crime charged

The penalty for Qualified Trafficking in Persons is set forth in Section 10(c) of R.A. No. 9208, which reads:

Section 10. *Penalties and Sanctions*. – The following penalties and sanctions are hereby established for the offenses enumerated in this Act:

x x x x x x x x x

(c) Any person found guilty of **qualified trafficking under Section 6 shall suffer the penalty of life imprisonment and a fine of not less than Two million pesos (₱2,000,000.00)** but not more than Five million pesos (₱5,000,000.00)[.] (Emphasis Ours)

Notably, the CA affirmed the joint decision of the RTC, imposing the penalty of life imprisonment without the benefit of parole upon the accused-appellants, but modified the fine inasmuch as each of them should pay the fine of Php 2,000,000.00. In light of the above-quoted provision, the penalty and the fine imposed are proper.

However, pursuant to Administrative Matter No. 15-08-02-SC,[47] the Court deletes the phrase "without eligibility for parole," as in cases where the death penalty is not warranted, the phrase "without eligibility for parole" does not need to describe and be affixed to the penalty; it is understood that convicted persons penalized with an indivisible penalty are not eligible for parole.

The Court, likewise agrees that the award of moral damages in the amount of Php 500,000.00 and the reduction of exemplary damages to Php 100,000.00, with interest at the rate of six percent (6%) *per annum* until finality of this Decision, is proper as the same is consistent with prevailing jurisprudence.[48]

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[47] *Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties,* August 4, 2015.

[48] *People of the Philippines v. Jehlson Aguirre y Aridido, Michael Arabit y Pacamara, Jefferson Paralejas y Pigtain and Jeffrey Roxas y Aragoncillo*, G.R. No. 219952, November 20, 2017: *People v. Hirang*, 803 Phil. 277 (2017).

Lastly, the CA also correctly ruled that the accused-appellants are jointly and severally liable to pay AAA the moral and exemplary damages, as specified above, pursuant to Article 110[49] of the Revised Penal Code.

WHEREFORE, premises considered, the appeal is hereby **DISMISSED** for lack of merit. The Decision dated May 15, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08276, convicting accused-appellants Ludivico Patrimonio Bandojo, Jr. and Kenny Joy Villacorta Ileto of the crime of Qualified Human Trafficking, as defined and penalized under Section 4(a), in relation to Section 6(a), of Republic Act No. 9208, is hereby **AFFIRMED**.

Accordingly, the Court hereby imposes upon accused-appellants Ludivico Patrimonio Bandojo, Jr. and Kenny Joy Villacorta Ileto the following:

1. To suffer the penalty of life imprisonment;
2. To each pay a fine of Php 2,000,000.00;
3. To jointly and severally pay the victim Php500,000.00 as moral damages and Php100,000.00 as exemplary damages; and
4. All monetary awards shall earn interest at the legal rate of six percent (6%) *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Reyes, J. Jr.,*[*] *JJ.*, concur.

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[49] **Article 110.** *Several and subsidiary liability of principals, accomplices and accessories of a felony; Preference in payment.* – Notwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally (*in solidum*) among themselves for their quotas, and subsidiaries for those of the other persons liable.

[*] Designated as Acting Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 236297. October 17, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARMANDO BAGABAY *y* MACARAEG,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; APPEALS IN CRIMINAL CASES THROW OPEN THE WHOLE CASE FOR REVIEW ON ISSUES OF BOTH FACT AND LAW, AND THE COURT MAY EVEN CONSIDER ISSUES WHICH WERE NOT RAISED BY THE PARTIES AS ERRORS.—** It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result. This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors. The appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; WITHOUT UNLAWFUL AGGRESSION, THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE HAS NO LEG TO STAND ON AND CANNOT BE APPRECIATED.—** An accused who pleads self-defense admits to the commission of the crime charged. He has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. Of these three, unlawful aggression is indispensable.

Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person." Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.

3. ID.; ID.; ID.; ID.; UNLAWFUL AGGRESSION; FOR UNLAWFUL AGGRESSION TO BE PRESENT, THERE MUST BE REAL DANGER TO LIFE OR PERSONAL SAFETY; ELEMENTS; NOT PRESENT IN CASE AT BAR.— For unlawful aggression to be present, there must be real danger to life or personal safety. Accordingly, the accused must establish the concurrence of the three elements of unlawful aggression, namely: (*a*) there must be a physical or material attack or assault; (*b*) the attack or assault must be actual, or, at least, imminent; and (*c*) the attack or assault must be unlawful. None of the elements of unlawful aggression was proven by the defense. Guevarra's act of pointing or cursing at Armando, not followed by other acts, is insufficient to constitute unlawful aggression. Thus, the CA is correct in ruling that there was no evidence proving the gravity of the utterances and the actuations allegedly made by Guevarra that would have indicated his wrongful intent to harm Armando.

4. ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; TREACHERY MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE AS CONCLUSIVELY AS THE KILLING ITSELF; CONDITIONS WHICH MUST EXIST TO APPRECIATE TREACHERY, ENUMERATED.— Treachery must be proved by clear and convincing evidence as conclusively as the killing itself. x x x There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To appreciate treachery as a qualifying circumstance, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant. The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby

> ensuring its commission without risk of himself. In order to appreciate treachery, both elements must be present. It is not enough that the attack was "sudden," "unexpected," and "without any warning or provocation." There must also be a showing that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an appeal[1] filed under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated July 28, 2017 (Decision) of the Court of Appeals, Eleventh Division (CA), in CA-G.R. CR-HC No. 07665, which affirmed the Decision[3] dated January 22, 2015 of the Regional Trial Court, Branch 31, Guimba, Nueva Ecija (RTC), in Criminal Case No. 2819-G, finding herein accused-appellant Armando Bagabay *y* Macaraeg (Armando) guilty of the crime of Murder under Article 248 of the Revised Penal Code.

The Facts

Armando was charged with the crime of Murder under the following Amended Information:[4]

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[1] See Notice of Appeal dated August 11, 2017; *rollo*, pp. 10-12.

[2] *Id*. at 2-8. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Normandie B. Pizarro and Marie Christine Azcarraga-Jacob concurring.

[3] CA *rollo*, pp. 63-77. Penned by Presiding Judge Brigando P. Saldivar.

[4] *Rollo*, p. 3.

That on or about the 7th day of September 2010, at Barangay San Antonio, in the Municipality/City of CUYAPO, Province of Nueva Ecija, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, with intent to kill, while armed with a stainless knife, with treachery, did then and there willfully, unlawfully and feloniously attack, assault, and stab one Alfredo M. Guevarra, Jr. with the said knife inflicting upon him multiple stab wounds on different parts of his body which caused his death, to the damage and prejudice of the latter's family and heirs.

SO ORDERED.[5]

Upon arraignment, Armando pleaded not guilty.[6]

Version of the Prosecution

The prosecution offered the testimonies of Dr. Nemesio Belmonte, Analiza Guevarra, Romeo Sapin, PO2 Joey Soleman Martinez and eyewitnesses Angelica Guevarra, Virginia Pangalilingan, and Carlo Antonio Pacamana.[7] They testified as follows:

In the morning of September 7, 2010, at around 7:00 o'clock, victim Alfredo M. Guevarra, Jr. (Guevarra) unloaded his passengers in front of Dr. Ramon De Santos National High School. While Guevarra was giving his passengers their change, Armando alighted from his tricycle armed with a kitchen knife. Without warning, Armando grabbed Guevarra's shoulder and stabbed the latter twice in rapid successive motions near the heart. Guevarra got off his tricycle and tried to run away, but Armando pursued him. When Guevarra collapsed on the road, Armando took this as an opportunity to stab the former one more time. Armando left thereafter. Gueverra was taken by bystanders to the Guimba District Hospital where he was pronounced dead on arrival.[8]

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[5] *Id*.

[6] *Id*.

[7] *Id*.

[8] *Id*. at 3-4.

Version of the Defense

Armando, on his part, asserted self-defense. He claimed that on the said date, he was plying the tricycle owned by his daughter when he saw Guevarra on the other side of the road pointing and cursing at him. He approached Guevarra and asked the latter why he was uttering such words so early in the morning. Guevarra replied, "[I]f you want, I will cut your throat." Without warning, Guevarra pulled out a knife and pointed it at him. When Guevarra tried to stab him, he held Guevarra's hand and twisted it causing Guevarra to stab himself. Guevarra tried to stab him again, but he quickly thwarted it off and caused Guevarra to stab himself a second time. After stabbing himself twice, Guevarra alighted from his tricycle and tried to run, but fell face down on the ground.[9]

Armando further narrated that prior to that encounter, he already had a rift with Guevarra. He was elected the President of Butao Guimba Cuyapo Tricycle Operators and Drivers Association (Association). The members of the Association were required to pay a membership fee of ₱1,000.00. Guevarra was only able to pay half of the said amount and as a consequence, was not allowed to queue along the line of tricycles waiting for passengers.[10]

Ruling of the RTC

In its assailed Decision[11] dated January 22, 2015, the RTC found Armando guilty of Murder, to wit:

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding the accused ARMANDO BAGABAY Y MACARAEG GUILTY beyond reasonable doubt of the crime of Murder defined and penalized under Article 248 of the Revised Penal Code and sentencing the accused the penalty of reclusion perpetua without eligibility for parole. The accused is hereby ordered to pay

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[9] *Id.* at 4.

[10] *Id.*

[11] *Supra* note 3.

the heirs of the victim ALFREDO GUEVARRA JR., represented by Analiza Guevarra, the following amounts: ₱41,110.00 as actual damages; ₱75,000.00 as civil indemnity for the death of Alfredo Guevarra Jr., ₱350,000.00 as temperate damages in lieu of the loss of earning capacity and unsupported expenses during wake and interment; ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages.

All the amounts of damages awarded shall earn interest at the legal rate of 6% per annum commencing from the date of finality of judgment until fully paid.

Costs of suit to be paid by the accused.

SO ORDERED.[12]

The RTC ruled that Armando failed to prove that he acted in self-defense. Other than his bare assertions, he did not present any witness to corroborate his claim. His only witness, Rolando Jacobe, who was around 12 to 15 meters away, testified that he saw Armando and Guevarra grappling for a knife while both were standing near the tricycle of Guevarra. This is diametrically opposed to the testimony of Armando that Guevarra was sitting astride his motorcycle when they were grappling for the knife.[13]

The RTC also declared that treachery attended the commission of the crime. It considered the fact that Guevarra was stabbed from behind. Further, it ruled that the suddenness and unexpectedness of the attack were deliberately employed so that the victim would be deprived of any means to resist it.[14]

Aggrieved, Armando appealed to the CA.

Ruling of the CA

In the assailed Decision[15] dated July 28, 2017, the CA affirmed the conviction by the RTC *in toto*:

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[12] *Rollo*, p. 2.

[13] CA *rollo*, p. 74.

[14] *Id*.

[15] *Supra* note 2.

WHEREFORE, the appeal is hereby DENIED. The Decision of the Regional Trial Court, Branch 31, Guimba Nueva Ecija in Criminal Case No. 2819-G is **AFFIRMED in toto**.

SO ORDERED.[16] (Emphasis in the original)

The CA agreed with the RTC that Armando failed to prove self-defense because all the essential elements of self-defense are absent. It likewise sustained the finding of the RTC that treachery attended the killing of the victim.

Hence, this appeal.

Issues

Whether the CA erred in affirming Armando's conviction for Murder despite the fact that the prosecution failed to establish his guilt for Murder beyond reasonable doubt.

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight; except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.[17] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.[18] The appeal confers the appellate court full jurisdiction over the case and renders such competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[19]

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[16] *Id*. at 8.

[17] *People v. Duran, Jr*., G.R. No. 215748, November 20, 2017, 845 SCRA 188, 211.

[18] *Id*.

[19] *Ramos v. People*, 803 Phil. 775, 783 (2017).

After a careful review and scrutiny of the records, the Court affirms the conviction of Armando, but only for the crime of homicide, instead of murder, as the qualifying circumstance of treachery was not proven in the killing of Guevarra.

The accused failed to prove self-defense

In questioning his conviction, Armando argues that he should not be criminally liable for the death of the victim because he only acted in self-defense. He posits that unlawful aggression was present when Guevarra allegedly pointed and cursed at him then drew out a knife.[20]

This argument deserves scant consideration.

An accused who pleads self-defense admits to the commission of the crime charged.[21] He has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[22] Of these three, unlawful aggression is indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person."[23] Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.[24]

The Court agrees with the CA that Armando failed to discharge his burden. All the requisites of self-defense are wanting in this case.

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[20] *Rollo*, p. 5.

[21] *People v. Duran, Jr.*, *supra* note 17 at 196.

[22] *Guevarra v. People*, 726 Phil. 183, 194 (2014).

[23] *People v. Dolorido*, 654 Phil. 467, 475 (2011).

[24] *Nacnac v. People*, 685 Phil. 223, 229 (2012).

First, there is no unlawful aggression on the part of the victim. For unlawful aggression to be present, there must be real danger to life or personal safety.[25] Accordingly, the accused must establish the concurrence of the three elements of unlawful aggression, namely: (*a*) there must be a physical or material attack or assault; (*b*) the attack or assault must be actual, or, at least, imminent; and (*c*) the attack or assault must be unlawful.[26] None of the elements of unlawful aggression was proven by the defense. Guevarra's act of pointing or cursing at Armando, not followed by other acts, is insufficient to constitute unlawful aggression. Thus, the CA is correct in ruling that there was no evidence proving the gravity of the utterances and the actuations allegedly made by Guevarra that would have indicated his wrongful intent to harm Armando.[27]

Second, in the absence of unlawful aggression on the part of the victim, the second requisite of self-defense could not have been present. Records show that Guevarra was unarmed and it was Armando who approached the former armed with a knife. Assuming that Guevarra had indeed shouted and cursed at him and drew out a knife, it was still not reasonably necessary for Armando to stab the victim. Furthermore, Armando stabbed the victim three times, the last wound inflicted when Guevarra was already on the ground asking for help. Thus, the CA was correct in ruling that the means employed by Armando in repelling the attack was unreasonable.[28]

Lastly, the third requisite requires the person mounting a defense to be reasonably blameless. He or she must not have antagonized or incited the attacker into launching an assault.[29] In this case, records show that it was actually Armando who

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[25] *People v. Satonero*, 617 Phil. 983, 993 (2009).

[26] *People v. Nugas*, 677 Phil. 168, 177 (2011).

[27] *Rollo*, p. 5.

[28] *Id*. at 7.

[29] *Velasquez v. People*, 807 Phil. 438, 451 (2017).

sought out and approached the victim with a knife. It was Armando who initiated the assault.[30]

Hence, the Court finds that Armando failed to prove that he acted in self-defense.

Treachery was not proved by clear and convincing evidence

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance of treachery was present, thereby making Armando liable for murder instead of homicide. The CA held:

> We find that the appellant's attack on the victim was treacherously carried out. The victim was giving out the change of his passengers, seated astride his tricycle, when the appellant appeared out of nowhere, held the victim by the shoulder and stabbed him twice on the chest. The position of the victim put him on a disadvantage as he cannot move freely and defend himself. The suddenness of the attack ensured that the victim cannot put up an adequate defense to protect himself. The deliberateness of the act is apparent in that the appellant knew how to kill the victim and came armed with a deadly weapon.[31]

Treachery must be proved by clear and convincing evidence as conclusively as the killing itself.[32] Thus, for Armando to be convicted of murder, the prosecution must not only establish that he killed Guevarra. It must also be proven, by clear and convincing evidence, that the killing of Guevarra was attended by treachery.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make.[33] To appreciate

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[30] *Rollo*, p. 5.

[31] *Id*. at 7.

[32] *People v. Mahilum*, 438 Phil. 641, 648 (2002).

[33] *People v. Duran, Jr., supra* note 17 at 205-206.

treachery as a qualifying circumstance, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[34] The essence of treachery is the sudden and unexpected attack by an aggressor on the unsuspecting victim, depriving the latter of any chance to defend himself and thereby ensuring its commission without risk of himself.[35]

In order to appreciate treachery, both elements must be present.[36] It is not enough that the attack was "sudden," "unexpected," and "without any warning or provocation."[37] There must also be a showing that the offender consciously and deliberately adopted the particular means, methods and forms in the execution of the crime which tended directly to insure such execution, without risk to himself.

In this case, although the attack was sudden and unexpected, the prosecution did not prove that Armando deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to himself arising from the defense that the victim might offer. As testified to by the witnesses of the prosecution, the incident happened in broad daylight outside Dr. Ramon De Santos National High School, a public place where there were plenty of other people present who could have offered their help. If Armando wanted to make certain that no risk would come to him, he could have chosen another time and place to stab the victim. In a similar case, the Court held that when aid was easily available to the victim, such as when the attendant circumstances showed that there

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[34] *Id.*, citing *People v. Dulin*, 762 Phil. 24, 40 (2015).

[35] *Id.*, citing *People v. Escote, Jr.*, 448 Phil. 749, 786 (2003).

[36] *Id.*, citing REVISED PENAL CODE, Art. 14, par. 16.

[37] *People v. Sabanal*, 254 Phil. 433, 436-437 (1989).

were several eyewitnesses to the incident, including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the facilitation of the crime, he could have chosen another place or time.[38] Thus, the Court can reasonably conclude that Armando acted impetuously in suddenly stabbing the victim.

Proper penalty and award of damages

With the removal of the qualifying circumstance of treachery, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any mitigating circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the appellant should be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor* (the penalty next lower in degree to that provided in Article 249) and whose maximum shall be within the range of *reclusion temporal* in its medium period. There being no mitigating or aggravating circumstance proven in the present case, the penalty should be applied in its medium period of fourteen (14) years, eight (8) months, and one (1) day to seventeen (17) years and four (4) months.

Thus, applying the Indeterminate Sentence Law, the maximum penalty will be selected from the above range, with the minimum penalty being selected from the range of the penalty one degree lower than *reclusion temporal*, which is *prision mayor* (six [6] years and one [1] day to twelve [12] years). Hence, the indeterminate sentence of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal,* as maximum, should be as it is hereby imposed.[39]

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[38] *People v. Caliao*, G.R. No. 226392, July 23, 2018, p. 7.

[39] *People v. Duavis*, 678 Phil. 166, 179 (2011).

Finally, in view of the Court's ruling in *People v. Jugueta*,[40] the damages awarded in the questioned Decision are hereby modified to civil indemnity, moral damages, and temperate damages of ₱50,000.00 each.

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Court **DECLARES** accused-appellant **Armando Bagabay y Macaraeg GUILTY** of **HOMICIDE**, for which he is sentenced to suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of Alfredo Guevarra, Jr. the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, Fifty Thousand Pesos (₱50,000.00) as moral damages, and Fifty Thousand Pesos (₱50,000.00) as temperate damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.*, concur.

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[40] 783 Phil. 806 (2016).

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[A.C. No. 12041. November 5, 2018]

JULIAN T. BALBIN and DOLORES E. BALBIN, *complainants, vs.* **ATTY. MARIANO B. BARANDA, JR.,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; NOTARIZING A DOCUMENT DESPITE FAILURE OF ONE OF THE PARTIES TO PERSONALLY APPEAR CONSTITUTES A VIOLATION OF NOTARIAL LAW.—** Settled is the rule that a notary public should not notarize a document unless the persons who signed it are the same persons who personally appeared before him to attest to its contents and truth. The physical presence of the parties to the instrument is required to enable the notary public to verify the genuineness of their signatures therein and the due execution of the documents x x x [pursuant to] Section 1 of Act No. 2103 or the Notarial Law[.] x x x Under Section 2 (b), Rule IV of the prevailing 2004 Rules on Notarial Practice, "[a] person shall not perform a notarial act if the person involved as signatory to the instrument or document x x x is **not in the notary's presence personally at the time of the notarization[.]"** In the present case, respondent explicitly admitted that he violated the foregoing requirement by notarizing the subject documents despite the fact that one of the parties-signatories thereto, Dolores, failed to personally appear before him. As such, he should be held administratively liable for his professional indiscretion. Notaries Public have been repeatedly reminded that they must be mindful of the significance of the notarial act when performing their duties.

2. **ID.; ID.; ID.; NOTARIZATION, CONCEPT OF; LAWYERS ARE REMINDED THAT COMPLIANCE WITH THE NOTARIAL LAW IS IN LINE WITH THEIR SOLEMN OATH UNDER THE CODE OF PROFESSIONAL RESPONSIBILITY.—** Notarization is not an empty, meaningless, or routinary act. Rather, it converts a private document into a public one and renders it admissible in court

without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face and, for this reason, notaries public are mandated to observe with the utmost care the basic requirements in the performance of their duties. In this light, lawyers commissioned as notaries public have been reminded that compliance with the Notarial Law is in line with their solemn oath under the CPR to obey the laws and to do no falsehood or consent to the doing of any.

3. ID.; ID.; ID.; PENALTY OF SIX (6) MONTHS SUSPENSION FROM THE PRACTICE OF LAW IS PROPER IN CASE AT BAR; RESPONDENT IS NOT DISQUALIFIED FROM NOTARIZING A DOCUMENT BY THE MERE FACT THAT HE SUBSEQUENTLY BECAME COUNSEL OF ONE OF THE PARTIES THEREIN.— [T]he Court finds that suspension from the practice of law for six (6) months would suffice, considering respondent's prompt admission of his error, his expression of sincere apology for his carelessness, the fact that he is already in the twilight years of his life, and complainants' admission that Dolores placed her signatures on the subject documents, thereby raising no dispute on the due execution thereof. Finally, the Court agrees with the IBP that respondent was not disqualified from notarizing the subject documents by the mere fact that he subsequently became counsel of RLC, which was one of the signatories thereon. No such prohibition appears in both the Notarial Law and its present iteration.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from a complaint[1] dated September 1, 2012 filed by Spouses Julian T. Balbin (Julian) and Dolores E. Balbin (Dolores; collectively, complainants) before the Integrated Bar of the Philippines (IBP) against respondent Atty. Mariano B. Baranda, Jr. (respondent) for

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[1] *Rollo,* pp. 2-8.

violations of the Code of Professional Responsibility (CPR) and the Notarial Law.[2]

The Facts

Complainants alleged that in January 2003, they entered into a loan agreement with Rapu-Raponhon Lending Company[3] (RLC). To secure the loan, the latter's Manager, Charles M. Guianan (Charles), asked them to affix their signatures on two (2) blank documents, specifically a Deed of Real Estate Mortgage[4] and a Promissory Note,[5] both dated January 24, 2003 (subject documents). Respondent notarized the subject documents on January 29, 2003.[6]

When complainants failed to pay the loan, RLC foreclosed the mortgage.[7] Aggrieved, they filed a case before the Regional Trial Court of Legazpi City, Branch 4 (RTC) for the annulment of the subject documents, claiming that they were made to sign the two (2) blank documents as security for the loan but they never received the loan proceeds.[8] However, in a Joint Decision[9] dated July 6, 2009, the RTC dismissed the case for failure of the complainants to substantiate their allegations.[10] While the civil case was pending on appeal,[11] complainants filed the present

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[2] Act No. 2103, entitled "AN ACT PROVIDING FOR THE ACKNOWLEDGMENT AND AUTHENTICATION OF INSTRUMENTS AND DOCUMENTS WITHOUT THE PHILIPPINE ISLANDS," enacted on January 26, 1912.

[3] Also referred to as "Rapo-Raponhon Co." in some parts of the *rollo*.

[4] *Id*. at 35 and 38.

[5] *Id*. at 36 and 39.

[6] *Id*. at 36, 37 and 39.

[7] See Respondent's Position Paper; *id*. at 139.

[8] See RTC Joint Decision dated July 6, 2009; *id*. at 42-43.

[9] *Id*. at 41-52. Penned by Judge Edgar L. Armes.

[10] See *id*. at 47-49 and 52.

[11] See Complaint; *id*. at 4. See also Answer; *id*. at 68-69.

administrative case against respondent, faulting him for notarizing the subject documents without Dolores' presence, which he admitted in open court before the RTC, to wit:

> Atty. [Joventino S.] Sardaña:
> Q – Did you appear before a Notary Public at the time that this was acknowledged before a Notary Public?
>
> Atty. Baranda:
> Already answered, she did not.
>
> Atty. Sardaña:
> There was no answer yet.
>
> **Atty. Baranda:**
> **We will admit that [Dolores] did not appear before a notary public.**
>
> Atty. Sardaña:
> There is an admission from the defendant's counsel that the plaintiffs as signatories to this Real Estate Mortgage and Promissory Note did not appear before a Notary Public.
>
> x x x x x x x x x[12] (Emphasis supplied)

Complainants further suggested that respondent was in conflict of interest, and therefore, disqualified from notarizing the subject documents because respondent was the counsel of RLC, which was their counter-party in those documents.[13]

For his part, respondent admitted that Dolores was not present when he notarized the subject documents in the presence of Julian, Charles, and the two (2) other witnesses to the instruments.[14] He argued, however, that he was not in conflict of interest when he notarized the subject documents on January 29, 2003 because he was retained as RLC's counsel only on May 4, 2004, or after complainants filed the civil case against

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[12] See TSN dated December 3, 2007; *id*. at 30.

[13] See *id*. at 5-6.

[14] See *id*. at 71.

RLC.[15] He also added that there was no conflict of interest because complainants have never been his clients.[16]

The IBP's Report and Recommendation

In a Modified Report and Recommendation[17] dated June 20, 2013, the IBP Investigating Commissioner recommended that respondent be reprimanded for his carelessness and misdeclarations in the notarial certificates in the subject documents.[18] He noted that since Dolores was not present during the notarization, respondent should have indicated in the acknowledgment of the Deed of Real Estate Mortgage and the jurat of the Promissory Note that only Charles and Julian appeared before him and acknowledged their execution of those documents.[19] Nevertheless, the Investigating Commissioner found no merit in complainants' allegations that respondent was disqualified from notarizing the subject documents on the ground of conflict of interest.[20]

In a Resolution[21] dated August 9, 2014, the IBP Board of Governors adopted and approved the Investigating Commissioner's Report and Recommendation **with modification** as to the penalty to be imposed upon respondent, to wit: *(a)* immediate revocation of his notarial commission; *(b)* disqualification from being commissioned as a notary public for two (2) years; and *(c)* suspension from the practice of law for three (3) months.[22]

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[15] See *id*. at 71-72. See also *id*. at 185.

[16] *Id*. at 72 and 185.

[17] *Id*. at 183-187. Signed by Commissioner Jose Alfonso M. Gomos.

[18] *Id*. at 187.

[19] See *id*. at 186-187.

[20] See *id*. at 187.

[21] See Notice of Resolution in Resolution No. XXI-2014-446 signed by National Secretary Nasser A. Marohomsalic; *id*. at 165 (including dorsal portion).

[22] *Id*.

Aggrieved, respondent moved for reconsideration[23] by expressing his sincere apology for his carelessness as a notary public and asking for compassion and understanding, noting that he is already seventy (70) years old and has been a notary public and in the practice of law since 1977.[24] In a Resolution[25] dated March 1, 2017, the IBP Board of Governors denied the motion and **modified** the period of suspension from the practice of law to six (6) months.[26]

The Issue Before the Court

The issue for the Court's resolution is whether or not respondent should be held administratively liable for the acts complained of.

The Court's Ruling

After a judicious perusal of the records, the Court concurs with the findings and recommendations of the IBP Board of Governors.

Settled is the rule that a notary public should not notarize a document unless the persons who signed it are the same persons who personally appeared before him to attest to its contents and truth.[27] The physical presence of the parties to the instrument is required to enable the notary public to verify the genuineness of their signatures therein and the due execution of the documents.[28] Pertinently, Section 1 of Act No. 2103 or the Notarial Law provides:

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[23] See motion for reconsideration dated March 24, 2015; *id*. at 171-172.

[24] *Id*. at 171.

[25] See Notice of Resolution in Resolution No. XXII-2017-885 signed by Assistant National Secretary Camille Bianca M. Gatmaitan-Santos; *id*. at 179-180.

[26] *Id*. at 179.

[27] See *Coquia v. Laforteza,* A.C. No. 9364, February 8, 2017. See also *Linco v. Lacebal,* 675 Phil. 160, 167 (2011).

[28] See *Almario v. Llera-Agno,* A.C. No. 10689, January 8, 2018. See also *Isenhardt v. Real,* 682 Phil. 19, 24 (2012).

> Section 1. x x x
>
> (a) The acknowledgment shall be made before a notary public or an officer duly authorized by law of the country to take acknowledgments of instruments or documents in the place where the act is done. The notary public or the officer taking the acknowledgment shall certify that the person acknowledging the instrument or document is known to him and that he is the same person who executed it, and acknowledged that the same is his free act and deed. The certificate shall be made under his official seal, if he is by law required to keep a seal, and if not, his certificate shall so state.

Under Section 2 (b), Rule IV of the prevailing 2004 Rules on Notarial Practice,[29] "[a] person shall not perform a notarial act if the person involved as signatory to the instrument or document x x x is **not in the notary's presence personally at the time of the notarization[.]"**[30]

In the present case, respondent explicitly admitted that he violated the foregoing requirement by notarizing the subject documents despite the fact that one of the parties-signatories thereto, Dolores, failed to personally appear before him. As such, he should be held administratively liable for his professional indiscretion. Notaries Public have been repeatedly reminded that they must be mindful of the significance of the notarial act when performing their duties. Notarization is not an empty, meaningless, or routinary act.[31] Rather, it converts a private document into a public one and renders it admissible in court without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face and, for this reason, notaries public are mandated to observe with the utmost care the basic requirements in the performance of their

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[29] A.M. No. 02-8-13-SC, July 6, 2004.

[30] Emphasis and underscoring supplied.

[31] See *Orola v. Baribar,* A.C. No. 6927, March 14, 2018, citing *Sappayani v. Gasmen,* 768 Phil. 1, 8 (2015).

duties.[32] In this light, lawyers commissioned as notaries public have been reminded that compliance with the Notarial Law is in line with their solemn oath under the CPR to obey the laws and to do no falsehood or consent to the doing of any.[33]

As regards the penalty to be imposed, recent jurisprudence shows that when a document is notarized despite the non-appearance of a party or an affiant before the notary public, the Court generally imposes the following penalties upon the latter: *(a)* immediate revocation of his notarial commission, if still existing; *(b)* disqualification from being appointed as a notary public for a period of two (2) years; and *(c)* suspension from the practice of law – the terms of which vary based on the circumstances of each case.[34] In *Ferguson v. Ramos,*[35] *Malvar v. Baleros*,[36] and *Yumul-Espina v. Tabaquiero*,[37] the erring lawyers were suspended from the practice of law for six (6) months; while in *Orola v. Baribar*,[38] *Sappayani v. Gasmen,*[39] and *Isenhardt v. Real,*[40] the suspensions imposed were for a period of one (1) year.

Here, the Court finds that suspension from the practice of law for six (6) months would suffice, considering respondent's prompt admission of his error, his expression of sincere apology for his carelessness, the fact that he is already in the twilight years of his life, and complainants' admission that Dolores placed

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[32] *Mariano v. Echanez,* 785 Phil. 923, 927-928 (2016).

[33] See *Orola v. Baribar,* A.C. No. 6927, March 14, 2018, citing *Agbulos v. Viray,* 704 Phil. 1, 9 (2013).

[34] See *id*., citing *Sappayani v. Gasmen, supra* note 31.

[35] A.C. No. 9209, April 18, 2017, 823 SCRA 59.

[36] A.C. No. 11346, March 8, 2017, 820 SCRA 620.

[37] 795 Phil. 653 (2016).

[38] See A.C. No. 6927, March 14, 2018.

[39] *Supra* note 31.

[40] *Supra* note 28.

her signatures on the subject documents, thereby raising no dispute on the due execution thereof.[41]

Finally, the Court agrees with the IBP that respondent was not disqualified from notarizing the subject documents by the mere fact that he subsequently became counsel of RLC, which was one of the signatories thereon. No such prohibition appears in both the Notarial Law and its present iteration.[42]

WHEREFORE, the Court finds respondent Atty. Mariano B. Baranda, Jr. **GUILTY** of violating the Notarial Law and the Code of Professional Responsibility. Accordingly, effective immediately, the Court hereby **SUSPENDS** him from the practice of law for six (6) months; **REVOKES** his incumbent commission as a notary public, if any; and **PROHIBITS** him from being commissioned as a notary public for two (2) years. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely. He is **DIRECTED** to report to this Court the date of his receipt of this Resolution to enable it to determine when his suspension from the practice of law, the revocation of his notarial commission, and his disqualification from being commissioned as notary public shall take effect.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent's personal record

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[41] See Modified Report and Recommendation of the IBP; *rollo,* pp. 186-187.

[42] Section 3, Rule IV of the 2004 Rules on Notarial Practice provides:

Section 3. *Disqualifications.* – A notary public is disqualified from performing a notarial act if he:

(a) is a party to the instrument or document that is to be notarized;

(b) will receive, as a direct or indirect result, any commission, fee, advantage, right, title, interest, cash, property, or other consideration, except as provided by these Rules and by law; or

(c) is a spouse, common-law partner, ancestor, descendant, or relative by affinity or consanguinity of the principal within the fourth civil degree.

as an attorney, the Integrated Bar of the Philippines for its information and guidance, and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa,* and *Reyes, A. Jr., JJ.,* concur.

Reyes, J. Jr.,[*] *J.,* on official leave.

FIRST DIVISION

[G.R. No. 206398. November 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JERRY JAMILA *y* VIRAY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THAT MUST CONCUR TO SECURE A CONVICTION; AS AN INTEGRAL KEY PART OF THE *CORPUS DELICTI* OF THE CRIME, THE IDENTITY OF THE SEIZED DRUGS MUST BE PROVEN BEYOND REASONABLE DOUBT.— Under Section 5, Article II of R.A. 9165, to secure a conviction for illegal sale of *shabu,* the following must concur: (i) the identity of the buyer and the seller, the object of the sale and its consideration; and (ii) the delivery of the thing sold and the payment therefore. It is necessary that the sale transaction actually took place, coupled with the presentation in court of the *corpus*

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

delicti as evidence. Jurisprudence dictates that the identity of the prohibited drug must be established beyond reasonable doubt, since it is an integral key part of the *corpus delicti* of the crime. Thus, the prosecution must prove with certitude each link in the chain of custody over the dangerous drug. The dangerous drug recovered from the suspect must be the very same object presented before the court as exhibit.

2. **ID.; ID.; CHAIN OF CUSTODY RULE; INSTANCES WHERE NON-COMPLIANCE WITH THE MANDATED PROCEDURAL REQUIREMENTS WILL NOT INVALIDATE THE SEIZURE AND CUSTODY OF CONFISCATED DRUGS; FAILURE OF THE POLICE OFFICERS TO COMPLY WITH THE SAFEGUARDS PRESCRIBED BY LAW, LEFT A REASONABLE DOUBT IN THE CHAIN OF CUSTODY OF THE SEIZED DRUGS.—** [T]he Court ruled that failure to comply with the mandated procedural requirements will not invalidate the seizure and custody of the confiscated items in the following instances: (i) there is a justifiable ground for the non-compliance; and (ii) the integrity and evidentiary value of the confiscated items are properly preserved. In the present case, a punctilious review of the records shows that the failure of the police officers to comply with the procedural safeguards prescribed by law, left a reasonable doubt in the chain of custody of the confiscated dangerous drug.

3. **ID.; ID.; ID.; ABSENCE OF CREDIBLE JUSTIFICATION FOR THE BUY-BUST TEAM'S FAILURE TO IMMEDIATELY CONDUCT AND MARK THE ILLEGAL DRUGS UPON SEIZURE AND CONFISCATION IS FATAL; ACQUITTAL OF THE ACCUSED SHOULD FOLLOW.—** The Court finds the explanation of the CA insufficient and unjustifiable considering that in *Candelaria v. People,* the Court emphasized that immediate marking upon confiscation or recovery of the dangerous drug is indispensable in the preservation of its integrity and evidentiary value. In the present case, the records undeniably failed to present any credible justification for the buy-bust team's failure to comply with the safeguards set by law. Absent any justifiable reason, they should have immediately conducted the marking upon seizure and confiscation of the item. The identity of the seized item, not having been sufficiently established beyond reasonable doubt, the acquittal of the accused-appellant should follow.

APPEARANCES OF COUNSEL

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

D E C I S I O N

TIJAM, *J.*:

Before the Court is an appeal of the Court of Appeals' (CA) Decision[1] dated July 12, 2012 dismissing the accused-appellant's appeal and affirming the Decision[2] dated May 25, 2011 of the Regional Trial Court (RTC), Branch 204, Muntinlupa City in Criminal Case No. 08-762 convicting accused-appellant of Violation of Section 5, Article II, Republic Act (R.A.) No. 9165.

FACTS OF THE CASE

Acting on an information received by the Station Anti-Illegal Drugs Special Operation Task Force (SAID-SOTF) of Muntinlupa City, a surveillance and monitoring operation was conducted against a certain "Jerry", who allegedly was selling *shabu* at Purok 4 PNR Site, Barangay Alabang, Muntinlupa City (target place).[3]

Upon validation of the information, P/S Inspector Alfredo Valdez conducted a briefing and designated SPO4 Faustino Atienza as team leader, PO3 Norman Villareal (PO3 Villareal) as *poseur* buyer, and PO1 Salvador Genova as immediate backup. Accordingly, a Pre-Operation Report to the Philippine Drug Enforcement Agency (PDEA) and the buy-bust money were prepared.[4]

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[1] Penned by Associate Justice Amy C. Lazaro-Javier with the concurrence of Associate Justices Mariflor P. Punzalan-Castillo and Socorro B. Inting; *rollo,* pp. 2-13.

[2] Penned by Presiding Judge Juanita T. Guerrero; CA *rollo,* pp. 33-38.

[3] *Rollo,* p. 4.

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

On September 30, 2008, at about 9:30 p.m., the team went to the target place. PO3 Villareal and the informant approached "Jerry", who was then having a drinking session with two other persons. The informant introduced PO3 Villareal to "Jerry" as a taxi driver interested to buy *shabu*. When asked how much he wanted, PO3 Villareal answered ₱300.00 worth. "Jerry" said that he has ₱500.00 worth of *shabu*,but he is willing to sell it only for ₱300.00. Thus, PO3 Villareal gave "Jerry" the marked peso bills and the latter, in turn, took from his pocket a plastic sachet containing white crystalline substance and gave it to PO3 Villareal.[5]

Upon examination of the plastic sachet, PO3 Villareal made the pre-arranged signal to alert his backup team. Immediately, he handcuffed "Jerry" and informed him of his constitutional rights. Thereafter, "Jerry" was brought to the SAID-SOTF office where he was identified as Jeremy Jamila (accused-appellant).[6]

At the station, PO3 Villareal marked the confiscated plastic sachet with the initial "JJ". He also prepared an Inventory, Booking and Information Sheet, Sport Report, Request for Laboratory Examination, Request for Drug Test, photocopied the buy bust-money, and took pictures of accused-appellant, as well as the confiscated items.[7]

After the laboratory examinations, the specimen yielded positive for *methylamphetamine hydrochloride,* a regulated drug.[8]

Thus, an Information[9] was filed against the accused-appellant for violation of Section 5, Article II of R.A. No. 9165, to wit:

On or about the 30th day of September 2008, in the City of Muntinlupa, Philippines and within the jurisdiction of this Honorable

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[5] *Id*. at 5.

[6] *Id*.

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

[8] *Id*. at 6.

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

Court, the above-named accused, without being authorized by law, did then and there willfully and unlawfully sell, trade and dispense a dangerous drug, as he did then and there sell to PO3 Norman Villareal for Three Hundred Pesos (₱300.00) Methylamphetamine Hydrochloride, a dangerous drug, with a total weight of 0.03 gram contained in transparent plastic sachet, without proper authorization or license therefor.

Contrary to law.

For his defense, accused-appellant countered that while he was drinking beer in front of a store, four men suddenly approached and handcuffed him. He was allegedly brought inside a Revo vehicle, and was asked "San daw po meron?." When accused-appellant replied that he did not know, he saw PO2 Dionisio Gastanes, Jr. produced a plastic sachet containing *shabu,* and three marked ₱100 bills and told him that those were the evidence that will be used against him. Despite his denial, accused-appellant was apprehended by the police officers.[10]

RTC RULING

On May 25, 2011, the trial court rendered its Decision finding accused-appellant guilty of the crime charged, and sentenced him as follows:

WHEREFORE, premises considered and finding the accused GUILTY beyond reasonable doubt of illegally selling "shabu" a dangerous drug in violation of Sec. 5, Art. II of R.a.. (sic) 9165, JERRY JAMILA y VIRAY is sentenced to LIFE IMPRISONMENT and to pay a fine of Php 500,000.00.

The subject drug evidence is ordered transmitted to the Philippine Drug Enforcement Agency for proper disposition.

The preventive imprisonment undergone by the accused shall be credited in his favor.

SO ORDERED.[11]

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[10] *Rollo,* pp. 6-7.

[11] CA *rollo,* p. 69.

In convicting accused-appellant, the trial court held that the testimonies of the police officers were more credible and consistent with the documentary evidence they presented. Also, it found that the prosecution has indubitably and sufficiently proven all the elements of the crime charged.

CA RULING

In a Decision dated July 12, 2012, the CA affirmed the Decision of the RTC *in toto,* thus:

> ACCORDINGLY, the appeal is DISMISSED and the assailed Decision dated May 25, 2011, AFFIRMED.
>
> SO ORDERED.[12]

The CA held that the prosecution had amply proved that the apprehending team substantially complied with the law and preserved the integrity of the seized items. Also, it gave credence to the testimonies of the buy-bust team members who were presumed to have regularly performed their duties.

Hence, the present appeal.

The accused-appellant raised the following errors in his appeal:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL WEIGHT AND CREDENCE TO THE PROSECUTION'S EVIDENCE NOTWITHSTANDING ITS FAILURE TO PROVE THE IDENTITY AND INTEGRITY OF THE ALLEGEDLY SEIZED DRUG.

II.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY OF THE SEIZED ITEM.

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[12] *Rollo,* p. 13.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PREVAILING IRREGULARITIES IN THE APPREHENDING OFFICERS' PERFORMANCE OF THEIR OFFICIAL DUTIES AND THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[13]

The accused-appellant averred that the irregularities on the part of the apprehending team, and the uncertainties surrounding the present case, reasonable doubt clearly exist as regards his guilt.

RULING OF THE COURT

The petition has merit.

Under Section 5, Article II of R.A. 9165, to secure a conviction for illegal sale of *shabu,* the following must concur: (i) the identity of the buyer and the seller, the object of the sale and its consideration; and (ii) the delivery of the thing sold and the payment therefore. It is necessary that the sale transaction actually took place, coupled with the presentation in court of the *corpus delicti* as evidence.[14]

Jurisprudence dictates that the identity of the prohibited drug must be established beyond reasonable doubt, since it is an integral key part of the *corpus delicti* of the crime. Thus, the prosecution must prove with certitude each link in the chain of custody over the dangerous drug. The dangerous drug recovered from the suspect must be the very same object presented before the court as exhibit.[15]

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[13] CA *rollo,* p. 49.

[14] *People of the Philippines v. Angelita Reyes y Ginove and Josephine Santa Maria y Sanchez,* G.R. No. 219953, April 23, 2018.

[15] *People v. Viterbo, et al.,* 739 Phil. 593 (2014).

To prevent abuse during buy-bust operations, however, the Congress prescribed several procedural safeguards under R.A. 9165 to guide the law enforcers implementing the same.[16] Specifically, Section 21 of R.A. 9165, as amended, relating to the custody and disposition of the confiscated drugs provides:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> "(1) The apprehending team having initial custody and control of the drugs, 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.

In support of the above-quoted provision, Section 21 (a) of the Implementing Rules and Regulations of R.A. 9165 states:

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[16] *Reyes v. Court of Appeals,* 686 Phil. 137 (2012).

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

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properlypreserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

In several cases, however, the Court ruled that failure to comply with the mandated procedural requirements will not invalidate the seizure and custody of the confiscated items in the following instances: (i) there is a justifiable ground for the non-compliance; and (ii) the integrity and evidentiary value of the confiscated items are properly preserved.[17]

In the present case, a punctilious review of the records shows that the failure of the police officers to comply with the procedural safeguards prescribed by law, left a reasonable doubt in the chain of custody of the confiscated dangerous drug.

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[17] *People v. Viterbo, et al., supra* note 15 at 603.

First, PO3 Villareal, who testified having inventoried the confiscated drug, did not claim that he conducted the same in the presence of (i) the accused-appellant, or his representative or counsel; (ii) a representative from media and the Department of Justice (DOJ); and (iii) any elected official. During his cross-examination, PO3 Villareal stated that:

> [Atty Jaime Felicen] Q: And witnesses during that inventory were certain Raymond Balsomo and Revelino Joaquin, Jr.?
> [PO3 Villareal] A: Yes, sir.
>
> Q: To whom you only called them [sic] after you arrived in your office, you called them for purposes of witnessing the inventory?
> A: Yes, sir.
>
> Q: In fact, at first they were hesitant to witness because they have nothing to do in your operation?
> A: Yes, sir, they just witnessed the inventory.
>
> Q: **And these persons were civilians?**
> A: **Local government employees, sir.**
>
> x x x x x x x x x. (emphasis supplied)[18]

As may be gleaned above, there was no representative from the media or the DOJ, and any elected official to witness the inventory of the confiscated item, and no justifiable ground was provided for their absence. Inarguably, the buy-bust operation against accused-appellant was arranged and scheduled prior to its execution. In fact, the buy-bust team even coordinated with the PDEA and prepared the marked money for the operation. Yet, the team failed to secure the presence of these persons required by law to witness the inventory. Surely, as held in *People v. Reyes, et al.,*[19] non-compliance to observe the required procedure must be justifiably explained and stated in a sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the confiscated item. Any shortcoming on the part of the prosecution in this regard is fatal to its cause.

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[18] TSN, February 4, 2010, pp. 19-20.

[19] G.R. No. 219953, April 23, 2018.

Second, PO3 Villareal testified that the marking, inventory, and taking of photograph of the confiscated item were not conducted at the place of the arrest but at the SAID-SOTF, thus:

[Fiscal Baybay] Q: So when you reached your office what identity you get from the person of the accused?
[PO3 Villareal] A: Jerry Jamila, sir.

x x x x x x x x x

Q: Now, what did you do with the item that you bought from the accused to your office?
A: We marked the evidence.

Q: Who made the marking?
A: I, sir.

x x x x x x x x x. (emphasis supplied)[20]

The CA ruled that R.A. 9165 did not specify the time frame within which "immediate marking" should be done, or where exactly the marking should take place.

The Court finds the explanation of the CA insufficient and unjustifiable considering that in *Candelaria v. People*,[21] the Court emphasized that immediate marking upon confiscation or recovery of the dangerous drug is indispensable in the preservation of its integrity and evidentiary value.

In the present case, the records undeniably failed to present any credible justification for the buy-bust team's failure to comply with the safeguards set by law. Absent any justifiable reason, they should have immediately conducted the marking upon seizure and confiscation of the item. The identity of the seized item, not having been sufficiently established beyond reasonable doubt, the acquittal of the accused-appellant should follow.

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[20] TSN, May 6, 2009, pp. 14-15.

[21] 725 Phil. 268, 280 (2014).

WHEREFORE, the appeal is **GRANTED.** The Decision dated July 12, 2012 of the Court of Appeals in CA-G.R. CR. HC No. 05121 is hereby **REVERSED** and **SET ASIDE.** Accused-appellant Jerry Jamila y Viray is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately **RELEASED,** unless he is being lawfully held in custody for any other reason.

The Director of the Bureau of Corrections is **DIRECTED** to **IMPLEMENT** this Decision and to **REPORT** to this Court within five (5) working days from receipt of this Decision the action he/she has taken.

SO ORDERED.

Bersamin[*] (*Acting Chairperson*) and *Hernando,*[**] *JJ.,* concur.

Del Castillo and *Gesmundo,*[***] *JJ.,* on official leave.

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[*] Designated Acting Chairperson per Special Order No. 2606 dated October 10, 2018.

[**] Designated Additional Member per Special Order No. 2607-B dated October 24, 2018 vice Associate Justice Francis H. Jardeleza.

[***] Designated Additional Member per Special Order No. 2607 dated October 10, 2018.

THIRD DIVISION

[G.R. No. 228641. November 5, 2018]

SPOUSES RODOLFO CRUZ and LOTA SANTOS-CRUZ, *petitioners, vs.* **HEIRS OF ALEJANDRO SO HIONG (Deceased), substituted by his heirs, GLORIA SO HIONG OLIVEROS, ALEJANDRO L. SO HIONG, JR., FLOCY SO HIONG VELARDE and BEATRIZ DOMINGUEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; IN AN ACTION FOR RECONVEYANCE OF PROPERTY, THE PARTY SEEKING TO RECOVER IT MUST PROVE BY CLEAR AND CONVINCING EVIDENCE HIS OR HER ALLEGATIONS OF FRAUD; RESPONDENTS' FAILURE TO PROVE THEIR ALLEGATIONS OF FRAUD EFFECTIVELY PREVENTS THEM FROM DISTURBING THE TITLE OF PETITIONERS.— [I]n an action for reconveyance of property, where both fraud and irregularity are presupposed, the party seeking to recover the property must prove, by clear and convincing evidence, that he or she is entitled thereto, and that the adverse party has committed fraud in obtaining his or her title. Allegations of fraud are not enough. Intentional acts to deceive and deprive another of his right, or in some manner injure him, must be specifically alleged and proved. Thus, the Court reiterates that Alejandro's bare allegation that the sale did not take place, and nothing more, cannot overcome the presumption of regularity of the performance by government offices, or the Register of Deeds in this case, of their official duties such as the issuance of the Spouses Cruz's title. It has been held in the past that the best proof of the ownership of the land is the certificate of title and it requires more than a bare allegation to defeat the face value of a certificate of title which enjoys a legal presumption of regularity of issuance. In the absence, therefore, of any evidence that would support the claims of fraud of Alejandro and his heirs, their complaint for reconveyance cannot be granted. x x x [E]ven if We assume

that prescription has not yet set in, the Court finds that Alejandro's bare and unsupported claim on the subject property cannot overcome the title issued in favor of the spouses. Stated otherwise, regardless of whether the action of Alejandro for reconveyance has already prescribed or not, his failure to prove his allegations of fraud therein effectively prevents him from disturbing the title of the spouses in the absence of any showing that said title was fraudulently issued, or that its issuance was not done in accordance with the procedure laid down by law.

2. ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR RUN CONTRARY TO RESPONDENTS' CLAIM OF OWNERSHIP OVER THE SUBJECT PROPERTY.— [T]he Court notes that apart from Alejandro's failure to present any such proof that the Spouses Cruz fraudulently obtained their title over the subject property, his actuations leading up to the filing of his complaint further weakens his case. For one, it took Alejandro about thirty-four (34) years from the time when he left Pampanga for Manila in 1972 before he acted on asserting his alleged right to the subject property by filing his complaint in 2007. For another, as pointed out by the Spouses Cruz, upon his return to Pampanga in 2002, Alejandro even opted to rent a house to stay in even if he allegedly believed that he is still the owner of his share of the subject property. To the Court, these actions and inactions run contrary to his claims of ownership thereon especially in light of the fact that ever since 1974, the family of the Spouses Cruz had already been occupying the same to the exclusion of Alejandro and his heirs.

APPEARANCES OF COUNSEL

Tolentino (+) Logronio & Dayrit Law Offices for petitioners.
Romeo Torno 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 May 23, 2016 and the Resolution[2] dated December 7, 2016 of the Court of Appeals (*CA*) in CA-G.R. CV No. 105749.

The antecedent facts are as follows:

Siblings Alejandro So Hiong and Conchita So Hiong were the former co-owners of a parcel of land with an area of 313 square meters located at Solib, Floridablanca, Pampanga, registered under Transfer Certificate of Title (*TCT*) No. 43193-R. On August 23, 2007, Alejandro, who was substituted by his heirs upon his death in 2010, filed a Complaint for Annulment of Transfer Certificate of Title, Reconveyance, and Damages against petitioner spouses Rodolfo Cruz and Lota Santos-Cruz (*Spouses Cruz*). In his complaint, he alleged that sometime in 1972 to 1973, he left Pampanga with his family to live in Manila, leaving the owner's duplicate copy of TCT No. 43193-R with Conchita for safekeeping. In 1974 to 2001, they transferred to Laguna, but in 2002, returned to Pampanga. In July 2007, Alejandro was reminded of the title to the subject land which he entrusted to his sister Conchita, but upon inquiry, he learned that Conchita could no longer remember where she kept the same. When Alejandro tried to secure a copy thereof from the Register of Deeds of Pampanga, he found out that the following inscription was already written on the back side of the original title:

Entry No. 4686, sale in favor of Sps. Rodolfo B. Cruz and Lota B. Cruz covering the LOT HEREIN DESCRIBED FOR THE AMOUNT OF ₱10,000.00, WHEREIN THIS TITLE IS CANCELLED AND TCT 356877-R IS ISSUED PER DOC. NO. 180, PAGE 37, BK NO XV, SERIES OF 1979. N.P.P. LOBO OF PAMP.

Date of Doc. 5-19-79
Date of INSC. 8-20-93 at 4:30 p.m.

Sgd. Register of Deeds

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[1] Penned by Associate Justice Renato C. Francisco, with Associate Justices Apolinario D. Bruselas, Jr. and Danton Q. Bueser, concurring; *rollo*, pp. 42-51.

[2] *Id.* at 53-57.

According to Alejandro, it was only then that he came to know that TCT No. 43193-R was cancelled and replaced by TCT No. 356877-R by virtue of a purported sale in favor of the Spouses Cruz. He tried to secure a copy of the deed of sale transferring the land from the Register of Deeds or from the Notary Public who notarized the same but to no avail. Alejandro maintains that he never executed a deed of sale nor transferred his share of the land in favor of Lota Cruz. Thus, in all probability, the Spouses Cruz must have prepared a fraudulent deed and used the same in transferring ownership of the land in their names.[3]

For their part, the Spouses Cruz countered that Alejandro and Conchita freely and voluntarily sold the subject property to them and that Alejandro's right to seek the cancellation of their title had already prescribed. In their Answer, the spouses averred that in 1974, Alejandro sold his share of the lot and his house thereon to the mother of Lota Cruz, Victoria Santos, but since Victoria was the sister of Alejandro, no document was yet issued at that time. After the sale, Lota Cruz and her family occupied the same. The other half of the property, fronting the national road, remained with Conchita where her house was located. Subsequently in 1979, Conchita sold her share of the property and her house thereon to the spouses. Lota Cruz's family agreed that in order that there would only be one title covering the properties that they purchased from Alejandro and Conchita, the said properties would be registered in the name of the spouses. It was in this respect that Victoria asked Alejandro and Conchita to sign a Deed of Sale as vendors and the spouses as vendees of the subject property, which deed was freely signed by Alejandro. Besides, the spouses also maintained that the complaint was already barred by laches, considering that from the time Alejandro left Pampanga in 1972 up to the time of the filing of the complaint in 2007, or for 34 years, more or less, he took no action in recovering his alleged property from the spouses who took possession of the same in the concept of an

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[3] *Rollo*, pp. 42-44.

owner since 1974. In fact, the spouses raised the question that if Alejandro truly believed that he still owned his portion of the subject property, why is it that he never asserted his claim during all those years and instead even rented a house in Floridablanca, Pampanga when he returned thereto in 2002?[4]

On September 15, 2015, the Regional Trial Court (*RTC*) of Guagua, Pampanga, dismissed the complaint filed by Alejandro. *First*, it ruled that the action had already prescribed and is barred by laches in view of the lapse of the long period of time before he filed his complaint. *Second*, the trial court found that Alejandro failed to discharge his burden of proving that the title was fraudulently issued in favor of the Spouses Cruz that would enable him to recover the subject property. *Third*, said court rejected the testimony of Alejandro's son stating that his father did not sell the land on the basis that the same is merely hearsay, especially in view of the fact that Alejandro's death supervened. And *fourth*, it was held that contrary to the claims of Alejandro, the spouses had no duty to keep all records, such as the deed of sale, pertinent to the sale of the land in their favor.[5]

In a Decision[6] dated May 23, 2016, however, the CA reversed and set aside the ruling of the RTC. Contrary to the findings of the RTC, the CA ruled that the burden was on the Spouses Cruz to prove their title because they alleged an affirmative defense. According to the appellate court, the deed of sale is the very foundation of the spouses' defense and should have been presented in court in view of the settled doctrine that a certificate of title is not equivalent title. On the issue of prescription, the CA further ruled that Alejandro's action has not yet prescribed because the right to file an action for reconveyance on the ground that the certificate of title was obtained by means of a fictitious deed of sale is virtually an action for the declaration of its nullity, which does not prescribe.

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[4] *Id.* at 61-64.

[5] *Id.* at 66-74.

[6] *Id.* at 46-51.

Aggrieved by the CA's denial of their Motion for Reconsideration, the spouses filed the instant petition on March 21, 2017 invoking the following arguments:

I.

THE COURT OF APPEALS ERRED IN REVERSING THE TRIAL COURT'S DECISION, IN EFFECT, SHIFTING THE BURDEN OF EVIDENCE TO PROVE THAT THERE WAS NO FRAUD IN THE TRANSFER OF TCT NO. 356877-R TO HEREIN PETITIONERS.

II.

THE COURT OF APPEALS ERRED IN RULING THAT THE CAUSE OF ACTION OF HEREIN RESPONDENTS IS NOT BARRED BY PRESCRIPTION AND LACHES.

III.

THE FINDINGS OF FACT OF THE COURT OF APPEALS ARE MANIFESTLY MISTAKEN AND WITHOUT EVIDENTIARY BASIS.[7]

In their petition, the Spouses Cruz allege that forgery, as a mechanism of fraud, must be proven clearly and convincingly, and the burden of proof lies on the party alleging the forgery, who, in this case, is Alejandro. They claim that the TCT No. 356877-R issued in their favor enjoys the legal presumption of regularity in its issuance and Alejandro failed to overcome such presumption. It has been ruled, moreover, that in an action for reconveyance, Alejandro, as the plaintiff, must rely on the strength of his title and not on the weakness of the spouses' claim. But even assuming that Alejandro was able to establish the existence of fraud, the spouses maintain that his cause of action is still barred not only by prescription based on implied and constructive trust but also by laches.

We rule in favor of the Spouses Cruz.

In finding for Alejandro and his heirs, the CA made much of the fact that the Spouses Cruz failed to keep the deed of sale

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[7] *Rollo*, p. 24.

by virtue of which Alejandro and Conchita conveyed the subject property to them. It essentially held that since the deed was not presented before the trial court, the sale did not happen. The Court, however, cannot sustain such view in light of the circumstances attending the instant case. On point is the recent pronouncement in *Heirs of Datu Dalandag Kuli v. Pia, et al.*[8] There, the heirs of Datu Kuli sought the restoration in their names of the certificate of title over the land they inherited from their predecessor, Datu Kuli, and the annulment of all subsequently issued titles under the names of the respondents. They claim that they had always been in possession of the property and that Datu Kuli never sold the same to any of the respondents. This was proven by the failure of the Register of Deeds to produce a copy of the deed of conveyance used as basis to cancel Datu Kuli's title. But the Court therein rejected said contention and ruled that the mere fact that copies of the deed of sale can no longer be produced does not defeat the legal presumption that the title of the respondents was regularly issued, especially in view of the certification of the Register of Deeds that proper procedure was observed. As such, before said office issued the new certificate of title, the deed of conveyance was duly executed and filed before it. Thus:

> Petitioners insist that the failure of the Register of Deeds to produce a copy of the Deed of Conveyance used as basis to cancel Datu Kuli's OCT proves that the property was never sold to respondent Pia.
>
> The argument of petitioners holds no water. **While the law requires the Register of Deeds to obtain a copy of the Deed of Conveyance before cancelling the seller's title, its subsequent failure to produce the copy, after a new title had already been issued is not a sufficient evidence to hold that the claimed sale never actually happened.**
>
> **We agree with the RTC and rule that even though copies of the Deed of Sale and the OCT of Datu Kuli can no longer be produced now, the evidence presented sufficiently shows that the deed conveying the property to respondent Pia was presented to the Register of Deeds on 21 December 1940, and that this deed was the basis for the cancellation of Datu Kuli's original title.**

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[8] 760 Phil. 883 (2015).

The failure on the part of the Register of Deeds to present a copy of the Deed of Sale when required by the trial court was duly explained by them. It appears that the records containing the Deed of Sale are no longer readable, because they are "very much mutilated." Nevertheless, the Register of Deeds was able to certify that the following entry or notation was found in the first volume of its Primary Entry Book:

Entry No. 7512

Date of Registration	:	Dec. 21, 1940 at 7:58 am
Nature of Document	:	Deed of Sale
Date of Document	:	(Dilapidated Portion)
Executed by	:	Datu Dalandag Kuli
In favor of	:	Daniel R. Pia
Amount	:	₱390.00

Although the Deed of Sale itself can no longer be located, we agree with the RTC's conclusion that the above notation proves that "there was at one time in the past such document recorded in the Register of Deeds but that with the passage of time, the same became tattered, unreadable, badly dilapidated, and mutilated and could not be found or recognized to boot."

All in all, it becomes clear that TCT 1608 was issued on 21 December 1940, because respondent Pia was able to present the requisite Deed of Sale as proven by the certification issued by the Register of Deeds.

Section 57 of the Property Registration Decree provides the procedure for the registration of conveyances, *viz.*:

> SECTION 57. *Procedure in Registration of Conveyances*. — An owner desiring to convey his registered land in fee simple shall execute and register a deed of conveyance in a form sufficient in law. The Register of Deeds shall thereafter make out in the registration book a new certificate of title to the grantee and shall prepare and deliver to him an owner's duplicate certificate. The Register of Deeds shall note upon the original and duplicate certificate the date of transfer, the volume and page of the registration book in which the new certificate is registered and a reference by number to the last preceding certificate. The original and the owner's duplicate of the grantor's certificate shall be stamped "cancelled". The deed of conveyance

shall be filed and indorsed with the number and the place of registration of the Certificate of title of the land conveyed.

The evidence and the records prove that the proper procedure for the issuance of TCT 1608 was followed. The title was validly issued.

Deserving scant consideration is petitioners' claim that the failure of the Register of Deeds to produce a copy of the Deed of Conveyance proves that Datu Kuli never sold Lot 2327 to anyone. Other than their self-serving claim that the sale never happened, petitioners failed to present any other evidence to prove that Lot 2327 had never been purchased by respondent Pia. It requires more than petitioners' bare allegation to defeat TCT 1608, which on its face enjoys the legal presumption of regularity of issuance.[9]

Similarly, in the instant case, Alejandro and his heirs simply alleged that Alejandro never sold his share of the subject property to the Spouses Cruz and that according to the appellate court, this was shown by the failure of the spouses to present the deed of sale covering the property. But other than his bare allegation, Alejandro presented no other evidence to prove that the sale never took place, merely concluding that "in all probability," the spouses must have prepared a fraudulent deed and used the same in transferring ownership of the land in their names. As held in *Heirs of Datu*, this self-serving claim, standing alone, cannot be permitted to defeat the spouses' title especially in the face of the Register of Deeds' certification dated August 1, 2007 stating that the deed of conveyance was no longer available and is deemed lost and destroyed as most of the records of said office were destroyed when their building was inundated by flashflood in October 1995 during the typhoon "Mameng."[10]

It bears stressing, moreover, that in an action for reconveyance of property, where both fraud and irregularity are presupposed, the party seeking to recover the property must prove, by clear and convincing evidence, that he or she is entitled thereto, and

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[9] *Heirs of Kuli v. Pia, supra*, at 889-891. (Emphasis ours)

[10] *Rollo*, p. 74.

that the adverse party has committed fraud in obtaining his or her title. Allegations of fraud are not enough. Intentional acts to deceive and deprive another of his right, or in some manner injure him, must be specifically alleged and proved.[11] Thus, the Court reiterates that Alejandro's bare allegation that the sale did not take place, and nothing more, cannot overcome the presumption of regularity of the performance by government offices, or the Register of Deedin this case, of their official duties such as the issuance of the Spouses Cruz's title. It has been held in the past that the best proof of the ownership of the land is the certificate of title and it requires more than a bare allegation to defeat the face value of a certificate of title which enjoys a legal presumption of regularity of issuance.[12] In the absence, therefore, of any evidence that would support the claims of fraud of Alejandro and his heirs, their complaint for reconveyance cannot be granted.

Besides, the Court notes that apart from Alejandro's failure to present any such proof that the Spouses Cruz fraudulently obtained their title over the subject property, his actuations leading up to the filing of his complaint further weakens his case. For one, it took Alejandro about thirty-four (34) years from the time when he left Pampanga for Manila in 1972 before he acted on asserting his alleged right to the subject property by filing his complaint in 2007. For another, as pointed out by the Spouses Cruz, upon his return to Pampanga in 2002, Alejandro even opted to rent a house to stay in even if he allegedly believed that he is still the owner of his share of the subject property. To the Court, these actions and inactions run contrary to his claims of ownership thereon especially in light of the fact that ever since 1974, the family of the Spouses Cruz had already been occupying the same to the exclusion of Alejandro and his heirs. Thus, even if We assume that prescription has not yet set in, the Court finds that Alejandro's bare and unsupported claim on the subject property cannot overcome the title issued

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[11] *Heirs of Teodora Loyola v. Court of Appeals*, 803 Phil. 143, 161 (2017).

[12] *Heirs of Velasquez v. Court of Appeals*, 382 Phil. 438, 458 (2000).

in favor of the spouses. Stated otherwise, regardless of whether the action of Alejandro for reconveyance has already prescribed or not, his failure to prove his allegations of fraud therein effectively prevents him from disturbing the title of the spouses in the absence of any showing that said title was fraudulently issued, or that its issuance was not done in accordance with the procedure laid down by law.

WHEREFORE, premises considered, the instant petition is **GRANTED**. The assailed Decision dated May 23, 2016 and the Resolution dated December 7, 2016 of the Court of Appeals in CA-G.R. CV No. 105749 are **REVERSED** and **SET ASIDE**. The Decision dated September 15, 2015 of the Regional Trial Court is **REINSTATED**.

SO ORDERED.

Leonen and *Hernando, JJ.*, concur.

Gesmundo and *Reyes, J. Jr., JJ.*, on wellness leave.

SECOND DIVISION

[G.R. No. 229326. November 5, 2018]

ROMINA N. BISMONTE, JENNIFER P. DACILLO, ERWIN C. FORMENTOS, JOHNNY M. NARZOLES, LANIE L. LATOMBO, ENRIQUE C. HERNANDEZ, NELSON G. BISMONTE, and MICHAEL S. VILLANUEVA, *petitioners, vs.* **GOLDEN SUNSET RESORT AND SPA and RICARDO "RICKY" REYES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2011 NATIONAL LABOR RELATIONS COMMISSION (NLRC) RULES OF

PROCEDURE *VIS-A-VIS* RULES OF COURT; AS THE NLRC RULES DO NOT PROVIDE FOR SPECIFIC RULES ON FILING AND SERVICE OF PLEADINGS, THE RULES OF COURT SHALL APPLY IN SUPPLETORY MANNER; PERSONAL SERVICE IS PREFERRED OVER OTHER MODES AND ONLY WHEN PERSONAL SERVICE IS NOT PRACTICABLE THAT RESORT TO OTHER MODES MAY BE HAD WITH A WRITTEN EXPLANATION WHY IT WAS NOT PRACTICABLE.— [T]he Court notes that since the 2011 NLRC Rules of Procedure do not provide for specific rules on filing and service of pleadings, the Rules of Court provisions pertaining thereto, *i.e.*, Rule 13 thereof, shall apply in a suppletory manner, pursuant to Section 3, Rule I of the 2011 NLRC Rules of Procedure. x x x There is a preference of personal filing and/or service over other modes as it expedites action or resolution on a pleading, motion, or other paper, and conversely, minimizes, if not eliminates, delays likely to be incurred if service or filing is done by mail. This notwithstanding, case law instructs that the rule is not so rigid so as to exclude any exception from its application, and that the only condition for the exception to apply is that the pleading served or filed should be accompanied by a written explanation as to why personal service was not practicable. "Thus, personal service is the general rule, and resort to other modes of service is the exception, so that where personal service is practicable, in the light of the circumstances of time, place, and person, personal service is mandatory. Only when personal service is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not practicable to begin with." "At this stage, the judge exercises proper discretion but only upon the explanation given. In adjudging the plausibility of an explanation, the court shall consider not only the circumstances, the time and the place but also the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading involved."

2. ID.; ID.; ID.; ID.; COURTS HAVE AUTHORITY TO EXERCISE DISCRETION TO DETERMINE THE PLAUSIBILITY OF THE WRITTEN EXPLANATION TAKING INTO CONSIDERATION THE PRINCIPLE

THAT SUBSTANTIAL JUSTICE FAR OUTWEIGHS RULES OF PROCEDURE.— Should a party, however, fail to so attach this written explanation, Section 11, Rule 13 of the Rules of Court authorizes the courts (or in this case, the tribunal) to exercise their discretion to consider a pleading or paper as not filed. This notwithstanding, jurisprudence emphasizes that such discretionary power must be exercised properly and reasonably, taking into consideration, again, the practicability of personal service, the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading sought to be expunged for violation of the aforesaid rule. In the determination of the plausibility of the written explanation (if there is one) or in the exercise of discretion as to whether a pleading should be expunged (in the absence thereof), the court/tribunal ought to be guided by the principle that substantial justice far outweighs rules of procedure.

3. ID.; ID.; ID.; ID.; THE COURT FINDS ENOUGH JUSTIFICATION TO RELAX THE RULE REQUIRING WRITTEN EXPLANATION SO AS TO AFFORD THE LITIGANTS THE AMPLEST OPPORTUNITY TO JUSTLY DETERMINE THEIR RIGHTS AND OBLIGATIONS.— In this case, the CA correctly pointed out that an examination of petitioners' Notice of Appeal with Appeal Memorandum reveals that it did not contain any written explanation as to why their counsel, the PAO, filed such pleading via registered mail instead of personal filing, especially considering that the PAO Office in San Pablo City, Laguna is just a stone's throw away from the NLRC-Sub-Regional Arbitration Branch IV located also in San Pablo, Laguna. Nonetheless, the Court believes that the filing via registered mail *sans* any written explanation may be excused, considering that the NLRC, the tribunal where the appeal was filed, allowed the admission of the same. More importantly, such appeal is ostensibly meritorious, as evidenced by the NLRC's May 30, 2014 Decision which modified the LA's March 14, 2014 Decision, at least insofar as the existence of employer-employee relationship between petitioners and respondents, and the former's entitlement to their money claims are concerned. Under these circumstances, the Court finds enough justification to relax technical rules of procedure in order to afford the litigants the amplest opportunity to properly and justly determine their rights and obligations to one another.

4. ID.; ID.; ID.; ID.; HOW TO DETERMINE DATE OF FILING WHERE PLEADING WAS FILED THROUGH REGISTERED MAIL; THE DATE STAMPED ON THE ENVELOPE CONTAINING THE PLEADING COUPLED WITH A CERTIFICATION FROM THE POSTMASTER IS CONSIDERED THE DATE OF FILING.— Section 3, Rule 13 of the Rules of Court provides that where pleadings are filed by registered mail, the date of mailing as shown by the post office stamp on the envelope or the registry receipt shall be considered as the date of filing. Based on this provision, the date of filing is determinable from two (2) sources: (1) from the post office stamp on the envelope or (2) from the registry receipt, either of which may suffice to prove the timeliness of the filing of the pleadings. "The Court previously ruled that if the date stamped on one is earlier than the other, the former may be accepted as the date of filing. This presupposes, however, that the envelope or registry receipt and the dates appearing thereon are duly authenticated before the tribunal where they are presented. When the photocopy of a registry receipt bears an earlier date but is not authenticated, the Court held that the later date stamped on the envelope shall be considered as the date of filing." In this case, and as aptly pointed out by the NLRC in its September 30, 2014 Resolution, the envelope that contained petitioners' Notice of Appeal with Appeal Memorandum bears the post office stamp with the date of March 31, 2014. This is further supported by a Certification dated September 24, 2014, signed by Postmaster Gemma C. Medallon, stating that "Registered Letter No. 4297 ***posted on March 31, 2014*** from [PAO], San Pablo City addressed to [NLRC], San Pablo City has been delivered to and received by Grace Espaldon on April 2, 2014." From the foregoing, it may be gleaned the petitioners' counsel indeed filed their appeal to the NLRC via registered mail on March 31, 2014, or exactly on the tenth (10^{th}) day after they received a copy of the LA Decision on March 21, 2014. As such, their appeal before the NLRC was filed on time, in accordance with Section 1, Rule VI of the 2011 NLRC Rules of Procedure.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Marcos L. Estrada, Jr. for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by petitioners Romina N. Bismonte, Jennifer P. Dacillo, Erwin C. Formentos, Johnny M. Narzoles, Lanie L. Latombo, Enrique C. Hernandez, Nelson G. Bismonte, and Michael S. Villanueva (petitioners) assailing the Decision[2] dated May 26, 2016 and the Resolution[3] dated January 9, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 138986, which annulled and set aside the Decision[4] dated May 30, 2014 and the Resolutions dated July 7, 2014,[5] September 30, 2014,[6] and October 21, 2014[7] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 07-001985-12, and accordingly, reinstated the Decision[8] dated March 14, 2014 of the Labor Arbiter (LA) dismissing petitioners' complaint for, *inter alia*, illegal dismissal against respondents Golden Sunset Resort and Spa and Ricardo "Ricky" Reyes (respondents).

The Facts

Petitioners alleged that on different dates, respondents hired them as resort staff, specifically as housekeepers, maintenance

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[1] *Rollo*, pp. 12-42.

[2] *Id*. at 56-67. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Ricardo R. Rosario and Marie Christine Azcarraga-Jacob, concurring.

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

[4] *Id*. at 133-151. Penned by Presiding Commissioner Alex A. Lopez with Commissioners Gregorio O. Bilog III and Pablo C. Espiritu, Jr., concurring.

[5] *Id*. at 152-154.

[6] *Id*. at 156-164.

[7] CA *rollo*, pp. 69-71.

[8] In NLRC Case Nos. RAB-IV-07-01054-11-B, RAB-IV-07-01055-11-B, and 07-01056-11-B. *Rollo*, pp. 235-243. Penned by Labor Arbiter Melchisedek A. Guan.

personnel, waiters, spa and massage attendants, cooks, dishwashers, and concierges. Three (3) of the petitioners asserted that they were dismissed without any just or authorized cause and without affording them due process; while five (5) of them claimed that they were constructively dismissed when their work schedule was unjustifiably reduced from six (6) to three (3) working days a week, resulting in a substantial reduction of their income. Furthermore, petitioners also accused respondents of not paying them their entitled benefits, such as holiday pay, overtime pay, service incentive leave pay, and their share from the service charge.[9] Thus, petitioners, along with several others, filed several complaints[10] for, *inter alia*, illegal dismissal against respondents.

For their part, respondents maintained that they did not hire petitioners as regular employees, but merely as seasonal employees. They explained that during the lean seasons, *i.e.*, rainy seasons, they either reduce their workers' duties to just thrice a week, or even do not require them to report for work, in which case, they are allowed to find employment elsewhere. Further, respondents posited that their engagement to their staff is akin to an "independent contractorship" in that they neither have the power to dismiss nor control the performance of their staff, and that they are free to perform their assigned tasks as long as they accomplish them within the time that they were contracted for work.[11]

The LA Ruling

In a Decision[12] dated March 14, 2014, the LA dismissed petitioners' complaints.[13] The LA concluded that there was no employer-employee relationship between petitioners and respondents given that the former failed to prove that the latter: (*a*) had the power to control petitioners' work performances;

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[9] *Id*. at 57-58. See also *id*. at 137-138.

[10] See *id*. at 366-374.

[11] *Id*. at 58. See also *id*. at 138-139.

[12] *Id*. at 235-243.

[13] *Id*. at 243.

and (*b*) were interested in the means and methods on how to perform their respective jobs.[14]

Dissatisfied, petitioners appealed[15] to the NLRC.

The NLRC Ruling

In a Decision[16] dated May 30, 2014, the NLRC set aside the LA ruling, and accordingly entered a new one: (*a*) dismissing the complaint for illegal dismissal; and (*b*) ordering respondents to pay petitioners the aggregate amount of ₱1,076,833.50, representing their salary differentials, holiday pay, service incentive leave pay, and 13th month pay.[17]

The NLRC deemed petitioners as regular employees of respondents, considering that: (*a*) petitioners were issued company identification cards, signifying that they were bona fide employees of respondents; (*b*) respondents issued various certifications explicitly stating that petitioners were their employees; and (*c*) the nature of petitioners' work for respondents were necessarily and desirable to the latter's business.[18] This notwithstanding, the NLRC ruled that three (3) of the petitioners failed to establish the fact of their actual dismissal; while the reduction of working days of the five (5) other petitioners did not constitute constructive dismissal as there was a valid ground for such reduction, *i.e.*, onset of the rainy season.[19] Finally, the NLRC held that petitioners were entitled to their money claims as respondents failed to show any proof that the same had already been paid.[20]

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[14] *Id*. at 240-242.

[15] See Notice of Appeal with Appeal Memorandum dated March 28, 2014; *id*. at 244-258.

[16] *Id*. at 133-151.

[17] *Id*. at 146-151.

[18] See *id*. at 142-144.

[19] *Id*. at 145.

[20] See *id*. at 146-150.

Respondents partially moved for reconsideration,[21] but the same was denied in a Resolution[22] dated July 7, 2014. Thereafter, respondents filed a Manifestation with Motion to Set Aside Entry of Judgment and Declare the Decision and Resolution Void *Ab Initio*,[23] principally contending that petitioners failed to file their appeal on time, and thus, the NLRC should not have taken cognizance of their appeal.[24] Such motion was denied by the NLRC in a Resolution[25] dated September 30, 2014. Respondents again moved for reconsideration,[26] but was also denied in a Resolution[27] dated October 21, 2014.

Aggrieved, respondents filed a petition for *certiorari*[28] before the CA.

The CA Ruling

In a Decision[29] dated May 26, 2016, the CA annulled and set aside the NLRC ruling, and accordingly, reinstated the LA's March 14, 2014 Decision.[30] The CA pointed out that since petitioners received the said LA Decision on March 21, 2014, they only had ten (10) days therefrom, or until March 31, 2014, within which to file their appeal to the NLRC, pursuant to Section

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[21] See Partial Motion for Reconsideration of Decision dated May 30, 2014 dated June 26, 2014; *id*. at 262-272.

[22] *Id*. at 152-154.

[23] Dated September 12, 2014. *Id*. at 273-279.

[24] See *id*. at 274-278.

[25] *Id*. at 156-164.

[26] See motion for reconsideration dated October 13, 2014; *id*. at 318-334.

[27] CA *rollo*, pp. 69-71.

[28] With Prayer for Preliminary Injunction and/or Temporary Restraining Order (TRO) dated December 22, 2014. *Id*. at 3-33.

[29] *Rollo*, pp. 56-67. Penned by Associate Justice Edwin D. Sorongon with Associate Justices Ricardo R. Rosario and Marie Christine Azcarraga-Jacob, concurring.

[30] *Id*. at 66.

1, Rule VI of the 2011 NLRC Rules of Procedure.[31] However, a scrutiny of petitioners' appeal memorandum shows that the NLRC only received the same on April 2, 2014,[32] and as such, petitioners failed to file their appeal on time.[33] Furthermore, the CA opined that petitioners' counsel, the Public Attorney's Office (PAO), should have availed of the personal filing of such appeal before the NLRC instead of registered mail, considering the proximity of the PAO Office in San Pablo City, Laguna to the NLRC-Sub-Regional Arbitration Branch IV, also in San Pablo City, Laguna.[34]

Undaunted, petitioners moved for reconsideration[35] which was, however, denied in a Resolution[36] dated January 9, 2017; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly ruled that: (*a*) petitioners failed to comply with the filing and service requirements in connection with their appeal to the NLRC; and (*b*) petitioners' appeal to the NLRC was filed out of time.

The Court's Ruling

The petition is meritorious.

I.

At the outset, the Court notes that since the 2011 NLRC Rules of Procedure do not provide for specific rules on filing and service of pleadings, the Rules of Court provisions pertaining thereto, *i.e.*, Rule 13 thereof, shall apply in a suppletory manner,

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[31] Approved on May 31, 2011.

[32] *Rollo*, p. 244.

[33] See *id*. at 60.

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

[35] Dated June 15, 2016. *Id*. at 435-444.

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

pursuant to Section 3, Rule I[37] of the 2011 NLRC Rules of Procedure. In this regard, Section 11, Rule 13 of the Rules of Court reads:

> Section 11. *Priorities in modes of service and filing.* – Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

There is a preference of personal filing and/or service over other modes as it expedites action or resolution on a pleading, motion, or other paper, and conversely, minimizes, if not eliminates, delays likely to be incurred if service or filing is done by mail.[38] This notwithstanding, case law instructs that the rule is not so rigid so as to exclude any exception from its application, and that the only condition for the exception to apply is that the pleading served or filed should be accompanied by a written explanation as to why personal service was not practicable.[39] "Thus, personal service is the general rule, and resort to other modes of service is the exception, so that where personal service is practicable, in the light of the circumstances of time, place, and person, personal service is mandatory. Only when personal service is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as to why personal service or filing was not

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[37] Section 3, Rule I of the 2011 NLRC Rules of Procedure reads:

> Section 3. *Suppletory Application of the Rules of Court.* – In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, the pertinent provisions of the Rules of Court of the Philippines may, in the interest of expeditious dispensation of labor[,] justice[,] and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.

[38] *Magsaysay Maritime Corp. v. Enanor*, G.R. No. 224115, June 20, 2018, citing *Solar Team Entertainment, Inc. v. Ricafort*, 355 Phil. 404, 413 (1998).

[39] *Magsaysay Maritime Corp. v. Enanor*, *id*.

practicable to begin with."[40] "At this stage, the judge exercises proper discretion but only upon the explanation given. In adjudging the plausibility of an explanation, the court shall consider not only the circumstances, the time and the place but also the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading involved."[41]

Should a party, however, fail to so attach this written explanation, Section 11, Rule 13 of the Rules of Court authorizes the courts (or in this case, the tribunal) to exercise their discretion to consider a pleading or paper as not filed. This notwithstanding, jurisprudence emphasizes that such discretionary power must be exercised properly and reasonably, taking into consideration, again, the practicability of personal service, the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading sought to be expunged for violation of the aforesaid rule.[42]

In the determination of the plausibility of the written explanation (if there is one) or in the exercise of discretion as to whether a pleading should be expunged (in the absence thereof), the court/tribunal ought to be guided by the principle that substantial justice far outweighs rules of procedure.[43]

In this case, the CA correctly pointed out that an examination of petitioners' Notice of Appeal with Appeal Memorandum[44] reveals that it did not contain any written explanation as to why their counsel, the PAO, filed such pleading via registered

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[40] *Pagadora v. Ilao*, 678 Phil. 208, 225 (2011), citing *Maceda v. Vda. de Macatangay*, 516 Phil. 755, 764 (2006).

[41] *Gahol v. Cobarrubias*, 743 Phil. 246, 254 (2014), citing *Pagadora v. Ilao*, *id*.

[42] *Magsaysay Maritime Corp. v. Enanor*, *supra* note 38, citing *Spouses Ello v. CA,* 499 Phil. 398 409 (2005).

[43] *Gahol v. Cobarrubias*, *supra* note 41, at 255, citing *Pagadora v. Ilao*, *supra* note 40, at 226.

[44] *Rollo*, pp. 244-258.

mail instead of personal filing, especially considering that the PAO Office in San Pablo City, Laguna is just a stone's throw away from the NLRC-Sub-Regional Arbitration Branch IV located also in San Pablo, Laguna. Nonetheless, the Court believes that the filing via registered mail *sans* any written explanation may be excused, considering that the NLRC, the tribunal where the appeal was filed, allowed the admission of the same. More importantly, such appeal is ostensibly meritorious, as evidenced by the NLRC's May 30, 2014 Decision which modified the LA's March 14, 2014 Decision, at least insofar as the existence of employer-employee relationship between petitioners and respondents, and the former's entitlement to their money claims are concerned. Under these circumstances, the Court finds enough justification to relax technical rules of procedure in order to afford the litigants the amplest opportunity to properly and justly determine their rights and obligations to one another. In *Peñoso v. Dona*,[45] the Court held:

> Thus, dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.[46]

II.

Section 3, Rule 13 of the Rules of Court provides that where pleadings are filed by registered mail, the date of mailing as shown by the post office stamp on the envelope or the registry receipt shall be considered as the date of filing. Based on this provision, the date of filing is determinable from two (2) sources:

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[45] 549 Phil. 39 (2007).

[46] *Id*. at 46, citing *Aguam v. CA*, 388 Phil. 587, 594 (2000).

(1) from the post office stamp on the envelope or (2) from the registry receipt, either of which may suffice to prove the timeliness of the filing of the pleadings. "The Court previously ruled that if the date stamped on one is earlier than the other, the former may be accepted as the date of filing. This presupposes, however, that the envelope or registry receipt and the dates appearing thereon are duly authenticated before the tribunal where they are presented. When the photocopy of a registry receipt bears an earlier date but is not authenticated, the Court held that the later date stamped on the envelope shall be considered as the date of filing."[47]

In this case, and as aptly pointed out by the NLRC in its September 30, 2014 Resolution,[48] the envelope[49] that contained petitioners' Notice of Appeal with Appeal Memorandum bears the post office stamp with the date of March 31, 2014. This is further supported by a Certification[50] dated September 24, 2014, signed by Postmaster Gemma C. Medallon, stating that "Registered Letter No. 4297 ***posted on March 31, 2014*** from [PAO], San Pablo City addressed to [NLRC], San Pablo City has been delivered to and received by Grace Espaldon on April 2, 2014."[51] From the foregoing, it may be gleaned the petitioners' counsel indeed filed their appeal to the NLRC via registered mail on March 31, 2014, or exactly on the tenth (10th) day after they received a copy of the LA Decision on March 21, 2014. As such, their appeal before the NLRC was filed on time, in accordance with Section 1, Rule VI[52] of the 2011 NLRC Rules of Procedure.

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[47] *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 189-190 (2016), citing *Government Service Insurance System v. NLRC*, 649 Phil. 538, 546 (2010).

[48] *Rollo*, pp. 156-164.

[49] NLRC records (Vol. II), p. 651.

[50] *Rollo*, p. 450.

[51] *Id.*; emphasis and underscoring supplied.

[52] Section 1, Rule VI of the 2011 NLRC Rules of Procedure reads:

In sum, the CA erred in setting aside the NLRC rulings and affirming the LA ruling purely on technical grounds, *i.e.*, that petitioners improperly availed of filing their appeal via registered mail and/or failed to file their appeal on time. However, since the appellate court did not tackle the substantial issues of this case, the Court deems it proper to remand the same to the CA for a resolution on the merits.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 26, 2016 and the Resolution dated January 9, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 138986 are hereby **SET ASIDE**. The instant case is **REMANDED** to the CA for a resolution on the merits.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa,* and *Reyes, A. Jr., JJ.*, concur.

Reyes, J. Jr.,[*] *J.*, on official leave.

Section 1. *Periods of Appeal*. – Decisions, awards, or orders of the Labor Arbiter shall be final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt thereof; and in case of decisions or resolutions of the Regional Director of the Department of Labor and Employment pursuant to Article 129 of the Labor Code, within five (5) calendar days from receipt thereof. If the 10th or 5th day, as the case may be, falls on a Saturday, Sunday or holiday, the last day to perfect the appeal shall be the first working day following such Saturday, Sunday or holiday.

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

THIRD DIVISION

[G.R. No. 231008. November 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FEDERICO SEÑERES, JR.** ***y*** **AJERO** ***alias*** **JUNIOR/ WALLY,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS THAT MUST CONCUR TO SECURE A CONVICTION; THE INTEGRITY AND EVIDENTIARY VALUE OF ILLEGAL DRUGS CONFISCATED FROM THE ACCUSED, WHICH COMPRISE THE *CORPUS DELICTI*, MUST BE PRESERVED.— Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: x x x (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. In illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge. In *People v. Gatlabayan,* "the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect." Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."

2. ID.; ID.; ID.; ORIGINAL AND AMENDATORY REQUIREMENTS IN THE CONDUCT OF SEIZURE AND CONFISCATION OF THE DRUGS, ENUMERATED AND EXPLAINED.— Under the original provision of Section 21 of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a

physically inventory and photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media **and** (3) from the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these persons will guarantee "against planting of evidence and frame up," *i.e.,* they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official; and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 of R.A. No. 9165 and its IRR shall apply since the alleged crime was committed before the amendment.

3. ID.; ID.; ID.; FAILURE TO FOLLOW THE PROCEDURE AND ABSENCE OF ADEQUATE EXPLANATION FOR NON-COMPLIANCE IS FATAL TO THE PROSECUTION; THE COURT FINDS IT NECESSARY TO ACQUIT THE ACCUSED FOR FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.— In this case, during the physical inventory and photograph of the items seized there were no representatives from the media and the DOJ, and there was no elected public official present. Instead, only a security guard of the mall witnessed the said inventory. An explanation of the absence of the required witnesses is also not provided nor was there any evidence to prove that the police officers exerted any effort to seek their presence. x x x [T]he prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended. It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law. Its failure to follow the mandated procedure must be adequately explained and must be proven

> as a fact, in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item. A stricter adherence to Section 21 of R.A. No. 9165 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration. x x x There being no justifiable reason in this case for the non-compliance of Section 21 of R.A. No. 9165, this Court finds it necessary to acquit the appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Decision,[1] dated November 16, 2016, of the Court of Appeals *(CA)* dismissing the appeal and affirming the Decision[2] dated December 3, 2015, of the Regional Trial Court *(RTC),* Branch 70, Taguig City convicting appellant Federico Señeres, Jr. y Ajero alias Junior/Wally of violation of Section 5, Article II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

The facts follow.

On September 14, 2011, around 12 noon, a confidential informant reported to Police Chief Inspector *(PCI)* Mihilan Abu Payao of the Taguig City Police Station Anti-Illegal Drugs that

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[1] *Rollo,* pp. 2-14. Penned by Associate Justice Agnes Reyes-Carpio, and concurred in by Presiding Justice Andres B. Reyes, Jr. (now a member of this Court) and Associate Justice Nina G. Antonio-Valenzuela.

[2] CA *rollo,* pp. 58-67. Penned by Presiding Judge Louis P. Acosta.

a certain Dennis was illegally selling dangerous drugs. As such, PCI Payao conducted a briefing for a buy-bust operation and designated Police Officer [PO]2 Joseph E. More as the poseur-buyer and PO2 Alexander Saez as the immediate back-up. PO2 More was given five (5) pieces of Five Hundred Pesos (₱500.00) buy-bust money which were marked with "MP" at the right side of the typewriter image therein. PO2 More also prepared the Pre-Operation Report and Coordination Form, and coordinated their operation with the Philippine Drug Enforcement Agency and the District Anti-Illegal Drug. Thereafter, the team went to the target area which was at the food court of the Market! Market! Mall. Upon their arrival at the said place, the confidential informant received a call from Dennis that he cannot come since he had to attend to an emergency, but will send two (2) trusted persons to replace him, who were later identified as appellant and Federico Valencia, Jr.

Thereafter, the confidential informant, who also knew appellant and Valencia, introduced PO2 More to the two as a drug dependent who wanted to buy *shabu* from them. Appellant and Valencia asked PO2 More to show the money. PO2 More complied, and was instructed to give the said money to Valencia. After Valencia counted the money given by PO2 More, the former took a sachet of *shabu* from his pocket and gave it to PO2 More. Subsequently, PO2 More lighted a cigarette, which was the pre-arranged signal, and immediately thereafter, PO2 Saez approached them and held appellant, while PO2 More held Valencia. PO2 More instructed Valencia to empty his pocket which the latter did, and the former was able to recover the marked money and one (1) sachet of *shabu*. PO2 More marked the sachet of *shabu* he bought from appellant (JEM-9-14-11) and the other sachet of *shabu* that was recovered from the pocket of Valencia (JEM-1-9-14-11). The Officer-in-Charge of the security division of Market! Market! Mall was asked to witness the preparation by PO2 More of the inventory of the seized and/or bought sachets of *shabu*. Appellant, Valencia and the confiscated items were then turned over to the investigator, PO3 Eric Valle, who prepared a Request for Drug Test, Request for Laboratory Examination, Spot Report, Booking Sheet,

Information Sheet, Affidavit of Attestation, and Affidavit of Arrest. PO2 More had custody of the recovered items from the place of arrest until they all reached the police station. PO3 Valle brought the confiscated items to the crime laboratory and were eventually tested positive for Methamphetamine Hydrochloride.

Two (2) Informations were filed against appellant and Valencia. Both were charged with violation of Section 5, paragraph 1, Article II of R.A. No. 9165, while Valencia was also charged with violation of Section 11, paragraph 2 of the same law, thus:

Criminal Case No. 17690-D

That, on or about the 14th day of September 2011, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with one another, without being authorized by law, did then and there willfully, unlawfully, feloniously and knowingly sell, deliver, distribute and give away to a poseur buyer, zero point eighty seven (0.87) gram contained in one (1) heat-sealed transparent plastic sachet for and in consideration of the amount of [₱]2,500.00, which substance was found positive to the test for Methamphetamine Hydrochloride, also known as *shabu,* a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[3]

Criminal Case No. 17691-D

That, on or about the 14th day of May (sic) 2011, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there willfully, unlawfully, feloniously and knowingly possess and have under his custody and control one point twenty (1.20) grams of Methamphetamine Hydrochloride, also known as *"shabu,"* a dangerous drug, in violation of the above-cited law.

CONTRARY TO LAW.[4]

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[3] Records, p. 1.

[4] *Id.* at 25.

Appellant and Valencia pleaded "not guilty" during their arraignment.

The prosecution presented the testimonies of PO2 More, PO3 Valle, and PO2 Saez.

In his defense, appellant testified that on September 14, 2011, at around 3:00 p.m., he and Valencia were sitting, resting and talking to each other at the circle inside Market! Market! Mall when two (2) armed men in civilian clothes approached and introduced themselves as policemen. He later learned that the two (2) armed men were PO2 Saez and PO2 More. Thereafter, appellant and Valencia were made to stand, handcuffed, and arrested for being suspicious-looking. They were frisked, but nothing was found in their possession. They were then brought to the police station for further investigation. Appellant then heard one of the policemen say that they were an "accomplishment" even if their supposed operation failed. They were made to sit in front of a long white table with two (2) sheets of bond paper and attached with the latter were Three Thousand Five Hundred Pesos (₱3,500.00). Later on, their pictures were taken and they were brought to an inquest proceeding where they learned of the cases filed against them.

Meanwhile, on July 7, 2014, Valencia died, and the charges against him were dismissed pursuant to Article 89 of the Revised Penal Code.

On December 3, 2015, the RTC rendered its Decision finding appellant guilty beyond reasonable doubt of the charge against him, thus:

> WHEREFORE, premises considered, accused FEDERICO SEÑERES, JR. y AJERO is hereby found GUILTY beyond reasonable doubt of selling without any authority 0.87 grams of Methylamphetamine Hydrochloride or *"shabu,"* a dangerous drug, in violation of Sec. 5, Art. II of R.A. 9165 and is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and a FINE of FIVE HUNDRED THOUSAND PESOS (PHP500,000.00).
>
> Pursuant to Section 21 of Republic Act 9165, the Evidence Custodian of the Philippine Drug Enforcement Agency (PDEA) or any of his authorized representative is hereby ordered to discharge

and have custody of the sachets of *"shabu,"* subject of these cases for proper disposition.

SO ORDERED.[5]

Appellant elevated the case to the CA. In its Decision dated November 16, 2016, the CA dismissed the appeal, thus:

WHEREFORE, premises considered, the Decision dated December 3, 2015 of the Regional Trial Court, Branch 70 of Taguig City, finding accused-appellant Federico Señeres, Jr. y Ajero @ "Junior/Wally" GUILTY BEYOND REASONABLE DOUBT for Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002, is hereby AFFIRMED.

SO ORDERED.[6]

Hence, the present appeal with the following assignment of errors:

I

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH THE CHAIN OF CUSTODY AND INTEGRITY OF THE ALLEGEDLY SEIZED DANGEROUS DRUG.

II

THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE INCONSISTENCIES IN THE TESTIMONIES OF THE PROSECUTION WITNESSES.

III

THE COURT *A QUO* GRAVELY ERRED IN NOT FINDING THAT THE POLICE OFFICERS' FAILURE TO COMPLY WITH SECTION 21, ARTICLE II OF REPUBLIC ACT NO. 9165 COMPROMISED THE IDENTITY OF THE ALLEGED SEIZED DANGEROUS DRUGS.

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[5] CA *rollo,* pp. 66-67.

[6] *Rollo,* p. 13.

IV

THE COURT *A QUO* GRAVELY ERRED IN DISREGARDING THE ACCUSED-APPELLANT'S PLAUSIBLE DEFENSE OF DENIAL.[7]

According to appellant, there was a gap in the chain of custody of the seized items as it appears that in the Chain of Custody Form, the last person who had custody of the items was PO2 Roque Garcia of the Southern Police District Crime Laboratory, but he was not presented in court to testify as a witness. He also contends that the testimonies of the prosecution's witnesses were full of inconsistencies on substantial and material matters. He further claims that the police officers did not prepare an inventory in accordance with Section 21 of R.A. No. 9165; and that the same police officers did not make an effort to secure the appearance of representatives from the Department of Justice *(DOJ)* and the media, and of barangay officials, neither did they give a valid reason for their failure to comply with the requirements of the said law. Thus, according to appellant, the prosecution failed to prove his guilt beyond reasonable doubt.

The appeal is meritorious.

Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur:

> x x x (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[8]

In illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge.[9] In *People v. Gatlabayan,*[10] "the Court held that it is of paramount

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[7] *Id.* at 6-7.

[8] *People v. Salim Ismael y Radang,* G.R. No. 208093, February 20, 2017.

[9] *Id.*

[10] 669 Phil. 240, 252 (2011).

importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect."[11] Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[12]

To ensure an unbroken chain of custody, Section 21 (1) of R.A. No. 9165 specifies:

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

Supplementing the above-quoted provision, Section 21 (a) of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 provides:

(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

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[11] *People v. Mirondo,* 771 Phil. 345, 356-357 (2015).

[12] See *People v. Salim Ismael y Radang, supra* note 8.

and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

On July 15, 2014, R.A. No. 10640 was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

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

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."[13] Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in

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[13] Journal, Senate 16th Congress 1st Session 348 (June 4, 2014).

more remote areas. For another, there were instances where elected barangay officials themselves were involved in the punishable acts apprehended."[14] In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."[15]

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."[16] In his Co-sponsorship Speech, he noted:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.
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> Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.
>
> It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place

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[14] *Id.*

[15] *Id.*

[16] *Id.* at 349.

of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.

Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[17]

The foregoing legislative intent had been taken cognizance of in a number of cases. Just recently, this Court opined in *People v. Jovencito Miranda y Tigas:*[18]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided

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

[18] G.R. No 229671, January 31, 2018.

that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe,* the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman,* it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[19] (Citations omitted)

Under the original provision of Section 21 of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team is required to immediately conduct a physically inventory and photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media **and** (3) from the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these persons will guarantee "against planting of evidence and frame up," *i.e.,* they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[20] Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) an elected public official;

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[19] See also *People v. Ronaldo Paz y Dionisio,* G.R. No. 229512, January 31, 2018; *People v. Philip Mamangon y Espiritu,* G.R. No. 229102, January 29, 2018; *People v. Alvin Jugo y Villanueva,* G.R. No. 231792, January 29, 2018; *People v. Niño Calibod y Henobeso,* G.R. No. 230230, November 20, 2017; *People v. Manuel Lim Ching,* G.R. No. 223556, October 9, 2017; *People v. Jonas Geronimo y Pinlac,* G.R. No. 225500, September 11, 2017; *People v. John Paul Ceralde y Ramos,* G.R. No. 228894, August 7, 2017; and *People v. Puyat Macapundag y Labao,* G.R. No. 225965, March 13, 2017.

[20] *People v. Ernesto Sagana y De Guzman,* G.R. No. 208471, August 2, 2017.

and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof. In the present case, the old provisions of Section 21 of R.A. No. 9165 and its IRR shall apply since the alleged crime was committed before the amendment.

In this case, during the physical inventory and photograph of the items seized there were no representatives from the media and the DOJ, and there was no elected public official present. Instead, only a security guard of the mall witnessed the said inventory. An explanation of the absence of the required witnesses is also not provided nor was there any evidence to prove that the police officers exerted any effort to seek their presence. The absence of the witnesses has been admitted by PO3 More, thus:

Q: What else did you do at the place of the arrest of the accused aside from the markings of these shabu?

A: Immediately, our team leader called the attention of the Barangay Fort Bonifacio, [M]a'am.

Q: For what [M]r. [W]itness?

A: To witness the inventory, ma'am.

Q: You mentioned this inventory, did the barangay officials come to witness the inventory?

A: No, ma'am.

Q: What did you do?

A: After the arrest of these two (2) men, the people in Market-[M]arket were panicking so we just asked the security of Market-Market to witness the inventory, ma'am.[21]

Q: Mr. Witness, it appears on page 16 of the transcript of stenographic notes that after the buy-bust operation, the team leader called the attention of the Barangay Fort Bonifacio, is that correct?

A: Yes, Ma'am.

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[21] TSN, October 16, 2012, pp. 16-17.

Q: So, what you are saying is that your team proceeded with the operation without first securing the attendance of the proper barangay officials?

A: By that time, not yet, Ma'am.

Q: And you also did not secure the presence of any media or DOJ representative, is that correct?

A: Our team leader exerted effort, Ma'am.

Q: But is there any documentary evidence to prove that your team actually tried to secure their appearance?

A: None, Ma'am.

Q: Mr. Witness, it appears on the inventory that the signature of security OIC Ronnie Aseron. Is he a media representative?

A: No, Ma'am.

Q: Is he a DOJ representative?

A: No, Ma'am.

Q: Actually, he is not even related to this case?

A: No, Ma'am.[22]

In *People v. Angelita Reyes, et al.*,[23] this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

x x x It must be emphasized that the prosecution must be able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply

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[22] TSN, November 6, 2013, pp. 4-5.

[23] G.R. No. 219953, April 23, 2018.

with the provisions of Article 125[24] of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

The above ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro,*[25] thus:

> The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. (Citation omitted)

Earnest effort to secure the attendance of the necessary witnesses must also be proven as held in *People v. Wilson Ramos y Cabanatan,*[26] thus:

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[24] Art. 125. *Delay in the delivery of detained persons to the proper judicial authorities.* – The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty-six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent.

In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

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

[26] G.R. No. 233744, February 28, 2018.

It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses under Section 21 of RA 9165 must be adduced. In *People v. Umipang,* the Court held that the prosecution must show that earnest efforts were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing fully well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. As such, police officers are compelled not only to state the reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable. (Citations omitted)

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.[27] It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.[28] Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact, in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention

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[27] See *People v. Puyat Macapundag y Labao, supra* note 19.

[28] See *People v. Jovencito Miranda y Tigas, supra* note 18; *People v. Ronalda Paz y Dionisio, supra* note 19; *People v. Philip Mamangon y Espiritu, supra* note 19; and *People v. Alvin Jugo y Villanueva, supra* note 19.

a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.[29] A stricter adherence to Section 21 of R.A. No. 9165 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.[30]

As a reminder, this Court, in *People v. Romy Lim,*[31] laid down a guideline, which is prospective in nature, that must be followed in order that the provisions of Section 21 of R.A. No. 9165 must be well-enforced and duly proven in courts, thus:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21 (1) of R.A. No. 9165, as amended, and its IRR.

2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.

3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.

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

[30] See *People v. Abelarde,* G.R. No. 215713, January 22, 2018; *People v. Macud,* G.R. No. 219175, December 14, 2017; *People v. Arposeple,* G.R. No. 205787, November 22, 2017; *Aparente v. People,* G.R. No. 205695, September 27, 2017; *People v. Cabellon,* G.R. No. 207229, September 20, 2017; *People v. Saragena, id.; People v. Saunar,* G.R. No. 207396, August 9, 2017; *People v. Ernesto Sagana y De Guzman, supra* note 20; *People v. Segundo,* G.R. No. 205614, July 26, 2017; and *People v. Jaafar,* G.R. No. 219829, January 18, 2017.

[31] G.R. No. 231989, September 4, 2018.

4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court. (Citation omitted)

There being no justifiable reason in this case for the non-compliance of Section 21 of R.A. No. 9165, this Court finds it necessary to acquit the appellant for failure of the prosecution to prove his guilt beyond reasonable doubt.

WHEREFORE, premises considered, the Decision dated November 16, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07933, dismissing the appeal and affirming the Decision dated December 3, 2015 of the Regional Trial Court, Branch 70, Taguig City, convicting appellant Federico Señeres, Jr. y Ajero alias Junior/Wally of violation of Section 5, Article II of Republic Act No. 9165, is **REVERSED and SET ASIDE.** Appellant is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered **IMMEDIATELY RELEASED** from detention, unless he is confined for any other lawful cause. Let entry of final judgment be issued immediately.

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

SO ORDERED.

Leonen and *Hernando, JJ.,* concur.

Gesmundo and *Reyes, J. Jr., JJ.,* on wellness leave.

THIRD DIVISION

[G.R. No. 233199. November 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARIEL MANABAT CADENAS and GAUDIOSO MARTIJE,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; REQUIRED PROOF FOR CRIMINAL CONVICTION, ENUMERATED AND EXPLAINED.— Every criminal conviction requires the prosecution to prove two things: (1) the fact of the crime, *i.e.,* the presence of all the elements of the crime for which the accused stands charged, and (2) the fact that the accused is the perpetrator of the crime. When a crime is committed, it is the duty of the prosecution to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established. Apart from showing the existence and commission of a crime, the State has the burden to correctly identify the author of such crime. Both facts must be proved by the State beyond cavil of a doubt on the strength of its evidence and without solace from the weakness of the defense. Our legal culture demands the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty or even property. As every crime must be established beyond reasonable doubt, it is also paramount to prove, with the same quantum of evidence, the identity of the culprit. It is basic and elementary that there can be no conviction until and unless an accused has been positively identified. The hypothesis of his guilt must flow naturally from the facts proved and must be consistent with all of them.

2. ID.; ID.; CIRCUMSTANTIAL EVIDENCE; REQUISITES THAT MUST CONCUR FOR CIRCUMSTANTIAL EVIDENCE TO BE A VALID BASIS FOR CONVICTION.— [C]onviction is not always based on direct evidence for it may likewise rest on purely circumstantial evidence. A rule of ancient respectability now sculpted into tradition is that conviction may be warranted on the basis of circumstantial evidence only if

the following requisites concur: *first,* there is more than one circumstance; *second,* the facts from which the inferences are derived are proved; and *third,* the combination of all the circumstances is such as to produce conviction beyond reasonable doubt. Jurisprudence teaches us that for circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent. The circumstances proven should constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of others, as the guilty person.

3. ID.; ID.; ID.; CIRCUMSTANCES IN CASE AT BAR ARE INADEQUATE TO AFFIRM ACCUSED-APPELLANTS' CONVICTION.— We do not subscribe, however, with the RTC and the CA that the foregoing circumstantial evidence inexorably lead to the conclusion that Cadenas and Martije raped and killed AAA. The circumstantial evidence invoked by the RTC, particularly as to the identification of the perpetrators, raises doubt rather than moral certainty as to the guilt of the appellants for the special complex crime of Rape with Homicide. To the mind of the Court, these circumstances, harnessed to establish the criminal liability of Cadenas and Martije, are miserably inadequate in weight and anemic in value to affirm their conviction. x x x The RTC, as well as the CA, immediately rushed to the conclusion that the presence of the appellants at the crime scene (they were seen running away from the house of Castillo and AAA) as sufficient to incriminate them to the commission of the crime charged. Admittedly, this circumstance may raise a speculation, as, in fact, inevitably made Cadenas and Martije the prime suspects, but it is far too inadequate to support a conviction. It is a mere conjecture that can be refuted by other equally conceivable and rational inferences. The testimony of Escribano does not conclusively connect Cadenas and Martije to the rape-slay of AAA, but merely arouse suspicion against them. The Court has consistently stressed that mere suspicions and speculations can never be the bases of conviction in a criminal case.

4. ID.; ID.; ID.; MOTIVE OF THE ACCUSED IN A CRIMINAL CASE IS GENERALLY HELD IMMATERIAL BUT IT ASSUMES IMPORTANCE WHEN THE EVIDENCE ON

THE COMMISSION OF THE CRIME AND THE IDENTITY OF THE PERPETRATOR IS PURELY CIRCUMSTANTIAL; DEFENSE OF ALIBI GIVEN CREDENCE AND IMPORTANCE IN VIEW OF THE PROSECUTION'S FAILURE TO DISCHARGE THE *ONUS* OF THE OFFENDERS' IDENTITY AND CULPABILITY.— [T]here is a paucity of evidence to show that appellants have motive to rape or kill the victim. The gruesome attack on AAA, who sustained a traumatic injury to the head which fractured her skull causing brain hemorrhage, clearly manifested the intention of the perpetrator/s to bring death upon the victim. There was no evidence, however, that Cadenas and Martije carried a grudge or had an axe to grind against the victim or her live-in partner, Castillo. Cadenas categorically declared that he knew AAA to be 30 years of age, but did not find her attractive. We are aware that the motive of the accused in a criminal case is generally held to be immaterial, not being an element of the offense. However, motive assumes importance when, as in this case, the evidence on the commission of the crime and the identity of the perpetrator is purely circumstantial. x x x In the face of the deficiency in the proof submitted by the prosecution anent the identity of the offenders, the respective alibis of Cadenas and Martije assume credence and importance. While the defense of alibi is by nature a weak one, it assumes commensurate significance and strength where the evidence for the prosecution is also intrinsically weak. At any rate, even if the defense of the appellants may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus of their identity and culpability. Let it be underscored that conviction must be based on the strength of the prosecution evidence and not on the weakness of the evidence for the defense, it is incumbent upon the prosecution to prove the guilt of the accused and not the accused to prove his innocence.

5. **ID.; ID.; ID.; CIRCUMSTANTIAL EVIDENCE IN CASE AT BAR FAILS TO PROVE INDUBITABLY APPELLANTS' AUTHORSHIP OF THE CRIME; THE COURT UPHOLDS THE PRIMACY OF PRESUMPTION OF INNOCENCE IN THEIR FAVOR.—** The Court denounces the senseless and gruesome crime committed against AAA and sincerely commiserates with the emotional sufferings of her bereaved family. However, the pieces of circumstantial evidence of the

prosecution fails to prove indubitably the appellants' authorship of the crime of Rape with Homicide. The conviction of the appellants cannot stand on the basis of sketchy and doubtful circumstantial evidence. Accordingly, the Court must uphold the primacy of the presumption of innocence in favor of Cadenas and Martije.

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.*:

Assailed in this appeal is the June 22, 2017 Decision[1] of the Court of Appeals *(CA)*in CA-G.R. CR-HC No. 01525-MIN, which affirmed with modifications the March 3, 2016 Decision[2] of the Regional Trial Court, Branch 32, Lupon, Davao Oriental *(RTC)*in Criminal Case No. 1389-12, finding accused-appellants Ariel Manabat Cadenas (*Cadenas)* and Gaudioso Martije *(Martije)* guilty beyond reasonable doubt of the crime of Rape with Homicide.

The antecedent facts are as follow:

Cadenas and Martije were indicted for Rape with Homicide in an Information[3] dated February 14, 2012, the accusatory portion of which reads:

That, on February 12, 2012, in the Municipality of [redacted], Province of [redacted] and within the jurisdiction of this Honorable Court, the above-named accused, in conspiracy with each

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[1] Penned by Associate Justice Louis P. Acosta with Associate Justice Edgardo T. Lloren and Associate Justice Ronaldo B. Martin, concurring; *rollo,* pp. 3-17.

[2] Penned by Judge Emilio G. Dayanghirang III; CA *rollo,* pp. 21-35.

[3] Records, p. 2.

other, with lewd design, by means of force, threat and intimidation, did then and there, willfully, unlawfully and feloniously have carnal knowledge with one [AAA] against her will and, thereafter, the accused killed [AAA], to the damage and prejudice of her legal heirs.

CONTRARY TO LAW.

When arraigned, Cadenas and Martije pleaded not guilty to the charge.[4] After pre-trial was terminated, trial on the merits followed.

Version of the Prosecution

As summarized by the Office of the Solicitor General, the People's factual version is as follows:

Castillo testified that [AAA], the victim, was his live-in partner. On February 12, 2012, from 7 a.m. to 6 p.m., he was at the copra drier together with Dindo Escribano (Escribano). [AAA] was also with them at the copra dryer but she left at 8 a.m. to prepare food in their house. At 9 p.m., Castillo asked Escribano to get the food, which [AAA] prepared, at their house. But Escribano returned to the copra drier and informed Castillo that he saw accused-appellants Cadenas and Martije going out of their house running away. Castillo and Escribano then went back to the house and upon arrival thereat, they saw [AAA] already dead. [AAA] was lying on her back naked. Her jogging pants were pulled down to her knees, and her vagina and breasts were exposed. Her nipple and cheek have wounds and her head was broken.

Escribano corroborated Castillo's testimony.

Dr. Guiritan, the Municipal Health Officer of [redacted], Davao Oriental, testified, as an expert witness, that he examined the cadaver of [AAA] to determine the cause of her death. He found that the immediate cause of [AAA]'s death was brain hemorrhage due to skull fracture secondary to traumatic injury of the head. The weapon used was a hard blunt object. It was probable that [AAA] was bitten as shown by the multiple abraded wounds at the *mons pubis,* an area outside the vagina, and at the left nipple area.

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[4] *Id.* at 18.

Bacus, the Chief *Barangay Tanod* of *Barangay* [redacted] testified that on February 12, 2012, at 5:00 a.m., while he was in his house, *Barangay Captain* Geraldo Arqueza called him. He was told that a crime happened at [redacted] and the suspect was Cadenas. He assisted the *barangay captain* in effecting the arrest of Cadenas at the latter's house. Cadenas voluntarily admitted to Bacus that he, together with Martije, were the ones who killed the victim. Bacus then turned over Cadenas to the police.[5]

Version of the Defense

The defense relates accused-appellants' version of the facts in the following manner:

Gaudioso Martije

On February 12, 2012, at around 5:00 p.m., he went to his house at Purok [redacted], Barangay [redacted]. In going home, he passed by the beach to buy food. He met his co-accused Cadenas at the beach. After arriving, he did not leave his house. He knows the victim, [AAA]. In going to the farm, he passes by the area of the victim. He was surprised when he was accused of killing the victim. He learned of the death of the victim when he was arrested the following day. He was arrested by Barangay Captain Arquiza. A warning shot was fired during his arrest. He did not resist when he was arrested. He informed the police that he did not commit the crime. He knows prosecution witness Dindo Escribano.

Ariel Cadenas

On February 12, 2012, he was in his house. He was weeding under the coconut trees near his house. He started working at around 7:00 o'clock in the morning and finished at 3:00 o'clock in the afternoon. At around 3:30 o'clock in the afternoon, he went to the seashore to buy food for the pig and get his share on the place where he worked. He waited for a fisherman to buy fish. After buying fish, he went to his house and arrived at around 5:30 o'clock in the afternoon. He cooked the fish, ate it and slept. He woke up at around 5:00 o'clock in the morning the following day. He was about to plant banana

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[5] CA *rollo,* p. 48.

seedlings when barangay tanods arrived. The barangay tanods told him to go with them. He was told he was a suspect of a crime that occurred. He was brought to the police in [redacted] near the seashore. The beating continued. He was brought to the police station and investigated about the killing. He knows the victim. There is a road going to the house of the victim. He knows his co-accused Martije. He denied he was responsible for the killing.[6]

The RTC Ruling

After trial, the RTC rendered its Decision dated March 3, 2016, finding accused-appellants guilty beyond reasonable of the crime charged. The RTC disposed the case as follows:

> WHEREFORE, finding accused ARIEL MANABAT CADENAS and GAUDIOSO MARTIJE guilty beyond reasonable doubt of the special complex crime of rape with homicide, they are hereby sentenced to suffer RECLUSION PERPETUA without eligibility for parole under the Indeterminate Sentence Law. They are ordered to pay individually the heirs of the victim [₱]100,000 as civil indemnity, ₱100,000 as moral and exemplary damages, and ₱25,000 as temperate damages in lieu of unproven actual damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this judgment until fully paid.
>
> SO ORDERED.[7]

The RTC found the testimonies of the prosecution witnesses credible and sufficient. It ruled that the circumstantial evidence proffered by the prosecution have amply established the commission of the crime of rape with homicide and have pointed to Cadenas and Martije as the perpetrators of the dastardly act.

Not in conformity, Cadenas and Martije appealed their conviction before the CA.

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

[7] *Id.* at 35.

The CA Ruling

On June 22, 2017, the CA rendered its assailed Decision affirming the conviction of Cadenas and Martije with modification as to the award of damages. The *fallo* of which states:

> WHEREFORE, the appeal is DENIED.
>
> The judgment dated 3 March 2016 of the Regional Trial Court, 11th Judicial Region, Branch 32, Lupon, Davao Oriental in Criminal Case No. 1389-12 for Rape with Homicide is AFFIRMED with MODIFICATIONS.
>
> Accused-Appellants BBB and CCC shall pay, jointly and severally, the Heirs of AAA the following:
>
> 1. civil indemnity *ex delicto* of Php100,000.00;
> 2. moral damages of Php100,000.00;
> 3. exemplary damages of Php100,000.00; and
> 4. temperate damages of Php50,000.00.
>
> All monetary awards shall earn interest at the rate of six percent (6%)*per annum* from date of finality of this Decision until fully paid.
>
> SO ORDERED.[8]

The CA ruled that the prosecution had duly established all the elements of the special complex crime of Rape with Homicide. According to the CA, the horrid state of the lifeless body of AAA when she was found - her body was found in the supine position with her pants and underwear pulled down to her knees, exposing her vagina, and her shirt pulled up, exposing her breasts – clearly showed that she was raped. Further, the appellate court held that the prosecution presented credible and sufficient pieces of circumstantial evidence that, when analyzed and taken together, would lead to the inescapable and reasonable conclusion that Cadenas and Martije were the authors of the crime. It debunked appellants' respective denials and alibis declaring that the same were not adequately proven by strong and competent evidence, and not at all persuasive when pitted against

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[8] *Rollo,* pp. 16-17.

the positive and convincing identification of them by prosecution witness Dindo Escribano *(Escribano)*.

Insisting on their innocence of the crime charged, Cadenas and Martije filed the present appeal and posited the same issues they previously raised before the CA, to wit:

I

Whether the guilt of the accused-appellants were established beyond reasonable doubt?

II

Whether circumstantial evidence is sufficient to convict the accused-appellants?

III

Whether there was basis for the award of damages?[9]

In its Resolution[10] dated October 2, 2017, the Court directed both parties to submit their supplemental briefs, if they so desired. On December 6, 2017, the Office of the Solicitor General filed its Manifestation and Motion (Re: Supplemental Brief)[11] praying that it be excused from filing a supplemental brief as its Appellee's Brief had sufficiently discussed all the issues raised by the accused-appellants. On December 18, 2017, the accused-appellants filed a Manifestation In lieu of a Supplemental Brief[12] averring that they would adopt all their arguments in their Appellants' Brief filed before the CA where they had already ventilated all matters pertinent to their defense.

Encapsulated, the issue herein focuses on the sufficiency of the prosecution evidence to prove the commission of Rape with Homicide and the identity of the culprits thereof.

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

[10] *Rollo,* pp. 23-24.

[11] *Id.* at 34-36.

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

The Court's Ruling

After a careful scrutiny of the records and evaluation of the evidence adduced by the parties, the Court is not convinced with moral certainty that Cadenas and Martije committed the crime charged. Reasonable doubt burdens the conscience. Our minds cannot rest easy on the certainty of appellants' guilt. This appeal is impressed with merit.

Every criminal conviction requires the prosecution to prove two things: (1) the fact of the crime, *i.e.,* the presence of all the elements of the crime for which the accused stands charged, and (2) the fact that the accused is the perpetrator of the crime.[13] When a crime is committed, it is the duty of the prosecution to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established.[14] Apart from showing the existence and commission of a crime, the State has the burden to correctly identify the author of such crime. Both facts must be proved by the State beyond cavil of a doubt on the strength of its evidence and without solace from the weakness of the defense.[15]

Our legal culture demands the presentation of proof beyond reasonable doubt before any person may be convicted of any crime and deprived of his life, liberty or even property. As every crime must be established beyond reasonable doubt, it is also paramount to prove, with the same quantum of evidence, the identity of the culprit. It is basic and elementary that there can be no conviction until and unless an accused has been positively identified. The hypothesis of his guilt must flow naturally from the facts proved and must be consistent with all of them.

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[13] *People v. Ayola,* 416 Phil. 861, 871 (2001).

[14] *People v. Sinco,* 408 Phil. 1, 12 (2001).

[15] *People v. Limpangog,* 444 Phil. 691, 709 (2003).

In the case at bench, there is no direct evidence that could link appellants to the commission of the crime. As observed by the RTC, "nobody witnessed the actual rape and killing of the victim."[16] The RTC was, thus, compelled to resort solely on circumstantial evidence. The trial court enumerated the pieces of circumstantial evidence that justified its finding of guilt, *viz.*:

> x x x First; Cadenas and Martije were seen leaving the house of the victim; Second: Cadenas and Martije left the house in in (sic) a hasty manner, they ran away; Third: when Castillo and Escrebano went to the house, they discovered the victim already dead; Fourth, the victim's pants and panty were pulled down up to her knee level, her t-shirt was pulled up, her breast and vagina were exposed and she was lying on her back, indicating she was sexually assaulted; Fifth, the victim has a wound on her cheek and her head was broken; and Sixth, the post-mortem examination conducted by Dr. Guiritan confirmed that the the (sic) immediate cause of death (of the) victim is brain haemorrhage due to skull fracture secondary to traumatic injury of the head. The probable weapon used was a hard blunt object. The victim was probably bitten causing multiple abraded wounds at the mons pubis, an area outside the vagina, and also multiple abraded wounds at the left nipple area.[17]

Inasmuch as the case for the prosecution is largely based on circumstantial evidence, a short discussion on the sufficiency of circumstantial evidence to convict an accused is in order.

True, conviction is not always based on direct evidence for it may likewise rest on purely circumstantial evidence. A rule of ancient respectability now sculpted into tradition is that conviction may be warranted on the basis of circumstantial evidence only if the following requisites concur: *first,* there is more than one circumstance; *second,* the facts from which the inferences are derived are proved; and *third,* the combination of all the circumstances is such as to produce conviction beyond

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[16] Records, p. 135.

[17] *Id.*

reasonable doubt.[18] Jurisprudence teaches us that for circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent.[19] The circumstances proven should constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of others, as the guilty person.[20]

We do not subscribe, however, with the RTC and the CA that the foregoing circumstantial evidence inexorably lead to the conclusion that Cadenas and Martije raped and killed AAA. The circumstantial evidence invoked by the RTC, particularly as to the identification of the perpetrators, raises doubt rather than moral certainty as to the guilt of the appellants for the special complex crime of Rape with Homicide. To the mind of the Court, these circumstances, harnessed to establish the criminal liability of Cadenas and Martije, are miserably inadequate in weight and anemic in value to affirm their conviction.

To begin with, the RTC gave much weight on the testimony of prosecution witness Escribano that he had seen Cadenas and Martije running away from the house of Michael Castillo *(Castillo)* and AAA where the latter's lifeless body was found, and ergo, the suspicion that they were the authors of the crime of Rape with Homicide. Escribano testified in this wise:

Direct Examination – Prosecutor Neil C. Pudpud

Q: So, what happened when AAA went home?
A: I was asked by Michael Castillo to go to their house.

Q: To follow AAA in their house?
A: Yes, sir to get the food for dinner at about 9:00 o'clock in the evening.

Q: Were you able to reach the house of Michael Castillo?
A: Yes, sir.

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[18] *Zabala v. People,* 752 Phil. 59, 65 (2015).

[19] *People v. Lopez,* 371 Phil. 852, 860 (1999).

[20] *Espineli v. People,* 735 Phil. 530, 533 (2014).

Q: What happened, if any, when you arrived at the house of Michael Castillo?
A: I saw this Gaudioso Martije and Ariel Cadenas.

Q: You saw Gaudioso and Ariel?
A: Yes, sir.

Q: Where?
A: In the house.

Q: Whose house?
A: Of Michael Castillo.

Q: What were they doing when you saw them?
A: I saw them going out of the house.

Q: Where did they proceed from the house of Michael Castillo?
A: They ran away.

Q: Running away from the house?
A: Yes, sir.

Q: What did you do when you saw them?
A: I returned back to Michael Castillo to the copra-dryer.

Q: And what did you tell Michael Castillo, if any?
A: I told him, uncle there is somebody in your house.

Q: And what happened after informing Michael Castillo there were persons in his house?
A: He asked me what is the name of the persons and I answered Dondon Cadenas and Martije.

Q: What is the real name of Dondon?
A: Ariel.

Q: What happened after you informed Michael Castillo that Ariel Cadenas and Martije was in their house?
A: We went to their house.

Q: And when you arrived in their house, what did you discover, if any?
A: When we reached the house of Michael Castillo, we saw that his wife is already dead.[21]

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[21] TSN, January 21, 2014, pp. 7-9.

The RTC, as well as the CA, immediately rushed to the conclusion that the presence of the appellants at the crime scene (they were seen running away from the house of Castillo and AAA) as sufficient to incriminate them to the commission of the crime charged. Admittedly, this circumstance may raise a speculation, as, in fact, inevitably made Cadenas and Martije the prime suspects, but it is far too inadequate to support a conviction. It is a mere conjecture that can be refuted by other equally conceivable and rational inferences. The testimony of Escribano does not conclusively connect Cadenas and Martije to the rape-slay of AAA, but merely arouse suspicion against them. The Court has consistently stressed that mere suspicions and speculations can never be the bases of conviction in a criminal case. In *People v. Lugod*,[22] the Court wrote:

> In the present case. much emphasis was placed by the trial court on the discovery of the pair of rubber slippers at the victim's house and the black T-shirt hanging on a guava twig near the cadaver of Nairube which were allegedly worn by accused-appellant the day before Nairube's disappearance. The trial court also relied on the fact that there was an eyewitness who saw accused-appellant leaving Villa Anastacia, the place where the body of the victim was found, in the morning after the disappearance of the victim. However, the combination of the above-mentioned circumstances does not lead to the irrefutably logical conclusion that accused-appellant raped and murdered Nairube. At most, these circumstances, taken with the testimonies of the other prosecution witnesses, merely establish the accused-appellant's whereabouts on that fateful evening and places accused-appellant at the scene of the crime and nothing more. The evidence of the prosecution does not provide a link which would enable this Court to conclude that he in fact killed and raped Nairube. It must be stressed that although not decisive for the determination of the guilt of the accused-appellant, the prosecution did not present any evidence to establish that he was at any time seen with the victim at or about the time of the incident. Neither was there any other evidence which could single him out to the exclusion of any other as being responsible for the crime.[23]

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[22] 405 Phil. 125 (2001).

[23] *Id.* at 149. (Underscoring ours.)

The alleged presence of Cadenas and Martije at the *locus criminis* does not necessarily mean that they authored the crime. At best, such presence at the crime scene merely debunks appellants' alibi that they were in their respective houses at around 9 o'clock in the evening on February 12, 2012. Moreover, the prosecution has not completely ruled out the probability that another person/s may have committed the crime. Indeed, it was not established that the appellants were with the victim inside the subject house at the time the crime was committed, if at all. The proof against Cadenas and Martije must pass the crucible of reasonable doubt; suspicion alone, no matter how strong it may be, is inadequate to sustain a conviction. Truly, the sea of suspicion has no shore, and the court that embarks upon it is without rudder or compass.[24]

For sure, we can only speculate at this stage on who perpetrated the crime as there is nothing on the records to provide us with any better clue than what has heretofore been surmised. However, the Court is not called upon to speculate on who committed the crime and how it was committed. Our task is confined in resolving whether the prosecution has adduced sufficient evidence to prove that the crime alleged in the Information was committed and that the accused-appellants are the culprits thereof. Unfortunately, the prosecution failed to discharge the onus of proving the identity of the malefactors.

Further, the Court finds Escribano's identification of the appellants as the persons whom he allegedly saw running away from the house of Castillo and AAA to be inconclusive and untrustworthy. Consider the following testimony of Escribano on this score:

Cross Examination – Atty. Apple Cherrie Amolata-Javier

Q: Can you describe to us the place going to the house of AAA?
A: There are big trees around.

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[24] *People v. Asis*, 439 Phil. 707, 728 (2002).

Q: And you will agree with me that the house of AAA is located at the mountainous area?
A: Yes, ma'am.

Q: And you will agree with me also that there are no electricity in the house of AAA?
A: Yes, ma'am.

Q: And along the way going to the house of AAA there were no electric light?
A: None, ma'am.

Q: You earlier testified that you allegedly saw the accused run from the house of AAA. Where were you when you saw them?
A: I was already under the house of AAA.

Q: You were already under the house when you saw them run away?
A: Yes, ma'am, because the house is a two-storey house.

Q: Exactly where were you when you first saw them?
A: On the terrace.

Q: That was the first time you saw them?
A: Yes, ma'am.

Q: And the two were running from the house when you saw them?
A: Yes, ma'am.

Q: And then you said you immediately informed Michael Castillo that there were persons in his house. It goes to say upon seeing these two accused you immediately went back to Michael Castillo without entering the house?
A: Yes ma'am, I did not enter the house.[25]

A nexus of related circumstances, however, rendered the above testimony of Escribano as highly suspect. Somehow, the Court cannot help but doubt the reliability of the identification made by the said witness. It was as if it was merely contrived to pin criminal culpability upon Cadenas and Martije.

First, the condition of visibility at the time Escribano allegedly saw Cadenas and Martije running away from the house, did not favor said witness, a factor that failed to lend credence to

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[25] TSN, January 21, 2014, pp. 12-14.

his testimony. The incident happened at 9 o'clock in the evening outside the house of AAA, in a remote *barangay* located at a mountainous area covered with big trees, and there is no electric lighting from the surroundings and even in the said house. No shred of evidence is on record that could show the existence of a source of light then which may have provided Escribano with enough illumination that enabled him to recognize who the two persons were. The distance between Escribano and the said two persons was not disclosed either. Even granting that the area was sufficiently lighted, the prosecution still failed to explain how Escribano was able to get a glimpse of the faces of the two persons because if the latter were running away from the house, it is safe to assume that their backs were turned against said witness. Also, the incident was so swift for ample observation. Under these circumstances, the positive identification of appellants by Escribano as the two persons running away from the house of AAA is elusive and hazy.

Secondly, Escribano's story, that after seeing the two persons run away, he did not enter the house (although he was already at the terrace thereof) but instead, he opted to take a long walk back to Castillo at the copra dryer just to tell the latter of what he saw, simply does not make sense. It appears strange that Escribano should return back to Castillo when natural instinct and reason would dictate that he should have entered the house to see if anything bad happened to his friend's live-in partner or at least called for AAA's name from outside the house just to check her condition. His reaction was unnatural and contrary to ordinary human experience. The failure of Escribano to lend a touch of realism to his tale leads to the conclusion that he was either withholding an incriminating information or was not telling the truth.

Thirdly, the Court finds it disturbing how Barangay Captain Gerald Arquiza *(Arquiza)*of *Barangay* [redacted], was able to identify Cadenas and Martije as the sexual ravishers and killers of AAA. Nowhere in the prosecution evidence does it show that Castillo and/or Escribano reported the incident and identified (or at least described), the perpetrator/s to Arquiza at any time after the discovery of the body of the victim. Yet,

at around 5 o'clock in the morning of the following day (February 13, 2012), Arquiza informed Joel Bacus, a *barangay* tanod member of *Barangay* [redacted], that he (Arquiza) had already arrested Martije, and requested the latter (Bacus) to apprehend Cadenas, who is allegedly another suspect to the rape and killing of AAA.[26] Curiously, Arquiza was not called to the witness stand to shed light on this gray area in the case of the prosecution.

Finally, there is a paucity of evidence to show that appellants have motive to rape or kill the victim. The gruesome attack on AAA, who sustained a traumatic injury to the head which fractured her skull causing brain hemorrhage, clearly manifested the intention of the perpetrator/s to bring death upon the victim. There was no evidence, however, that Cadenas and Martije carried a grudge or had an axe to grind against the victim or her live-in partner, Castillo. Cadenas categorically declared that he knew AAA to be 30 years of age, but did not find her attractive.[27]

We are aware that the motive of the accused in a criminal case is generally held to be immaterial, not being an element of the offense. However, motive assumes importance when, as in this case, the evidence on the commission of the crime and the identity of the perpetrator is purely circumstantial. As held in *Crisostomo v. Sandiganbayan:*[28]

> Motive is generally held to be immaterial because it is not an element of the crime. However, motive becomes important when the evidence on the commission of the crime is purely circumstantial or inconclusive. Motive is, thus, vital in this case.

In the face of the deficiency in the proof submitted by the prosecution anent the identity of the offenders, the respective alibis of Cadenas and Martije assume credence and importance.

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[26] TSN, November 19, 2013; Joint Affidavit, records, p. 8.

[27] TSN, April 21, 2015, p. 5.

[28] 495 Phil. 718, 745 (2005).

While the defense of alibi is by nature a weak one, it assumes commensurate significance and strength where the evidence for the prosecution is also intrinsically weak.[29] At any rate, even if the defense of the appellants may be weak, the same is inconsequential if, in the first place, the prosecution failed to discharge the onus of their identity and culpability.[30] Let it be underscored that conviction must be based on the strength of the prosecution evidence and not on the weakness of the evidence for the defense, it is incumbent upon the prosecution to prove the guilt of the accused and not the accused to prove his innocence.[31]

The Court denounces the senseless and gruesome crime committed against AAA and sincerely commiserates with the emotional sufferings of her bereaved family. However, the pieces of circumstantial evidence of the prosecution fails to prove indubitably the appellants' authorship of the crime of Rape with Homicide. The conviction of the appellants cannot stand on the basis of sketchy and doubtful circumstantial evidence. Accordingly, the Court must uphold the primacy of the presumption of innocence in favor of Cadenas and Martije.

WHEREFORE, the appeal is **GRANTED.** The June 22, 2017 Decision of the Court of Appeals in CA-G.R. CR-HC No. 01525-MIN is **REVERSED** and **SET ASIDE.** Accused-appellants Ariel Manabat Cadenas and Gaudioso Martije are **ACQUITTED** of the crime of Rape with Homicide on the ground of reasonable doubt.

The Director of the Bureau of Corrections is **DIRECTED** to cause the **IMMEDIATE RELEASE** of the accused-appellants unless lawfully held for another cause, and to **INFORM** this Court of the date of their release, or the ground for their continued confinement, within ten (10) days from receipt hereof.

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[29] *People v. Canlas,* 423 Phil. 665, 678 (2001).

[30] *People v. Sinco, supra* note 14, at 19.

[31] *People v. Mamalias,* 385 Phil. 499, 514 (2000).

SO ORDERED.

Leonen and *Hernando, JJ.,* concur.

Gesmundo and *Reyes, J. Jr., JJ.,* on wellness leave.

SECOND DIVISION

[G.R. No. 234818. November 5, 2018]

THE PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FELIX AQUINO,** *accused-appellant*, **IRIS AQUINO (Deceased), ELEANOR MACABBALUG (At-Large), GENALYN NASOL (At-large), ARTURO DELGADO, JR. (At-Large), PEARL MILITAR (At-Large) and CATHERINE ANNA DELA CRUZ (At-Large),** *accused.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE (RPC);** ***ESTAFA*****; ELEMENTS.—** The elements of *Estafa* as contemplated in this provision are the following: (*a*) that there must be a false pretense or fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (*b*) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (*c*) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (*d*) that, as a result thereof, the offended party suffered damage.

2. **ID.; ID.; RPC IN RELATION TO PRESIDENTIAL DECREE NO. (PD) 1689; HOW SYNDICATED** ***ESTAFA*** **IS COMMITTED; ELEMENTS.—** Section 1 of PD 1689 states that Syndicated *Estafa* is committed as follows: Section 1. Any

person or persons who shall commit *estafa* or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon*(*s*)" or farmers' association, or funds solicited by corporations/associations from the general public. x x x [T]he elements of Syndicated *Estafa* are: (*a*) *Estafa* or Other Forms of Swindling, as defined in Articles 315 and 316 of the RPC, is committed; (*b*) the *Estafa* or Swindling is committed by a syndicate of five (5) or more persons; and (*c*) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon*(*s*)" or farmers' association, or of funds solicited by corporations/associations from the general public.

3. ID.; ID.; ID.; ALL THE ELEMENTS OF SYNDICATED *ESTAFA* ARE PRESENT IN CASE AT BAR.— [T]he courts *a quo* correctly found that all the elements of Syndicated *Estafa* are present in the instant case, as shown in the following circumstances: (*a*) the officers/directors of Everflow, comprising of Felix and his co-accused who are more than five (5) people, made false pretenses and representations to the investing public, *i.e.*, private complainants, regarding a lucrative investment opportunity with Everflow in order to solicit money from them; (*b*) the said false pretenses and representations were made prior to and simultaneous with the commission of fraud, which is made more apparent by the fact that Everflow was not authorized by the Securities and Exchange Commission to solicit investments from the public in the first place; (*c*) relying on the same, private complainants invested various amounts of money into Everflow; and (*d*) Felix and his co-accused failed to deliver their promised returns and ended up running away with private complainants' investments, obviously to the latter's prejudice.

4. ID.; ID.; ID.; ACCUSED-APPELLANT'S CONVICTION FOR 21 COUNTS OF SYNDICATED *ESTAFA*, UPHELD; PENALTY AND CIVIL LIABILITY.— [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. As such, Felix's conviction for twenty-one (21) counts of Syndicated *Estafa* must be upheld. Accordingly, he should suffer the penalty of life imprisonment for each count of the aforesaid crime. Finally, the Court deems it proper to adjust the actual damages awarded to private complainants in order to reflect the amount defrauded from them, as indicated in the respective Informations. These amounts shall earn legal interest at the rate of twelve percent (12%) per annum from the filing of the Informations until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Felix Aquino (Felix) assailing the Decision[2] dated July 28, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07078, which affirmed the Joint Decision[3] dated July 22, 2014, as partly revised by the Order[4] dated August 8, 2014, of

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[1] See Notice of Appeal dated August 14, 2017; *rollo*, pp. 36-37.

[2] *Id*. at 2-35. Penned by Associate Justice Marie Christine Azcarraga-Jacob with Associate Justices Normandie B. Pizarro and Danton Q. Bueser concurring.

[3] CA *rollo* at 113-134. Penned by Judge Encarnacion Jaja G. Moya.

[4] *Id*. at 135.

the Regional Trial Court of Makati City, Branch 146 (RTC) in Crim. Case Nos. 04-1270, 04-1271, 04-1273, 04-1274, 04-1275, 04-1276, 04-1277, 04-1278, 04-1279, 04-1280, 04-1281, 04-1284, 04-1285, 04-1287, 04-1288, 04-1290, 04-1291, 04-1296, 04-1298, 04-1300, and 04-1301, convicting him of twenty-one (21) counts of Syndicated *Estafa* defined and penalized under Article 315 (2) (a) of the Revised Penal Code (RPC) in relation to Presidential Decree No. (PD) 1689.[5]

The Facts

The instant case stemmed from thirty-three (33) separate Informations[6] filed before the RTC each charging Felix and his co-accused, namely, Iris Z. Aquino (Iris), Eleanor Macabbalug, Genalyn Nasol, Arturo Delgado, Jr., Pearl Militar, and Catherine Anna Dela Cruz of the aforesaid crime. The accusatory portions of the said Informations, save for the case number, private complainants, dates, and respective amounts, are similarly worded as follows:

> That within the month of _____ in the City of Makati, Philippines, and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating together and mutually helping one another as a syndicate, did then and there, as Officers/ Directors of Everflow Group of Companies which operated on funds solicited from the public, willfully, unlawfully, and feloniously induced _____ to give and/or deliver to said accused the amount of _____ as investment in Everflow Group of Companies upon false pretenses and fraudulent acts executed by the accused prior to or simultaneously with the commission of the fraud that said amount will earn 5% interest per month, purposely for the accused to convert, misapply and misappropriate, as they did convert misapply and misappropriate to their personal gain or benefit the amount received as investment, to the damage and prejudice of _____ in the aforesaid amount of _____, which accused failed and refused to return, as they continue to fail and refuse to return said amount despite demands for them to do so.

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[5] Entitled "INCREASING THE PENALTY FOR CERTAIN FORMS OF SWINDLING OR ESTAFA" (April 6,1980).

[6] Not attached to the *rollo*.

CONTRARY TO LAW.[7]

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[7] See *rollo*, pp. 3-6. See also *CA rollo*, pp. 113-114. Private complainants and the respective amounts allegedly taken from them are as follows:

Criminal Case No.	Complainant	Amount	Criminal Case No.	Complainant	Amount
04-1270	Elna E. Hidalgo	₱150,000.00	04-1287	Restituto C. Novero	₱125,250.00
04-1271	Rosabella Espanol	₱50,000.00	04-1288	Karen N. Novero	US$50,000.00
04-1272	Dionisio Miguel	₱200,000.00	04-1289	Letecia Barnizo	₱30,000.00
04-1273	Reynold C. Español	US$562.00	04-1290	Melanie C. Navata	₱320,000.00
04-1274	Virginia D. Casero	₱15,000.00	04-1291	Michelle C. Navata	₱315,000.00
04-1275	Imelda Dela Cruz	₱15,435.00	04-1292	Fermin P. Vivas	₱200,000.00
04-1276	Vennus C. Español	₱50,000.00	04-1293	Victoria F. Sto. Tomas	₱25,306.38
04-1277	Merlina C. Español	₱102,819.00	04-1294	Lorna V. Aclan	US$5,000.00
04-1278	Luz B. Unay	US$4,421.00	04-1295	Rochelle P. Alinabon	₱350,000.00
04-1279	Rogelio C. Unay	₱200,000.00	04-1296	Judith Novero	₱334,000.00
04-1280	Marilyn Ruth C. Flores	₱13,400.90	04-1297	Ma. Cecilia Reyes Patton	₱300,000.00
04-1281	Victor Flores	₱480,000.00	04-1298	Gil Nicanor	₱50,000.00
04-1282	Eddie P. Agorilla	₱50,000.00 and US$1,000.00	04-1299	Asteria De Guzman	₱100,000.00
04-1283	Charisma N. De Guzman	US$10,000.00	04-1300	Zosimo Malagday	₱210,000.00
04-1284	Chona N. Novero	₱200,000.00 and US$14,500.00	04-1301	Elpidio Navata	₱40,000.00
04-1285	Felix So Manota	₱400,000.00 and US$2,600.00	04-1302	Nilda Primo	₱100,000.00
04-1286	Esperanza Longino	₱735,000.00 and US$2,898.00			

(Cases are erroneously numbered in the CA Decision.)

The prosecution alleged that spouses Felix and Iris are the owners of Everflow Group of Companies, Inc. (Everflow), with the latter being its chairperson. Private complainants alleged that on various dates between 2000 and 2002, they were convinced by Iris and Felix to invest their money in Everflow, claiming that the money to be invested will earn seventy percent (70%) interest; that the same will be doubled in more than a year; that the investment was in safe hands; and that it would earn five percent (5%) interest per month. Convinced with the reassurances by Iris and Felix, they invested a total of ₱5,161,211.28 and US$90,981.00. When complainants went back to Everflow to get their investments, Felix promised the return of their money. After the closure of Everflow because of the Cease and Desist Order issued by the Securities and Exchange Commission, they demanded the return of their money, but to no avail. Thus, they were compelled to file multiple charges of Syndicated *Estafa* against Felix, Iris, and their co-accused who are allegedly members of the board of directors of Everflow.[8]

Of the seven (7) accused, only Felix and Iris were arrested and arraigned, while the others remained at-large to this day.[9] Further, on April 15, 2008, the RTC provisionally dismissed eleven (11)[10] of the thirty-three (33) counts of *Syndicated Estafa* with their consent, due to the failure to appear by the respective private complainants before the court despite due notice.[11]

In their defense, Felix and Iris denied the accusations against them, claiming that they were mere victims of a certain Rosario Baladjay who recommended that they put up Everflow as a conduit of Multinational Telecom Investors Corporation (Multitel), which was controlled by a certain Rosario Baladjay. They also alleged that the money invested in Everflow was

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[8] See *rollo*, pp. 6-20.

[9] See *id.* at 6.

[10] Criminal Case Nos. 04-1272, 04-1282, 04-1283, 04-1286, 04-1289, 04-1292, 04-1293, 04-1294, 04-1295,04-1299, and 04-1302.

[11] *Rollo*, p. 20.

also invested in Multitel.[12] Notably, the cases against Iris were dismissed due to her supervening death.[13]

The RTC Ruling

In a Joint Decision[14] dated July 22, 2014, the RTC found Felix guilty beyond reasonable doubt of sixteen (16) counts[15] of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment for each count.[16] It further ordered him to pay the total amount of ₱2,323,504.00 and US$4,983.00,[17] with legal interest from the filing of the Informations until fully paid.[18]

The RTC found that Felix and his co-accused, who were in control of the operations of Everflow and through their counselors, fraudulently induced private complainants to invest

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[12] See *id*. at 20-22.

[13] *Id*. at 32.

[14] CA *rollo*, pp. 113-134.

[15] Criminal Case Nos. 04-1270, 04-1271, 04-1273, 04-1274, 04-1275, 04-1276, 04-1277, 04-1278, 04-1281, 04-1285, 04-1287, 04-1290, 04-1291, 04-1298, 04-1300, and 04-1301 (erroneously numbered as 04-1302).

[16] See CA *rollo*, pp. 132-133.

[17] Felix is held liable to pay: (*a*) in Crim. Case No. 04-1270, ₱150,000.00 to Elna E. Hidalgo; (*b*) in Crim. Case No. 04-1271, ₱50,000.00 to Rosabella C. Español; (*c*) in Crim. Case No. 04-1273, US$562.00 to Reynold C. Español; (*d*) in Crim. Case No. 04-1274, ₱15,000.00 to Virginia D. Casero; (*e*) in Crim. Case No. 04-1275, ₱15,435.00 to Imelda Dela Cruz; (*f*) in Crim. Case No. 04-1276, ₱50,000.00 to Vennus C. Español; (*g*) in Crim. Case No. 04-1277, ₱102,819.00 to Medina C. Espanol; (*h*) in Crim. Case No. 04-1278, US$4,421.00 to Luz B. Unay; (*i*) in Crim. Case No. 04-1281, ₱480,000 00 to Victor Flores; (*j*) in Crim. Case No. 04-1285, ₱400,000.00 to Feliz So Manota; (*k*) in Crim. Case No. 04-1287, ₱125,250.00 to Restituto C. Novero; (*l*) in Crim. Case No. 04-1290, ₱320,000.00 to Melanie C. Navata; (*m*) in Crim. Case No. 04-1291, ₱315,000.00 to Michelle C. Navata; (*n*) in Crim. Case No. 04-1298, ₱50,000.00 to Gil Nicanor; (*o*) in Crim. Case No. 04-1300, ₱210,000.00 to Zosimo Malagday; and (*p*) in Crim. Case No. 04-1301 (erroneously numbered as 04-1302), ₱40,000.00. (*Id*.)

[18] *Id*.

their money to Everflow, despite knowing that they are prohibited from soliciting and accepting investments from the general public. To even bolster their scheme, they even issued checks representing the investment of private complainants plus interest, only for such checks to be dishonored upon presentment for being drawn against closed accounts.[19]

However, in an Order[20] dated August 8, 2014, the RTC modified the dispositive portion of its earlier Joint Decision, convicting Felix of twenty-one (21) counts[21] instead of sixteen (16) counts of Syndicated *Estafa*, as indicated in the body of the said Joint Decision. Nonetheless, the RTC clarified that while Felix was found criminally liable for twenty-one (21) counts of Syndicated *Estafa*, he can only be held civilly liable to sixteen (16) private complainants in their respective cases, considering: (*a*) that the witnesses who testified in the other five (5) counts were not necessarily the private complainants therein who had personal knowledge of the commission of the offense; and (*b*) the absence of private complainants in said five (5) counts and the absence of an authorization that they are indeed claiming the civil aspect of their respective cases.[22]

Aggrieved, Felix appealed to the CA.[23]

The CA Ruling

In a Decision[24] dated July 28, 2017, the CA affirmed the RTC ruling *in toto*.[25] It held that Felix and his co-accused defrauded private complainants substantial amounts of money

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[19] See *id*. at 128-131.

[20] *Id*. at 135.

[21] Criminal Case Nos. 04-1279, 04-1280, 04-1284, 04-1288, and 04-1296 were added to the initial list of cases where Felix was convicted.

[22] See *id*. at 132 and 135.

[23] See Notice of Appeal dated July 23, 2014; *id*. at 64.

[24] *Rollo*, pp. 2-35.

[25] *Id*. at 34.

by misrepresenting and falsely pretending to the latter that they will invest the money in legitimate businesses which will earn them huge percentage of returns. However, such returns remained unrealized when the checks purportedly representing the same were dishonored for being drawn against a closed account. According to the CA, Felix and his co-accused's fraudulent intent was made even more apparent by the fact that they solicited investments from the general public despite Everflow not being authorized to do so.[26]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Felix is guilty beyond reasonable doubt of Syndicated *Estafa*.

The Court's Ruling

The appeal is without merit.

Article 315 (2) (a) of the RPC reads:

> Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> x x x x x x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using a fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.
>
> x x x x x x x x x

The elements of *Estafa* as contemplated in this provision are the following: (*a*) that there must be a false pretense or

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[26] See *id*. at 25-34.

fraudulent representation as to his power, influence, qualifications, property, credit, agency, business or imaginary transactions; (*b*) that such false pretense or fraudulent representation was made or executed prior to or simultaneously with the commission of the fraud; (*c*) that the offended party relied on the false pretense, fraudulent act, or fraudulent means and was induced to part with his money or property; and (*d*) that, as a result thereof, the offended party suffered damage.[27]

In relation thereto, Section 1 of PD 1689 states that Syndicated *Estafa* is committed as follows:

> Section 1. Any person or persons who shall commit *estafa* or other forms of swindling as defined in Articles 315 and 316 of the Revised Penal Code, as amended, shall be punished by life imprisonment to death if the swindling (*estafa*) is committed by a syndicate consisting of five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme, and the defraudation results in the misappropriation of money contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon*(*s*)" or farmers' association, or funds solicited by corporations/associations from the general public.
>
> x x x x x x x x x

Thus, the elements of Syndicated *Estafa* are: (*a*) *Estafa* or Other Forms of Swindling, as defined in Articles 315 and 316 of the RPC, is committed; (*b*) the *Estafa* or Swindling is committed by a syndicate of five (5) or more persons; and (*c*) defraudation results in the misappropriation of moneys contributed by stockholders, or members of rural banks, cooperative, "*samahang nayon*(*s*)" or farmers' association, or of funds solicited by corporations/associations from the general public.[28]

In this case, a judicious review of the records reveals that Felix and his co-accused repeatedly induced the public to invest

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[27] *People v. Tibayan*, 750 Phil. 910, 919 (2015), citing *People v. Chua*, 695 Phil. 16, 32 (2012).

[28] *Id*. at 920, citing *Galvez v. CA*, 704 Phil. 463, 472 (2013).

in Everflow on the undertaking that their investment would yield a huge percentage of returns. Under such lucrative promise, the public – as represented by private complainants – were enticed to invest their hard-earned money into Everflow. Initially, Everflow would deliver on their promise, thus "hooking" the unwary investors into infusing more funds into it. However, as the Everflow officers/directors, *i.e.*, Felix and his co-accused, knew from the start that Everflow had no clear trade by which it can pay the assured profits to its investors, they could no longer comply with their guarantee and had to simply abscond with their investors' funds. It is settled that "where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that there will be none, or that they will be substantially less than he represents, the statements constitute an actionable fraud where the hearer believes him and relies on the statement to his injury,"[29] as in this case.

Lest it be misunderstood, not all proposals to invest in certain business ventures are tainted with fraud. To be sure, an actionable fraud arises when the accused has knowledge that the venture proposed would not reasonably yield the promised results, and yet, despite such knowledge, deliberately continues with the misrepresentation. Business investments ordinarily carry risks; but for as long as the incipient representations related thereto are legitimate and made in good faith, the fact that the business eventually fails to succeed or skews from its intended targets does not mean that there is fraud. As case law instructs, "the gravamen of the (crime of *Estafa*) is the employment of fraud or deceit to the damage or prejudice of another.[30] When fraud pertains to the means of committing a crime or the classes of crimes under Chapter Three, Title Four, Book Two and Chapter Three, Title Seven, Book Two of the RPC, criminal liability may arise; otherwise, if fraud merely causes loss or injury to

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[29] *People v. Menil, Jr.*, 394 Phil. 433, 453 (2000), citing *People v. Balasa*, 356 Phil. 362, 387 (1998).

[30] See *People v. Baladjay*, G.R. No. 220458, July 26, 2017.

another, without being an element of a crime, then it may only be classified as civil fraud from which an action for damages may arise.[31]

Far from being a legitimate business venture, the Court herein observes that Felix and his co-accused's *modus operandi* is constitutive of criminal fraud as they used the same to commit a crime. In fact, their *modus operandi* may be characterized as a kind of Ponzi scheme, which schemes have gained notoriety in modern times. As generally defined, a Ponzi scheme is "a type of investment fraud that involves the payment of purported returns to existing investors from funds contributed by new investors. Its organizers often solicit new investors by promising to invest funds in opportunities claimed to generate high returns with little or no risk. In many Ponzi schemes, the perpetrators focus on attracting new money to make promised payments to earlier-stage investors to create the false appearance that investors are profiting from a legitimate business. It is not an investment strategy but a gullibility scheme, which works only as long as there is an ever increasing number of new investors joining the scheme. It is difficult to sustain the scheme over a long period of time because the operator needs an ever larger pool of later investors to continue paying the promised profits to early investors. The idea behind this type of swindle is that the 'con-man' collects his money from his second or third round of investors and then absconds before anyone else shows up to collect. Necessarily, Ponzi schemes only last weeks, or months at the most."[32]

In this light, the courts *a quo* correctly found that all the elements of Syndicated *Estafa* are present in the instant case, as shown in the following circumstances: (*a*) the officers/directors of Everflow, comprising of Felix and his co-accused who are more than five (5) people, made false pretenses and

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[31] See *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. Nos. 159139 and 174777, June 6, 2017; citations omitted.

[32] *People v. Tibayan*, *supra* note 27, at 921; citations omitted.

representations to the investing public, *i.e.*, private complainants, regarding a lucrative investment opportunity with Everflow in order to solicit money from them; (*b*) the said false pretenses and representations were made prior to and simultaneous with the commission of fraud, which is made more apparent by the fact that Everflow was not authorized by the Securities and Exchange Commission to solicit investments from the public in the first place; (*c*) relying on the same, private complainants invested various amounts of money into Everflow; and (*d*) Felix and his co-accused failed to deliver their promised returns and ended up running away with private complainants' investments, obviously to the latter's prejudice.

Thus, the Court finds no reason to deviate from the factual findings of the trial court, as affirmed by the CA, as there is no indication that it overlooked, misunderstood or misapplied the surrounding facts and circumstances of the case. In fact, the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties, and hence, due deference should be accorded to the same.[33] As such, Felix's conviction for twenty-one (21) counts of Syndicated *Estafa* must be upheld. Accordingly, he should suffer the penalty of life imprisonment for each count of the aforesaid crime.

Finally, the Court deems it proper to adjust the actual damages awarded to private complainants in order to reflect the amount defrauded from them, as indicated in the respective Informations. These amounts shall earn legal interest at the rate of twelve percent (12%) per annum from the filing of the Informations until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.[34]

WHEREFORE, the appeal is **DENIED**. The Decision dated July 28, 2017 of the Court of Appeals in CA-G.R. CR HC

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[33] See *Peralta v. People,* G.R. No. 221991, August 30, 2017, citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

[34] See *Nacar v. Gallery Frames*, 716 Phil. 267, 281-283 (2013), applying Resolution No. 796 of the *Bangko Sentral ng Pilipinas* Monetary Board.

No. 07078 finding accused-appellant Felix Aquino **GUILTY** beyond reasonable doubt of twenty-one (21) counts of Syndicated *Estafa* defined and penalized under Article 315 (2) (a) of the Revised Penal Code in relation to Presidential Decree No. 1689 is hereby **AFFIRMED** with **MODIFICATION**, sentencing him to suffer the penalty of life imprisonment for each count. He is further ordered to pay actual damages to the following private complainants in the following amounts: (*a*) ₱150,000.00 to Elna E. Hidalgo; (*b*) ₱50,000.00 to Rosabella Espanol; (*c*) US$562.00 to Reynold C. Español; (*d*) ₱15,000.00 to Virginia D. Casero; (*e*) ₱15,435.00 to Imelda Dela Cruz; (*f*) ₱50,000.00 to Vennus C. Español; (g) ₱102,819.00 to Merlina C. Español; (*h*) US$4,421.00 to Luz B. Unay; (*i*) ₱480,000.00 to Victor Flores; (*j*) ₱400,000.00 to Felix So Manota; (*k*) ₱125,250.00 to Restituto C. Novero; (*l*) ₱320,000.00 to Melanie C. Navata; (*m*) ₱315,000.00 to Michelle C. Navata; (*n*) ₱50,000.00 to Gil Nicanor; (*o*) ₱210,000.00 to Zosimo Malagday; and (*p*) ₱40,000.00 to Elpidio Navata. All sums due shall each earn legal interest at the rate of twelve percent (12%) per annum from the filing of the Informations until June 30, 2013, and six percent (6%) per annum from July 1, 2013 until full payment.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa*, and *Reyes, A. Jr., JJ.*, concur.

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

FIRST DIVISION

[G.R. Nos. 235412-15. November 5, 2018]

ELDRED PALADA TUMBOCON, *petitioner, vs.* **HON. SANDIGANBAYAN SIXTH DIVISION and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO SPEEDY DISPOSITION OF CASES; WHEN DEEMED VIOLATED.— The right to a speedy disposition of a case, is deemed violated when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without justifiable cause, a long period of time is allowed to lapse without the party having his case tried. Inordinate delay in the resolution and termination of a preliminary investigation will result in the dismissal of the case against the accused. Delay, however, is not determined through mere mathematical computation but through the examination of the facts and circumstances peculiar in each case.

2. ID.; ID.; ID.; ID.; THE COURT ADOPTED THE "BALANCING TEST" TO DETERMINE WHETHER THERE IS VIOLATION OF DEFENDANT'S RIGHT TO A SPEEDY DISPOSITION OF A CASE; FOUR-FOLD FACTORS TO CONSIDER TO DETERMINE IF THERE IS VIOLATION OF THE RIGHT.— In resolving cases involving inordinate delay this Court has been adopting the "balancing test" to determine whether the defendant's right to speedy disposition of cases has been violated. The four-fold factors are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion or non-assertion of his right; and (4) the prejudice to defendant resulting from the delay. However, none of these factors is either necessary or sufficient condition, they must be considered together with other relevant circumstances. The totality of the particular facts peculiar to a case must be determined and weighed.

3. ID.; ID.; ID.; ID.; THE PERIOD OF MORE THAN SIX (6) YEARS TO CONCLUDE A PRELIMINARY INVESTIGATION

AND TO FILE THE INFORMATION FOR A SIMPLE CASE OF PERJURY IS CLEARLY AN INORDINATE DELAY THAT VIOLATES THE CONSTITUTIONAL RIGHT OF SPEEDY DISPOSITION OF CASES.— It took 5 years, 3 months and 24 days to conclude the preliminary investigation and for the Ombudsman to approve the resolution of GIPO II Bautista. The said period for determining probable cause for a case of perjury is beyond the reasonable period of ninety (90) days to determine probable cause. The purpose of a preliminary investigation is only to determine whether there are reasonable grounds to believe that petitioner should be held for trial or not. It bears stressing that this case involves only the petitioner and his SALNs regarding an alleged undeclared real property, motor vehicle, and a business interest. Certainly, this does not involve a complicated and complex issue that would require the painstaking scrutiny and perusal of the Ombudsman. Thus, the period of 5 years, 3 months and 24 days to resolve a simple case of perjury is clearly an inordinate delay, blatantly intolerable, and grossly prejudicial to the constitutional right of speedy disposition of cases. Further, the motion for reconsideration of the petitioner seeking the reversal of GIPO II Bautista's resolution was finally denied by the Office of the Ombudsman on June 4, 2015. However, it took the Ombudsman a period of 1 year, 7 months and 19 days just to file the Informations for perjury. Clearly, the petitioner was prejudiced because of the inordinate delay of the Ombudsman in having the petitioner's case tried within a reasonable time. A total period of 6 years, 11 months and 13 days cannot be said, in any standard, as reasonable, for resolving a simple case of perjury that does not involve millions of pesos and numerous accused.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] filed by Eldred Palada Tumbocon (petitioner) assailing the Resolution[2]

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[1] *Rollo,* pp. 3-49.

[2] Penned by Associate Justice Karl B. Miranda with Associate Justices Rodolfo A. Ponferrada and Bayani H. Jacinto, *concurring,* while Associate

dated August 10, 2017 and the Resolution[3] dated November 10, 2017 of the Sandiganbayan in SB-17-CRM-0059-0062, denying petitioner's Motion to Dismiss the case on the ground of inordinate delay.

The antecedent facts

Sometime in the year 2007, an anonymous complaint was filed against the petitioner with the Office of the Ombudsman docketed as CPL-C-07-1600 for fact-finding investigation.[4]

On August 28, 2009, the fact-finding investigation of the Field Investigation Office (FIO) was concluded with the filing of a formal complaint against the petitioner for violation of Section 2 of Republic Act (R.A.) No. 1379,[5] in relation to

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Justices Michael Frederick L. Musngi and Edgardo M. Caldona, *dissenting*. *Id*. at 64-83.

[3] *Id*. at 136-141.

[4] *Id*. at 5 and 65.

[5] AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY ANY PUBLIC OFFICER OR EMPLOYEE AND PROVIDING FOR THE PROCEEDINGS THEREFOR.

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Section 2. *Filing of petition.* Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: *Provided,* That no such petition shall be filed within one year before any general election or within three months before any special election.

Section 8 of R.A. No. 3019,[6] Article 172 in relation to Article 171 (4) of the Revised Penal Code (RPC)[7] and Section 8, in relation to Section 11 of the Code of Conduct and Ethical Standards for Public Officials, Serious Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.[8]

On April 6, 2010, the Office of the Deputy Ombudsman for Luzon conducted the preliminary investigation and ordered the petitioner and his wife Camila, to submit their counter-affidavits.[9]

On May 21, 2010, the Office of the Deputy Ombudsman received the Joint Counter-Affidavit of the petitioner and his wife.[10]

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[6] ANTI-GRAFT AND CORRUPT PRACTICES ACT.

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Section 8. *Dismissal due to unexplained wealth.* If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and unmarried children of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.

[7] Article 172 – *Falsification by private individual and use of falsified documents.*

Article 171 – *Falsification by public officer, employee of notary or ecclesiastic minister.*

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(4) Making untruthful statements in a narration of facts;

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[8] *Rollo,* pp. 67-68.

[9] *Id.* at 68.

[10] *Id.*

On March 11, 2013, the GIPO II Irmina H. Bautista found probable cause against the petitioner for 8 counts of Perjury. On December 22, 2014, Ombudsman Conchita Carpio-Morales approved the resolution.[11]

Petitioner sought the reconsideration of the resolution, however, on March 6, 2015, the same was denied.[12]

On April 22, 2016, the Office of the Special Prosecutor drafted four (4) informations for Perjury. The said informations were filed on January 23, 2017 before the Sandiganbayan.[13]

On February 23, 2017, petitioner filed a Motion to Dismiss[14] seeking to dismiss the criminal cases for Perjury on the ground of inordinate delay.[15]

On August 10, 2017, the Sandiganbayan issued a Resolution denying the motion to dismiss and held that there is no inordinate delay. The Sandiganbayan found that the following periods should be excluded:

> a. The time spent by the FIO in issuing the *subpoena duces tecum* to several government agencies/offices, and the receipt of the certifications and letters by the FIO from November 13, 2007 to March 3, 2009, or one (1) year, three (3) months and eighteen (18) days[16];
> b. The period from April 6, 2010 to May 23, 2012, or two (2) years, one (1) month and seventeen (17) days, should likewise be excluded since it was attributable to the petitioner and his wife for failing to submit their counter-affidavit and their option to adopt the counter-affidavit they filed in the administrative case[17];

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[11] *Id*. at 69.

[12] *Id*.

[13] *Id*. at 70.

[14] *Id*. at 50-63.

[15] *Id*. at 70.

[16] *Id*. at 75.

[17] *Id*. at 76.

c. The period from May 23, 2012 to December 22, 2014, or two (2) years, six (6) months and twenty-nine (29) days is excusable as they were used by the Office of the Deputy Ombudsman to thoroughly study the case[18];
d. The period from December 22, 2014 to February 26, 2015, or two (2) months and four (4) days, is attributable to the petitioner for seeking reconsideration of the resolution finding probable cause to indict him[19]; and,
e. The period of one (1) year, seven (7) months and nineteen (19) days is justified because the resolution of the motion for reconsideration was thoroughly reviewed by the Ombudsman.[20]

The Sandiganbayan found that the delay of five (5) years, six (6) months, and twenty-nine (29) days can hardly be considered as inordinate, capricious, oppressive and vexatious.[21]

Aggrieved, petitioner filed a motion for reconsideration of the Sandiganbayan's Resolution dated August 10, 2017. However, the same was also denied. Hence, this petition.

Issue

Whether or not there is inordinate delay that violated petitioner's constitutional right to a speedy disposition of a case.

Petitioner's Arguments

Petitioner claimed that the delay of 10 years from the time an anonymous complaint was filed against him until the filing of four (4) informations against him before the Sandiganbayan constitutes inordinate delay which violated his constitutional right to a speedy disposition of cases. Petitioner further asserted that the cases against him only involved his alleged untruthful

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[18] *Id*.

[19] *Id*. at 77.

[20] *Id*.

[21] *Id*. at 78.

statements in his Statement of Assets, Liabilities and Net Worth involving a real property registered in 1995, a motor vehicle purchased in 2000 and a business interest registered in 2000.[22] The issues in the formal complaint were not complex and is within the expertise of the Office of the Ombudsman, hence a delay of 10 years cannot be considered as justified.

On the other hand, the People of the Philippines, through the Office of the Special Prosecutor, argued that there is no inordinate delay in which it amounted to a violation of petitioner's constitutional right to a speedy disposition of his case. Petitioner has merely shown a mere mathematical reckoning of the period that lapsed during the fact-finding and preliminary investigation of his cases before the Office of the Ombudsman. Further, the People claimed that petitioner failed to assert his right to speedy disposition of his case before the Office of the Ombudsman.

The Court's ruling

The petition is meritorious.

The Constitution provides that:

> Section 16. All persons shall have the right to a speedy disposition of their cases before all judicial, quasi-judicial or administrative bodies.

The right to a speedy disposition of a case, is deemed violated when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without justifiable cause, a long period of time is allowed to lapse without the party having his case tried.[23] Inordinate delay in the resolution and termination of a preliminary investigation will result in the dismissal of the case against the accused. Delay, however, is not determined through mere mathematical computation but through the

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[22] *Id.* at 37.

[23] *Juanito Victor C. Remulla v. Sandiganbayan, et al.*, G.R. No. 218040, April 17, 2017.

examination of the facts and circumstances peculiar in each case.[24]

In resolving cases involving inordinate delay this Court has been adopting the "balancing test" to determine whether the defendant's right to speedy disposition of cases has been violated. The four-fold factors are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion or non-assertion of his right; and (4) the prejudice to defendant resulting from the delay.[25] However, none of these factors is either necessary or sufficient condition, they must be considered together with other relevant circumstances.[26] The totality of the particular facts peculiar to a case must be determined and weighed.

As held in the case of *Marialen C. Corpuz, et al. v. The Sandiganbayan, et al.*[27]:

xxxPrejudice should be assessed in the light of the interest of the defendant that the speedy trial was designed to protect, namely: to prevent oppressive pre-trial incarceration; to minimize anxiety and concerns of the accused to trial; and to limit the possibility that his defense will be impaired. Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system. There is also prejudice if the defense witnesses are unable to recall accurately the events of the distant past. Even if the accused is not imprisoned prior to trial, he is still disadvantaged by restraints on his liberty and by living under a cloud of anxiety, suspicion and often, hostility. His financial resources may be drained, his association is curtailed, and he is subjected to public obloquy.

Delay is a two-edge sword. It is the government that bears the burden of proving its case beyond reasonable doubt. The passage of time may make it difficult or impossible for the government to carry

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[24] *Cesar Matas Cagang v. Sandiganbayan, et al.,* G.R. Nos. 206438 & 206458, July 31, 2018.

[25] *People v. Sandiganbayan, et al.,* 791 Phil. 37, 53 (2016).

[26] *Remulla v. Sandiganbayan, supra* note 23.

[27] 484 Phil. 899 (2004).

its burden. The Constitution and the Rules do not require impossibilities or extraordinary efforts, diligence or exertion from courts or the prosecutor, nor contemplate that such right shall deprive the State of a reasonable opportunity of fairly prosecuting criminals. As held in *Williams v. United States,* for the government to sustain its right to try the accused despite a delay, it must show two things: (a) that the accused suffered no serious prejudice beyond that which ensued from the ordinary and inevitable delay; and (b) that there was no more delay than is reasonably attributable to the ordinary processes of justice.

Closely related to the length of delay is the reason or justification of the State for such delay. Different weights should be assigned to different reasons or justifications invoked by the State. For instance, a deliberate attempt to delay the trial in order to hamper or prejudice the defense should be weighted heavily against the State. Also, it is improper for the prosecutor to intentionally delay to gain some tactical advantage over the defendant or to harass or prejudice him. On the other hand, the heavy case load of the prosecution or a missing witness should be weighted less heavily against the State. Corollarily, Section 4, Rule 119 of the Revised Rules of Criminal Procedure enumerates the factors for granting a continuance.[28] (Emphasis Ours)

In this case, sometime in 2007, an anonymous complaint was filed against herein petitioner. On August 28, 2009, the fact-finding investigation of the FIO was concluded by the filing of a formal complaint against the petitioner for violation of Section 2 of R.A. No. 1379,[29] in relation to Section 8 of R.A.

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[28] *Id.* at 918-919.

[29] AN ACT DECLARING FORFEITURE IN FAVOR OF THE STATE ANY PROPERTY FOUND TO HAVE BEEN UNLAWFULLY ACQUIRED BY ANY PUBLIC OFFICER OR EMPLOYEE AND PROVIDING FOR THE PROCEEDINGS THEREFOR.

x x x x x x x x x

Section *2. Filing of petition.* Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who shall conduct a previous inquiry similar to preliminary investigations

No. 3019,[30] Article 172 in relation to Article 171 (4) of the RPC[31] and Section 8, in relation to Section 11 of the Code of Conduct and Ethical Standards for Public Officials, Serious Dishonesty, Grave Misconduct and Conduct Prejudicial to the Best Interest of the Service.[32]

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in criminal cases and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: *Provided,* That no such petition shall be filed within one year before any general election or within three months before any special election.

[30] ANTI-GRAFT AND CORRUPT PRACTICES ACT.

x x x x x x x x x

Section 8. *Dismissal due to unexplained wealth.* If in accordance with the provisions of Republic Act Numbered One thousand three hundred seventy-nine, a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and unmarried children of such public official may be taken into consideration, when their acquisition through legitimate means cannot be satisfactorily shown. Bank deposits shall be taken into consideration in the enforcement of this section, notwithstanding any provision of law to the contrary.

x x x x x x x x x

[31] Article 172 – Falsification by private individual and use of falsified documents.

Article 171 – Falsification by public officer, employee of notary or ecclesiastic minister

x x x x x x x x x

(4) Making untruthful statements in a narration of facts;

x x x x x x x x x

[32] *Rollo,* pp. 67-68.

It took the FIO around 2 years to conclude its fact-finding investigation. As held in the recent case of *Cesar Matas Cagang v. Sandiganbayan*[33], the fact-finding investigation conducted by the Office of the Ombudsman should be separate and distinct from the preliminary investigation for purposes of determining whether there was inordinate delay, to wit:

> When an anonymous complaint is filed or the Office of the Ombudsman conducts a motu proprio fact-finding investigation, the proceedings are not yet adversarial. Even if the accused is invited to attend these investigations, this period cannot be counted since these are merely preparatory to the filing of a formal complaint. At this point, the Office of the Ombudsman will not yet determine if there is probable cause to charge the accused.
>
> This period for case build-up cannot likewise be used by the Office of the Ombudsman as unbridled license to delay proceedings. If its investigation takes too long, it can result in the extinction of criminal liability through the prescription of the offense.
>
> **Considering that fact-finding investigations are not yet adversarial proceedings against the accused, the period of investigation will not be counted in the determination of whether the right to speedy disposition of cases was violated. Thus, this Court now holds that for the purpose of determining whether inordinate delay exists, a case is deemed to have commenced from the filing of the formal complaint and the subsequent conduct of the preliminary investigation.** In *People v. Sandiganbayan, Fifth Division,* the ruling that fact-finding investigations are included in the period for determination of inordinate delay is abandoned.

Thus, the 2 years spent for the fact-finding investigation prior to the filing of the formal complaint should be excluded from determining whether inordinate delay was incurred.

On August 28, 2009, a formal complaint was filed against the petitioner. On April 6, 2010, the Office of the Deputy Ombudsman for Luzon conducted the preliminary investigation.[34]

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[33] *Supra*, note 24.

[34] *Rollo,* p. 68.

On March 11, 2013, the GIPO II Irmina H. Bautista (GIPO II Bautista) found probable cause against the petitioner for 8 counts of Perjury. On December 22, 2014, Ombudsman Conchita Carpio-Morales approved the resolution.[35]

It took 5 years, 3 months and 24 days to conclude the preliminary investigation and for the Ombudsman to approve the resolution of GIPO II Bautista. The said period for determining probable cause for a case of perjury is beyond the reasonable period of ninety (90) days to determine probable cause.[36] The purpose of a preliminary investigation is only to determine whether there are reasonable grounds to believe that petitioner should be held for trial or not. It bears stressing that this case involves only the petitioner and his SALNs regarding an alleged undeclared real property, motor vehicle, and a business interest. Certainly, this does not involve a complicated and complex issue that would require the painstaking scrutiny and perusal of the Ombudsman. Thus, the period of 5 years, 3 months and 24 days to resolve a simple case of perjury is clearly an inordinate delay, blatantly intolerable, and grossly prejudicial to the constitutional right of speedy disposition of cases.

Further, the motion for reconsideration of the petitioner seeking the reversal of GIPO II Bautista's resolution was finally denied by the Office of the Ombudsman on June 4, 2015. However, it took the Ombudsman a period of 1 year, 7 months and 19 days just to file the Informations for perjury.

Clearly, the petitioner was prejudiced because of the inordinate delay of the Ombudsman in having the petitioner's case tried within a reasonable time. A total period of 6 years, 11 months and 13 days cannot be said, in any standard, as reasonable, for resolving a simple case of perjury that does not involve millions of pesos and numerous accused.

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[35] *Id.* at 69.

[36] *People v. Sandiganbayan, et al.,* 723 Phil. 444 (2013).

As held in the case of *Casiano A. Angchangco, Jr. v. The Hon. Ombudsman*,[37] a violation of petitioner's right to speedy disposition of cases warrants the dismissal of criminal cases against him.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **GRANTED.** The Resolutions dated August 10, 2017 and November 10, 2017 of the Sandiganbayan in SB-17-CRM-0059-0062 are hereby **REVERSED and SET ASIDE.** The criminal complaint filed against Eldred Palada Tumbocon, docketed as OMB-L-C-10-0161-B is hereby **DISMISSED.**

SO ORDERED.

Bersamin[*] (*Acting Chairperson*) and *Jardeleza, JJ.,* concur.

Del Castillo and *Gesmundo,*[**] *JJ.,* on official leave.

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[37] 335 Phil. 766 (1997).

[*] Designated Acting Chairperson per Special Order No. 2606 dated October 10, 2018.

[**] Designated Additional Member per Special Order No. 2607-A dated October 24, 2018.

FIRST DIVISION

[G.R. No. 236075. November 5, 2018]

MARILYN L. GO RAMOS-YEO, LAURENCE L. GO and MONTGOMERY L. GO, *petitioners, vs.* **SPOUSES RICHARD O. CHUA and POLLY S. CHUA, CENTURY TRADING INC., MULTI-REALTY DEVELOPMENT CORPORATION, ECI TRADING CORPORATION SUBSTITUTED BY SPOUSES RAFAEL G. HECHANOVA and EUMELIA C. HECHANOVA, and J. KING & SONS CO., INC., THE REGISTER OF DEEDS FOR TAGAYTAY CITY, THE CITY ENGINEER FOR TAGAYTAY CITY and LANDS MANAGEMENT BUREAU,** *respondents.*

[G.R. No. 236076. November 5, 2018]

MULTI-REALTY DEVELOPMENT CORPORATION, *petitioner, vs.* **MARILYN L. GO RAMOS-YEO, LAURENCE L. GO and MONTGOMERY L. GO, REGIONAL TRIAL COURT OF CAVITE, BRANCH 18, TAGAYTAY CITY, SPOUSES RICHARD O. CHUA and POLLY S. CHUA, CENTURY TRADING INC., ECI TRADING CORPORATION SUBSTITUTED BY SPOUSES RAFAEL G. HECHANOVA and EUMELIA C. HECHANOVA, and J. KING & SONS CO., INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SERVICE OF SUMMONS; PERSONAL SERVICE IS PREFERRED; REQUIREMENTS FOR A VALID SUBSTITUTED SERVICE.— It is settled in Our jurisprudence, that personal service is the preferred mode of service of summons, but if, for justifiable reasons, it cannot be served within reasonable time, then substituted service can be resorted to. x x x Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons

within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant. x x x Here, the service of summons was, without question, made via substituted service. A careful reading of the Sheriff's Return, however, would reveal the absence of specific details on the serious efforts to serve the summons on the persons of Gos, nor were there valid reasons cited why personal service proved to be ineffectual. It is also apparent on the face of the Sheriff's Return that personal service was attempted to the Gos only once on December 15, 1989, and no other date. Deputy Sheriff Liboro failed to at least personally serve the summons for three (3) tries, preferably on at least two different dates, and gave no explanation why personal service proved to be ineffectual or impossible. x x x Moreso, there are two (2) requirements for substituted service of summons to be available under the Rules: (1) recipient must be a person of suitable age and discretion; and (2) recipient must reside in the house or residence of defendant.

2. ID.; ID.; ID.; ID.; REQUIREMENTS FOR A VALID SUBSTITUTED SERVICE OF SUMMONS WERE NOT MET IN CASE AT BAR; THE TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE PERSONS OF PETITIONERS.— Here, both requirements were not met. Deputy Sheriff Liboro did not allege any justifiable reason for effecting the substituted service upon the person of Mr. Patricio Alampay (Alampay). The Sheriff's Return failed to substantiate that Alampay is a person of suitable age with full legal capacity (18 years old), and is considered to have enough discernment to comprehend the import of the summons, and fully realize the need to deliver the same to the Gos at the earliest possible time for the person to take appropriate action. Indeed, compliance with the rules regarding the service of summons is as much important as the issue of due process as of jurisdiction. It has been stated and restated that substituted service of summons must faithfully and strictly comply with the prescribed requirements and in the circumstances authorized by the rules. Further, it cannot be gainsaid that Gos voluntarily submitted to the Court's jurisdiction and were afforded the opportunity to be heard. In fact, they were declared in default and learned

the pendency of the action and the Amended Decision only on September 20, 1997, when they discovered that Spouses Chua had started building an adobe fence around the substantial portion of their properties. Immediately thenceforth, Gos filed an Amended Petition for Annulment of Judgment before the CA to question the decision and to protect their rights. Due to non-compliance with the prerequisites for valid substituted service, the trial court did not acquire jurisdiction over the persons of Gos and any proceedings held and judgment therefrom must be annulled.

3. ID.; COURTS; JURISDICTION; THE TRIAL COURT DID NOT ACQUIRE JURISDICTION OVER THE SUBJECT MATTER OF THE INSTANT CASE; A COMPLAINT IN THE GUISE OF AN *ACCION REINVINDICATORIA* CANNOT REOPEN AND REVIEW A FINAL DECREE OF REGISTRATION; IT IS AN INDIRECT AND COLLATERAL ATTACK TO THE VALIDITY OF PETITIONERS' TITLES.— The appellate court erroneously affirmed the trial court's supposed subject matter of jurisdiction over the case. The assailed Decision incorrectly characterized the Amended Complaint as an *Accion Reinvindicatoria* by reason of the allegations that relate to issues of ownership and possession, but a cursory reading of the same would reveal that it was a disguise to re-open and review a final decree of registration in the names of Gos, and Multi-Realty[.] x x x Hence, it can be inferred that the Amended Complaint is not only an *Accion Reinvindicatoria* but an indirect and collateral attack to the validity and accuracy of Gos and Multi-Realty's titles, which is not allowed within the purview of Sections 108 and 32 of P.D. 1529[.] x x x In addition, Spouses Chua themselves admitted in their Opposition dated January 26, 1990, that the said complaint was only for recovery of possession and not a land registration case, which they implicitly admitted that the trial court has no jurisdiction in correction of certificates of title.

4. CIVIL LAW; LAND REGISTRATION; CERTIFICATES OF TITLE BECAME INCONTROVERTIBLE AFTER THE LAPSE OF THE ONE-YEAR PERIOD; MATERIAL ALTERATIONS IN THE BOUNDARIES OF THE PROPERTIES INVOLVED IN THE INSTANT CASE CAN BE DONE ONLY THROUGH AN *IN REM* LAND

REGISTRATION PROCEEDING AFTER COMPLIANCE WITH THE PUBLICATION AND SERVICE OF NOTICE REQUIREMENTS.— The filing of the Amended Complaint and the Amended Decision promulgated by the trial court had the effect of reopening the decree of registration, and thereby impaired the rights of innocent purchasers in good faith and for value, herein Gos and Multi-Realty. To reopen the decree of registration was no longer permissible, considering that the one-year period to do so had long ago lapsed, and their certificates of title became incontrovertible. Thusly, it violates the *proviso* in Section 108 of P.D. No. 1529[.] x x x Moreover, the appellate court was not correct in its conclusion that it merely identified the respective property of each adjoining party, by using the correct tie-line, the defects are very material that it cannot be argued that they are just clerical in nature. The material alterations in the boundaries of the respective properties of Gos and Multi-Realty pertain to the essential core of their title and definitely affect their integrity. Furthermore, it is settled that a land registration case is a proceeding *in rem*, and jurisdiction *in rem* cannot be acquired unless there be constructive seizure of the land through publication and service of notice, which the Spouses Chua failed to comply. Ergo, without complying with the requirements under P.D. 1529, and the trial court not sitting as a land registration court, the trial court erroneously ordered the reopening, review, and amendment of the transfer certificate of titles of Gos and Multi-Realty.

5. ID.; LACHES; PETITIONERS ARE NOT BARRED BY LACHES; NO LACHES WILL ATTACH WHEN THE JUDGMENT IS VOID FOR WANT OF JURISDICTION.— A judgment rendered without jurisdiction over the subject matter is void. In the same way, no laches will even attach when the judgment is null and void for want of jurisdiction. As We have dissertate in the case of *Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz*, viz: x x x Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action. **Nor can it be acquired through, or waived by, any act or omission of the parties. Moreover, estoppel does not apply to confer jurisdiction to a tribunal that has none over the cause of action.**

APPEARANCES OF COUNSEL

Reciña Reciña Aragones and *Iniego Carl G. Varon* for Marilyn L. Ramos-Yeo, Laurence Go and Montgomery Go.

Villaraza & Angangco for Multi-Realty Development Corporation.

The Solicitor General for public respondents.

Obligar Law Firm for respondent spouses Chua.

G. Echalar Calalang for respondent Century Trading, Inc.

Marcos Ochoa Serapio & Tan Law Firm (Most Law) for ECI Trading Co., Inc.

D E C I S I O N

TIJAM, *J.*:

This is a consolidated Petitions for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by Marilyn L. Go Ramos-Yeo, Laurence L. Go and Montgomery L. Go (Gos) in G.R. No. 236075 and Multi-Realty Development Corporation (Multi-Realty) in G.R. No. 236076, which seeks to reverse and set aside the Court of Appeals' (CA) Decision[2] dated March 9, 2017 and Resolution[3] dated October 24, 2017 in CA-G.R. SP No. 50922, affirming the January 27, 1992 Amended Decision[4] of the Regional Trial Court (RTC), Fourth Judicial Region, Tagaytay City, Branch 18 in Civil Case No. TG-893.

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[1] *Rollo* (G.R. No. 236075), pp. 38-80; *rollo* (G.R. No. 236076), pp. 43-75.

[2] Penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Franchito N. Diamante and Carmelita Salandanan-Manahan; *id*. (G.R. No. 236075) at 9-26.

[3] *Id*. at 27-34.

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

The Facts

On April 21, 1986, Spouses Richard O. Chua and Polly S. Chua (Spouses Chua) filed a Complaint[5] for *Accion Reinvindicatoria* with Preliminary Injunction for the recovery of possession over a portion of their property covered by Transfer Certificate Title (TCT) No. T-2163 against respondent Century Investment Co. Inc., (Century) covered by TCT No. T-2903.[6]

Spouses Chua alleged in their complaint that after a relocation survey, they found out that their property overlapped with the property owned by Century. However, in view of Century's failure to attend a conference set by Engineer Nicolas Bernando, Spouses Chua constructed a hollow block fence around their property. Later on, Spouses Chua also discovered that Century took possession of a portion of their property and planted pineapple thereon.[7]

Hence, a Complaint was filed by Spouses Chua against Century to recover possession and ownership of their lot.

Thereafter, on May 16, 1987, the RTC issued an Order requiring the Chief Surveyor of the Lands Management Bureau to re-survey the respective lots of Spouses Chua and Century and to shed light on the case.[8]

Pursuant to the RTC directive to re-survey, Acting Chief Geodetic Engineer of Central Surveys Division, Engr. Privadi Dalire (Engr. Dalire), and Engr. Eleuterio Paz of the Regional Survey Division of the Bureau of Lands, Region IV, uncovered that there was an error in the cadastral survey because the cadastral map surprisingly emplaced Lot 3, PSU-146224 of Spouses Chua's property inside Lot 3, PSU-167189 of Century's property; that the said lots of Spouses Chua and Century were

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[5] Penned by Judge Julieto P. Tabiola; *id*. at 156-167.

[6] *Id*. at 11, 45, 170-171.

[7] *Id*. at 172-173.

[8] *Id*. at 46.

not overlapping but instead adjoining one another; that the tie-lines for the respective lots are in error, and the correction of the same would result to a chain reaction of all adjoining lots covered by PSU-146224 and PSU-167189.[9]

On the basis of the aforesaid reports, the RTC ordered the Amendment and/or Supplementation of the Complaint *Ad Cautela*, which impleaded all the owners of the adjoining lots affected, namely: Gos, Multi-Realty, ECI Trading Corporation (ECI Trading).[10]

On January 16, 1990, Multi-Realty, the registered owner of the adjoining parcels of land located at Tagaytay City, Cavite, designated as Lots 1 (Psu-146224) and 2 (Psu-110811), with a total area of One Thousand Nine Hundred Sixty-Nine (1,969) square meters covered by TCT Nos. 14786 and 14787, filed a Motion to Dismiss.[11] Multi-Realty invoked the dismissal of the Complaint *Ad Cautela*, on the ground among others, that the RTC had no jurisdiction over the subject matter of the action since the proper forum should be in a land registration court, and that the case was intended to amend the titles of the adjoining lot owners in the guise of an action for recovery of ownership and possession, which was not allowed under Presidential Decree (P.D.) 1529.[12]

On February 2, 1990, Spouses Chua filed an Opposition[13] (to Motion to Dismiss), wherein they admitted that the RTC had no jurisdiction to order the correction of the certificates of title, and even acknowledged that the same can only be ordered in a land registration case.

The RTC denied the Motion to Dismiss of Multi-Realty and required it to file responsive pleading. On the other hand, the

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[9] *Id*. at 203-204.

[10] *Id*. at 192-210.

[11] *Id*. at 229-245.

[12] *Id*. at 232-235.

[13] *Id*. at 247-254.

Gos were declared in default in a *Nunc Pro Tunc* Order by the RTC dated February 22, 1991.[14]

The RTC Ruling

Trial on the merits ensued and thereafter, on January 27, 1992, the RTC issued an Amended Decision,[15] to wit:

WHEREFORE, considering all the foregoing, judgment is hereby rendered identifying the properties purusant (sic) to the aforesaid Report and declaring the following as the identifying descriptions of the individual properties of all the parties.

Lot 1
Psu-167189
ECI Trading
TCT No. T-15797

A parcel of LAND (Lot 1 of the plan Psu-167189, L.R.C. Record No.), situated in Tagaytay City. Bounded on the N., along line 1-2 by Provincial Road (20.00 m. wide); on the E., along lines 2-3-4, by property of Josefa Jara Martinez; on the S., along line 4-5, by property of Leopoldo de Grano; and on the W., along line 5-1, by Right of way. Beginning at a point marked "1" on plan, being N. 82 deg. 53'W., 819.80 m. from B.L.L.M. 5, Mp. of Tagaytay.

> Thence N. 83 deg. 13'E., 82.00 m. to point 2; thence S. 2 deg. 03'E., 79.18 m. to point 3; thence S. 9 deg. 08'E., 7.00 m. to point 4; thence S. 75 deg. 20'W., 41.96 m. to point 5; thence N. 3 deg. 00'E., 93.01 m. to point of beginning;

containing an area of THREE THOUSAND TWO HUNDRED (3,200) Square Meters. All points referred to are indicated on the plan and are marked on the ground by P.S. Cyl. Conc. Mons.; bearings true; date of survey, January 31, 1958 and that of the approval, May 19, 1958.

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[14] *Id*. at 296.

[15] *Id*. at 156-167.

Lot 2
Psu-167189
(ECI Trading)
TCT No. T-16603

A PARCEL OF LAND (Lot 2 of the plan Psu-167189, L.R.C. Record No.), situated in Tagaytay City. Bounded on the W., along line 1-2 by Lot 3 of plan Psu-167189; on the N., along lines 2-3-4, by Provincial Road (20.00 m. wide); on the E., along line 4-5, by Right of Way; and on the S., along line 5-1, by property of Leopoldo de Grano. Beginning at a point marked "1" on plan, being S. 89 deg. 22'W., 859.91 m. from B.L.L.M. 5 Mp. of Tagaytay,

thence N. 4 deg. 00'E., 107.00 m. to point 2;
thence N. 85 deg. 41'E., 7.17 m. to point 3;
thence N. 83 deg. 13'E., 24.83 m. to point 4;
thence S. 3 deg. 00'W., 102.79 m. to point 5;
thence S. 77 deg. 25'W., 34.72 m. to the point of beginning;

containing an area of THREE THOUSAND FOUR HUNDRED (3,400) Square Meters. All points referred to are indicated on the plan and are marked on the ground by P.S. Cyl. Conc. Mons.; bearings true; date of survey, January 31, 1958 and that of the approval, May 19, 1958.

Lot 3
Psu-167189
(Century Investment,
TCT No. 2903)

A PARCEL OF LAND (Lot 3 of the plan Psu-167189, L.R.C. Record No.), situated in Tagaytay City. Bounded on the W., along line 1-2, by property of Genoveva Perlas and Jose Crisostomo (Lot 3, Psu-146224 Amd.); on the N., along line 2-3, by Provincial Road (20.00 m. wide); on the E., along line 3-4, by Lot 2 of plan Psu-167189; on the S., along line 4-5, by property of Leopoldo de Grano; and on the W., along line 5-1, by property of Leopoldo de Grano. Beginning at a point marked "1" on plan, being N. 89 deg. 56'W., 890.87m. From B.L.L.M. 5 Mp. of Tagaytay.

thence N. 4 deg. 00'E., 94.23 m. to point 2;
thence N. 85 deg. 41'E., 32.00 m. to point 3;
thence S. 4 deg. 00'W., 107.00 m. to point 4;
thence S. 77 deg. 11'W., 33.06 m. to point 5;
thence N. 4 deg. 00'E., 17.70 m. to point of beginning;

containing an area of THREE THOUSAND FOUR HUNDRED SIXTY SIX (3,466) Square Meters. All points referred to are indicated on the plan and are marked on the ground as follows; points 1 and 2 by old P.L.S. Conc. Mons.; and the rest by P.S. Cyl. Conc. Mons; bearings true; date of survey, January 31, 1958 and that of the approval, May 19, 1958.

Lot 1
Psu-146224 Amd.
(Multi Realty Dev. Corp.)
(MRDC) TCT No. T-14786

A PARCEL OF LAND (Lot 1 of the amendment plan Psu-146224 Amd., L.R.C. Record No.), situated in Tagaytay City. Bounded on the E., along line 1-2 by Lot 2 of the amendment plan; on the S., along line 2-3 by property of Leopoldo de Grano; on the W., along line 3-4, by property of Francisco Tolentino (LOT 2 Psu-110811); and on the N., along line 4-1, by National Road (20.00 m. wide). Beginning at a point marked "1" on plan, being N. 84 deg. 10'W., 953.36 m. from BL.L.M. 5, Tagaytay City,

thence S. 2 deg. 51'W., 80.51 m. to point 2;
thence N. 80 deg. 13'W., 38.24 m. to point 3;
thence N. 2 deg. 51'E., 77.56 m. to point 4;
thence S. 84 deg. 38'E., 38.00 m. to the point of beginning;

containing an area of THREE THOUSAND (3,000) Square Meters. All points referred to are indicated on the plan and are marked on the ground as follows; point 2 by P.L.S. Cyl. Conc. Mons.; and the rest by old P.L.S. Cyl. Conc. Mons.; bearings true; date of the amendment survey, March 4 and Oct. 11, 1955 and that of approval, Oct. 28, 1955.

Lot 2
Psu-146224 Amd.
(Marilyn Go, Ramos Yeo, Laurence L. Go and Montgomery L. Go)
TCT Nos. 17271 and 17272

A PARCEL OF LAND (Lot 2 of the amendment plan Psu-146224 Amd., L.R.C. Record No.), situated in Tagaytay City. Bounded on the N., along lines 1-2-3, by National Road (20.00 m. wide); on the E., along line 3-4, by lot 3 of the amendment plan; on the S., along line 4-5, by property of Leopoldo de Grano; on the W., along line

5-1, by lot 1 of the amendment plan. Beginning at a point marked "1" on plan, being N. 84 deg. 10W., 953.36 m. from B.L.L.M. 5, Tagaytay City.

thence S. 88 deg. 13'E., 8.39 m. to point 2;
thence S. 88 deg. 15'E., 17.79 m. to point 3;
thence S. 3 deg. 54'W., 89.09 m. to point 4;
thence N. 74 deg. 18'W., 35.41 m. to point 5;
thence N. 2 deg. 51'E., 80.51 m. to the point of beginning;

containing an area of THREE THOUSAND (3,000) Square Meters. All points referred to are indicated on the plan and are marked on the ground as follows; points 4 and 5 by P.L.S. Cyl. Conc. Mons.; and the rest by old P.L.S. Cyl. Conc. Mons.; bearings true; date of the amendment survey, March 4 and Oct. 11, 1955 and that of the approval, Oct. 28, 1955.

Lot 3
Psu-146224 Amd.
(Richard Chua)
TCT No. T-2163

A PARCEL OF LAND (Lot 3 of the amendment plan Psu-146224 Amd., L.R.C. Record No.), situated in Tagaytay City. Bounded on the N., along line 1-2, by National Road (20.00 m. wide); on the E., and on the S., along lines 2-3-4, by property of Leopoldo de Grano; and on the W., along line 4-1, by Lot 2 of the amendment plan. Beginning at a point marked "1" on plan, being N. 84 deg. 00'W., 917.72 m. from B.L.L.M. 5, Tagaytay City.

thence S. 88 deg. 10'E., 28.41 m. to point 2;
thence S. 4 deg. 00'W., 94.23 m. to point 3;
thence N. 77 deg. 48'W., 28.53 m. to point 4;
thence N. 3 deg. 54'E., 89.09 m. to the point of beginning;

containing an area of TWO THOUSAND FIVE HUNDRED NINETY-SIX (2,596) Square Meters. All points referred to are indicated on the plan and are marked on the ground as follows: point 4 by P.L.S. Cyl. Cone. Mon.; and the rest by old P.L.S. Cyl. Conc. Mons.; bearings true; date of the amendment survey, March 4 and Oct. 11, 1955 and that of the approval, Oct. 28, 1955.

Plaintiffs Richard O. Chua and Polly S. Chua and defendant Century Investment Co., Inc. are hereby ordered to pay not later than fifteen (15) days from receipt of this judgment, their outstanding balance

the amounts of ₱11,000.00 and ₱5,000.00, respectively, in favor of Engineers Paz and Daliri, pursuant to a Statement of Expenses which they submitted to the Court, in an equal sharing basis, pursuant to a prior agreement of the parties.

SO ORDERED.[16]

On May 14, 1992, the RTC issued a Writ of Execution[17] and subsequently ordered the Amended Decision final and executory.[18]

On September 20, 1997, Gos were surprised when they discovered that Spouses Chua had started building an adobe fence around a substantial portion of their properties, designated as Lots 2-A and 2-B, covering areas of One Thousand Thirty-One square meters (1,031 sq. m.), and One Thousand Nine Hundred Sixty-Nine square meters (1,969 sq. m.), covered by TCT Nos. T-17272[19] and T-17217,[20] respectively, without their knowledge and consent.

Consequently, Gos demanded Spouses Chua to desist from completing the adobe fences and encroaching upon their properties. However, Gos were informed for the first time by Spouses Chua of the RTC's Amended Decision, which supposedly ordered and caused the movement of the boundaries of their respective properties.[21]

Thus, to protect their rights, on February 25, 1999, Gos filed an Amended Petition for Annulment of Judgment (with prayer for Temporary Restraining Order and/or Writ of Preliminary Injunction under Rule 47 of the Rules of Court before the CA.[22]

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[16] *Id*. at 164-167.

[17] *Id*. at 297-301.

[18] Order dated May 15, 1992, *id*. at 302.

[19] *Id*. at 168.

[20] *Id*. at 169.

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

[22] *Id*. at 114-150.

Gos argued that the RTC did not acquire jurisdiction over their person on account of improper service of summons. Gos also argued that the RTC had no jurisdiction over the subject matter of the action, considering that the amendments of certificates of title can only be ordered in a proper *in rem* proceedings by a court sitting as a land registration court, and not in an ordinary civil action such as the Amendment and/or Supplementation of the Complaint Ad Cautela, resultantly, the RTC's Amended Decision was void.[23] Gos further argued that the RTC's order of amendment of the certificates of title did not fall within the purview of allowable amendments under P.D. 1529.[24]

The CA's Ruling

On March 9, 2017 the CA rendered a Decision, which denied Gos Amended Petition for Annulment of Judgment and affirmed the RTC ruling. The CA ruled that the RTC did not, in any manner, ordered the amendment of the transfer certificates of title but merely identified the respective property of each adjoining party by using the correct tie-line in plotting the lots on the ground to conform with the decree and the approved original survey plan.[25] The dispositive portion of the CA Decision, provides:

> **WHEREFORE**, the *Amended Petition for Annulment of Judgment* is hereby **DENIED**. The assailed *Amended Decision* dated 27 January 1992 of the Regional Trial Court, Fourth Judicial Region, Tagaytay City, Cavite, Branch 18, in Civil Case No. TG-893, is **AFFIRMED**.
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> Costs against petitioners.
>
> **SO ORDERED.**[26]

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[23] *Id*. at 130-140.

[24] *Id*. at 130, 140-147.

[25] *Id*. at 23.

[26] *Id*. at 25.

The motions for reconsideration filed by Gos[27] and Multi-Realty[28] were also denied by the CA in its October 24, 2017 Resolution.[29]

Hence, the instant petitions.

Gos raised the following assignment of errors in their Petition:

THE COURT *A QUO* COMMITTED AN EGREGIOUS AND HARMFUL ERROR IN ISSUING THE ASSAILED DECISION AND ASSAILED RESOLUTION, WHICH DENIED THE AMENDED PETITION, AND FAILED TO ANNUL AND SET ASIDE THE AMENDED DECISION ISSUED BY THE RTC PURSUANT TO SECTION 2, RULE 47 OF THE RULES OF COURT, CONSIDERING THAT:

A. THE RTC NEVER ACQUIRED JURISDICTION OVER THE PERSONS OF THE PETITIONERS DUE TO IMPROPER SUBSTITUTED SERVICE OF SUMMONS;

B. THE RTC HAD NO JURISDICTION OVER THE SUBJECT MATTER OF THE RTC CASE, SINCE THE ALTERNATIVE CAUSES OF ACTION PLEADED IN THE AMENDED COMPLAINT ARE EXCLUSIVELY WITHIN THE JURISDICTION OF LAND REGISTRATION COURTS TO RESOLVE; AND

C. CONTRARY TO THE FINDING OF THE COURT *A QUO*, THE PETITIONERS ARE NOT BARRED BY LACHES FROM FILING THE AMENDED PETITION, PRECISELY BECAUSE THE AMENDED DECISION IS VOID FOR LACK OF JURISDICTION OF THE RTC.[30]

For its part, Multi-Realty raised the following assignment of errors in its petition:

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[27] *Id*. at 306-322.

[28] *Id*. at 406-424.

[29] *Id*. at 27-34.

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

I

THE COURT *A QUO* COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT FAILED TO FIND THAT THE AMENDED PETITION FOR ANNULMENT OF JUDGMENT IS AN APPROPRIATE REMEDY TO RECTIFY THE AMENDED DECISION OF THE TRIAL COURT, WHICH WAS PROMULGATED WITHOUT JURISDICTION OVER THE SUBJECT MATTER OF THE CASE.

A. THE TRIAL COURT PROMULGATED THE AMENDED DECISION WITHOUT JURISDICTION CONSIDERING THAT AMENDMENTS OF CERTIFICATES OF TITLE CAN ONLY BE ORDERED IN PROPER *IN REM* PROCEEDINGS BY A COURT SITTING AS A LAND REGISTRATION COURT, AND NOT IN AN ORDINARY CIVIL ACTION SUCH AS THE AMENDED AND/OR SUPPLEMENTAL COMPLAINT *AD CAUTELA* IN CIVIL CASE NO. TG-893.

B. THE TRIAL COURT ALSO PROMULGATED THE AMENDED DECISION WITHOUT JURISDICTION SINCE THE TRIAL COURT FAILED TO COMPLY WITH SECTION 23 OF PRESIDENTIAL DECREE NO. 1592, (SIC) OR THE PROPERTY REGISTRATION DECREE (PD 1529) ON PUBLICATION AND NOTICE TO INTERESTED PARTIES.

C. EVEN ASSUMING THAT CIVIL CASE NO. TG-893 WAS AN ACTION *IN REM*, THE TRIAL COURT STILL HAD NO JURISDICTION TO ORDER THE AMENDMENT OF THE CERTIFICATES OF TITLE SINCE THE AMENDMENT OF TORRENS CERTIFICATES OF TITLES PRAYED FOR THEREIN IS TANTAMOUNT TO THE RE-OPENING OR REVIEW OF THE DECREE OF REGISTRATION BEYOND THE REGLEMENTARY ONE (1) YEAR PROVIDED UNDER SECTION 32 OF PD 1529.

D. THE TRIAL COURT STILL HAD NO JURISDICTION TO ORDER THE AMENDMENT OF THE CERTIFICATES OF TITLE SINCE SUCH AMENDMENT DID NOT FALL WITHIN THE PURVIEW OF ALLOWABLE AMENDMENTS UNDER SECTION 108 OF PD 1592 (SIC).

II

THE COURT *A QUO* COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT RULED THAT PETITIONER

MULTI-REALTY WAS BARRED BY LACHES, SINCE THE AMENDED DECISION OF THE TRIAL COURT IS VOID FOR LACK OF JURISDICTION; CONSEQUENTLY, PETITIONER MULTI-REALTY CANNOT BE BARRED BY LACHES.

III

THE COURT *A QUO* COMMITTED GRAVE AND REVERSIBLE ERROR WHEN IT COMPLETELY FAILED TO CONSIDER THE ARGUMENTS AND EVIDENCE OF PETITIONER MULTI-REALTY, AS WELL AS THE RESULTING PREJUDICE THAT THE AMENDMENT OF ITS CERTIFICATE OF TITLE WILL PRODUCE, AS IS CLEARLY EVIDENT FROM THE ASSAILED DECISION AND THE ASSAILED RESOLUTION.[31]

Ultimately, the issues for Our resolution are: 1) Whether there was a valid substituted service of summons on Gos for the trial court to acquire jurisdiction; 2) Whether the amendments of certificates of title can only be ordered in proper *in rem* proceedings by a court sitting as a land registration court; 3) Whether the order of amendment of the certificates of title is beyond the one (1) year prescriptive period under PD No. 1529; 4) Whether the amendment of certificates of title is allowed under PD. No. 1529; and, 5) Whether the Gos and Multi-Realty are barred by laches to question the Amended Decision of the trial court.

Our Ruling

The petitions are meritorious.

The RTC did not acquire jurisdiction over the person of Gos because of invalid service of summons.

There is no dispute that service of summons upon a defendant is imperative in order that a court may acquire jurisdiction over

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[31] *Rollo*, (G.R. No. 236076), pp. 56-57.

his person. As held in the case of *Ma. Imelda M. Manotoc vs. Court of Appeals, et al.*,[32]

> The court's jurisdiction over a defendant is founded on a valid service of summons. Without a valid service, the court cannot acquire jurisdiction over the defendant, unless the defendant voluntarily submits to it. The defendant must be properly apprised of a pending action against him and assured of the opportunity to present his defenses to the suit. Proper service of summons is used to protect one's right to due process.[33]

It is settled in Our jurisprudence, that personal service is the preferred mode of service of summons, but if, for justifiable reasons, it cannot be served within reasonable time, then substituted service can be resorted to.

In the case of *Carson Realty & Management Corp. vs. Red Robin Realty Security Agency and Monina Santos*,[34] the Court explained:

> In actions *in personam*, such as the present case, the court acquires jurisdiction over the person of the defendant through personal or substituted service of summons. However, because substituted service is in derogation of the usual method of service and personal service of summons is preferred over substituted service, parties do not have unbridled right to resort to substituted service of summons. Before substituted service of summons is resorted to, the parties must: (a) indicate the impossibility of personal service of summons within a reasonable time; (b) specify the efforts exerted to locate the defendant; and (c) state that the summons was served upon a person of sufficient age and discretion who is residing in the address, or who is in charge of the office or regular place of business of the defendant.

Let us examine the full text of the Sheriff's Return dated December 15, 1989 executed by Deputy Sheriff Bienvenido J. Liboro (Deputy Sheriff Liboro), which reads:

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[32] 530 Phil. 454 (2006).

[33] *Id*. at 462.

[34] G.R. No. 225035, February 8, 2017.

THIS CERTIFIES THAT on December 15, 1989, summons and copies of the complaint together with annexes in the above-entitled case were served upon subject defendants at No. 154, 10th Street, New Manila, Quezon City, thru Mr. Patricio Alampay, a person of suitable age and discretion residing at the above given address, who acknowledged receipt thereof as evidenced by his signature affixed on the original copy of the summons herewith returned to the Honorable Court of origin SERVED by way of substituted service.[35]

Here, the service of summons was, without question, made via substituted service. A careful reading of the Sheriff's Return, however, would reveal the absence of specific details on the serious efforts to serve the summons on the persons of Gos, nor were there valid reasons cited why personal service proved to be ineffectual.

It is also apparent on the face of the Sheriff's Return that personal service was attempted to the Gos only once on December 15, 1989, and no other date. Deputy Sheriff Liboro failed to at least personally serve the summons for three (3) tries, preferably on at least two different dates, and gave no explanation why personal service proved to be ineffectual or impossible.

As explained in the case of *Manotoc*:

X x x. For substituted service of summons to be accepted, there must be several attempts by the sheriff to personally serve the summons within a reasonable period [of one month] which eventually resulted in failure to prove impossibility of prompt service. Several attempts means at least three (3) tries, preferably on at least two different dates. In addition, the sheriff must cite why such efforts were unsuccessful. It is only then that impossibility of service can be confirmed or accepted.[36]

Moreso, there are two (2) requirements for substituted service of summons to be available under the Rules[37]: (1) recipient

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[35] *Rollo*, (G.R. No. 236075) p. 294.

[36] *Manotoc v. Court of Appeals, et al.*, *supra* note 32 at 470.

[37] Section 7, Rule 14 of the Rules of Court provides:

must be a person of suitable age and discretion; and (2) recipient must reside in the house or residence of defendant. The case of *Manotoc*,[38] explains a person of suitable age and discretion:

> If the substituted service will be effected at defendants house or residence, it should be left with a person of suitable age and discretion then residing therein. A person of suitable age and discretion is one who has attained the age of full legal capacity (18 years old) and is considered to have enough discernment to understand the importance of a summons. Discretion is defined as the ability to make decisions which represent a responsible choice and for which an understanding of what is lawful, right or wise may be presupposed. Thus, to be of sufficient discretion, such person must know how to read and understand English to comprehend the import of the summons, and fully realize the need to deliver the summons and complaint to the defendant at the earliest possible time for the person to take appropriate action. Thus, the person must have the relation of confidence to the defendant, ensuring that the latter would receive or at least be notified of the receipt of the summons. The sheriff must therefore determine if the person found in the alleged dwelling or residence of defendant is of legal age, what the recipients relationship with the defendant is, and whether said person comprehends the significance of the receipt of the summons and his duty to immediately deliver it to the defendant or at least notify the defendant of said receipt of summons. These matters must be clearly and specifically described in the Return of Summons.

Here, both requirements were not met. Deputy Sheriff Liboro did not allege any justifiable reason for effecting the substituted service upon the person of Mr. Patricio Alampay (Alampay). The Sheriff's Return failed to substantiate that Alampay is a person of suitable age with full legal capacity (18 years old), and is considered to have enough discernment to comprehend

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SEC. 7. *Substituted service.* If the defendant cannot be served within a reasonable time as provided in the preceding section [personal service on defendant], service may be effected (a) by leaving copies of the summons at the defendants residence with some person of suitable age and discretion then residing therein, or (b) by leaving the copies at defendants office or regular place of business with some competent person in charge thereof.

[38] *Supra* note 32 at 470-471.

the import of the summons, and fully realize the need to deliver the same to the Gos at the earliest possible time for the person to take appropriate action.

Indeed, compliance with the rules regarding the service of summons is as much important as the issue of due process as of jurisdiction.[39] It has been stated and restated that substituted service of summons must faithfully and strictly comply with the prescribed requirements and in the circumstances authorized by the rules.[40]

Further, it cannot be gainsaid that Gos voluntarily submitted to the Court's jurisdiction and were afforded the opportunity to be heard. In fact, they were declared in default and learned the pendency of the action and the Amended Decision only on September 20, 1997, when they discovered that Spouses Chua had started building an adobe fence around the substantial portion of their properties. Immediately thenceforth, Gos filed an Amended Petition for Annulment of Judgment before the CA to question the decision and to protect their rights.

Due to non-compliance with the prerequisites for valid substituted service, the trial court did not acquire jurisdiction over the persons of Gos and any proceedings held and judgment therefrom must be annulled.

The trial court had no jurisdiction over the subject matter, which is to reopen, review and amend the transfer certificate of titles of Gos and Multi-Realty. The amendment of certificates of title is within the jurisdiction of a court sitting as a land registration court.

The appellate court erroneously affirmed the trial court's supposed subject matter of jurisdiction over the case. The assailed

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[39] *Supra* note 32 at 468.

[40] *Supra* note 32 at 475.

Decision incorrectly characterized the Amended Complaint as an *Accion Reinvindicatoria* by reason of the allegations that relate to issues of ownership and possession, but a cursory reading of the same would reveal that it was a disguise to re-open and review a final decree of registration in the names of Gos, and Multi-Realty, the relative portion of the Spouses Chua's Amended Complaint's prayer, reads:

x x x x x x x x x

1. For the **resurvey** of Multi-Realty's Lot, Go's Lot, Chua's Lot, Century's Lot and ECI's Lot for purposes of shifting northwesternly and locating correctly the said lots on the ground;
2. **Amending** the tie-lines for the Multi-Realty's Lot, Go's Lot, Chua's Lot, Century's Lot and ECI's Lot to reflect the correct tie-line as determined by this Honorable Court;
3. **Correcting the tie-lines as appearing in the respective certificates of title** for the Multi-Realty's Lot, Go's Lot, Chua's Lot, Century's Lot and ECI's Lot to reflect the correct tie-line as determined by this Honorable Court;
4. **Directing the Registry of Deeds for Tagaytay City to issue an amended transfer certificates of title** for the Multi-Realty's Lot, Go's Lot, Chua's Lot, Century's Lot and ECI's Lot incorporating therein the correct tie-line as determined by this Honorable Court. (Emphasis Ours).[41]

Hence, it can be inferred that the Amended Complaint is not only an *Accion Reinvindicatoria* but an indirect and collateral attack to the validity and accuracy of Gos and Multi-Realty's titles, which is not allowed within the purview of Sections 108 and 32 of P.D. 1529, quoted as follows:

Section 108 of P.D. No. 1529, reads:

Section 108. *Amendment and alteration of certificates*. **No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same by the Register of Deeds, except by order of the proper Court of First Instance.** A registered

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[41] *Rollo*, (G.R. No. 236075) pp. 208-209.

owner or other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate: or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; *Provided, however*, **That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs, and assigns, without his or their written consent**. Where the owners duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.

All petitions or motions filed under this Section as well as any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered. (Emphasis Ours)

And Section 32, provides:

Section 32. *Review of decree of registration; Innocent purchaser for value*. The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation

of title obtained by actual fraud, **to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration**, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud. (Emphasis Ours)

In addition, Spouses Chua themselves admitted in their Opposition dated January 26 1990, that the said complaint was only for recovery of possession and not a land registration case, which they implicitly admitted that the trial court has no jurisdiction in correction of certificates of title. The pertinent portions thereof, provides:

The instant case was not instituted by [Spouses Chua] principally to seek the correction of the certificates of title, but to recover land unjustly detained from them. x x x.

The alternative prayers set forth by the [Spouses Chua], including the necessity for a thorough resurvey of the properties concerned and the correction of the tie lines, if found necessary, have not and will not change the nature of the present suit, **which is primarily for recovery of possession, not for correction of certificate of title. Thus, if the preliminary findings of the surveyors would subsequently be confirmed, a conversion of the present proceedings into a land registration cases, or perhaps, the filing of an entirely new action, will then have to be necessary, this time for the correction of the certificate of title**. (Emphasis Ours)[42]

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[42] *Id*. at 249-250.

Gos and Multi-Realty certificates of title became incontrovertible after the lapse of the one-year period.

The filing of the Amended Complaint and the Amended Decision promulgated by the trial court had the effect of reopening the decree of registration, and thereby impaired the rights of innocent purchasers in good faith and for value, herein Gos and Multi-Realty. To reopen the decree of registration was no longer permissible, considering that the one-year period to do so had long ago lapsed, and their certificates of title became incontrovertible. Thusly, it violates the *proviso* in Section 108 of P.D. No. 1529, to wit:

> x x x *Provided, however*, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section.[43]

Moreover, the appellate court was not correct in its conclusion that it merely identified the respective property of each adjoining party, by using the correct tie-line, the defects are very material that it cannot be argued that they are just clerical in nature.[44] The material alterations in the boundaries of the respective properties of Gos and Multi-Realty pertain to the essential core of their title and definitely affect their integrity.

Furthermore, it is settled that a land registration case is a proceeding *in rem*, and jurisdiction *in rem* cannot be acquired unless there be constructive seizure of the land through publication and service of notice,[45] which the Spouses Chua failed to comply.

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[43] *Paz v. Rep. of the Phils., et al.*, 677 Phil. 78, 85-86, (2011).

[44] *Chua, et al. v. B.E. San Diego, Inc.*, 708 Phil. 386, 421 (2013).

[45] *Cabañez v. Solano*, 786 Phil. 381, 394 (2016).

Ergo, without complying with the requirements under P.D. 1529, and the trial court not sitting as a land registration court, the trial court erroneously ordered the reopening, review, and amendment of the transfer certificate of titles of Gos and Multi-Realty. The appellate court likewise erred in affirming the same. In all cases where the authority of the courts to proceed is conferred by a statute, and when the manner of obtaining jurisdiction is mandatory, it must be strictly complied with, or the proceedings will be utterly void.[46]

Gos and Multi-Realty are not barred by laches.

A judgment rendered without jurisdiction over the subject matter is void. In the same way, no laches will even attach when the judgment is null and void for want of jurisdiction.[47]

As We have dissertate in the case of *Heirs of Julian Dela Cruz and Leonora Talaro v. Heirs of Alberto Cruz*,[48] viz:

> It is axiomatic that the jurisdiction of a tribunal, including a quasi-judicial officer or government agency, over the nature and subject matter of a petition or complaint is determined by the material allegations therein and the character of the relief prayed for, irrespective of whether the petitioner or complainant is entitled to any or all such reliefs. Jurisdiction over the nature and subject matter of an action is conferred by the Constitution and the law, and not by the consent or waiver of the parties where the court otherwise would have no jurisdiction over the nature or subject matter of the action. **Nor can it be acquired through, or waived by, any act or omission of the parties. Moreover, estoppel does not apply to confer jurisdiction to a tribunal that has none over the cause of action.** x x x
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> x x x x x x x x x

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[46] *Supra* note 45 at 394-395.

[47] *Figueroa v. People*, 580 Phil. 548, 77-78 (2008).

[48] 512 Phil. 389 (2005).

Indeed, the jurisdiction of the court or tribunal is not affected by the defenses or theories set up by the defendant or respondent in his answer or motion to dismiss. Jurisdiction should be determined by considering not only the status or the relationship of the parties but also the nature of the issues or questions that is the subject of the controversy. x x x **The proceedings before a court or tribunal without jurisdiction, including its decision, are null and void, hence, susceptible to direct and collateral attacks.**[49] (Emphasis Ours)

Penultimately, this is not to say, however, that a *certiorari* before the Court is a remedy against its own final and executory judgment. As ruled in certain cases, the Court is invested with the power to suspend the application of the rules of procedure as a necessary complement to promote substantial justice. The case of *Philippine Woman's Christian Temperance Union, Inc. v. Teodoro R. Yangco 2nd and 3rdGeneration Heirs Foundation, Inc.*,[50] citing *Jimmy L. Barnes v. Hon. Ma. Luisa C. Quijano Padilla*,[51] discussed the rationale for this, to wit:

Let it be emphasized that the rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. Even the Rules of Court reflect this principle. The power to suspend or even disregard rules can be so pervasive and compelling as to alter even that which this Court itself has already declared to be final, x x x.

The emerging trend in the rulings of this Court is to afford every party litigant the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Time and again, this Court has consistently held that rules must not be applied rigidly so as not to override substantial justice.[52] (Emphasis supplied)

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[49] *Id.* at 400-401.

[50] 731 Phil. 269 (2014).

[51] 500 Phil. 303, 311 (2005).

[52] *Id*. at 292.

In this case, the grave error in jurisdiction permeating the proceedings taken in Civil Case No. TG-893, deprived Gos and Multi-Realty substantial portion of its properties without the very foundation of due process. Certainly, the Court cannot let this mistake pass without *de rigueur* rectification by suspending the rules of procedure, and permitting the present recourse to access auxiliary review.[53]

All told, the RTC, had no jurisdiction over the actual subject matter contained in the Amended Complaint for the amendment of titles of Gos and Multi-Realty. Spouses Chua cannot use the civil action of *Accion Reinvindicatoria* to reopen, review and amend titles which become incontrovertible. Since the RTC had no jurisdiction over the action in disguised of *Accion Reinvindicatoria*, the judgment in Civil Case No. TG-893 is null and void. Being void, it cannot be the source of any right or the creator of any obligation. It can never become final and any writ of execution based on it is likewise void. Resultantly, the appellate proceedings relative to Civil Case No. TG-893, and all issuances made in connection with such review in CA-G.R. SP No. 50922 are likewise of no force and effect. A void judgment cannot perpetuate even if affirmed on appeal by the highest court of the land. All acts pursuant to it and all claims emanating from it have no legal effect.[54]

WHEREFORE, premises considered, the petitions are **GRANTED**. The Court of Appeals' Decision dated March 9, 2017 and Resolution dated October 24, 2017 in CA-G.R. SP No. 50922, are **REVERSED and SET ASIDE**.

Accordingly, all proceedings taken, *i.e.*, decisions, resolutions, orders, and other issuances made in Civil Case No. TG-893 and CA-G.R. SP No. 50922 are hereby **ANNULLED and SET ASIDE**.

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[53] *Philippine Woman's Christian Temperance Union, Inc. v. Teodoro R. Yangco 2nd and 3rd Generation Heirs Foundation, Inc.*, *supra* note 50.

[54] *Philippine Woman's Christian Temperance Union, Inc. v. Teodoro Yangco 2nd and 3rd Generation Heirs Foundation, Inc.*, *supra* note 50 at 290-291; citing *Ga, Jr., et al. v. Sps. Tubungan, et al.*, 616 Phil. 709, 714-715 (2009).

The Register of Deeds of Tagaytay City is hereby **ORDERED** to CANCEL any amendments made in the Transfer Certificate of Titles of Marilyn L. Go Ramos-Yeo, Laurence L. Go and Montgomery L. Go and Multi-Realty Development Corporation, as a consequence of the execution of the disposition in Civil Case No. TG-893, and to **REINSTATE** the boundaries of their respective titles in Transfer Certificate of Title Nos. T-17272 and T-17217 in the names of Marilyn L. Go Ramos-Yeo, Laurence L. Go, and Montgomery L. Go and Transfer Certificate of Title Nos. 14786 and 14787 in the name of Multi-Realty Development Corporation.

SO ORDERED.

Bersamin[*] (*Acting Chairperson*) and *Jardeleza, JJ.*, concur.

Del Castillo and *Gesmundo*,[**] *JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 236304. November 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ARMAN SANTOS GUTIERREZ *a.k.a.* "ARMAN,"**[*] *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE/ILLEGAL POSSESSION OF

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[*] Designated Acting Chairperson per Special Order No. 2606 dated October 10, 2018.

[**] Designated Additional Member per Special Order No. 2607 dated October 10, 2018.

[*] "Arman Santos *y* Gutierrez" in some parts of the records.

DANGEROUS DRUGS; IDENTITY OF THE DANGEROUS DRUGS SEIZED FROM THE ACCUSED, BEING THE *CORPUS DELICTI*, MUST 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. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to 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.

2. **ID.; ID.; RA 9165 AS AMENDED BY RA 10640; CHAIN OF CUSTODY RULE; THE LAW REQUIRES STRICT COMPLIANCE WITH CERTAIN PROCEDURE IN THE MARKING, INVENTORY, AND PHOTOGRAPHY OF THE SEIZED DRUGS AS WELL AS THE PRESENCE OF SPECIFIED WITNESSES.—** As part of the chain of custody procedure, the law requires, *inter alia,* that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the Department of Justice (DOJ), and any elected public official; or *(b)* if **after** the amendment of RA 9165 by RA 10640, **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." 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."

3. **ID.; ID.; ID.; ID.; FAILURE TO STRICTLY COMPLY WITH THE PROCEDURE WOULD NOT RENDER THE SEIZURE AND CUSTODY OF THE ITEMS INVALID AS LONG AS THE REASONS FOR NON-COMPLIANCE WAS DULY EXPLAINED AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** [T]he Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. **ID.; ID.; ID.; ID.; WHEN IT COMES TO THE PRESENCE OF THE REQUIRED WITNESSES, NON-COMPLIANCE MAY BE EXCUSED ONLY UPON SUFFICIENT SHOWING THAT THE OFFICERS EXERTED EFFORTS TO SECURE THEIR PRESENCE BUT EVENTUALLY FAILED TO APPEAR; MERE STATEMENTS OF UNAVAILABILITY WITHOUT SERIOUS ATTEMPT TO CONTACT THE REQUIRED WITNESSES ARE UNACCEPTABLE.—** Anent the witness requirement in the chain of custody procedure, non-compliance may be permitted if the prosecution is able to prove 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.

5. ID.; ID.; ID.; ID.; THE COURT HOLDS THAT THE CHAIN OF CUSTODY RULE WAS SUBSTANTIALLY OBSERVED IN THIS CASE; CONVICTION OF THE ACCUSED FOR ILLEGAL SALE OF DRUGS, UPHELD.— In this case, the Court finds no reason to disturb the findings of the courts *a quo* that Gutierrez committed the crime of Illegal Sale of Dangerous Drugs. Moreover, the Court holds that the chain of custody rule was duly observed following the prescribed procedure under RA 9165, as amended by RA 10640, which applies to this case considering that the seizure, marking, inventory, and photography were all conducted on May 30, 2015, after the effectivity of the latter law. Records show that after the buy-bust transaction, the plastic sachet containing *shabu* seized from Gutierrez was immediately **marked, photographed, and inventoried in the latter's presence,** the backup officers of the PNP, **the Provincial Prosecutor, and the barangay officials**. x x x [B]ased on [the] circumstances, the Court finds that the police officers' efforts to comply with the required procedure, whether during or prior to the amendments of RA 10640 as discussed-above, were genuine which, hence, justifies the media representative's absence. All told, the Court finds no reason to overturn Gutierrez's conviction for the crime of Illegal Sale of Dangerous Drugs as defined and penalized under Section 5, Article II of RA 9165, as amended by RA 10640.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated August 23, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08178, which affirmed the Decision[3] dated February 16, 2016 of the Regional Trial Court of Lingayen, Pangasinan, Branch 69 (RTC) in Crim. Case No. L-10499, finding accused-appellant Arman Santos Gutierrez a.k.a. "Arman" (Gutierrez) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5,[4] Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case arose from an Information[6] dated June 1, 2015 filed before the RTC accusing Gutierrez of violating Section 5,

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[1] See Notice of Appeal dated September 6, 2017; *rollo,* pp. 14-15.

[2] *Id*. at 2-13. Penned by Associate Justice Pedro B. Corales with Associate Justices Japar B. Dimaampao and Amy C. Lazaro-Javier, concurring.

[3] CA *rollo,* pp. 46-53. Penned by Presiding Judge Loreto S. Alog, Jr.

[4] The pertinent portion of Section 5, Article II of RA 9165 reads:

> Section 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions x x x.

[5] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT NO. 6425, OTHERWISE KNOWN AS THE DANGEROUS DRUGS ACT

Article II of RA 9165. The prosecution alleged that in the morning of May 30, 2015, the elements of the Philippine National Police (PNP) Binmaley, Pangasinan, in coordination with the Philippine Drug Enforcement Agency (PDEA) regional office, planned a buy-bust operation against Gutierrez who was in the police's drug watch list. After the buy-bust team was organized, the operatives went to the agreed place in Canaoalan, Binmaley, Pangasinan, coordinated with the barangay officials, and briefed them about the operation. They were likewise joined by Prosecutor Jeffrey Catungal of the Office of the Provincial Prosecutor in Lingayen, Pangasinan. Further, they invited and informed Michelle Soriano (Soriano) of ABS-CBN Dagupan, Pangasinan, as the required media person to witness the inventory and photography of the item/s to be seized pursuant to law.[7]

During the buy-bust operation, Gutierrez handed over to PO1 Antonio Tadeo, Jr. (PO1 Tadeo), the designated poseur-buyer, one (1) plastic sachet with white crystalline substance and one (1) piece of aluminum foil, in exchange for the marked ₱500.00 bill, resulting in his apprehension. The seized items were then marked by PO1 Tadeo and, inventoried and photographed in the presence of the barangay officials and the Provincial Prosecutor.[8] Afterwards, Gutierrez together with the seized items were brought to the Binmaley Police Station where the incident was recorded in the blotter.[9] Upon securing the necessary letter-requests,[10] PO1 Tadeo delivered the plastic sachet to Police

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OF 1972, AS AMENDED, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES," approved on June 7, 2002.

[6] Records, pp. 1-2.

[7] It appears, however, that Soriano came in late because she apparently came from a "far town." See *rollo,* pp. 3-4. See also CA *rollo,* pp. 46-47; and TSN, September 10, 2015, p. 6.

[8] The plastic sachet was marked "ATT2 5 30 15" while the aluminum foil was marked "ATT3 5 30 15." (CA *rollo,* p. 47. See also records, pp. 19-22; and TSN, September 10, 2015, pp. 6 and 11-12.)

[9] See CA *rollo,* p. 47.

[10] See Request for Drug Test Examination and Request for Laboratory Examination; records, pp. 16 and 17, respectively.

Chief Inspector Myrna C. Malojo-Todeño (PCI Todeño), Forensic Chemical Officer, at the Pangasinan Provincial Crime Laboratory, who later confirmed after qualitative examination[11] that the substance inside the seized items were positive for methamphetamine hydrochloride, a dangerous drug. Thereafter, PCI Todeño sealed the sachet with a masking tape, placed it inside an improvised paper envelope, sealed and signed the same and turned it over for safekeeping to the evidence custodian.[12]

In defense, Gutierrez denied the charges against him, contending instead that at around ten (10) o'clock in the morning of May 30, 2015, he was in Barangay Canaoalan, Binmaley, Pangasinan to buy mangoes. Upon reaching the road leading to Barangay Linoc, he was flagged down by the police officers and thereafter, brought to a house where he was forced to admit to selling drugs. When he refused, PO1 Tadeo boxed him in the stomach and hit his back which caused him to lose consciousness. When he woke up, he was already handcuffed and drugs were "planted" inside his pocket.[13]

In a Decision[14] dated February 16, 2016, the RTC found Gutierrez guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.[15] The RTC held that the prosecution had successfully established all the elements of the crime of Illegal Sale of Dangerous Drugs and ruled that the identity, integrity, and probative value of the seized drugs were preserved and kept intact by the evidence custodian.[16] On the other hand, it

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[11] See Initial Laboratory Report and Chemistry Report No. D-438-2015L; records, pp. 18 and 44, respectively.

[12] See CA *rollo,* pp. 47-48. See also TSN, July 28, 2015, pp. 3-7.

[13] See *rollo,* pp. 5-6. See also CA *rollo,* pp. 48-49.

[14] CA *rollo,* pp. 46-53.

[15] *Id.* at 53.

[16] See *id.* at 49-52.

brushed aside Gutierrez's allegation of frame-up for being unsubstantiated and upheld the presumption of regularity in the performance of official duties.[17] Aggrieved, Gutierrez appealed[18] to the CA.

In a Decision[19] dated August 23, 2017, the CA affirmed the RTC ruling.[20] Among others, it declared that the integrity of the seized items, from the time of its seizure up to its presentation in evidence before the RTC, was preserved.[21]

Hence, the instant appeal seeking that Gutierrez's conviction be overturned.

The Court's Ruling

The appeal is without merit.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[22] it is essential that the identity of the dangerous drug be established with moral certainty, considering

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[17] See *id*. at 52-53.

[18] See Notice of Appeal dated February 16, 2016; *id*. at 11.

[19] *Rollo,* pp. 2-13.

[20] *Id*. at 12.

[21] See *id*. at 8-12.

[22] 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]. See also *People v. Almodiel,* 694 Phil. 449 [2012]; and *People v. Laylo,* 669 Phil. 111 [2011].)

that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[23] 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.[24]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to 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.[25] 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,[26]

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[23] See also *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).

[24] See *People v. Gamboa,* G.R. No. 233702, June 20, 2018, citing *People v. Umipang,* 686 Phil. 1024, 1039-1040 (2012).

[25] See *People v. Año,* G.R. No. 230070, March 14, 2018; *People v. Crispo, supra* note 23; *People v. Sanchez, supra* note 22; *People v. Magsano, supra* note 22; *People v. Manansala, supra* note 22; *People v. Miranda, supra* note 22; and *People v. Mamangon, supra* note 22. See also *People v. Viterbo, supra* note 23.

[26] 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. See Office of the Court Administrator Circular No. 77-2015 dated April 23, 2015, which pertinently provides:

> TO: ALL REGIONAL TRIAL COURT JUDGES
>
> SUBJECT: APPLICATION OF REPUBLIC ACT NO. 10640
>
> The attention of this Court has been called to the significance of the so-called 'Sotto Amendment to the Anti-Drug Law', or otherwise known as Republic Act No. 10640 (An Act to Further Strengthen the

a representative from the media *AND* the Department of Justice (DOJ), and any elected public official;[27] 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.**[28] 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."[29]

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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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') **which took effect on July 23, 2014.**

In view of the foregoing, all concerned are hereby REMINDED to COMPLY with the above-quoted law, appended herein as 'Annex A,' for the purpose of ensuring that all those involved in the proper apprehension of the drug violators will avail of the full benefits of the law. (Emphasis supplied)

Note, however, that under Section 5 of RA 10640, the *"Act shall take effect fifteen (15) days after its complete publication in at least two (2) newspapers of general circulation"* RA 10640 was published on July 23, 2014 in The Philippine Star (Vol. XXVIII, No. 359, Philippine Star Metro section, p. 21) and Manila Bulletin (Vol. 499, No. 23; World News section, p. 6) – both considered as newspapers of general circulation. Thus, following Section 5 thereof, RA 10640 appears to have become effective on August 7, 2014 or fifteen days after its publication in the Philippine Star and Manila Bulletin.

Additionally, RA 10640 was filed with the Office of National Administration (ONAR) at the University of the Philippines Law Center also on July 23, 2014. It was also published in the *Official Gazette,* Vol. 110, dated September 1, 2014.

[27] Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations.

[28] Section 21, Article II of RA 9165, as amended by RA 10640.

[29] See *People v. Miranda, supra* note 22. See also *People v. Mendoza,* 736 Phil. 749, 764 (2014).

substantive law."[30] 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."[31]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[32] 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.[33] The foregoing is based on the saving clause found in Section 21 (a),[34] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[35] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[36] and that

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[30] See *People v. Miranda, id*. See also *People v. Macapundag,* G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215, citing *People v. Umipang, supra* note 24, at 1038.

[31] See *People v. Segundo,* G.R. No. 205614, July 26, 2017, citing *People v. Umipang, id*.

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

[33] See *People v. Almorfe,* 631 Phil. 51, 60 (2010).

[34] 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."**

[35] 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."**

[36] *People v. Almorfe, supra* note 33.

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.[37]

Anent the witness requirement in the chain of custody procedure, non-compliance may be permitted if the prosecution is able to prove 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.[38] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[39] 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.[40]

Notably, the Court, in *People v. Miranda*,[41] issued a definitive reminder to prosecutors when dealing with drugs cases. It underscored 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

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[37] *People v. De Guzman,* 630 Phil. 637, 649 (2010).

[38] See *People v. Manansala, supra* note 22.

[39] See *People v. Gamboa, supra* note 24, citing *People v. Umipang, supra* note 24, at 1053.

[40] See *People v. Crispo, supra* note 22.

[41] *Supra* note 22.

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 if not raised, become apparent upon further review."[42]

In this case, the Court finds no reason to disturb the findings of the courts *a quo* that Gutierrez committed the crime of Illegal Sale of Dangerous Drugs. Moreover, the Court holds that the chain of custody rule was duly observed following the prescribed procedure under RA 9165, as amended by RA 10640, which applies to this case considering that the seizure, marking, inventory, and photography were all conducted on May 30, 2015, after the effectivity of the latter law.[43]

Records show that after the buy-bust transaction, the plastic sachet containing *shabu* seized from Gutierrez was immediately **marked, photographed, and inventoried in the latter's presence,** the backup officers of the PNP, **the Provincial Prosecutor, and the barangay officials**.[44] Thereafter, PO1 Tadeo brought Gutierrez, together with the seized items, to the Binmaley Police Station, where the incident was recorded in the blotter, and thereafter to the Pangasinan Provincial Crime Laboratory for examination, where the seized plastic sachet was turned over and personally received by PCI Todeño.[45]

PO1 Tadeo's testimony on this point was corroborated by PCI Todeño who testified that at around 4:20 in the afternoon of May 30, 2015, he delivered the seized sachet marked with "ATT2 5 30 15" for qualitative examination, which yielded positive for methamphetamine hydrochloride, a dangerous drug, as contained in her initial and final chemistry report.[46] PCI Todeño

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[42] See *id*.

[43] See note 26.

[44] See TSN, September 10, 2015, pp. 6-7 and 11-13. See also records, pp. 15 and 19-22.

[45] See TSN, September 10, 2015, pp. 8-10. See also CA *rollo,* pp. 47-48.

[46] See Initial Laboratory Report and Chemistry Report No. D-438-2015L; records, pp. 18 and 44, respectively. See also TSN, July 28, 2015, pp. 3-6.

also gave a clear account of the procedure she had undertaken after the examination to secure the integrity and evidentiary value of the specimen, and testified that she personally turned it over to the evidence custodian for safekeeping, who likewise affixed his signature upon receipt.[47]

Notably, while the Court observes that the media representative, *i.e.,* Soriano from ABS-CBN, failed to witness the inventory and photography of the seized items, her presence during the said activities was not actually necessary since the witness requirement under RA 10640 had already been complied with. As earlier stated, under RA 10640, the presence of "*[a]n elected public official* ***and*** *a representative of the National Prosecution Service* ***[OR]*** *the media,"* and of course, the accused himself, during the conduct of the inventory and photography is required. This is in contrast to the witness requirement prior to the effectivity of RA 10640, wherein the presence of a representative from the media *AND* the DOJ, and any elected public official, as well as the accused, was required. In this case, the presence of the Provincial Prosecutor **and** the barangay officials during the inventory and photography conducted on May 30, 2015 already sufficiently complied with the procedure laid down in the amendatory law.

At any rate, it deserves pointing out that the absence of the media representative was both recognized and sufficiently explained by PO1 Tadeo who testified that he previously informed ABS-CBN's Soriano of the planned buy-bust operation and invited her to witness the same. It was, however, unfortunate that Soriano could not make it in time to witness the inventory considering that she was in an area far from the buy-bust site.[48]

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[47] These include sealing the plastic sachet with masking tape after the examination and putting her markings thereon, placing the same inside an improvised paper envelope which was likewise sealed with masking tape and marked with her signature. See CA *rollo,* p. 48. See also TSN, July 28, 2015, pp. 6-7.

[48] See TSN, September 10, 2015, p. 6. See also *rollo,* p. 4; CA *rollo,* p. 47; and records, p. 10.

Nonetheless, it is undisputed that Soriano still came, albeit late, and just proceeded to the Binmaley, Police Station as the conduct of the inventory was already over.[49] Thus, based on these circumstances, the Court finds that the police officers' efforts to comply with the required procedure, whether during or prior to the amendments of RA 10640 as discussed-above, were genuine which, hence, justifies the media representative's absence.

All told, the Court finds no reason to overturn Gutierrez's conviction for the crime of Illegal Sale of Dangerous Drugs as defined and penalized under Section 5, Article II of RA 9165, as amended by RA 10640.

WHEREFORE, the appeal is **DISMISSED.** The Decision dated August 23, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08178 is hereby **AFFIRMED.** Accused-appellant Arman Santos Gutierrez a.k.a. "Arman" is found **GUILTY** beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165, as amended by Republic Act No. 10640, and accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa,* and *Reyes, A. Jr., JJ.,* concur.

Reyes, J. Jr.,[**] *J.,* on official leave.

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[49] See Certification dated May 30, 2015; records, p. 14.

[**] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 238594. November 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOEY REYES *y* LAGMAN,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE/ILLEGAL POSSESSION OF DANGEROUS DRUGS; IDENTITY OF THE DANGEROUS DRUGS SEIZED FROM THE ACCUSED, BEING THE *CORPUS DELICTI*, MUST 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. 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.

2. **ID.; ID.; RA 9165 AS AMENDED BY RA 10640; CHAIN OF CUSTODY RULE; THE LAW REQUIRES STRICT COMPLIANCE WITH CERTAIN PROCEDURE IN THE MARKING, INVENTORY, AND PHOTOGRAPHY OF THE SEIZED DRUGS AS WELL AS THE PRESENCE OF SPECIFIED WITNESSES.—** 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. In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the

nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody. 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."

3. **ID.; ID.; ID.; ID.; FAILURE TO STRICTLY COMPLY WITH THE PROCEDURE WOULD NOT RENDER THE SEIZURE AND CUSTODY OF THE ITEMS INVALID AS LONG AS THE REASONS FOR NON-COMPLIANCE WERE DULY EXPLAINED AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** [T]he Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

4. ID.; ID.; ID.; ID.; AS TO WITNESS REQUIREMENT, NON-COMPLIANCE MAY BE EXCUSED ONLY UPON SUFFICIENT SHOWING THAT THE OFFICERS EXERTED EFFORTS TO SECURE THEIR PRESENCE BUT EVENTUALLY FAILED TO APPEAR; MERE STATEMENTS OF UNAVAILABILITY WITHOUT SERIOUS ATTEMPT TO CONTACT THE REQUIRED WITNESSES ARE UNACCEPTABLE.— Anent the witness requirement, 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.

5. ID.; ID.; ID.; ID.; ABSENCE OF THE REQUIRED WITNESSES WITHOUT VALID JUSTIFICATION IS FATAL TO THE PROSECUTION; IN VIEW OF THE UNJUSTIFIED DEVIATION FROM THE CHAIN OF CUSTODY RULE, THE COURT IS CONSTRAINED TO CONCLUDE THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS WERE COMPROMISED WARRANTING ACQUITTAL OF THE ACCUSED.— In this case, it is explicitly stated in the Inventory of Confiscated/Seized Drugs dated December 20, 2012 that no elected public official and DOJ representative were available to witness the concurrent conduct of inventory and photography of the items purportedly seized from Reyes. x x x [I]t 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. Here, the prosecution only endeavored to prove that there was indeed a conduct of inventory and photography, and then moved on to another matter. Notably, the absence of an elected public official and a DOJ representative during such conduct was never acknowledged, much less justified. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Reyes were compromised, which consequently warrants his acquittal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated August 25, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07352, which affirmed the Joint Decision[3] dated March 10, 2015 of the Regional Trial Court of Caloocan City, Branch 127 (RTC) in Criminal Case Nos. C-89170 and C-89171, finding accused-appellant Joey Reyes *y* Lagman (Reyes) 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 September 21, 2016; *rollo,* pp. 16-17.

[2] *Id*. at 2-15. Penned by Associate Justice Socorro B. Inting with Associate Justices Remedios A. Salazar-Fernando and Priscilla J. Baltazar-Padilla, concurring.

[3] CA *rollo,* pp. 21-39-A. Penned by Presiding Judge Victoriano B. Cabanos.

[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 two (2) Informations[5] filed before the RTC accusing Reyes of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The prosecution alleged that in the evening of December 20, 2012, members of the Northern Police District Anti-Illegal Drug Special Operation Task Group successfully conducted a buy-bust operation against Reyes, during which one (1) plastic sachet containing 0.07 gram of white crystalline substance was recovered from him. During the search incidental to Reyes' arrest, eight (8) more plastic sachets containing an aggregate weight of 0.43 gram were discovered in his possession. After marking the seized items at the place of arrest, the buy-bust team, together with Reyes, went to their headquarters where the inventory and photography were witnessed by a media representative. Thereafter, the seized items were brought to the crime laboratory where, after examination,[6] the contents thereof yielded positive for methamphetamine hydrochloride or *shabu,* a dangerous drug.[7]

In defense, Reyes denied the charges against him, claiming instead, that he was just loitering outside his house when he saw policemen running after a suspected drug pusher. When said drug pusher was arrested, Reyes was likewise arrested by the policemen and taken to their headquarters where he was forced to admit ownership of the drugs found from the aforesaid drug pusher.[8]

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[5] The Information dated December 27, 2012 in Criminal Case No. C-89170 was for Section 5, Article II of RA 9165 (Illegal Sale of Dangerous Drugs); records, pp. 2-3; while the Information dated December 27, 2012 in Criminal Case No. C-89171 was for Section 11, Article II of RA 9165 (Illegal Possession of Dangerous Drugs); records, pp. 27-28.

[6] See Physical Science Report No. D-421-12 dated December 21, 2012; records, p. 20.

[7] *Rollo,* pp. 4-7.

[8] *Id*. at 8.

In a Joint Decision[9] dated March 10, 2015, the RTC found Reyes guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: *(a)* in Criminal Case No. C-89170, he was sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and *(b)* in Criminal Case No. C-89171, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years, and one (1) day, as minimum, to seventeen (17) years and eight (8) months, as maximum, and to pay a fine in the amount of ₱300,000.00.[10] The RTC found that through the positive testimonies of the members of the buy-bust team, the prosecution had established that Reyes indeed sold a plastic sachet containing *shabu* to the poseur-buyer, and that after his arrest, more plastic sachets also containing *shabu* were found in his possession. It further found that the buy-bust team substantially complied with the chain of custody rule, thereby preserving the integrity and evidentiary value of the drugs seized from Reyes.[11] Aggrieved, Reyes appealed[12] to the CA.

In a Decision[13] dated August 25, 2016, the CA affirmed *in toto* the RTC ruling.[14] It held that the prosecution had established all the elements of the crimes charged, and that there was substantial compliance with the chain of custody rule.[15]

Hence, this appeal seeking that Reyes' conviction be overturned.

The Court's Ruling

The appeal is meritorious.

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[9] CA *rollo,* pp. 21-39-A.

[10] *Id.* at 39.

[11] *Id.* at 34-39.

[12] See Notice of Appeal dated March 11, 2015; *id.* at 40.

[13] *Rollo,* pp. 2-15.

[14] *Id.* at 14.

[15] See *id.* at 11-15.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[16] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[17] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[18]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized 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

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[16] The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: *(a)* the identity of the buyer and the seller, the object, and the consideration; and *(b)* the delivery of the thing sold and the payment; while the elements of Illegal Possession of Dangerous Drugs under Section 11, Article II of RA 9165 are: *(a)* the accused was in possession of an item or object identified as a prohibited drug; *(b)* such possession was not authorized by law; and *(c)* the accused freely and consciously possessed the said drug. (See *People v. Crispo,* G.R. No. 230065, March 14, 2018; *People v. Sanchez,* G.R. No. 231383, March 7, 2018; *People v. Magsano,* G.R. No. 231050, February 28, 2018; *People v. Manansala,* G.R. No. 229092, February 21, 2018; *People v. Miranda,* G.R. No. 229671, January 31, 2018; and *People v. Mamangon,* G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili,* 753 Phil. 342, 348 [2015] and *People v. Bio,* 753 Phil. 730, 736 [2015]).

[17] See *People v. Crispo, id*.; *People v. Sanchez, id*.; *People v. Magsano, id*.; *People v. Manansala, id*.; *People v. Miranda, id*.; and *People v. Mamangon, id*. See also *People v. Viterbo,* 739 Phil. 593, 601 (2014).

[18] See *People v. Gamboa,* G.R. No. 233702, June 20, 2018, citing *People v. Umipang,* 686 Phil. 1024, 1039-1040 (2012).

[19] See *People v. Año,* G.R. No. 230070, March 14, 2018; *People v. Crispo, supra* note 16; *People v. Sanchez, supra* note 16; *People v. Magsano, supra* note 16; *People v. Manansala, supra* note 16; *People v. Miranda, supra* note 16; and *People v. Mamangon*, *supra* note 16. See also *People v. Viterbo, supra* note 17.

confiscation of the same.[20] In this regard, case law recognizes that "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team."[21] 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.[22]

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,[23] "a representative from the media ***and*** the Department of Justice

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[20] In this regard, case law recognizes that "marking 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] *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).

[22] See *People v. Tumulak,* 791 Phil. 148, 160-161 (2016); and *People v. Rollo,* 757 Phil. 346, 357 (2015).

[23] 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.

(DOJ), and any elected public official";[24] 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."[25] 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."[26]

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."[27] 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."[28]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[29] 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.[30] The foregoing is based on the saving

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[24] Section 21 (1) and (2) Article II of RA 9165 and its Implementing Rules and Regulations; emphasis and underscoring supplied.

[25] Section 21, Article II of RA 9165, as amended by RA 10640; emphasis and underscoring supplied.

[26] See *People v. Bangalan,* G.R. No. 232249, September 3, 2018, citing *People v. Miranda, supra* note 16. See also *People v. Mendoza,* 736 Phil. 749, 764 (2014).

[27] See *People v. Miranda, id.* See also *People v. Macapundag,* G.R. No. 225965, March 13, 2017, citing *People v. Umipang, supra* note 18, at 1038.

[28] See *People v. Segundo,* G.R. No. 205614, July 26, 2017, citing *People v. Umipang, id.*

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

[30] See *People v. Almorfe,* 631 Phil. 51, 60 (2010).

clause found in Section 21 (a),[31] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[32] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[33] 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.[34]

Anent the witness requirement, 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.[35] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[36] 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

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[31] 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."**

[32] 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."**

[33] *People v. Almorfe, supra* note 30.

[34] *People v. De Guzman,* 630 Phil. 637, 649 (2010).

[35] See *People v. Manansala, supra* note 16.

[36] See *People v. Gamboa, supra* note 18, citing *People v. Umipang, supra* note 18, at 1053.

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.[37]

Notably, the Court, in *People v. Miranda,*[38] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo;* otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[39]

In this case, it is explicitly stated in the Inventory of Confiscated/Seized Drugs[40] dated December 20, 2012 that no elected public official and DOJ representative were available to witness the concurrent conduct of inventory and photography of the items purportedly seized from Reyes. In this regard, it is noticeable from the testimonies of the poseur-buyer, Police Officer 2 John Rey Catinan (PO2 Catinan), and the back-up arresting officer, Police Officer 1 Nepthalie Buensuceso (PO1 Buensuceso), that the absence of the aforesaid required witnesses was not acknowledged by the prosecution, to wit:

Direct Examination of PO2 Catinan

[Assistant City Prosecutor Albert T. Cansino (Pros. Cansino)]: So after the turn-over to the investigator, what happened to this case? [PO2 Catinan]: Our investigator called for [a] media representative in the person of Ka Maeng Santos in order to conduct inventory with the picture taking, sir.

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[37] See *People v. Crispo, supra* note 16.

[38] *Supra* note 16.

[39] See *id*.

[40] Records, p. 15.

Q: Do you have proof that there was an inventory and taking of photographs?
A: There was, sir.

Q: I am showing to you Inventory of Confiscated/Seized Drugs previously marked as Exhibit "G" and the photographs previously marked as Exhibit "I" and Exhibit "I-1". What relation has this [sic] documents and photographs to those taken during the investigation?
A: These are the one [sic], sir.

COURT INTERPRETER:

Witness identifying Exhibits "G", "I", and "I-1".

[Pros Cansino]: After the inventory and the taking of the photographs, what happened next?

[PO2 Catinan]: Our investigator requested for [a] crime laboratory examination on the pieces of evidence, sir.[41]

Direct Examination of PO1 Buensuceso

[Pros. Cansino]: You also said that the investigator called up the presence of witnesses and conducted an inventory, do you have proof that inventory was conducted in this case?

[PO1 Buensuceso]: Yes, sir.

Q: What is that proof Mr. Witness?
A: We accomplished the inventory of the seized drug evidences and we also signed the same document sir during that day, sir.

Q: I'm showing to you inventory of confiscated and seized drugs dated December 20, 2012 previously marked Exhibit "G", what relation has this document to the inventory you said you accomplished?
A: This is the same document that we have accomplished, the inventory of confiscated and/or seized drug bearing our signatures, the signature of PO2 Catinan and my signature as the arresting officer and also bearing the signature of the media representative Ka Maeng Santos, sir.

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[41] TSN, August 6, 2013, pp. 20-21.

Q: You said that the other two signatures aside from your signature are the signatures of PO2 Catinan and Maeng Santos, media representative, how do you know that these are their signatures?
A: Sir, because I am present during their signing of these documents, sir.

Q: After the inventory conducted in this case, what happened next, Mr. Witness?
A: After the inventory that we did in front of the media representative and in front of the accused, as far as I can remember, our duty investigator SPO1 Fidel Cabinta prepared the necessary documents for crime laboratory and our duty investigator SPO1 Cabinta brought the suspect together with the seized drug evidence to the PNP Crime laboratory office located at Valenzuela City.

x x x x x x x x x[42]

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. Here, the prosecution only endeavored to prove that there was indeed a conduct of inventory and photography, and then moved on to another matter. Notably, the absence of an elected public official and a DOJ representative during such conduct was never acknowledged, much less justified. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Reyes were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED.** The Decision dated August 25, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07352 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant Joey Reyes *y* Lagman 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.

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[42] TSN, October 21, 2013, pp. 12-14.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa,* and *Reyes, A. Jr., JJ.,* concur.

Reyes, J. Jr.,[*] *J.,* on official leave.

SECOND DIVISION

[G.R. No. 238906. November 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FEDERICO CUEVAS *y* MARTINEZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE/ ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS, PRESENT.— 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. Here, the courts *a quo* correctly found that all the elements of the crimes charged are present, as the records clearly show that Cuevas was caught *in flagrante delicto* selling *shabu* to the poseur-buyer, SPO1 Andulay, during a legitimate buy-bust operation conducted by PNP-IB-LPPO in coordination with the PDEA; and that two (2) other plastic sachets containing *shabu* were recovered from him during the search made incidental

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

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 as the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.

2. ID.; ID.; ID.; IDENTITY OF THE DANGEROUS DRUGS MUST BE ESTABLISHED WITH MORAL CERTAINTY.— In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.

3. ID.; ID.; CHAIN OF CUSTODY RULE; MARKING OF THE CONFISCATED DRUGS AT THE POLICE STATION OR OFFICE OF THE APPREHENDING TEAM IS SUFFICIENT COMPLIANCE.— 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. 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." 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.

4. ID.; ID.; ID.; REQUIREMENTS AS TO THE PRESENCE OF THE WITNESSES DURING INVENTORY AND PHOTOGRAPHY OF THE SEIZED DRUGS, SUFFICIENTLY COMPLIED WITH; ACCUSED'S CONVICTION, UPHELD.— 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, "[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." In this case, it is glaring from the records that after Cuevas was arrested during the buy-bust operation and subsequently searched, the buy-bust team immediately took custody of the seized plastic sachets and conducted the marking thereof at the place where Cuevas was arrested. Thereafter, the buy-bust team proceeded to the barangay hall to conduct the inventory and photography of the seized items in the presence of an elected public official, a DOJ representative, and a media representative. The plastic sachets were then secured, taken to the police station, and thereafter, to the crime laboratory where they tested positive for *shabu*. Finally, the same specimens were duly identified in court. 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, Cuevas' conviction must stand.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated August 31, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC

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[1] See Notice of Appeal dated September 15, 2017; *rollo,* pp. 27-29.

[2] *Id*. at 2-26. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Elihu A. Ybañez and Carmelita Salandanan-Manahan, concurring.

No. 08624, which affirmed the Judgment[3] dated August 31, 2016 of the Regional Trial Court of Calamba City, Laguna, Branch 37 (RTC) in Crim. Case Nos. 21940-2014-C and 21942-2014-C, finding accused-appellant Federico Cuevas *y* Martinez (Cuevas), *inter alia,* guilty beyond reasonable doubt of Illegal Sale 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 three (3) Informations[5] charging Cuevas of violating, *inter alia,* Sections 5, 11, and 12, Article II of RA 9165. The prosecution alleged that at around ten (10) o'clock in the morning of January 10, 2014, operatives of the Philippine National Police Intelligence Branch, Laguna Police Provincial Office (PNP-IB-LPPO), in coordination with the Philippine Drug Enforcement Agency (PDEA), conducted a buy-bust operation against Cuevas, during which: *(a)* he allegedly sold a plastic sachet containing 0.04 gram of suspected methamphetamine hydrochloride or *shabu* to the poseur-buyer; *(b)* during the search incidental to his arrest, two (2) plastic

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[3] CA *rollo,* pp. 48-60. Penned by Presiding Judge Caesar C. Buenagua.

[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 January 15, 2014 in Crim. Case No. 21940-14-C was for Section 5, Article II of RA 9165 (Illegal Sale of Dangerous Drugs), records (Crim. Case No. 21940-14-C), p. 1; the Information dated January 15, 2014 in Crim. Case No. 21941-14-C was for Section 12, Article II of RA 9165 (Illegal Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs), records (Crim. Case No. 21941-14-C), p. 1; and the Information dated January 15, 2014 in Crim. Case No. 21942-14-C was for Section 11, Article II of RA 9165 (Illegal Possession of Dangerous Drugs), records (Crim. Case No. 21942-14-C), p. 1.

sachets containing an aggregate weight of 0.17 gram[6] of suspected methamphetamine hydrochloride or *shabu,* as well as various drug paraphernalia, were recovered from him. After marking the seized items, the apprehending officers took Cuevas to the barangay hall where the items were inventoried and photographed in the presence of Barangay Councilor Marcelino P. Ameglio, Department of Justice (DOJ) representative Noemi Quiloy, and media representative Zen Trinidad. Cuevas and the seized items were then taken to the police station where a request for laboratory examination was prepared, and thereafter, such request and the seized items were taken to the crime laboratory. After qualitative examination,[7] the seized items tested positive for methamphetamine hydrochloride or *shabu,* a dangerous drug.[8]

For his part, Cuevas denied the charges against him. He narrated that on the date and time he was arrested, he was in his house, together with his live-in partner and three (3) children, when suddenly, a police officer peeked inside, pointed a gun at him, and called him "Tolit." Cuevas told them that he was not "Tolit Garcia," but the police officers did not believe him and instead, started searching his house for *shabu.* When the police did not find any, they hit him and took him to the police station where he was forced to admit ownership of a box allegedly recovered from his house. Thereafter, he learned that he was already charged with crimes involving illegal drugs.[9]

In a Judgment[10] dated August 31, 2016, the RTC found Cuevas guilty beyond reasonable doubt of Illegal Sale and Illegal

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[6] One sachet contained 0.09 gram while another sachet contained 0.08 gram; see records (Crim. Case No. 21940-14-C), p. 15, records (Crim. Case No. 21941-14-C), p. 16, and records (Crim. Case No. 21942-14-C), p. 16.

[7] See Chemistry Report No. D-032-14 dated January 10, 2014; records (Crim. Case No. 21940-14-C), p. 13, records (Crim. Case No. 21941-14-C), p. 16, and records (Crim. Case No. 21942-14-C), p. 16.

[8] See *rollo,* pp. 3-4.

[9] See *id.* at 4-5.

[10] CA *rollo,* pp. 48-60.

Possession of Dangerous Drugs, and accordingly, sentenced him as follows: *(a)* in Criminal Case No. 21940-2014-C for Illegal Sale of Dangerous Drugs, he was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and *(b)* in Criminal Case No. 21942-2014-C for Illegal Possession of Dangerous Drugs, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of ₱300,000.00. He was, however, acquitted in Criminal Case No. 21941-2014-C for Illegal Possession of Drug Paraphernalia for failure of the prosecution to prove his guilt beyond reasonable doubt.[11] In so ruling, the RTC found that the prosecution had established his guilt beyond reasonable doubt for Illegal Sale and Illegal Possession of Dangerous Drugs, as he was caught selling *shabu* during the conduct of a legitimate buy-bust operation, and during the search incidental to his arrest, two (2) more plastic sachets containing *shabu* were recovered from him. The RTC also found that the integrity and evidentiary value of the items seized from Cuevas were preserved as the apprehending officers substantially complied with the chain of custody rule.[12] Aggrieved, Cuevas appealed the RTC ruling to the CA.

In a Decision[13] dated August 31, 2017, the CA affirmed the RTC ruling. It held that Cuevas was caught *inflagrante delicto* to be selling *shabu* during a buy-bust operation and that the additional sachets found in his possession were recovered pursuant to a search incidental to his lawful arrest. Further, the CA ruled that the integrity and evidentiary value of the items seized from Cuevas were preserved.[14]

Hence, this appeal seeking that Cuevas' conviction be overturned.

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

[12] See *id*. at 53-59.

[13] *Rollo,* pp. 2-26.

[14] See *id*. at 11-25.

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; 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 that all the elements of the crimes charged are present, as the records clearly show that Cuevas was caught *inflagrante delicto* selling *shabu* to the poseur-buyer, SPO1 Andulay, during a legitimate buy-bust operation conducted by PNP-IB-LPPO in coordination with the PDEA; and that two (2) other plastic sachets containing *shabu* were 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 as 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.

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[15] 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).

[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).

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 of the chain of custody from the moment the 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. 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."[20] 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

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[17] See *People v. Crispo, supra* note 15; *People v. Sanchez, supra* note 15; *People v. Magsano, supra* note 15, *People v. Manansala, supra* note 15, *People v. Miranda, supra* note 15; *People v. Mamangon, supra* note 15. 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). See also *People v. Manansala, supra* note 15.

[19] See *People v. Año,* G.R. No. 230070, March 14, 2018; *People v. Crispo, supra* note 15; *People v. Sanchez, supra* note 15; *People v. Magsano, supra* note 15; *People v. Manansala, supra* note 15; *People v. Miranda, supra* note 15; and *People v. Mamangon, supra* note 15. See also *People v. Viterbo, supra* note 17.

[20] *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).

conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[21]

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,[22] "a representative from the media ***and*** the [DOJ], and any elected public official";[23] 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."[24] 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."[25]

In this case, it is glaring from the records that after Cuevas was arrested during the buy-bust operation and subsequently searched, the buy-bust team immediately took custody of the seized plastic sachets and conducted the marking thereof at the place where Cuevas was arrested. Thereafter, the buy-bust team proceeded to the barangay hall to conduct the inventory and photography of the seized items in the presence of an elected public official, a DOJ representative, and a media representative. The plastic sachets were then secured, taken to the police station,

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[21] See *People v. Tumulak,* 791 Phil. 148, 160-161 (2016); and *People v. Rollo,* 757 Phil. 346, 357 (2015).

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

[23] See Section 21 (1) and (2) Article II of RA 9165; emphases and underscoring supplied.

[24] See Section 21, Article II of RA 9165, as amended by RA 10640.

[25] See *People v. Bangalan,* G.R. No. 232249, September 3, 2018, citing *People v. Miranda, supra* note 15.

and thereafter, to the crime laboratory where they tested positive for *shabu*. Finally, the same specimens were duly identified in court. 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, Cuevas' conviction must stand.

WHEREFORE, the appeal is **DISMISSED.** The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated August 31, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08624 and **AFFIRMS** said Decision finding accused-appellant Federico Cuevas *y* Martinez **GUILTY** beyond reasonable doubt of the crime 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 hereby sentenced as follows: *(a)* in Criminal Case No. 21940-2014-C for Illegal Sale of Dangerous Drugs, he is sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and *(b)* in Criminal Case No. 21942-2014-C for Illegal Possession of Dangerous Drugs, he is sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of ₱300,000.00.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa,* and *Reyes, A. Jr., JJ.,* concur.

Reyes, J. Jr.,[*] *J.,* on official leave.

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

SECOND DIVISION

[G.R. No. 239000. November 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEROME EMAR SANCHEZ *y* EDERA *alias* "CHIN,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE/ ILLEGAL POSSESSION OF DANGEROUS DRUGS; IDENTITY OF THE DANGEROUS DRUGS, BEING THE *CORPUS DELICTI*, MUST BE ESTABLISHED WITH MORAL CERTAINTY; "MARKING" UPON IMMEDIATE CONFISCATION CONTEMPLATES EVEN MARKING AT THE NEAREST POLICE STATION OR OFFICE OF THE APPREHENDING TEAM.— 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. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. 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." 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.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; PRESENCE OF THE ACCUSED AND THE REQUIRED WITNESSES IS NECESSARY TO ENSURE THE ESTABLISHMENT OF THE CHAIN OF CUSTODY AND REMOVE ANY SUSPICION OF SWITCHING, PLANTING, OR CONTAMINATION OF EVIDENCE.— 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, "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."

3. ID.; ID.; ID.; ID.; COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE IS STRICTLY ENJOINED; REQUIREMENTS FOR A VALID SEIZURE AND CUSTODY OVER THE SEIZED DRUGS DESPITE NON-COMPLIANCE WITH THE PROCEDURE, EXPLAINED.— 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.

4. ID.; ID.; ID.; ID.; CONDITIONS BEFORE NON-COMPLIANCE WITH WITNESSES' REQUIREMENT MAY BE PERMITTED.— Anent the witness requirement, 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.

5. ID.; ID.; ID.; ID.; ID.; ABSENT ANY FINDING THAT EARNEST EFFORTS WERE EXERTED TO ENSURE THE PRESENCE OF THE REQUIRED WITNESSES, DEVIATION FROM THE CHAIN OF CUSTODY RULE WAS UNJUSTIFIED LEADING TO THE CONCLUSION THAT THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED DRUGS WERE COMPROMISED; ACCUSED'S ACQUITTAL IS WARRANTED.— [I]t 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. However, both IO1 Dealagdon and IO1 Saplan acknowledged the absence of representatives from the DOJ and the media during the inventory and photography of the seized items, and offered the excuse that as per their team leader, they sought their presence during the conduct thereof but nobody came. At this point, the prosecution should have

called their team leader to the witness stand in order to show, at the very least, that earnest efforts were exerted to ensure the presence of the required witnesses during the conduct of the inventory and photography. Absent any finding that such earnest efforts were made, the Court is constrained to hold that there was an unjustified deviation from the chain of custody rule, resulting in the conclusion that the integrity and evidentiary value of the items purportedly seized from Sanchez were compromised. Perforce, his acquittal is warranted under these circumstances.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated September 4, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08608, which affirmed the Joint Judgment[3] dated August 23, 2016 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case Nos. R-QZN-13-02708-CR and R-QZN-13-02709-CR, finding accused-appellant Jerome Emar Sanchez *y* Edera alias "Chin" (Sanchez),*inter alia*, guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

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[1] See Notice of Appeal dated January 30, 2018; *rollo*, pp. 24-25.

[2] *Id*. at 2-23. Penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos, concurring.

[3] CA *rollo*, pp. 54-62. Penned by Presiding Judge Nadine Jessica Corazon J. Fama.

[4] Entitled "AN ACT INSTITUTING THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002, REPEALING REPUBLIC ACT

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC accusing Sanchez of violating Sections 5 and 15, Article II of RA 9165. The prosecution alleged that at around nine (9) o' clock in the evening of August 9, 2013, a buy-bust team composed of operatives from the Philippine Drug Enforcement Agency (PDEA) conducted a buy-bust operation against Sanchez, during which two (2) sachets containing white crystalline substance were obtained from him. As there was a crowd already forming at the place of arrest, the buy-bust team, together with Sanchez, proceeded to their headquarters, where the seized items were marked, photographed, and inventoried in the presence of Barangay Kagawad Jose Ruiz, Jr. (Kag. Ruiz). Thereafter, the seized items were brought to the crime laboratory where, upon examination,[6] the contents thereof yielded positive for a total of 0.3512[7] gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.[8]

In defense, Sanchez denied the charges against him, claiming instead, that he was seated with Bernard, the friend of his best friend, when six (6) men approached them and asked if they knew a certain "Jerome." When Sanchez asked why they were looking for "Jerome," one of the men grabbed his arm and another choked his neck, and later forced him to board a vehicle. They

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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 August 12, 2013 in Criminal Case No. R-QZN-13-02708-CR was for Section 15, Article II of RA 9165 (Use of Dangerous Drugs); records, pp. 2-3; while the Information dated August 12, 2013 in Criminal Case No. R-QZN-13-02709-CR was for Section 5, Article II of RA 9165 (Illegal Sale of Dangerous Drugs); records, pp. 4-5.

[6] See Chemistry Report No. PDEA-DDO13-200 dated August 10, 2013; *id*. at 19.

[7] One sachet contained 0.1833 gram while the other sachet contained 0.1679 gram of *shabu*; see *id*.

[8] See *rollo*, pp. 4-10. See also CA *rollo*, pp. 55-58.

were then brought to the PDEA office where the men took his belongings, and thereafter detained him. Sanchez also claimed that one of the men even demanded ₱100,000.00 from him, but he did not have the said amount.[9]

In a Joint Judgment[10] dated August 23, 2016, the RTC found Sanchez guilty beyond reasonable doubt of violating Section 5, Article II of RA 9165, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00. He was, however, acquitted of violation of Section 15, Article II of RA 9165 for insufficiency of evidence.[11] The RTC found that the prosecution had established all the elements of the crime of Illegal Sale of Dangerous Drugs as it was shown that Sanchez was caught *in flagrante delicto* to be selling *shabu* during a legitimate buy-bust operation. Further, the RTC ruled that the failure of the PDEA operatives to conduct the inventory and photography of the seized items immediately at the place of arrest did not weaken the case against him, opining that the integrity and evidentiary value thereof were nevertheless preserved.[12] Aggrieved, Sanchez appealed[13] to the CA.

In a Decision[14] dated September 4, 2017, the CA affirmed the RTC ruling.[15] It held that Sanchez was indeed caught selling *shabu* during a legitimate buy-bust operation and that there was substantial compliance with the chain of custody rule.[16]

Hence, this appeal seeking that Sanchez's conviction be overturned.

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[9] See *rollo*, pp. 10-11. See also CA *rollo*, pp. 58-59.

[10] CA *rollo*, pp. 54-62.

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

[12] See *id*. at 59-61.

[13] See Notice of Appeal dated September 5, 2016; *id*. at 13-14.

[14] *Rollo*, pp. 2-23.

[15] *Id.* at 22.

[16] See *id*. at 13-22.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[17] 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.[18] 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.[19]

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.[20] As

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[17] 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].)

[18] 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).

[19] See *People v. Gamboa*, G.R. No. 233702, June 20, 2018, citing *People v. Umipang*, 686 Phil. 1024, 1039-1040 (2012).

[20] 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 18.

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. 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."[21] 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.[22]

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,[23] "a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official";[24] 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."[25] The law requires the presence of these witnesses

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[21] *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).

[22] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

[23] 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.

[24] Section 21 (1) and (2), Article II of RA 9165; emphasis and underscoring supplied.

[25] 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."[26]

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."[27] 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."[28]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[29] 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.[30] The foregoing is based on the saving clause found in Section 21 (a),[31] Article II of the Implementing

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[26] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, *supra* note 17. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[27] See *People v. Miranda*, *id*. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 19, at 1038.

[28] See *People v. Segundo*, G.R. No. 205614, July 26, 2017, citing *People v. Umipang*, *id*.

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

[30] See *People v. Almorfe*, 631 Phil. 51, 60 (2010).

[31] 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[.]**"

Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[32] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[33] 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.[34]

Anent the witness requirement, 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.[35] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[36] 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.[37]

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[32] 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.**"

[33] *People v. Almorfe*, *supra* note 30.

[34] *People v. De Guzman*, 630 Phil. 637, 649 (2010).

[35] See *People v. Manansala*, *supra* note 17.

[36] See *People v. Gamboa*, *supra* note 19, citing *People v. Umipang*, *supra* note 19, at 1053.

[37] See *People v. Crispo*, *supra* note 17.

Notably, the Court, in *People v. Miranda*,[38] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[39]

In this case, the Court has observed that the marking of the items purportedly seized from Sanchez at the PDEA office was justified as there was a crowd already forming at the place of arrest that might jeopardize the buy-bust operation. Nonetheless, it must be pointed out that, as may be gleaned from the Inventory of Seized Properties/Items[40] dated August 10, 2013, the inventory and photography[41] of such items were not conducted in the presence of representatives from the DOJ and the media, contrary to the afore-described procedure. This was separately confirmed by two (2) PDEA agents, namely, Intelligence Officer 1 Cesar Dealagdon, Jr. (IO1 Dealagdon) and Intelligence Officer 1 Arcadio Saplan, Jr. (IO1 Saplan) during their respective direct-examinations, to wit:

Direct Examination of IO1 Dealagdon

[Assistant City Prosecutor Alexis G. Bartolome (ACP Bartolome)]: During the last hearing, Mr. witness, you were asked to identify the Inventory Receipt which was previously marked as Exhibit "N", where was the accused at the time when this Inventory Receipt was being prepared?
[IO1 Dealagdon]: He was with us, sir.

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[38] *Supra* note 17.

[39] See *id*.

[40] Records, p. 22.

[41] As per IO1 Dealagdon, the photography of the seized items was done concurrently with the inventory thereof. (See TSN, August 7, 2014, p. 4)

Q: Who else was with you at that time?
A: The elected Brgy. Official, Kag. Ruiz, Agent Samplan [sic], the team leader, the accused, and the rest of the team, sir.

Q: How about the representative from the Media?
A: There was no representative from the Media, sir.

Q: Why, Mr. witness?
A: Our team leader called the presence of the representative from the Media but there was nobody [who] appeared, sir.

Q: How about the DOJ representative, Mr. witness?
A: None, sir.

Q: Why?
A: Our team leader called also the presence of the DOJ representative but there was nobody [who] came.[42]

Direct Examination of IO1 Saplan

[ACP Bartolome]: Mr. witness, why is it that there are no signatures from the representatives of the Media and the DOJ?
[IO1 Saplan]: Our team leader informed me that there were no representatives available from the DOJ and the Media, so, he instructed us to bring the specimen to the crime laboratory.[43]

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. However, both IO1 Dealagdon and IO1 Saplan acknowledged the absence of representatives from the DOJ and the media during the inventory and photography of the seized items, and offered the excuse that as per their team leader, they sought their presence during the conduct thereof but nobody came. At this point, the prosecution should have called their team leader to the witness stand in order to show, at the very least, that earnest efforts were exerted to ensure the presence of the required witnesses during the conduct of the

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[42] *Id*. at 2-3.

[43] TSN, August 4, 2015, pp. 9-10.

inventory and photography. Absent any finding that such earnest efforts were made, the Court is constrained to hold that there was an unjustified deviation from the chain of custody rule, resulting in the conclusion that the integrity and evidentiary value of the items purportedly seized from Sanchez were compromised. Perforce, his acquittal is warranted under these circumstances.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 4, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08608 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jerome Emar Sanchez *y* Edera alias "Chin" is **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Caguioa,* and *Reyes, A. Jr., JJ.*, concur.

Reyes, J. Jr.,[*] *J.*, on official leave.

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[*] Designated Additional Member per Special Order No. 2587 dated August 28, 2018.

EN BANC

[A.M. No. P-15-3400. November 6, 2018]
(Formerly OCA IPI No. 12-3896-P)

INVESTIGATING JUDGE JAIME E. CONTRERAS, Regional Trial Court, Branch 25, Naga City, *complainant, vs.* **PATRICIA DE LEON, Clerk III, Office of the Clerk of Court, Regional Trial Court, Naga City; EDGAR HUFANCIA, Sheriff,[*] Regional Trial Court, Branch 21, Naga City; EDGAR SURTIDA IV,[**] Sheriff IV, Regional Trial Court, Branch 25, Naga City; and PELAGIO J. PAPA, JR., Sheriff, Office of the Clerk of Court, Regional Trial Court, Naga City,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; DISHONESTY, MISCONDUCT, CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE, AND INSUBORDINATION, DEFINED ACCORDINGLY; PENALTY CORRESPONDING TO EACH OFFENSE.— Dishonesty has been defined as "the disposition to lie, cheat, deceive, defraud, or betray; unworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness" which renders a person unfit to serve in the judiciary. Misconduct, on the other hand, involves a "transgression of some established and definite rule of action, [specifically] unlawful behavior or gross negligence" by a public officer or employee, which should be grave, serious, important, weighty, momentous, and not trifling. Moreover, to be characterized as gross, such misconduct must be attended by corruption, clear intent to violate the law, or flagrant disregard of established rule. Conduct prejudicial to the best interest of

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[*] Appears as Sheriff IV in some parts of the records.

[**] Also referred to as Edgar Surtida II in some parts of the records.

the service pertains to any conduct, whether an act or omission, which violates the norm of public accountability, as well as diminish – or threaten to diminish – public faith in the judiciary. Finally, insubordination is a willful or intentional disregard of, or refusal to obey, lawful and reasonable instructions of the employer. This includes, among others, failure to comply with a directive issued by the Court, whether directly or through the OCA, to submit a comment to a complaint or a report regarding an offense allegedly committed by the court personnel concerned. x x x As for the imposable penalty, grave misconduct is punishable by dismissal from the service for the first offense, while dishonesty and conduct prejudicial to the best interest of the service are punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense, under Rule 10, Section 46(A) and (B) of the RRACCS, respectively, all of them being grave offenses. On the other hand, insubordination is a less grave offense which is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense, under Section 46(D) thereof. Moreover, Section 50 provides that if the respondent is found guilty of two (2) or more charges or counts, the penalty for the most serious charge shall be imposed, and the others shall be considered as aggravating circumstances.

2. **ID.; ID.; ID.; DISHONESTY, GRAVE MISCONDUCT, AND INSUBORDINATION, COMMITTED; IN VIEW OF THE NUMBER AND GRAVITY OF RESPONDENT'S OFFENSES AS WELL AS THE FACT THAT SHE IS NOT A FIRST TIME OFFENDER, THE COURT FORFEITS ALL HER BENEFITS, EXCLUDING ACCRUED LEAVE CREDITS, WITH PREJUDICE TO RE-EMPLOYMENT TO ANY PUBLIC OFFICE.—** [I]t is relevant to note that this is not the first time that De Leon and Surtida have been held administratively liable. In *Villaseñor v. De Leon*, the Court reprimanded De Leon for conduct unbecoming of an employee of the court after she had willfully failed to pay the amount of ₱20,000.00 she had loaned from the complainant therein, Monica Villaseñor. Moreover, considering that De Leon had already been dropped from the rolls, the Court can only impose a fine or forfeiture of benefits to her. Taking into account the number and gravity of De Leon's offenses in this matter and her previous administrative liability, the Court finds the fine of ₱40,000.00,

as recommended by the OCA, too lenient. Therefore, the Court hereby forfeits all of her benefits, excluding her accrued leave credits, and perpetually disqualifies her from being re-employed in any government agency or instrumentality, including government-owned and controlled corporations or government financial institutions, without prejudice to the filing of appropriate civil and criminal cases against her.

3. **ID.; ID.; ID.; AS RESPONDENT IS FOUND GUILTY OF CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE AND INSUBORDINATION, ONE YEAR SUSPENSION WITHOUT PAY WITH A STERN WARNING, IMPOSED.—** As for Surtida, the Court, in *Manaog v. Rubio and Surtida II*, had also previously reprimanded him for conduct unbecoming of an employee of the court after he joined Rubio in verbally abusing the complainant therein, Christopher Manaog, when the latter tried to secure information with the OCC regarding certain parcels of land which were allegedly transferred to others through fraud. Hence, in view of this and the number and gravity of Surtida's offenses in the present matter, the Court also finds the fine of ₱20,000.00, as recommended by the OCA, less than commensurate to his infractions. Therefore, he should be, as he is hereby, suspended from the service without pay for one (1) year.

4. **ID.; ID.; ID.; WHERE RESPONDENT IS A FIRST TIME OFFENDER, SIX (6) MONTHS AND ONE (1) DAY SUSPENSION IS PROPER FOR CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE.—** [A]s to Papa, it appears that he has not been previously held administratively liable for any other offense. Nevertheless, the Court also finds the fine of ₱5,000.00, as recommended by the OCA, too light. Thus, he should be, as he is hereby, suspended from the service without pay for six (6) months and one (1) day.

D E C I S I O N

***PER CURIAM*:**

This administrative matter, which was filed by Investigating Judge Jaime E. Contreras (Judge Contreras) of the Regional

Trial Court (RTC), Branch 25, Naga City, is an offshoot of *Olivan v. Rubio*,[1] which, in turn, stemmed from a complaint filed by Eleanor Olivan (Olivan) with the Office of the Court Administrator (OCA) against Arnel Jose A. Rubio (Rubio), Sheriff IV, Office of the Clerk of Court (OCC), RTC of Naga City, for malversation, alleging that Rubio claimed excessive sheriffs expenses and bloated the liquidation thereof in connection with Land Registration Case No. N-594, GLRC Rec. No. 8109 entitled *Domingo Olivan, et al. v. The Municipality of Pasacao, et al.*[2] (subject case), after which the Court then found Rubio guilty of Dishonesty and Grave Misconduct, and dismissed him from the service.

To recall, the Court of Appeals decided the subject case in favor of Olivan, which decision already became final and executory. Thereafter, a Writ of Execution was also issued in her favor, followed by an *Alias* Writ of Execution (writ) on September 29, 2005, wherein Rubio was tasked to enforce the latter.[3]

On April 27, 2006, Rubio received ₱20,000.00 from Olivan as partial payment for the sheriff's incidental expenses for the implementation of the writ, after which he issued a handwritten receipt which Olivan signed. Subsequently, on May 10, 2006, Rubio filed a Manifestation pursuant to Rule 141 of the Rules of Court, detailing the Sheriff's Expenses in the amount of ₱150,000.00 as incidental expenses and ₱3,000.00 as the court's commission fee, or a total of ₱153,000.00 for the implementation of the said writ. The Manifestation contained Olivan's conformity and the recommending approval of Atty. Egmedio C. Blacer, Clerk of Court VI and *Ex-Officio* Sheriff of the RTC, which was approved by Judge Pablo M. Paqueo, Jr., then Executive Judge of the RTC. On the same day, Olivan deposited

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[1] Docketed as A.M. No. P-12-3063 (Formerly A.M. OCA IPI No. 09-3082-P), 722 Phil. 77 (2013).

[2] *Rollo*, p. 1.

[3] See *Olivan v. Rubio*, *supra* note 1, at 80.

₱153,000.00 with the OCC of the RTC, which Rubio withdrew in full thereafter on the same day.[4]

Rubio, however, failed to implement the writ despite receipt of a total sum of ₱173,000.00, and failed to return to the OCC or to Olivan the remaining amount of ₱22,866.00 as indicated in his Liquidation of Sheriff's Expenses dated December 20, 2008. The said report showed that the total amount spent in attempting to implement the writ was only ₱150,134.00, thereby leaving a balance of ₱22,866.00.[5]

Rubio defended the aforementioned payment of ₱20,000.00 given to him by Olivan by alleging that he needed other court sheriffs to assist him in implementing the writ and requested for a precision survey of the subject property to identify the actual occupants thereof to whom they would serve the writ and the Notice to Vacate, as well as personnel of the Philippine National Police and the Philippine Army to maintain peace and order, considering, among others, that it had to be served to 40 residents living in the parcel of land subject of the case, who had violently refused to obey the writ. He also added that Atty. Fiel V. Bagalacsa-Abad, Clerk of Court V of the OCC, issued a Travel Order to him and other assisting sheriffs, namely, respondent Pelagio Papa, Jr. (Papa), Sheriff, OCC, RTC Naga City, respondent Edgar Surtida IV (Surtida), Sheriff IV, RTC Branch 25, Naga City, and the late Donn Valenciano, after which they went to the subject property several times to enforce the writ, submitting thereafter a Partial Return thereof and a Sheriff's Report detailing the actions he had undertaken during the service of the writ.[6]

Thereafter, the Court, in its Resolution dated January 11, 2010, referred Olivan's complaint to Judge Contreras for investigation, report and recommendation.[7]

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[4] *Id*.

[5] *Id*. at 80-81.

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

[7] See Memorandum of Judge Contreras dated December 5, 2010, p. 1; *rollo*, p. 1. Please note that no copy of the said Resolution was attached to the records.

In the course of the investigation, Judge Contreras found that, aside from the fact that Rubio had incurred unnecessary and/or unsubstantiated expenses, other employees of the RTC, who were identified as Papa, Surtida, respondent Patricia De Leon (De Leon), Clerk III, OCC, RTC Naga City, and respondent Edgar Hufancia (Hufancia), Sheriff, RTC Branch 21, Naga City, were involved in the anomalous transactions wherein they were able to collect certain sums of money from Olivan under the promise of helping her in the subject case.[8] In his Report and Recommendation[9] dated December 5, 2010, Judge Contreras made the following observations, based on the testimonies and admissions of Olivan and the respondents, to wit:

OTHER RELATED MATTERS

During the course of the investigation in this instant administrative case against Sheriff Rubio, informations were disclosed showing that other employees in the Regional Trial Court of Naga City were involved in anomalous or shady transactions wherein they were able to collect certain sums of money from complainant, Eleanor Olivan, under the guise of helping her in her case. They are the following:

1. **PATRICIA DE LEON**, a Clerk at the Office of the Clerk of Court, Regional Trial Court, Naga City, whom complainant Eleanor Olivan approached for help being her townmate, promised to expedite the implementation of the writ of execution and find a lawyer for her and in the process received aggregate sums of money in the total amount of [₱]9,500.00. However, for failure to comply with her promises, Patricia de Leon undertook to return the money to Mrs. Olivan upon the latter's demand. However, the money was not actually returned to Mrs. Olivan due to the intervention of her lawyer, Atty. Amador Simando, that said amount be just credited as payment for his future court appearances in her case, and

2. **SHERIFF EDGAR HUFANCIA** of RTC, Br. 21, Naga City, who, per his own admission was allegedly the assisting sheriff of the late Sheriff Roque Angeles, to whom this case was earlier assigned. He received certain sums of money amounting to more than

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[8] See *Olivan v. Rubio*, *supra* note 1, at 84; *rollo*, p. 13.

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

[₱]40,000.00 from Mrs. Olivan under the guise of helping her with Budget Secretary Rolando Andaya, Jr. for the payment of the lot purchase [sic] of the land subject-matter [sic] of the writ. However, upon demand, [he] acknowledged and paid only the amount of [₱]24,000.00 to Mrs. Olivan.

Other sheriffs must also be taught a lesson and be subjected to disciplinary action by reason of their complicity in the implementation of the writ, when ordinary prudence would tell them that on several occasions, it was unnecessary for them to still be going back and forth to Pasacao, Camarines Sur, and still hire unreasonable number of laborers/security escorts which resulted to the financial losses or prejudice of Mrs. Olivan, and they are the following:

1. **SHERIFF EDGAR SURTIDA II** of RTC, Br. 25, Naga City, who was one of the assisting sheriffs of Sheriff Rubio in causing the implementation of the writ subject-matter [sic] in [sic] this case, for his complicity and in conspiracy with Sheriff Rubio and other assisting sheriffs, who per travel orders, have [sic] repeatedly gone with [I]mplementing Sheriff Rubio to Pasacao, Camarines Sur, even if a simple exercise of prudence would dictate that the same were no longer necessary, thereby causing additional expense to the complainant. Further, as assisting sheriff, he disregarded the Supreme Court Circular on the matter and repeated reminders of herein Investigating Judge, who is also the Presiding Judge of Br. 25, to secure the latter's appropriate permission and approval before consenting/agreeing to be an assisting sheriff, and

2. **SHERIFF PELAGIO J. PAPA, JR.** of the OCC, RTC, Naga City for his complicity and in conspiracy with Sheriff Rubio and other assisting sheriffs of having repeatedly gone with [I]mplementing Sheriff Rubio to Pasacao, Camarines Sur, even if a simple exercise of prudence would dictate that the same were [sic] no longer necessary, thereby causing additional expense to the complainant.[10]

Acting on the recommendation of the OCA in its Memorandum[11] dated March 14, 2012, the Court, in its Resolution[12] dated June 13, 2012, docketed Judge Contreras'

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

[11] *Id*. at 18-24.

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

aforementioned Report and Recommendation as the instant administrative matter against herein respondents separately from that of Rubio, and required them to comment therein. While Papa and Hufancia had filed their respective Comments, Surtida and De Leon failed to file theirs.

Papa, in his Comment,[13] denied having conspired with Rubio and having committed misconduct, asserting that he was issued travel orders[14] to assist Rubio in the subject case where more than 200 persons or 35 families were subject for eviction. That, coupled by the fact that the subject property was located 40 kilometers from the RTC of Naga City, and that the area was believed to be infested by members of the New People's Army, necessitated his assistance in implementing the writ. Moreover, there were also times when he did not actually accompany Sheriff Rubio, and merely reported to the office, as shown by his daily time records.[15]

Hufancia, for his part,[16] denied having been the assisting sheriff of Rubio or the late Sheriff Roque Angeles, or that he received any complaint from Olivan. He maintained that it was retired Executive Sheriff Anastacio Bongon whom he assisted in implementing the writ before the task was reassigned to Rubio. However, he admitted having tried to convince the *Sangguniang Bayan* of Pasacao, Camarines Sur, to instead buy the subject property from Olivan, necessitating additional expenses which were not included in the original estimate of expenses. Thus, he received the amount of ₱24,000.00 from Olivan in connection with his attempt to sell the property, issuing receipts for every amount that he received from her. However, he claimed that he had returned the said amount to Olivan during the investigation conducted by Judge Contreras.

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[13] Dated August 17, 2012; *id*. at 28-32.

[14] *Rollo*, pp. 33-37.

[15] *Id*. at 30-31, 38-39.

[16] See Hufancia's Comment dated August 14, 2012; *id*. at 41-46.

The OCA's Report and Recommendation

In its Memorandum[17] dated September 1, 2015, the OCA made the following findings and recommendations, to wit:

1. It found De Leon guilty of Dishonesty and Grave Misconduct for accepting ₱9,500.00 from Olivan in exchange for a promise to expedite the implementation of the writ in the subject case. It opined that, not only did she violate Section 3(b) of Republic Act No. (RA) 3019, but her act is also considered as grave misconduct under Section 2, Canon 1 of the Code of Conduct for Court Personnel which enjoins all personnel from soliciting or accepting any gift, favor or benefit based on any or explicit understanding that such gift, favor or benefit shall influence their official actions, as well as dishonesty, both of which are considered grave offenses under Section 52(A)(1) and (3) (later Section 46[A][1] and [3]) of the Revised Rules on Administrative Cases in the Civil Service (RRACCS). Moreover, her failure to file her Comment on Judge Contreras' Report and Recommendation despite orders from the Court is considered a violation of the Court's circulars. However, considering that De Leon had been previously dropped from the rolls effective February 1, 2012 in the Court's Resolution dated August 12, 2013,[18] the OCA recommended that she be fined ₱40,000.00 in lieu of dismissal from the service.[19]
2. As for Hufancia, he was found guilty of Serious Dishonesty for his act of unilaterally receiving ₱24,000.00 from Olivan for the execution of the Alias Writ without issuing a receipt therefor. It opined that

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[17] *Rollo*, pp. 87-100.

[18] See *id*. at 91. Please note that no copy of the Court's Resolution on the matter of De Leon's dropping from the rolls was attached to the records.

[19] See *id*. at 92-93.

as the sheriff, he is not allowed to receive any voluntary payments from parties to a case, much less demand such payment on his own without observing the proper procedure, that is: (1) making the estimate of his expenses to be submitted for the approval of the court; (2) depositing the amount by the party concerned with the clerk of court and *ex-officio* sheriff, who will then disburse such amount to the sheriff assigned to enforce the writ; and (3) liquidating the amount received, returning the excess amount to the party, and rendering a full report. Moreover, it is immaterial whether or not Hufancia received the said amount in good faith, since it is important that the said procedure be followed before accepting such amount, which he had failed to do. However, in view of his death on August 31, 2013, the OCA recommended that this case as against him be dismissed.[20]

3. With regard to Surtida, he was found guilty of Conduct Prejudicial to the Best Interest of the Service in his act of travelling with Rubio and the other sheriffs to Pasacao, Camarines Sur around ten (10) times in order to implement the writ, all without any authority issued by the Executive Judge. It also found that Surtida had received allowances therefrom, brought along his own security, and had continued to assist Rubio even though the only thing they had accomplished was the service of the writ and the notice to vacate, thereby also causing Olivan to suffer additional and needless expenses. Moreover, his failure to file a Comment on Judge Contreras' Report and Recommendation despite orders from the Court is considered a violation of the Court's circulars. Considering that suspending Surtida would unduly have an adverse effect on public service, the OCA recommended that he instead be fined ₱20,000.00.[21]

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[20] See *id*. at 91, 93-96.

[21] *Id*. at 96-98.

4. Finally, as to Papa, he was also found guilty of Conduct Prejudicial to the Best Interest of the Service. It held that, like Surtida, Papa also travelled with Rubio and the other sheriffs to Pasacao, Camarines Sur around the same number of times in order to implement the writ, and received allowances therefrom, all without any authority issued by the Executive Judge. Thus, the OCA recommended that he be fined ₱5,000.00.[22]

In its Resolution[23] dated August 3, 2016, the Court dismissed the case as against Hufancia in view of his death.

The Court's Ruling

After a judicious review of the records, the Court has no compelling reason to deviate from the findings of the OCA. However, the penalties should be modified.

Dishonesty has been defined as "the disposition to lie, cheat, deceive, defraud, or betray; unworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness" which renders a person unfit to serve in the judiciary.[24]

Misconduct, on the other hand, involves a "transgression of some established and definite rule of action, [specifically] unlawful behavior or gross negligence" by a public officer or employee, which should be grave, serious, important, weighty, momentous, and not trifling. Moreover, to be characterized as gross, such misconduct must be attended by corruption, clear intent to violate the law, or flagrant disregard of established rule.[25]

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[22] See *id*. at 98-99.

[23] *Id*. at 115-119.

[24] *Zarate-Fernandez v. Lovendino*, A.M. No. P-16-3530 (Formerly A.M. No. 16-08-306-RTC), March 6, 2018, p. 6 and *Tolentino-Genilo v. Pineda*, A.M. No. P-17-3756 (Formerly OCA I.P.I. No. 16-4634-P), October 10, 2017, p. 5, both citing *Office of the Court Administrator v. Acampado*, 721 Phil. 12, 30 (2013).

[25] *Office of the Court Administrator v. Umblas*, A.M. No. P-09-2649 (Formerly A.M. No. 09-5-219- RTC), August 1, 2017, 833 SCRA 502, 510.

Conduct prejudicial to the best interest of the service pertains to any conduct, whether an act or omission, which violates the norm of public accountability, as well as diminish — or threaten to diminish — public faith in the judiciary.[26]

Finally, insubordination is a willful or intentional disregard of, or refusal to obey, lawful and reasonable instructions of the employer.[27] This includes, among others, failure to comply with a directive issued by the Court, whether directly or through the OCA, to submit a comment to a complaint or a report regarding an offense allegedly committed by the court personnel concerned.[28]

In this matter, the OCA observed that De Leon had falsely promised Olivan that the execution of the writ would be expedited in exchange for ₱9,500.00, and accepted the said amount. Meanwhile, Papa and Surtida had joined Rubio and the other sheriffs in implementing the writ, and even hired additional security in doing so, all without the authority of the judge, thereby incurring additional and unnecessary expenses on the part of Olivan.

The Court agrees with the OCA. Time and again, the Court has emphasized that "[c]ourt personnel, regardless of position or rank, are expected to conduct themselves in accordance with the strict standards of integrity and morality."[29] Any deviation from such standards would adversely reflect on the image of the judiciary to the public, as well as their trust and confidence in this branch of government.[30]

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[26] *Zarate-Fernandez v. Lovendino*, *supra* note 24.

[27] *Id*. at 6-7.

[28] See *id*. at 8; *Balloguing v. Dagan*, A.M. No. P-17-3645 (Formerly OCA IPI No. 15-4415-P), January 30, 2018, p. 7.

[29] *Villahermosa, Sr. v. Sarcia*, 726 Phil. 408, 415 (2014).

[30] See *Cabauatan v. Uvero*, A.M. No. P-15-3329 (Formerly OCA I.P.I. No. 13-4165-P), November 6, 2017, p. 6; *Gubatanga v. Bodoy*, 785 Phil. 30, 37 (2016).

As gleaned above, the evidence had established De Leon's intent to extort money from Olivan by making her falsely believe that the execution of the writ would be expedited in exchange for ₱9,500.00 and actually accepting the said amount. Such display of dishonesty and misconduct not only gravely endangers the trust and confidence of the people in the judiciary, but also violates Section 3(b) of RA 3019 — an offense which, when committed by an official or personnel of the judiciary, would be a serious affront to the image of this hallowed branch of government.

With regard to Papa and Surtida, their **unauthorized** acts of accompanying Rubio and the other sheriffs in enforcing the writ and employing additional security had caused an additional and unnecessary financial burden on Olivan, who had been patiently waiting for a long time for the writ to be fully implemented, and thus, they are considered prejudicial to the best interest of the service.

Finally, it also bears emphasizing that De Leon's and Surtida's failure to file their respective comments, despite the Court's directive for them to do so, shows their utter indifference thereto, and is tantamount to insubordination.

As for the imposable penalty, grave misconduct is punishable by dismissal from the service for the first offense, while dishonesty and conduct prejudicial to the best interest of the service are punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and dismissal from the service for the second offense, under Rule 10, Section 46(A) and (B) of the RRACCS, respectively, all of them being grave offenses. On the other hand, insubordination is a less grave offense which is punishable by suspension of one (1) month and one (1) day to six (6) months for the first offense, and dismissal from the service for the second offense, under Section 46(D) thereof. Moreover, Section 50 provides that if the respondent is found guilty of two (2) or more charges or counts, the penalty for the most serious charge shall be imposed, and the others shall be considered as aggravating circumstances.

In this regard, it is relevant to note that this is not the first time that De Leon and Surtida have been held administratively liable. In *Villaseñor v. De Leon*,[31] the Court reprimanded De Leon for conduct unbecoming of an employee of the court after she had willfully failed to pay the amount of ₱20,000.00 she had loaned from the complainant therein, Monica Villaseñor. Moreover, considering that De Leon had already been dropped from the rolls, the Court can only impose a fine or forfeiture of benefits to her.

Taking into account the number and gravity of De Leon's offenses in this matter and her previous administrative liability, the Court finds the fine of ₱40,000.00, as recommended by the OCA, too lenient. Therefore, the Court hereby forfeits all of her benefits, excluding her accrued leave credits, and perpetually disqualifies her from being re-employed in any government agency or instrumentality, including government-owned and controlled corporations or government financial institutions,[32] without prejudice to the filing of appropriate civil and criminal cases against her.

As for Surtida, the Court, in *Manaog v. Rubio and Surtida II*,[33] had also previously reprimanded him for conduct unbecoming of an employee of the court after he joined Rubio in verbally abusing the complainant therein, Christopher Manaog, when the latter tried to secure information with the OCC regarding certain parcels of land which were allegedly transferred to others through fraud. Hence, in view of this and the number and gravity of Surtida's offenses in the present matter, the Court also finds the fine of ₱20,000.00, as recommended by the OCA, less than commensurate to his infractions. Therefore, he should be, as he is hereby, suspended from service without pay for one (1) year.

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[31] 447 Phil. 457 (2003).

[32] See *Perez v. Roxas*, A.M. No. P-16-3595 (formerly OCA I.P.I. No. 15-4446-P), June 26, 2018, pp. 8-9; *Noces-De Leon v. Florendo*, 781 Phil. 334, 340-341 (2016).

[33] 598 Phil. 491 (2009).

Finally, as to Papa, it appears that he has not been previously held administratively liable for any other offense. Nevertheless, the Court also finds the fine of ₱5,000.00, as recommended by the OCA, too light. Thus, he should be, as he is hereby, suspended from the service without pay for six (6) months and one (1) day.

WHEREFORE, the Court hereby finds respondent Patricia De Leon, former Clerk III, Office of the Clerk of Court, Regional Trial Court, Naga City, **GUILTY** of Dishonesty, Grave Misconduct, and Insubordination, and would have been **DISMISSED** from the service, had she not been earlier dropped from the rolls of court employees. Accordingly, all of her benefits, except accrued leave credits, if any, are hereby **FORFEITED, WITH PREJUDICE** to re-employment or appointment to any public office or employment, including government-owned or controlled corporations.

The Office of the Court Administrator is hereby **DIRECTED TO IMMEDIATELY FILE** the appropriate civil and criminal charges against respondent Patricia De Leon.

As to respondent Pelagio Papa, Jr., Sheriff, Office of the Clerk of Court, Regional Trial Court, Naga City, he is hereby found **GUILTY** of Conduct Prejudicial to the Best Interest of the Service and is hereby **SUSPENDED from the service for SIX (6) MONTHS AND ONE (1) DAY WITHOUT PAY**, with a **STERN WARNING** that a repetition of the same or similar offense in the future shall be dealt with more severely.

As regards respondent Edgar Surtida II, Sheriff IV, Regional Trial Court, Branch 25, Naga City, he is hereby found **GUILTY** of Conduct Prejudicial to the Best Interest of the Service and Insubordination, and is hereby **SUSPENDED from the service for ONE (1) YEAR WITHOUT PAY**, with a **STERN WARNING** that a repetition of the same or similar offense in the future shall be dealt with more severely.

Finally, the Court reiterates that this case as against respondent Edgar Hufancia, Sheriff, Regional Trial Court, Branch 21, Naga City, is hereby **DISMISSED** in view of his death.

This Decision is **IMMEDIATELY EXECUTORY**.

SO ORDERED.

Carpio, Senior Associate Justice, Peralta, Bersamin, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., and *Hernando, JJ.*, concur.

Del Castillo, Gesmundo, and *Reyes, J. Jr., JJ.*, on official leave.

EN BANC

[G.R. No. 234448. November 6, 2018]

PRIVATE HOSPITALS ASSOCIATION OF THE PHILIPPINES, INC. (PHAPi) represented by its President, DR. RUSTICO JIMENEZ, *petitioner, vs.* **HON. SALVADOR MEDIALDEA, Executive Secretary, and the ACTING SECRETARY of Department of Health,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* AND PROHIBITION; PROPER REMEDY TO ASSAIL THE CONSTITUTIONALITY OF AN ACT STRENGTHENING THE ANTI-HOSPITAL DEPOSIT LAW (RA 10932) AND ENJOIN ITS ENFORCEMENT NOTWITHSTANDING THE FACT THAT LEGISLATION DOES NOT INVOLVE THE EXERCISE OF JUDICIAL, QUASI-JUDICIAL OR MINISTERIAL FUNCTIONS.— The present petition specifically alleges that R.A. No. 10932 is unconstitutional for being violative of substantive due process, the presumption of innocence, and the equal protection of laws and as such, seeks

that the enforcement and implementation thereof be prohibited. Under Rule 65 of the Rules of Court, the ground for review in *certiorari* and prohibition is grave abuse of discretion, and there is grave abuse of discretion when an act is *done contrary to the Constitution*, the law or jurisprudence or executed whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias. Petitions for *certiorari* and prohibition are thus appropriate remedies to raise constitutional questions. Grave abuse of discretion as a ground for review does not only appear under Rule 65 of the Rules of Court but also under Section 1, Article VIII of the Constitution defining judicial power. As constitutionally defined, judicial power includes not only the duty to settle actual controversies involving rights which are legally demandable and enforceable, but also, the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. Such innovation under the 1987 Constitution later on became known as the Court's "traditional jurisdiction" and "expanded jurisdiction," respectively. Given the commonality of the ground of grave abuse of discretion, the Court has allowed the use of a Rule 65 petition to invoke this Court's expanded jurisdiction. As expressly granted by the Constitution, the Court's expanded jurisdiction when invoked permits a review of acts not only by a tribunal, board or officer exercising judicial, quasi-judicial or ministerial functions, but also by any branch or instrumentality of the Government. "Any branch or instrumentality of the Government" necessarily includes the legislative and the executive, even if they are not exercising judicial, quasi-judicial or ministerial functions. x x x Accordingly, we held as proper remedies the writs of *certiorari* and prohibition in *Samahan ng mga Progresibong Kabataan (SPARK), et al. v. Quezon City, as represented by Mayor Herbert Bautista, et al.*, assailing the constitutionality of curfew ordinances and in *Agcaoili* questioning the contempt powers of the Congress in the exercise of its power of inquiry in aid of legislation. Following this trend in jurisprudence, petitioner therefore correctly availed of *certiorari* and prohibition under Rule 65 of the Rules of Court to assail the constitutionality of R.A. No. 10932 and enjoin its enforcement, notwithstanding that these governmental actions do not involve the exercise of judicial, quasi-judicial or ministerial functions.

2. ID.; JURISDICTION; DOCTRINE OF HIERARCHY OF COURTS, EXPLAINED; DIRECT RESORT TO THE SUPREME COURT IS GENERALLY IMPROPER; INSTANCES WHEN DIRECT RESORT TO THE COURT IS ALLOWED.— Under the doctrine of hierarchy of courts, "recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court." As a rule, "direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket." x x x As developed by case law, the instances when direct resort to this Court is allowed are enumerated in *The Diocese of Bacolod* as follows: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time; (b) when the issues involved are of transcendental importance; (c) in cases of first impression; (d) the constitutional issues raised are better decided by the Supreme Court; (e) the time element or exigency in certain situations; (f) the filed petition reviews an act of a constitutional organ; (g) when there is no other plain, speedy, and adequate remedy in the ordinary course of law; (h) 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.

3. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; EXPLAINED.— "The power of judicial review is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution." When exercised, the judiciary does not arrogate upon it a position superior to that of the other branches of the government but merely upholds the supremacy of the Constitution.

4. ID.; ID.; ID.; ID.; REQUISITES FOR THE PROPER EXERCISE OF THE POWER OF JUDICIAL REVIEW; ACTUAL CASE OR CONTROVERSY, ELABORATED; THE PRESENT PETITION FAILED TO PRESENT A *PRIMA FACIE* SHOWING OF GRAVE ABUSE OF DISCRETION ON THE PART OF CONGRESS IN

ENACTING RA 10932.— "[A]n actual case or controversy is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute." To be justiciable, the case or controversy must present a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Regardless of whether the Court's power of review is invoked under the traditional or expanded concept, the presence of an actual case or controversy remains a requisite before judicial power is exercised. However, when the Court's expanded jurisdiction is invoked, the requirement of an actual case or controversy is satisfied upon a *prima facie* showing of grave abuse of discretion in the assailed governmental act. *Alexander A. Padilla, et al. v. Congress of the Philippines* emphasized that for the Court to exercise its power of judicial review and give due course to a petition for *certiorari*, the petitioners should set forth their material allegations to make out a *prima facie* case for *certiorari*. Interrelated with the requirement of an actual case or controversy is the requirement of ripeness. Consistently, a question is considered ripe for adjudication when the act being challenged has had a direct adverse effect on the individual or entity challenging it. The question of ripeness asks whether a case involves contingent events that may not occur as anticipated and whether there is actual injury to the party being suit. Thus, it is required that an act had been accomplished or performed by either branch of the government and that there is an immediate or threatened injury to the petitioner as a result of the challenged action before courts may interfere. In *Province of North Cotabato, et al. v. Gov't. of the Rep. of the Phils. Peace Panel on Ancestral Domain (GRP), et al.*, we held that "[w]hen an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute." The allegations set forth in the petition failed to meet the requirement of a *prima facie* showing of grave abuse of discretion on the part of the Congress relative to the provisions of R.A. No. 10932. While R.A. No. 10932 and its implementing rules are accomplished acts of a co-equal branch of the government, the petition is unfortunately bereft of any allegation that petitioner, nor any of its members, had thereby suffered an actual or direct injury as a result of a discretion gravely abused. In the absence of an actual and direct injury, any pronouncement by the Court would be purely advisory

or sheer legal opinion, in view of the mere hypothetical scenarios which the instant petition presents.

5. ID.; ID.; ID.; ID.; ID.; LEGAL STANDING, DEFINED; INSTANCES WHEN A PARTY IS ALLOWED TO RAISE A CONSTITUTIONAL QUESTION; RECOGNIZED EXCEPTIONS ON THE RULE ON LEGAL STANDING; TO FALL ON THE THIRD PARTY EXCEPTION, AN ASSOCIATION FILING A CASE ON BEHALF OF ITS MEMBERS MUST NOT ONLY SHOW THAT IT STANDS TO SUFFER DIRECT INJURY BUT ALSO THAT IT HAS BEEN AUTHORIZED BY ITS MEMBERS; PETITIONER FAILED TO DEMONSTRATE THAT AMPLE OPPORTUNITY HAD BEEN EXTENDED TO IT BY ITS MEMBERS TO FILE THE INSTANT PETITION.— [L]egal standing or *locus standi* is defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. As a rule, a party is allowed to raise a constitutional question when (1) he can show that he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action. *Sans* doubt, R.A. No. 10932 governs the conduct of hospitals, medical facilities, medical practitioners and employees inasmuch as the law imposes upon the latter certain obligations and imposes corresponding sanctions in case of violation. However, petitioner itself, is not a hospital, a medical facility, a medical practitioner or employee, but an *association* thereof. x x x Thus, while juridical persons, like an association, are endowed with the capacity to sue or be sued, it must demonstrate substantial interest that it has sustained or will sustain direct injury. Assuming a hospital is found liable for violating the provisions of R.A. No. 10932, the liability or direct injury inures not to the petitioner association itself but to the member-hospital. To be sure, the rule on standing admits of recognized exceptions: the over breadth doctrine, taxpayer suits, third party standing and the doctrine of transcendental importance. To fall under the third party exception, an association filing a case on behalf of its members must not only show that it stands to suffer direct injury, but also that it has been duly authorized by its members to represent them or sue in their behalf. In this case, while petitioner successfully averred that

it is a non-stock, non-profit organization, existing under the laws of the Philippines and identified its members being the sole national organization of purely privately owned clinics, hospitals or other health facilities in the Philippines, dedicated to the management and concerns of private hospitals in the country, it failed to demonstrate that ample authority had been extended to it by its members to file the instant petition. The attached Board Resolutions and Secretary's Certificate merely state that the "members of the [petitioner], view [R.A. No. 10932] as [unconstitutional] with respect to its penal provisions or Section 4 thereof, the same being oppressive and confiscatory; and with respect to its provision on 'Presumption of Liability' or Section 5 thereof, which is utterly against the Constitutional provision on 'Presumption of Innocence'" without authorizing petitioner to file the necessary petition to question the constitutionality of the law before any court. Petitioner therefore cannot benefit from the third party exception to the requirement of *locus standi*.

PERLAS-BERNABE, *J.*, *concurring opinion:*

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; REQUIREMENTS THAT MUST BE MET FOR A VALID EXERCISE THEREOF.—** The power of judicial review is the power of the courts to test the validity of the executive and legislative acts if they conform to the Constitution. Through such power, the judiciary enforces and upholds the supremacy of the Constitution. However, for a court to exercise this power, certain requirements must first be met, namely: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

2. **ID.; ID.; ID.; ID.; ID.; PETITIONER HAS NO *LOCUS STANDI* TO FILE THE PETITION; THERE IS NO ACTUAL JUSTICIABLE CONTROVERSY THAT WOULD SANCTION A REVIEW OF THE ASSAILED REPUBLIC ACT NO. 10932 PROVISIONS.—** In this case, PHAPi is not

a hospital or medical clinic, but only an association of – as its name denotes – private hospitals. As such, PHAPi is not directly subject to the provisions of Republic Act No. (RA) 10932, and consequently, does not stand to suffer a real and apparent threat or injury so as to demonstrate its *locus standi* to file this petition. To be sure, while it claims that it represents the interests of its member hospitals, records are bereft of any showing that it was specifically authorized to file this case on their behalf. Hence, PHAPi's conveyed interests, through the distinct manner of argumentation in the petition, can only be attributed as its own. Furthermore, there appears to be no actual justiciable controversy that would sanction a review of the assailed provisions of RA 10932. x x x [T]he need to prove an actual justiciable controversy is not merely an idle procedural requirement, but a clear safeguard to ensure that the courts do not unduly intrude into the areas specifically reserved to the other branches of government. The Court's exercise of judicial review on a hypothetical and theoretical situation runs the danger of it prematurely supplanting the wisdom of Congress with its own.

LEONEN, *J.*, concurring opinion:

1. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; REQUIREMENTS FOR PROPER EXERCISE THEREOF; THERE MUST BE AN ACTUAL CASE OR CONTROVERSY.—** It is well-established in this jurisdiction that ". . . for a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; x x x[.] Thus, there must first be a real and material act affecting another, which one party asserts is done within the bounds allowed by law, but which another contends is injurious to his or her right. If there is yet no such act, or when such acts are merely conjecture, there is no actual case or controversy. In case of a governmental act, the party asserting its unconstitutionality must allege the actual act performed by the government that caused it the injury. x x x The requirement of an actual case or controversy is rooted on the respect for the separation of powers of the three branches of the government. Courts cannot supplant the discretionary acts of the legislative or the executive branch on the premise

that they know of a wiser, more just, or expedient policy or course of action. They may only act in case the other branches acted outside the bounds of their powers or with grave abuse of discretion amounting to lack or excess of jurisdiction. The other reason for requiring an actual case or controversy is to maintain the significance of this Court's role in making "final and binding construction[s] of law." Courts do not render mere advisory opinions. Judicial decisions are part of the legal system, and thus, have binding effects on actual persons, places, and things. Ruling on hypothetical situations with no bearing on any matter will weaken the import of this Court's issuances.

2. ID.; ID.; ID.; ID.; ID.; PETITIONER FAILED TO SHOW THAT THERE WAS A VIOLATION OF ITS RIGHT OR INJURY SUFFERED BY ITS MEMBERS AS A CONSEQUENCE OF THE ENACTMENT OF REPUBLIC ACT NO. 10932 (AN ACT STRENGTHENING THE ANTI-HOSPITAL DEPOSIT LAW).— [I]n cases where the constitutionality of a law is being questioned, it is not enough that the law or the regulation has been passed or is in effect. To rule on the constitutionality of provisions in the law without an actual case is to decide only the basis of the mere enactment of the statute. This amounts to a ruling on the wisdom of the policy imposed by the Congress on the subject matter of the law. x x x An allegation of grave abuse of discretion amounting to lack or excess of jurisdiction is insufficient. If there is no exercise of discretion, it could not have been gravely abused. In the case at bar, petitioner failed to show that any violation of its rights was committed as a consequence of the enactment of Republic Act No. 10932. The law itself has not been enforced against petitioner or its members. In fact, petitioner's allegation is that there is *a risk or a threat* that its members will be obligated and sanctioned by the enactment of the law. Thus, there is yet no act committed by petitioner showing any breach of the statute, and there is yet no act of enforcement or sanction against it. There is no injury yet suffered by petitioner. The sanctions they alleged are still in the realm of imagination.

3. ID.; ID.; ID.; ID.; ID.; PARTY FILING THE SUIT MUST HAVE LEGAL STANDING; REQUISITES FOR A THIRD-PARTY STANDING, NOT COMPLIED WITH; PETITIONER WAS UNABLE TO PROVE THAT IT WAS AUTHORIZED BY ITS MEMBERS TO FILE THE

INSTANT CASE THROUGH BOARD RESOLUTIONS OR THROUGH ITS ARTICLES OF INCORPORATION.— In a very limited subset of cases, this Court has allowed a party to bring a suit on behalf of another. However, for this Court to accept that the third party has the standing to file the case, the following requisites must be present: first, the party filing the suit "must have suffered an 'injury-in-fact', thus [has] a "sufficiently concrete interest" in the outcome of the issue in dispute; [second, he or she] must have a close relation to the third party; and [third, the third party is prevented by] some hindrance . . . to protect his or her own interest." Associations have been able to file petitions on behalf of its members on the basis of third-party standing. x x x However, associations must sufficiently establish who their members are, that their members authorized them to sue on their behalf, and that they would be directly injured by the challenged governmental acts. x x x The petitioner was unable to prove that it was authorized by its members to file the instant case through board resolutions or through its articles of incorporation; I find, thus, that petitioner does not have the required standing to file the petition.

CAGUIOA, *J.*, *separate concurring opinion:*

1. POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW, DEFINED; REQUIREMENTS FOR A VALID EXERCISE THEREOF.— The power of judicial review refers to the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution. Through such power, the judiciary enforces and upholds the supremacy of the Constitution. For the Court to exercise this power, it is indispensable that certain requirements must first be met, namely: (1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have standing to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.

2. ID.; ID.; ID.; ID.; ACTUAL CASE OR CONTROVERSY, EXPLAINED; THERE IS NO ACTUAL CASE OR

CONTROVERSY IN CASE AT BAR CALLING FOR THE COURT'S EXERCISE OF ITS POWER.— An "actual case or controversy" is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute. There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Related to the requisite of an actual case or controversy is the requisite of "ripeness," which means that **something had then been accomplished or performed by either branch before a court may come into the picture,** and **the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action**. Otherwise stated, an actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, **not conjectural or anticipatory**. x x x [I]t is apparent that the instant Petition was filed merely in **anticipation** of a possible breach or infraction of the law. To emphasize, an actual case or controversy which justifies the Court's exercise of its judicial review power necessitates an existing case or controversy that is appropriate or ripe for determination, and not merely an anticipatory controversy.

3. **ID.; ID.; ID.; ID.; *LOCUS STANDI*, DEFINED; PETITIONER HAS NO *LOCUS STANDI* TO QUESTION THE CONSTITUTIONALITY OF AN ACT STRENGTHENING THE ANTI-HOSPITAL DEPOSIT LAW (RA 10932).—** Defined as a right of appearance in a court of justice on a given question, *locus standi* requires that a party alleges such **personal stake** in the outcome of the controversy as to assure that **concrete adverseness** which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions. Unless a person has sustained or is in imminent danger of sustaining an injury as a result of an act complained of, such proper party has no standing. Applying the foregoing in the instant case, it is crystal clear that **petitioner PHAPi has no legal standing to question the constitutionality of RA 10932** — as it does not stand to sustain any damage or injury of a direct and personal nature in the implementation of RA 10932.

4. **ID.; ID.; CONSTITUTIONALITY OF RA 10932; RATIONALE OF RA 10932; SECTIONS 1 AND 4 ARE NOT VIOLATIVE**

OF THE CONSTITUTION.— The essence of RA 10932 is to prohibit medical institutions/practitioners from requesting or accepting any deposit or any other form of payment as a prerequisite for administering basic emergency care, confinement, or medical treatment of a patient, or to refuse to administer medical treatment and support as dictated by good practice of medicine to prevent death, or permanent disability, or, in the case of a pregnant woman, permanent injury or loss of her unborn child, or non-institutional delivery, only in emergency or serious cases and only if the medical institution or practitioner has adequate medical capabilities to administer treatment. x x x [C]ontrary to the specious interpretation of the petitioner, Section 1 of RA 10932 does not mandate whatsoever that physicians be insurers of the good result of treatment. The law merely imposes on medical institutions/practitioners the strict duty to administer basic emergency care, as defined under the law, only with respect to persons in emergency or serious situations, and when the medical institutions/practitioners have the capability to administer such treatment. x x x [T]he stern fines and penalties provided by Section 4 of RA 10932 are not at all unjust, excessive, and oppressive, considering that the violation of the law does not entail mere damage to property. The observance of RA 10932 may very well determine whether a patient experiencing an emergency health situation will survive or perish. The grave consequences involved cannot be overstated; a patient's life hangs in the balance. Further, the legislature's desire to impose strict penalties upon violators of RA 10932 is in fealty to the constitutional mandate that the State shall protect and promote the right to health of the people. Hence, the petitioner's attempt to assail the constitutionality of Section 4 of RA 10932 must also fall.

5. ID.; ID.; ID.; SECTION 5 OF RA 10932 ON THE PRESUMPTION OF LIABILITY DOES NOT VIOLATE THE CONSTITUTION; CREATING A PRESUMPTION OF NEGLIGENCE BASED ON THE VIOLATION OF A STATUTORY DUTY IS NOT LEGALLY INFIRM.— While the petitioner posits the view that this is unconstitutional because the plaintiff, in medical malpractice cases, must first prove that negligence was indeed committed, it should be noted that under Philippine law, the violation of a statutory duty may be treated either as a circumstance which establishes a presumption of

negligence, negligence *per se*, or a circumstance which should be considered together with other circumstances as evidence of negligence. The Court held in *F.F. Cruz and Co., Inc. v. Court of Appeals* that the failure of the therein petitioner to construct a firewall in accordance with certain city ordinances **in itself** sufficed to support a finding of negligence. x x x ***Hence, creating a presumption of negligence based on the violation of a statutory duty is not legally infirm.***

6. ID.; ID.; ID.; ID.; SINCE SECTION 5 OF RA 10932 CONTEMPLATES A SITUATION WHERE CERTAIN INJURIES OCCUR, WHICH INJURIES ARE THE VERY INJURIES INTENDED TO BE PREVENTED BY THE LAW, THEN THE ACTS VIOLATIVE THEREOF WILL BE PRESUMED THE PROXIMATE CAUSE OF THE DEATH OR INJURY; THE PROVISION DOES NOT CREATE A CONCLUSIVE PRESUMPTION OF DEFENDANT'S GUILT, IT MERELY SHIFTS THE BURDEN TO THE DEFENDANT TO PROVE THAT THERE WAS ANOTHER ACT OR EVENT THAT WAS THE PROXIMATE CAUSE OF THE DEATH OR INJURY.— [W]hen a statute is created in order to prevent a certain injury, and such injury occurs when the statute is violated, then the violation of the statute will be deemed to be the proximate cause of the injury. Applying the foregoing in the instant case, since Section 5 of RA 10932 contemplates a situation wherein death, permanent disability, serious impairment of the health condition of the patient-complainant, *etc*. occurs, ***which are the very injuries intended to be prevented by the introduction of RA 10932***, then the acts violative of RA 10932 will be presumed to be the proximate cause of the death or serious injury. In any case, the Presumption of Liability Clause does not create a conclusive presumption that the defendant is automatically guilty of medical malpractice. **What the provision merely does is to *shift the burden* to the defendant to prove that there was another act or event that was the proximate cause of the death/injury.**

7. ID.; ID.; ID.; ID.; THE PRESUMPTION OF LIABILITY CLAUSE DOES NOT VIOLATE THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE; REASON.— [C]onsidering that [the Presumption of Liability Clause] envisions a situation wherein a person who is in extremely urgent

need of medical attention is denied treatment by a medical institution/practitioner due to an illegal policy or practice of demanding deposits/advance payments for confinement or treatment, and such person dies or is seriously injured immediately thereafter, there is undoubtedly a reasonable connection between the illegal act committed and the ultimate fact presumed, *i.e.*, liability for the death or injury of the emergency patient. ***Such connection is not unreasonable and arbitrary, considering that death or serious injury would be the rational and logical outcome/consequence when a person experiencing an extremely urgent medical situation was not given timely medical attention due to a policy or practice expressly prohibited by law.***

8. **ID.; ID.; ID.; SECTIONS 7 AND 8 OF RA 10932 DO NOT VIOLATE THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION.—** The equal protection clause does not call for absolute equality. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification. Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class. First, a belabored discussion is not needed to explain that there are substantial distinctions as to the medical treatment of poor, indigent, and marginalized patients and that of patients who can very well afford medical treatment. It is self-explanatory that poor, indigent, and marginalized patients are differently situated as compared to affluent and well-off patients who have the means to avail themselves of medical treatment. Further, the special treatment of poor, indigent, and marginalized patients under RA 10932 is very much germane to the purpose of the law. In fact, the 1987 Constitution itself mandates that the State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods, health and other social services available to all the people at affordable cost, wherein there shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children. Lastly, it is not limited to existing conditions only and that the questioned provisions equally apply to all members of the same class.

APPEARANCES OF COUNSEL

Castro Rebosa Rebosa Law Offices for petitioner PHAPi.
The Solicitor General for respondents.

D E C I S I O N

TIJAM, *J.*:

On grounds of denial of substantive due process, repugnancy to the constitutional presumption of innocence, violation of the equal protection and involuntary servitude clauses, petitioner Private Hospitals Association of the Philippines, Inc., (PHAPi) — an organization of privately-owned clinics, hospitals, and other health facilities — seeks to declare as unconstitutional and void the duty imposed upon hospitals, medical practitioners and employees to prevent actual death or injury under Section 1; the penal provisions under Section 4; the presumption of liability clause under Section 5; and the reimbursement and tax deduction clause under Sections 7 and 8, all of Republic Act (R.A.) No. 10932[1] otherwise known as an Act Strengthening the Anti-Hospital Deposit Law.

The Antecedents

In 1984, Batas Pambansa (BP) Bilang 702 entitled An Act Prohibiting the Demand of Deposits or Advance Payments for the Confinement or Treatment of Patients in Hospitals and Medical Clinics in Certain Cases was enacted. BP 702 was

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[1] AN ACT STRENGTHENING THE ANTI-HOSPITAL DEPOSIT LAW BY INCREASING THE PENALTIES FOR THE REFUSAL OF HOSPITALS AND MEDICAL CLINICS TO ADMINISTER APPROPRIATE INITIAL MEDICAL TREATMENT AND SUPPORT IN EMERGENCY OR SERIOUS CASES, AMENDING FOR THE PURPOSE BATAS PAMBANSA BILANG 702, OTHERWISE KNOWN AS "AN ACT PROHIBITING THE DEMAND OF DEPOSITS OR ADVANCE PAYMENTS FOR THE CONFINEMENT OR TREATMENT OF PATIENTS IN HOSPITALS AND MEDICAL CLINICS IN CERTAIN CASES", AS AMENDED BY REPUBLIC ACT NO. 8344, AND FOR OTHER PURPOSES. Approved August 3, 2017.

described as a landmark legislative measure that aimed to stop the practice of hospitals and medical clinics of asking for deposits or advance payments for treatment or confinement of patients in emergency and serious cases.[2]

Essentially, BP 702 makes it unlawful for any director, manager or any other officer of a hospital or medical clinic to demand any deposit or any other form of advance payment for confinement or treatment in such hospital or medical clinic in emergency or serious cases.[3] BP 702 penalizes such erring director, manager or any other officer of a hospital or medical clinic with a fine of not less than one thousand pesos but not more than two thousand pesos or imprisonment for not less than fifteen days but not more than thirty days, or both such fine and imprisonment.[4]

On August 25, 1997, BP 702 was amended by R.A. No. 8344.[5] R.A. No. 8344 makes it unlawful not only to demand, but also

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[2] *See* Explanatory Note of House Bill No. 6341.

[3] **Section 1.** It shall be unlawful for any director, manager or any other officer of a hospital or medical clinic to demand any deposit or any other form of advance payment for confinement or treatment in such hospital or medical clinic in emergency or serious cases.

[4] **Section 2.** Any director, manager or any other officer of a hospital or medical clinic who violates Section 1 of this Act shall be punished by a fine of not less than one thousand pesos but not more than two thousand pesos or imprisonment for not less than fifteen days but not more than thirty days, or both such fine and imprisonment.

Section 3. Any person convicted under this Act shall not be entitled to probation under the provisions of Presidential Decree No. 968, as amended, otherwise known as the Probation Law of 1976.

[5] AN ACT PENALIZING THE REFUSAL OF HOSPITALS AND MEDICAL CLINICS TO ADMINISTER APPROPRIATE INITIAL MEDICAL TREATMENT AND SUPPORT IN EMERGENCY OR SERIOUS CASES, AMENDING FOR THE PURPOSE BATAS PAMBANSA BILANG 702, OTHERWISE KNOWN AS "AN ACT PROHIBITING THE DEMAND OF DEPOSITS OR ADVANCE PAYMENTS FOR THE CONFINEMENT OR TREATMENT OF PATIENTS IN HOSPITALS AND MEDICAL CLINICS IN CERTAIN CASES."

to request, solicit, and accept any deposit or advance payment as a prerequisite for confinement or medical treatment in emergency or serious cases. R.A. No. 8344 further makes the refusal to administer medical treatment and support as dictated by good practice of medicine to prevent death or permanent disability unlawful. In case the hospital or the medical clinic has no adequate medical capabilities, R.A. No. 8344 outlines the procedure for the transfer of the patient to a facility where appropriate care can be given.[6] Under a new provision, R.A. No. 8344 allows the transfer of the patient to an appropriate hospital consistent with the latter's needs after the hospital or medical clinic has administered medical treatment and support.[7]

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[6] **Section 1.** *Section 1 of Batas Pambansa Bilang 702 is hereby amended to read as follows:*

SECTION 1. In emergency or serious cases, it shall be unlawful for any proprietor, president, director, manager or any other officer, and/or medical practitioner or employee of a hospital or medical clinic to request, solicit, demand or accept any deposit or any other form of advance payment as a prerequisite for confinement or medical treatment of a patient in such hospital or medical clinic or to refuse to administer medical treatment and support as dictated by good practice of medicine to prevent death or permanent disability: Provided, That by reason of inadequacy of the medical capabilities of the hospital or medical clinic, the attending physician may transfer the patient to a facility where the appropriate care can be given, after the patient or his next of kin consents to said transfer and after the receiving hospital or medical clinic agrees to the transfer: Provided, however, That when the patient is unconscious, incapable of giving consent and/or unaccompanied, the physician can transfer the patient even without his consent: Provided, further, That such transfer shall be done only after necessary emergency treatment and support have been administered to stabilize the patient and after it has been established that such transfer entails less risks than the patient's continued confinement: Provided, furthermore, That no hospital or clinic, after being informed of the medical indications for such transfer, shall refuse to receive the patient nor demand from the patient or his next of kin any deposit or advance payment: Provided, finally, That strict compliance with the foregoing procedure on transfer shall not be construed as a refusal made punishable by this Act.

[7] **Section 2.** *Section 2 of Batas Pambansa Bilang 702 is hereby deleted and in place thereof, new Sections 2, 3 and 4 are added, to read as follows:*

x x x x x x x x x

R.A. No. 8344 also provides the following governing definitions for purposes of the law:

(a) Emergency - a condition or state of a patient wherein based on the objective findings of a prudent medical officer on duty for the day there is immediate danger and where delay in initial support and treatment may cause loss of life or cause permanent disability to the patient.

(b) Serious case – refers to a condition of a patient characterized by gravity or danger wherein based on the objective findings of a prudent medical officer on duty for the day when left unattended to, may cause loss of life or cause permanent disability to the patient.

(c) Confinement – a state of being admitted in a hospital or medical clinic for medical observation, diagnosis, testing, and treatment consistent with the capability and available facilities of the hospital or clinic.

(d) Hospital – a facility devoted primarily to the diagnosis, treatment and care of individuals suffering from illness, disease, injury or deformity, or in need of obstetrical or other medical and nursing care. It shall also be construed as any institution, building or place where there are facilities and personnel for the continued and prolonged care of patients.

(e) Emergency treatment and support – any medical or surgical measure within the capability of the hospital or medical clinic that is administered by qualified health care professionals to prevent the death or permanent disability of a patient.

(f) Medical clinic - a place in which patients can avail of medical consultation or treatment on an outpatient basis.

(g) Permanent disability - a condition of physical disability as defined under Article 192-C and Article 193-B and C of Presidential Decree No. 442; as amended, otherwise known as the Labor Code of the Philippines.

SEC. 3. After the hospital or medical clinic mentioned above shall have administered medical treatment and support, it may cause the transfer of the patient to an appropriate hospital consistent with the needs of the patient, preferably to a government hospital, specially in the case of poor or indigent patients.

(h) Stabilize - the provision of necessary care until such time that the patient may be discharged or transferred to another hospital or clinic with a reasonable probability that no physical deterioration would result from or occur during such discharge or transfer.

R.A. No. 8344 also increased the penalties prescribed under BP 702 to imprisonment of not less than six months and one day but not more than two years and four months, or a fine of not less than twenty thousand pesos, but not more than one hundred thousand pesos, or both at the discretion of the court. However, if the violation was committed pursuant to an established hospital or clinic policy or upon the instruction of its management, the director or officer responsible for the formulation and implementation of such policy shall suffer imprisonment of four to six years, or a fine of not less than one hundred thousand pesos, but not more than five hundred thousand pesos, or both, at the court's discretion.[8]

Sensing the need to curb the still prevalent practice of refusing to provide initial medical treatment and support in emergency or serious cases without the corresponding deposit or advance

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[8] **Section 2.** *Section 2 of Batas Pambansa Bilang 702 is hereby deleted and in place thereof, new Sections 2, 3 and 4 are added, to read as follows:*

x x x x x x x x x

SEC. 4. Any official, medical practitioner or employee of the hospital or medical clinic who violates the provisions of this Act shall, upon conviction by final judgment, be punished by imprisonment of not less than six (6) months and one (1) day but not more than two (2) years and four (4) months, or a fine of not less than Twenty thousand pesos (₱20,000.00), but not more than One hundred thousand pesos (₱100,000.00) or both, at the discretion of the court: Provided, however, That if such violation was committed pursuant to an established policy of the hospital or clinic or upon instruction of its management, the director or officer of such hospital or clinic responsible for the formulation and implementation of such policy shall, upon conviction by final judgment, suffer imprisonment of four (4) to six (6) years, or a fine of not less than One hundred thousand pesos (₱100,000.00), but not more than Five hundred thousand pesos (₱500,000.00) or both, at the discretion of the court.

payment, House Bill No. 5159[9] was submitted by the House Committee on Health which seeks to increase the penalties for violation of BP 702 as amended by R.A. No. 8344; expand the definition of "emergency care" to include women in active labor and at the risk of miscarriage or fetal distress; include reimbursement from the Philippine Health Insurance Corporation (PhilHealth) for the expenses advanced by hospitals and medical facilities in treating poor and indigent patients; and mandate the Philippine Charity Sweepstakes Office (PCSO) to provide assistance to poor and marginalized patients on emergency treatment in hospitals.[10]

This development met similar support from the Senate through Senate Bill No. 1353[11] submitted by its Committees on Health and Demography, Justice and Human Rights, and Ways and Means. Similar to its lower house counterpart, Senate Bill No. 1353 aims to increase the penalties for violation of the law; define "basic emergency care"; and include PhilHealth reimbursement of basic emergency care incurred by the hospital or medical clinic. However, peculiar to the Senate version is the presumption of liability imposed against the hospital, medical clinic, and the involved official, medical practitioner, or employee

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[9] AN ACT STRENGTHENING THE PROVISION OF EMERGENCY HEALTH CARE SERVICE TO PATIENTS, FURTHER AMENDING FOR THE PURPOSE BATAS PAMBANSA BILANG 702, AS AMENDED, ENTITLED "AN ACT PROHIBITING THE DEMAND OF DEPOSITS OR ADVANCED PAYMENTS FOR THE CONFINEMENT OR TREATMENT OF PATIENTS IN HOSPITALS AND MEDICAL CLINICS IN CERTAIN CASES."

[10] *See* Fact Sheet of House Bill No. 5159.

[11] AN ACT INCREASING THE PENALTIES FOR THE REFUSAL OF HOSPITALS AND MEDICAL CLINICS TO ADMINISTER APPROPRIATE INITIAL MEDICAL TREATMENT AND SUPPORT IN EMERGENCY OR SERIOUS CASES, AMENDING FOR THE PURPOSE BATAS PAMBANSA BILANG 702, OTHERWISE KNOWN AS "AN ACT PROHIBITING THE DEMAND OF DEPOSITS OR ADVANCE PAYMENTS FOR THE CONFINEMENT OR TREATMENT OF PATIENTS IN HOSPITALS AND MEDICAL CLINICS IN CERTAIN CASES" AS AMENDED BY REPUBLIC ACT NO. 8344, AND FOR OTHER PURPOSES.

in the event of death, permanent disability, serious impairment of the health condition of the patient, or injury to or loss of the unborn child proceeding from the denial of admission to the health facility pursuant to a policy or practice of demanding deposits or advance payments for confinement or treatment.

A consolidation of Senate Bill No. 1353 and House Bill No. 5159 gave birth to R.A. No. 10932 which was signed into law on August 3, 2017.

Thus, as it presently stands, R.A. No. 10932 makes it unlawful to request, solicit, demand or accept deposit or advance payment as a prerequisite not only for confinement or medical treatment but also for administering basic emergency care.[12] It expands

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[12] Section 1. Section 1 of Batas Pambansa Bilang 702, as amended, is hereby further amended to read as follows:

Sec. 1. In emergency or serious cases, it shall be unlawful for any proprietor, president, director, manager or any other officer and/or medical practitioner or employee of a hospital or medical clinic to request, solicit, demand or accept any deposit or any other form of advance payment as a prerequisite for administering basic emergency care to any patient, confinement or medical treatment of a patient in such hospital or medical clinic or to refuse to administer medical treatment and support as dictated by good practice of medicine to prevent death, or permanent disability, or in the case of a pregnant woman, permanent injury or loss of her unborn child, or noninstitutional delivery: *Provided*, That by reason of inadequacy of the medical capabilities of the hospital or medical clinic, the attending physician may transfer the patient to a facility where the appropriate care can be given, after the patient or his next of kin consents to said transfer and after the receiving hospital or medical clinic agrees to the transfer: *Provided, however*, That when the patient is unconscious, incapable of giving consent and/or unaccompanied, the physician can transfer the patient even without his consent: *Provided, further*, That such transfer shall be done only after necessary emergency treatment and support have been administered to stabilize the patient and after it has been established that such transfer entails less risks than the patient's continued confinement: *Provided, furthermore*, That no hospital or clinic, after being informed of the medical indications for such transfer, shall refuse to receive the patient nor demand from the patient or his next of kin any deposit or advance payment: *Provided, finally*, That strict compliance with the foregoing procedure on transfer shall not be construed as a refusal made punishable by this Act.

the scope of "basic emergency care" to include medical procedures and treatment administered to a woman in active labor.[13]

In case a transfer to another hospital is deemed appropriate, R.A. No. 10932 further mandates the local government unit where the hospital or medical clinic is located to allow free use of its emergency medical vehicle. Moreover, all hospitals are required to post a notice indicating its classification level and the list of medical services it is authorized to perform.[14]

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[13] Section 2. Section 2 of the same Act, as amended, is hereby further amended to read as follows:

"Sec. 2. For purposes of this Act, the following definitions shall govern:

"x x x x x x x x x

"(i) 'Basic emergency care' – the response to a situation where there is urgently required medical care and attention, and shall include procedures required for initial diagnosis, use of equipment and supplies in sufficiently addressing the emergency situation, considering the welfare of the patient. It also includes the necessary medical procedures and treatment administered to a woman in active labor to ensure the safe delivery of the newborn.

"(j) 'Noninstitutional delivery' – the delivery of a newborn while in transit, outside of a health facility, after an initial consultation was done with a health facility."

[14] SEC. 3. Section 3 of the same Act, as amended, is hereby further amended to read as follows:

"SEC. 3. After the hospital or medical clinic mentioned above shall have administered medical treatment and support, it may cause the transfer of the patient to an appropriate hospital consistent with the needs of the patient, especially in the case of poor or indigent patients.

Where there is no ambulance available for use by the hospital or medical clinic for the emergency transfer of the patient to a facility where the appropriate care shall be given, the local government unit (LGU) where the hospital or medical clinic is located must allow the free use of its emergency vehicle to transport the patient to the hospital or medical clinic where a continuation of care shall be given. The hospital or medical clinic must provide a staff nurse with advanced cardiovascular life support (ACLS) certification or its equivalent to accompany the patient in the emergency vehicle.

All hospitals are required to post at their entrance a notice indicating the classification level of the hospital as licensed by the Department of Health (DOH) and the list of medical services that the hospital is authorized to perform."

R.A. No. 10932 also introduces the creation of a Health Facilities Oversight Board (Board) where complaints against health facilities for violations of the law shall be initially filed. The Board is given the power to investigate, adjudicate and impose administrative sanctions including the revocation of the health facility's license.[15]

Further to the matter of penalties, R.A. No. 10932 imposes upon an erring official, medical practitioner or employee of the hospital or medical clinic the penalty of imprisonment of not less than six (6) months and one (1) day but not more than two (2) years and four (4) months, or a fine of not less than ₱100,000.00, but not more than ₱300,000.00, or both at the court's discretion. However, when the violation was made pursuant to an established hospital policy or upon instructions of its management, the penalties are increased as against the director or officer formulating and implementing such policy to four (4) years to six (6) years, or a fine of not less than ₱500,000.00, but not more than ₱1,000,000.00, or both, without prejudice to an award for damages.[16]

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[15] SEC. 5. New Sections 5, 6, 7 and 8 shall be inserted after Section 4 of Batas Pambansa bilang 702, as amended, to read as follows:

x x x x x x x x x

SEC. 6. Health Facilities Oversight Board. – All complaints for violations of this Act against health facilities shall be filed initially with the Health Facilities Oversight Board under the Health Facilities and Services Regulatory Bureau (HFSRB) of the [DOH]. The Board shall be composed of a DOH representative with a minimum rank of director to serve as Chair, a representative from the Philippine Health Insurance Corporation (PhilHealth), a representative from the Philippine Medical Association (PMA), a representative from private health institutions and three (3) representatives from non-government organizations (NGOs) advocating for patient's rights and public health, one of whom should be a licensed physician.

The Board shall investigate the claim of the patient and after adjudication, impose administrative sanctions in accordance with this Act including the revocation of the health facility's license. On the basis of its own findings, the Board shall also facilitate the filing of the criminal case in the proper courts. This is without prejudice to the right of the patient-complainant to directly institute criminal proceedings in the courts.

[16] SEC. 4. Section 4 of the same Act, as amended, is hereby further amended to read as follows:

In addition, R.A. No. 10932 introduces the three-strike rule, or when upon 3 repeated violations committed pursuant to an established policy or upon instruction of the management, the health facility's license to operate shall be revoked by the Department of Health (DOH). The law also makes the president, chairman, board of directors, or trustees and other officers of the health facility solidarily liable for damages.[17]

Apart from the foregoing, R.A. No. 10932 presumes liability against the hospital, medical clinic, and the official, medical practitioner, or employee involved, in the event of death, permanent disability, serious impairment or permanent injury to or loss of an unborn child, proceeding from the denial of admission to a health facility pursuant to a policy of requiring deposits or advance payments for confinement or treatment.[18]

SEC. 4. Any official, medical practitioner or employee of the hospital or medical clinic who violates the provisions of this Act shall, upon conviction by final judgment, be punished by imprisonment of not less than six (6) months and one (1) day but not more than two (2) years and four (4) months, or a fine of not less than One hundred thousand pesos (₱100,000.00), but not more than Three hundred thousand pesos (₱300,000.00 or both, at the discretion of the court: Provided, however, That if such violation was committed pursuant to an established policy of the hospital or clinic or upon instruction of its management, the director or officer of such hospital or clinic responsible for the formulation and implementation of such policy shall, upon conviction by final judgment, suffer imprisonment of four (4) to six (6) years, or a fine of not less than Five hundred thousand pesos (₱500,000.00), but not more than One million pesos (₱1,000,000.00) or both, at the discretion of the court, without prejudice to damages that may be awarded to the patient-complainant: Provided, further, That upon three (3) repeated violations committed pursuant to an established policy of the hospital or clinic or upon the instruction of its management, the health facility's license to operate shall be revoked by the DOH. The president, chairman, board of directors, or trustees, and other officers of the health facility shall be solidarily liable for damages that may be awarded by the court to the patient-complainant.

[17] *Id*.

[18] SEC. 5. New Sections 5, 6, 7 and 8 shall be inserted after Section 4 of Batas Pambansa bilang 702, as amended, to read as follows:

SEC. 5. Presumption of Liability. – In the event of death, permanent disability, serious impairment of the health condition of the patient-

R.A. No. 10932 also mandates that the PhilHealth reimburse the cost of the basic emergency care and transportation services rendered by the hospital or medical clinic to poor and indigent patients and that the PCSO provide medical assistance for the basic emergency care needs of the poor and marginalized groups. Expenses incurred in giving basic emergency care to poor and indigent patients not reimbursed by PhilHealth are allowed to be treated as tax deductions.[19]

Meanwhile, pending resolution of the instant petition or on April 4, 2018, the DOH issued Administrative Order No. 2018-0012 implementing R.A. No. 10932.

The Arguments for the Petitioner

Petitioner claims *locus standi* to file the present Petition for *Certiorari* and Prohibition as it stands to be directly injured by the implementation of R.A. No. 10932 insofar as the law regulates the conduct of its members and places the latter's management and staff at the risk of administrative, civil, and criminal sanctions.[20] At any event, petitioner claims that the issues herein presented specifically on the denial of due process and to equal protection of laws are of transcendental importance that should

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complainant, or in the case of a pregnant woman, permanent injury or loss of her unborn child, proceeding from the denial of his or her admission to a health facility pursuant to a policy or practice of demanding deposits or advance payments for confinement or treatment, a presumption of liability shall arise against the hospital, medical clinic, and the official, medical practitioner, or employee involved.

[19] SEC. 5. New Sections 5, 6, 7 and 8 shall be inserted after Section 4 of Batas Pambansa bilang 702, as amended, to read as follows:

x x x x x x x x x

SEC. 7. *PhilHealth Reimbursement of Basic Emergency Care.* – PhilHealth shall reimburse the cost of basic emergency care and transportation services incurred by the hospital or medical clinic for the emergency medical services given to poor and indigent patients. Furthermore, the Philippine Charity Sweepstakes Office (PCSO) shall provide medical assistance for the basic emergency care needs of the poor and marginalized groups.

[20] *Rollo*, p. 8.

allow the present petition to prosper despite the absence of direct injury.[21]

Petitioner further claims that the issues raised in the instant petition are ripe for adjudication given the imminent threat of the imposition of the unconstitutional duties and the corresponding unconstitutional sanctions under R.A. No. 10932 against petitioner's members with the impending approval of the rules implementing R.A. No. 10932.[22] Petitioner also argues that an allegation that R.A. No. 10932 infringes upon the constitutional rights to due process, equal protection of laws and the presumption of innocence, is sufficient to invoke the Court's power of review.[23]

Claiming exception to the doctrine of hierarchy of courts, petitioner also advances the view that direct resort to the Court is justified given the genuine issues of constitutionality posed by the present petition.[24]

Going into the merits of the petition, petitioner seeks to strike down as unconstitutional R.A. No. 10932 for being unduly oppressive and thus violative of substantive due process. Elaborating, petitioner argues that Section 1 of BP 702 as amended by R.A. No. 8344 and R.A. No. 10932 *imposes* upon the proprietor, president, director, manager or any other officer, medical practitioner or employee of a health care institution the *duty* to administer basic emergency care or medical treatment and support as dictated by good practice of medicine to *prevent* death, or permanent disability, or in the case of a pregnant woman, permanent injury or loss of her unborn child, or non-institutional delivery in emergency or serious cases.[25]

Petitioner argues that "basic emergency care" and "emergency treatment and support" as defined under R.A. No. 10932 imposes

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[21] *Id.*

[22] *Id.* at 10.

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

[24] *Id.* at 11.

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

upon the physician, the hospital, its management and staff the *untenable* duties to *actually prevent* death, permanent disability, permanent injury to or loss of an unborn baby or its non-institutional delivery and to *sufficiently address* an emergency situation and in case of a woman in active labor, to *ensure* the safe delivery of the baby.[26] Echoing *Lucas, et al. v. Dr. Tuaño*,[27] petitioner emphasizes that a physician is not an insurer of the good result of treatment.[28] Petitioner thus argues that the duty imposed by R.A. No. 10932, being predicated on the achievement of an end that is impossible to guarantee, amounts to a denial of due process.[29]

Further, petitioner aims to strike down the fines imposed under Section 4 for being unjust, excessive, and oppressive as they are not commensurate to the act or omission that is being penalized.[30] Petitioner also questions the solidary liability for damages under Section 4 insofar as it generally makes "other officers" of the health facility solidarily liable with the president, chairman, members of the board of directors or trustees.[31]

The presumption of liability spelled under Section 5 of R.A. No. 10932 is also being assailed for being repugnant to the constitutional presumption of innocence. It is the contention of petitioner that the presumption of liability clause allows for a presumption of generalized liability, *i.e.*, administrative, civil and criminal, upon the occurrence of death, permanent disability and serious impairment of the health condition of the patient or her unborn child after the denial of the patient's admission due to a hospital policy of demanding deposits or advance payments.[32]

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[26] *Id*. at 14.

[27] 604 Phil. 98 (2009).

[28] *Id*. at 125.

[29] *Rollo*, p. 16.

[30] *Id*.

[31] *Id*. at 18.

[32] *Id*. at 20.

Also, petitioner emphasizes that the presumption of liability clause necessarily presumes that there is, at all times, a causal connection between the injury and the acts or omissions complained of.[33] Expounding on this argument, petitioner argues that the offense defined under R.A. No. 10932 involves medical malpractice. As such, the causation between the injury and the medical action are determinable only through the technical and scientific competence of physicians and thus, cannot be presumed by law.[34]

Finally, petitioner seeks to strike down as unconstitutional the exclusion of the basic emergency care of patients *not* classified as poor, indigent or marginalized from PhilHealth reimbursement, PCSO assistance and tax deductibility under Sections 7 and 8 of R.A. No. 10932 for being violative of the equal protection clause.

Illustrating its argument, petitioner contends that these provisions would allow a hospital who treats a poor patient to receive PhilHealth reimbursement, PCSO assistance and tax deduction, and yet the hospital who treats a patient not classified as poor, indigent or marginalized will not be allowed a similar PhilHealth reimbursement, PCSO assistance and tax deduction.[35] It is likewise the view of petitioner that the law, insofar as it obliges hospitals, its staff and management to render services to patients not classified as poor, indigent, or marginalized without the corresponding reimbursement, assistance and tax deduction, amounts to involuntary servitude.[36]

The Arguments for the Respondents

Respondents Hon. Salvador Medialdea, Executive Secretary, and the Acting Secretary of Department of Health, through the Office of the Solicitor General (OSG), seek to dismiss the instant

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[33] *Id*.

[34] *Id*.

[35] *Id*. at 22.

[36] *Id*.

petition for being procedurally infirm on the ground that *certiorari* and prohibition are proper only against judicial, quasi-judicial, or ministerial act. Like so, respondents seek a dismissal of the petition for lack of a justiciable controversy in the absence of an actual governmental act which directly causes or will imminently cause injury to the alleged right of petitioner.[37] Respondents also attacks petitioner's standing to file the present petition for lack of personal stake in the outcome of the controversy, it being neither a hospital or health facility itself.[38] Further, respondents assert that the issues raised by petitioner being speculative are not matters of transcendental importance that would justify a disregard of the rule on *locus standi* and the doctrine of hierarchy of courts.[39]

Contrary to petitioner's claims, respondents contend that R.A. No. 10932 does not impose upon the hospital, medical facility, its staff or management the duty to guarantee that death, permanent loss or injury is prevented, neither does it penalize the failure of the physician or the hospital staff to prevent such occurrences. Rather, respondents argue that what R.A. No. 10932 prohibits is the act of requesting any form of advance payment as a prerequisite for administering basic emergency care or medical treatment, or the act of refusing to administer such as dictated by good practice to prevent death, permanent loss or injury.[40]

Also, respondents maintain that the fines imposed under R.A. No. 10932 are reasonable, and that in any case, the determination of the propriety of fines for violation of offenses lies within the discretion of the legislature.[41] Respondents add that neither is the solidary liability imposed by law unreasonable because such arises only from the participatory acts of the directors

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[37] *Id*. at 55.

[38] *Id*. at 56.

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

[40] *Id*. at 61.

[41] *Id*. at 68.

and officers who are responsible for the formulation and implementation of policies contrary to the mandates of R.A. No. 10932 and pertains only to damages which may be awarded to the patient-complainant.[42]

Respondents likewise defend the validity of the presumption of liability clause on the argument that the liability therein mentioned pertains to the liability for the death, permanent disability, serious impairment, injury or loss of the unborn child and that such presumption arises only upon prior proof that there was denial of admission to the health facility and that such denial was made pursuant to a policy of demanding deposits for confinement or treatment.[43]

Addressing the supposed violation of the equal protection clause, respondents maintain that patients classified as "poor", "indigent", or "marginalized" substantially differ from those who are not categorized as such, hence the provision on PhilHealth reimbursement, PCSO assistance and tax deduction must be upheld in the face of the equal protection challenge.[44]

Issues

Before the Court addresses the questions of constitutionality raised against certain provisions of R.A. No. 10932, it is imperative to first determine whether the Court, in fact, can discharge its power of judicial review. This is, in turn, determined by addressing the following issues: (a) are petitions for *certiorari* and prohibition proper to assail the constitutionality of R.A. No. 10932; (b) is direct resort to the Court proper; (c) has petitioner, as an association of privately-owned hospitals, clinics and other health facilities, the requisite legal standing; and (c) is the petition ripe for adjudication.

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[42] *Id*. at 71.

[43] *Id*. at 72.

[44] *Id*. at 73-74.

Ruling of the Court

We dismiss the petition. While the remedies of *certiorari* and prohibition are proper legal vehicles to assail the constitutionality of a law, the requirements for the exercise of the Court's judicial review even under its expanded jurisdiction must nevertheless first be satisfied.

Propriety of *Certiorari* and Prohibition

Petitioner seeks to declare as unconstitutional certain provisions of R.A. No. 10932 and for this purpose, availed of the remedy of *certiorari* and prohibition. Respondents counter that *certiorari* and prohibition are available only against judicial, quasi-judicial or ministerial functions and not against legislative acts, as in the instant case.

The rule is settled that the allegations in the complaint and the character of the relief sought determine the nature of the action and the court that has jurisdiction over it.[45] The present petition specifically alleges that R.A. No. 10932 is unconstitutional for being violative of substantive due process, the presumption of innocence, and the equal protection of laws and as such, seeks that the enforcement and implementation thereof be prohibited.

Under Rule 65 of the Rules of Court, the ground for review in *certiorari* and prohibition is grave abuse of discretion, and there is grave abuse of discretion when an act is *done contrary to the Constitution*, the law or jurisprudence or executed whimsically, capriciously or arbitrarily, out of malice, ill will or personal bias.[46] Petitions for *certiorari* and prohibition are thus appropriate remedies to raise constitutional questions.[47]

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[45] *Hon. Ermita v. Hon. Aldecoa-Delorino*, 666 Phil. 122, 132 (2011).

[46] *Ocampo, et al. v. Rear Admiral Enriquez, et al.*, 798 Phil. 227, 294 (2016).

[47] *Francisco, Jr., et al. v. Toll Regulatory Board, et al.*, 648 Phil. 54, 86 (2010).

Grave abuse of discretion as a ground for review does not only appear under Rule 65 of the Rules of Court but also under Section 1,[48] Article VIII of the Constitution defining judicial power. As constitutionally defined, judicial power includes not only the duty to settle actual controversies involving rights which are legally demandable and enforceable, but also, the duty to determine whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. Such innovation under the 1987 Constitution later on became known as the Court's "traditional jurisdiction" and "expanded jurisdiction," respectively.[49]

Given the commonality of the ground of grave abuse of discretion, the Court has allowed the use of a Rule 65 petition to invoke this Court's expanded jurisdiction.[50]

As expressly granted by the Constitution, the Court's expanded jurisdiction when invoked permits a review of acts not only by a tribunal, board or officer exercising judicial, quasi-judicial or ministerial functions, but also by any branch or instrumentality of the Government. "Any branch or instrumentality of the Government" necessarily includes the legislative and the executive, even if they are not exercising judicial, quasi-judicial or ministerial functions.[51]

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[48] Section 1. The judicial power shall be vested in the Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[49] See *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 883, 909-910 (2003).

[50] *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.*, 802 Phil. 116, 139 (2016).

[51] *Araullo, et al. v. President Benigno S.C. Aquino III, et al.*, 737 Phil. 457, 531 (2014).

In *Pedro Agcaoili, Jr., et al. v. The Honorable Representative Rodolfo C. Fariñas, et al.*,[52] we affirmed the availability of the extraordinary writs for determining and correcting grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the legislative and executive branches following *Judge Villanueva v. Judicial and Bar Council*,[53] as follows:

> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of *certiorari* or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, even if the latter does not exercise judicial, quasi-judicial or ministerial functions. This application is expressly authorized by the text of the second paragraph of Section 1, *supra*.
>
> Thus, petitions for *certiorari* and prohibition are appropriate remedies to raise **constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials**.[54] (Citation omitted and emphasis ours)

Accordingly, we held as proper remedies the writs of *certiorari* and prohibition in *Samahan ng mga Progresibong Kabataan (SPARK), et al. v. Quezon City, as represented by Mayor Herbert Bautista, et al.*,[55] assailing the constitutionality of curfew ordinances and in *Agcaoili* questioning the contempt powers of the Congress in the exercise of its power of inquiry in aid of legislation. Following this trend in jurisprudence, petitioner therefore correctly availed of *certiorari* and prohibition under Rule 65 of the Rules of Court to assail the constitutionality of

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[52] G.R. No. 232395, July 3, 2018.

[53] 757 Phil. 534 (2015).

[54] *Id*. at 544, citing *Araullo, et al. v. President Benigno S.C. Aquino III, et al.*, *supra* at 531.

[55] G.R. No. 225442, August 8, 2017.

R.A. No. 10932 and enjoin its enforcement, notwithstanding that these governmental actions do not involve the exercise of judicial, quasi-judicial or ministerial functions.

Direct Resort to the Court

Jurisdiction over petitions for *certiorari* and prohibition are shared by this Court, the Court of Appeals, the Sandiganbayan and the Regional Trial Courts.[56] Since the remedies of *certiorari* and prohibition are available to assail the constitutionality of a law, the question as to which court should the petition be properly filed consequently arises given that the hierarchy of courts "also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs."[57]

Respondents argue that direct resort to this Court is unjustified and thus violates the doctrine of hierarchy of courts.

Under the doctrine of hierarchy of courts, "recourse must first be made to the lower-ranked court exercising concurrent

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[56] Section 4 of Rule 65 provides:

SEC. 4. *When and where petition filed*. – The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the sixty (60) day period shall be counted from notice of the denial of the said motion.

The petition shall be filed in the Supreme Court or, if it relates to the acts or omissions of a lower court or of a corporation, board, officer or person, in the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed in the Court of Appeals whether or not the same is in aid of its appellate jurisdiction, or in the Sandiganbayan if it is in aid of its appellate jurisdiction. If it involves the acts or missions of a quasi-judicial agency, unless otherwise provided by law or these rules, the petition shall be filed in and cognizable only by the Court of Appeals.

No extension of time to file the petition shall be granted except for compelling reason and in no case exceeding fifteen (15) days.

[57] *Chamber of Real Estate and Builders Assn., Inc. (CREBA) v. Sec. of Agrarian Reform*, 635 Phil. 283, 300 (2010), citing *Heirs of Bertuldo Hinog v. Hon. Melicor*, 495 Phil. 422, 432 (2005).

jurisdiction with a higher court."[58] As a rule, "direct recourse to this Court is improper because the Supreme Court is a court of last resort and must remain to be so in order for it to satisfactorily perform its constitutional functions, thereby allowing it to devote its time and attention to matters within its exclusive jurisdiction and preventing the overcrowding of its docket."[59]

Nevertheless, we cautioned in *The Diocese of Bacolod, et al. v. COMELEC, et al.*,[60] that the Supreme Court's role to interpret the Constitution and act in order to protect constitutional rights when these become exigent is never meant to be emasculated by the doctrine of hierarchy of courts. As such, this Court possesses full discretionary authority to assume jurisdiction over extraordinary actions for *certiorari* filed directly before it for exceptionally compelling reasons, or if warranted by the nature of the issues clearly and specifically raised in the petition.[61]

As developed by case law, the instances when direct resort to this Court is allowed are enumerated in *The Diocese of Bacolod*[62] as follows: (a) when there are genuine issues of constitutionality that must be addressed at the most immediate time;[63] (b) when the issues involved are of transcendental importance;[64] (c) in cases of first impression;[65] (d) the constitutional issues raised are better decided by the Supreme Court;[66] (e) the time element or exigency in certain

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[58] *Arroyo v. DOJ, et al.*, 695 Phil. 302, 334 (2012).

[59] *Dy v. Judge Bibat-Palamos, et al.*, 717 Phil. 776, 782 (2013).

[60] 751 Phil. 301 (2015).

[61] *Id.* at 330-331.

[62] *Supra* note 60.

[63] *Id.* at 331.

[64] *Id.* at 332.

[65] *Id.*

[66] *Id.* at 333.

situations;[67] (f) the filed petition reviews an act of a constitutional organ;[68] (g) when there is no other plain, speedy, and adequate remedy in the ordinary course of law;[69] (h) 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.[70]

The present petition, while directed against an act of a co-equal branch of the government and concerns a legislative measure directly affecting the health and well-being of the people, actually presents no *prima facie* challenge, as hereunder expounded, as to be so exceptionally compelling to justify direct resort to this Court.

Requisites of Judicial Review

Notwithstanding the propriety of the legal vehicle employed, the Court cannot exercise its power of judicial review, even under its expanded jurisdiction, when the requisites for the exercise thereof are not satisfied.

"The power of judicial review is the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution."[71] When exercised, the judiciary does not arrogate upon it a position superior to that of the other branches of the government but merely upholds the supremacy of the Constitution.

In *Congressman Garcia v. The Executive Secretary*,[72] the Court held that, for a proper exercise of its power of review, certain requisites must be satisfied, namely:

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[67] *Id*.

[68] *Id*. at 334.

[69] *Id*.

[70] *Id*. at 334-335.

[71] *Congressman Garcia v. The Executive Secretary, et al.*, 602 Phil. 64, 73 (2009).

[72] 602 Phil. 64 (2009).

(1) an actual case or controversy calling for the exercise of judicial power; (2) the person challenging the act must have standing to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement; (3) the question of constitutionality must be raised at the earliest possible opportunity; and (4) the issue of constitutionality must be the very *lis mota* of the case.[73]

Arguing the absence of the first and second requisites, respondents seek an outright dismissal of the instant petition. We agree.

Actual Case or Controversy

"[A]n actual case or controversy is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute."[74] To be justiciable, the case or controversy must present a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. Regardless of whether the Court's power of review is invoked under the traditional or expanded concept, the presence of an actual case or controversy remains a requisite before judicial power is exercised.[75] However, when the Court's expanded jurisdiction is invoked, the requirement of an actual case or controversy is satisfied upon a *prima facie* showing of grave abuse of discretion in the assailed governmental act.[76] *Alexander A. Padilla, et al. v. Congress of the Philippines*[77] emphasized that for the Court to exercise its power of judicial review and give due course to a petition for *certiorari*, the

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[73] *Id.* at 73.

[74] *Hon. Exec. Sec. Belgica, et al. v. Ochoa, Jr., et al.*, 721 Phil. 416, 519 (2013).

[75] *Samahan ng mga Progresibong Kabataan (SPARK), et al., v. Quezon City, as represented by Mayor Herbert Bautista, et al.*, *supra* note 55.

[76] *Id.*

[77] G.R. No. 231671, July 25, 2017.

petitioners should set forth their material allegations to make out a *prima facie* case for *certiorari*.

Interrelated with the requirement of an actual case or controversy is the requirement of ripeness. Consistently, a question is considered ripe for adjudication when the act being challenged has had a direct adverse effect on the individual or entity challenging it. The question of ripeness asks whether a case involves contingent events that may not occur as anticipated and whether there is actual injury to the party being suit.[78] Thus, it is required that an act had been accomplished or performed by either branch of the government and that there is an immediate or threatened injury to the petitioner as a result of the challenged action before courts may interfere.[79] In *Province of North Cotabato, et al. v. Gov't. of the Rep. of the Phils. Peace Panel on Ancestral Domain (GRP), et al.*,[80] we held that "[w]hen an act of a branch of government is seriously alleged to have infringed the Constitution, it becomes not only the right but in fact the duty of the judiciary to settle the dispute."[81]

The allegations set forth in the petition failed to meet the requirement of a *prima facie* showing of grave abuse of discretion on the part of the Congress relative to the provisions of R.A. No. 10932. While R.A. No. 10932 and its implementing rules are accomplished acts of a co-equal branch of the government, the petition is unfortunately bereft of any allegation that petitioner, nor any of its members, had thereby suffered an actual or direct injury as a result of a discretion gravely abused. In the absence of an actual and direct injury, any pronouncement by the Court would be purely advisory or sheer legal opinion, in view of the mere hypothetical scenarios which the instant petition presents.

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[78] *Lawyers Against Monopoly and Poverty (LAMP), et al. v. The Secretary of Budget and Management, et al.*, 686 Phil. 357, 369 (2012).

[79] *Philippine Constitution Association (PHILCONSA) v. Philippine Government (GPH)*, G.R. No. 218406, November 29, 2016, 811 SCRA 284, 297.

[80] 589 Phil. 387 (2008).

[81] *Id*. at 486.

The challenged law also enjoys the presumption of constitutionality which the Court, at the first instance, cannot disturb in the absence of a *prima facie* showing of grave abuse of discretion and, upon delving into the merits, in the absence of a clearest showing that there was indeed an infraction of the Constitution.[82] If the Court were to invalidate the questioned law on the basis of conjectures and suppositions, then it would be unduly treading questions of policy and wisdom not only of the legislature that passed it, but also of the executive which approved it.[83]

Legal Standing

Closely related to the constitutional mandate that the Court settle only actual cases or controversies is the requirement of legal standing. Invariably, legal standing or *locus standi* is defined as a personal and substantial interest in a case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged.[84]

As a rule, a party is allowed to raise a constitutional question when (1) he can show that he will personally suffer some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[85]

Sans doubt, R.A. No. 10932 governs the conduct of hospitals, medical facilities, medical practitioners and employees inasmuch as the law imposes upon the latter certain obligations and imposes corresponding sanctions in case of violation. However, petitioner itself, is not a hospital, a medical facility, a medical practitioner or employee, but an *association* thereof.

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[82] See *Hon. Drilon v. Mayor Lim*, 305 Phil. 146, 150 (1994).

[83] *ABAKADA GURO Party List (formerly AASJS), et al. v. Hon Purisima, et al.*, 584 Phil. 246, 268 (2008).

[84] *Anak Mindanao Party-List Group v. Exec. Sec. Ermita*, 558 Phil. 338, 350 (2007).

[85] *Tolentino v. Commission on Elections*, 465 Phil. 385, 402 (2004).

Section 1,[86] Rule 3 of the Rules of Court provides that juridical persons authorized by law may be parties in a civil action. In turn, Article 44[87] of the Civil Code enumerates the juridical persons having capacity to sue which includes corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member. Section 4,[88] Rule 8 of the Rules of Court mandates that "[f]acts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of persons that is made a party, must be averred."

Thus, while juridical persons, like an association, are endowed with the capacity to sue or be sued, it must demonstrate substantial interest that it has sustained or will sustain direct injury. Assuming a hospital is found liable for violating the provisions of R.A.

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[86] SECTION 1. *Who may be parties; plaintiff and defendant*. — Only natural or juridical persons, or entities authorized by law may be parties in a civil action. The term "plaintiff" may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, *etc*.) — party plaintiff. The term "defendant" may refer to the original defending party, the defendant in a counterclaim, the cross-defendant, or the third (fourth, *etc*.) — party defendant.

[87] Art. 44. The following are juridical persons:

(1) The State and its political subdivisions;
(2) Other corporations, institutions and entities for public interest or purpose, created by law; their personality begins as soon as they have been constituted according to law;
(3) Corporations, partnerships and associations for private interest or purpose to which the law grants a juridical personality, separate and distinct from that of each shareholder, partner or member.

[88] **Sec. 4.** *Capacity*. — Facts showing the capacity of a party to sue or be sued or the authority of a party to sue or be sued in a representative capacity or the legal existence of an organized association of person that is made a party, must be averred. A party desiring to raise an issue as to the legal existence of any party or the capacity of any party to sue or be sued in a representative capacity, shall do so by specific denial, which shall include such supporting particulars as are peculiarly within the pleader's knowledge.

No. 10932, the liability or direct injury inures not to the petitioner association itself but to the member-hospital.

To be sure, the rule on standing admits of recognized exceptions: the over breadth doctrine, taxpayer suits, third party standing and the doctrine of transcendental importance.[89] To fall under the third party exception, an association filing a case on behalf of its members must not only show that it stands to suffer direct injury, but also that it has been duly authorized.by its members to represent them or sue in their behalf.[90]

In this case, while petitioner successfully averred that it is a non-stock, non-profit organization, existing under the laws of the Philippines and identified its members being the sole national organization of purely privately owned clinics, hospitals or other health facilities in the Philippines, dedicated to the management and concerns of private hospitals in the country,[91] it failed to demonstrate that ample authority had been extended to it by its members to file the instant petition.

The attached Board Resolutions[92] and Secretary's Certificate[93] merely state that the "members of the [petitioner], view [R.A. No. 10932] as [unconstitutional] with respect to its penal provisions or Section 4 thereof, the same being oppressive and confiscatory; and with respect to its provision on 'Presumption of Liability' or Section 5 thereof, which is utterly against the Constitutional provision on 'Presumption of Innocence'" without authorizing petitioner to file the necessary petition to question the constitutionality of the law before any court. Petitioner therefore cannot benefit from the third party exception to the requirement of *locus standi*.

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[89] *White Light Corp., et al. v. City of Manila*, 596 Phil. 444, 456 (2009).

[90] *Pharmaceutical and Health Care Assoc. of the Phils. v. Health Sec. Duque III*, 561 Phil. 386, 396 (2007).

[91] *Rollo*, pp. 4-5.

[92] *Id.* at 33-34 and 36-37.

[93] *Id.* at 35.

In view of the foregoing limitations, there is no reason for the Court to take cognizance of the present petition.

WHEREFORE, the Petition is **DISMISSED**.

SO ORDERED.

Carpio, Senior Associate Justice, Peralta, Bersamin, Jardeleza, Reyes, A. Jr., and *Hernando, JJ.*, concur.

Perlas-Bernabe, Leonen, and *Caguioa, JJ.*, see separate concurring opinions.

Del Castillo, Gesmundo, and *Reyes, J. Jr., JJ.*, on official leave.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur.

The present Petition for *Certiorari* and Prohibition filed by petitioner Private Hospitals Association of the Philippines, Inc. (PHAPi) should be dismissed due to its lack of legal standing, and the absence of an actual case or controversy.

The power of judicial review is the power of the courts to test the validity of the executive and legislative acts if they conform to the Constitution. Through such power, the judiciary enforces and upholds the supremacy of the Constitution. However, for a court to exercise this power, certain requirements must first be met, namely:

(1) an actual case or controversy calling for the exercise of judicial power;

(2) the person challenging the act must have "standing" to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3) the question of constitutionality must be raised at the earliest possible opportunity; and

(4) the issue of constitutionality must be the very *lis mota* of the case.[1]

In this case, PHAPi is not a hospital or medical clinic, but only an association of — as its name denotes — private hospitals. As such, PHAPi is not directly subject to the provisions of Republic Act No. (RA) 10932,[2] and consequently, does not stand to suffer a real and apparent threat or injury so as to demonstrate its *locus standi* to file this petition. To be sure, while it claims that it represents the interests of its member hospitals, records are bereft of any showing that it was specifically authorized to file this case on their behalf. Hence, PHAPi's conveyed interests, through the distinct manner of argumentation in the petition, can only be attributed as its own.

Furthermore, there appears to be no actual justiciable controversy that would sanction a review of the assailed provisions of RA 10932. Among others, PHAPi does not allege that any of its represented hospitals employs the deposit policy prohibited under RA 10932. Neither does PHAPi claim that a patient was refused admission by virtue of such policy nor was it shown that a claim has been filed based on the said law. As jurisprudence states, the need to prove an actual justiciable controversy is not merely an idle procedural requirement, but a clear safeguard to ensure that the courts do not unduly intrude

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[1] *Garcia v. Executive Secretary*, 602 Phil. 64,73 (2009).

[2] Entitled "AN ACT STRENGTHENING THE ANTI-HOSPITAL DEPOSIT LAW BY INCREASING THE PENALTIES FOR THE REFUSAL OF HOSPITALS AND MEDICAL CLINICS TO ADMINISTER APPROPRIATE INITIAL MEDICAL TREATMENT AND SUPPORT IN EMERGENCY OR SERIOUS CASES, AMENDING FOR THE PURPOSE BATAS PAMBANSA BILANG 702, OTHERWISE KNOWN AS 'AN ACT PROHIBITING THE DEMAND OF DEPOSITS OR ADVANCE PAYMENTS FOR THE CONFINEMENT OR TREATMENT OF PATIENTS IN HOSPITALS AND MEDICAL CLINICS IN CERTAIN CASES,' AS AMENDED BY REPUBLIC ACT NO. 8344, AND FOR OTHER PURPOSES," approved on August 3, 2017.

into the areas specifically reserved to the other branches of government.[3] The Court's exercise of judicial review on a hypothetical and theoretical situation runs the danger of it prematurely supplanting the wisdom of Congress with its own.

ACCORDINGLY, I vote to **DISMISS** the petition.

CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia* and add the following observations.

In this Petition for Certiorari and Prohibition under Rule 65 of the Rules of Court, petitioner Private Hospitals Association of the Philippines, Inc. (PHAPi), represented by its President, Dr. Rustico Jimenez, seeks to question the constitutionality of particular provisions of Republic Act No. 10932, otherwise known as the *Act Strengthening the Anti-Hospital Deposit Law by Increasing Penalties for Refusal of Hospitals and Clinics to Administer Medical Treatment in Emergency or Serious Cases*.

Petitioner asserts that the case is ripe for adjudication considering that there is an imminent threat that unconstitutional obligations and sanctions will be imposed on its members because of the impending approval of the implementing rules of Republic Act No. 10932.[1] It also claims that it has the required *locus standi* because it stands to be directly injured by the implementation of Republic Act No. 10932, considering that its members' management and staff are placed at the risk of administrative, civil, and criminal liabilities.[2] It further argues that in any case, the absence of a direct injury should not bar this Court from taking cognizance of this case as it raises issues

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[3] See *Philippine Constitution Association v. Philippine Government*, G.R. Nos. 218406, 218761, 204355, 318407, and 204354, November 29, 2016, 811 SCRA 284, 296-297.

[1] *Ponencia*, p. 7.

[2] *Id*.

that are of transcendental importance, particularly on denial of due process, equal protection of laws, and presumption of innocence.[3]

The *ponencia* notes that the requisites for this Court's exercise of the power of judicial review is not present in this case.[4] It found that there is no actual case or controversy, and that petitioner does not have the required *locus standi* to file the petition.

It discusses that the requirement of an actual case or controversy is satisfied upon a *prima facie* showing of grave abuse of discretion in the governmental act. Likewise, a case is ripe for adjudication if there is an act of the government and an immediate or threatened injury to petitioner as a result of the act.[5]

The *ponencia* found that petitioner failed to meet the requirement. It notes that there is no allegation that petitioner or its members have suffered an actual or direct injury from any grave abuse of discretion. It found that the absence of the injury will render this Court's opinion as merely advisory.[6]

The *ponencia* further points out that the law is presumed constitutional and this cannot be overturned in the absence of any showing of grave abuse of discretion or any infraction of the Constitution.[7] It posits that it would be delving into questions of policy and wisdom of the executive and legislative departments if it invalidated the law based on conjectures and suppositions.[8]

As to *locus standi*, the *ponencia* notes that Republic Act No. 10932 covers hospitals, medical facilities, medical

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[3] *Id*.

[4] *Id*. at 14.

[5] *Id*. at 15.

[6] *Id*.

[7] *Id*.

[8] *Id*. at 16.

practitioners, and employees, but not associations.[9] Thus, in this case, the association is not the one who will be held liable for any violation of Republic Act No. 10932.[10]

Furthermore, while an association has the capacity to sue or be sued, it must still show a substantial interest such that it has sustained or will sustain a direct injury.[11] While third-party standing may be invoked as an exception to the rule, the *ponencia* notes that petitioner failed to demonstrate that it had been authorized by its members to file the instant case.[12]

Thus, it did not take cognizance of the present petition.

I concur. This case is indeed not ripe for judicial review.

Canonical for the exercise of judicial review when the constitutionality of a law is being questioned are these requirements: first, there must be an actual case or controversy involving legal rights that are capable of judicial determination; second, the parties raising the issue must have *locus standi*; third, the constitutionality of the law must be raised at the earliest opportunity; and fourth, resolving the issue on constitutionality must be essential to the disposition of the case.[13]

I

There is no actual case or controversy in the case at bar.

The requirement for an actual case or controversy is fundamental. This is based on Article VIII, Section 1 of the 1987 Constitution:

Section 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

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[9] *Id*.

[10] *Id*. at 17.

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

[12] *Id*. at 17.

[13] *Levy Macasiano v. National Housing Authority*, 296 Phil. 56, 63-64 (1993) [Per *C.J.* Davide, Jr., *En Banc*].

Judicial power includes the duty of the courts of justice to settle *actual controversies involving rights which are legally demandabie and enforceable*, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government. (Emphasis supplied)

An actual case or controversy means that there are conflicting legal rights, such that the legal claim of one party is opposed to the legal claim of another, and it is capable of being resolved by the courts.[14] It is necessary that the conflicting legal rights must be real and concrete, not merely hypothetical or conjectural.[15]

It is well-established in this jurisdiction that ". . . for a court to exercise its power of adjudication, there must be an actual case or controversy — one which involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; . . . In other words, the pleadings must show *an active antagonistic assertion of a legal right, on the one hand, and a denial thereof on the other*; that is, it must concern a real and not a merely theoretical question or issue. There ought to be an *actual and substantial controversy admitting of specific relief through a decree conclusive in nature*, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.[16] (Citations omitted)

Thus, there must first be a real and material act affecting another, which one party asserts is done within the bounds allowed by law, but which another contends is injurious to his or her right. If there is yet no such act, or when such acts are merely conjecture, there is no actual case or controversy. In case of a governmental act, the party asserting its

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[14] *Information Technology Foundation of the Philippines v. COMELEC*, 499 Phil. 281, 304 (2005) [Per *C.J.* Panganiban, *En Banc*].

[15] *Id*. See also *Southern Hemisphere Engagement Network v. Anti-Terrorism Council*, 646 Phil. 452, 479 (2010) [Per *J.* Carpio-Morales, *En Banc*].

[16] *Information Technology Foundation of the Philippines v. COMELEC*, 499 Phil. 281, 304 (2005) [Per *C.J.* Panganiban, *En Banc*].

unconstitutionality must allege the actual act performed by the government that caused it the injury.

In *Lozano v. Nograles*,[17] this Court explained:

> An aspect of the "case-or-controversy" requirement is the requisite of "**ripeness**". In the United States, courts are centrally concerned with whether a case involves uncertain contingent future events that may not occur as anticipated, or indeed may not occur at all. Another approach is the evaluation of the **twofold** aspect of ripeness: first, the fitness of the issues for judicial decision; and second, the hardship to the parties entailed by withholding court consideration. In our jurisdiction, the issue of ripeness is generally treated in terms of *actual injury* to the plaintiff. Hence, a question is ripe for adjudication when the act being challenged has had a *direct adverse effect* on the individual challenging it. An alternative road to review similarly taken would be to determine whether an *action has already been accomplished or performed by a branch of government before the courts may step in*.[18] (Emphasis supplied, citations omitted)

The requirement of an actual case or controversy is rooted on the respect for the separation of powers of the three branches of the government. Courts cannot supplant the discretionary acts of the legislative or the executive branch on the premise that they know of a wiser, more just, or expedient policy or course of action.[19] They may only act in case the other branches acted outside the bounds of their powers or with grave abuse of discretion amounting to lack or excess of jurisdiction.

The other reason for requiring an actual case or controversy is to maintain the significance of this Court's role in making "final and binding construction[s] of law."[20] Courts do not render

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[17] 607 Phil. 334 (2009) [Per *C.J.* Puno, *En Banc*].

[18] *Id*. at 341.

[19] See *Angara v. Electoral Commission*, 63 Phil. 139 (1936) [Per *J*. Laurel, *En Banc*]; *Garcia v. Executive Secretary*, 602 Phil. 64 (2009) [Per *J*. Brion, *En Banc*].

[20] Concurring Opinion of *J*. Leonen in *Belgica v. Ochoa*, 721 Phil. 416, 661 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

mere advisory opinions. Judicial decisions are part of the legal system,[21] and thus, have binding effects on actual persons, places, and things. Ruling on hypothetical situations with no bearing on any matter will weaken the import of this Court's issuances. In *Belgica, et al. v. Ochoa*:[22]

> Basic in litigation raising constitutional issues is the requirement that there must be an actual case or controversy. This Court cannot render an advisory opinion. We assume that the Constitution binds all other constitutional departments, instrumentalities, and organs. We are aware that in the exercise of their various powers, they do interpret the text of the Constitution in the light of contemporary needs that they should address. A policy that reduces this Court to an adviser for official acts by the other departments that have not yet been done would unnecessarily tax our resources. It is inconsistent with our role as final arbiter and adjudicator and weakens the entire system of the Rule of Law. Our power of judicial review is a duty to make a final and binding construction of law. This power should generally be reserved when the departments have exhausted any and all acts that would remedy any perceived violation of right. The rationale that defines the extent of our doctrines laying down exceptions to our rules on justiciability are clear: Not only should the pleadings show a convincing violation of a right, but the impact should be shown to be so grave, imminent, and irreparable that any delayed exercise of judicial review or deference would undermine fundamental principles that should be enjoyed by the party complaining or the constituents that they legitimately represent.
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> The requirement of an "actual case," thus, means that the case before this Court "involves a conflict of legal rights, an assertion of opposite legal claims susceptible of judicial resolution; the case must not be moot or academic based on extra-legal or other similar considerations not cognizable by a court of justice." Furthermore, "the controversy needs to be definite and concrete, bearing upon the legal relations of parties who are pitted against each other due to their adverse legal interests." Thus, the adverse position of the parties must be sufficient enough for the case to be pleaded and for this Court to be able to provide the parties the proper relief/s prayed for.

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[21] CIVIL CODE, Art. 8.

[22] 721 Phil. 416 (2013) [Per *J*. Perlas-Bernabe, *En Banc*].

The requirement of an 'actual case' will ensure that this Court will not issue advisory opinions. It prevents us from using the immense power of judicial review absent a party that can sufficiently argue from a standpoint with real and substantial interests.[23] (Citations omitted)

Moreover, hypothetical or conjectural situations illicitly widen the courts' discretion such that future parties who present claims on the law being interpreted may be unduly affected by the limitations set, without affording them the opportunity to be heard, thus:[24]

An advisory opinion is one where the factual setting is conjectural or hypothetical. In such cases, the conflict will not have sufficient concreteness or adversariness so as to constrain the discretion of this Court. After all, legal arguments from concretely lived facts are chosen narrowly by the parties. Those who bring theoretical cases will have no such limits. They can argue up to the level of absurdity. They will bind the future parties who may have more motives to choose specific legal arguments. In other words, for there to be a real conflict between the parties, *there must exist actual facts from which courts can properly determine whether there has been a breach of constitutional text*.[25] (Emphasis in the original)

Thus, in cases where the constitutionality of a law is being questioned, it is not enough that the law or the regulation has been passed or is in effect. To rule on the constitutionality of provisions in the law without an actual case is to decide only the basis of the mere enactment of the statute. This amounts to a ruling on the wisdom of the policy imposed by the Congress on the subject matter of the law.

In *Southern Hemisphere Engagement Network, Inc. v. Anti-Terrorism Council*,[26] this Court ruled that it is not enough that

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[23] *Id.* at 661-662.

[24] *Philippine Bus Operators Association of the Philippines, et al. v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018 [Per *J.* Leonen, *En Banc*].

[25] *Id.* at 25.

[26] 646 Phil. 452 (2010) [Per *J.* Carpio-Morales].

there is a possibility of abuse of the questioned enactment. There must first be an actual act of abuse.

In *Republic of the Philippines v. Herminio Harry Roque, et al.*,[27] this Court said that the parties presented no actual case or controversy because they did not show any government action implementing the questioned statute against them.

In *Philippine Bus Operators Association of the Philippines v. Department of Labor and Employment*,[28] this Court ruled that it is not enough that the issuances may result in a diminution of the bus drivers and conductors' income, considering that the allegations are based on speculation.

In *Philippine Press Institute, Inc. v. Commission on Elections*,[29] the petitioner in that case did not assert a specific act committed against it by the Commission on Elections in enforcing or implementing the questioned law. This Court found that there was no actual case or controversy.

An allegation of grave abuse of discretion amounting to lack or excess of jurisdiction is insufficient.[30] If there is no exercise of discretion, it could not have been gravely abused.

In the case at bar, petitioner failed to show that any violation of its rights was committed as a consequence of the enactment of Republic Act No. 10932. The law itself has not been enforced against petitioner or its members. In fact, petitioner's allegation is that there is *a risk or a threat* that its members will be obligated and sanctioned by the enactment of the law. Thus, there is yet no act committed by petitioner showing any breach of the statute, and there is yet no act of enforcement or sanction against it.

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[27] 718 Phil. 294 (2013) [Per *J.* Perlas-Bernabe, *En Banc*].

[28] G.R. No. 202275, July 17, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2018/july2018/202275.pdf] [Per *J.* Leonen, *En Banc*].

[29] *Philippine Press Institute, Inc. v. Commission on Elections*, 314 Phil. 131 (1995) [Per *J.* Feliciano, *En Banc*].

[30] *See* Dissenting Opinion of *J.* Leonen in *Spouses Imbong v. Ochoa, Jr.*, 732 Phil. 1, 554-666 (2014) [Per *J.* Mendoza, *En Banc*].

There is no injury yet suffered by petitioner. The sanctions they alleged are still in the realm of imagination.

II

I also agree that petitioner failed to show that it has the required *locus standi* to file the petition.

As an association which represents private hospitals, petitioner is a third party to the instant case. Thus, before it may file the petition, it must show that it is compliant with the requisites for third-party standing.

Another requisite for this Court's exercise of judicial review is that the party filing must have *locus standi* or legal standing to file the suit, thus:

> Legal standing or *locus standi* is the "right of appearance in a court of justice on a given question." To possess legal standing, parties must show "a personal and substantial interest in the case such that [they have] sustained or will sustain direct injury as a result of the governmental act that is being challenged." The requirement of direct injury guarantees that the party who brings suit has such personal stake in the outcome of the controversy and, in effect, assures "that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions."
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> . . . . . .
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> Whether a suit is public or private, the parties must have "a present substantial interest," not a "mere expectancy or a future, contingent, subordinate, or consequential interest." Those who bring the suit must possess their own right to the relief sought.[31] (Citations omitted)

The party filing must show that it has a substantial interest in the case such that it was or will be directly affected or injured by the challenged governmental act.

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[31] *Philippine Bus Operators Association of the Philippines, et al. vs. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2018/july2018/202275.pdf] 27-28 [Per J. Leonen, *En Banc*].

However, this Court has given leeway to petitions filed by parties who have no personal or substantial interest in the challenged governmental act but nonetheless raise "constitutional issue[s] of critical significance."[32]

The substantiality and directness of the injury is reckoned from the point of view of petitioner. Thus, this Court has allowed suits to be filed by taxpayers in cases where there is a claim of an unconstitutional tax measure or illegal disbursement of public funds. Cases filed by voters who show an obvious interest in the validity of the questioned election law have been allowed. Courts have likewise taken cognizance of cases filed by legislators in petitions where they claim that their prerogative as legislators have been infringed upon.[33]

In a very limited subset of cases, this Court has allowed a party to bring a suit on behalf of another. However, for this Court to accept that the third party has the standing to file the case, the following requisites must be present: first, the party filing the suit "must have suffered an 'injury-in-fact', thus [has] a "sufficiently concrete interest" in the outcome of the issue in dispute; [second, he or she] must have a close relation to the third party; and [third, the third party is prevented by] some hindrance . . . to protect his or her own interest."[34]

Associations have been able to file petitions on behalf of its members on the basis of third-party standing.

In *Pharmaceutical and Health Care Association of the Philippines v. Secretary of Health*,[35] this Court found that an association "has the legal personality to represent its members because the results of the case will affect their vital interests,"[36] thus:

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[32] *Funa v. Villar*, 686 Phil. 571, 585 (2012) [Per *J.* Velasco, Jr., *En Banc*].

[33] See *Funa v. Villar*, 686 Phil. 571 (2012) [Per *J.* Velasco, Jr., *En Banc*].

[34] *White Light Corp., et al. v. City of Manila*, 596 Phil. 444, 456 (2009) [Per *J.* Tinga, *En Banc*].

[35] 561 Phil. 386 (2007) [Per *J.* Austria-Martinez, *En Banc*].

[36] *Id*. at 396.

This [modern] view fuses the legal identity of an association with that of its members. An association has standing to file suit for its workers despite its lack of direct interest if its members are affected by the action. An organization has standing to assert the concerns of its constituents.

. . . . . .

. . . We note that, under its Articles of Incorporation, the respondent was organized . . . to act as the representative of any individual, company, entity or association on matters related to the manpower recruitment industry, and to perform other acts and activities necessary to accomplish the purposes embodied therein. The respondent is, thus, the appropriate party to assert the rights of its members, because it and its members are in every practical sense identical . . . The respondent [association] is but the medium through which its individual members seek to make more effective the expression of their voices and the redress of their grievances.[37] (Citation omitted)

However, associations must sufficiently establish who their members are, that their members authorized them to sue on their behalf, and that they would be directly injured by the challenged governmental acts.[38]

In *Philippine Bus Operators Association of the Philippines vs. Department of Labor and Employment*,[39] this Court did not allow the association to represent its members because it failed to establish the presence of these requirements. There was no evidence of board resolutions or articles of incorporation showing that it was authorized to file the petition. It noted that some of the associations even had their certificates of incorporation revoked by the Securities and Exchange Commission. This Court ruled that it was not enough that they alleged that they were an

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[37] *Id.* at 395-396.

[38] *Philippine Bus Operators Association of the Philippines, et al. v. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2018/july2018/202275.pdf] 32 [Per *J.* Leonen, *En Banc*].

[39] G.R. No. 202275, July 17, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2018/july2018/202275.pdf] [Per *J.* Leonen, *En Banc*].

association that represented members who would be directly injured by the implementation of a law, thus:

> The associations in *Pharmaceutical and Health Care Association of the Philippines, Holy Spirit Homeowners Association, Inc.*, and *The Executive Secretary* were allowed to sue on behalf of their members because they sufficiently established who their members were, that their members authorized the associations to sue on their behalf, and that the members would be directly injured by the challenged governmental acts.
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> The liberality of this Court to grant standing for associations or corporations whose members are those who suffer direct and substantial injury depends on a few factors.
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> In all these cases, there must be an actual controversy. Furthermore, there should also be a clear and convincing demonstration of special reasons why the truly injured parties may not be able to sue.
>
> Alternatively, there must be a similarly clear and convincing demonstration that the representation of the association is more efficient for the petitioners to bring. They must further show that it is more efficient for this Court to hear only one voice from the association. In other words, the association should show special reasons for bringing the action themselves rather than as a class suit, allowed when the subject matter of the controversy is one of common or general interest to many persons. In a class suit, a number of the members of the class are permitted to sue and to defend for the benefit of all the members so long as they are sufficiently numerous and representative of the class to which they belong.
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> In some circumstances similar to those in *White Light*, the third parties represented by the petitioner would have special and legitimate reasons why they may not bring the action themselves. Understandably, the cost to patrons in the *White Light* case to bring the action themselves—i.e., the amount they would pay for the lease of the motels—will be too small compared with the cost of the suit. But viewed in another way, whoever among the patrons files the case even for its transcendental interest endows benefits on a substantial number of interested parties without recovering their costs. This is the free rider problem in economics. It is a negative externality which operates as a disincentive to sue and assert a transcendental right.[40]

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

In *Executive Secretary v. The Hon. Court of Appeals*,[41] the Asian Recruitment Council Philippine Chapter, Inc. was found to have standing to file the petition for declaratory relief on behalf of its member recruitment agencies because it proved through board resolutions that it was authorized to sue on the behalf of its members. It was able to show that it was the medium used by the members to effectively communicate their grievances.

Allegations of transcendental importance are not enough to allow exceptions to *locus standi*.

In *Francisco v. House of Representatives*,[42] this Court enumerated factors that determine if an issue is of transcendental importance.

> There being no doctrinal definition of transcendental importance, the following determinants formulated by former Supreme Court Justice Florentino P. Feliciano are instructive: (1) the character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in raising the questions being raised.[43] (Citations omitted)

Moreover, there must also be a showing of a "clear or imminent threat to fundamental rights" and of "proper parties suffering real, actual or more imminent injury,"[44] thus:

> In addition to an actual controversy, special reasons to represent, and disincentives for the injured party to bring the suit themselves, there must be a showing of the transcendent nature of the right involved.
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> Only constitutional rights shared by many and requiring a grounded level of urgency can be transcendent. For instance, in *The Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, the association was allowed to file on behalf of its members

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[41] 473 Phil. 27 (2004) [Per *J.* Callejo, Sr., Second Division].

[42] 460 Phil. 830 (2003) [Per *J.* Carpio Morales, *En Banc*].

[43] *Id*. at 899.

[44] *In Re Supreme Court Judicial Independence v. Judiciary Development Fund*, 751 Phil. 30, 44 (2015) [Per *J.* Leonen, *En Banc*].

considering the importance of the issue involved, i.e., the constitutionality of agrarian reform measures, specifically, of then newly enacted Comprehensive Agrarian Reform Law.

This Court is not a forum to appeal political and policy choices made by the Executive, Legislative, and other constitutional agencies and organs. This Court dilutes its role in a democracy if it is asked to substitute its political wisdom for the wisdom of accountable and representative bodies where there is no unmistakable democratic deficit. It cannot lose this place in the constitutional order. Petitioners' invocation of our jurisdiction and the justiciability of their claims must be presented with rigor. Transcendental interest is not a talisman to blur the lines of authority drawn by our most fundamental law.

. . . . . .

Again, the reasons cited—the "far-reaching consequences" and "wide area of coverage and extent of effect" of Department Order No. 118-12 and Memorandum Circular No. 2012-001—are reasons not transcendent considering that most administrative issuances of the national government are of wide coverage. These reasons are not special reasons for this Court to brush aside the requirement of legal standing.[45] (Citations omitted)

The petitioner was unable to prove that it was authorized by its members to file the instant case through board resolutions or through its articles of incorporation; I find, thus, that petitioner does not have the required standing to file the petition.

ACCORDINGLY, I **VOTE** to **DISMISS** the Petition.

SEPARATE CONCURRING OPINION

CAGUIOA, *J.*:

The instant Petition for *Certiorari* (Petition) filed by Private Hospitals Association of the Philippines, Inc. (PHAPi) assails

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[45] *Philippine Bus Operators Association of the Philippines, et al. vs. Department of Labor and Employment*, G.R. No. 202275, July 17, 2018 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2018/july2018/202275.pdf] 33-34 [Per *J.* Leonen, *En Banc*].

the constitutionality of select provisions of Republic Act No. 10932[1] (RA 10932), or the Act Strengthening the Anti-Hospital Deposit Law, *i.e.*, Sections 1, 4, 5, 7, and 8 of the said law.

I concur with the *ponencia* that the instant Petition should be dismissed at the first instance because it does not present an actual case or controversy calling for the exercise of judicial power, and the petitioner has no personal and substantial interest in the case such that it has sustained, or will sustain, direct injury as a result of its enforcement.

In asking the Court to declare certain provisions of RA 10932 as unconstitutional for supposedly contravening the Constitution, the petitioner invokes the Court's power of judicial review under Section 4(2), Article VIII of the Constitution.[2] The power of judicial review refers to the power of the courts to test the validity of executive and legislative acts for their conformity with the Constitution.[3] Through such power, the judiciary enforces and upholds the supremacy of the Constitution.[4] For the Court to exercise this power, it is indispensable that certain requirements must first be met, namely:

(1) an actual case or controversy calling for the exercise of judicial power;

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[1] AN ACT STRENGTHENING THE ANTI-HOSPITAL DEPOSIT LAW BY INCREASING THE PENALTIES FOR THE REFUSAL OF HOSPITALS AND MEDICAL CLINICS TO ADMINISTER APPROPRIATE INITIAL MEDICAL TREATMENT AND SUPPORT IN EMERGENCY OR SERIOUS CASES, AMENDING FOR THE PURPOSE BATAS PAMBANSA BILANG 702, OTHERWISE KNOWN AS "AN ACT PROHIBITING THE DEMAND OF DEPOSITS OR ADVANCE PAYMENTS FOR THE CONFINEMENT OR TREATMENT OF PATIENTS IN HOSPITALS AND MEDICAL CLINICS IN CERTAIN CASES", AS AMENDED BY REPUBLIC ACT NO. 8344, AND FOR OTHER PURPOSES.

[2] See *Garcia v. The Executive Secretary*, 602 Phil. 64, 73 (2009).

[3] *Id*. at 73.

[4] *Id*.

(2) the person challenging the act must have standing to challenge; he must have a personal and substantial interest in the case such that he has sustained, or will sustain, direct injury as a result of its enforcement;

(3) the question of constitutionality must be raised at the earliest possible opportunity; and

(4) the issue of constitutionality must be the very *lis mota* of the case.[5]

The Petition here fails the first two (2) requisites.

There is no actual case or controversy calling for the Court's exercise of judicial power.

An "actual case or controversy" is one which involves a conflict of legal rights, an assertion of opposite legal claims, susceptible of judicial resolution as distinguished from a hypothetical or abstract difference or dispute.[6] There must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence.[7]

Related to the requisite of an actual case or controversy is the requisite of "ripeness," which means that **something had then been accomplished or performed by either branch before a court may come into the picture,** and **the petitioner must allege the existence of an immediate or threatened injury to itself as a result of the challenged action**.[8]

Otherwise stated, an actual case or controversy means an existing case or controversy that is appropriate or ripe for determination, **not conjectural or anticipatory**.[9]

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[5] *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 892 (2003).

[6] *Ocampo v. Enriquez*, 798 Phil. 227, 288 (2016).

[7] *Id*. at 288.

[8] *Id*.

[9] *Board of Optometry v. Colet*, 328 Phil. 1187, 1206 (1996).

The Petition here does not allege that any medical institution or practitioner has actually been held liable under RA 10932. Nor is there even an assertion that an existing action has been filed against any medical institution or practitioner who violated RA 10932. As well, there is likewise no assertion that any medical institution or practitioner has actually committed any act violative of RA 10932 that makes such institution or person susceptible to the liabilities imposed under the said law.

In short, it is apparent that the instant Petition was filed merely in **anticipation** of a possible breach or infraction of the law. To emphasize, an actual case or controversy which justifies the Court's exercise of its judicial review power necessitates an existing case or controversy that is appropriate or ripe for determination, and not merely an anticipatory controversy.

The petitioner has no locus standi to question the constitutionality of RA 10932.

That is not all. Again, in order for the Court to exercise its power of judicial review, the person or entity challenging the act must have standing to challenge — he must have a **personal and substantial interest** in the case such that he has sustained, or will sustain, **direct injury** as a result of its enforcement.

Defined as a right of appearance in a court of justice on a given question, *locus standi* requires that a party alleges such **personal stake** in the outcome of the controversy as to assure that **concrete adverseness** which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.[10] Unless a person has sustained or is in imminent danger of sustaining an injury as a result of an act complained of, such proper party has no standing.[11]

Applying the foregoing in the instant case, it is crystal clear that **petitioner PHAPi has no legal standing to question the**

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[10] *Ocampo v. Enriquez*, *supra* note 6, at 289-290.

[11] *Id*. at 290.

constitutionality of RA 10932 — as it does not stand to sustain any damage or injury of a direct and personal nature in the implementation of RA 10932.

Under RA 10932, only officials, medical practitioners, and/or medical institutions that actually demand/accept any form of advance payment as a prerequisite for confinement/medical treatment of a patient in emergency situations or refuse to administer medical treatment and support as dictated by good practice of medicine to prevent death/permanent disability are subjected to potential liability under the law.

Emphasis must be placed on the fact that petitioner PHAPi is **not** a medical institution that administers medical treatment, being an association with a completely separate juridical personality from its members. With petitioner PHAPi being a juridical person endowed with a distinct personality of its own, it is clear that any potential liability that may be imposed upon any of the petitioner's member hospitals, clinics, and facilities will NOT be a liability of petitioner PHAPi.

Restating the obvious, petitioner PHAPi will sustain no direct and personal injury from the implementation of RA 10932; it has no personal stake in the issues raised in the Petition. Hence, the requisite of *locus standi* is completely lacking, warranting the outright dismissal of the instant Petition.

Section 1 of RA 10932 is not violative of the Constitution.

Nevertheless, even if the abovementioned matters were to be swept aside for the sake of liberality, the instant Petition should nonetheless be dismissed as it is bereft of substantive merit.

The petitioner argues that Section 1[12] of RA 10932 transgresses the Constitution because it purportedly imposes upon medical

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[12] SECTION 1. In emergency or serious cases, it shall be unlawful for any proprietor, president, director, manager or any other officer, and/or medical practitioner or employee of a hospital or medical clinic to request,

institutions and medical practitioners the untenable and impossible duty of actually preventing the death or permanent disability of a patient, or, in the case of a pregnant woman, permanent injury or loss of her unborn child, or non-institutional delivery. The petitioner posits the view that the aforementioned provision of the law is violative of due process as it goes against the jurisprudential doctrine that a physician is not an insurer of the good result of treatment.[13]

The petitioner's interpretation of RA 10932 is mistaken.

The essence of RA 10932 is to prohibit medical institutions/practitioners from requesting or accepting any deposit or any other form of payment as a prerequisite for administering basic emergency care, confinement, or medical treatment of a patient, or to refuse to administer medical treatment and support as dictated by good practice of medicine to prevent death, or permanent disability, or, in the case of a pregnant woman,

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solicit, demand or accept any deposit or any other form of advance payment as a prerequisite for administering basic emergency care to any patient, confinement or medical treatment of a patient in such hospital or medical clinic or to refuse to administer medical treatment and support as dictated by good practice of medicine to prevent death, or permanent disability, or in the case of a pregnant woman, permanent injury or loss of her unborn child, or noninstitutional delivery: *Provided*, That by reason of inadequacy of the medical capabilities of the hospital or medical clinic, the attending physician may transfer the patient to a facility where the appropriate care can be given, after the patient or his next of kin consents to said transfer and after the receiving hospital or medical clinic agrees to the transfer: *Provided, however*, That when the patient is unconscious, incapable of giving consent and/or unaccompanied, the physician can transfer the patient even without his consent: *Provided, further*, That such transfer shall be done only after necessary emergency treatment and support have been administered to stabilize the patient and after it has been established that such transfer entails less risks than the patient's continued confinement: *Provided, furthermore*, That no hospital or clinic, after being informed of the medical indications for such transfer, shall refuse to receive the patient nor demand from the patient or his next of kin any deposit or advance payment: *Provided, finally*, That strict compliance with the foregoing procedure on transfer shall not be construed as a refusal made punishable by this Act.

[13] See *Lucas v. Tuaño*, 604 Phil. 98, 125 (2009).

permanent injury or loss of her unborn child, or non-institutional delivery, only in emergency or serious cases and only if the medical institution or practitioner has adequate medical capabilities to administer treatment.

By reason of inadequacy of the medical capabilities of the hospital or medical clinic, the attending physician may transfer the patient to a facility where the appropriate care can be given, after the patient or his next of kin consents to said transfer and after the receiving hospital or medical clinic agrees to the transfer.[14]

Hence, contrary to the specious interpretation of the petitioner, Section 1 of RA 10932 does not mandate whatsoever that physicians be insurers of the good result of treatment. The law merely imposes on medical institutions/practitioners the strict duty to administer basic emergency care, as defined under the law, only with respect to persons in emergency or serious situations, and when the medical institutions/practitioners have the capability to administer such treatment.

Further, Section 4 of RA 10932 is also not violative of the Constitution.

The petitioner likewise argues that the fines and penalties imposed under Section 4[15] of RA 10932 are constitutionally

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[14] RA 10932, Sec. 1.

[15] SEC. 4. Any official, medical practitioner or employee of the hospital or medical clinic who violates the provisions of this Act shall, upon conviction by final judgment, be punished by imprisonment of not less than six (6) months and one (1) day but not more than two (2) years and four (4) months, or a fine of not less than One hundred thousand pesos (₱100,000.00), but not more than Three hundred thousand pesos (₱300,000.00) or both, at the discretion of the court: *Provided, however*, That if such violation was committed pursuant to an established policy of the hospital or clinic or upon instruction of its management, the director or officer of such hospital or clinic responsible for the formulation and implementation of such policy shall, upon conviction by final judgment, suffer imprisonment of four (4) to six (6) years, or a fine of not less than Five hundred thousand pesos (₱500,000.00), but not more than One million pesos (₱1,000,000.00) or both, at the discretion of the court, without prejudice to damages that may

infirm because they are supposedly unjust, excessive, and oppressive; the penalties set by the law are allegedly not commensurate to the act or omission being penalized.

This argument deserves scant consideration.

The penalties as prescribed by statute are essentially and exclusively legislative; the courts should not encroach on the prerogative of the lawmaking body.[16] As pronounced by the Court early on in *United States v. Borromeo*,[17] the fixing of penalties for the violation of statutes is primarily a legislative function, and the courts hesitate to interfere, unless the fine provided for is so far excessive as to shock the sense of mankind.

In any case, the stern fines and penalties provided by Section 4 of RA 10932 are not at all unjust, excessive, and oppressive, considering that the violation of the law does not entail mere damage to property. The observance of RA 10932 may very well determine whether a patient experiencing an emergency health situation will survive or perish. The grave consequences involved cannot be overstated; a patient's life hangs in the balance. Further, the legislature's desire to impose strict penalties upon violators of RA 10932 is in fealty to the constitutional mandate that the State shall protect and promote the right to health of the people.[18]

Hence, the petitioner's attempt to assail the constitutionality of Section 4 of RA 10932 must also fall.

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be awarded to the patient-complainant: *Provided, further*, That upon three (3) repeated violations committed pursuant to an established policy of the hospital or clinic or upon the instruction of its management, the health facility's license to operate shall be revoked by the DOH. The president, chairman, board of directors, or trustees, and other officers of the health facility shall be solidarily liable for damages that may be awarded by the court to the patient-complainant.

[16] *People v. Millora*, 252 Phil. 105, 122 (1989).

[17] 23 Phil. 279, 289 (1912).

[18] 1987 CONSTITUTION, Art. II, Sec. 15.

Furthermore, Section 5 of RA 10932 likewise does not violate the Constitution.

Section 5 of RA 10932 (Presumption of Liability Clause) states:

> SEC. 5. *Presumption of Liability*. — In the event of death, permanent disability, serious impairment of the health condition of the patient-complainant, or in the case of a pregnant woman, permanent injury or loss of her unborn child, proceeding from the denial of his or her admission to a health facility pursuant to a policy or practice of demanding deposits or advance payments for confinement or treatment, a presumption of liability shall arise against the hospital, medical clinic, and the official, medical practitioner, or employee involved.

The petitioner finds Section 5, which makes the erring medical institution and/or practitioner *prima facie* liable for medical malpractice, unconstitutional on the notion that, in medical malpractice cases, the plaintiff must prove that the medical practitioner failed to do what a reasonably prudent doctor would have done or did what a reasonably prudent doctor would not have done. The petitioner adds that medical malpractice must be proven with reasonable medical probability based on competent expert testimony and that proximate cause of injury/death must be established.

These arguments are mistaken.

Under Section 5 of RA 10932, the presumption of liability on the part of the medical practitioner/institution arises ***only when*** death, permanent disability, serious impairment of the health condition of the patient-complainant, or, in the case of a pregnant woman, permanent injury or loss of her unborn child, occurs after the denial by the medical institution/practitioner of the emergency patient's admission to the health facility during an emergency/serious situation, pursuant to an established policy/practice of demanding deposits/advance payments for confinement or treatment.

In the context of medical malpractice, Section 5 creates a presumption of negligence on the part of the medical institution/

practitioner when the latter commits a violation of law, *i.e.*, the act of denying the emergency patient's admission to the health facility during an emergency/serious situation pursuant to an established policy/practice of demanding deposits/advance payments for confinement or treatment, which RA 10932 considers a violation of law.

The presumption of negligence when a statutory duty has been violated.

While the petitioner posits the view that this is unconstitutional because the plaintiff, in medical malpractice cases, must first prove that negligence was indeed committed, it should be noted that under Philippine law, the violation of a statutory duty may be treated either as a circumstance which establishes a presumption of negligence, negligence *per se*, or a circumstance which should be considered together with other circumstances as evidence of negligence.[19]

The Court held in *F.F. Cruz and Co., Inc. v. Court of Appeals*[20] that the failure of the therein petitioner to construct a firewall in accordance with certain city ordinances **in itself** sufficed to support a finding of negligence.

In *Cipriano v. Court of Appeals*,[21] finding that the failure of the therein petitioner to register and insure his auto rustproofing shop in accordance with Presidential Decree No. 1572 constituted negligence *per se*, the Court held that "[t]here is thus a statutory duty imposed on petitioner and it is for his failure to comply with this duty that he was guilty of negligence rendering him liable for damages to private respondent."[22]

Hence, creating a presumption of negligence based on the violation of a statutory duty is not legally infirm.

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[19] See *Añonuevo v. Court of Appeals*, 483 Phil. 756, 766-767 (2004).

[20] 247-A Phil. 51, 56 (1988).

[21] 331 Phil. 1019 (1996).

[22] *Id*. at 1027.

The violation of a statutory duty as the proximate cause of an injury

The petitioner also faults Section 5 of RA 10932 for supposedly presuming that the illegal act of the medical institution/practitioner, *i.e.*, denying the emergency patient's admission to the health facility during an emergency/serious situation pursuant to an established policy/practice of demanding deposits/advance payments for confinement or treatment, is the proximate cause of the injury or death of the patient. The petitioner argues that in medical malpractice cases, the act or omission complained of must be established as the proximate cause of the injury or death.

In this respect, the pronouncement of the Court in *Teague v. Fernandez*,[23] is instructive:

"x x x **[I]f the very injury has happened which was intended to be prevented by the statute, it has been held that violation of the statute will be deemed to be the proximate cause of the injury.**"
x x x

"The generally accepted view is that violation of a statutory duty constitutes negligence, negligence as a matter of law, or, according to the decisions on the question, negligence *per se*, for the reason that **non-observance of what the legislature has prescribed as a suitable precaution is failure to observe that care which an ordinarily prudent man would observe**, and, when the state regards certain acts as so liable to injure others as to justify their absolute prohibition, doing the forbidden act is a breach of duty with respect to those who may be injured thereby; ***or, as it has been otherwise expressed, when the standard of care is fixed by law, failure to conform to such standard is negligence, negligence per se or negligence in and of itself, in the absence of a legal excuse***. According to this view it is immaterial, where a statute has been violated, whether the act or omission constituting such violation would have been regarded as negligence in the absence of any statute on the subject or whether there was, as a matter of fact, any reason to anticipate

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[23] 151-A Phil. 648 (1973).

that injury would result from such violation. x x x"[24] (Italics in the original omitted; emphasis, italics and underscoring supplied)

Otherwise stated, when a statute is created in order to prevent a certain injury, and such injury occurs when the statute is violated, then the violation of the statute will be deemed to be the proximate cause of the injury.

Applying the foregoing in the instant case, since Section 5 of RA 10932 contemplates a situation wherein death, permanent disability, serious impairment of the health condition of the patient-complainant, *etc.* occurs, ***which are the very injuries intended to be prevented by the introduction of RA 10932***, then the acts violative of RA 10932 will be presumed to be the proximate cause of the death or serious injury.

In any case, the Presumption of Liability Clause does not create a conclusive presumption that the defendant is automatically guilty of medical malpractice. **What the provision merely does is to *shift the burden* to the defendant to prove that there was another act or event that was the proximate cause of the death/injury.**

The presumption of liability recognized under Philippine Law

Under various legal provisions and established legal doctrines, it is well recognized that liability may, at certain times, be disputably presumed when certain acts have been committed or when a certain set of conditions is present which has a reasonable or rational connection with the fact presumed.

For instance, the doctrine of *res ipsa loquitur* is well-recognized in this jurisdiction, wherein in a situation in which the thing causing the injury complained of is shown to be under the management of the defendant or his servants and the accident is such as in the ordinary course of things does not happen if those who have its management or control use proper care, it

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[24] *Id*. at 652.

is presumed, in the absence of sufficient explanation by the defendant, that the accident arose from want of care of the latter.[25]

As another example, Article 1387 of the Civil Code provides that alienation of property for valuable consideration made by a person against whom an unsatisfied judgment is outstanding raises a presumption of fraud.[26]

Similarly, under Article 1265 of the Civil Code, whenever a thing is lost in the possession of the debtor, it shall be presumed that the loss was due to his fault, unless there is proof to the contrary, and without prejudice to the provisions of Article 1165.

With respect to common carriers, Article 1735 of the Civil Code states that if goods under the care of common carriers are lost, destroyed or deteriorated, then the common carriers are presumed to have been at fault or to have acted negligently. In relation to the foregoing, Article 1752 of the Civil Code even dictates that despite the presence of an agreement limiting the liability of the common carrier in the vigilance over the goods, the common carrier is nevertheless disputably presumed to have been negligent in case of their loss, destruction or deterioration.

In the same way, according to Article 1756 of the Civil Code, in case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence.

With respect to motor vehicle mishaps, Article 2185 of the Civil Code provides that unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he/she was violating any traffic regulation.

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[25] *Spouses Africa v. Caltex (Phil.), Inc.*, 123 Phil. 272, 281-282 (1966).

[26] See *Ramos v. Cho Chun Chac*, 54 Phil. 713, 715 (1930).

Moreover, under Article 2188 of the Civil Code, there is *prima facie* presumption of negligence on the part of the defendant if the death or injury results from his possession of dangerous weapons or substances, such as firearms and poison, except when the possession or use thereof is indispensable in his occupation or business.

In addition, and as already explained above, it is a settled rule that when a statute is created in order to prevent a certain injury, and such injury occurred when the statute was violated, the violation of the statute will be deemed to be the proximate cause of the injury.[27] Jurisprudence has also recognized that the violation of a statutory duty may be treated either as a circumstance which establishes a presumption of negligence, negligence *per se*, or a circumstance which should be considered together with other circumstances as evidence of negligence.[28]

In fact, under Section 3(b), Rule 131 of the Rules of Court, the disputable presumption that an unlawful act was done with an unlawful intent is sufficient, unless satisfactorily contradicted.

Hence, considering the foregoing provisions of law and established doctrines in jurisprudence providing for the presumption of liability, the Presumption of Liability Clause under Section 5 of RA 10932 is **not at all a novel provision of law**.

Similar to the abovementioned provisions and doctrines on the presumption of liability, Section 5 merely creates a disputable presumption of liability over the death or injury of a patient on the part of the medical practitioner and/or institution in a situation wherein a violation of a statutory duty is committed, in which such violation has, at the very least, a reasonable and rational connection to the death or injury that occurred.

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[27] *Teague v. Fernandez*, *supra* note 23, at 652.

[28] *Añonuevo v. Court of Appeals*, *supra* note 19.

The Presumption of Liability Clause does not violate the constitutional presumption of innocence.

The notion of presuming liability has been so accepted in Philippine law that it has even found application with respect to the more stringent and rigid concept of criminal liability.

The Court has previously upheld the constitutionality of penal statutes that provide for a *prima facie* evidence of guilt, shifting the burden of proof to the accused, despite the elementary rule that the prosecution has the burden of establishing proof beyond reasonable doubt. Hence, neither can the argument be made that the Presumption of Liability Clause infringes on the constitutional right to be presumed innocent.

To illustrate, under Article 217 of the Revised Penal Code, the failure of a public officer to have duly forthcoming public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be *prima facie* evidence that he has put such missing funds or property to personal use.

Also, under Article 315, paragraph 2(d) of the Revised Penal Code, as amended by RA 4885, the drawer of a check is given three (3) days to make good the said check by depositing the necessary funds to cover the amount thereof; otherwise, a *prima facie* presumption will arise as to the existence of fraud, which is an element of the crime of *estafa*.

In *Bañares v. Court of Appeals*,[29] citing *People v. Mingoa*,[30] the Court held that, contrary to petitioner PHAPi's theory on the supposed infringement of the constitutional presumption of innocence, there is no constitutional objection to a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct:

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[29] 271 Phil. 886 (1991).

[30] 92 Phil. 856, 858-859 (1953).

There is, of course, **no constitutional objection to a law providing that the presumption of innocence may be overcome by a contrary presumption founded upon the experience of human conduct, and enacting what evidence shall be sufficient to overcome such presumption of innocence**. The legislature may provide for *prima facie* evidence of guilt of the accused and shift the burden of proof **provided there be a rational connection between the facts proved and the ultimate fact presumed so that the inference of the one from proof of the others is not unreasonable and arbitrary because of lack of connection between the two in common experience**.[31] Emphasis and underscoring supplied)

Applying the foregoing to the Presumption of Liability Clause, considering that it envisions a situation wherein a person who is in extremely urgent need of medical attention is denied treatment by a medical institution/practitioner due to an illegal policy or practice of demanding deposits/advance payments for confinement or treatment, and such person dies or is seriously injured immediately thereafter, there is undoubtedly a reasonable connection between the illegal act committed and the ultimate fact presumed, *i.e.*, liability for the death or injury of the emergency patient.

Such connection is not unreasonable and arbitrary, considering that death or serious injury would be the rational and logical outcome/consequence when a person experiencing an extremely urgent medical situation was not given timely medical attention due to a policy or practice expressly prohibited by law.

Finally, Sections 7 and 8 of RA 10932 do not violate the Constitution.

Lastly, the petitioner seeks to declare Sections 7 and 8[32] of RA 10932 unconstitutional because the said provisions, which

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[31] *Bañares v. Court of Appeals*, *supra* note 29, at 897.

[32] SEC. 7. *PhilHealth Reimbursement of Basic Emergency Care*. — PhilHealth shall reimburse the cost of basic emergency care and transportation services incurred by the hospital or medical clinic for the emergency medical

provide that PhilHealth reimbursement, Philippine Charity Sweepstakes Office assistance, and tax deductions shall only cover basic emergency care provided to poor, indigent, or marginalized patients, supposedly violate the equal protection clause.

The equal protection clause does not call for absolute equality. What it simply requires is equality among equals as determined according to a valid classification. Indeed, the equal protection clause permits classification.[33]

Such classification, however, to be valid must pass the test of reasonableness. The test has four requisites: (1) The classification rests on substantial distinctions; (2) It is germane to the purpose of the law; (3) It is not limited to existing conditions only; and (4) It applies equally to all members of the same class.[34]

First, a belabored discussion is not needed to explain that there are substantial distinctions as to the medical treatment of poor, indigent, and marginalized patients and that of patients who can very well afford medical treatment. It is self-explanatory that poor, indigent, and marginalized patients are differently situated as compared to affluent and well-off patients who have the means to avail themselves of medical treatment. Further, the special treatment of poor, indigent, and marginalized patients under RA 10932 is very much germane to the purpose of the law. In fact, the 1987 Constitution itself mandates that the State shall adopt an integrated and comprehensive approach to health development which shall endeavor to make essential goods,

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services given to poor and indigent patients. Furthermore, the Philippine Charity Sweepstakes Office (PCSO) shall provide medical assistance for the basic emergency care needs of the poor and marginalized groups.

SEC. 8. *Tax Deductions*. — Other expenses incurred by the hospital or medical clinic in providing basic emergency care to poor and indigent patients not reimbursed by PhilHealth shall be tax deductible.

[33] *Biraogo v. The Philippine Truth Commission of 2010*, 651 Phil. 374, 459 (2010).

[34] *Id*. at 459.

health and other social services available to all the people at affordable cost, wherein there shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children.[35] Lastly, it is not limited to existing conditions only and that the questioned provisions equally apply to all members of the same class.

Given the foregoing reasons, I concur with the *ponencia* and vote to **DISMISS** the instant Petition.

SECOND DIVISION

[G.R. No. 190800. November 7, 2018]

METROPOLITAN BANK & TRUST COMPANY, *petitioner, vs.* **FORTUNA PAPER MILL & PACKAGING CORPORATION,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; CORPORATE REHABILITATION, DEFINED; A CORPORATION WHICH MAINTAINS A STATUS OF SOLVENCY IS NOT PRECLUDED FROM FILING A REHABILITATION PETITION; WHAT IS ESSENTIAL IS THE COMPANY'S INABILITY TO PAY ITS DUES AS THEY FALL DUE FOR IT IS IN LINE WITH THE VERY PURPOSE OF CORPORATE REHABILITATION.— Rehabilitation refers to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover

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[35] 1987 CONSTITUTION, Art. XIII, Sec. 11.

by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated. x x x A plain reading of [Section 1, Rule 4 of the Interim Rules on the Procedure on Corporate Rehabilitation] shows that the Interim Rules does not make any distinction between a corporation which is already in debt and a corporation which foresees the possibility of debt, or which would eventually yet surely fall into the same, but may at present be free from any financial liability. Thus, since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis,* as expressed in the maxim *index animi sermo* or speech is the index of intention. x x x Upon cursory reading of the report and recommendation of Atty. Teston, it can be seen that Fortuna maintains a status of solvency, having more assets than its liabilities with a Php 71,000,000.00 margin. However, even hypothetically granting that Fortuna is already in a state of insolvency, the Court finds that [it] is not precluded from filing its Rehabilitation Petition to facilitate its restoration to its former business stability. Fortuna is seeking a fresh start to lift itself from its present financial predicament. Thus, the foreseen viable rehabilitation of Fortuna would be more advantageous to the business community and its creditors rather than proceed with its liquidation which may possibly lead to its eventual corporate death. This Court need not distinguish whether the claim has already matured or not. What is essential in case of rehabilitation is the inability of the debtor corporation to pay its dues as they fall due. In the case herein, accepting MBTC's proposition that debtor companies already in default are unqualified to file a petition for corporate rehabilitation not only contradicts the purpose of the law, as stated, but also advocates a limiting bar that is not found under the pertinent provisions. A better and more sound interpretation adheres to the very purpose of corporate rehabilitation, which is to allow the debtor-corporation to be restored "to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan."

2. ID.; ID.; ID.; DOCTRINE OF *STARE DECISIS*, APPLIED; A CORPORATION IN DEBT MAY PETITION FOR CORPORATE REHABILITATION ALTHOUGH ITS

DEBTS HAVE ALREADY MATURED.— Relevantly and crucially, the Court has already categorically ruled that a corporation with debts that have already matured may still file a petition for corporate rehabilitation under the Interim Rules. In *Metropolitan Bank and Trust Company v. Liberty Corrugated Boxes Manufacturing Corporation,* therein respondent Liberty Corrugated Boxes Manufacturing Corporation (Liberty), the sister company of Fortuna in the present case, filed its own petition for corporate rehabilitation which was subsequently approved, despite opposition from MBTC, likewise the petitioner herein. The petition for corporate rehabilitation in the *Liberty* case consisted of grounds similarly raised by Fortuna such as a debt moratorium, renewal or marketing efforts, resumption of operations and entry into condominium development. x x x Ruling favorably, the Court granted Liberty's petition concluding that a corporation may file for rehabilitation despite having defaulted on its obligations to the petitioners. x x x Thus, considering the question of law whether or not a corporation already in debt may file a petition for rehabilitation, in the *Liberty* case, is identical to that posited by MBTC in the case herein, the Court is behooved to dismiss the petition as the doctrine of *stare decisis* finds full application. 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.

3. **ID.; ID.; ID.; WHERE THE CORPORATION WAS UNABLE TO SHOW AN ECONOMICALLY FEASIBLE REHABILITATION PLAN AS IT WAS PREDICATED ON SPECULATIVE BUSINESS PROPOSALS, THE COURT MUST RULE AGAINST ITS VALIDITY.—** It is clear from a perusal of the Rehabilitation Plan that the process is heavily, if not completely predicated on speculative business proposals as well as the contingent entry of the potential foreign investor, Polycity. It is emphasized that the entry of Polycity is wholly predicated on conditions imposed on Fortuna by the former, as seen in the letter of Polycity[.] x x x [T]here is also no showing on the part of Fortuna that the company was able to comply with the conditions that would result in Polycity investing in

the former. In fact, Fortuna subsequently filed a Motion to Amend Rehabilitation Plan dated March 5, 2009 almost two (2) years after the filing of the Rehabilitation Plan, stating that the investment of Polycity did not push through, necessitating the entry of Fortuna in the real estate business[.] x x x Even setting aside that the entry into real estate business is general and cannot constitute a surefire way to obtain assets to eventually pay of its creditors, Fortuna has failed to persuade, not only because on its surface the Rehabilitation Plan is riddled with potholes, but also because the facts of the case show that its initial attempts at currying investors have already failed, which has in fact been the basis for the 2011 decision of the RTC in terminating the rehabilitation proceedings. Fortuna was unable to show proof of feasibility turning into actuality as regards its proposal that would warrant the return of confidence that the continuation of Fortuna's corporate life and activities would achieve solvency, or a position where it would be able to pay its obligations as they fall due in the ordinary course of business. Even in its subsequent pleadings, Fortuna failed to show any positive development which would assuage any doubts. Even Fortuna's mention of the joint-venture agreement with Oroquieta Properties, Inc. (OPI) in its Comment to the Petition as a viable means for feasibility, is based on contingency and is far from a sure thing. While Fortuna alleges that it has already moved ahead of the realty development aspect of the Plan and that the architectural plans have already been prepared by OPI and submitted to the Home Development Mutual Fund for assessment, Fortuna itself admits that this is subject to the condition that OPI is willing to participate only as soon as the legal issues of rehabilitation is resolved. It is clear that this substitute investment also has the taint of uncertainty that certainly deprives the Rehabilitation Plan of the requisite feasibility under the law, and thus, this Court must rule as to its invalidity especially as holding otherwise would go against the purpose of corporate rehabilitation and the protection of creditors.

4. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; IN VIEW OF A SUPERVENING EVENT TERMINATING THE REHABILITATION PROCEEDINGS BEFORE THE TRIAL COURT, THE COURT DISMISSED THE PETITION FOR BEING MOOT AND ACADEMIC.— The rationale behind corporate rehabilitation must be upheld at all times and must not be allowed to be abused and misused by

corporations whose aim is solely to thwart the enforcement of legal rights by a creditor, in this case, the Rehabilitation Plan which absolutely lacks feasibility and the lack of any abuse appurtenant to the provisions therein. Perhaps the best indicator that the Rehabilitation Plan was doomed to fail from the start was the very proclamation of the trial court declaring it as such and thus terminating the rehabilitation proceedings, a belated yet crucial development which rendered the issues in this case moot and academic.

PERLAS-BERNABE, *J.*, *concurring opinion*:

1. **REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC; THE COURT OPTED TO DISCUSS AN OTHERWISE MOOT AND ACADEMIC CASE IN VIEW OF THE SUBSTANTIVE ISSUES RAISED CONCERNING CORPORATE REHABILITATION AND ITS WORKING PARAMETERS FOR THE GUIDANCE OF THE BENCH, THE BAR, AND THE PUBLIC.—** A case or issue is considered moot and academic when it ceases to present a justiciable controversy because of supervening events, rendering the adjudication of the case or the resolution of the issue without any practical use or value. This notwithstanding, the Court, in a number of instances, discussed the substantive merits of the case otherwise moot and academic whenever it found the need to formulate controlling principles to guide the bench, the bar, and the public in view of the public interest involved. In my view, and as the *ponencia* deemed fit, this case falls under the foregoing exception, considering the substantive issues raised concerning the technical subject of corporate rehabilitation and some of its working parameters.

2. **COMMERCIAL LAW; CORPORATIONS; CORPORATE REHABILITATION, DEFINED; A CORPORATION WITH DEBTS THAT HAVE ALREADY MATURED MAY STILL FILE A PETITION FOR CORPORATE REHABILITATION; REASONS.—** As presently defined, "[r]ehabilitation shall refer to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated." Under Section 1,

Rule 4 of the Interim Rules, any debtor who foresees the impossibility of meeting its debts when they respectively fall due may file a petition for corporate rehabilitation before the RTC. x x x In *MBTC v. Liberty Corrugated Boxes Manufacturing Corporation* x x x The Court declared that a corporation with debts that have already matured may still file a petition for corporate rehabilitation under the Interim Rules because: *(a)* the condition that triggers rehabilitation proceedings is not the maturation of a corporation's debts but the **inability of the debtor to pay** these; and *(b)* the definition under the Interim Rules is encompassing; hence, there should be no distinction whether a claim has matured or otherwise.

3. **ID.; ID.; ID.; THE SUBJECT REHABILITATION PLAN IS NOT FEASIBLE AS IT IS NOT SUPPORTED BY MATERIAL FINANCIAL COMMITMENTS AND PROPER LIQUIDATION ANALYSIS.—** Under Section 5, Rule 4 of the Interim Rules, the rehabilitation plan shall include the material financial commitments supporting the same. In this case, MBTC faults the CA for relying on the highly contingent and speculative proposal given by Polycity – the alleged White Knight investor – prior to the latter's conduct of due diligence on Fortuna and while funding negotiations were still placed on hold. It pointed out that while the rehabilitation receiver concluded that the said proposal was a distinct possibility, his recommendation in favor of Fortuna's rehabilitation was precisely conditioned on the completion of such due diligence by Polycity and the corresponding cash infusion within nine (9) months from approval of the rehabilitation plan. x x x Neither can Fortuna's projected entry into the realty business be considered as an acceptable material financial commitment. This is because no formal agreement was shown to have been forged between it and its alleged joint venture partner, Oroquieta Properties, Inc. (Oroquieta). Similar to Polycity, Oroquieta only provided a proposal to develop Fortuna's properties, which was likewise still subject to the conduct of due diligence and the further execution of a formal Memorandum of Agreement "after the rehabilitation court has given its approval" of Fortuna's petition. In any event, capital infusion from this source is speculative at best, as there is no reasonable expectation that the Projects would be completed within the assumed target dates for completion in order to realize

any income therefrom. As aptly pointed out by MBTC, Pag-IBIG's "guarantee lies only on the sale of the completed units but not on the means of sustaining the funds needed to complete the Project." But this is not all. In addition, Fortuna's rehabilitation petition lacks a *proper* liquidation analysis that would guide the Court in ascertaining if Fortuna's creditors can recover by way of the present value of payments projected in the plan, more if it continues as a going concern than if it is immediately liquidated, which is a crucial factor in a corporate rehabilitation case. The Interim Rules state that the rehabilitation plan shall include **"a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated."** However, while a liquidation analysis was attached to the rehabilitation petition, the same was not accompanied by any explanation or reliable market information to back the assumptions made by Fortuna's management as to the recoverable amount of its assets, and thus, preventing the Court from determining the feasibility of the plan. The failure of the Rehabilitation Plan to state any material financial commitment to support rehabilitation, as well as to include a proper liquidation analysis, renders the CA's considerations for approving the same as actually **unsubstantiated,** and hence, insufficient to decree Fortuna's rehabilitation. It bears to stress that the remedy of rehabilitation should be denied to corporations that do not qualify under the Interim Rules. Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors. At any rate, the financial documents presented by Fortuna clearly fail to demonstrate the feasibility of its proposed Rehabilitation Plan.

4. ID.; ID.; ID.; PURPOSE OF REHABILITATION PROCEEDINGS, REITERATED; THE REMEDY OF REHABILITATION SHOULD BE DENIED TO CORPORATIONS WHOSE INSOLVENCY APPEARS TO BE IRREVERSIBLE AND WHOSE SOLE PURPOSE IS TO DELAY THE ENFORCEMENT OF ANY OF THE RIGHTS OF THE CREDITORS.— The purpose of rehabilitation proceedings is not only to enable the company to gain a new lease on life but also to allow creditors to be paid their claims from its earnings, when so rehabilitated. **Therefore, the remedy of rehabilitation should be denied to corporations whose insolvency appears to be irreversible and whose sole**

purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by: *(a)* the absence of a sound and workable business plan; *(b)* baseless and unexplained assumptions, targets and goals; and *(c)* speculative capital infusion or complete lack thereof for the execution of the business plan, as in this case.

APPEARANCES OF COUNSEL

Andres Padernal & Paras for petitioner.
CRC Law Firm, collaborating counsel for petitioner.
Jeronimo B. Cumigad for respondent.

D E C I S I O N

A. REYES, JR., *J.*:

Challenged before this Court *via* this Petition for Review[1] under Rule 45 of the Rules of Court is the Decision[2] dated July 7, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 102148, which dismissed the petition for review filed by petitioner Metropolitan Bank and Trust Company (MBTC). Likewise challenged is the Resolution[3] dated January 4, 2010 of the CA denying the Motion for Reconsideration likewise filed by MBTC.

In the said decision, the CA found no error in the assailed Order[4] dated December 20, 2007 of the Regional Trial Court (RTC) of Malabon City, Branch 74, in SEC Case No. S7-002-MN granting the Petition for Corporate Rehabilitation of respondent Fortuna Paper Mill and Packaging Corporation (Fortuna) considering the latter complied with the qualifications

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[1] *Rollo,* pp. 3-8.

[2] Penned by Associate Justice Arturo G. Tayag, with Associate Justices Noel G. Tijam (now a Member of this Court) and Normandie B. Pizarro concurring, *id*. at 39-66.

[3] *Id*. at 84.

[4] Rendered by Assisting Judge Leonardo L. Leonia; *id.* at 226-228.

and minimum requirements provided for under Rule 4, Sections 1 and 5 of the Interim Rules of Procedure on Corporate Rehabilitation (Interim Rules).

The Antecedent Facts

MBTC is a domestic banking corporation organized and existing under the laws of the Republic of the Philippines, and who extended various credit accommodations and loan facilities to Fortuna. Fortuna, before the closure of its business and cessation of its operations in 2006, was organized to manufacture special and craft papers from waste and scrap materials, and which it used to sell its products principally to manufacturers of corrugated boxes, cement paper bags, and other stationary paper products.[5]

The credit accommodations and loan facilities extended by MBTC to Fortuna principally amounted to Php 259,981,915.33. In order to secure these obligations, Fortuna mortgaged to MBTC its real and movable properties as well as several pieces of realty owned by several sister companies.[6]

Fortuna eventually ended up defaulting on its obligations to MBTC, and failed to pay said indebtedness along with the interests and penalties despite repeated demands on the part of MBTC. Around this same period, the Manila Electric Company (Meralco) filed a criminal complaint against Fortuna for pilferage of electricity and cut off the latter's electrical supply. Though Fortuna and Meralco eventually executed a compromise agreement that resulted in the reconnection of Fortuna's power supply, due to alleged dire financial straits and labor problems, Fortuna subsequently and for the second time defaulted in its payments. This led Meralco to once again disconnect Fortuna's supply of electricity, a turn of events which persisted up until the time the petition was filed.[7]

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[5] *Id.* at 13.

[6] *Id.*

[7] *Id.*

Instead of paying the overdue obligations to MBTC, Fortuna filed on June 21, 2007 a Petition for Corporate Rehabilitation (Rehabilitation Petition) with the RTC of Malabon, Branch 74. Attached therein was Fortuna's proposed Rehabilitation Plan, which consisted mainly of (i) the resumption and continuance of its business, to be made possible by the entry of a supposed investor and a debt moratorium on principal interest, and (ii) entry into the business condominium development.[8] The salient features of the proposed Rehabilitation Plan are the following:

30.a) PROGRAM I – Restart and Continuance of Business of Fortuna with Implementation of Specific Plans of Action – The general plan is to continue the operation of Fortuna. These will be implemented with the following features:

(1) Entry of Investor for Fortuna. The of (sic) Policity (sic) Enterprises Ltd. of Hongkong has been identified in buying into Fortuna.

(2) Debt moratorium on principal and interest for two years and debt restructuring for a longer term or tenure and reduced interest rates. It is proposed that interest rates for a certain period within the rehabilitation period be reduced.

It is proposed that interest rates for a certain period within the rehabilitation period be reduced.

Thus, the Program I of the Rehabilitation Plan calls for the forbearance of the creditors/bank to the longer payment period of eight (8) years with the provision for acceleration of payment as cash becomes available from operation or from investors. Reduction of interest rates to 2% on the first two years; then 4% thereafter until the eight year is also an essential component of the Rehabilitation Plan because:

1. Higher interest rates do not encourage the major stockholders to put in more capital and take additional risks;

2. Reduction is customary in rehabilitation or liquidation proceedings when the issue is self-preservation and survival of the debtor;

3. The reduced interest rates are reflective of a very reasonable remedial interest rate;

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[8] *Id.* at 14.

With the relief from debt burdens and threats of paralyzing foreclosures by the foregoing modifications of its debt-structure, and also as part of its rehabilitation plan, FORTUNA shall implement the following key plans of action to bolster its businesses; detailed as follows:

a. The entry of new investor shall pump in at least Php 70,000.000 into the Company; a communication identifying this new investor is hereto attached as Appendix "B";

b. The cash infusion shall be used principally to: (i) convert the bunker-fired boiler to cheaper coal; (ii) purchase of raw materials; (iii) operation of machines at or near maximum capacities; and (iv) settlement of liabilities to Meralco to assure power supply.

30.b) PROGRAM II – Expansion to Other Businesses to Take Advantage of Best-Use of Realty Assets – The Business Plan for the Rehabilitation of FORTUNA has the general premise that the present business of the Petitioner will remain, and in fact, will be expanded, considering that it is still viable.

The plans for additional or supplementary new businesses are hereby adopted only to augment the old business and serve as a cushion in the event that there are adverse environmental and business conditions that are not foreseen. This is also being done to ensure that the settlement of all obligations will occur at the programmed period of eight years or even shorter.

This supplementary business consists of developing some of the realty assets of the Petitioner and/or its sister companies into love-rise (sic) or medium-rise residential condominium under the Pag-IBIG City Program of the Home Mutual Development Fund (Pag-IBIG). Under this Program, the Pag-IBIG shall purchase the completed residential units at 70% of its appraised value and constitute the developer as the marketing agent. This way, the payment to the contractor, who shall complete the building on a turn-key basis, is assured.[9]

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

Finding the Rehabilitation Petition sufficient in form and substance, on June 27, 2007, the RTC issued a Stay Order setting the initial hearing involving the Rehabilitation Petition on August 6, 2007 and directing all of Fortuna's creditors and other interested parties to file their verified comments/ opposition.[10]

The court likewise ordered for the appointment of a rehabilitation receiver pursuant to Rule 4, Section 6 of the Interim Rules. On July 13, 2007, Atty. Rafael F. Teston (Atty. Teston) accepted his appointment as rehabilitation receiver.[11]

On August 6, 2007, MBTC filed its Comment/Opposition[12] to the Rehabilitation Petition and prayed for its dismissal based on the following grounds: (1) Fortuna was not qualified for corporate rehabilitation under Section 1 of Rule 4 of the Interim Rules; (2) the petition was fatally defective for non-compliance with the minimum requirements of Section 5 of Rule 4 of the Interim Rules; and (3) the petition was filed solely for the purpose of unjustly delaying the payment of its debt obligations.[13]

Despite opposition, the Rehabilitation Petition was given due course in an Order dated September 20, 2007. The RTC thus referred the same to Atty. Teston for the latter's evaluation and recommendations.[14]

After reviewing the same, Atty. Teston submitted a Rehabilitation Receiver's Report and Comments to the Rehabilitation Plan (Receiver's Report), the said report recommending that the proposed Rehabilitation Plan be adopted, but subject to the following timelines and benchmarks: (1) The prospective investor Polycity must complete its due diligence and begin its infusion of new cash for MBTC within nine (9)

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[10] *Id*. at 16.

[11] *Id*. at 45.

[12] *Id*. at 170-179.

[13] *Id*. at 45.

[14] *Id*. at 17.

months from approval of the Rehabilitation Plan; and (2) The construction of the Classic Frames property must be initiated within twelve (12) months from approval of the Rehabilitation Plan and completed as set forth in the Plan.[15]

Ruling of the RTC

On the basis of this, the RTC issued an Order[16] dated December 20, 2007 approving the Rehabilitation Plan. The trial court found the proposed Rehabilitation Plan feasible and viable and noted Fortuna's effort to improve its financial standing by establishing a new business of realty development in Malabon City. The RTC held:

> With respect to the rehabilitation plan, the Court finds the same feasible and viable. A moratorium period of two (2) years on the payment of its loans/obligations will enable [Fortuna] to generate additional capital/funds to continue its business operations. This is in line with [Fortuna's] intention to source fund from its internal operations, the growth of which is expected to favorably expand. To achieve this goal, an extension period for the payment of [Fortuna] is just and proper. This is precisely the main reason why [Fortuna] filed the instant petition as corporate rehabilitation can, in one way, be effected by suspension of payments of obligation for a certain period. Thereafter, payment of their loan/obligations could be ably resumed.
>
> Further, the Court notes that [Fortuna] is in the process of establishing a new business of realty development in Malabon City using the 13,000 square meters property of its sister company, Classic Frames Corporation. Although the proposed project site is, as correctly pointed out by [Fortuna], not feasible at this time as it is inundated by flood during heavy rains, the on-going flood control project being undertaken by the government (CAMANAVA Flood Control Project) will solve this problem. As further pointed out by [Fortuna], residential development in Malabon is a feasible and marketable project. The Comprehensive Land Use Plan for the City of Malabon indicates that the community requires a substantial housing for its residents

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[15] *Id*. at 215-216.

[16] *Id*. at 226-228.

of all income groups. There is a housing deficiency of about 7,000 units for the lower-to-middle income class economic segment. The development of a modern residential condominium for the City's middle class priced at the level presented by the debtor is a welcome addition to the community's housing inventory. The HMDF has projected that such an inventory can be marketed easily. The realty company Oroquieta Properties, Inc. is willing to consider and to participate as the developer-contractor for the project. From this project, [Fortuna] expects to earn additional income which is a good source of cashflow for its operations.[17]

The dispositive portion of the order reads:

WHEREFORE, the Rehabilitation Plan filed with this Court and made as an Annex and integral part of this Order is hereby APPROVED. Petitioners are strictly enjoined to abide by its terms and conditions and they shall, unless directed otherwise, submit a quarterly report on the progress of the implementation of the Rehabilitation Plan. Further, and as prayed for, let the construction of the Valenzuela property be initiated within the twelve (12) months from this date and completed as set forth in the plan.[18]

Ruling of the CA

Aggrieved, MBTC filed a Petition for Review under Rule 43 with the CA seeking to set aside the RTC's order. The CA dismissed the petition as it found that the rehabilitation was feasible, and the opposition of the petitioning creditors was manifestly unreasonable.[19]

The dispositive portion of the Decision[20] dated July 7, 2009 reads, to wit:

WHEREFORE, premises considered, the petition for review is DISMISSED. The Order dated 20 December 2007 of the [RTC], Branch 74, City of Malabon in SEC Case No. S7-002-MN is AFFIRMED.

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[17] *Id*. at 227-228.

[18] *Id*. at 228.

[19] *Id*. at 56.

[20] *Id*. at 39-66.

SO ORDERED.[21]

MBTC filed its Motion for Reconsideration to the decision of the CA, which was however denied by the latter through a Resolution[22] dated January 4, 2010.

Hence, this Petition, wherein MBTC prays that this Court reverse and set aside the decision of the CA and order the termination of the rehabilitation proceedings and the liquidation of Fortuna.

The Issue and Contention of the Parties

A perusal of the pleadings filed by the parties will show that the overlying issue in this case is whether or not the CA erred in affirming the Rehabilitation Plan approved by the RTC. MBTC advocates that the CA is mistaken, and anchors its contentions on the belief that Fortuna is not qualified to file a petition for rehabilitation under the Interim Rules.

MBTC argues that a corporation may petition that it be placed under rehabilitation only if it is in the financial condition of a debtor who foresees the majority of its debts and its failure to meet them. Thus, this element of foresight is allegedly wanting where a debtor has already failed to meet its debts that have fallen due, such as in the case of Fortuna. The unequivocal language of the provision, according to the interpretation of MBTC, shows the manifest intent on the part of the drafters to make a distinction between debtors already in default and those who are not, to the end that only the latter may petition to be placed under rehabilitation, and which means that no exception or condition should be introduced save that given expressly in the law.[23]

MBTC also contends that, notwithstanding the question of eligibility of Fortuna, the CA overlooked the many glaring and

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[21] *Id*. at 66.

[22] *Id*. at 84.

[23] *Id*. at 22.

patent deficiencies of Fortuna's Rehabilitation Plan, which include the alleged absence of material financial commitments to support it.[24]

On the other hand, Fortuna in its Comment to the Petition, argues that a cursory reading of the Interim Rules reveals that MBTC's reading of the same is legally untenable and restrictive, and that the salient provision merely indicates the minimum conditions for a debtor to be able to file a Rehabilitation Petition.[25] As regards MBTC's contention that Fortuna is not qualified for corporate rehabilitation, Fortuna points out the lower courts have already determined that the Rehabilitation Plan is feasible, and that MBTC's objections to the same is akin to substituting the latter's judgment over that of the court, in derogation of Section 23, Rule 4 of the Interim Rules, reading to wit:

> **Sec. 23.** *Approval of the Rehabilitation Plan.* – The court may approve a rehabilitation plan even over the opposition of creditors holding a majority of the total liabilities of the debtor if, in its judgment, the rehabilitation of the debtor is feasible and the opposition of the creditors is manifestly unreasonable.
>
> In determining whether or not the opposition of the creditors is manifestly unreasonable, the court shall consider the following:
>
> a. That the plan would likely provide the objecting class of creditors with compensation greater than that which they would have received if the assets of the debtor were sold by a liquidator within a three-month period; x x x.

To this, MBTC reiterates in its Reply to the Comment of Fortuna that Section 1, Rule 4 is clear and unambiguous and not susceptible of the interpretation that even defaulting debtors such as Fortuna may file a Rehabilitation Petition. MBTC pleads its view that rehabilitation is intended to aid distressed but still viable corporations to the end that they may be able to get back to their feet again and resume operations.[26]

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[24] *Id*. at 29-31.

[25] *Id*. at 245.

[26] *Id*. at 267.

As a creditor, MBTC behooves this Court to overrule the CA as "the rationale behind corporate rehabilitation must be upheld at all times and must not be allowed to be abused and misused by corporations whose aim is solely to thwart the enforcement of legal rights by a creditor, and that the creditor must not be put into a situation where it would have to wait for a miracle to happen while watching the assets of the debtor slowly dissipating and losing their values."[27]

This Court takes notice that on September 24, 2018, MBTC filed a Compliance and Motion to Dismiss[28] with this Court, informing this Court that the rehabilitation proceedings have allegedly already been rendered moot by the following supervening events, to wit: First, that the rehabilitation proceedings in SEC Case No. S7-002-MN entitled *"In Re: Corporate Rehabilitation Fortuna Paper Mills and Packaging Corporation"* subject of the present petition, was already terminated by the RTC in its Order[29] dated November 21, 2011. Second, that the CA affirmed said order in a Decision[30] promulgated on August 30, 2013. Third, that Fortuna initially filed a motion for reconsideration to assail the CA's decision, but submitted a Motion to Withdraw[31] the same on February 18, 2014. Fourth, that the CA promulgated a Resolution[32] on April 30, 2014 granting the Motion to Withdraw, hence, that the Decision dated August 30, 2013 of the CA in CA-G.R. SP No. 124062, which affirmed the Order dated November 21, 2011 of the RTC in SEC Case No. S7-002-MN which declared the rehabilitation proceedings as deemed terminated.

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[27] *Id*. at 267-268.

[28] *Id*. at 284-290.

[29] Rendered by Judge Celso R.L. Magsino, Jr.; *id*. at 291-296.

[30] Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez concurring; *id*. at 299-321.

[31] *Id*. at 322-325.

[32] *Id*. at 327.

To wit, the RTC's decision terminating the rehabilitation proceedings reads, to wit:

> **WHEREFORE,** finding the proposed amended rehabilitation plan inadequate to convince the Court that petitioner can be rehabilitated and restored to its former position of successful operation, the motion to admit amended rehabilitation plan is **DENIED.**
>
> For failure to implement the approved eight[-]year rehabilitation plan for four years, the motion to terminate rehabilitation proceedings is **GRANTED.**
>
> The rehabilitation receiver's report for November 2011 is **NOTED** and he is directed to render his final accounting within a period of thirty days from notice.
>
> This rehabilitation proceeding is forthwith deemed **TERMINATED.** Accordingly, the Stay Order issued in this case is **LIFTED,** and is now *functus oficio.*
>
> **SO ORDERED.**[33]

As a result of the foregoing, MBTC belatedly prays that this petition be dismissed in view of the supervening event ergo the termination of the rehabilitation proceedings, rendering the case moot and academic.

Ruling of the Court

In legal parlance, a case is considered moot when it ceases to present a justiciable controversy by virtue of supervening events, and as a rule, courts decline jurisdiction over such a case, or dismiss it on ground of mootness.[34]

The reasoning behind the dismissal of a case for being declared moot and academic is clear. Especially for pragmatic reasons, courts will not determine a moot question in a case in which no practical relief can be granted. It is deemed unnecessary to indulge in an academic discussion of a case presenting a moot

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[33] *Id.* at 13.

[34] *Mendoza, et al. v. Mayor Villas, et al.,* 659 Phil. 409, 417 (2011).

question as a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced.[35]

The RTC's Order dated November 21, 2011 terminating the rehabilitation proceedings effectively puts an end to the judicial controversy between the parties. Nonetheless, this Court still considers it necessary to touch on the question of whether or not a corporation in debt may qualify for corporate rehabilitation, Fortuna in this case, despite the finding of the lower court, belatedly brought to this Court's attention. Ruling on the merits despite a ruling of the lower court rendering the case moot and academic, is not novel. In *Rep. of the Phils. v. Manila Electric Co. (Meralco), et al.*,[36] despite the intervening rendition of the trial court's decision on the merits of the case therein, the Court considered it necessary to still deal with the contentions of the petitioner, in the interest of upholding the observations of the CA on the propriety of the actions of the trial court, which the Court reasoned would be instructive for the Bench and the practicing Bar.

This Court finds that the issues brought to fore go beyond the facts presented and delve into important questions of law, questions that will continue to crop up considering the importance and regularity of rehabilitation proceedings. As a matter of pragmatism, this Court notes that Fortuna has several creditors[37] aside from MBTC, and an adjudication on the substantial merits as presented in this petition will serve as a guide for the conduct of the rehabilitation proceedings, not only in terms of the validity of the rehabilitation proceeding itself, but even if Fortuna is in fact qualified to file for corporate rehabilitation in the first place.

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[35] *Lanuza, Jr. v. Yuchengco,* 494 Phil. 125, 133 (2005).

[36] 723 Phil. 776 (2013).

[37] *Rollo,* p. 129.

Fortuna is qualified to file for corporate rehabilitation.

Rehabilitation refers to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated.[38]

Section 1, Rule 4 of the Interim Rules on the Procedure on Corporate Rehabilitation provides for the qualifications of a corporation to file a petition for corporate rehabilitation, to wit:

> **Sec. 1.** *Who May Petition.* – Any debtor **who foresees the impossibility** of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation. (Emphasis Ours)

A plain reading of the provision shows that the Interim Rules does not make any distinction between a corporation which is already in debt and a corporation which foresees the possibility of debt, or which would eventually yet surely fall into the same, but may at present be free from any financial liability. Thus, since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis,* as expressed in the maxim *index animi sermo* or speech is the index of intention.[39]

In *Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation,*[40] the Court underscored that despite

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[38] *Republic Act No. 10142* or the *Financial Rehabilitation and Insolvency Act of 2010,* Section 4(gg).

[39] *Amores v. House of Representatives Electoral Tribunal, et al.,* 636 Phil. 600, 610 (2010).

[40] 745 Phil. 651 (2014).

the insolvency of a corporation, it cannot be hindered to file a petition for corporate rehabilitation. To conclude otherwise will defeat its purpose of restoring a corporation to its former position of successful operation and solvency.[41]

Upon cursory reading of the report and recommendation of Atty. Teston, it can be seen that Fortuna maintains a status of solvency, having more assets than its liabilities with a Php 71,000,000.00 margin.[42] However, even hypothetically granting that Fortuna is already in a state of insolvency, the Court finds that is not precluded from filing its Rehabilitation Petition to facilitate its restoration to its former business stability. Fortuna is seeking a fresh start to lift itself from its present financial predicament. Thus, the foreseen viable rehabilitation of Fortuna would be more advantageous to the business community and its creditors rather than proceed with its liquidation which may possibly lead to its eventual corporate death.

This Court need not distinguish whether the claim has already matured or not. What is essential in case of rehabilitation is the inability of the debtor corporation to pay its dues as they fall due. In the case herein, accepting MBTC's proposition that debtor companies already in default are unqualified to file a petition for corporate rehabilitation not only contradicts the purpose of the law, as stated, but also advocates a limiting bar that is not found under the pertinent provisions. A better and more sound interpretation adheres to the very purpose of corporate rehabilitation, which is to allow the debtor-corporation to be restored "to a position of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan."[43]

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[41] *Id*. at 657.

[42] *Rollo,* p. 209.

[43] *Republic Act No. 10142* or the *Financial Rehabilitation and Insolvency Act of 2010,* Section 4(gg).

Under the doctrine of stare decisis, it has already been held that a corporation in debt may petition for corporate rehabilitation.

Relevantly and crucially, the Court has already categorically ruled that a corporation with debts that have already matured may still file a petition for corporate rehabilitation under the Interim Rules. In *Metropolitan Bank and Trust Company v. Liberty Corrugated Boxes Manufacturing Corporation,*[44] therein respondent Liberty Corrugated Boxes Manufacturing Corporation (Liberty), the sister company of Fortuna in the present case, filed its own petition for corporate rehabilitation which was subsequently approved, despite opposition from MBTC, likewise the petitioner herein. The petition for corporate rehabilitation in the *Liberty* case consisted of grounds similarly raised by Fortuna such as a debt moratorium, renewal or marketing efforts, resumption of operations and entry into condominium development.

Arriving at the same conclusion as in the trial court proceedings herein, the RTC found the petition to be sufficient in form and substance, and subsequently approved Liberty's rehabilitation plan as it found that Liberty was still capable of rehabilitation.[45]

On subsequent appeal to the Court, MBTC argued that Liberty can no longer file a petition for corporate rehabilitation pursuant to Section 1 of Rule 4 of the Interim Rules since MBTC believed that the provision restricts the kind of debtor who could petition to only those "who foresees the impossibility of meeting its debts when the respectively fall due."[46] Liberty, being already in default in its obligations, allegedly no longer fell within the ambit of the provision. Furthermore, MBTC asserted that the rehabilitation lacked the requisite material financial commitment required under Section 5 of Rule 4 of the Interim Rules.

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[44] 804 Phil. 195 (2017).

[45] *Id*. at 201.

[46] *Id*. at 203.

Ruling favorably, the Court granted Liberty's petition concluding that a corporation may file for rehabilitation despite having defaulted on its obligations to the petitioners.[47] The Court stated:

As stated by the CA in *Philippine Bank of Communications,* rehabilitation is in line with the State's objective to promote a wider and more meaningful equitable distribution of wealth.

In line with this objective, the Interim Rules provide for a liberal construction of its provisions:

RULE 2
Definition of Terms and Construction

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SECTION 2. *Construction.* – These Rules shall be liberally construed to carry out the objectives of Sections 5(d), 6(c) and 6(d) of Presidential Decree No. 902-A, as amended, and to assist the parties in obtaining a just, expeditious, and inexpensive determination of cases. Where applicable, the Rules of Court shall apply suppletorily to proceedings under these Rules.

x x x x x x x x x

There is no reason why corporations with debts that may have already matured should not be given the opportunity to recover and pay their debtors in an orderly fashion. The opportunity to rehabilitate the affairs of an economic entity, regardless of the status of its debts, redounds to the benefit of its creditors, owners, and to the economy in general. Rehabilitation, rather than collection of debts from a company already near bankruptcy, is a better use of judicial rewards.

x x x x x x x x x

Thus, the condition that triggers rehabilitation proceedings is not the maturation of a corporation's debts but the inability of the debtor to pay these.

Where the law does not distinguish, neither should this Court. Because the definition under the Interim Rules is encompassing, there should be no distinction whether a claim has matured or otherwise.

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[47] *Id.* at 207-208.

Petitioner's proposed interpretation contradicts provisions of the Interim Rules, which contemplate situations where a debtor corporation may already be in default. As correctly pointed out by respondent, a creditor may possibly petition for the debtor's rehabilitation for default on debts already owed.[48] (Citations omitted and emphasis and underscoring Ours)

Thus, considering the question of law whether or not a corporation already in debt may file a petition for rehabilitation, in the *Liberty* case, is identical to that posited by MBTC in the case herein, the Court is behooved to dismiss the petition as the doctrine of *stare decisis* finds full application. 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.

As defined and discussed in *Hon. Jonathan A. Dela Cruz and Hon. Gustavo S. Tambunting, as Members of the House of Representatives and as Taxpayers v. Hon. Paquito N. Ochoa Jr., in his Capacity as the Executive Secretary; Hon. Joseph Emilio A. Abaya, in his Capacity as the Secretary of the Department of Transportation and Communications; Hon. Florencio B. Abad, in his Capacity as the Secretary of the Department of Budget and Management; and Hon. Rosalia V. De Leon, in her Capacity as the National Treasurer:*[49]

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

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[48] *Id*. at 470-472.

[49] G.R. No. 219683, January 23, 2018.

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."[50]

There is no compliance with the minimum requirements under Section 5 of Rule 4 of the Interim Rules

Despite this Court's finding that Fortuna may petition for court rehabilitation, being qualified to do does not mean that such a petition will automatically be validated.

While to delve into the material incidents of the Rehabilitation Plan would require a painstaking review of the sufficiency and weight of evidence presented by the parties, ergo, a review of the facts, this Court believes that exceptions under law are present to allow a closer look at the evidence on record. The Court as a general rule reviews questions of fact only if the petition shows any, some, or all of the following:

a. The conclusion of the [CA] is grounded entirely on speculations, surmises and conjectures;

b. The inference made is manifestly mistaken, absurd or impossible;

c. There is a grave abuse of discretion;

d. The judgment is based on misapprehension of facts;

e. The findings of facts are conflicting;

f. The [CA], in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee.

g. The findings of fact of the [CA] are contrary to those of the trial court;

h. The findings of fact are conclusions without citation of specific evidence on which they are based;

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[50] *Id*., citing *Ty v. Banco Filipino Savings and Mortgage Bank,* 689 Phil. 603, 614 (2012).

i. The facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by respondents; or

j. The findings of fact of the [CA] are premised on the supposed absence of evidence and contradicted by the evidence on record.[51]

In this case, the Court finds that the lower courts based their findings on a misapprehension of facts, facts that would very clearly show that the lack of feasibility in the Rehabilitation Plan as well as the infirmities in the same. Due to this, this Court holds that the CA committed grave abuse of discretion that warrants the reversal of its decision on the apparent validity of the Rehabilitation Plan.

To note, the test[52] in evaluating the feasibility of the plan was laid down in *Bank of the Philippine Islands v. Sarabia Manor Hotel Corporation (Bank of the Philippine Islands,*[53] to wit:

In order to determine the feasibility of a proposed rehabilitation plan, it is imperative that a thorough examination and analysis of the distressed corporation's financial data must be conducted. If the results of such examination and analysis show that there is a real opportunity to rehabilitate the corporation in view of the assumptions made and financial goals stated in the proposed rehabilitation plan, then it may be said that a rehabilitation is feasible. In this accord, the rehabilitation court should not hesitate to allow the corporation to operate as an on-going concern, albeit under the terms and conditions stated in the approved rehabilitation plan. **On the other hand, if the results of the financial examination and analysis clearly indicate that there lies no reasonable probability that the distressed corporation could be revived and that liquidation would, in fact, better subserve the interests of its stakeholders, then it may be said that a rehabilitation would not be feasible.** In such case, the

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[51] *Golden (Iloilo) Delta Sales Corp. v. Pre-Stress Int'l. Corp., et al.,* 596 Phil. 26, 39 (2009); *Jarantilla v. Jarantilla, et al.,* 651 Phil. 13, 27 (2010).

[52] *Phil. Asset Growth Two, Inc., et al. v. Fastech Synergy Phils., Inc., et al.,* 788 Phil. 355, 378 (2016).

[53] 715 Phil. 420 (2013).

rehabilitation court may convert the proceedings into one for liquidation.[54] (Emphasis Ours)

In the recent case of *Phil. Asset Growth Two, Inc., et al. v. Fastech Synergy Phils., Inc., et al.,*[55] the Court took note of the characteristics of feasible rehabilitation plan as opposed to an infeasible rehabilitation plan, as follows:

> Professor Stephanie V. Gomez of the University of the Philippines College of Law suggests specific characteristics of an economically feasible rehabilitation plan:
>
> a. The debtor has assets that can generate more cash if used in its daily operations than if sold.
>
> b. Liquidity issues can be addressed by a *practicable business plan* that will generate enough cash to sustain daily operations.
>
> c. The debtor has a definite source of financing for the proper and full implementation of a Rehabilitation Plan that is anchored on realistic assumptions and goals.
>
> These requirements put emphasis on liquidity: the cash flow that the distressed corporation will obtain from rehabilitating its assets and operations. A corporation's assets may be more than its current liabilities, but some assets may be in the form of land or capital equipment, such as machinery or vessels. Rehabilitation sees to it that these assets generate more value if used efficiently rather than if liquidated.
>
> On the other hand, this court enumerated the characteristics of a rehabilitation plan that is infeasible:
>
> a. the absence of a sound and workable business plan;
>
> b. baseless and unexplained assumptions, targets and goals;
>
> c. speculative capital infusion or complete lack thereof for the execution of the business plan;
>
> d. cash flow cannot sustain daily operations; and

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[54] *Id.* at 378-379.

[55] 788 Phil. 355 (2016).

(e) negative net worth and the assets are near full depreciation or fully depreciated.[56] (Citation omitted)

Taking all these points into consideration, among others, in the case of Fortuna, the Court disagrees with the finding of the lower courts that the Rehabilitation Plan is one that is economically feasible for several reasons.

First, the Rehabilitation Plan is primarily premised on speculative investments and the lack of material financial commitments. In *Fastech,* the Court stated that nothing short of legally binding investment commitment/s from third parties is required as a material financial commitment. To wit:

> A material financial commitment becomes significant in gauging the resolve, determination, earnestness, and good faith of the distressed corporation in financing the proposed rehabilitation plan. This commitment may include the voluntary undertakings of the stockholders or the would-be investors of the debtor-corporation indicating their readiness, willingness, and ability to contribute funds or property to guarantee the continued successful operation of the debtor-corporation during the period of rehabilitation. x x x Case law holds that nothing short of legally binding investment commitment/s from third parties is required to qualify as a material financial commitment. x x x Here, no such binding investment was presented.[57]

The following proposals and commitments as found in the Rehabilitation Plan show the lack of any legally binding investment:[58]

> 30.a) PROGRAM I – Restart and Continuance of Business of Fortuna with Implementation of Specific Plans of Action – The general plan is to continue the operation of Fortuna. These will be implemented with the following features:
>
> (1) Entry of Investor for Fortuna. The of (sic) Policity (sic) Enterprises Ltd. of Hongkong has been identified in buying into Fortuna.

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[56] *Id.* at 379-380.

[57] *Id.* at 375-377.

[58] *Rollo,* p. 92.

(2) Debt moratorium on principal and interest for two years and debt restructuring for a longer term or tenure and reduced interest rates. It is proposed that interest rates for a certain period within the rehabilitation period be reduced

x x x x x x x x x

With the relief from debt burdens and threats of paralyzing foreclosures by the foregoing modifications of its debt-structure, and also as part of its rehabilitation plan, FORTUNA shall implement the following key plans of action to bolster its businesses; detailed as follows:

c. The entry of new investor shall pump in at least Php 70,000.000 into the Company; a communication identifying this new investor is hereto attached as Appendix "B";

d. The cash infusion shall be used principally to: (i) convert the bunker-fired boiler to cheaper coal; (ii) purchase of raw materials; (iii) operation of machines at or near maximum capacities; and (iv) settlement of liabilities to Meralco to assure power supply.

30.b) PROGRAM II – Expansion to Other Businesses to Take Advantage of Best-Use of Realty Assets – The Business Plan for the Rehabilitation of FORTUNA has the general premise that the present business of the Petitioner will remain, and in fact, will be expanded, considering that it is still viable.

The plans for additional or supplementary new businesses are hereby adopted only to augment the old business and serve as a cushion in the event that there are adverse environmental and business conditions that are not foreseen. This is also being done to ensure that the settlement of all obligations will occur at the programmed period of eight years or even shorter.

This supplementary business consists of developing some of the realty assets of the Petitioner and/or its sister companies into love-rise (sic) or medium-rise residential condominium under the Pag-IBIG City Program of the Home Mutual Development Fund (Pag-IBIG). Under this Program, the Pag-IBIG shall purchase the completed residential units at 70% of its appraised value and constitute the developer as the marketing agent. This way, the payment to the contractor, who shall complete the building on a turn-key basis, is assured.[59]

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

It is clear from a perusal of the Rehabilitation Plan that the process is heavily, if not completely predicated on speculative business proposals as well as the contingent entry of the potential foreign investor, Polycity. It is emphasized that the entry of Polycity is wholly predicated on conditions imposed on Fortuna by the former, as seen in the letter of Polycity, which reads to wit:

Gentlemen:

We write to express our intention to acquire 50% or more of the issued capital stock of Fortuna Paper Mills & Packaging Corporation (Fortuna), which we understand is being sold. This letter serves notice to you being the sole financial creditor of Fortuna.

Our offer to purchase shall be subject to the following conditions: (i) grant of an exclusivity period of ninety (90) days **during which period Fortuna shall not entertain any other offers from possible purchasors,** but shall allow us to conduct due diligence and undertake other activities related to the possible acquisition of Fortuna's sticks; (ii) the conduct of financial, operational, legal and technical due diligence which yield satisfactory results to be completed within sixty (60) days of Fortuna's acceptance of this letter (iii) acceptable documentation of the acquisition; and (iv) Fortuna's compliance with any conditions precedent to such acquisition.

The Letter of Intent submitted to Fortuna does not constitute a binding a commitment on either party with respect to any transaction and is not intended to be and does not constitute a legal binding obligation. No legal binding obligations will be created, implied or inferred until and unless a definitive agreement is executed and delivered by the parties.

We will be sending over to Manila our representatives over in the immediate coming weeks to negotiate with the owners of Fortuna and to meet with the authorized representatives of Metropolitan Bank. We hope to introduce ourselves in person and to discuss other matters involving Fortuna.

Yours,

Anthony Sher[60]

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[60] *Id*. at 104.

The aforecited transaction is not the viable and realistic option that complies with the minimum requirements of the Interim Rules. Critically, to this date, there is also no showing on the part of Fortuna that the company was able to comply with the conditions that would result in Polycity investing in the former. In fact, Fortuna subsequently filed a Motion to Amend Rehabilitation Plan dated March 5, 2009[61] almost two (2) years after the filing of the Rehabilitation Plan, stating that the investment of Polycity did not push through, necessitating the entry of Fortuna in the real estate business, to wit:

> That unfortunately, it is unable to come up with the payments in the first year of Rehabilitation, due to the following reasons:
>
> a. The Rehabilitation Plan requires the infusion of Php70 Million from investor POL[Y]CITY. The current financial crisis, however, has compelled the investor to review its investment programs in this part of the world.
>
> b. That it is now necessary to raise on its own the funds required to initiate the operations of the plant.
>
> x x x x x x x x x
>
> The approved Plan calls for the entry of the Petitioner in real estate business. The first phase of thus business is the construction of a six-storey condominium at the 1.3 Hectare property of its sister company Classic Frames Inc. at Malabon, Metro Manila. This project is expected to result in a net profit of Php 277 Million.[62]

Even setting aside that the entry into real estate business is general and cannot constitute a surefire way to obtain assets to eventually pay of its creditors, Fortuna has failed to persuade, not only because on its surface the Rehabilitation Plan is riddled with potholes, but also because the facts of the case show that its initial attempts at currying investors have already failed, which has in fact been the basis for the 2011 decision of the RTC in terminating the rehabilitation proceedings. Fortuna was unable to show proof of feasibility turning into actuality as

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[61] *Id*. at 229-235.

[62] *Id*. at 230-233.

regards its proposal that would warrant the return of confidence that the continuation of Fortuna's corporate life and activities would achieve solvency, or a position where it would be able to pay its obligations as they fall due in the ordinary course of business. Even in its subsequent pleadings, Fortuna failed to show any positive development which would assuage any doubts.

Even Fortuna's mention of the joint-venture agreement with Oroquieta Properties, Inc. (OPI) in its Comment to the Petition[63] as a viable means for feasibility, is based on contingency and is far from a sure thing. While Fortuna alleges that it has already moved ahead of the realty development aspect of the Plan and that the architectural plans have already been prepared by OPI and submitted to the Home Development Mutual Fund for assessment, Fortuna itself admits that this is subject to the condition that OPI is willing to participate only as soon as the legal issues of rehabilitation is resolved.[64] It is clear that this substitute investment also has the taint of uncertainty that certainly deprives the Rehabilitation Plan of the requisite feasibility under the law, and thus, this Court must rule as to its invalidity especially as holding otherwise would go against the purpose of corporate rehabilitation and the protection of creditors.

In *Viva Shipping Lines, Inc. v. Keppel Phils. Marine, Inc., et al.,*[65] the Court emphasized the very definition and dictated purposes of corporate rehabilitation, as a remedy effected not just for the problematic corporation, but also for the creditors and other stakeholders:

> Corporate rehabilitation is a type of proceeding available to a business that is insolvent. In general, insolvency proceedings provide for predictability that commercial obligations will be met despite business downturns. Stability in the economy results when there is assurance to the investing public that obligations will be reasonably

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[63] *Id*. at 251.

[64] *Id*.

[65] 781 Phil. 95 (2016).

paid. It is considered state policy to encourage debtors, both juridical and natural persons, and their creditors to *collectively and realistically resolve* and adjust competing claims and property rights[.] x x x [Rehabilitation or liquidation shall be made with a view to ensure or maintain certainty and predictability in commercial affairs, preserve and maximize the value of the assets of these debtors, recognize creditor rights and respect priority of claims, and ensure equitable treatment of creditors who are similarly situated. x x x The rationale in corporate rehabilitation is to resuscitate businesses in financial distress because "assets x x x are often more valuable when so maintained than they would be when liquidated." Rehabilitation assumes that assets are still serviceable to meet the purposes of the business. The corporation receives assistance from the court and a disinterested rehabilitation receiver to balance the interest to recover and continue ordinary business, all the while attending to the interest of its creditors to be paid equitably. x x x.

x x x x x x x x x

Philippine Bank of Communications v. Basic Polyprinters and Packaging Corporation reiterates that courts "must endeavor to balance the interests of all the parties that had a stake in the success of rehabilitating the debtors." These parties include the corporation seeking rehabilitation, its creditors, and the public in general. x x x Clearly then, there are instances when corporate rehabilitation can no longer be achieved. When rehabilitation will not result in a better present value recovery for the creditors, the more appropriate remedy is liquidation.

It does not make sense to hold, suspend, or continue to devalue outstanding credits of a business that has no chance of recovery. In such cases, the optimum economic welfare will be achieved if the corporation is allowed to wind up its affairs in an orderly manner. Liquidation allows the corporation to wind up its affairs and equitably distribute its assets among its creditors.[66]

The rationale behind corporate rehabilitation must be upheld at all times and must not be allowed to be abused and misused by corporations whose aim is solely to thwart the enforcement of legal rights by a creditor, in this case, the Rehabilitation Plan which absolutely lacks feasibility and the lack of any abuse

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[66] *Id*. at 112-115.

appurtenant to the provisions therein. Perhaps the best indicator that the Rehabilitation Plan was doomed to fail from the start was the very proclamation of the trial court declaring it as such and thus terminating the rehabilitation proceedings, a belated yet crucial development which rendered the issues in this case moot and academic.

WHEREFORE, the petition is **DISMISSED** for being moot and academic.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*) and *Caguioa, JJ.,* concur.

Perlas-Bernabe, J., see concurring opinion.

Reyes, J. Jr.,[*] *J.,* on wellness leave.

CONCURRING OPINION

PERLAS-BERNABE, *J.*:

I concur. This petition assailing the Decision[1] dated July 7, 2009 of the Court of Appeals (CA) which upheld the Rehabilitation Plan of respondent Fortuna Paper Mill & Packaging Corporation (Fortuna) should be dismissed on the ground of mootness in view of the termination of the rehabilitation proceedings before the Court could resolve the instant petition. A case or issue is considered moot and academic when it ceases to present a justiciable controversy because of supervening events, rendering the adjudication of the case or the resolution of the issue without any practical use or value.[2]

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[*] Designated as Acting Member per Special Order No. 2587 dated August 28, 2018.

[1] *Rollo,* pp. 39-66. Penned by Associate Justice Arturo G. Tayag with Associate Justices Noel G. Tijam (now a Member of this Court) and Normandie B. Pizarro, concurring.

[2] See *Ayala Land, Inc. v. Heirs of Lactao,* G.R. No. 208213, August 8, 2018.

This notwithstanding, the Court, in a number of instances,[3] discussed the substantive merits of the case otherwise moot and academic whenever it found the need to formulate controlling principles to guide the bench, the bar, and the public in view of the public interest involved.[4] In my view, and as the *ponencia* deemed fit, this case falls under the foregoing exception, considering the substantive issues raised concerning the technical subject of corporate rehabilitation and some of its working parameters.

As background, the basic facts of this case are as follows: on June 21, 2007, Fortuna filed a Petition[5] for corporate rehabilitation (rehabilitation petition) before the Regional Trial Court of Malabon, Branch 74 (RTC), with prayer for the issuance of a Stay Order, docketed as SEC. Case No. S7-002-MN. It alleged, among others, that eighty-eight percent (88%) of its total obligations is owing to petitioner Metropolitan Bank & Trust Company (MBTC)[6] which is secured by real estate and chattel mortgages over properties owned by it and its affiliates, and are now overdue.[7] It claimed that rehabilitation is the best option for the company, as well as its creditors because any forced liquidation would give the unsecured creditors a mere ₱0.51[8] for every peso of exposure.[9]

Under the proposed Rehabilitation Plan,[10] Fortuna intends to resume its operations which had ceased since the second

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[3] See *Mahinay v. Gako, Jr.,* 677 Phil. 292 (2011); *Republic v. Manila Electric Company,* 723 Phil. 776 (2013).

[4] See *Genuino v. De Lima,* G.R. Nos. 197930, 199034 & 199046, April 17, 2018.

[5] *Rollo,* pp. 85-97.

[6] See *id.* at 92.

[7] See *id.* at 90-91.

[8] Should be ₱0.54. See Liquidation Analysis; CA *rollo,* p. 212.

[9] *Rollo,* p. 95.

[10] *CA rollo,* pp. 109-141.

quarter of 2006 due to the labor problems it encountered,[11] that was followed by the disconnection of its supply of electricity.[12] Essentially, the elements of the business plan are: *(a)* debt moratorium for two (2) years, restructuring of interest rates and waiver of penalty charges;[13] *(b)* the infusion of investment by Polycity Enterprises Ltd. (HK; Polycity) which had indicated its interest to acquire fifty percent (50%) or more of the company's stocks that is valued at least ₱70 Million;[14] and *(c)* entry into the business of condominium development on a 13,503 square meter-property owned by its sister company, Classic Frames Corp., located in Malabon, Metro Manila (Malabon property), which project shall be enrolled with the Pag-IBIG City Program backed with a Payment Guarantee Bond.[15]

Despite opposition, the rehabilitation petition was given due course, and the Rehabilitation Plan, which was found to be feasible and viable, was eventually approved by the RTC in an Order[16] dated December 20, 2007. The said Order was subsequently affirmed by the CA in the assailed July 7, 2009 Decision.

Hence, the instant petition filed by MBTC, contending that: ***(a)* Fortuna is not qualified to file a rehabilitation petition**[17] **under the 2000 Interim Rules of Procedure on Corporate Rehabilitation**[18] **(Interim Rules); and *(b)* there are no material financial commitments to support the Rehabilitation Plan.**[19]

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[11] See *id*. at 123.

[12] See *rollo,* pp. 13.

[13] See CA *rollo,* pp. 131-132.

[14] See *id*. at 134. See also Polycity's letter of intent dated March 14, 2007; *rollo,* p. 104.

[15] See CA *rollo,* pp. 135-136.

[16] See *rollo,* pp. 226-228. Penned by Assisting Judge Leonardo L. Leonida.

[17] See *rollo,* pp. 21-23.

[18] A.M. No. 00-8-10-SC, November 21, 2000 (Re: Interim Rules of Procedure on Corporate Rehabilitation).

[19] See *rollo,* pp. 29-31.

Subsequently, however, MBTC informed the Court that the RTC had already terminated the rehabilitation proceedings in SEC. Case No. S7-002-MN,[20] which was affirmed by the CA.[21] Thus, based on this supervening event, MBTC prayed that the instant petition be dismissed on the ground of mootness.

As earlier mentioned, although this case had indeed become moot and academic due to the termination of the rehabilitation proceedings, it would be highly instructive to delve into the aforementioned substantive issues to guide the bench, the bar, and the public in understanding some of the working parameters attending corporate rehabilitation.

I.

FORTUNA IS QUALIFIED TO FILE FOR CORPORATE REHABILITATION.

As presently defined, "[r]ehabilitation shall refer to the restoration of the debtor to a condition of successful operation and solvency, if it is shown that its continuance of operation is economically feasible and its creditors can recover by way of the present value of payments projected in the plan, more if the debtor continues as a going concern than if it is immediately liquidated."[22]

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[20] In its Decision dated November 21, 2011.

[21] The CA denied Fortuna's Rule 43 petition in its Decision dated August 30, 2013 in CA-G.R. SP No. 124062. Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez, concurring.

Fortuna moved for reconsideration, but subsequently **withdrew the motion on the ground that the petition has been overtaken by *unspecified* events which rendered the petition moot and academic, and admitting the correctness and validity of the November 21, 2011 RTC Order terminating the rehabilitation proceedings.**

In a Resolution dated April 30, 2014, the CA granted Fortuna's motion to withdraw.

[22] See Section 4 (gg) of Republic Act No. 10142, entitled "AN ACT PROVIDING FOR THE REHABILITATION OR LIQUIDATION OF FINANCIALLY DISTRESSED ENTERPRISES AND INDIVIDUALS," otherwise known as the "FINANCIAL REHABILITATION AND INSOLVENCY ACT (FRIA) OF 2010" (July 18, 2010).

Under Section 1,[23] Rule 4 of the Interim Rules, any debtor who foresees the impossibility of meeting its debts when they respectively fall due may file a petition for corporate rehabilitation before the RTC. In this case, MBTC insists that Fortuna is not qualified to file a rehabilitation petition under the Interim Rules since the phrase "who foresees the impossibility of meeting its debts when they respectively fall due" must be construed to mean that an element of foresight is required, and that the debts of the corporation should not have matured.[24] It maintains that "[t]he unequivocal language of the [said] provision demonstrates a manifest intent on the part of its drafters to make a distinction between debtors already in default and those who are not, to the end that only debtors in the latter class may petition to be placed under rehabilitation."[25]

In *MBTC v. Liberty Corrugated Boxes Manufacturing Corporation*[26] *(Liberty),* wherein Fortuna's sister company was involved, the Court had already struck down MBTC's proposed interpretation as contradicting provisions of the Interim Rules, which contemplate situations where a debtor corporation may already be in default,[27] and defeats the clear purpose of the lawmakers.[28] The Court declared that a corporation with debts that have already matured may still file a petition for corporate rehabilitation under the Interim Rules because: *(a)* the condition that triggers rehabilitation proceedings is not the maturation of a corporation's debts but the **inability of the debtor to pay** these; and *(b)* the definition under the Interim Rules is

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[23] Section 1. *Who May Petition.* – Any debtor who foresees the impossibility of meeting its debts when they respectively fall due, or any creditor or creditors holding at least twenty-five percent (25%) of the debtor's total liabilities, may petition the proper Regional Trial Court to have the debtor placed under rehabilitation.

[24] See *rollo,* p. 21.

[25] See *id*. at 22-23.

[26] G.R. No. 184317, January 25, 2017, 815 SCRA 458.

[27] See *id*. at 472.

[28] See *id*. at 479.

encompassing; hence, there should be no distinction whether a claim has matured or otherwise.[29]

II.

THE REHABILITATION PLAN IS NOT SUPPORTED BY THE REQUIRED MATERIAL FINANCIAL COMMITMENTS, AS WELL AS A PROPER LIQUIDATION ANALYSIS, AND CONSEQUENTLY, IS NOT FEASIBLE.

Under Section 5,[30] Rule 4 of the Interim Rules, the rehabilitation plan shall include the material financial commitments supporting the same. In this case, MBTC faults the CA for relying on the highly contingent and speculative proposal given by Polycity – the alleged White Knight investor – prior to the latter's conduct of due diligence on Fortuna and while funding negotiations were still placed on hold. It pointed out that while the rehabilitation receiver concluded that the said proposal was a distinct possibility, his recommendation in favor of Fortuna's rehabilitation was precisely conditioned on the completion of such due diligence by Polycity and the corresponding cash infusion within nine (9) months from approval of the rehabilitation plan.[31]

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[29] See *id*. at 471-472.

[30] Section 5. Rehabilitation Plan. – The rehabilitation plan shall include (a) the desired business targets or goals and the duration and coverage of the rehabilitation; (b) the terms and conditions of such rehabilitation which shall include the manner of its implementation, giving due regard to the interests of secured creditors; **(c) the material financial commitments to support the rehabilitation plan;** (d) the means for the execution of the rehabilitation plan, which may include conversion of the debts or any portion thereof to equity, restructuring of the debts, *dacion en pago,* or sale of assets of the controlling interest; **(e) a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated;** and (f) such other relevant information to enable a reasonable investor to make an informed decision on the feasibility of the rehabilitation plan. (Emphases supplied)

[31] See *rollo,* pp. 26-27.

In *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc.*,[32] the Court explained that **"nothing short of legally binding investment commitment/s from third parties is required to qualify as a material financial commitment."**[33] However, no such binding investment was presented by Fortuna in this case. Clearly, Polycity only presented an offer to purchase that is contingent upon, among others, "the conduct of financial, operational, legal[,] and technical due diligence which yield satisfactory results to be completed within sixty (60) days of Fortuna's acceptance of [its] letter."[34] Significantly, Polycity's Letter of Intent[35] expressly states that: *(a)* the same "does not constitute a binding commitment on either party with respect to any transaction and is not intended to be and does not constitute a legal binding obligation;" and *(b)* "[n]o legal binding obligations will be created, implied or inferred until and unless a definitive agreement is executed and delivered by the parties."[36] While Polycity's then President, Anthony Sher,[37] *informally* affirmed his company's readiness to make the capital infusion subject to the resolution of the legal issues surrounding Fortuna's rehabilitation,[38] the same was made at a time when it has not yet completed its due diligence on Fortuna,[39] and has yet to ascertain satisfactory results that would convince it to invest. This hardly fits the description of a material financial commitment which would inspire confidence that the rehabilitation would turn out to be successful. Tellingly, even prior to the filing of the instant petition before the Court, Fortuna filed a Motion to

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[32] 757 Phil. 251, 266 (2015).

[33] *Id*. at 268.

[34] *Rollo,* p. 104; underscoring supplied.

[35] *Id*.

[36] See *id*.

[37] See *id*.

[38] During an interview with the rehabilitation receiver; see *id*. at 212.

[39] See *id*. at 215.

Amend Rehabilitation Plan[40] dated March 5, 2009 acknowledging that it was unable to come up with the scheduled payments in the first year of rehabilitation, on the ground, among others, that Polycity had not pushed through with its planned investment, leaving it with the necessity to raise its own funds,[41] but without indicating how it shall proceed therewith. It is worthy to emphasize that while there is no absolute certainty in rehabilitation, the sacrifice that the creditors are compelled to make can only be considered justified if the restoration of the corporation's former state of solvency is feasible due to a sound business plan with an assured funding,[42] which is lacking in this case.

Neither can Fortuna's projected entry into the realty business be considered as an acceptable material financial commitment. This is because no formal agreement was shown to have been forged between it and its alleged joint venture partner, Oroquieta Properties, Inc. (Oroquieta). Similar to Polycity, Oroquieta only provided a proposal to develop Fortuna's properties, which was likewise still subject to the conduct of due diligence and the further execution of a formal Memorandum of Agreement "after the rehabilitation court has given its approval"[43] of Fortuna's petition. In any event, capital infusion from this source is speculative at best, as there is no reasonable expectation that the Projects would be completed within the assumed target dates for completion in order to realize any income therefrom. As aptly pointed out by MBTC, Pag-IBIG's "guarantee lies only on the sale of the completed units but not on the means of sustaining the funds needed to complete the Project."[44]

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[40] *Id.* at 229-236.

[41] See *id*. at 230.

[42] See *Wonder Book Corp. v. Phil. Bank of Communications,* 691 Phil. 83, 100 (2012).

[43] See *rollo,* pp. 219-220.

[44] See MBTC's Reply (Re: Comment dated 28 May 2010) dated September 20, 2010; *id*. at 266.

But this is not all. In addition, Fortuna's rehabilitation petition lacks a *proper* liquidation analysis that would guide the Court in ascertaining if Fortuna's creditors can recover by way of the present value of payments projected in the plan, more if it continues as a going concern than if it is immediately liquidated, which is a crucial factor in a corporate rehabilitation case.[45] The Interim Rules state that the rehabilitation plan shall include **"a liquidation analysis that estimates the proportion of the claims that the creditors and shareholders would receive if the debtor's properties were liquidated."**[46] However, while a liquidation analysis[47] was attached to the rehabilitation petition, the same was not accompanied by any explanation or reliable market information to back the assumptions[48] made by Fortuna's management as to the recoverable amount of its assets, and thus, preventing the Court from determining the feasibility of the plan.

The failure of the Rehabilitation Plan to state any material financial commitment to support rehabilitation, as well as to include a proper liquidation analysis, renders the CA's considerations for approving the same[49] as actually

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[45] See *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc., supra* note 32, at 269.

[46] See Section 5, Rule 4 of the Interim Rules.

[47] CA *rollo,* p. 212.

[48] Among the assumptions made was the inclusion of the account "Estimated receivable" from Liberty on the realizable value of its land pledged in the amount of ₱84,414,200.00 (see CA *rollo,* p. 212) in the computation of free/available assets. However, the records are bereft of showing that Liberty, which is also undergoing rehabilitation, had already sold or assigned the said land to Fortuna.

[49] *I.e., (a)* Fortuna's assets, which are well in excess of its liabilities, would be even more valuable if Fortuna is preserved as a going concern rather than if it were liquidated outright (see *rollo,* p. 57); *(b)* Polycity's investment is a viable and realistic option (see *id*. at 58), and the approval of Fortuna's rehabilitation plan, as well as the lower court's close oversight of its implementation through the receiver "could well expedite the entry of Polycity" (see *id*. at 61); and *(c)* the proposed business of condominium development is a viable venture for the debtor and a good source of cash flow for its operations (see *id*. at 63).

unsubstantiated, and hence, insufficient to decree Fortuna's rehabilitation. It bears to stress that the remedy of rehabilitation should be denied to corporations that do not qualify under the Interim Rules. Neither should it be allowed to corporations whose sole purpose is to delay the enforcement of any of the rights of the creditors.[50]

At any rate, the financial documents presented by Fortuna clearly fail to demonstrate the feasibility of its proposed Rehabilitation Plan. In this case, the interim financial statements (FS) as of May 31, 2007 show that: *(a)* while Fortuna has substantial total assets, a large portion thereof is comprised of Property and Equipment,[51] the bulk of which are mortgaged to MBTC;[52] *(b)* Fortuna's cash operating position[53] was insufficient to meet its maturing obligations as its current assets were substantially lower than its current liabilities;[54] and *(c)* when

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[50] *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc.,* 788 Phil. 355, 378 (2016).

[51] See *rollo,* p. 125.

[52] Comprising the following:

Buildings	₱ 131,521,000.00	
Machineries/Chattel	144,643,000.00	
Land	36,772.000.00	
Total assets mortgaged	₱ 312,936,000.00	(see *id*. at 90-91)
Total Porperty & Equipment (PPE)	÷ 409,349,354.62	(see *id*. at 125)
Percentage of mortgaged properties in the PPE	76.45%	

[53] "A company's cash position refers specifically to its level of cash compared to its pending expenses and liabilities, x x x. In general, a stable cash position means the company can easily meet its current liabilities with the cash or liquid assets it has on hand. Current liabilities are debts with payments due within the next 12 months." (See footnote 54 in *BPI Family Savings Bank, Inc. v. St. Michael Medical Center, Inc., supra* note 32, at 269, citing Kokemuller, "Neil, "*Cash Flow vs. Cash Position,"* Chron. < http://smallbusiness.chron.com/cash-flow-vs-cash-position-51149.html> [visited November 5, 2018])

[54] Fortuna's current assets and current liabilities as of May 31, 2007 are as follows:

compared vis-a-vis Fortuna's audited FS[55] for the three (3) immediately preceding years, certain accounts were omitted[56] or added[57] without any explanation or justification. Moreover, no basis was provided for the projected sales,[58] expenses, and net incomes for the ten (10)-year period[59] following the filing of the rehabilitation petition, such as forecasts of independent industry analysts, and Fortuna's performance in previous years[60] does not indicate that its sales grow annually at such rate.

Total Current Assets	₱ 3,605,395.50
Total Current Liabilities	14,896,762.24 (see *rollo,* p. 125)

[55] The audited financial statements attached to the *rollo* and the CA *rollo* were not accompanied by any explanatory notes.

[56] The account "Finished Goods Inventory" which was valued at ₱50,316,867.49 in the audited Balance Sheet as of December 31, 2006 (see *rollo,* p. 121) does not appear in the Interim Statement of Cost of Goods Manufactured and Sold (see *id*. at 127) and the Current Assets section of the Interim Balance Sheet (see *id*. at 125) without a showing that the same was sold and converted to cash or receivables, or otherwise disposed through a *dacion en pago*. Neither was it shown why the beginning balance of the "Raw Materials Inventory" in the Interim Statement of Cost of Goods Manufactured and Sold was reduced to ₱6,500,700.50 (see *id*. at 127) when the same was valued at ₱50,780,900.50 (see *id.* at 121) in the audited Balance Sheet as of December 31, 2006.

[57] The account "Utilities Payable" in the amount of ₱30,354,849.60 corresponding to the liability to MERALCO was suddenly reported in the Interim Balance Sheet (see *id*. at 125) when the same was never reflected in Fortuna's audited balance sheets for the years 2005 (see *id*. at 115) and 2006 (see *id*. at 122), despite the compromise agreement entered with MERALCO on *July 2005* (see *id*. at 88).

[58]

Year 2 Sales	₱ 379,848,960.00
Year 1 Sales	- 323,872,960.00 (see CA *rollo,* p. 135)
Increase in Sales	₱ 55,976,000.00
	÷ 379,848,960.00
	0.1474
	x 100%
Sales growth percentage	14.74%

[59] See *id*.

[60] Considering the growth of 3.35% in sales from 2004 to 2005 computed as follows:

Verily, Fortuna's rehabilitation plan should have shown that it has enough serviceable assets to be able to continue its business operation. In fact, opposed to this objective, the rehabilitation plan still requires: *(a)* the acquisition of a "coal-fired boiler for an estimated ₱15,000,000.00"[61] to replace the bunker-fired boiler[62] in order "to reduce its production costs and be competitive with its rivals;"[63] and *(b)* the settlement of the liabilities to Manila Electric Company[64] and its suppliers "essential for resumption of operations"[65] – that would further sacrifice its cash flow. Without a definite source of financing, both internally and externally, or enough cash and other current assets to enable it to resume operations, it is difficult to perceive the feasibility of rehabilitating Fortuna's business.

The purpose of rehabilitation proceedings is not only to enable the company to gain a new lease on life but also to allow creditors to be paid their claims from its earnings, when so rehabilitated. **Therefore, the remedy of rehabilitation should be denied to corporations whose insolvency appears to be irreversible and whose sole purpose is to delay the enforcement of any of the rights of the creditors, which is rendered obvious by: *(a)* the absence of a sound and workable business plan; *(b)* baseless and unexplained assumptions, targets and goals;**

2005 Sales	₱ 92,842,658.02 (see *rollo,* p. 113)
2004 Sales	- 89,730,395.13 (see *id.* at 107)
Increase in Sales	₱ 3,112,262.89
	÷ 92,842.658.02
	0.0335
	x 100%
Sales growth percentage	3.35%

[61] See CA *rollo,* p. 134.

[62] See *id*. at 120.

[63] See *id*. at 134.

[64] Amounting to ₱30,354,849.60; see *id*. at 101.

[65] See *id*. at 134.

and *(c)* speculative capital infusion or complete lack thereof for the execution of the business plan,[66] as in this case.

Thus, Fortuna's rehabilitation petition should have been dismissed not only due to its failure to comply with the key requirements under the Interim Rules – *i.e.,* to state any material financial commitment to support the rehabilitation, as well as to include a proper liquidation analysis – but also to establish the feasibility and viability of the Rehabilitation Plan. However, since the rehabilitation proceedings had already been terminated, the foregoing observations are purely academic as this case has already been mooted and therefore, must be dismissed.

ACCORDINGLY, I vote to **DISMISS** the petition on the ground of mootness.

THIRD DIVISION

[G.R. No. 194388. November 7, 2018]

METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM, *petitioner, vs.* **THE LOCAL GOVERNMENT OF QUEZON CITY, CITY TREASURER OF QUEZON CITY, CITY ASSESSOR OF QUEZON CITY, SANGGUNIANG PANLUNGSOD NG QUEZON CITY, and CITY MAYOR OF QUEZON CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; DOCTRINE OF HIERARCHY OF COURTS; EXCEPTIONS.— The principle of the hierarchy

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[66] See *Philippine Asset Growth Two, Inc. v. Fastech Synergy Philippines, Inc., supra* note 50, at 383-384.

of courts is a judicial policy designed to restrain direct resort to *this Court* if relief can be granted or obtained from the lower courts x x x, [a]s this Court explained in *Aala v. Uy* x x x. This Court shares concurrent jurisdiction in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus with the Regional Trial Court and the Court of Appeals. As it stated in *Aala*, the principle of the hierarchy of courts prevents parties from randomly selecting which among these forums their actions will be directed. *Diocese of Bacolod v. Commission on Elections* likewise explained the rationale behind this Court's adherence to the principle x x x. The doctrine of the hierarchy of courts, however, is often invoked in direct resorts to *this Court*. Hence, the exceptions to the rule are more tailored to the specific functions and discretion of *this Court*: "Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy."

2. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; LOCAL GOVERNMENT UNITS; POWER TO LEVY REAL PROPERTY TAX; LOCAL GOVERNMENT UNITS ARE GRANTED THE POWER TO LEVY TAXES ON REAL PROPERTY NOT OTHERWISE EXEMPTED UNDER THE LAW; SPECIFIC LIMITATIONS.— Under the Local Government Code, local government units are granted the power to levy taxes on real property not otherwise exempted under the law x x x. The Local Government Code provides two (2) specific limitations on local government units' power of taxation. The first is Section 133(o) x x x. The first limitation provides a general rule, that is, that local government units cannot levy any taxes, fees, or charges of any kind on the national government or its agencies and instrumentalities. The provision, however, also provides for

an exception: "[u]nless otherwise provided herein." The implication, therefore, is that while a government agency or instrumentality is generally tax-exempt, the Local Government Code may provide for instances when it could be taxable. The second limitation is provided for under Section 234 of the Local Government Code, which enumerates the properties that are specifically exempted from the payment of real property taxes x x x. The second limitation likewise provides for its own exceptions. Under Section 234(a), the general rule is that any real property owned by the Republic or its political subdivisions is exempt from the payment of real property tax "except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person." The implication is that real property, even if owned by the Republic or any of its political subdivisions, may still be subject to real property tax if the beneficial use of the real property was granted to a taxable person.

3. ID.; ID.; ADMINISTRATIVE CODE; GOVERNMENT INSTRUMENTALITY AND GOVERNMENT-OWNED AND CONTROLLED CORPORATION, DEFINED; THE PROPERTIES OF A GOVERNMENT INSTRUMENTALITY ARE EXEMPT FROM REAL PROPERTY TAX BUT A GOVERNMENT-OWNED AND CONTROLLED CORPORATION IS NOT EXEMPT FROM REAL PROPERTY TAXES.— Citing Section 2(10) of the Administrative Code, this Court defined a government "instrumentality" as an "agency of the National Government, not integrated within the department framework vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter." x x x A "government-owned and -controlled corporation," on the other hand, is defined under Section 2(13) of the Administrative Code x x x. [A]ccording to the parameters set by *Manila International Airport Authority* [*vs*. Court of Appeals], a government instrumentality is exempt from the local government unit's levy of real property tax. The government instrumentality must not have been organized as a stock or non-stock corporation, even though it exercises corporate powers, administers special funds, and enjoys operational autonomy, usually through its charter. Its properties are exempt from real

property tax because they are properties of the public dominion: held in trust for the Republic, intended for public use, and cannot be the subject of levy, encumbrance, or disposition. A government-owned and controlled corporation, on the other hand, is *not* exempt from real property taxes due to the passage of the Local Government Code.

4. ID.; ID.; ID.; GOVERNMENT INSTRUMENTALITIES; METROPOLITAN WATERWORKS AND SEWERAGE SYSTEM; CATEGORIZED AS A GOVERNMENT INSTRUMENTALITY WITH CORPORATE POWERS/ GOVERNMENT CORPORATE ENTITY AND IT IS EXEMPT FROM REAL PROPERTY TAXES.— Petitioner was created in 1971 by Republic Act No. 6234, initially without any capital stock. x x x Under its Charter, petitioner was explicitly declared exempt from the payment of real property taxes x x x. In 1974, however, Presidential Decree No. 425 amended the Charter and converted petitioner into a stock corporation x x x. Petitioner is an attached agency of the Department of Public Works and Highways, but exercises corporate functions and maintains operational autonomy x x x. To be categorized as a government-owned and -controlled corporation, a government agency must meet the two (2) requirements prescribed in Article XII, Section 16 of the Constitution: common good and economic viability. x x x Petitioner was created by Congress with the mandate to provide potable water to Metro Manila, Rizal, and a portion of Cavite. Undoubtedly, its creation was for the benefit of the common good. With the passing of the National Water Crisis Act of 1995 and petitioner's subsequent privatization, any contract that petitioner undertakes with private concessionaires must be assessed for its market competitiveness or, otherwise stated, for economic viability. Properties of the public dominion are properties "devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased" by the government agency to private parties. x x x Under its Charter, petitioner is given the power to "acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose" of its real property. Properties held by petitioner under the exercise of this power, therefore, cannot be considered properties of the public dominion. Held against the parameters of *Manila International Airport Authority*, this Court cannot but conclude that petitioner is a government-owned

and controlled corporation. Under the Local Government Code, only its machinery and equipment actually, directly, and exclusively used in the supply and distribution of water can be exempt from the levy of real property taxes. x x x Be that as it may, this Court's categorization cannot supplant that which was previously made by the Executive and Legislative Branches. After the promulgation of *Manila International Airport Authority*, then President Gloria Macapagal-Arroyo issued Executive Order No. 596, which recognized this Court's categorization of "government instrumentalities vested with corporate powers." x x x [P]etitioner is categorized with other government agencies that were found to be exempt from the payment of real property taxes. In 2011, Congress passed Republic Act No. 10149 or the GOCC Governance Act of 2011, which adopted the same categorization and explicitly lists petitioner together with the other government agencies that were previously held by this Court to be exempt from the payment of real property taxes x x x. The Executive and Legislative Branches, therefore, have already categorized petitioner not as a government-owned and controlled corporation but as a Government Instrumentality with Corporate Powers/Government Corporate Entity like the Manila International Airport Authority and the Philippine Fisheries Development Authority. Privileges enjoyed by these Government Instrumentalities with Corporate Powers/Government Corporate Entities should necessarily also extend to petitioner. Hence, petitioner's real property tax exemption under Republic Act No. 6234 is still valid as the proviso of Section 234 of the Local Government Code is only applicable to government-owned and -controlled corporations. Thus, petitioner is not liable to respondent Local Government of Quezon City for real property taxes, except if the beneficial use of its properties has been extended to a taxable person. Respondents have not alleged that the beneficial use of any of petitioner's properties was extended to a taxable person. In the absence of any allegation to the contrary, petitioner's properties in Quezon City are not subject to the levy of real property taxes.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Office of the City Attorney, Quezon City for respondents.

D E C I S I O N

LEONEN, *J.*:

A government instrumentality exercising corporate powers is not liable for the payment of real property taxes on its properties unless it is alleged and proven that the beneficial use of its properties has been extended to a taxable person.

This resolves a Petition for Review on Certiorari[1] assailing the October 19, 2010 Decision[2] of the Court of Appeals in CA-G.R. SP No. 100733, which held that the Local Government of Quezon City may assess real property taxes on Metropolitan Waterworks and Sewerage System's properties located in Quezon City.

On June 19, 1971, Congress enacted Republic Act No. 6234,[3] creating the Metropolitan Waterworks and Sewerage System. Under the law, it was mandated "to insure an uninterrupted and adequate supply and distribution of potable water for domestic and other purposes and the proper operation and maintenance of sewerage systems."[4] It was granted the power to exercise supervision and control over all waterworks and sewerage systems within Metro Manila, Rizal, and a portion of Cavite.[5]

It was initially created as a corporation without capital stock. On March 29, 1974, then President Ferdinand Marcos issued

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[1] *Rollo*, pp. 9-44. The Petition is erroneously captioned on its first page as a petition for *certiorari*.

[2] *Id*. at 163-189. The Decision was penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Stephen C. Cruz and Manuel M. Barrios of the Special Seventeenth Division, Court of Appeals, Manila.

[3] An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority; and for Other Purposes.

[4] Rep. Act No. 6234 (1971), Sec. 1.

[5] *See* Rep. Act No. 6234 (1971), Sec. 2(c).

Presidential Decree No. 425,[6] authorizing it to have an authorized capital stock of ₱1,000,000,000.00, divided into 10,000,000 shares at a par value of ₱100.00 each. Presidential Decree No. 425 further mandated that all shares of stock shall only be subscribed by the government. The stocks should not be "transferred, negotiated, pledged, mortgaged or otherwise given as security for the payment of any obligation."[7]

Sometime in July 2007, Metropolitan Waterworks and Sewerage System received several Final Notices of Real Property Tax Delinquency from the Local Government of Quezon City, covering various taxable years, in the total amount of ₱237,108,043.83 on the real properties owned by Metropolitan Waterworks and Sewerage System in Quezon City. The Local Government of Quezon City warned it that failure to pay would result in the issuance of warrants of levy against its properties.[8]

On August 7, 2007, the Treasurer's Office of Quezon City issued Warrants of Levy on the properties due to Metropolitan Waterworks and Sewerage System's failure to pay.[9]

On September 10, 2007, the Local Government of Quezon City had a Notice of Sale of Delinquent Real Properties published, which stated that the real properties would be sold at a public auction on September 27, 2007. The list included properties owned by Metropolitan Waterworks and Sewerage System.[10]

On September 26, 2007, Metropolitan Waterworks and Sewerage System filed before the Court of Appeals a Petition for Certiorari and Prohibition with Prayer for the Issuance of

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[6] Amending Certain Sections of Republic Act Numbered Sixty-Two Hundred Thirty-Four, Entitled "An Act Creating the Metropolitan Waterworks and Sewerage System and Dissolving the National Waterworks and Sewerage Authority, and for Other Purposes."

[7] Presidential Decree No. 425 (1974), Sec. 2-A.

[8] *Rollo*, p. 70.

[9] *Id*.

[10] *Id*.

a Temporary Restraining Order and/or Writ of Preliminary Injunction.[11] It argued that its real properties in Quezon City were exclusively devoted to public use, and thus, were exempt from real property tax.[12]

The Court of Appeals issued a Temporary Restraining Order on September 27, 2007, enjoining the Local Government of Quezon City from proceeding with the scheduled auction of the properties. On November 14, 2007, the Court of Appeals conducted oral arguments. On December 19, 2007, it issued a Writ of Preliminary Injunction.[13]

On October 19, 2010, the Court of Appeals rendered a Decision[14] denying the Petition for lack of merit and lifting the Writ of Preliminary Injunction.

According to the Court of Appeals, Metropolitan Waterworks and Sewerage System need not exhaust administrative remedies since the issue involved a purely legal question.[15] It noted, however, that the Petition should have been first filed before the Regional Trial Court, which shares concurrent jurisdiction with the Court of Appeals over petitions for certiorari and prohibition.[16] Nonetheless, it proceeded to resolve the case on its merits.[17]

The Court of Appeals found that since Metropolitan Waterworks and Sewerage System was not a municipal corporation, it could not invoke the immunity granted in

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[11] *Id*. at 46-66.

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

[13] *Id*. at 71.

[14] *Id*. at 163-189.

[15] *Id*. at 74.

[16] *Id*. at 77.

[17] *Id*. at 78.

Section 133(o) of the Local Government Code.[18] In particular, it found that even if Metropolitan Waterworks and Sewerage System was an instrumentality of the government, it was not performing a purely governmental function. As such, it cannot invoke immunity from real property taxation.[19]

The Court of Appeals likewise found that the taxed properties were not part of the public dominion, but were even made the subject of concession agreements between Metropolitan Waterworks and Sewerage System and private concessionaires due to its privatization in 1997. It concluded that since the properties were held by Metropolitan Waterworks and Sewerage System in the exercise of its proprietary functions, they were still subject to real property tax.[20]

The dispositive portion of the Court of Appeals October 19, 2010 Decision stated:

> **WHEREFORE**, in view of the foregoing premises, judgment is hereby rendered by us **DENYING** the instant petition for lack of merit. The Writ of Preliminary Injunction issued herein is hereby ordered **LIFTED**.
>
> **SO ORDERED.**[21] (Emphasis in the original)

On November 9, 2010, Warrants of Levy were issued by the Quezon City Treasurer over Metropolitan Waterworks and Sewerage System's properties.[22] Hence, on November 18, 2010,

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[18] LOCAL GOVT. CODE, Sec. 133 provides:

> Section 133. Common Limitations on the Taxing Powers of Local Government Units.– Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:
>
> . . . .
>
> (o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

[19] *Rollo*, p. 186.

[20] *Id*. at 187-188.

[21] *Id*. at 189.

[22] *Id*. at 13.

Metropolitan Waterworks and Sewerage System filed its Petition for Certiorari with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[23] before this Court.

On December 14, 2010, petitioner filed a Very Urgent Reiteratory Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction.[24]

Acting on this Motion, this Court resolved to Issue a Temporary Restraining Order on January 26, 2011.[25]

Respondents filed a Consolidated Motions to Dismiss[26] and a Motion for Extension of Time to File Comment.[27] In its April 11, 2011 Resolution,[28] this Court resolved to deny the Consolidated Motions to Dismiss but to grant the Motion for Extension of Time to file comment. Respondents, thus, filed their Comment[29] on April 19, 2011.

While the Petition was pending, however, respondent City Treasurer of Quezon City submitted a Manifestation[30] stating that he intended to auction petitioner's Lot Nos. 1, 2, and 3 of Block PCS-8998, located in Barangay Pasong Putik, Quezon City on July 7, 2011. He reasoned that these properties were not included among those covered in this Court's January 26, 2011 Temporary Restraining Order.[31]

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[23] *Id*. at 9-44.

[24] *Id*. at 202-218.

[25] *Id*. at 240-243.

[26] *Id*. at 248-263-A.

[27] *Id*. at 274-277.

[28] *Id*. at 278.

[29] *Id*. at 290-310.

[30] *Id*. at 322-325.

[31] *Id*. at 323.

Petitioner filed a Counter-Manifestation *Ad Cautelam*,[32] arguing that while these properties were not included among the properties covered by the January 26, 2011 Temporary Restraining Order, they fall under the same or similar category as those properties that were covered. It contends that if these properties were auctioned, the issue in the Petition would be rendered moot.[33]

In its September 7, 2011 Resolution,[34] this Court issued a Temporary Restraining Order preventing respondents from proceeding with the auction of petitioner's Lot Nos. 1, 2, and 3 of Block PCS-8998.

The parties subsequently submitted their respective memoranda[35] before this Court.

Petitioner maintains that it is a government instrumentality exempt from real property taxation under Section 133(o)[36] of the Local Government Code. In particular, it argues that it is a regulatory body mandated to oversee the operations of its two (2) private concessionaires, the Manila Water Company, Inc. and the Maynilad Water Services, Inc. It points out that Republic Act No. 6234, Section 18, as amended by Presidential

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[32] *Id*. at 312-315.

[33] *Id*. at 313.

[34] *Id*. at 327-328.

[35] *Id*. at 335-349 and 360-377.

[36] LOCAL GOVT. CODE, Sec. 133 provides:

Section 133. Common Limitations on the Taxing Powers of Local Government Units. – Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

. . . . . .

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

Decree No. 425,[37] expressly exempts it from the payment of real property taxes.[38]

Citing *Manila International Airport Authorities v. Court of Appeals*[39] and *Philippine Fisheries Development Authority v. Central Board of Assessment Appeals*,[40] petitioner argues that it is exempt from taxation as it is an instrumentality of the government holding properties of the public dominion. It likewise cites Republic Act No. 10149,[41] passed on July 26, 2010, which

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[37] Rep. Act No. 6234 (1971), as amended, Sec. 18 provides:

Section 18. Non-Profit Character of the System, Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities. – The System shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion and improvement. To enable the System to pay its indebtedness and obligations and the furtherance and effective implementation of the policy enumerated in Section one of this Act, the System is hereby declared exempt.

(a) From the payment of all taxes, duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities including the taxes, duties, fees, imports, and other charges provided for under the Tariff and Customs Code of the Philippines, Republic Act Numbered Nineteen Hundred Thirty-Seven, as amended to further amended by Presidential Decree No. 34, dated October 27, 1972, and costs and service fees in any Court or administrative proceedings in which it may be a party;

(b) From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and the other Government agencies and instrumentalities; and

(c) From all imposts, duties, compensating taxes, and advanced sales tax, and wharfage fees on import of foreign goods required for its operations

[38] *Rollo*, pp. 336-339.

[39] 528 Phil. 181 (2006) [Per *J.* Carpio, *En Banc*].

[40] 560 Phil. 738 (2007) [Per *J.* Azcuna, First Division].

[41] An Act to Promote Financial Viability and Fiscal Discipline in Government-Owned or -Controlled Corporations and to Strengthen the Role of the State in its Governance and Management to Make Them More Responsive to the Needs of Public Interest and for Other Purposes.

lists petitioner as one of the government instrumentalities with corporate powers.[42]

Respondents, on the other hand, point out that petitioner failed to observe the principle of the hierarchy of courts when it filed the case directly before the Court of Appeals, instead of the Regional Trial Court, which exercises concurrent jurisdiction in petitions for certiorari.[43]

They maintain that petitioner holds properties in the exercise of its proprietary functions, and thus, are susceptible to real property tax.[44] They point out that tax exemption granted in Republic Act No. 6234, Section 18 has since been repealed by Section 234[45] of the Local Government Code.[46] They likewise assert that petitioner has since recognized its tax liabilities when it paid respondents a down payment of ₱30,000,000.00, and when it committed to pay the balance not later than April 2011.[47]

This Court is asked to resolve a pure question of law: whether a local government unit may assess real property taxes on petitioner Metropolitan Waterworks and Sewerage System, a government entity.

Before this issue can be resolved, however, this Court will first pass upon the issue of whether or not petitioner Metropolitan

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[42] *Rollo*, pp. 340-346.

[43] *Id*. at 360-362.

[44] *Id*. at 364.

[45] LOCAL GOVT. CODE, Sec. 234 provides:

Section 234. Exemptions from Real Property Tax. – The following are exempted from payment of the real property tax:

. . . . . .

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code.

[46] *Rollo*, pp. 365-366.

[47] *Id*. at 368.

Waterworks and Sewerage System violated the principle of hierarchy of courts in directly bringing the case to the Court of Appeals instead of to the Regional Trial Court.

I

The principle of the hierarchy of courts is a judicial policy designed to restrain direct resort to *this Court* if relief can be granted or obtained from the lower courts. As this Court explained in *Aala v. Uy*:[48]

> The doctrine on hierarchy of courts is a practical judicial policy designed to restrain parties from directly resorting to this Court when relief may be obtained before the lower courts. The logic behind this policy is grounded on the need to prevent "inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction," as well as to prevent the congestion of the Court's dockets. Hence, for this Court to be able to "satisfactorily perform the functions assigned to it by the fundamental charter[,]" it must remain as a "court of last resort." This can be achieved by relieving the Court of the "task of dealing with causes in the first instance."[49]

This Court shares concurrent jurisdiction in the issuance of writs of certiorari, prohibition, mandamus, quo warranto, and habeas corpus with the Regional Trial Court and the Court of Appeals.[50] As it stated in *Aala*, the principle of the hierarchy of courts prevents parties from randomly selecting which among

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[48] G.R. No. 202781, January 10, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2018/january2017/202781.pdf] [Per J. Leonen, *En Banc*].

[49] *Id*. at 13, citing *De Castro v. Carlos*, 709 Phil. 389, 396-397 (2013) [Per *C.J.* Sereno, *En Banc*]; *People v. Cuaresma*, 254 Phil. 418, 426-428 (1989) [Per *J.* Narvasa, First Division]; *Bañez, Jr. v. Concepcion*, 693 Phil. 399, 411-414 (2012) [Per *J.* Bersamin, First Division]; *Kalipunan ng Damayang Mahihirap, Inc. v. Robredo*, G.R. No. 200903, July 22, 2014, 730 SCRA 322, 332-333 (2014) [Per *J.* Brion, *En Banc*]; *Ouano v. PGTT International Investment Corp.*, 434 Phil. 28, 34-35 (2002) [Per *J.* Sandoval-Gutierrez, Third Division]; and *Vergara, Sr. v. Suelto*, 240 Phil. 719, 732-733 (1987) [Per *J.* Narvasa, First Division].

[50] *See* CONST., Art. VIII, Sec. 5, par. 1; and *People v. Cuaresma*, 254 Phil. 418, 426-428 (1989) [Per *J.* Narvasa, First Division].

these forums their actions will be directed. *Diocese of Bacolod v. Commission on Elections*[51] likewise explained the rationale behind this Court's adherence to the principle:

> Trial courts do not only determine the facts from the evaluation of the evidence presented before them. They are likewise competent to determine issues of law which may include the validity of an ordinance, statute, or even an executive issuance in relation to the Constitution. To effectively perform these functions, they are territorially organized into regions and then into branches. Their writs generally reach within those territorial boundaries. Necessarily, they mostly perform the all-important task of inferring the facts from the evidence as these are physically presented before them. In many instances, the facts occur within their territorial jurisdiction, which properly present the 'actual case' that makes ripe a determination of the constitutionality of such action. The consequences, of course, would be national in scope. There are, however, some cases where resort to courts at their level would not be practical considering their decisions could still be appealed before the higher courts, such as the Court of Appeals.
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> The Court of Appeals is primarily designed as an appellate court that reviews the determination of facts and law made by the trial courts. It is collegiate in nature. This nature ensures more standpoints in the review of the actions of the trial court. But the Court of Appeals also has original jurisdiction over most special civil actions. Unlike the trial courts, its writs can have a nationwide scope. It is competent to determine facts and, ideally, should act on constitutional issues that may not necessarily be novel unless there are factual questions to determine.
>
> This court, on the other hand, leads the judiciary by breaking new ground or further reiterating — in the light of new circumstances or in the light of some confusions of bench or bar — existing precedents. Rather than a court of first instance or as a repetition of the actions of the Court of Appeals, this court promulgates these doctrinal devices in order that it truly performs that role.[52] (Citation omitted)

Respondents assail petitioner's direct resort of its Petition for Certiorari to the Court of Appeals, arguing that the Petition

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[51] G.R. No. 205728, January 21, 2015, 747 SCRA 1 [Per *J.* Leonen, *En Banc*].

[52] *Id.* at 14.

should have been filed before the Regional Trial Court, which shares concurrent jurisdiction.

The doctrine of the hierarchy of courts, however, is often invoked in direct resorts to *this Court*. Hence, the exceptions to the rule are more tailored to the specific functions and discretion of *this Court*:

> Immediate resort to this Court may be allowed when any of the following grounds are present: (1) when genuine issues of constitutionality are raised that must be addressed immediately; (2) when the case involves transcendental importance; (3) when the case is novel; (4) when the constitutional issues raised are better decided by this Court; (5) when time is of the essence; (6) when the subject of review involves acts of a constitutional organ; (7) when there is no other plain, speedy, adequate remedy in the ordinary course of law; (8) when the petition includes questions that may affect public welfare, public policy, or demanded by the broader interest of justice; (9) when the order complained of was a patent nullity; and (10) when the appeal was considered as an inappropriate remedy.[53]

It is doubtful whether the Court of Appeals could apply the same rationale when the doctrine of the hierarchy of courts is invoked. In any case, it has full discretion on whether to give due course to any petition for certiorari directly filed before it. In this case, it allowed petitioner's direct resort to it on the ground that the issue presented was a pure question of law. No error can be ascribed to it for passing upon the issue.

II

Under the Local Government Code, local government units are granted the power to levy taxes on real property not otherwise exempted under the law:

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[53] *Aala v. Uy*, G.R. No. 202781, January 10, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=jurisprudence/2018/july2018/202275.pdf] 15 [Per J. Leonen, *En Banc*], citing *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015, 747 SCRA 1 [Per J. Leonen, *En Banc*].

Section 232. Power to Levy Real Property Tax. – A province or city or a municipality within the Metropolitan Manila Area may levy an annual *ad valorem* tax on real property such as land, building, machinery, and other improvement not hereinafter specifically exempted.

The Local Government Code provides two (2) specific limitations on local government units' power of taxation. The first is Section 133(o), which provides:

Section 133. Common Limitations on the Taxing Powers of Local Government Units.– Unless otherwise provided herein, the exercise of the taxing powers of provinces, cities, municipalities, and barangays shall not extend to the levy of the following:

. . . . . .

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

The first limitation provides a general rule, that is, that local government units cannot levy any taxes, fees, or charges of any kind on the national government or its agencies and instrumentalities. The provision, however, also provides for an exception: "[u]nless otherwise provided herein." The implication, therefore, is that while a government agency or instrumentality is generally tax-exempt, the Local Government Code may provide for instances when it could be taxable.

The second limitation is provided for under Section 234 of the Local Government Code, which enumerates the properties that are specifically exempted from the payment of real property taxes:

Section 234. Exemptions from Real Property Tax. – The following are exempted from payment of the real property tax:

(a) Real property owned by the Republic of the Philippines or any of its political subdivisions except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person;

(b) Charitable institutions, churches, parsonages or convents appurtenant thereto, mosques, non-profit or religious cemeteries

and all lands, buildings, and improvements actually, directly, and exclusively used for religious, charitable or educational purposes;

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power;

(d) All real property owned by duly registered cooperatives as provided for under R.A. No. 6938; and

(e) Machinery and equipment used for pollution control and environmental protection.

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code.

The second limitation likewise provides for its own exceptions. Under Section 234(a), the general rule is that any real property owned by the Republic or its political subdivisions is exempt from the payment of real property tax "except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person." The implication is that real property, even if owned by the Republic or any of its political subdivisions, may still be subject to real property tax if the beneficial use of the real property was granted to a taxable person.

Petitioner claims that it is an instrumentality of the Republic; thus, its real properties should be exempt from real property tax. Respondents, on the other hand, claim that petitioner is a government-owned and -controlled corporation whose tax exemptions have since been withdrawn with the effectivity of the Local Government Code.

This is not the first time that this Court has been confronted with this issue.

In *Manila International Airport Authority v. Court of Appeals*,[54] this Court was confronted with the issue of whether

[54] 528 Phil. 181 (2006) [Per *J.* Carpio, *En Banc*].

Parañaque City could levy real property taxes on airport lands and buildings. To resolve this issue, it first had to determine whether the Manila International Airport Authority, a government entity with its own charter, was considered an "instrumentality" or a "government-owned and -controlled corporation."

Citing Section 2(10) of the Administrative Code,[55] this Court defined a government "instrumentality" as an "agency of the National Government, not integrated within the department framework vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter." Government instrumentalities are exempt from any kind of taxation from local government for the following reasons:

> There is . . . no point in national and local governments taxing each other, unless a sound and compelling policy requires such transfer of public funds from one government pocket to another.
>
> There is also no reason for local governments to tax national government instrumentalities for rendering essential public services to inhabitants of local governments. The only exception is when the legislature clearly intended to tax government instrumentalities for the delivery of essential public services for sound and compelling policy considerations. There must be express language in the law empowering local governments to tax national government instrumentalities. Any doubt whether such power exists is resolved against local governments.[56]

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[55] ADM. CODE, Sec. 2. General Terms Defined. – . . .

(10) *Instrumentality* refers to any agency of the National Government, not integrated within the department framework vested with special functions or jurisdiction by law, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy, usually through a charter. . . .

[56] *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 214-215 (2006) [Per *J.* Carpio, *En Banc*].

A "government-owned and -controlled corporation," on the other hand, is defined under Section 2(13) of the Administrative Code, thus:

(13) *Government-owned or controlled corporation* refers to any agency organized as a stock or non-stock corporation, vested with functions relating to public needs whether governmental or proprietary in nature, and owned by the Government directly or through its instrumentalities either wholly, or, where applicable as in the case of stock corporations, to the extent of at least fifty-one (51) per cent of its capital stock[.]

The entity must also meet the two (2) conditions prescribed under Article XII, Section 16 of the Constitution:

ARTICLE XI
National Economy and Patrimony

Section 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

This Court determined that the Manila International Airport Authority was not a government-owned and controlled corporation since it was not organized as a stock or non-stock corporation. It was likewise unnecessary to subject it to the test of economic viability since it was not created to compete in the marketplace.

Although the Manila International Airport Authority was granted corporate powers, it also exercised governmental powers of eminent domain, police authority, and levying of charges and fees. The proper nomenclature for it, therefore, was that of a government instrumentality exercising corporate powers, sometimes loosely referred to as "government corporate entity." As a government instrumentality, it is exempt from local taxes under Section 133(o)[57] of the Local Government Code.

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[57] LOCAL GOVT. CODE, Sec. 133 provides:

Section 133. Common Limitations on the Taxing Powers of Local Government Units.– Unless otherwise provided herein, the exercise of the taxing powers

Manila International Airport Authority likewise held that airport lands and buildings are properties of public dominion owned by the Republic. These properties have been determined to be intended for public use as they are used by the public for domestic and international air travel. Even if the titles to the properties were in Manila International Airport Authority's name, it only held them in trust for the Republic since the properties cannot be conveyed without the President's signature on the deed of conveyance. *Manila International Airport Authority*, however, clarified that portions of the Republic's properties that are leased to taxable persons may be subjected to real property tax:

> The Republic may grant the beneficial use of its real property to an agency or instrumentality of the national government. This happens when title of the real property is transferred to an agency or instrumentality even as the Republic remains the owner of the real property. Such arrangement does not result in the loss of the tax exemption. Section 234(a) of the Local Government Code states that real property owned by the Republic loses its tax exemption only if the "beneficial use thereof has been granted, for consideration or otherwise, to a taxable person." MIAA, as a government instrumentality, is not a taxable person under Section 133(o) of the Local Government Code. Thus, even if we assume that the Republic has granted to MIAA the beneficial use of the Airport Lands and Buildings, such fact does not make these real properties subject to real estate tax.
>
> However, portions of the Airport Lands and Buildings that MIAA leases to private entities are not exempt from real estate tax. For example, the land area occupied by hangars that MIAA leases to private corporations is subject to real estate tax. In such a case, MIAA has granted the beneficial use of such land area for a consideration to a taxable person and therefore such land area is subject to real

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of provinces, cities, municipalities, and Barangays shall not extend to the levy of the following:

. . . . . .

(o) Taxes, fees or charges of any kind on the National Government, its agencies and instrumentalities, and local government units.

estate tax. In *Lung Center of the Philippines v. Quezon City*, the Court ruled:

> Accordingly, we hold that the portions of the land leased to private entities as well as those parts of the hospital leased to private individuals are not exempt from such taxes. On the other hand, the portions of the land occupied by the hospital and portions of the hospital used for its patients, whether paying or non-paying, are exempt from real property taxes.[58]

Philippine Fisheries Development Authority v. Court of Appeals[59] was confronted with the same issue when the City of Iloilo levied real property taxes on Iloilo Fishing Port Complex, which was operated by the Philippine Fisheries Development Authority.

Applying the parameters set by *Manila International Airport Authority*, this Court determined that the Philippine Fisheries Development Authority was a government instrumentality exercising corporate powers, not a government-owned and controlled corporation. Thus, it was exempt from the payment of real property taxes on the Iloilo Fishing Port Complex, except for those portions that were leased to private entities. *Philippine Fisheries Development Authority* further clarified that:

> Notwithstanding said tax delinquency on the leased portions of the [Iloilo Fishing Port Complex], the latter or any part thereof, being a property of public domain, cannot be sold at public auction. This means that the City of Iloilo has to satisfy the tax delinquency through means other than the sale at public auction of the [Iloilo Fishing Port Complex].[60]

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[58] *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 224-225 (2006) [Per *J.* Carpio, *En Banc*], citing *Lung Center of the Philippines v. Quezon City*, G.R. No. 144104, June 29, 2004, 433 SCRA 119, 138 [Per *J.* Callejo, Sr., *En Banc*].

[59] 555 Phil. 661 (2007) [Per *J.* Ynares-Santiago, Third Division].

[60] *Id*. at 674.

In *Government Service Insurance System v. City Treasurer of Manila*,[61] this Court likewise applied *Manila International Airport Authority* and held that the Government Service Insurance System was a government instrumentality whose properties, being owned by the Republic, cannot be assessed for real property taxes:

> While perhaps not of governing sway in all fours inasmuch as what were involved in *Manila International Airport Authority, e.g.*, airfields and runways, are properties of the public dominion and, hence, outside the commerce of man, the rationale underpinning the disposition in that case is squarely applicable to GSIS, both MIAA and GSIS being similarly situated. First, while created under CA 186 as a non-stock corporation, a status that has remained unchanged even when it operated under PD 1146 and RA 8291, GSIS is not, in the context of the afore quoted Sec. 193 of the LGC, a GOCC following the teaching of *Manila International Airport Authority*, for, like MIAA, GSIS' capital is not divided into unit shares. Also, GSIS has no members to speak of. And by members, the reference is to those who, under Sec. 87 of the Corporation Code, make up the non-stock corporation, and not to the compulsory members of the system who are government employees. Its management is entrusted to a Board of Trustees whose members are appointed by the President.
>
> Second, the subject properties under GSIS's name are likewise owned by the Republic. The GSIS is but a mere trustee of the subject properties which have either been ceded to it by the Government or acquired for the enhancement of the system. This particular property arrangement is clearly shown by the fact that the disposal or conveyance of said subject properties are either done by or through the authority of the President of the Philippines. Specifically, in the case of the Concepcion-Arroceros property, it was transferred, conveyed, and ceded to this Court on April 27, 2005 through a presidential proclamation, Proclamation No. 835. Pertinently, the text of the proclamation announces that the Concepcion-Arroceros property was earlier ceded to the GSIS on October 13, 1954 pursuant to Proclamation No. 78 for office purposes and had since been titled to GSIS which constructed an office building thereon. Thus, the transfer on April27, 2005 of the Concepcion-Arroceros property to this Court by the

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[61] 623 Phil. 964 (2009) [Per *J.* Velasco, Jr., Third Division].

President through Proclamation No. 835. This illustrates the nature of the government ownership of the subject GSIS properties, as indubitably shown in the last clause of Presidential Proclamation No. 835:

> WHEREAS, by virtue of the Public Land Act (Commonwealth Act No. 141, as amended), Presidential Decree No. 1455, and the Administrative Code of 1987, the President is authorized to transfer any government property that is no longer needed by the agency to which it belongs to other branches or agencies of the government.[62]

Manila International Airport Authority remains good law and was applied in the fairly recent *Mactan-Cebu International Airport Authority v. City of Lapu-Lapu*,[63] where this Court concluded that the Mactan-Cebu International Airport Authority, being a government instrumentality, cannot be levied real property tax except on portions leased to taxable persons:

> MCIAA, with its many similarities to the MIAA, should be classified as a government instrumentality, as its properties are being used for public purposes, and should be exempt from real estate taxes. This is not to derogate in any way the delegated authority of local government units to collect realty taxes, but to uphold the fundamental doctrines of uniformity in taxation and equal protection of the laws, by applying all the jurisprudence that have exempted from said taxes similar authorities, agencies, and instrumentalities, whether covered by the 2006 *MIAA* ruling or not.[64]

Thus, according to the parameters set by *Manila International Airport Authority*, a government instrumentality is exempt from the local government unit's levy of real property tax. The government instrumentality must not have been organized as a stock or non-stock corporation, even though it exercises corporate powers, administers special funds, and enjoys operational autonomy, usually through its charter. Its properties

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[62] *Id*. at 979-980.

[63] 759 Phil. 296 (2015) [Per *J*. Leonardo-De Castro, First Division].

[64] *Id*. at 349.

are exempt from real property tax because they are properties of the public dominion: held in trust for the Republic, intended for public use, and cannot be the subject of levy, encumbrance, or disposition.

A government-owned and controlled corporation, on the other hand, is *not* exempt from real property taxes due to the passage of the Local Government Code, which now provides:

> Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, *including all government-owned or - controlled corporations* are hereby withdrawn upon the effectivity of this Code.[65] (Emphasis supplied)

Guided by these parameters, this Court now determines whether petitioner is a government instrumentality exercising corporate powers or a government-owned and controlled corporation.

III

Petitioner was created in 1971 by Republic Act No. 6234, initially without any capital stock. Its Charter merely stated:

> Section 2. Creation, Name, Domicile and Jurisdiction. –
>
> (a) There is hereby created a government corporation to be known as the Metropolitan Waterworks and Sewerage System, hereinafter referred to as the System, which shall be organized within thirty days after the approval of this Act.[66]

Under its Charter, petitioner was explicitly declared exempt from the payment of real property taxes:

> Section 18. Tax Exemption. – All articles imported by the Metropolitan Waterworks and Sewerage System or the local governments for the exclusive use of their waterworks and sewerage systems particularly machineries, equipment, pipes, fire hydrants, and those related to,

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[65] LOCAL GOVT. CODE, Sec. 234.

[66] Rep. Act No. 6234 (1971), Sec. 2(a).

or connected with, the construction, maintenance, and operation of dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pumping stations; or of artesian wells and springs within their territorial jurisdictions, shall be exempt from the imposition of import duties and other taxes.[67]

In 1974, however, Presidential Decree No. 425 amended the Charter and converted petitioner into a stock corporation:

Section 2-A. Capital Stock of the System. – The System is hereby authorized a capital stock of one billion pesos divided into ten million shares at a par value of one hundred pesos each, which shares shall not be transferred, negotiated, pledged, mortgaged or otherwise given as security for the payment of any obligation. The shares shall be subscribed and paid for by the Government of the Philippines[.]

Petitioner is an attached agency of the Department of Public Works and Highways,[68] but exercises corporate functions and maintains operational autonomy as it was granted the following attributes, powers and functions:

(a) To exist and have continuous succession under its corporate name for a term of fifty (50) years from and after the date of the approval of this Act, notwithstanding any provision of law to the contrary: Provided, however, That at the end of the said period, the System shall automatically continue to exist for another fifty (50) years, unless otherwise provided by law;

(b) To prescribe its by-laws;

(c) To adopt and use a seal and alter it at its pleasure;

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[67] Rep. Act No. 6234 (1971), Sec. 18.

[68] ADM. CODE, Book IV, Title V, Ch. 6, Sec. 25 provides:

Section 25. Attached Agencies and Corporations. – Agencies and corporations attached to the Department [of Public Works and Highways] shall continue to operate and function in accordance with their respective charters/laws/executive orders creating them. Accordingly, the Metropolitan Waterworks and Sewerage System, the Local Water Utilities Administration, the National Irrigation Administration, and the National Water Resources Council, among others, shall continue to be attached to the Department; while the Metropolitan Manila Flood Control and Drainage Council, as reorganized, shall be attached to the Department.

(d) To sue and be sued;

(e) To establish the basic and broad policies and goals of the System;

(f) To construct, maintain, and operate dams, reservoirs, conduits, aqueducts, tunnels, purification plants, water mains, pipes, fire hydrants, pumping stations, machineries and other waterworks for the purpose of supplying water to the inhabitants of its territory, for domestic and other purposes; and to purity, regulate and control the use, as well as prevent the wastage of water;

(g) To construct, maintain, and operate such sanitary sewerages as may be necessary for the proper sanitation and other uses of the cities and towns comprising the System;

(h) To fix periodically water rates and sewerage service fees as the System may deem just and equitable in accordance with the standards outlined in Section 12 of this Act;

(i) To construct, develop, maintain and operate such artesian wells and springs as may be needed in its operation within its territory;

(j) To acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose of real and personal property, including rights and franchises, consistent with the purpose for which the System is created and reasonably required for the transaction of the lawful business of the same;

(k) To construct works across, over, through and/or alongside any stream, watercourse, canal, ditch, flume, street, avenue, highway or railway, whether public or private, as the location of said works may require: Provided, That such works be constructed in such manner as to afford security to life and property; and Provided, further, That the stream, watercourse, canal, ditch, flume, street, avenue, highway, railway, so crossed or intersected be restored as near as possible to their former state, or in a manner not to impair unnecessary their usefulness. Every person or entity whose right-of-way or property is lawfully crossed or intersected by said works shall not obstruct any such crossing or intersection and shall grant the System or its representatives the proper authority to execute such work. The System is hereby given the right-of-way to locate, construct and maintain such works over and throughout the lands, including any street, avenue, or highway owned by the Republic of the Philippines or any of its branches and political subdivisions, and is given right of immediate entry and to prosecute any undertaking thereon without any further

requirement or restriction other than due notice to the office or entity concerned. The System, or its representatives, may also enter upon private property in the lawful performance or prosecution of its business or purposes, including the construction of water mains and distribution pipes thereon, provided that the owner of such private property shall be compensated as follows:

(1) In case the land shall be acquired by purchase, the fair market value thereof, which shall be the value of the land based on the tax declaration that is valid and effective at the time of the filing of the complaint for eminent domain or of the taking of said land by the System, whichever is earlier; and

(2) In addition, the owner shall be compensated for the improvements such as houses, buildings, structures, or agricultural crops and the like, if any, actually damaged during the construction, operation, and maintenance of such works on the land, in amounts based on the value of such improvements appearing on the tax declaration that is valid and effective and/or the prevailing valuation of such agricultural crops and the like made by the appropriate appraisal body authorized by law at the time of the filing of the said complaint for eminent domain or of the taking of said improvements by the System, whichever is earlier; Provided, further, That any action for compensation and/or damages under (1) and (2) above, shall be filed within five years from the date the right-of-way, pipelines structures or other facilities shall have been established; Provided, finally, That after the said period of five years, no suit shall be brought to question said right-of-way, pipelines, structures or other facilities nor the amounts of compensation and/or damages involve.

(l) To exercise the right of eminent domain for the purpose for which the System is created;

(m) To contract indebtedness in any currency and issue bonds to finance projects now authorized for the National Waterworks and Sewerage Authority under existing laws and as may hereafter be expressly authorized by law with the approval of the President of the Philippines upon the recommendation of the Secretary of Finance;

(n) To approve, regulate, and supervise the establishment, operation and maintenance of waterworks and deepwells within its jurisdiction operated for commercial, industrial and governmental purposes and

to fix just and equitable rates or fees that may be charged to customers thereof;

(o) To assist in the establishment, operation and maintenance of waterworks and sewerage systems within its jurisdiction under cooperative basis;

(p) To approve and regulate the establishment and construction of waterworks and sewerage systems in privately owned subdivisions within its jurisdiction;

(q) To have exclusive and sole right to test, mount, dismount and remount water meters within its jurisdiction;

(r) To render annual reports to the President of the Philippines and the Presiding Officers of the two Houses of Congress not later than January thirty-first of every year;

(s) In the prosecution and maintenance of its projects and plants, the System shall adopt measures to prevent environmental pollution and shall enhance the conservation, development and maximum utilization of national resources, including the improvement and beautification of its reservoirs, filter plants, and other areas to promote tourism and related purposes, and shall provide for the necessary corporate funds therefor.[69]

To be categorized as a government-owned and -controlled corporation, a government agency must meet the two (2) requirements prescribed in Article XII, Section 16 of the Constitution:[70] common good and economic viability.

In 1995, Congress passed Republic Act No. 8041, or the National Water Crisis Act of 1995, which reorganized petitioner and privatized the "financing, construction, repair, rehabilitation,

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[69] Rep. Act No. 6234 (1971), Sec. 3, as amended by Pres. Decree No. 425 (1974) and Pres. Decree No. 1406 (1978).

[70] CONST., Art. XII, Sec. 16 provides:

Section 16. The Congress shall not, except by general law, provide for the formation, organization, or regulation of private corporations. Government-owned or controlled corporations may be created or established by special charters in the interest of the common good and subject to the test of economic viability.

improvement and operation of water supply, treatment and distribution facilities and projects, including sewerage projects."[71] Any proposal by a private concessionaire "to undertake private sector infrastructure or development projects related to water supply, treatment, distribution and disposal under a [Build-Operate- and-Transfer], Build-and-Transfer (BT), Build-Lease-and-Transfer (BLT), Build-Own-and-Operate (BOO), Build-Transfer-and-Operate (BTO), Contract-Add-and-Operate (CAO), Develop-Operate-and-Transfer (DOT), Rehabilitate-Own-and-Transfer (ROT), Rehabilitate-Own-and-Operate (ROO), or other similar contractual arrangements or schemes"[72] is evaluated and assessed for its "technical, operational, financial and economic viability, as well as the environmental impact."[73]

Petitioner was created by Congress with the mandate to provide potable water to Metro Manila, Rizal, and a portion of Cavite. Undoubtedly, its creation was for the benefit of the common good. With the passing of the National Water Crisis Act of 1995 and petitioner's subsequent privatization, any contract that petitioner undertakes with private concessionaires must be assessed for its market competitiveness or, otherwise stated, for economic viability.

Properties of the public dominion are properties "devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased"[74] by the government agency to private parties. *Manila International Airport Authority* added:

> Properties of public dominion, being for public use, are not subject to levy, encumbrance or disposition through public or private sale.

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[71] Implementing Rules and Regulations of Rep. Act No. 8041 (1995), Rule 3, Sec. 3.1.

[72] Implementing Rules and Regulations of Rep. Act No. 8041 (1995), Rule 3, Sec. 3.3.

[73] Implementing Rules and Regulations of Rep. Act No. 8041 (1995), Rule 3, Sec. 3.8.

[74] *Espiritu v. Municipal Council*, 102 Phil. 866, 870 (1958) [Per *J.* Montemayor, *En Banc*].

Any encumbrance, levy on execution or auction sale of any property of public dominion is void for being contrary to public policy. Essential public services will stop if properties of public dominion are subject to encumbrances, foreclosures and auction sale. This will happen if the City of Parañaque can foreclose and compel the auction sale of the 600-hectare runway of the MIAA for non-payment of real estate tax.[75]

Under its Charter, petitioner is given the power to "acquire, purchase, hold, transfer, sell, lease, rent, mortgage, encumber, and otherwise dispose"[76] of its real property. Properties held by petitioner under the exercise of this power, therefore, cannot be considered properties of the public dominion.

Held against the parameters of *Manila International Airport Authority*, this Court cannot but conclude that petitioner is a government- owned and controlled corporation. Under the Local Government Code, only its machinery and equipment actually, directly, and exclusively used in the supply and distribution of water can be exempt from the levy of real property taxes.[77] Its powers, functions, and attributes are more akin to that of the National Power Corporation, which was previously held by this Court as a taxable entity:

To be sure, the ownership by the National Government of its entire capital stock does not necessarily imply that petitioner is not engaged in business. Section 2 of Pres. Decree No. 2029 classifies government-owned or controlled corporations (GOCCs) into those performing governmental functions and those performing proprietary functions, *viz*:

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[75] *Manila International Airport Authority v. Court of Appeals*, 528 Phil. 181, 219 (2006) [Per *J*. Carpio, *En Banc*].

[76] Rep. Act No. 6234 (1971), Sec. 3(j).

[77] LOCAL GOVT. CODE, Sec. 234 provides:

Section 234. Exemptions from Real Property Tax. – The following are exempted from payment of the real property tax:

. . . . . .

(c) All machineries and equipment that are actually, directly and exclusively used by local water districts and government-owned or -controlled corporations engaged in the supply and distribution of water and/or generation and transmission of electric power[.]

> "A government-owned or controlled corporation is a stock or a non-stock corporation, whether performing governmental or proprietary functions, which is directly chartered by special law or if organized under the general corporation law is owned or controlled by the government directly, or indirectly through a parent corporation or subsidiary corporation, to the extent of at least a majority of its outstanding voting capital stock . . ."

Governmental functions are those pertaining to the administration of government, and as such, are treated as absolute obligation on the part of the state to perform while proprietary functions are those that are undertaken only by way of advancing the general interest of society, and are merely optional on the government. Included in the class of GOCCs performing proprietary functions are "business-like" entities such as the National Steel Corporation (NSC), the National Development Corporation (NDC), the Social Security System (SSS), the Government Service Insurance System (GSIS), and the National Water Sewerage Authority (NAWASA), among others.

Petitioner was created to "undertake the development of hydroelectric generation of power and the production of electricity from nuclear, geothermal and other sources, as well as the transmission of electric power on a nationwide basis." Pursuant to this mandate, petitioner generates power and sells electricity in bulk. Certainly, these activities do not partake of the sovereign functions of the government. They are purely private and commercial undertakings, albeit imbued with public interest. The public interest involved in its activities, however, does not distract from the true nature of the petitioner as a commercial enterprise, in the same league with similar public utilities like telephone and telegraph companies, railroad companies, water supply and irrigation companies, gas, coal or light companies, power plants, ice plant among others; all of which are declared by this Court as ministrant or proprietary functions of government aimed at advancing the general interest of society.[78]

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[78] *National Power Corporation v. City of Cabanatuan*, 449 Phil. 233, 256-257 (2003) [Per J. Puno, Third Division], citing *Social Security System Employees Association v. Soriano*, 7 SCRA 1016, 1020 (1963) [Per J. Bautista Angelo, *En Banc*]; *Boy Scouts of the Philippines v. NLRC*, 196 SCRA 176, 185 (1991) [Per J. Feliciano, Third Division]; *Shipside Incorporated v. Court of Appeals*, 352 SCRA 334, 350 (2001) [Per J. Melo, Third Division]; Rep. Act No. 6395, Sec. 2; and *National Waterworks & Sewerage Authority v. NWSA Consolidated Unions*, 11 SCRA 766, 774 (1964) [Per J. Bautista Angelo, *En Banc*].

Be that as it may, this Court's categorization cannot supplant that which was previously made by the Executive and Legislative Branches. After the promulgation of *Manila International Airport Authority*, then President Gloria Macapagal-Arroyo issued Executive Order No. 596,[79] which recognized this Court's categorization of "government instrumentalities vested with corporate powers." Section 1 of Executive Order No. 596 states:

> Section 1. The Office of the Government Corporate Counsel (OGCC) shall be the principal law office of all GOCCs, except as may otherwise be provided by their respective charter or authorized by the President, their subsidiaries, corporate offsprings, and government acquired asset corporations. The OGCC shall likewise be the principal law office of "government instrumentality vested with corporate powers" or "government corporate entity", as defined by the Supreme Court in the case of "*MIAA vs. Court of Appeals, City of Parañaque, et al.*", supra, notable examples of which are: Manila International Airport Authority (MIAA), Mactan International Airport Authority, the Philippine Ports Authority (PPA), Philippine Deposit Insurance Corporation (PDIC), *Metropolitan Water and Sewerage Services (MWSS)*, Philippine Rice Research Institute (PRRI), Laguna Lake Development Authority (LLDA), Fisheries Development Authority (FDA), Bases Conversion Development Authority (BCDA), Cebu Port Authority (CPA), Cagayan de Oro Port Authority, and San Fernando Port Authority. (Emphasis supplied)

Under this provision, petitioner is categorized with other government agencies that were found to be exempt from the payment of real property taxes.

In 2011, Congress passed Republic Act No. 10149 or the GOCC Governance Act of 2011, which adopted the same categorization and explicitly lists petitioner together with the other government agencies that were previously held by this Court to be exempt from the payment of real property taxes:

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[79] Defining and Including "Government Instrumentality Vested With Corporate Powers" or "Government Corporate Entities" Under the Jurisdiction of the Office of the Government Corporate Counsel (OGCC) as Principal Law Office of Government-Owned or Controlled Corporations (GOCCs) and for Other Purposes (2006).

(n) *Government Instrumentalities with Corporate Powers (GICP)/ Government Corporate Entities (GCE)* refer to instrumentalities or agencies of the government, which are neither corporations nor agencies integrated within the departmental framework, but vested by law with special functions or jurisdiction, endowed with some if not all corporate powers, administering special funds, and enjoying operational autonomy usually through a charter including, but not limited to, the following: the Manila International Airport Authority (MIAA), the Philippine Ports Authority (PPA), the Philippine Deposit Insurance Corporation (PDIC), the *Metropolitan Waterworks and Sewerage System (MWSS)*, the Laguna Lake Development Authority (LLDA), the Philippine Fisheries Development Authority (PFDA), the Bases Conversion and Development Authority (BCDA), the Cebu Port Authority (CPA), the Cagayan de Oro Port Authority, the San Fernando Port Authority, the Local Water Utilities Administration (LWUA) and the Asian Productivity Organization (APO).[80] (Emphasis supplied)

The Executive and Legislative Branches, therefore, have already categorized petitioner not as a government-owned and controlled corporation but as a Government Instrumentality with Corporate Powers/Government Corporate Entity like the Manila International Airport Authority and the Philippine Fisheries Development Authority. Privileges enjoyed by these Government Instrumentalities with Corporate Powers/ Government Corporate Entities should necessarily also extend to petitioner. Hence, petitioner's real property tax exemption under Republic Act No. 6234[81] is still valid as the proviso of

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[80] Rep. Act No. 10149 (2011), Sec. 3(n).

[81] Rep. Act No. 6234 (1971), as amended, Sec. 18 provides:

Section 18. Non-Profit Character of the System, Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by Government and Governmental Instrumentalities. – The System shall be non-profit and shall devote all its returns from its capital investment as well as excess revenues from its operations, for expansion and improvement. To enable the System to pay its indebtedness and obligations and the furtherance and effective implementation of the policy enumerated in Section one of this Act, the System is hereby declared exempt:

Section 234[82] of the Local Government Code is only applicable to government-owned and -controlled corporations.

Thus, petitioner is not liable to respondent Local Government of Quezon City for real property taxes, except if the beneficial use of its properties has been extended to a taxable person.

Respondents have not alleged that the beneficial use of any of petitioner's properties was extended to a taxable person. In the absence of any allegation to the contrary, petitioner's properties in Quezon City are not subject to the levy of real property taxes.

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals October 19, 2010 Decision in CA-G.R. SP No. 100733 is **REVERSED** and **SET ASIDE**. The Temporary Restraining Orders issued by this Court on January 26, 2011 and September 7, 2011 are made **PERMANENT**.

(a) From the payment of all taxes, duties, fees, imposts, charges and restrictions of the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities including the taxes, duties, fees, imports, and other charges provided for under the Tariff and Customs Code of the Philippines, Republic Act Numbered Nineteen Hundred Thirty-Seven, as amended to further amended by Presidential Decree No. 34, dated October 27, 1972, and costs and service fees in any Court or administrative proceedings in which it may be a party;

(b) *From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and the other Government agencies and instrumentalities*; and

(c) From all imposts, duties, compensating taxes, and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects. (Emphasis supplied)

[82] LOCAL GOVT. CODE, Sec. 234 provides:

Section 234. Exemptions from Real Property Tax. – The following are exempted from payment of the real property tax:

. . . . . .

Except as provided herein, any exemption from payment of real property tax previously granted to, or presently enjoyed by, all persons, whether natural or juridical, including all government-owned or -controlled corporations are hereby withdrawn upon the effectivity of this Code.

The real properties of the Metropolitan Waterworks and Sewerage System located in Quezon City are **DECLARED EXEMPT** from the real estate tax imposed by the Local Government of Quezon City. All the real estate tax assessments, including the final notices of real estate tax delinquencies, issued by the Local Government of Quezon City on the real properties of the Metropolitan Waterworks and Sewerage System located in Quezon City are declared **VOID**, except for the portions that are alleged and proven to have been leased to private parties.

SO ORDERED.

Peralta (*Chairperson*) and *Hernando, JJ.*, concur.

Gesmundo and *Reyes, J. Jr., JJ.*, on wellness leave.

THIRD DIVISION

[G.R. No. 199851. November 7, 2018]

NOELL WHESSOE, INC.,[1] *petitioner, vs.* **INDEPENDENT TESTING CONSULTANTS, INC., PETROTECH SYSTEMS, INC., and LIQUIGAZ PHILIPPINES CORP.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF

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[1] Noell Whessoe Philippines Construction, Inc. has changed its name to "Whessoe Philippines Construction, Inc." (See *rollo*, p. 541). However, this Decision will use "Noell Whessoe, Inc." to be consistent with how petitioner identifies itself in its Petition (See *rollo*, p. 12).

LAW CAN BE RAISED THEREIN; EXCEPTIONS; THE PRESENCE OF ANY OF THE EXCEPTIONS DOES NOT AUTOMATICALLY PLACE THE CASE UNDER THE SUPREME COURT'S REVIEW, FOR THE PARTY CLAIMING AN EXCEPTION MUST DEMONSTRATE AND PROVE THAT A REVIEW OF THE FACTUAL FINDINGS IS NECESSARY.— As a general rule, only questions of law can be raised in a petition for review on certiorari under Rule 45 of the Rules of Court. The distinction between a question of fact and a question of law is settled. There is a question of law if the issue can be determined without reviewing or evaluating the evidence on record. Otherwise, the issue raised is a question of fact. x x x Appeal is not a matter of right but of sound judicial discretion. This Court may, in its discretion, entertain questions of fact if they fall under certain exceptions, summarized 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 petitioners' 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." x x x The presence of any of the exceptions to the general rule, however, does not automatically place the case under this Court's review. This Court explained in *Pascual v. Burgos* that the party claiming an exception "must demonstrate and prove" that a review of the factual findings is necessary.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; RULE ON PRIVITY OF CONTRACTS; CONTRACTS ONLY TAKE EFFECT BETWEEN THE PARTIES, AND THEIR ASSIGNS AND HEIRS; EXCEPTION.— "[A] contract is law between the parties[.]" Generally, contracts only take effect

between the parties, and their assigns and heirs. Thus, subject to certain exceptions, those not privy to the contract would not be bound by any of its provisions. x x x In *JL Investment and Development, Inc. v. Tendon Philippines, Inc.*, this Court explained that Article 1729 of the Civil Code is an exception to the general rule on the privity of contracts x x x. Article 1729 talks of three (3) different parties: the owner, the contractor, and the supplier. In certain situations, the supplier may also be referred to as a subcontractor to provide materials or services. There are also situations where, as in this case, the subcontractor further subcontracts some materials and services to another subcontractor. This sub-subcontractor would be considered the supplier of materials and services. In this case, the owner is Liquigaz, the contractor is petitioner, the subcontractor is Petrotech, and the supplier/sub-subcontractor is respondent Independent Testing Consultants. Considering that the rationale behind the provision is to protect suppliers from possible connivance between the owners and the contractors, there would be no reason to apply the same rationale when it was the subcontractor that hired the supplier. The liability will extend from the owner to the contractor to the subcontractor. Under Article 1729, respondent Independent Testing Consultants had a cause of action against Liquigaz and petitioner, even if its contract was only with Petrotech. [P]etitioner was solidarily liable with Liquigaz and Petrotech for unpaid fees to respondent Independent Testing Consultants.

3. **ID.; ID.; ID.; ID.; ID.; ID.; SOLIDARY LIABILITY BETWEEN THE OWNER, THE CONTRACTOR, AND THE SUBCONTRACTOR; THE CONTRACTOR IS SOLIDARILY LIABLE WITH THE OWNER AND SUBCONTRACTOR FOR ANY LIABILITIES AGAINST THE SUPPLIER DESPITE THE ABSENCE OF CONTRACT BETWEEN THE CONTRACTOR AND THE SUPPLIER, EXCEPT WHEN THE SUBCONTRACTOR HAS ALREADY BEEN FULLY PAID FOR ITS SERVICES.—** Article 1729 creates a solidary liability between the owner, the contractor, and the subcontractor. A solidary obligation is "one in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation." Respondent Independent Testing Consultants may demand payment for all of its unpaid fees from Liquigaz, petitioner, or Petrotech, even if its contract was only

with the latter. However, Article 1729, while serving as an exception to the general rule on the privity of contracts, likewise provides for an exception to this exception. The contractor is solidarily liable with the owner and subcontractor for any liabilities against a supplier despite the absence of contract between the contractor and the supplier, *except when the subcontractor has already been fully paid for its services.*

4. ID.; ID.; ID.; DAMAGES; MORAL DAMAGES; NOT AWARDED TO A CORPORATION SINCE IT IS INCAPABLE OF FEELINGS OR MENTAL ANGUISH.— Moral damages are awarded when the claimant suffers "physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury." "These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered." Its award is "aimed at a restoration, within the limits possible, of the spiritual *status quo ante*; and therefore, it must be proportionate to the suffering inflicted." A corporation is not a natural person. It is a creation of legal fiction and "has no feelings[,] no emotions, no senses[.]" A corporation is incapable of fright, anxiety, shock, humiliation, and physical or mental suffering. "Mental suffering can be experienced only by one having a nervous system and it flows from real ills, sorrows, and griefs of life[.]" A corporation, not having a nervous system or a human body, does not experience physical suffering, mental anguish, embarrassment, or wounded feelings. Thus, a corporation cannot be awarded moral damages. x x x There is no standing doctrine that corporations are, as a matter of right, entitled to moral damages. The existing rule is that moral damages are not awarded to a corporation since it is incapable of feelings or mental anguish. Exceptions, if any, only apply *pro hac vice*.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner.

Campanilla & Ponce Law Office for Independent Testing Consultants, Inc.

Sycip Salazar Hernandez & Gatmaitan for Liquigaz Phils. Corp.

Ronaldo A. Geron for Petrotech Systems, Inc.

D E C I S I O N

LEONEN, *J.*:

The contractor may be solidarily liable with the owner and the subcontractor for any unpaid obligations to the subcontractor's supplier despite the absence of a contract between the contractor and supplier. Full payment to the subcontractor, however, serves as a valid defense against this liability.

This resolves a Petition for Review on Certiorari[2] assailing the Court of Appeals April 28, 2011 Decision[3] and December 7, 2011 Resolution[4] in CA-G.R. CV No. 89300, which affirmed the Regional Trial Court's finding that Noell Whessoe, Inc. (Noell Whessoe) was solidarily liable with Liquigaz Philippines Corporation (Liquigaz) and Petrotech Systems, Inc. (Petrotech) to Independent Testing Consultants, Inc. (Independent Testing Consultants) for unpaid fees of ₱1,063,465.70.

Independent Testing Consultants is engaged in the business of conducting non-destructive testing on the gas pipes and vessels of its industrial customers.[5]

Sometime in June 1998, Petrotech, a subcontractor of Liquigaz, engaged the services of Independent Testing Consultants to conduct non-destructive testing on Liquigaz's piping systems

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[2] *Rollo*, pp. 12-59.

[3] *Id*. at 60-73. The Decision was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino of the Sixth Division, Court of Appeals, Manila.

[4] *Id*. at 74-75. The Resolution was penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino of the Former Sixth Division, Court of Appeals, Manila.

[5] *Id*. at 61.

and liquefied petroleum gas storage tanks located in Barangay Alas-Asin, Mariveles, Bataan.[6]

Independent Testing Consultants conducted the agreed tests. It later billed Petrotech, on separate invoices, the amounts of ₱474,617.22 and ₱588,848.48 for its services. However, despite demand, Petrotech refused to pay.[7]

Independent Testing Consultants filed a Complaint[8] for collection of sum of money with damages against Petrotech, Liquigaz, and Noell Whessoe for ₱1,063,465.70 plus legal interest. It joined Noell Whessoe as a defendant, alleging that it was Liquigaz's contractor that subcontracted Petrotech.[9]

In its Answer,[10] Liquigaz argued that Independent Testing Consultants had no cause of action against it since there were no contractual relations between them and that any contract that Independent Testing Consultants had was with its subcontractors.[11]

Noell Whessoe, on the other hand, denied that it was Liquigaz's contractor and that its basic role was merely to supervise the construction of its gas plants.[12] It argued that any privity of contract was only with Petrotech. Thus, it asserted that Petrotech alone should be liable to Independent Testing Consultants.[13] Noell Whessoe later submitted a Formal Offer of Documentary Exhibits[14] showing that Liquigaz engaged Whessoe Projects

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[6] *Id*.

[7] *Id*.

[8] *Id*. at 236-245.

[9] *Id*. at 238.

[10] *Id*. at 318-324.

[11] *Id*. at 321.

[12] *Id*. at 339.

[13] *Id*. at 340-342.

[14] *Id*. at 451-456.

Limited (Whessoe UK), a limited company organized under the laws of the United Kingdom, for the construction of its storage facilities.[15] Whessoe UK, in turn, engaged Noell Whessoe, a separate and distinct entity, to be the construction manager for the Mariveles Terminal Expansion Project.[16] The documents further stated that Whessoe UK had already paid in full its contractual obligations to Petrotech.[17]

For its part, Petrotech alleged that upon Noell Whessoe's approval, Independent Testing Consultants was chosen to conduct the non-destructive testing on Liquigaz's liquefied petroleum gas storage vessel under the supervision of OIS, an inspection firm from the United Kingdom, and of Nick Stephenson (Stephenson).[18] However, it averred that it later received a letter from Noell Whessoe withdrawing its approval for Independent Testing Consultants' continued services. Independent Testing Consultants' services allegedly failed to satisfy the standards set by the OIS and Stephenson.[19] Petrotech further claimed that due to Independent Testing Consultants' poor performance, it incurred additional costs. Thus, it prayed that Independent Testing Consultants be ordered to pay the additional costs as actual damages.[20]

The Regional Trial Court later declared Petrotech in default for failure to appear during the pre-trial conference.[21]

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[15] *Id*. at 452.

[16] *Id*. at 451.

[17] *Id*. at 453.

[18] Noell Whessoe's letter to Petrotech dated June 9, 1998 erroneously referred to Nick Stephenson as Mick Stephenson. See *rollo*, p. 331.

[19] *Rollo*, p. 326.

[20] *Id*. at 327.

[21] *Id*. at 808.

In its March 7, 2005 Decision,[22] the Regional Trial Court found Liquigaz, Noell Whessoe, and Petrotech solidarily liable to Independent Testing Consultants. It ruled that Liquigaz was liable considering that it was the entity which directly benefited from Independent Testing Consultants' services. It likewise held that Noell Whessoe, as the main contractor of the project, could not escape liability. Petrotech, as the subcontractor of the project, was also held liable.[23] The dispositive portion of the Regional Trial Court March 7, 2005 Decision read:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against the defendants Liquigaz Philippine Corp., Noell Whessoe, Inc. and Petrotech Systems, Inc.
>
> 1) Ordering all defendants to pay plaintiff jointly and severally the amount of Php 1,063,465.70 plus legal rate of interest from December 1, 1998 until it is fully paid;
>
> 2) Ordering the defendants to pay attorney's fees equivalent to 25% of the principal amount of claim; and, the costs of suit.
>
> SO ORDERED.[24]

Only Noell Whessoe and Liquigaz appealed to the Court of Appeals.[25] Thus, the Regional Trial Court March 7, 2005 Decision became final as to Petrotech.[26]

In its April 28, 2011 Decision,[27] the Court of Appeals affirmed the Regional Trial Court March 7, 2005 Decision and found that Noell Whessoe, Petrotech, and Liquigaz were liable to Independent Testing Consultants. It found that Whessoe UK,

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[22] *Id*. at 798-810. The Decision, docketed as Civil Case No. 67895, was penned by Pairing Judge Amelia A. Fabros of Branch 161, Regional Trial Court, City of Pasig.

[23] *Id*. at 809.

[24] *Id*. at 810.

[25] *Id*. at 811-814.

[26] *Id*. at 822-823.

[27] *Id*. at 60-73.

as contractor, assigned construction management to Noell Whessoe, effectively stepping into the shoes of Whessoe UK. Hence, Noell Whessoe could not disclaim knowledge that Petrotech engaged the services of Independent Testing Consultants, considering its admission that it later sent a letter to Petrotech withdrawing its approval of the engagement.[28] The Court of Appeals, however, held that Noell Whessoe's liability did not preclude it from demanding reimbursement from Petrotech for any amount paid.[29]

The Court of Appeals likewise found that Liquigaz had knowledge, as early as January 1999, that one of its subcontractors, Petrotech, failed to fulfill its contractual obligations in the amount of ₱1,063,465.70 to another subcontractor, Independent Testing Consultants.[30] It likewise found that Liquigaz still owed Noell Whessoe the amount of US$9,000.00, which it could have withheld subject to Petrotech's fulfillment of its contractual obligations. Thus, Liquigaz was liable to Independent Testing Consultants, but only up to the amount of US$9,000.00, which it could also demand from Petrotech.[31] The dispositive portion of the Court of Appeals April 28, 2011 Decision read:

> WHEREFORE, the instant appeals are PARTLY GRANTED. The Decision of the RTC, Branch 161, Pasig City, dated March 7, 2005, is hereby AFFIRMED with MODIFICATIONS.
>
> 1. Defendants WHESSOE and PETROTECH are ordered to pay plaintiff-appellee jointly and severally the total claim of ₱1,063,465.70 plus legal rate of interest from December 1, 1998 until it is fully paid. On the other hand, the liability of defendant-appellant LIQUIGAZ, in case it is required to satisfy the judgment herein, is limited only to the amount of US$9,000.00, or its peso equivalent at the time of payment, with right of reimbursement from PETROTECH.

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

[29] *Id*. at 67.

[30] *Id*. at 70.

[31] *Id*. at 71.

2. The cross-claim of defendant-appellant WHESSOE against PETROTECH is GRANTED. The latter is ordered to reimburse WHESSOE in the event that it will be made to satisfy the judgment herein.

3. Defendants are ordered to pay the costs of suit. However, the award of attorney's fees in favor of plaintiff-appellee is DELETED.

SO ORDERED.[32]

Noell Whessoe filed a Motion for Reconsideration, which was denied by the Court of Appeals in its December 7, 2011 Resolution.[33] Hence, it filed this Petition[34] before this Court.

Petitioner asserts that it should not have been made solidarily liable to respondent Independent Testing Consultants since it had no privity of contract with the latter. It maintains that the Contract Agreement for the Mariveles Terminal Expansion Project[35] was between Liquigaz and Whessoe UK, an entity separate and distinct from petitioner. It likewise asserts that the Pipework and Mechanical Equipment Installation Subcontract[36] for the testing and delivery of subcontracting works was between Whessoe UK and Petrotech. It explained that the Conditions of Contract for Supply of Professional, Technical and Management Services[37] between Whessoe UK and petitioner was not intended to be a deed of assignment where petitioner would step into Whessoe UK's shoes as

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[32] *Id*. at 72.

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

[34] *Id*. at 12-59. Respondent Liquigaz filed a Manifestation stating that since the Petition did not assert any claims against it, it would no longer be filing a comment. Respondent Petrotech's comment was dispensed with due to its failure to comply within the required period (*rollo*, p. 1031). Respondent Independent Testing Consultants filed its Comment (*rollo*, pp. 1015-1024) on March 29, 2012. Reply (*rollo*, pp. 1037-1045) was filed on November 19, 2013.

[35] *Id*. at 84-165.

[36] *Id*. at 166-170.

[37] *Id*. at 228-233.

contractor but was rather merely an undertaking to supply professional, technical, and management services.[38]

Petitioner maintains that it cannot be bound by the contract between Whessoe UK and Petrotech simply because it sent a letter to Petrotech expressing dissatisfaction or disapproval of respondent Independent Testing Consultants' services.[39] It likewise points out that even assuming that there was privity of contract, Whessoe UK had already paid in full its contractual obligations to Petrotech.[40] Thus, it asserts that it was entitled to moral damages of ₱1,000,000.00 since "the filing of this baseless and unfounded case . . . has tarnished its good business name and standing by giving the erroneous and false impression to the public that it is a company that reneges on its obligations."[41]

Respondent Independent Testing Consultants, on the other hand, counters that petitioner directly approved and commissioned its services, as admitted by Petrotech in its Answer before the Regional Trial Court.[42] It claims that petitioner never introduced evidence that it had already paid Petrotech, and that its allegation that it was not the same entity being sued was negated by its Answer before the Regional Trial Court.[43] Thus, respondent argues that petitioner was not entitled to any of its counterclaims.[44]

From the arguments of the parties, this Court is asked to resolve the issue of whether or not petitioner Noell Whessoe, Inc. can be held solidarily liable with respondents Liquigaz Philippines Corporation and Petrotech Systems, Inc. for unpaid fees to respondent Independent Testing Consultants, Inc.

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[38] *Id*. at 33-38.

[39] *Id*. at 43-44.

[40] *Id*. at 46-47.

[41] *Id*. at 50.

[42] *Id*. at 1021.

[43] *Id*. at 1022.

[44] *Id*.

Assuming that petitioner Noell Whessoe, Inc. was not liable, this Court is further asked to resolve the issue of whether or not it was entitled to moral damages.

I

To resolve the issue of whether petitioner is solidarily liable with Liquigaz and Petrotech, this Court must first pass upon petitioner's argument that it is a separate and distinct entity from Whessoe UK, the signatory of the contracts with them. This, however, is a question of fact.

As a general rule, only questions of law can be raised in a petition for review on certiorari under Rule 45 of the Rules of Court.[45] The distinction between a question of fact and a question of law is settled. There is a question of law if the issue can be determined without reviewing or evaluating the evidence on record. Otherwise, the issue raised is a question of fact.[46]

Petitioner raises an issue that has already been factually determined by both the Regional Trial Court and the Court of Appeals. For this Court to pass upon the same issue, it would have to review and evaluate the evidence presented before the lower courts. Clearly then, petitioner raises a question of fact.

Appeal is not a matter of right but of sound judicial discretion.[47] This Court may, in its discretion, entertain questions of fact if

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

Section 1. Filing of petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

[46] *Century Iron Works v. Bañas*, 511 Phil. 576, 584-585 (2013) [Per J. Brion, Second Division].

[47] RULES OF COURT, Rule 45, Sec. 6.

they fall under certain exceptions, summarized in *Medina v. Mayor Asistio, Jr.*:[48]

> (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 petitioners' 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.[49] (Citations omitted)

Petitioner's assignment of the Court of Appeals' alleged errors centers on the Court of Appeals' interpretation of the provisions of the Conditions of Contract for Supply of Professional, Technical and Management Services,[50] and the Letter[51] dated June 29, 1998. Therefore, it alleges that the Court of Appeals' judgment was based on a misapprehension of facts. Any review requires a reevaluation of these two (2) documents mentioned.

The presence of any of the exceptions to the general rule, however, does not automatically place the case under this Court's review. This Court explained in *Pascual v. Burgos*[52] that the party claiming an exception "must demonstrate and prove"[53] that a review of the factual findings is necessary.

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[48] 269 Phil. 225 (1990) [Per J. Bidin, Third Division].

[49] *Id.* at 232.

[50] *Rollo*, pp. 228-233.

[51] *Id.* at 331-332.

[52] 776 Phil. 167 (2016) [Per J. Leonen, Second Division].

[53] *Id.* at 184.

Petitioner has not alleged that it raised a question of fact, much less allege that this case falls under any of the exceptions. This would have merited the denial of the Petition since this Court is not a trier of facts. Petitioner, however, argues that this case falls under the considerations stated in Rule 45, Section 6 of the Rules of Court:

> Section 6. Review discretionary. — A review is not a matter of right, but of sound judicial discretion, and will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of the reasons which will be considered:
>
> (a) When the court *a quo* has decided a question of substance, not theretofore determined by the Supreme Court, or has decided it in a way probably not in accord with law or with the applicable decisions of the Supreme Court; or
>
> (b) When the court *a quo* has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such departure by a lower court, as to call for an exercise of the power of supervision.

In particular, petitioner alleges that:

a. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and/or has decided a question of substance in a way not in accord with law or with the applicable decisions of the Honorable Court when it held that petitioner Noell Whessoe is solidarily liable with respondent Petrotech for the claims for respondent ITCI.

b. The Court of Appeals has so far departed from the accepted and usual course of judicial proceedings and/or has decided a question of substance in a way not in accord with law or with the applicable decisions of the Honorable Court when it denied petitioner Noell Whessoe's counterclaims.[54]

A quick perusal of the parties' evidence reveals that the Regional Trial Court and the Court of Appeals may have erred

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[54] *Rollo*, p. 32.

in finding that petitioner was still liable to respondent Independent Testing Consultants for its unpaid fees. If not corrected, the assailed judgments may result in grave injustice to petitioner.

II

"[A] contract is law between the parties[.]"[55] Generally, contracts only take effect between the parties, and their assigns and heirs.[56] Thus, subject to certain exceptions,[57] those not privy to the contract would not be bound by any of its provisions.

Petitioner contends that all contracts between the parties were undertaken by Whessoe UK, an entity that it alleges is separate and distinct from itself.

Both the Regional Trial Court and the Court of Appeals rejected this argument on the ground that petitioner's co-defendants, Liquigaz and Petrotech, alleged that petitioner was the contracting party. Liquigaz's Answer read, in part:

> 5. On November 7, 1996, defendant Liquigaz and defendant Whessoe entered into a Design and Construction Contract ("contract") for the construction of a storage facility for liqu[e]fied petroleum gas located in Mariveles, Bataan. Under the contract, defendant Whessoe undertook to complete the design and execute and complete the construction of the storage facility.
>
> 6. Under the contract, defendant Whessoe could subcontract the performance of any of its obligation as it deemed expedient. Thus,

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[55] *Alcantara v. Alinea*, 8 Phil. 111, 114 (1907) [Per J. Torres, *En Banc*].

[56] CIVIL CODE, Art. 1311.

[57] CIVIL CODE, Art. 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.

If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

it subcontracted majority of the project work to several local subcontractors. One such subcontractor was defendant Petrotech. Defendant Petrotech was responsible for the fabrication of vessels and piping. Its work included conducting various non-destructive testing ("NDT"), which in turn defendant Petrotech subcontracted to several NDT firms. Apparently, plaintiff was one such NDT firm.[58]

Petrotech, on the other hand, alleged:

4. From December 5, 1997 to February 24, 1999, herein defendant Petrotech Systems Corporation (hereinafter Petrotech) became a sub-contractor of defendant Noell Whessoe (hereinafter Whessoe) in the latter's project for defendant Liquigaz Philippines Corporation (hereinafter Liquigaz); part of the conditions of the contract that Petrotech has is that all works must pass Non-destructive Testing (hereinafter NDT) by an independent third party before said works can be accepted by Whessoe[.][59]

To determine whether the Regional Trial Court and the Court of Appeals correctly held that petitioner is the same entity as Whessoe UK, further examination of the evidence is necessary.

The Contract Agreement for the Mariveles Terminal Expansion Project[60] dated November 7, 1996 was between Liquigaz and Whessoe UK, thus:

THIS AGREEMENT is made [on] the 7th day of November, 1996

Between	LIQUIGAZ PHILIPPINES CORPORATION
of	SUITE 2311 CITYLAND 10 TOWER 1 DELA COSTA STREET, SALCEDO VILLAGE MAKATI CITY, MANILA, PHILIPPINES

(hereinafter called 'the Purchaser') of the one part

And	WHESSOE PROJECTS LIMITED

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[58] *Rollo*, p. 321.

[59] *Id.* at 326.

[60] *Id.* at 84-165.

of BRINKBURN ROAD, DARLINGTON
CODURHAM DL3 6DS
UNITED KINGDOM[61]

On May 12, 1997, *Whessoe UK* executed the Pipework and Mechanical Equipment Installation Subcontract[62] with Petrotech, thus:

FORM OF SUBCONTRACT AGREEMENT

This Agreement made [on] the Twelfth day of May 1997

BETWEEN

(1) WHESSOE PROJECTS LIMITED

of BRINKBURN ROAD, DARLINGTON, ENGLAND
(hereinafter called "the CONTRACTOR" of the one part; and

(2) PETROTECH SYSTEMS INC.

of 2ND FLOOR, AYALA LIFE ASSURANCE BUILDING, NATIONAL HIGHWAY, ALANGITAN, BATANGAS CITY, PHILIPPINES

(hereinafter called "the SUBCONTRACTOR") of the other part.[63]

One of the attached documents to the Pipework and Mechanical Equipment Installation Subcontract was a Confidentiality Agreement dated April 12, 1997 between Petrotech and *petitioner Noell Whessoe*, thus:

CONFIDENTIALITY AGREEMENT

The AGREEMENT entered into and effective this 12th day of April [1997] between NOELL WHESSOE Philippines Construction, Inc. whose registered office is situated at Unit 2409 Herrera Towers, 98 Herrera corner Valero Sts., Salcedo Village, Makati (hereinafter called "CONTRACTOR") of the one part and PETROTECH SYSTEMS, INC., whose registered office is situated at 2nd Floor Ayala Life Assurance

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[61] *Id*. at 85.

[62] *Id*. at 166-170.

[63] *Id*. at 167.

Building, Kumintang Ilaya, Alangilan, Batangas (hereinafter called "SUBCONTRACTOR").

Witnesseth:

Whereas CONTRACTOR, as a wholly owned subsidiary of Noell desires SUBCONTRACTOR to undertake the performance of a SUBCONTRACT for the provision of Pipework Mechanical Equipment Installation, and it is necessary for each party to pass to the other certain confidential information whereby the SUBCONTRACTOR may examine CONTRACTOR'S SUBCONTRACT documentation and the CONTRACTOR (and its advisors) may assess SUBCONTRACTOR'S Work, then

It is hereby agreed that neither party shall:

a) Divulge to any other party any matter or thing arising from the performance of the SUBCONTRACT at any time except as may be necessary to assist either CONTRACTOR or SUBCONTRACTOR in their assessment, and then only in the event that the third party enters into a similar Confidentiality Agreement or

. . . . . .

In witness hereof the parties have caused this Confidentiality Agreement to be signed by the parties[']behalf.[64]

As of April 12, 1997, petitioner referred to itself as a "wholly owned subsidiary" of Whessoe UK. It alleged, however, that on June 5, 1997, it was registered with the Securities and Exchange Commission as a domestic corporation engaged in general construction and other allied businesses.[65] Unfortunately, no evidence was presented to prove that it was incorporated as a separate corporation by June 5, 1997. It instead filed on August 24, 1998 its Amendment of Articles of Incorporation.[66]

Petitioner contends that it was already a separate and distinct entity since it had to execute a Conditions of Contract for Supply

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[64] *Id*. at 223.

[65] *Id*. at 33.

[66] *Id*. at 541-551.

of Professional, Technical and Management Services[67] on November 29, 1997 with Whessoe UK for the Mariveles Terminal Expansion Project. Pertinent portions of this contract provided:

THIS AGREEMENT is made on the 29 day of November 1997 between WHESSOE PROJECTS LIMITED whose registered office is at Brinkburn Road, Darlington, Durham, England, hereinafter called the "Employer" of the one part and Noell Whessoe Philippines Construction Incorporated whose registered office is at Unit 2409, Herrera Tower, 98 Herrera corner Valero St., North Salcedo Village[,] Makati City, Philippines, hereinafter called the "Contractor" of the other part.

WHEREAS, the Employer assign to the Contractor the construction management of the Mariveles Terminal Expansion Project located at Barangay Alas-asin, Mariveles, Bataan.

NOW IT IS HEREBY AGREED AS FOLLOWS:

Article 1 The Contractor will, subject to the conditions of the Contract, perform and complete the Works.

Article 2 The Employer will pay the Contractor such cost or costs expended in relation to the Works on a cost reimbursable basis plus a ten (10) percent mark-up.

. . . . . .

1.2 The "Work" means any and all services rendered by the Contractor in relation to the construction and successful completion of the Mariveles Terminal Expansion Project. Such services shall include but not be limited to the:

a) Management of all site and Subcontractors' activities;

b) Procurement of all local free issue materials and consumables;

c) Provision of all equipment and tools not included in any Subcontractor's scope;

d) Subcontract Administration;

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[67] *Id*. at 228-233.

e) Preparation of all necessary periodic reports and compilation of all required documentation.

. . . . . .

2.3 The Contractor shall be responsible for the timely and successful completion of the Project.[68]

Petitioner argues that the execution of this contract did not make it the contractor for the Mariveles Terminal Expansion Project. It asserts that it was merely a subcontractor hired by Whessoe UK to oversee the management of the site and the other subcontractors' activities.

Records, however, show that during the negotiations for the Pipework and Mechanical Equipment Installation Subcontract with Petrotech, *Petrotech made no distinction between petitioner and Whessoe UK*.

On April 24, 1997, Whessoe UK sent a Facsimile Message[69] to Petrotech on its Tender. Petrotech replied on April 28, 1997 to petitioner with its comments.[70] On April 30, 1997, Whessoe UK sent another message discussing the terms of the Quotation.[71] Petrotech replied on May 13, 1997 to petitioner, negotiating the subcontract price.[72] Whessoe UK replied on July 1, 1997 with a counter-offer.[73] Petrotech again addressed its reply to petitioner on July 2, 1997, submitting its Tender Form.[74]

In the letter[75] dated June 27, 1998, petitioner informed Petrotech that it was withdrawing its approval of the subcontract. This letter stated, in part:

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[68] *Id*. at 229-230.

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

[70] *Id*. at 185-193.

[71] *Id*. at 204-206.

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

[73] *Id*. at 212.

[74] *Id*. at 213-219.

[75] *Id*. at 331-332.

We confirm our withdrawal of approval to your employment of Intec as your MPI-NDT Sub-contractor with effect from today, 27th June, 1998, for which we served warnings to Mr. McGrane over seven (7) days ago.

We additionally confirm having received Mr. McGrane's concurrence with this measure, and your undertaking to employ a new service subcontractor for the remaining work still to be performed, with effect from Monday, 29th June, 1998.

We also wish to confirm to you that since our engagement of the U.K. inspection firm, O.I.S., to supervise and manage your NDT obligations, such of Mr. Mick Stephenson's time has been rendered abortive by Intec's ap[p]arent inability to react qualifiedly to his instructions, which have not in any manner been onerous, resulting in an unacceptably high level of reboots and poor quality Radiographs that have been impossible to interpret and rejected because of density, limits, film marks, debris etc.

Whilst it was at our own cost, and of necessity to the project that we arranged for O.I.S.'s services, these costs have escalated unreasonably due to Intec's intransigence.

We therefore feel compelled to onpass (sic) to your account our assessment of the abortive costs based upon a Re-shoot factor of 32.6% of the total of 414 radiographs inspected.

To date this amounts to 52.6% of 720 hours @ $ 72.50/Hours = $17,017.20 and continuing, depend[e]nt upon the degree of improvement that you are able to motivate from Intec's replacement. Otherwise, it is indicated that your responsib[ility] for continuing extra costs will increase by a further $ 8,200.00 for O.I.S. charges to us.[76]

This letter did not state that Whessoe UK, through petitioner, was withdrawing approval. It states that *petitioner* was withdrawing approval. Petrotech was not privy to the Contract for Supply of Professional, Technical and Management Services between Whessoe UK and petitioner. It was only bound by its contract with Whessoe UK. Petitioner's withdrawal of approval would not have bound Petrotech.

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[76] *Id.* at 331-332.

Considering that Petrotech abided by petitioner's instructions, it did not consider petitioner and Whessoe UK as two (2) separate and distinct entities.

This Court made the same conclusion in *Pioneer International v. Hon. Guadiz*.[77] Although the issue in that case was on jurisdiction, this Court made a similar examination of the communications between the parties to determine whether several corporations were separate and distinct entities:

> PIL's alleged acts in actively negotiating to employ Todaro to run its pre-mixed concrete operations in the Philippines, which acts are hypothetically admitted in PIL's motion to dismiss, are not mere acts of a passive investor in a domestic corporation. Such are managerial and operational acts in directing and establishing commercial operations in the Philippines. The annexes that Todaro attached to his complaint give us an idea on the extent of PIL's involvement in the negotiations regarding Todaro's employment. In Annex "E", McDonald of Pioneer Concrete Group HK confirmed his offer to engage Todaro as a consultant of PIL. In Annex "F", Todaro accepted the consultancy. In Annex "H", Klepzig of PPHI stated that PIL authorized him to tell Todaro about the cessation of his consultancy. Finally, in Annex "I", Folwell of PIL wrote to Todaro to confirm that "Pioneer" no longer wishes to be associated with Todaro and that Klepzig is authorized to terminate this association. Folwell further referred to a Dr. Schubert and to Pioneer Hong Kong. These confirmations and references tell us that, in this instance, the various officers and companies under the Pioneer brand name do not work independently of each other. It cannot be denied that PIL had knowledge of and even authorized the non-implementation of Todaro's alleged permanent employment. In fact, *in the letters to Todaro, the word "Pioneer" was used to refer not just to PIL alone but also to all corporations negotiating with Todaro under the Pioneer name*.
>
> As further proof of the interconnection of the various Pioneer corporations with regard to their negotiations with Todaro, McDonald of Pioneer Concrete Group HK confirmed Todaro's engagement as consultant of PIL (Annex "E") while Folwell of PIL stated that Todaro

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[77] 561 Phil. 688 (2007) [Per *J*. Carpio, Second Division].

rendered consultancy services to Pioneer HK (Annex "I"). In this sense, the various Pioneer corporations were not acting as separate corporations. *The behavior of the various Pioneer corporations shoots down their defense that the corporations have separate and distinct personalities, managements, and operations. The various Pioneer corporations were all working in concert to negotiate an employment contract between Todaro and PPHI, a domestic corporation*.[78] (Emphasis supplied)

In their respective Answers, Liquigaz and Petrotech referred to both Whessoe UK and petitioner when they used "Whessoe." Neither party was aware that Whessoe UK and petitioner held themselves as separate and distinct entities.

Petitioner cannot also be considered as a mere subcontractor of Whessoe UK. The Contract Agreement for the Mariveles Terminal Expansion Project between Liquigaz and Whessoe UK provided:

> 10.1 Neither the Purchaser nor the Contractor shall without the previous consent of the other transfer any benefit or obligation under the Contract to any other person in whole or in part, save that the Contractor may without such consent assign absolutely or by way of charge any money which is or may become due to him under the Contract.
>
> 10.2 Subject to the provisions of Clause 11 (Nominated Subcontractors) *the Contractor may subcontract the performance of any of his obligations under the Contract as the Contractor considers expedient* with the exception of any limitations on subcontracting as defined in Schedule 12 (Limitations on Subcontracting).
>
> 10.3 Subject to the provisions of Clause 11 (Nominated Subcontractors), the subcontracting by the Contractor of any of his benefits or obligations under the Contract in whole or in part shall not relieve the Contractor in any way whatsoever from his responsibility for due performance of the Contract in accordance with its terms.

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[78] *Id*. at 706-707.

10.4 *The Contractor shall not subcontract the whole of the Works*.[79] (Emphasis supplied)

Under this Contract, Whessoe UK may subcontract the performance of some obligations but was prohibited from subcontracting "the whole of the Works." On the other hand, the Contract for Supply of Professional, Technical and Management Services between petitioner and Whessoe UK stated that petitioner would provide the following services:

1.2 The "Work" means any and all services rendered by the Contractor in relation to the construction and successful completion of the Mariveles Terminal Expansion Project. Such services shall include but not be limited to the:

a) Management of all site and Subcontractors' activities;
b) Procurement of all local free issue materials and consumables;
c) Provision of all equipment and tools not included in any Subcontractor's scope;
d) Subcontract Administration;
e) Preparation of all necessary periodic reports and compilation of all required documentation.

. . . . . .

2.3 The Contractor shall be responsible for the timely and successful completion of the Project.[80]

All of Whessoe UK's responsibilities as contractor for Liquigaz were passed on to petitioner, despite Liquigaz's stipulation that Whessoe UK could not subcontract all of its work to a subcontractor. Considering this stipulation, petitioner cannot be considered as a mere subcontractor of Whessoe UK. Otherwise, Whessoe UK would be in breach of its Contract with Liquigaz.

There was insufficient evidence proving that Whessoe UK and petitioner were two (2) separate and distinct entities. As

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[79] *Id*. at 109.

[80] *Id*. at 230.

with *Pioneer International*, prior acts by Liquigaz and Petrotech indicate that they were contracting with the same entity, albeit with different names. Thus, petitioner failed to prove that for the Mariveles Terminal Expansion Project, it was a separate and distinct entity from Whessoe UK. Therefore, it cannot set up the defense of privity of contract to escape liability.

Article 1729 of the Civil Code provides:

> Article 1729. Those who put their labor upon or furnish materials for a piece of work undertaken by the contractor have an action against the owner up to the amount owing from the latter to the contractor at the time the claim is made. However, the following shall not prejudice the laborers, employees and furnishers of materials:
>
> 1. Payments made by the owner to the contractor before they are due;
>
> 2. Renunciation by the contractor of any amount due him from the owner.
>
> This article is subject to the provisions of special laws.

In *JL Investment and Development, Inc. v. Tendon Philippines, Inc.*,[81] this Court explained that Article 1729 of the Civil Code is an exception to the general rule on the privity of contracts:[82]

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[81] 541 Phil. 82 (2007) [Per J. Carpio, Second Division].

[82] CIVIL CODE, Art. 1311 provides:

> Article 1311. Contracts take effect only between the parties, their assigns and heirs, except in case where the rights and obligations arising from the contract are not transmissible by their nature, or by stipulation or by provision of law. The heir is not liable beyond the value of the property he received from the decedent.
>
> If a contract should contain some stipulation in favor of a third person, he may demand its fulfillment provided he communicated his acceptance to the obligor before its revocation. A mere incidental benefit or interest of a person is not sufficient. The contracting parties must have clearly and deliberately conferred a favor upon a third person.

This provision imposes a direct liability on an owner of a piece of work in favor of suppliers of materials (and laborers) hired by the contractor "up to the amount owing from the [owner] to the contractor at the time the claim is made." Thus, to this extent, the owner's liability is solidary with the contractor, if both are sued together. *By creating a constructive vinculum between suppliers of materials (and laborers), on the one hand, and the owner of a piece of work, on the other hand, as an exception to the rule on privity of contracts, Article 1729 protects suppliers of materials (and laborers) from unscrupulous contractors and possible connivance between owners and contractors.* As the Court of Appeals correctly ruled, the supplier's cause of action under this provision, reckoned from the time of judicial or extra-judicial demand, subsists so long as any amount remains owing from the owner to the contractor. *Only full payment of the agreed contract price serves as a defense against the supplier's claim.*[83] (Emphasis supplied)

Article 1729 talks of three (3) different parties: the owner, the contractor, and the supplier. In certain situations, the supplier may also be referred to as a subcontractor to provide materials or services. There are also situations where, as in this case, the subcontractor further subcontracts some materials and services to another subcontractor. This sub-subcontractor would be considered the supplier of materials and services. In this case, the owner is Liquigaz, the contractor is petitioner, the subcontractor is Petrotech, and the supplier/sub-subcontractor is respondent Independent Testing Consultants.

Considering that the rationale behind the provision is to protect suppliers from possible connivance between the owners and the contractors, there would be no reason to apply the same rationale when it was the subcontractor that hired the supplier. The liability will extend from the owner to the contractor to the subcontractor.

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[83] *JL Investment and Development, Inc. v. Tendon Philippines, Inc.*, 541 Phil. 82, 91 (2007) [Per J. Carpio, Second Division], citing *Flores v. Ruelo*, No. 13905-R, September 29, 1955, 52 O.G. No. 2, 850; *Velasco v. Court of Appeals*, 184 Phil. 335 (1980) [Per J. Barredo, Second Division]; and V. A. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines* 295 (1992 ed.).

Under Article 1729, respondent Independent Testing Consultants had a cause of action against Liquigaz and petitioner, even if its contract was only with Petrotech. The Regional Trial Court and the Court of Appeals, therefore, did not err in concluding that petitioner was solidarily liable with Liquigaz and Petrotech for unpaid fees to respondent Independent Testing Consultants.

Article 1729 creates a solidary liability between the owner, the contractor, and the subcontractor. A solidary obligation is "one in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation."[84] Respondent Independent Testing Consultants may demand payment for all of its unpaid fees from Liquigaz, petitioner, or Petrotech, even if its contract was only with the latter.

However, Article 1729, while serving as an exception to the general rule on the privity of contracts, likewise provides for an exception to this exception. The contractor is solidarily liable with the owner and subcontractor for any liabilities against a supplier despite the absence of contract between the contractor and the supplier, *except when the subcontractor has already been fully paid for its services*.

Here, the Court of Appeals found that there was "uncontroverted evidence that PETROTECH had already been paid for its services:"[85]

> MR. JOHN TATE, President of [petitioner] and former Managing Director of WHESSOE-UK, testified in open court affirming the existence of the Agreement (Exhibit "7" – Whessoe) between PETROTECH and WHESSOE-UK indicating the schedule of payment of the remaining balance in the amount of US$283,436.42, as well as two (2) Barclays International Payments Service Customer Order Forms (Exhibits "8" and "9" – Whessoe) evidencing payment in the amounts

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[84] *Inciong v. Court of Appeals*, 327 Phil. 364, 372 (1996) [Per *J*. Romero, Second Division], citing 4 TOLENTINO, *CIVIL CODE OF THE PHILIPPINES* 217 (1991 ed.)

[85] *Rollo*, p. 67.

of US$125,000.00 and US$158,436.42, respectively, that was coursed through the account of PETROTECH with China Banking Corporation in the Philippines.[86]

Since Whessoe UK and petitioner should be considered the same entity for the purposes of the Mariveles Terminal Expansion Project, Whessoe UK's full payment to Petrotech would serve as a valid defense against petitioner's solidary liability. Thus, petitioner still cannot be held solidarily liable with Liquigaz and Petrotech for any remaining receivables from respondent Independent Testing Consultants. Any remaining obligations to it should be solidarily borne by the owner, Liquigaz, and the subcontractor, Petrotech.

III

While petitioner is absolved from its solidary liability, it is not, however, entitled to any moral damages.

Petitioner asserts that it was entitled to moral damages of ₱1,000,000.00 on the basis that respondent Independent Testing Consultants' collection suit "has tarnished its good business name and standing[.]"[87]

Moral damages are awarded when the claimant suffers "physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury."[88] "These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered."[89] Its award is "aimed at a restoration,

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[86] *Id*.

[87] *Id*. at 50.

[88] CIVIL CODE, Art. 2217.

[89] *Del Mundo v. Court of Appeals*, 310 Phil. 367, 376 (1995) [Per *J*. Vitug, Third Division], citing *San Miguel Brewery, Inc. v. Magno*, 128 Phil. 328 (1967) [Per *J*. Angeles, *En Banc*]; *Agustin v. Court of Appeals*, 264 Phil. 744 (1990) [Per *J*. Regalado, Second Division]; *Abrogar v. Intermediate Appellate Court*, 241 Phil. 69 (1988) [Per *J*. Sarmiento, Second Division];

within the limits possible, of the spiritual *status quo ante*; and therefore, it must be proportionate to the suffering inflicted."[90]

A corporation is not a natural person. It is a creation of legal fiction and "has no feelings[,] no emotions, no senses[.]"[91] A corporation is incapable of fright, anxiety, shock, humiliation, and physical or mental suffering. "Mental suffering can be experienced only by one having a nervous system and it flows from real ills, sorrows, and griefs of life[.]"[92] A corporation, not having a nervous system or a human body, does not experience physical suffering, mental anguish, embarrassment, or wounded feelings. Thus, a corporation cannot be awarded moral damages.

In the 1968 case of *Mambulao Lumber v. Philippine National Bank*,[93] this Court stated, in passing, "[a] corporation may have a good reputation which, if besmirched, may also be a ground for the award of moral damages."[94]

This same statement has appeared in *People v. Manero*.[95] *Mambulao Lumber* and *Manero*, however, were not meant to be used as basis to carve an exception to the rule. There is still no definitive pronouncement by this Court of any existing exceptions to the rule. In *ABS-CBN Broadcasting Corporation*

Buan v. Camaganacan, 123 Phil. 131 (1966) [Per *J*. J.B.L. Reyes, *En Banc*]; *Guita v. Court of Appeals*, 224 Phil. 123 (1985) [Per *J*. Plana, First Division]; and *Guilatco v. City of Dagupan*, 253 Phil. 377 (1989) [Per *J*. Sarmiento, Second Division].

[90] *Lambert v. Heirs of Castillon*, 492 Phil. 384, 395 (2005) [Per *J*. Ynares-Santiago, First Division], *citing* CESAR SANGCO, *TORTS AND DAMAGES* 986 (1994 ed.).

[91] *LBC Express v. Court of Appeals*, 306 Phil. 624, 628 (1994) [Per *J*. Puno, Second Division].

[92] *Id*. at 628, citing *Tamayo v. University of Negros Occidental*, 58 OG No. 37, p. 6032, September 10, 1962.

[93] 130 Phil. 366 (1968) [Per *J*. Angeles, *En Banc*].

[94] *Id*. at 391.

[95] 291-A Phil. 93 (1993) [Per *J*. Bellosillo, First Division].

v. Court of Appeals,[96] this Court even clarified that the statement in *Mambulao Lumber* and *Manero* was mere *obiter dictum*.

There is no standing doctrine that corporations are, as a matter of right, entitled to moral damages. The existing rule is that moral damages are not awarded to a corporation since it is incapable of feelings or mental anguish. Exceptions, if any, only apply *pro hac vice*.

Even assuming that moral damages may be granted, no moral damages can be awarded in this case. Claims for moral damages must have sufficient factual basis, either in the evidence presented or in the factual findings of the lower courts.[97] Petitioner has not presented any evidence, other than its bare allegations, that it was entitled to its award.

WHEREFORE, the Petition is **PARTIALLY GRANTED**. The Court of Appeals April 28, 2011 Decision and December 7, 2011 Resolution in CA-G.R. CV No. 89300 are **AFFIRMED WITH MODIFICATION**.

Petitioner Noell Whessoe, Inc. is **ABSOLVED** from solidary liability with respondents Petrotech Systems, Inc. and Liquigaz Philippines Corporation to respondent Independent Testing Consultants, Inc. in view of its full payment to Petrotech Systems, Inc. Petitioner Noell Whessoe, Inc.'s claim for moral damages is **DENIED** for lack of factual basis.

All other previous dispositions by the Court of Appeals **STAND**.

SO ORDERED.

Peralta (*Chairperson*) and *Hernando, JJ.*, concur.

Gesmundo and *Reyes, J. Jr., JJ.*, on wellness leave.

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[96] 361 Phil. 499 (1999) [Per *J.* Davide, Jr., First Division].

[97] *Kierulf v. Court of Appeals*, 336 Phil. 414, 426 (1997) [Per *J.* Panganiban, Third Division].

THIRD DIVISION

[G.R. No. 204594. November 7, 2018]

SINDOPHIL, INC., *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF APPEAL; DISMISSAL OF APPEAL UPON FAILURE TO FILE APPELLANT'S BRIEF WITHIN THE REQUIRED PERIOD; HELD AS DIRECTORY AND NOT MANDATORY, WITH THE DISCRETION TO BE EXERCISED SOUNDLY AND IN ACCORDANCE WITH THE TENETS OF FAIR PLAY AND HAVING IN MIND THE CIRCUMSTANCES OBTAINING IN EACH CASE.— Rule 50, Section 1(e) of the Rules of Court is the basis for dismissing an appeal for failure to file the appellant's brief within the required period x x x. With the use of the permissive "may," it has been held that the dismissal is directory, not mandatory, with the discretion to be exercised soundly and "in accordance with the tenets of justice and fair play" and "having in mind the circumstances obtaining in each case." x x x In Sindophil's Motion for Reconsideration before the Court of Appeals, Sindophil's counsel, Atty. Obligar, explained that his law office used to be located in Pasig City. However, when two (2) of his staff left due to "family reasons," he had to transfer his office to Las Piñas City, which was near Parañaque City where he resided. He then speculated that in the course of the transfer, the Court of Appeals' resolution directing Sindophil to file its appeal brief might have been one of the files lost or inadvertently disposed of by his house helpers. Atty. Obligar's excuse is unacceptable. x x x He cannot blame his staff or house helpers as it is already settled that the negligence of the clerks and employees of a lawyer binds the latter. That he is not even sure what happened to the Resolution shows his carelessness, and this negligence is one that ordinary diligence could have guarded against. He should have devised a system in his law office whereby his clerks are to immediately route the notices they receive to the handling lawyer because the reglementary period for filing an appeal brief runs from their

receipt. Under the circumstances, the Court of Appeals exercised its discretion soundly by deeming Sindophil's appeal as abandoned and, consequently, dismissing the appeal.

2. ID.; ID.; TRIAL; ORDER OF TRIAL; REOPENING OF CASE TO INTRODUCE NEW EVIDENCE; THE INTRODUCTION OF NEW EVIDENCE EVEN AFTER A PARTY HAS RESTED ITS CASE MAY BE DONE ONLY IF THE COURT FINDS THAT IT IS FOR GOOD REASONS AND IN THE FURTHERANCE OF JUSTICE.— The order of trial is governed by Rule 30, Section 5 of the Rules of Court, with item (f) specifically governing the reopening of a case to introduce new evidence x x x. The introduction of new evidence even after a party has rested its case may x x x be done but only if the court finds that it is for good reasons and in the furtherance of justice. The admission is discretionary on the part of the court and, as explained in *Republic* [v. Sandiganbayan], may only be set aside if the admission was done with grave abuse of discretion x x x. The stroke suffered by Sindophil's President was not a good reason to reopen the case. x x x Furthermore, while illness is a valid ground for postponing a hearing, it does not appear that Sindophil raised Chalid's stroke as a ground to postpone its initial presentation of defense evidence. The illness was only alleged in the Motion to Re-Open Case filed on March 31, 2009, more than three (3) months after the scheduled presentation of evidence on December 10, 2008. The excuse, therefore, appears to be an afterthought. Neither can Sindophil claim that it was not given equal opportunity to present its case. Atty. Obligar, counsel for Sindophil, admitted that he never objected to the motions for extension to file formal offer of evidence filed by the Republic. x x x Furthermore, contrary to Sindophil's claim, the Regional Trial Court entertained the Motion to Re-Open Case that it even set the Motion for clarificatory hearing and oral argument. However, Atty. Obligar again absented himself during the scheduled hearing. Given the foregoing, the Regional Trial Court did not gravely abuse its discretion in deciding the case despite the filing of the Motion to Re-Open Case.

3. CIVIL LAW; LAND REGISTRATION; LAND TITLES; INNOCENT PURCHASERS IN GOOD FAITH AND FOR VALUE; THE BURDEN OF PROVING THE STATUS OF AN INNOCENT PURCHASER IN GOOD FAITH AND FOR VALUE LIES UPON HIM WHO ASSERTS THAT STATUS, AND THE

GOOD FAITH THAT IS ESSENTIAL IS INTEGRAL WITH THE VERY STATUS WHICH MUST BE PROVED.— [T]he presumption of good faith and that a holder of a title is an innocent purchaser for value may be overcome by contrary evidence. Here, the Republic presented evidence that TCT No. 10354, from which Sindophil's TCT No. 132440 was derived, was void. x x x With the Republic having put forward evidence that the Tramo property claimed by Sindophil belongs to the Republic, the burden of evidence shifted to Sindophil to prove that its title to it was valid. Concomitantly, it had the burden of proving that it was indeed a buyer in good faith and for value. As this Court said in *Baltazar v. Court of Appeals*, "the burden of proving the status of a purchaser in good faith and for value lies upon him who asserts that status" and "[i]n discharging that burden, it is not enough to invoke the ordinary presumption of good faith, i.e., that everyone is presumed to act in good faith. The good faith that is [essential here] is integral with the very status which must be proved." Unfortunately for Sindophil, it utterly failed to discharge the burden of evidence because its counsel failed to attend the scheduled initial presentation of evidence.

4. **ID.; ID.; PROPERTY REGISTRATION DECREE; ASSURANCE FUND; ACTION FOR COMPENSATION FROM FUNDS; THE PERSON WHO BRINGS AN ACTION FOR DAMAGES AGAINST THE ASSURANCE FUND MUST BE THE REGISTERED OWNER, AND AS TO HOLDERS OF TRANSFER CERTIFICATES OF TITLE, THAT THEY BE INNOCENT PURCHASERS IN GOOD FAITH AND FOR VALUE.—** With Sindophil failing to prove that it was a buyer in good faith, it cannot recover damages to be paid out of the Assurance Fund under Section 95 of the Property Registration Decree. In *La Urbana v. Bernardo*, this Court held that "it is a condition *sine qua non* that the person who brings an action for damages against the assurance fund be the registered owner, and, as to holders of transfer certificates of title, that they be innocent purchasers in good faith and for value."

APPEARANCES OF COUNSEL

Obligar Law Firm for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

The presumption that a holder of a Torrens title is an innocent purchaser for value is disputable and may be overcome by contrary evidence. Once a *prima facie* case disputing this presumption is established, the adverse party cannot simply rely on the presumption of good faith and must put forward evidence that the property was acquired without notice of any defect in its title.

This resolves Sindophil, Inc.'s (Sindophil) Petition for Review on Certiorari[1] assailing the June 19, 2012 Resolution[2] and November 23, 2012 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 96660. The Court of Appeals deemed as abandoned and, consequently, dismissed Sindophil's joint appeal with a certain Marcelo R. Teodoro (Teodoro) for their failure to file their Appellants' Brief within the required period.[4]

This case involves a 2,791-square-meter parcel of land (Tramo property) located on Aurora Boulevard (Tramo), Pasay City, currently in Sindophil's possession. Sindophil anchors its right to the Tramo property on Transfer Certificate of Title (TCT) No. 132440, which was purportedly issued by the Register of Deeds of Pasay City.[5]

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[1] *Rollo*, pp. 9-31.

[2] *Id*. at 32-33. The Resolution was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr. of the Fourteenth Division, Court of Appeals, Manila.

[3] *Id*. at 34-36. The Resolution was penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Jane Aurora C. Lantion and Eduardo B. Peralta, Jr. of the Former Fourteenth Division, Court of Appeals, Manila.

[4] *Id*. at 32.

[5] *Id*. at 10.

On July 27, 1993, the Republic of the Philippines filed a Complaint[6] for revocation, annulment, and cancellation of certificates of title before the Pasay City Regional Trial Court, and impleaded Sindophil as one of the defendants.

In its Complaint, the Republic alleged that per TCT No. 10354,[7] issued by the Register of Deeds of Pasay City, the Tramo property was initially registered under the name of Teodoro on November 12, 1964. Teodoro then sold it to a certain Reynaldo Puma (Puma), causing the cancellation of TCT No. 10354 and the issuance of TCT No. 128358.[8] Subsequently, Puma sold it to a certain Lourdes Ty (Ty). Puma's TCT No. 128358 was cancelled and TCT No. 129957 was issued to Ty.[9] Finally, on May 3, 1991,[10] Ty sold the property to Sindophil, causing the cancellation of TCT No. 129957 and the issuance of TCT No. 132440 to Sindophil on March 24, 1993.[11]

Despite the issuance of certificates of title over the Tramo property, the Republic claimed that TCT No. 10354 in the name of Teodoro was "spurious or of doubtful authenticity."[12] For one, the registry records of the Register of Deeds of Pasay City showed that it was issued for a parcel of land in the name of a certain Maximo Escobar, not Teodoro.[13] Another instance was that Teodoro's TCT No. 10354 provided that it emanated from TCT No. 3632; but the memorandum of cancellation annotated on TCT No. 3632 provided that it was cancelled by TCT No. 8081 issued to a certain Efigenia A. Vda. de Inocencio, not by TCT No. 10354 supposedly issued to Teodoro.[14]

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[6] *Id*. at 40-47.

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

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

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

[10] *Id*. at 43.

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

[12] *Id*. at 43.

[13] *Id*.

[14] *Id*. at 44.

Furthermore, TCT No. 10354 provided that it covered Lot 3270-B of the subdivision plan Psd-18572, allegedly a portion of Lot 3270 registered in the name of the Republic of the Philippines under TCT No. 6735. An examination of TCT No. 6735, however, revealed that it was never subdivided and that it remained under the name of the Republic. Neither was there a record of subdivision plan Psd-18572 recorded with the Department of Environment and Natural Resources.[15] For these reasons, the Republic argued that TCT No. 10354 and all certificates of title that emanated from it, including Sindophil's TCT No. 132440, were null and void and should accordingly be cancelled.[16]

In their Answer,[17] Teodoro, Puma, Ty, and Sindophil countered that the Republic was estopped from questioning the transfers considering that it had allowed the series of transfers and even accepted the "tremendous amount[s] paid"[18] as capital gains tax. They added that the Complaint was filed because of the Register of Deeds' "personal grudge"[19] against them because they had questioned a consulta issued by the Register of Deeds before the Administrator of the Land Registration Authority.[20] Finally, they contended that they were innocent purchasers for value and, in the absence of evidence to the contrary, reconveyance should not lie.[21] Arguing that the Republic had no cause of action against them, they prayed for the dismissal of the Complaint.[22]

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[15] *Id*.

[16] *Id*. at 45-46.

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

[18] *Id*. at 71.

[19] *Id*.

[20] *Id*. at 71-72.

[21] *Id*. at 72-74.

[22] *Id*. at 75.

During trial, only the Republic was able to present its evidence. Defendants Teodoro, Puma, Ty, and Sindophil were all deemed to have waived their right to present evidence when they failed to present any evidence or witness despite several settings. The parties were then ordered to file their respective memoranda; but instead of filing a memorandum, Sindophil filed a Motion to Re-Open Case,[23] praying that it be allowed to present evidence that it was a buyer in good faith. As to why it failed to present evidence during trial, Sindophil explained that its witness, Sindophil President Victoria Y. Chalid (Chalid), suffered a stroke which prevented her from testifying during trial.[24] Lastly, it pointed out that the Regional Trial Court granted the Republic a total of 110 days to file a formal offer of evidence. Thus, Sindophil prayed that it be "given equal opportunity to present [its] defense since the [Regional Trial Court] had been very lenient to [the Republic's counsel,] the Office of the Solicitor General[.]"[25]

The Regional Trial Court, however, went on to decide the case without acting on Sindophil's Motion to Re-Open Case. In its November 13, 2009 Decision,[26] it ruled in favor of the Republic and voided the certificates of title issued to defendants Teodoro, Puma, Ty, and Sindophil. It found that the Tramo property claimed by Teodoro under TCT No. 10354 was derived from TCT No. 6735 registered in the name of the Republic.[27] However, no annotation of the supposed transfer to Teodoro was annotated on TCT No. 6735.[28]

On the claim of defendants that they were innocent purchasers for value, the Regional Trial Court said that this defense was

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[23] *Id*. at 119-127.

[24] *Id*. at 119.

[25] *Id*. at 125.

[26] *Id*. at 37-38. The Decision, docketed as Civil Case No. 93-10146, was penned by Presiding Judge Jesus B. Mupas of Branch 112, Regional Trial Court, Pasay City.

[27] *Id*. at 37.

[28] *Id*. at 38.

"just a mere [assertion] and was never supported by any documents."[29] It stated that defendants failed to discharge the burden of proving that they were purchasers in good faith and for value, thus, rejecting their argument.[30]

The dispositive portion of the Regional Trial Court November 13, 2009 Decision read:

> **WHEREFORE**, in view of the foregoing, TCT No. 10354 in the name of Marcelo R. Teodoro and all subsequent titles derived therein, TCT Nos. 128358, 129957 and 132440, in the names of Reynaldo Puma, Lourdes Ty and Sindophil, Inc., respectively, are hereby declared **Null and Void**. The Re[gi]ster of Deeds is hereby ordered to effect the cancellation of the same. Likewise, defendants are hereby directed to refrain from exercising or representing acts of ownership and/or possession over the land covered by the titles declared Null and Void.
>
> **SO ORDERED.**[31] (Emphasis in the original)

Sindophil, together with Teodoro, appealed before the Court of Appeals.[32] However, for failure to file their appellants' brief within the required period, the Court of Appeals deemed the appeal abandoned and consequently dismissed it. The Court of Appeals June 19, 2012 Resolution[33] stated:

> In view of the failure of the defendants-appellants to file their Appellants' Brief within the period allowed to them, we hereby consider their appeal as **ABANDONED** and, consequently, **DISMISSED** pursuant to Section 1(e) of Rule 50 of the 1997 Rules of Civil Procedure.
>
> **IT IS SO ORDERED.**[34] (Emphasis in the original)

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[29] *Id*.

[30] *Id*.

[31] *Id*.

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

[33] *Id*. at 32.

[34] *Id*. at 32.

Sindophil filed a Motion for Reconsideration[35] with its appellant's brief[36] annexed to it. It explained that it failed to file its appeal brief on time because its counsel, Atty. Rovenel O. Obligar (Atty. Obligar), transferred his law office from Pasig City to Las Piñas City and, in the process, his house helpers probably lost or inadvertently disposed of the Resolution directing the filing of appeal brief.[37]

In its November 23, 2012 Resolution,[38] the Court of Appeals denied Sindophil's Motion for Reconsideration, thus:

> This has reference to the motion filed by the defendant-appellant Sindophil, Inc., through its counsel, for reconsideration of the resolution promulgated in this case on June 19, 2012.
>
> We find no cogent reason to warrant a reconsideration of the aforementioned resolution. The petitioner, through its counsel, admitted in its motion that it committed lapses. It has to suffer the consequence of such lapses.
>
> Procedural rules have their own wholesome rationale in the orderly administration of justice. Justice is to be administered according to the rules in order to obviate arbitrariness, caprice or whimsicality (*Vasco vs. Court of Appeals, G.R. No. L-46763, February 28, 1978, 81 SCRA 763, 766*).
>
> Thus, procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantive rights. Like all rules, they are required to be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed. While it is true that litigation is not a game of technicalities, this does not mean that the Rules of Court may be ignored at will and at random to the prejudice of the orderly presentation and assessment of the issues and their just resolution.

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[35] *Id*. at 158-162.

[36] *Id*. at 163-177.

[37] *Id*. at 159.

[38] *Id*. at 34-36.

As held by the Supreme Court in *Garbo vs. Court of Appeals, G.R. No. 107698, July 5, 1996, 258 SCRA 159*:

> "Procedural rules are tools designed to facilitate the adjudication of cases. Courts and litigants alike are thus enjoined to abide strictly by the rules. And while the Court, in some instances, allows a relaxation in the application of the rules, this, we stress, was never intended to forge a bastion of erring litigants to violate the rules with impunity. The liberality in the interpretation and application of the rules applies only in proper cases and under justifiable causes and circumstances. While it is true that litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to insure an orderly and speedy administration of justice."

Procedural rules, therefore, are not to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party (*Santos vs. Court of Appeals, G.R. No. 92862, July 4, 1991, 198 SCRA 806*). We find the instant case to be not an exception to the aforementioned rule.

WHEREFORE, in view of the foregoing premises, we hereby **DENY** the motion for reconsideration filed in this case by the defendant-appellant Sindophil, Inc.

SO ORDERED.[39]

On January 18, 2013, Sindophil filed its Petition for Review on Certiorari[40] before this Court. After four (4) Motions[41] for Extension, the Republic filed its Comment[42]on July 15, 2013. In its July 31, 2013 Resolution,[43] this Court noted the Comment and directed Sindophil to file its Reply within 10 days from notice.

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

[40] *Id*. at 9-31.

[41] *Id*. at 179-182, 183-186, 187-191, and 192-196.

[42] *Id*. at 197-219.

[43] *Id*. at 424.

Sindophil was served a copy of the Comment on September 18, 2013 and had until September 28, 2013 to file its Reply.[44] However, Sindophil failed to file its Reply within the required period and its counsel was required to show cause[45] why he should not be disciplinarily dealt with and was again required to file a Reply. On May 15, 2014, Sindophil filed its Reply[46] with its counsel apologizing for failing to file it within the required period "because he honestly believed that the filing of one is optional and not mandatory."[47] This Court noted the Reply in its July 7, 2014 Resolution.[48]

The parties raise both procedural and substantive issues for resolution of this Court. The procedural issues in this case are:

First, whether or not the Court of Appeals erred in dismissing Sindophil's appeal for failure to file an appeal brief within the required period; and

Second, whether or not the Regional Trial Court erred in deciding the case despite Sindophil's filing of a Motion to Re-Open Case.

The substantive issues are:

First, whether or not the certificates of title emanating from TCT No. 10354 are null and void; and

Second, whether or not the Regional Trial Court erred in not awarding Sindophil, compensation from the Assurance Fund.

On the procedural issues, Sindophil mainly argues that it was deprived of the right to "genuine" due process both by the Regional Trial Court and the Court of Appeals. According to Sindophil, its failure to present evidence during trial and its

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[44] *Id*. at 424-A.

[45] *Id*. at 425.

[46] *Id*. at 428-455.

[47] *Id*. at 453.

[48] *Id*. at 462.

failure to file the appeal brief within the required period are "technical grounds"[49] that the Regional Trial Court and the Court of Appeals could have excused in the interest of substantial justice.

On the merits, Sindophil maintains that when it bought the Tramo property from Ty, it was a buyer in good faith and had no notice of any infirmities in his title.[50] Considering that under the Torrens System, "[a] purchaser is not bound by the original certificate of title but only by the certificate of title of the person from whom he purchased the property[,]"[51] the Regional Trial Court erred in voiding its title to the Tramo property because of the supposed anomalies surrounding the issuance of TCT No. 10354 to Teodoro. Assuming that its title is indeed void, Sindophil nevertheless argues that it should have been awarded compensation from the Assurance Fund per Section 95[52] of the Property Registration Decree, as amended.[53]

As for respondent, it argues that there was no deprivation of due process because Sindophil was given more than enough opportunity to present its case but repeatedly and unjustifiably failed to do so. Its reasons for failing to file the appeal brief

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[49] *Id*. at 26.

[50] *Id*. at 17-21.

[51] *Id*. at 20.

[52] PROPERTY REGISTRATION DECREE, Sec. 95 provides:

Section 95. *Action for compensation from funds*. — A person who, without negligence on his part, sustains loss or damage, or is deprived of land or any estate or interest therein in consequence of the bringing of the land under the operation of the Torrens system or arising after original registration of land, through fraud or in consequence of any error, omission, mistake or misdescription in any certificate of title or in any entry or memorandum in the registration book, and who by the provisions of this Decree is barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein, may bring an action in any court of competent jurisdiction for the recovery of damages to be paid out of the Assurance Fund.

[53] *Rollo*, pp. 21-23.

— the Resolution directing the filing of the brief was lost either because of its counsel's transfer of office from Pasig City to Las Piñas City or because it might have been disposed by the counsel's house helpers — are inexcusable and are all due to the negligence of its counsel. With appeal being a mere statutory privilege, respondent argues that the Court of Appeals did not err in dismissing Sindophil's appeal for failure to comply with the Rules of Court.[54]

Furthermore, respondent maintains that the issue of whether a buyer is in good faith is a question of fact. The issue of whether Sindophil is entitled to compensation from the Assurance Fund is likewise a question of fact as entitlement to compensation presupposes that the claimant is a buyer in good faith. These issues being questions of fact, respondent argues that this Court may not resolve them because only questions of law may be brought before this Court on a petition for review on certiorari under Rule 45 of the Rules of Court.[55] In any case, even if the case is resolved on the merits, respondent avers that Sindophil still had the burden of proving that it was a buyer in good faith, an assertion that Sindophil miserably failed to establish. According to respondent, it was error for Sindophil to rely solely on the presumption of good faith without proving its case.[56]

This Petition must be denied.

I

Rule 50, Section 1(e) of the Rules of Court is the basis for dismissing an appeal for failure to file the appellant's brief within the required period:

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[54] *Id*. at 211-215.

[55] *Id*. at 204-206.

[56] *Id*. at 206-208.

RULE 50
Dismissal of Appeal

Section 1. *Grounds for Dismissal of Appeal*. – An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

. . . . . .

(e) Failure of the appellant to serve and file the required number of copies of his brief or memorandum within the time provided by these Rules[.]

With the use of the permissive "may," it has been held that the dismissal is directory, not mandatory, with the discretion to be exercised soundly and "in accordance with the tenets of justice and fair play"[57] and "having in mind the circumstances obtaining in each case."[58] In *Bigornia v. Court of Appeals*:[59]

> Technically, the Court of Appeals may dismiss an appeal for failure of the appellant to file the appellants' brief on time. But, the dismissal is *directory*, not *mandatory*. Hence, the court has discretion to dismiss or not to dismiss the appeal. It is a power conferred on the court, not a duty. The discretion, however, must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the circumstances obtaining in each case.[60] (Emphasis in the original, citation omitted)

In *Bigornia*, this Court ordered the reinstatement of the appeal despite the late filing of the appellant's brief. The petitioners in *Bigornia* were police officers who, this Court said, "receive meager salaries for risking life and limb."[61] With the police officers having been adjudged liable for substantial

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[57] *Bigornia v. Court of Appeals*, 600 Phil. 693, 698 (2009) [Per *J*. Quisumbing, Second Division].

[58] *Id*.

[59] 600 Phil. 693 (2009) [Per *J*. Quisumbing, Second Division].

[60] *Id*. at 698.

[61] *Id*.

amounts in damages, this Court said that "[i]t is but fair that [petitioners] be heard on the merits of their case before being made to pay damages, for what could be, a faithful performance of duty."[62]

The appeal was likewise reinstated in *Aguam v. Court of Appeals*,[63] where a motion for extension of time to file appellant's brief was denied by the Court of Appeals for having been filed nine (9) days[64] beyond the period for filing the appellant's brief. The motion for reconsideration with attached appellant's brief was likewise denied.[65] However, it was established that the notice to file appellant's brief was received by an employee of the realty firm with whom the appellant's lawyer was sharing office, not by the appellant's lawyer who was a solo practitioner.[66] Thus, this Court ordered the Court of Appeals to admit the appellant's brief in the higher interest of justice.[67]

The same extraordinary circumstances similar to *Bigornia* and *Aguam* are *not* present here. In Sindophil's Motion for Reconsideration[68] before the Court of Appeals, Sindophil's counsel, Atty. Obligar, explained that his law office used to be located in Pasig City. However, when two (2) of his staff left due to "family reasons,"[69] he had to transfer his office to Las Piñas City, which was near Parañaque City where he resided. He then speculated that in the course of the transfer, the Court of Appeals' resolution directing Sindophil to file its appeal brief might have been one of the files lost or inadvertently disposed of by his house helpers.[70]

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[62] *Id*.

[63] 388 Phil. 587 (2000) [Per *J*. Pardo, First Division].

[64] *Id*. at 595.

[65] *Id*. at 592.

[66] *Id*. at 594-595.

[67] *Id*. at 595.

[68] *Rollo*, pp. 158-162.

[69] *Id*. at 158.

[70] *Id*. at 159.

Atty. Obligar's excuse is unacceptable. While he is not prohibited from hiring clerks and other staff to help him in his law practice, it is still, first and foremost, his duty to monitor the receipt of notices such as the Court of Appeals' resolution directing the filing of the appellant's brief. He cannot blame his staff or house helpers as it is already settled that the negligence of the clerks and employees of a lawyer binds the latter.[71] That he is not even sure what happened to the Resolution shows his carelessness, and this negligence is one that ordinary diligence could have guarded against. He should have devised a system in his law office whereby his clerks are to immediately route the notices they receive to the handling lawyer because the reglementary period for filing an appeal brief runs from their receipt.[72] Under the circumstances, the Court of Appeals exercised its discretion soundly by deeming Sindophil's appeal as abandoned and, consequently, dismissing the appeal.

II

Neither did the Regional Trial Court err in deciding the case despite Sindophil's filing of a Motion to Re-Open Case.

The order of trial is governed by Rule 30, Section 5 of the Rules of Court, with item (f) specifically governing the reopening of a case to introduce new evidence, thus:

> Section 5. *Order of trial.* — Subject to the provisions of Section 2 of Rule 31, and unless the court for special reasons otherwise directs, the trial shall be limited to the issues stated in the pre-trial order and shall proceed as follows:
>
> (a) The plaintiff shall adduce evidence in support of his complaint;
>
> (b) The defendant shall then adduce evidence in support of his defense, counterclaim, cross-claim and third-party complaint;

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[71] *Negros Stevedoring Co., Inc. v. Court of Appeals*, 245 Phil. 328, 333 (1988) [Per J. Padilla, Second Division].

[72] *Id.*

(c) The third-party defendant, if any, shall adduce evidence of his defense, counterclaim, cross-claim and fourth-party complaint;

(d) The fourth-party, and so forth, if any, shall adduce evidence of the material facts pleaded by them;

(e) The parties against whom any counterclaim or cross-claim has been pleaded, shall adduce evidence in support of their defense, in the order to be prescribed by the court;

(f) The parties may then respectively adduce rebutting evidence only, unless the court, for good reasons and in the furtherance of justice, permits them to adduce evidence upon their original case; and

(g) Upon admission of the evidence, the case shall be deemed submitted for decision, unless the court directs the parties to argue or to submit their respective memoranda or any further pleadings.

If several defendants or third-party defendants, and so forth, having separate defenses appear by different counsel, the court shall determine the relative order of presentation of their evidence. (Underscoring provided)

Republic v. Sandiganbayan[73] explained Rule 30, Section 5 in this wise:

Under this rule, a party who has the burden of proof must introduce, at the first instance, all the evidence he relies upon and such evidence cannot be given piecemeal. The obvious rationale of the requirement is to avoid injurious surprises to the other party and the consequent delay in the administration of justice.

A party's declaration of the completion of the presentation of his evidence prevents him from introducing further evidence; but where the evidence is *rebuttal* in character, whose necessity, for instance, arose from the shifting of the burden of evidence from one party to the other; or where the evidence sought to be presented is in the nature of *newly discovered* evidence, the party's right to introduce further evidence must be recognized. Otherwise, the aggrieved party *may* avail of the remedy of *certiorari*.

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[73] 678 Phil. 358 (2011) [Per J. Brion, *En Banc*].

Largely, the exercise of the court's discretion under the exception of Section 5 (f), Rule 30 of the Ru1es of Court depends on the attendant facts — i.e., on whether the evidence would qualify as a "good reason" and be in furtherance of "the interest of justice." For a reviewing court to properly interfere with the lower court's exercise of discretion, the petitioner must show that the lower court's action was attended by grave abuse of discretion. Settled jurisprudence has defined this term as the capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law. Grave abuse of discretion goes beyond the bare and unsupported imputation of caprice, whimsicality or arbitrariness, and beyond allegations that merely constitute errors of judgment or mere abuse of discretion.

In *Lopez v. Liboro*, we had occasion to make the following pronouncement:

> After the parties have produced their respective direct proofs, they are allowed to offer rebutting evidence only, but, it has been held, the court, for good reasons, in the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. So, generally, additional evidence is allowed when it is newly discovered, or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered. The omission to present evidence on the testator's knowledge of Spanish had not been deliberate. It was due to a misapprehension or oversight.

Likewise, in *Director of Lands v. Roman Archbishop of Manila*, we ruled:

> The strict rule is that the plaintiff must try his case out when he commences. Nevertheless, a relaxation of the rule is permitted in the sound discretion of the court. "The proper rule for the exercise of this discretion," it has been said by an eminent author, "is, that material testimony should not be excluded because offered by the plaintiff after the defendant has rested, although not in rebuttal, unless it has been kept back by a trick, and for

> the purpose of deceiving the defendant and affecting his case injuriously."
>
> These principles find their echo in Philippine remedial law. While the general rule is rightly recognized, the Code of Civil Procedure authorizes the judge "for special reasons," to change the order of the trial, and "for good reason, in the furtherance of justice," to permit the parties "to offer evidence upon their original case." . . .
>
> In his commentaries, Chief Justice Moran had this to say:
>
> However, the court for good reasons, may, in the furtherance of justice, permit the parties to offer evidence upon their original case, and its ruling will not be disturbed where no abuse of discretion appears, Generally, additional evidence is allowed when . . .; but it may be properly disallowed where it was withheld deliberately and without justification.[74] (Emphasis in the original, citations omitted)

The introduction of new evidence even after a party has rested its case may, therefore, be done but only if the court finds that it is for good reasons and in the furtherance of justice. The admission is discretionary on the part of the court and, as explained in *Republic*, may only be set aside if the admission was done with grave abuse of discretion or:

> [T]he capricious and whimsical exercise of judgment, equivalent to lack of jurisdiction; or, the exercise of power in an arbitrary manner by reason of passion, prejudice, or personal hostility, so patent or so gross as to amount to an evasion of a positive duty, to a virtual refusal to perform the mandated duty, or to act at all in contemplation of the law.[75] (citation omitted)

To recall, Sindophil filed an Urgent Motion to Reset Hearing with Notice of Change of Address one (1) day before its scheduled initial presentation of evidence. On motion by the Solicitor General, representing the Republic, the Regional Trial Court denied the Motion to Reset Hearing for having been filed on

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[74] *Id*. at 397-399.

[75] *Id*. at 397-398.

short notice and deemed as waived Sindophil's right to present evidence. The parties were then ordered to file their respective memoranda thirty (30) days from notice, after which the case would be deemed submitted for decision.[76]

Thereafter, Sindophil filed a motion for extension, praying for an additional fifteen (15) days or until February 26, 2009, to file its memorandum.[77] The Regional Trial Court granted the motion in its February 24, 2009 Order.[78] However, despite the grant of extension, Sindophil did not file the required memorandum. Instead, it filed the Motion to Re-Open Case[79] more than a month later or on March 31, 2009. In its Motion to Re-Open Case, Sindophil alleged that its witness, Sindophil President Chalid, had previously suffered a stroke that rendered her indisposed to take the stand.[80]

The stroke suffered by Sindophil's President was not a good reason to reopen the case. In its Pre-Trial Brief, Sindophil indicated the Register of Deeds of Pasay City as its other witness.[81] It could have very well presented the Register of Deeds first while Chalid recovered from her stroke. Why it did not do so is only known to Sindophil.

Furthermore, while illness is a valid ground for postponing a hearing,[82] it does not appear that Sindophil raised Chalid's stroke as a ground to postpone its initial presentation of defense evidence. The illness was only alleged in the Motion to Re-Open Case filed on March 31, 2009, more than three (3) months after the scheduled presentation of evidence on December 10, 2008. The excuse, therefore, appears to be an afterthought.

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[76] *Rollo*, p. 333.

[77] *Id*. at 348.

[78] *Id*.

[79] *Id*. at 119-127.

[80] *Id*. at 119.

[81] *Id*. at 312.

[82] RULES OF COURT, Rule 30, Sec. 4.

Neither can Sindophil claim that it was not given equal opportunity to present its case. Atty. Obligar, counsel for Sindophil, admitted that he never objected to the motions for extension to file formal offer of evidence filed by the Republic.[83] Even if this Court believes that he did not object to the extensions "as a gesture of consideration bearing in mind the work load and bulk of cases being attended to by the [Office of the Solicitor General],"[84] he was still not entitled to expect that the Office of the Solicitor General would grant him the same leniency by not objecting to the Motion to Reset the initial presentation of defense evidence. Litigation is primarily an adversarial proceeding. Counsels are to take every opportunity, so long as it is within the bounds of the law, to advocate their clients' causes.

Furthermore, contrary to Sindophil's claim, the Regional Trial Court entertained the Motion to Re-Open Case that it even set the Motion for clarificatory hearing and oral argument.[85] However, Atty. Obligar again absented himself during the scheduled hearing.

Given the foregoing, the Regional Trial Court did not gravely abuse its discretion in deciding the case despite the filing of the Motion to Re-Open Case.

III

Sindophil insists that it bought the Tramo property from Ty in good faith and that it was an innocent purchaser for value. However, the presumption of good faith and that a holder of a title is an innocent purchaser for value may be overcome by contrary evidence.

Here, the Republic presented evidence that TCT No. 10354, from which Sindophil's TCT No. 132440 was derived, was void. As found by the Regional Trial Court:

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[83] *Rollo*, p. 356.

[84] *Id.*

[85] *Id.* at 358.

Record shows that Certificate of Title No. 6735, wherein the lot claimed by defendant, Marcelo R. Teodoro, lot 3270-B, is derived therefrom, is under the name of the Republic of the Philippines, dated October 17, 1913. Nothing in the subsequent annotations was under the name of any of the defendants and neither the subject TCT No. 10354.[86]

With the Republic having put forward evidence that the Tramo property claimed by Sindophil belongs to the Republic, the burden of evidence shifted to Sindophil to prove that its title to it was valid. Concomitantly, it had the burden of proving that it was indeed a buyer in good faith and for value. As this Court said in *Baltazar v. Court of Appeals*,[87] "the burden of proving the status of a purchaser in good faith and for value lies upon him who asserts that status"[88] and "[i]n discharging that burden, it is not enough to invoke the ordinary presumption of good faith, i.e., that everyone is presumed to act in good faith. The good faith that is [essential here] is integral with the very status which must be proved."[89]

Unfortunately for Sindophil, it utterly failed to discharge the burden of evidence because its counsel failed to attend the scheduled initial presentation of evidence.

Further, looking at the records, the defects in Sindophil's title could be inferred from the annotations in TCT No. 129957, the certificate of title held by Sindophil's immediate predecessor, Ty. A certain Antonio C. Mercado had filed an adverse claim against Ty because the Tramo property had been previously sold to him by Puma, Ty's predecessor.[90] The alleged double sale should have prompted Sindophil to look into Puma's title, TCT No. 128358, where it can be gleaned that Teodoro likewise

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[86] *Id*. at 38.

[87] 250 Phil. 349 (1988) [Per J. Feliciano, Third Division].

[88] *Id*. at 366.

[89] *Id*.

[90] *Rollo*, p. 233.

filed an adverse claim.[91] These annotations show that the Tramo property is controversial and has been the subject of several adverse claims, belying Sindophil's contention that it acquired the property in good faith.

With Sindophil failing to prove that it was a buyer in good faith, it cannot recover damages to be paid out of the Assurance Fund under Section 95[92] of the Property Registration Decree. In *La Urbana v. Bernardo*,[93] this Court held that "it is a condition *sine qua non* that the person who brings an action for damages against the assurance fund be the registered owner, and, as to holders of transfer certificates of title, that they be innocent purchasers in good faith and for value."[94]

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The June 19, 2012 Resolution and November 23, 2012 Resolution of the Court of Appeals in CA-G.R. CV No. 96660 are **AFFIRMED**.

SO ORDERED.

Peralta (*Chairperson*) and *Reyes, A. Jr., JJ.*, concur.

Gesmundo and *Reyes, J. Jr., JJ.*, on wellness leave.

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[91] *Id.* at 231.

[92] PROPERTY REGISTRATION DECREE, Sec. 95 provides:

Section 95. *Action for compensation from funds*.— A person who, without negligence on his part, sustains loss or damage, or is deprived of land or any estate or interest therein in consequence of the bringing of the land under the operation of the Torrens system or arising after original registration of land, through fraud or in consequence of any error, omission, mistake or misdescription in any certificate of title in any entry or memorandum in the registration book, and who by the provisions of this Decree is barred or otherwise precluded under the provision of any law from bringing an action for the recovery of such land or the estate or interest therein, may bring an action in any court of competent jurisdiction for the recovery of damages to be paid out of the Assurance Fund.

[93] 62 Phil. 790 (1936) [Per *J.* Imperial, *En Banc*].

[94] *Id.* at 803.

THIRD DIVISION

[G.R. No. 211206. November 7, 2018]

ROSEMARIE Q. REY, *petitioner, vs.* **CESAR G. ANSON,** *respondent.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; FREEDOM OF CONTRACTS; VOLUNTARINESS DOES NOT MAKE THE STIPULATION ON AN INTEREST, WHICH IS INIQUITOUS, VALID.—** The freedom of contract is not absolute. Article 1306 of the Civil Code provides that "[t]he contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." x x x In the case before us, even if Rosemarie Rey initially suggested the interest rate on the first loan, voluntariness does not make the stipulation on an interest, which is iniquitous, valid. x x x In this case, the first loan had a 7.5% monthly interest rate or 90% interest per annum, while the second loan had a 7% monthly interest rate or 84% interest per annum, which rates are very much higher than the 3% monthly interest rate imposed in *Ruiz v. Court of Appeals* and the 5% monthly interest rate imposed in *Sps. Albos v. Sps. Embisan, et al.* Based on the ruling of the *Spouses Albos* case, the Court holds that the interest rates of 7.5% and 7% are excessive, unconscionable, iniquitous, and contrary to law and morals; and, therefore, void *ab initio.* Hence, the Court of Appeals erred in sustaining the imposition of the said interest rates, while the RTC correctly imposed the legal interest of 12% per annum in place of the said interest rates.

2. **ID.; ID.; ID.; SIMPLE LOAN; INTEREST; NO INTEREST SHALL BE DUE UNLESS IT HAS BEEN STIPULATED IN WRITING.—** Anent the third and fourth loans both in the amount of ₱100,000.00, the Court of Appeals correctly held that as the agreement of 3% monthly interest on the third loan and 4% monthly interest on the fourth loan was merely verbal and not put in writing, no interest was due on the third and fourth loans. This is in accordance with Article 1956 of the Civil Code

which provides that "[n]o interest shall be due unless it has been stipulated in writing." Hence, the payments made as of March 18, 2005 in the third loan amounting to ₱141,360.00 resulted in the overpayment of ₱41,360.00. Moreover, the payments made as of February 2, 2005 in the fourth loan amounting to ₱117,960.00 resulted in an overpayment of ₱17,960.00. Consequently, as found by the Court of Appeals, there was a total overpayment of ₱59,320.00 for the third and fourth loans.

3. **ID.; ID.; ID.; QUASI-CONTRACTS; *SOLUTIO INDEBITI*; WHEN EXCESS PAYMENT IS MADE OUT OF MISTAKE THAT IT IS DUE, AN OBLIGATION TO RETURN IT ARISES.—** Articles 1253 and 2154 of the Civil Code apply to this case, and Cesar Anson is obliged to return to petitioner excess payments received by him. Article 1253 of the Civil Code states that "[i]f the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered." x x x Since Cesar Anson received a total overpayment of ₱269,700.68 from petitioner, he is obliged to return the amount in accordance with the principle of *solutio indebiti* under Article 2154 of the Civil Code x x x. However, in regard to payment of interest on the overpayment made by petitioner, the Court notes its ruling in *Sps. Abella v. Sps. Abella* x x x. In this case, the excess payments made by petitioner were also borne out of a mistake that they were due; hence, following the ruling in *Sps. Abella v. Sps. Abella,* the Court deems it in the better interest of equity not to hold Cesar Anson liable for interest on the excess payments. Nevertheless, an interest at the rate of 6% per annum is imposable on the total judgment award pursuant to *Nacar v. Gallery Frames, et al.,* which held that "[w]hen the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest x x x 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."

4. **ID.; ID.; ID.; DAMAGES; ATTORNEY'S FEES AND LITIGATION EXPENSES; CANNOT BE AUTOMATICALLY RECOVERED AS PART OF DAMAGES.—** It is a settled rule that attorney's fees and litigation expenses cannot be automatically recovered as part of damages in light of the policy that the right to litigate should bear no premium. Attorney's fees are awarded only in

those cases enumerated in Article 2208 of the Civil Code. Considering the absence of facts that justify the award of attorney's fees to herein petitioner, the Court of Appeals was correct in not awarding attorney's fees and litigation expenses to petitioner.

APPEARANCES OF COUNSEL

Aquende Ralla & Associates for petitioner.
Romeo G. Serrano for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, of the Decision[2] of the Court of Appeals dated September 6, 2013 in CA-G.R. CV No. 95012, which reversed and set aside the Decision[3] dated February 5, 2010 of the Regional Trial Court *(RTC)* of Legazpi City, Branch 5, and entered a new judgment ordering herein petitioner Rosemarie Q. Rey to pay respondent Cesar G. Anson the sum of ₱902,847.87, plus twelve percent (12%) interest per annum from September 1, 2013 until fully paid, and to pay legal interest of twelve percent (12%) per annum on the total award due, to be computed from the time the judgment becomes final and executory until the same is fully satisfied.

The facts, as stated by the Court of Appeals, are as follows:

Rosemarie Rey is the President and one of the owners of Southern Luzon Technological College Foundation Incorporated, a computer school in Legazpi City. Sometime in August 2002,

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[1] *Rollo,* pp. 40-67.

[2] *Id.* at 10-29. Penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justices Amelita G. Tolentino and Danton Q. Bueser.

[3] *Id.* at 94-96. Penned by Judge Pedro R. Soriao.

she needed a quick infusion of cash for the said school. She approached a friend, Ben Del Castillo, who introduced her to his acquaintance, Cesar Anson.

On August 23, 2002, Rosemarie Rey borrowed from Cesar Anson the amount of ₱200,000.00 payable in one year, and subject to 7.5% interest per month or ₱15,000.00 monthly interest, which would be paid bi-monthly by way of postdated checks. The loan was secured by a real estate mortgage on Spouses Teodoro and Rosemarie Rey's property, Lot 1271-C-4, covered by Transfer Certificate of Title (*TCT*) No. 50872. In the event of default, the Spouses Rey would pay a penalty charge of 10% of the total amount, plus 12% attorney's fees. The terms and conditions of the loan were embodied in a Deed of Real Estate Mortgage[4] dated August 23, 2002. Rosemarie Rey thereafter issued 24 postdated checks for ₱7,500.00 each, as well as another postdated check for the principal amount of ₱200,000.00.

Three days later, or on August 26, 2002, Rosemarie Rey again borrowed from Cesar Anson ₱350,000.00, subject to 7% interest per month, and payable in four months. The second loan was secured by a real estate mortgage over a parcel of land covered by TCT No. 2776, registered in the name of Rosemarie Rey's mother, Isabel B. Quinto. The parties executed a second Deed of Real Estate Mortgage[5] dated August 26, 2002.

Rosemarie Rey faithfully paid the interest on the first loan for twelve (12) months. She was, however, unable to pay the principal amount of ₱200,000.00 when it became due on August 24, 2003. She appealed to Cesar Anson not to foreclose the mortgage or to impose the stipulated penalty charges, but instead to extend the terms thereof. Cesar Anson agreed and Rosemarie Rey later signed a promissory note[6] dated April 23,

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[4] Exhibit "A"; records, pp. 180-181.

[5] Exhibit "ZZ"; *id.* at 233-234.

[6] Exhibit "21"; *id.* at 326.

2004 and executed a Deed of Real Estate Mortgage[7] dated May 3, 2004, stating that the Spouses Rey's principal obligation of ₱200,000.00 shall be payable in four (4) months from the execution of the Deed of Real Estate Mortgage, and it shall be subject to interest of 7.5% per month. These two documents cancelled, updated and replaced the original agreement on the first loan. Rosemarie Rey once again issued postdated checks to cover the interest payments on the amended first loan, the latest of which was dated August 23, 2004, and another postdated check for ₱200,000.00 for the principal amount. Rosemarie Rey was able to make good on her interest payments, but thereafter failed to pay the principal amount of ₱200,000.00.

Anent the second loan of ₱350,000.00, Rosemarie Rey failed to faithfully pay monthly interest thereon and she was unable to pay the principal amount thereof when it became due on December 26, 2002. Rosemarie Rey appealed to Cesar Anson not to foreclose the mortgage securing the same or to impose the penalty charges, but instead to extend the terms thereof. Cesar Anson agreed, and the parties executed anew a Deed of Real Estate Mortgage[8] dated January 19, 2003 wherein Rosemarie Rey acknowledged her indebtedness to Cesar Anson in the amount of ₱611,340.00, payable within four months from the execution of the Deed of Real Estate Mortgage, and subject to 7% interest per month.

Four months thereafter, Rosemarie Rey again failed to fulfill her obligation on the second loan. The same was extended once more in a Deed of Real Estate Mortgage[9] dated June 19, 2003 wherein Rosemarie Rey acknowledged indebtedness to Cesar Anson in the amount of ₱761,450.00, payable within six months from the execution of the Deed of Real Estate Mortgage, and subject to the same 7% interest per month.

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[7] Exhibit "B"; *id.* at 182-183.

[8] Exhibit "AAA"; *id.* at 236-238.

[9] Exhibit "BBB"; *id.* at 239-241.

On February 24, 2004, Rosemarie Rey obtained a third loan from Cesar Anson in the amount of ₱100,000.00. The third loan was not put in writing, but the parties verbally agreed that the same would be subject to 3% monthly interest.

A week later or on March 2, 2004, Rosemarie Rey obtained a fourth loan from Cesar Anson for ₱100,000.00. It was also not put in writing, but there was an oral agreement of 4% monthly interest.

On February 25, 2005, Cesar Anson sent Rosemarie Rey a Statement of Account[10] seeking full payment of all four loans amounting to ₱2,214,587.50.

Instead of paying her loan obligations, Rosemarie Rey, through counsel, sent Cesar Anson a letter[11] dated August 8, 2005, stating that the interest rates imposed on the four loans were irregular, if not contrary to law. The 7.5% and 7% monthly interest rates imposed on the first and second loans, respectively, were excessive and unconscionable and should be adjusted to the legal rate. Moreover, no interest should have been imposed on the third and fourth loans in the absence of any written agreement imposing interest. Per Rosemarie Rey's computation using the legal rate of interest, all four loans were already fully paid, as well as the interests thereon. Rey contended that she had overpaid the amount of ₱283,434.19. She demanded from Cesar Anson the return of the excess payment; otherwise, she would be compelled to seek redress in court.

On August 16, 2005, the Spouses Rey and Isabel Quinto filed a Complaint[12] for Recomputation of Loans and Recovery of Excess Payments and Cancellation of Real Estate Mortgages and Checks against Cesar Anson with the RTC of Legazpi City. They prayed for the recomputation of all four loans reflecting the reduction of the interest rates of the first and second loans

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[10] Exhibit "24"; *id.* at 328.

[11] *Id.* at 29.

[12] *Rollo,* pp. 116-126.

to 12% per annum and the disallowance of interest on the third and fourth loans; the return of overpayment amounting to ₱269,700.68; the cancellation and discharge of the real estate mortgages securing the first and second loans; and the award of ₱75,000.00 as attorney's fees and ₱25,000.00 as litigation expenses.

In his Answer with Counter-claim,[13] Cesar Anson sought the dismissal of the complaint for lack of cause of action. He contended that with the suspension of the Usury Law, parties can freely stipulate on the imposable rates of interest that shall accrue on a loan. Cesar Anson alleged that the Spouses Rey freely agreed with him and even proposed the rate of interest to be imposed on Loan 1 and Loan 2. As the Spouses Rey have benefited from the proceeds of the loan, they cannot now be allowed to raise the alleged illegality of the interest rates imposed on the loans. Cesar Anson likewise prayed, by way of counterclaim, for the award of ₱100,000.00 as moral damages and ₱50,000.00 as attorney's fees.

In a Decision[14] dated February 5, 2010, the RTC of Legazpi City, Branch 5 granted the Spouses Rey's complaint for recomputation of the loans.

In regard to the third and fourth loans, the RTC held that since the said loans were not in writing, they could not legally earn interest in accordance with Article 1956[15] of the Civil Code. Therefore, whatever amounts of money that were applied as interest payments in either Loan 3 or Loan 4 were invalid.

Anent the first and second loans with stipulated monthly interest rates at 7.5% and 7%, respectively, the RTC ruled that the stipulated interest rates at 90% per annum and 84% per annum for the first and second loans, respectively, were void. It held

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[13] *Id.* at 146-150.

[14] *Id.* at 94.

[15] Article 1956. No interest shall be due unless it has been expressly stipulated in writing.

that the appropriate interest for the first two loans should be at the legal rate of 12% per annum. It based its ruling on *New Sampaguita Builders Construction, Inc. (NSBCI) v. PNB*,[16] which held that a combined stipulated interest and surcharge ranging from 62% to 71% per annum is iniquitous, unconscionable and exorbitant and, therefore, void.

The RTC further held:

> Rosemarie Rey paid the amount of 1,089,908 pesos as interest payments for the 4 loans x x x. Cesar Anson having received this amount must return it to Rosemarie Rey; otherwise he would unduly enrich himself at her expense.
>
> The 4 loans and the interest payments that obviously made Cesar Anson and Rosemarie Rey in their own rights creditors and debtors to each other are money obligations that are past due. In such a legal condition, compensation will extinguish the obligations as explicitly provided by Article 1278 of the Civil Code x x x.
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> x x x x x x x x x
>
> However, Cesar Anson can be made liable on the interest payments that he received at the time that he was in default.
>
> The plaintiffs' counsel's demand letter dated 08 August 2005 that Cesar Anson received on 11 August 2005 (Exhibit "GGGG") was a valid demand for the right amount regarding the interest payments that Cesar Anson may be liable (United Coconut Planters Bank v. Spouses Samuel and Odette Beluso, G.R. No. 159912). From 11 August 2005 and onwards Cesar Anson was in default on the interest payments that he received (Article 1169 of The Civil Code).
>
> Thus, compensation must have taken place when the obligations arising from the 4 loans and the interest payments became both demandable, that is, the day Cesar Anson was in default on 11 August 2005.
>
> Now, the total principal amount for the 4 loans that Rosemarie Rey received was 750,000 pesos. However, Loan 1's principal obligation in the amount of 200,000 pesos should earn interest at the legal rate of 12% per annum from 23 August 2002 until 11 August 2005.

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[16] 479 Phil. 483 (2004).

Furthermore, Loan 2's principal obligation in the amount of 350,000 pesos should earn interest also at the legal rate of 12% per annum from 26 August 2002 until 11 August 2005. The total amount of interest earned by Loan 1 and Loan 2 should be in the amount of 196,220 pesos, which amount should be added to the total principal obligation of 750,000 pesos. Thus, Rosemarie Rey's total obligation upon the 4 loans on the day that Cesar Anson was in default was 946,220 pesos.

On the other hand, the total amount of interest payments that Cesar Anson received was 1,089,908 pesos.

The above two debts in this case were not of the same amount. The compensation that took place was in the amount of 946,220 pesos which, obviously was partial. Thus, Cesar Anson must pay his remaining debt in the amount of 143,688 pesos.

Needless to say, Loan 1 and Loan 2 having been extinguished by compensation[,] the cancellation of the real estate mortgages that secured these two loans is in order.[17]

The dispositive portion of the Decision of the RTC reads:

WHEREFORE, Premises Considered, this Court renders judgment ordering Mr. Cesar Anson to pay Ms. Rosemarie Rey the amount of 143,688 pesos and furthermore orders the cancellation and revocation of the real estate mortgages that were constituted in favor of Cesar Anson over Lot 1271-C-4 and Lot 11 embraced by Transfer Certificates of Title No. 50872 and No. 2776, respectively. No pronouncement as to costs.[18]

Plaintiffs Spouses Rey and Isabel Quinto and defendant Cesar Anson appealed the Decision of the RTC before the Court of Appeals.

Cesar Anson made this assignment of errors: (1) the court *a quo* erred in ruling that the interest rates of the first and second loans agreed upon by the parties and fixed at 7.5% and 7% per month, respectively, and fixing the same at 12% per

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[17] *Rollo,* pp. 95-96.

[18] *Id.* at 96.

annum; and that the interest rates of the third and fourth loans fixed at 3% and 4% per month, respectively, to be void; (2) the court *a quo* erred in ordering the cancellation and revocation of the real estate mortgages that were constituted in favor of Cesar Anson; and (3) the court *a quo* erred in finding that the parties, in their own right, are creditors and debtors of each other, thereby resulting in Cesar Anson having a remaining debt to Rosemarie Rey in the amount of ₱143,688.00.[19]

On the other hand, the Spouses Rey and Isabel Quinto made this assignment of errors: (1) the court *a quo* erred in its recomputation of the excess payment made by Rosemarie Rey on her loans from Cesar Anson by awarding only ₱143,688.00 instead of the correct amount of ₱269,700.68, which the latter ought to refund to the former; (2) the court *a quo* erred in not holding Cesar Anson liable for the payment of legal interest on the excess payment made by Rosemarie Rey, computed from the date of receipt by the former of the written demand until fully paid; and (3) the court *a quo* erred in not awarding attorney's fees and litigation expenses in favor of Rosemarie Rey.[20]

In a Decision[21] dated September 6, 2013, the Court of Appeals reversed and set aside the Decision of the RTC. It found the appeal of Cesar Anson partly meritorious.

Anent the third and fourth loans, the Court of Appeals held that the RTC correctly declared the interest provisions on the third and fourth loans invalid and that Cesar Anson must return the overpayments thereon to Rosemarie Rey. He admitted that the third and fourth loans were not put in writing. As such, their agreement to impose interests thereon remained verbal and, thus, invalid.

The Court of Appeals stated that the records show that as of March 18, 2005, Rosemarie Rey had already paid the amount

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[19] *Id.* at 78.

[20] *Id.* at 78-79.

[21] *Supra* note 2.

of ₱141,360.00 for the third loan, resulting in overpayment amounting to ₱41,360.00. Moreover, as of February 2, 2005, she had paid the total amount of ₱117,960.00 for the fourth loan, resulting in ₱17,960.00 overpayment, or a total overpayment of ₱59,320.00 for the third and fourth loans. Hence, her obligation on the third and fourth loans was extinguished when Cesar Anson received full payment thereon. There being no interest due, he is obliged to return the overpayment of ₱59,320.00. The said obligation, not being a loan or forbearance of money, is subject to the legal interest of 6% per annum, pursuant to Article 2209 of the Civil Code and the rules on interest payment in the case of *Eastern Shipping Lines, Inc. v. Court of Appeals*,[22] reckoned from the date of extrajudicial demand on August 11, 2005 until full payment.

In regard to the first and second loans, the Court of Appeals agreed with Cesar Anson that with the suspension of the Usury Law and the removal of interest ceiling, the parties are free to stipulate the interest to be imposed on monetary obligations. Hence, the RTC erred when it mitigated the interest rates of 7.5% and 7% due on the first and second loans, respectively. In doing so, it merely took the rates imposed in isolation, without taking into consideration the circumstances in which they were entered into.

The Court of Appeals stated that when Rosemarie Rey entered into the two loan transactions with Cesar Anson, she was fully aware of the imposable interests thereon, as it was the latter who proposed the interest rates of 7.5% and 7% per month. After years of benefiting from the proceeds of the loans, she cannot now be allowed to renege on her obligation to comply with what is incumbent upon her under the loan agreement.

In regard to the first loan in the amount of ₱200,000.00, the Court of Appeals said that the agreement of the parties was embodied in the Real Estate Mortgage dated May 3, 2004, which cancelled, updated and replaced the first Deed of Real Estate

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[22] 304 Phil. 236 (1994).

Mortgage dated August 23, 2002, wherein the parties agreed to a monthly interest rate of 7.5% from the moment of execution on August 23, 2002 until August 24, 2004. Pursuant to their agreement, the Court of Appeals ruled that the stipulated interest may be applied only for the period agreed upon. For the period thereafter, only the legal interest of 12% per annum shall apply, pursuant to Articles 1169[23] and 2209[24] of the Civil Code, reckoned from the date of extrajudicial demand on February 25, 2005. The records showed that Rey was faithful in paying the stipulated interest for the period agreed upon and only the principal amount of ₱200,000.00 remained unpaid. Being a loan obligation, this would earn legal interest at the rate of 12% per annum reckoned from extrajudicial demand on February 25, 2005 until fully paid.

Anent the second loan of ₱350,000.00, the Court of Appeals stated that pursuant to the Deed of Real Estate Mortgage dated June 19, 2003, which cancelled, updated and replaced the Deeds of Real Estate Mortgage dated August 26, 2002 and January 19,

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[23] ARTICLE 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.

However, the demand by the creditor shall not be necessary in order that delay may exist:

(1) When the obligation or the law expressly so declare; or
(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[24] ARTICLE 2209. If the obligation consists in the payment of a sum of money, and the debtor incurs in delay, the indemnity for damages, there being no stipulation to the contrary, shall be the payment of the interest agreed upon, and in the absence of stipulation, the legal interest, which is six [percent] per annum.

2003, Rosemarie Rey acknowledged that as of June 19, 2003, she had an unpaid principal obligation of ₱500,000.00. She agreed to pay a fixed interest of 7% per month until December 19, 2003, equivalent to ₱261,450.00. Hence, her total obligation amounted to ₱761,450.00. She was able to pay only ₱440,588.00, leaving a balance of ₱320,862.00. Being a loan obligation, and pursuant to *Eastern Shipping Lines, Inc. v. Court of Appeals*,[25] the balance is subject to legal interest at the rate of 12% per annum reckoned from the extrajudicial demand made on February 25, 2005 until fully paid.

The Court of Appeals held:

> In sum, We find that defendant-appellant Cesar Anson is obliged to return to plaintiff-appellant Rosemarie Rey the latter's overpayment in the third and fourth loans amounting to ₱59,320.00, subject to legal interest of 6% per annum reckoned from the date of extrajudicial demand on August 11, 2005. As of August 31, 2013, the total obligation amounted to ₱87,988.62.
>
> For her part, plaintiff-appellant Rosemarie Rey is indebted to defendant-appellant Cesar Anson the amount of ₱200,000.00 and ₱320,862.00 for the first and second loans. Both amounts are subject to legal interest of 12% per annum computed from extrajudicial demand on February 25, 2005. As of August 31, 2013, her obligations amounted to ₱380,460.27 for the first loan, and ₱610,376.22 for the second loan, or the total sum of ₱990,836.49.
>
> We find that legal compensation under Article 1279 of the Civil Code is proper in this case.
>
> x x x Here, plaintiff-appellant Rosemarie Rey and defendant-appellant Cesar Anson are creditors and debtors of each other. Anson owes Rey the amount of ₱87,988.62 representing her overpayment [on] the third and fourth loans plus interest as of August 31, 2013. In turn, Rey's outstanding obligation under the first and second loans to Anson is pegged at ₱990,836.49, also as of August 31, 2013. The obligations are due, liquidated, and demandable. Thus, compensation is proper. Consequently, Rey's remaining indebtedness as of August 31, 2013 is ₱902,847.87. The amount is still subject to the legal rate of interest of 12% per annum until fully paid.

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[25] *Supra* note 22.

Thereafter, plaintiff-appellant Rosemarie Rey is liable to pay legal interest at the rate of 12% per annum, to be computed from the time judgment herein becomes final and executory until the same is fully satisfied, again applying the rules in the case of *Eastern Shipping Line, Inc.* which states that when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.[26] (Citations omitted.)

The Court of Appeals denied the appeal of Rosemarie Rey for payment of attorney's fees, since she was the one who enticed Cesar Anson to lend her money, and then she filed this case for the equitable reduction of her indebtedness for which she bore part, if not all, of the blame.

The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, premises considered, the appeal filed by plaintiff-appellant Rosemarie Rey is hereby DENIED while the appeal filed by defendant-appellant Cesar Anson is GRANTED. The Decision dated February 5, 2010 of the Regional Trial Court (RTC), Branch 5, Legazpi City is REVERSED and SET ASIDE. In lieu thereof, a new judgment is entered ordering plaintiff-appellant Rosemarie Rey to pay defendant-appellant Cesar Anson the amount of Nine Hundred Two Thousand Eight Hundred Forty Seven Pesos and 87/100 (₱902,847.87) plus twelve percent (12%) interest per annum from September 1, 2013 until fully paid; and twelve percent (12%) per annum of the total award due as legal interest, to be computed from the time the judgment becomes final and executory until the same is fully satisfied.[27] (Citation omitted.)

Appellants Spouses Rey's motion for reconsideration was denied by the Court of Appeals in a Resolution[28] dated January 10, 2014.

Petitioner Rosemarie Rey filed this petition, raising these issues:

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[26] *Rollo,* pp. 87-89.

[27] *Id.* at 89.

[28] *Id.* at 92-93.

(1) THE COURT OF APPEALS COMMITTED SERIOUS REVERSIBLE ERROR AND ACTED CONTRARY TO THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT AFFIRMING THE SETTLED PRINCIPLE THAT STIPULATED INTEREST RATES OF 3% PER MONTH OR HIGHER ARE EXCESSIVE, UNCONSCIONABLE AND CONTRARY TO MORALS, WHEN IT REVERSED AND SET ASIDE THE DECISION OF THE TRIAL COURT DECLARING THE STIPULATED MONTHLY INTEREST RATES OF 7.5% AND 7% ON LOAN 1 AND LOAN 2 TO BE INIQUITOUS, UNCONSCIONABLE AND EXORBITANT AND REDUCING THE SAME TO 12% PER ANNUM;

(2) THE TRIAL COURT, IN RE-COMPUTING THE LOANS OF PETITIONER, COMMITTED SERIOUS REVERSIBLE ERROR AND ACTED CONTRARY TO LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT WHEN –

a) IT DID NOT APPLY AND CREDIT THE PAYMENTS MADE BY PETITIONER ON THE FOUR LOANS AT THE PRECISE TIME SAID PAYMENTS WERE MADE;

b) IT DID NOT APPLY AND CREDIT THE EXCESS PAYMENTS MADE BY PETITIONER ON LOAN 1 AS PAYMENT ON LOAN 2 AT THE TIME SAID EXCESS PAYMENTS WERE MADE;

c) IT DECLARED THAT THE EXCESS PAYMENT OF PETITIONER WAS ONLY ₱143,688.00; AND

d) IT DID NOT IMPOSE LEGAL INTEREST AGAINST RESPONDENT ON THE EXCESS PAYMENTS MADE BY PETITIONER, COMPUTED FROM WRITTEN DEMAND UNTIL THE SAME IS FULLY PAID;

3) THE COURT OF APPEALS AND THE TRIAL COURT COMMITTED SERIOUS REVERSIBLE ERROR AND ACTED CONTRARY TO LAW AND THE APPLICABLE DECISIONS OF THE HONORABLE SUPREME COURT WHEN THEY DID NOT AWARD ATTORNEY'S FEES AND LITIGATION EXPENSES IN FAVOR OF PETITIONER.[29]

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[29] *Id.* at 48.

I. Whether or not the interest rates on the first and second loans are unconscionable and contrary to morals.

Petitioner contends that the Decision of the Court of Appeals insofar as it declared that the stipulated 7.5% and 7% monthly interest rates imposed on Loan 1 and Loan 2, respectively, are valid must be reversed and set aside, as it is contrary to the jurisprudential pronouncements of this Court that stipulated interest rates of 3% per month or higher are unconscionable and contrary to morals.

The Court agrees with petitioner.

The freedom of contract is not absolute. Article 1306 of the Civil Code provides that "[t]he contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

In *Sps. Albos v. Sps. Embisan, et al.*,[30] the Court held:

> As case law instructs, the imposition of an unconscionable rate of interest on a money debt, *even if knowingly and voluntarily assumed*, is immoral and unjust. It is tantamount to a repugnant spoliation and an iniquitous deprivation of property, repulsive to the common sense of man. It has no support in law, in principles of justice, or in the human conscience nor is there any reason whatsoever which may justify such imposition as righteous and as one that may be sustained within the sphere of public or private morals.
>
> Summarizing the jurisprudential trend towards this direction is the recent case of *Castro v. Tan* in which We held:
>
> > While we agree with petitioners that parties to a loan agreement have wide latitude to stipulate on any interest rate in view of the Central Bank Circular No. 905 s. 1982 which suspended the Usury Law ceiling on interest effective January 1, 1983, it is also worth stressing that interest rates

[30] 748 Phil. 907 (2014).

> whenever unconscionable may still be declared illegal. There is certainly nothing in said circular which grants lenders carte blanche authority to raise interest rates to levels which will either enslave their borrowers or lead to a hemorrhaging of their assets.
>
> In several cases, we have ruled that stipulations authorizing iniquitous or unconscionable interests are contrary to morals, if not against the law. In *Medel v. Court of Appeals*, we annulled a stipulated 5.5% per month or 66% per annum interest on a ₱500,000.00 loan and a 6% per month or 72% per annum interest on a ₱60,000.00 loan, respectively, for being excessive, iniquitous, unconscionable and exorbitant. In *Ruiz v. Court of Appeals*, we declared a 3% monthly interest imposed on four separate loans to be excessive. In both cases, the interest rates were reduced to 12% per annum.

In this case, the 5% monthly interest rate, or 60% per annum, compounded monthly, stipulated in the Kasulatan is even higher than the 3% monthly interest rate imposed in the *Ruiz* case. Thus, we similarly hold the 5% monthly interest to be excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law. It is therefore void *ab initio* for being violative of Article 1306 of the Civil Code. With this, and in accord with the *Medel* and *Ruiz* cases, we hold that the Court of Appeals correctly imposed the legal interest of 12% per annum in place of the excessive interest stipulated in the Kasulatan.[31] (Citations omitted; emphasis supplied.)

In the case before us, even if Rosemarie Rey initially suggested the interest rate on the first loan, voluntariness does not make the stipulation on an interest, which is iniquitous, valid.[32] As Rosemarie Rey later realized through the counsel of her lawyer that the interest rates of the first and second loans were excessive and no interest should be imposed on the third and fourth loans, she came to court for recomputation of the loans and recovery of excess payments.

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[31] *Id*. at 918-919.

[32] See *Menchavez v. Bermudez*, 697 Phil. 447, 458 (2012).

In this case, the first loan had a 7.5% monthly interest rate or 90% interest per annum, while the second loan had a 7% monthly interest rate or 84% interest per annum, which rates are very much higher than the 3% monthly interest rate imposed in *Ruiz v. Court of Appeals*[33] and the 5% monthly interest rate imposed in *Sps. Albos v. Sps. Embisan, et al.*[34] Based on the ruling of the *Spouses Albos* case, the Court holds that the interest rates of 7.5% and 7% are excessive, unconscionable, iniquitous, and contrary to law and morals; and, therefore, void *ab initio*. Hence, the Court of Appeals erred in sustaining the imposition of the said interest rates, while the RTC correctly imposed the legal interest of 12% per annum in place of the said interest rates.

Anent the third and fourth loans both in the amount of ₱100,000.00, the Court of Appeals correctly held that as the agreement of 3% monthly interest on the third loan and 4% monthly interest on the fourth loan was merely verbal and not put in writing no interest was due on the third and fourth loans. This is in accordance with Article 1956 of the Civil Code which provides that "[n]o interest shall be due unless it has been stipulated in writing." Hence, the payments made as of March 18, 2005 in the third loan amounting to ₱141,360.00[35] resulted in the overpayment of ₱41,360.00. Moreover, the payments made as of February 2, 2005 in the fourth loan amounting to ₱117,960.00[36] resulted in an overpayment of ₱17,960.00. Consequently, as found by the Court of Appeals, there was a total overpayment of ₱59,320.00 for the third and fourth loans.

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[33] 449 Phil. 419 (2003).

[34] *Supra* note 30.

[35] Exhibits "WWW", "RRR", "SSS", "TTT", "UUU", and "VVV"; records, pp. 257-262.

[36] Exhibits "CCCC", "RRR", "YYY", "ZZZ", "AAAA", and "BBBB"; *id.* at 257, 263-267.

II. Whether or not the computation of payment of interest and the principal amount is correct in Loan 1 and Loan 2, and whether interest is imposable on the excess payments.

Further, petitioner contends that the manner by which the RTC recomputed the four loans after the reduction of the interest rates to 12% per annum was erroneous and contrary to law. It simply added the principal amount of the four loans with the 12% per annum legal interest on Loan 1 and Loan 2, and thereafter deducted from the sum the total amount paid by petitioner. It did not take into consideration the principle that each particular payment should be applied and credited on the precise time it is made, to be applied first on the interest and thereafter on the principal of the loan, pursuant to Article 1253[37] of the Civil Code. Following this principle, petitioner contends that the recomputation of Loan 1, with a principal amount of ₱200,000.00 and an interest rate of 1% per month starting on August 23, 2002, should be as follows:

DATE	PRINCIPAL	MONTHLY INTEREST	PAYMENT	DATE OF PAYMENT	BALANCE PRINCIPAL	INTEREST
09/23/2002	200,000.00	2,000.00	7,500.00[38] 7,500.00[39]	09/08/2002 09/23/2002	187,000.00	0.00
10/23/2002	187,000.00	1,870.00	7,500.00[40] 7,500.00[41]	10/08/2002 10/23/2002	173,870.00	0.00

[37] Article 1253. If the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered.

[38] Exhibit "C"; records, p. 184.

[39] Exhibit "D"; *id.* at 185.

[40] Exhibit "E"; *id.* at 186.

[41] Exhibit "F"; *id.* at 187.

11/23/2002	173,870.00	1,738.70	7,500.00[42] 7,500.00[43]	11/08/2002 11/23/2002	160,608.70	0.00
12/23/2002	160,608.70	1,606.09	7,500.00[44] 7,500.00[45]	12/08/2002 12/23/2002	147,214.79	0.00
01/23/2003	147,214.79	1,472.15	7,500.00[46] 7,500.00[47]	01/08/2003 01/23/2003	133,686.93	0.00
02/23/2003	133,686.93	1,336.87	7,500.00[48] 7,500.00[49]	02/08/2003 02/23/2003	120,023.80	0.00
03/23/2003	120,023.80	1,200.24	7,500.00[50] 7,500.00[51]	03/08/2003 03/23/2003	106,224.04	0.00
04/23/2003	106,224.04	1,062.24	7,500.00[52] 7,500.00[53]	04/08/2003 04/23/2003	92,286.28	0.00
05/23/2003	92,286.28	922.86	7,500.00[54] 7,500.00[55]	05/08/2003 05/23/2003	78,209.15	0.00
06/23/2003	78,209.15	782.09	7,500.00[56] 7,500.00[57]	06/08/2003 06/23/2003	63,991.24	0.00

[42] Exhibit "G"; *id.* at 188.

[43] Exhibit "H"; *id.* at 189.

[44] Exhibit "I"; *id.* at 190.

[45] Exhibit "J"; *id.* at 191.

[46] Exhibit "K"; *id.* at 192.

[47] Exhibit "L"; *id.* at 193.

[48] Exhibit "M"; *id.* at 194.

[49] Exhibit "N"; *id.* at 195.

[50] Exhibit "O"; *id.* at 196.

[51] Exhibit "P"; *id.* at 197.

[52] Exhibit "Q"; *id.* at 198.

[53] Exhibit "R"; *id.* at 199.

[54] Exhibit "S"; *id.* at 200.

[55] Exhibit "T"; *id.* at 201.

[56] Exhibit "U"; *id.* at 202.

[57] Exhibit "V"; *id.* at 203.

07/23/2003	63,991.24	639.91	7,500.00[58] 7,500.00[59]	07/08/2003 07/23/2003	49,631.15	0.00
08/23/2003	49,631.15	496.31	7,500.00[60] 7,500.00[61]	08/08/2003 08/23/2003	35,127.46	0.00
09/23/2003	35,127.46	351.27	7,500.00[62] 7,500.00[63]	09/08/2003 09/23/2003	20,478.74	0.00
10/23/2003	20,478.74	204.79	7,500.00[64] 7,500.00[65]	10/08/2003 10/23/2003	5,683.52	0.00
11/23/2003	5,683.52	56.84	7,500.00[66] 7,500.00[67]	11/08/2003 11/23/2003	(9,2[5]9.64)	0.00
12/23/2003	0.00	0.00	7,500.00[68] 7,500.00[69]	12/08/2003 12/23/2003	(24,259.64)	0.00
01/23/2004			7,500.00[70] 7,500.00[71]	01/08/2004 01/23/2004	(39,259.64)	0.00

[58] Exhibit "W"; *id.* at 204.

[59] Exhibit "X"; *id.* at 205.

[60] Exhibit "Y"; *id.* at 206.

[61] Exhibit "Z"; *id.* at 207.

[62] Exhibit "AA"; *id.* at 208.

[63] Exhibit "BB"; *id.* at 209.

[64] Exhibit "CC"; *id.* at 210.

[65] Exhibit "DD"; *id.* at 211.

[66] Exhibit "EE"; *id.* at 212.

[67] Exhibit "FF"; *id.* at 213.

[68] Exhibit "GG"; *id.* at 214.

[69] Exhibit "HH"; *id.* at 215.

[70] Exhibit "II"; *id.* at 216.

[71] Exhibit "JJ"; *id.* at 217.

02/23/2004			7,500.00[72] 7,500.00[73]	02/08/2004 02/23/2004	(54,259.64)	0.00
03/23/2004			7,500.00[74] 7,500.00[75]	03/08/2004 03/23/2004	(69,259.64)	0.00
04/23/2004			7,500.00[76] 7,500.00[77]	04/08/2004 04/23/2004	(84,259.64)	0.00
05/23/2004			7,500.00[78] 7,500.00[79]	05/08/2004 05/23/2004	(99,259.64)	0.00
06/23/2004			7,500.00[80] 7,500.00[81]	06/08/2004 06/23/2004	(114,259.64)	0.00
07/23/2004			7,500.00[82] 7,500.00[83]	07/08/2004 07/23/2004	(129,259.64)	0.00
08/23/2004			7,500.00[84] 7,500.00[85]	08/08/2004 08/23/2004	(144,259.64)	0.00
TOTAL			360,000.00			

[72] Exhibit "KK"; *id.* at 218.

[73] Petitioner stated that this was paid in cash by Nemia Barrun from the proceeds of LOAN 3 in the amount of ₱100,000.00, and the remaining ₱92,500.00 was deposited in the bank as shown by the deposit slip marked as Exhibit "YY"; *id.* at 232.

[74] Exhibit '"LL"; *id.* at 219.

[75] Exhibit "MM"; *id.* at 220.

[76] Exhibit "NN"; *id.* at 221.

[77] Exhibit "OO"; *id.* at 222.

[78] Exhibit "PP"; *id.* at 223.

[79] Exhibit "QQ"; *id.* at 224.

[80] Exhibit "RR"; *id.* at 225.

[81] Exhibit "SS"; *id.* at 226.

[82] Exhibit "TT"; *id.* at 227.

[83] Exhibit "UU"; *id.* at 228.

[84] Exhibit "VV"; *id.* at 229.

[85] Exhibit "WW"; *id.* at 230.

Petitioner points out that the computation above shows that Loan 1 was already fully paid as of November 8, 2003 and excess payments were made thereafter.

Moreover, petitioner contends that applying the same manner of computation to Loan 2, but at the same time crediting to Loan 2 the excess payments made in Loan 1, the recomputation of Loan 2, with a principal amount of ₱350,000.00 and an interest rate of 1% per month starting August 26, 2002, should be as follows:

DATE	PRINCIPAL	MONTHLY INTEREST	PAYMENT LOAN 2	LOAN 1	BALANCE PRINCIPAL	INTEREST
09/26/02	350,000.00	3,500.00	0.00		350,000.00	3,500.00
10/26/02	350,000.00	3,500.00	0.00		350,000.00	7,000.00
11/26/02	350,000.00	3,500.00	0.00		350,000.00	10,500.00
12/26/02	350,000.00	3,500.00	0.00		350,000.00	14,000.00
01/26/03	350,000.00	3,500.00	20,000.00[86]		337,500.00	0.00
			10,000.00[87]			
02/26/03	337,500.00	3,375.00	0.00		337,500.00	3,375.00
03/26/03	337,500.00	3,375.00	0.00		337,500.00	6,750.00
04/26/03	337,500.00	3,375.00	0.00		337,500.00	10,125.00
05/26/03	337,500.00	3,375.00	0.00		337,500.00	13,500.00
06/26/03	337,500.00	3,375.00	71,7[7]0.00[88]		282,605.00	0.00
07/26/03	282,605.00	2,826.05	35,885.00[89]		213,661.05	0.00
			35,885.00[90]			
08/26/03	213,661.05	2,136.61	0.00		213,661.05	2,136.61
09/26/03	213,661.05	2,136.61	0.00		213,661.05	4,273.22
10/26/03	213,661.05	2,136.61	0.00		213,661.05	6,409.83

[86] Exhibit "CCC"; *id.* at 242.

[87] Exhibit "DDD"; *id.* at 243.

[88] Exhibit "EEE"; *id.* at 244.

[89] Exhibit "FFF"; *id.* at 245.

[90] Exhibit "GGG"; *id.* at 246.

11/26/03	213,661.05	2,136.61	0.00	1,759.64[91] 7,500.00[92]	212,947.85	0.00
12/26/03	212,947.85	2,129.48	0.00	7,500.00[93] 7,500.00[94]	200,077.33	0.00
01/26/04	200,077.33	2,000.77	0.00	7,500.00[95] 7,500.00[96]	187,078.10	0.00
02/26/04	187,078.10	1,870.78	29,631.00[97]	7,500.00[98] 7,500.00[99]	144,317.88	0.00
03/26/04	144,317.88	1,443.18	30,369.00[100]	7,500.00[101] 7,500.00[102]	100,392.06	0.00
04/26/04	100,392.06	1,003.92	29,631.00[103] 29,631.00[104]	7,500.00[105] 7,500.00[106]	27,133.98	0.00
05/26/04	27,133.98	271.34	29,631.00[107] 29,631.00[108]	0.00	(31,856.68)	0.00

[91] First excess payment from LOAN 1; Exhibit "EE", *supra* note 66.

[92] *Supra* note 67.

[93] *Supra* note 68.

[94] *Supra* note 69.

[95] *Supra* note 70.

[96] *Supra* note 71.

[97] Exhibit "HHH"; records, p. 247.

[98] *Supra* note 72.

[99] *Supra* note 73.

[100] Exhibit "III"; records, p. 248.

[101] *Supra* note 74.

[102] *Supra* note 75.

[103] Exhibit "JJJ"; records, p. 249.

[104] Exhibit "KKK"; *id.* at 250.

[105] *Supra* note 76.

[106] *Supra* note 77.

[107] Exhibit "LLL"; records, p. 251.

[108] Exhibit "MMM"; *id.* at 252.

06/26/04	0.00	0.00	29,631.00[109]	0.00	(61,487.68)	0.00
07/26/04	0.00	0.00	29,631.00[110]	0.00	(91,118.68)	0.00
08/26/04	0.00	0.00	29,631.00[111]	0.00	(120,749.68)	0.00
09/26/04	0.00	0.00	29,631.00[112]	0.00	(150,380.68)	0.00
TOTAL			470,588.00	84,259.64		

Petitioner asserts that the computation above shows that Loan 2 was fully paid on May 26, 2004, and excess payments were made thereon in the total amount of ₱150,380.68. The same computation also reveals that out of the excess payments in the total sum of ₱144,259.64 in Loan 1, the amount of ₱84,259.64 was applied and credited to Loan 2, thereby leaving an excess payment of only ₱60,000.00 for Loan 1.

Petitioner contends that as for Loan 3 and Loan 4, she has made excess payments in the sum of ₱41,360.00 and ₱17,960.00, respectively, since no interest was imposable in the absence of a written agreement.

Thus, petitioner contends that she has made excess payments for the four loans in the total sum of ₱269,700.68, which ought to be returned by Cesar Anson in accordance with the principle of *solutio indebiti* under Article 2154 of the Civil Code.

In addition, petitioner contends that Cesar Anson is liable for payment of interest on the excess payment from the time of extrajudicial demand until full payment.

The Court agrees with petitioner that Articles 1253 and 2154 of the Civil Code apply to this case, and Cesar Anson is obliged to return to petitioner excess payments received by him.

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[109] Exhibit "NNN"; *id.* at 253.

[110] Exhibit "OOO"; *id.* at 254.

[111] Exhibit "PPP"; *id.* at 255.

[112] Exhibit "QQQ"; *id.* at 256.

Article 1253 of the Civil Code states that "[i]f the debt produces interest, payment of the principal shall not be deemed to have been made until the interests have been covered." The Court reviewed the computation above made by petitioner for Loan 1 and Loan 2, and found the computation to be correct.

The Court finds that in Loan 1, petitioner already paid in full the principal amount of ₱200,000.00 and monthly interest thereon on November 8, 2003, leaving an excess payment of ₱1,759.64. Further payments made by petitioner from November 23, 2003 to August 23, 2004 resulted in overpayment amounting to ₱144,259.64. The excess payment of ₱9,259.64 as of November 23, 2003 plus excess payments made from December 23, 2003 to April 23, 2004 amounting to ₱84,259.64 in Loan 1 may be applied to Loan 2, leaving a final excess payment of ₱60,000.00 for Loan 1.

As regards Loan 2, petitioner fully paid the principal amount of ₱350,000.00 and monthly interest thereon on May 26, 2004, leaving an excess payment of ₱31,856.68. Payments made thereafter, from June 26, 2004 to September 26, 2004, resulted in excess payments amounting to ₱150,380.68 for Loan 2. Petitioner also made excess payments of ₱41,360.00 in Loan 3, and ₱17,960.00 in Loan 4. Hence, the total excess payments made by petitioner in the four loans amounted to ₱269,700.68.

Since Cesar Anson received a total overpayment of ₱269,700.68 from petitioner, he is obliged to return the amount in accordance with the principle of *solutio indebiti* under Article 2154 of the Civil Code, to wit:

> Article 2154. If something is received when there is no right to demand it, and it was unduly delivered ***through mistake***, the obligation to return it arises. (Emphasis supplied.)

However, in regard to payment of interest on the overpayment made by petitioner, the Court notes its ruling in *Sps. Abella v. Sps. Abella,*[113] thus:

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[113] 763 Phil. 372 (2015).

As respondents made an overpayment, the principle of *solutio indebiti* as provided by Article 2154 of the Civil Code applies. xxx

x x x x x x x x x

In *Moreno-Lentfer v. Wolff,* this court explained the application of *solutio indebiti:*

> The quasi-contract of *solutio indebiti* harks back to the ancient principle that no one shall enrich himself unjustly at the expense of another. It applies where (1) a payment is made when there exists no binding relation between the payor, who has no duty to pay, and the person who received the payment, and (2) the payment is made through mistake, and not through liberality or some other cause.

As respondents had already fully paid the principal and all conventional interest that had accrued, they were no longer obliged to make further payments. Any further payment they made was only because of a mistaken impression that they were still due. Accordingly, petitioners are now bound by a quasi-contractual obligation to return any and all excess payments delivered by respondents.

Nacar provides that "[w]hen 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." This applies to obligations arising from quasi-contracts such as *solutio indebiti.*

Further, Article 2159 of the Civil Code provides:

> Art. 2159. Whoever **in bad faith accepts an undue payment, shall pay legal interest if a sum of money is involved,** or shall be liable for fruits received or which should have been received if the thing produces fruits.
>
> He shall furthermore be answerable for any loss or impairment of the thing from any cause, and for damages to the person who delivered the thing, until it is recovered.

Consistent however, with our finding that the excess payment made by respondents were borne out of a mere mistake that it was due, we find it in the better interest of equity to no longer hold petitioners

liable for interest arising from their quasi-contractual obligation.[114] (Citations omitted; emphasis supplied.)

In this case, the excess payments made by petitioner were also borne out of a mistake that they were due; hence, following the ruling in *Sps. Abella v. Sps. Abella*,[115] the Court deems it in the better interest of equity not to hold Cesar Anson liable for interest on the excess payments.

Nevertheless, an interest at the rate of 6% per annum is imposable on the total judgment award pursuant to *Nacar v. Gallery Frames, et al.*,[116] which held that "[w]hen the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest x x x 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."

III. Whether or not petitioner is entitled to the award of attorney's fees.

Petitioner contends that the Court of Appeals and the RTC erred in not awarding attorney's fees and litigation expenses in her favor.

Petitioner's contention is without merit.

It is a settled rule that attorney's fees and litigation expenses cannot be automatically recovered as part of damages in light of the policy that the right to litigate should bear no premium.[117] Attorney's fees are awarded only in those cases enumerated in Article 2208[118] of the Civil Code. Considering the absence

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[114] *Id.* at 395-397.

[115] *Supra* note 113.

[116] 716 Phil. 267, 283 (2013).

[117] *Land Bank of the Phils. v. Ibarra, et al.,* 747 Phil. 691, 701 (2014).

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

of facts that justify the award of attorney's fees to herein petitioner, the Court of Appeals was correct in not awarding attorney's fees and litigation expenses to petitioner.

WHEREFORE, the Decision of the Court of Appeals dated September 6, 2013 and its Resolution dated January 10, 2014 in CA-G.R. CV No. 95012 are **REVERSED AND SET ASIDE**, and the Decision of the Regional Trial Court of Legazpi City, Branch 5 in Civil Case No. 10489 is **REINSTATED** with the following **MODIFICATION**: respondent Cesar G. Anson is ordered to pay petitioner Rosemarie Q. Rey the amount of Two Hundred Sixty-Nine Thousand Seven Hundred Pesos and Sixty-Eight Centavos (₱269,700.68), with legal interest at the rate of 6% per annum reckoned from the finality of this Decision until full payment.

SO ORDERED.

Leonen and *Hernando, JJ.,* concur.

Gesmundo and *Reyes, J. Jr., JJ.,* on wellness leave.

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(1) When exemplary damages are awarded;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) In criminal cases of malicious prosecution against the plaintiff;
(4) In case of a clearly unfounded civil action or proceeding against the plaintiff:
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) In actions for legal support;
(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;
(8) In actions for indemnity under workmen's compensation and employer's liability laws;
(9) In a separate civil action to recover civil liability arising from a crime;
(10) When at least double judicial costs are awarded;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

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

THIRD DIVISION

[G.R. No. 217349. November 7, 2018]

MARIA FE CRUZ AQUINO *y* VELASQUEZ *a.k.a.* MA. PRECIOSA CRUZ AQUINO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 8239 (THE 1996 PHILIPPINE PASSPORT LAW); VIOLATION OF SECTION 19, PARAGRAPH (c)1; ELEMENTS.— The elements of Section 19, paragraph (c)1 [of Republic Act No. 8239] are: 1. The accused forged, counterfeited, mutilated, or altered any passport or travel document or any passport validly issued, which has become void by the occurrence of any condition prescribed by law; and 2. The accused used, uses, or attempts to use, or furnishes to another for use such false, forged, counterfeited, mutilated or altered passport or travel document or any passport validly issued which has become void by the occurrence of any condition prescribed by law. All the elements are present. x x x [T]he evidence proved beyond reasonable doubt that petitioner submitted false supporting documents in her passport application and in the passport applications of Kim Mariel Cruz Aquino and Leonore Coleen Cruz Aquino. She then used the fraudulently obtained passports and false supporting documents to apply for their United States visas. x x x The intent to use and the act of using fraudulently obtained passports and false supporting documents are not qualified. These were definitely committed when she applied for United States visas. The offenses were already consummated when she was arrested at the United States Embassy. She was in possession of the fraudulently obtained passports and false supporting documents when she applied for United States visas.

2. ID.; CRIMES; CRIMINAL ACTS ARE REGARDED TO HAVE BEEN COMMITTED WITHIN THE PROVINCE OR CITY WHERE THE ACCUSED IS FOUND AND ARRESTED.— Petitioner x x x argues that all the essential elements of the crime took place in the Department of Foreign Affairs, Pasay City, and therefore, is under the jurisdiction of the Regional Trial

Court, Pasay City. Clearly, however, the second element of the offense, the intent to use, was committed in the premises of the United States Embassy in Manila. Criminal acts are regarded to have been committed within the province or city where the appellant was found and arrested.

APPEARANCES OF COUNSEL

Eric P. Fuentes Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

This case involves the application and interpretation of certain provisions in Republic Act No. 8239 or the 1996 Philippine Passport Law.

This is a Petition for Review on Certiorari[1] assailing the Court of Appeals September 4, 2013 Decision[2] and March 19, 2015 Resolution[3] in CA-G.R. CR No. 33654, which dismissed three (3) out of the seven (7) cases against Maria Fe Cruz Aquino y Velasquez (Aquino) for lack of jurisdiction. However, the Court of Appeals affirmed her guilt under Section 19, paragraph c(2) of Republic Act No. 8239 for Criminal Case Nos. 97-161314 to 97-161317.

Seven (7) separate Informations were filed against Aquino before the Regional Trial Court of Manila charging her with

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[1] *Rollo*, pp. 11-51.

[2] *Id*. at 144-162. The Decision was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Amelita G. Tolentino and Ramon R. Garcia of the Fourth Division, Court of Appeals, Manila.

[3] *Id*. at 186. The Resolution was penned by Associate Justice Danton Q. Bueser and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Ramon R. Garcia of the Special Former Fourth Division, Court of Appeals, Manila.

three (3) counts of violation of Section 19, paragraph (b)1 of Republic Act No. 8239 and four (4) counts of violation of Section 19, paragraph (c)l of Republic Act No. 8239:[4]

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[4] Rep. Act No. 8239, Sec. 19 provides:

Section 19. Offenses and Penalties. — A passport being a proclamation of the citizenship of a Filipino, is a document that is superior to all other official documents. As such, it should be accorded the highest respect by its holder that to do damage to its integrity and validity is a serious crime that should be penalized accordingly:

. . . . . .

b) Offenses Relating to False Statements: Penalties. — Any person who willfully and knowingly:

1. Makes any false statement in any application for passport with the intent to induce or secure the issuance of a passport under the authority of the Philippine Government, either for his own use or the use of another, contrary to this Act or rules and regulations prescribed pursuant hereto shall be punished by a fine of not less than Fifteen thousand pesos (₱15,000) nor more than Sixty thousand pesos (₱60,000) and imprisonment of not less than three (3) years nor more than ten (10) years: or

2. Uses or attempts to use any passport which was secured in any way by reason of any false statements, shall be punished by a fine of not less than Fifteen thousand pesos (₱15,000) nor more than Sixty thousand pesos (₱60,000) and imprisonment of not less than three (3) years, but not more than ten (10) years; or

3. Travel and recruitment agencies whose agents, liaison officers or representatives are convicted of offenses relating to false statements shall in addition to the fines and penalties abovementioned have their license revoked with all deposits, escrow accounts or guarantee funds deposited or made as a requirement of their business forfeited in favor of the government without prejudice to the officials of the branch office or of the agency being charged as accessories to the offense and upon conviction barred from engaging in the travel or recruitment agency business.

c) Offenses Relating to Forgery: Penalties. — Any person who:

1. Falsely makes, forges, counterfeits, mutilates or alters any passport or travel document or any supporting document for a passport application, with the intent of using the same shall be punished by a fine of not less than Sixty thousand pesos (₱60,000) nor more than One hundred fifty thousand pesos (₱150,000) and imprisonment of not less than six (6) years nor more than fifteen (15) years; or

2. Willfully or knowingly uses or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated or altered passport

RE: CRIMINAL CASE NOS. 97-161311 to 97-161313

. . . . . .

That on or before the afternoon of 3 November 1997, in Manila, and within the jurisdiction of this Honorable Court, herein accused, did then and there willfully, unlawfully and feloniously MAKE FALSE STATEMENTS in the passport application bearing the name (in Criminal Case No. 97-1613411, "KIM MARIEL CRUZ AQUINO", in Criminal Case No. 97-161312, "MA. PRECIOSA CRUZ AQUINO"; in Criminal Case No. 97-161313, "LEONORE COLEEN CRUZ AQUINO") for the purpose of securing the issuance of a Philippine Passport bearing the aforestated name under the authority of the Republic of the Philippines with the intent of using the same in applying for a U.S. Visa in flagrant violation of the aforesaid law.

RE: CRIMINAL CASE NOS. 97-161314 to 97-161317

. . . . . .

That on or before the afternoon of 3 November 1997, in Manila, and within the jurisdiction of this Honorable Court, herein accused, did then and there willfully, unlawfully and feloniously FORGE (in Criminal Case No. 97-161314, MARRIAGE CONTRACT between MA. PRECIOSA CRUZ AQUINO and JUANITO T. AQUINO with Serial No. 1233216; in Criminal Case No. 97-161315, BIRTH CERTIFICATE bearing the name "KIM MARIEL CRUZ AQUINO"; in Criminal Case No. [97-161316], "DRIVER'S LICENSE with Serial No. NO2-97-097256 bearing the name" "MA. PRECIOSA CRUZ AQUINO"; in Criminal Case No. 97-161317, BIRTH CERTIFICATE bearing the name "LEONOR

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or travel document or any passport validly issued which has become void by the occurrence of any condition therein prescribed shall be punished by a fine of not less than Sixty thousand pesos (₱60,000) nor more than One hundred and fifty thousand pesos (₱150,000) and imprisonment of not less than six (6) years nor more than fifteen (15) years: Provided, however, That officers of corporations, agencies or entities licensed in the travel and recruitment industry would be held similarly as their agents, liaison officers or representatives: Provided, finally, That forgeries of five or more passports or travel documents, would be considered as massive forgery tantamount to national sabotage and shall be punished by a fine of not less than Two hundred and fifty thousand pesos (₱250,000) nor more than One Million pesos (₱1,000,000) and imprisonment of not less than seven (7) years nor more than seventeen (17) years.

COLEEN CRUZ AQUINO") and used the same as supporting document in the accused's application for a U.S. Visa in flagrant violation of the aforesaid law.[5]

On November 3, 1997, Vice Consul Ted Archibal (Archibal) of the Anti-Fraud Unit of the United States Embassy received a call from the non-immigrant visa section through a consular officer, who suspected that the documents submitted by a female applicant with two (2) minor children were fraudulent.[6]

The documents consisted of Philippine Passport No. BB081492 bearing the name "Ma. Preciosa Cruz Aquino"; Philippine Passport No. CC628586 bearing the name "Kim Mariel Cruz Aquino"; Philippine Passport No. CC673078 bearing the name "Leonore Coleen Cruz Aquino"; Marriage Contract between Juanito T. Aquino and Ma. Preciosa Cruz; Certificates of Live Birth pertaining to Kim Mariel Cruz Aquino and Leonore Coleen Cruz Aquino; and Philippine Driver's License No. N02-97-097256 bearing the name "Ma. Preciosa Cruz Aquino."[7]

Aquino was later identified as the female applicant.[8]

After speaking with Aquino, Archibal verified with the National Statistics Office that the submitted documents did not exist.[9]

Archibal reported the matter to Interpol, through National Bureau of Investigation Agent Mario Garcia (Garcia), who immediately went to the United States Embassy. Archibal then turned over the custody of Aquino and the documents to the National Bureau of Investigation through Garcia.[10]

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[5] *Rollo*, p. 145. The RTC Decision had "Lenore" (see *rollo*, p. 54) but the CA Decision had "Leonore" (see *rollo*, p. 145). For consistency, this Decision will use "Leonore."

[6] *Id*. at 165.

[7] *Id.* at 66.

[8] *Id*. at 169.

[9] *Id*. at 166.

[10] *Id*.

According to a National Statistics Office certification dated November 3, 1997, there was no marriage between Juanito T. Aquino and Ma. Preciosa Cruz, contrary to the information indicated in the Marriage Contract submitted to the United States Embassy.[11]

Similarly, the Land Transportation Office certification stated that the name "Aquino, Ma. Preciosa Cruz" did not exist in the file of licenses that it had issued.[12]

On May 19, 1999, Aquino was arraigned and pleaded "not guilty."[13] Joint trial of the cases ensued.[14]

In its March 6, 2009 Decision,[15] the Regional Trial Court found Aquino guilty beyond reasonable doubt of all offenses charged. The dispositive portion of this Decision read:

WHEREFORE, the Court rules as follows:

RE: CRIMINAL CASE NO. 97-161311:

Upon proof beyond reasonable doubt, the accused MARIA FE CRUZ AQUINO Y VELASQUEZ a.k.a. MA. PRECIOSA CRUZ AQUINO, is sentenced to pay a fine of ₱30,000.00 and to suffer imprisonment of 5 years.

RE: CRIMINAL CASE NO. 97-161312:

Upon proof beyond reasonable doubt, the accused MARIA FE CRUZ AQUINO Y VELASQUEZ a.k.a. MA. PRECIOSA CRUZ AQUINO, is sentenced to pay a fine of ₱30,000.00 and to suffer imprisonment of 5 years.

RE: CRIMINAL CASE NO. 97-161313:

Upon proof beyond reasonable doubt, the accused MARIA FE CRUZ AQUINO Y VELASQUEZ a.k.a. MA. PRECIOSA CRUZ

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[11] *Id*. at 167.

[12] *Id*.

[13] *Id*. at 165.

[14] *Id*.

[15] *Id*. at 52-72. The Decision was penned by Presiding Judge Nina G. Antonio-Valenzuela of Branch 28, Regional Trial Court, Manila.

AQUINO, is sentenced to pay a fine of ₱30,000.00 and to suffer imprisonment of 5 years.

RE: CRIMINAL CASE NO. 97-161314:

Upon proof beyond reasonable doubt, the accused MARIA FE CRUZ AQUINO Y VELASQUEZ a.k.a. MA. PRECIOSA CRUZ AQUINO, is sentenced to pay a fine of ₱75,000.00 and to suffer imprisonment of 8 years.

RE: CRIMINAL CASE NO. 97-161315:

Upon proof beyond reasonable doubt, the accused MARIA FE CRUZ AQUINO Y VELASQUEZ a.k.a. MA. PRECIOSA CRUZ AQUINO, is sentenced to pay a fine of ₱75,000.00 and to suffer imprisonment of 8 years.

RE: CRIMINAL CASE NO. 97-161316:

Upon proof beyond reasonable doubt, the accused MARIA FE CRUZ AQUINO Y VELASQUEZ a.k.a. MA. PRECIOSA CRUZ AQUINO, is sentenced to pay a fine of ₱75,000.00 and to suffer imprisonment of 8 years.

RE: CRIMINAL CASE NO. 97-161317:

Upon proof beyond reasonable doubt, the accused MARIA FE CRUZ AQUINO Y VELASQUEZ a.k.a. MA. PRECIOSA CRUZ AQUINO, is sentenced to pay a fine of ₱75,000.00 and to suffer imprisonment of 8 years.

SO ORDERED.[16]

On August 26, 2009,[17] Aquino filed a Motion for Reconsideration, which was denied by the Regional Trial Court in its February 23, 2010 Order.[18]

On appeal, the Court of Appeals modified the Regional Trial Court March 6, 2009 Decision, thus:

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[16] *Id*. at 71-72.

[17] *Id*. at 73.

[18] *Id*. at 73-74. The Order was penned by Presiding Judge Nina G. Antonio-Valenzuela of Branch 28, Regional Trial Court, Manila.

WHEREFORE, in view of the foregoing, the Decision dated March 6, 2009 is hereby MODIFIED as follows: (1) Criminal Cases Nos. 97-161311 to 97-161313 are hereby DISMISSED for lack of jurisdiction of the trial court; (b) the penalty of fine is REDUCED to sixty (60) thousand pesos and imprisonment to six (6) years for each of Criminal Cases Nos. 97-161314 to 97-161317, respectively.

SO ORDERED.[19]

According to the Court of Appeals, the Informations for Criminal Case Nos. 97-161311 to 97-161313 should have been filed before the Regional Trial Court of Pasay City, and not of Manila. The violations of Section 19, paragraph (b)1 of Republic Act No. 8239 were committed in Pasay City since the passport applications were filed with the Department of Foreign Affairs Office at 2330 Roxas Boulevard, Pasay City.[20] Hence, the Court of Appeals dismissed Criminal Case Nos. 97-161311 to 97-161313 for lack of jurisdiction:

Incidentally in criminal actions, it is a fundamental rule that for jurisdiction to be acquired by courts in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. Territorial jurisdiction in criminal cases is the territory where the court has jurisdiction to take cognizance or to try the offense allegedly committed therein by the accused. The jurisdiction of a court over a criminal case is determined by the allegations in the complaint or information. Once these are shown, the court may validly take cognizance of the case.

In the present case, appellant was, *inter alia*, charged in the Regional Trial Court of Manila for three (3) counts of making false statement in the application for Philippine passport under No. 1, Paragraph b, Section 19 of Republic Act No. 8239. Notwithstanding the indictment, the prosecution did not present evidence that [Aquino] committed the offenses being imputed in the City of Manila. What has been established so far by the prosecution was that, on November 3, 1997, [Aquino] together with two (2) children was

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[19] *Id*. at 161.

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

discovered by US Embassy personnel purportedly applying for non-immigrant visas at the US Embassy supported by fraudulent documents. Later, she was turned over to an NBI agent who brought her to the NBI for further investigation. Thus, if [Aquino] indeed perpetrated the acts of making false statement in the application for Philippine passport, acts subject of the Information in this case were already *fait accompli* at the time she together with two (2) children applied for visas at the US Embassy. *By the time the purported crime was discovered by the NBI agent, she, together with the minors, was already applying for US visas using the Philippine passports purportedly secured through fraudulent document. Thus, the proper offense that should have been charged against [Aquino] was No. 2, Paragraph b, Section 19 thereof, that is, the act of using or attempting to use any passport which was secured by reason of any false statements, since at the time she was held by government authorities she was already using or attempting to use the passports she purportedly obtained through fraudulent document[s].*[21] (Emphasis supplied)

However, the Court of Appeals affirmed with modification Aquino's liability under Section 19, paragraph (c)2 of Republic Act No. 8239:

In Criminal Case Nos. 97-161314 to 97-161317, the Informations charged [Aquino] that she wilfully, unlawfully and feloniously "used the same in ... [her] application for US Visa ..." Consequently, if proved, as it was proved, at the trial, she may be convicted, and sentenced accordingly, of the offense of *using the forged documents* under No. 2, Paragraph c, Section 19 of Republic Act No. 8239. Such is the case notwithstanding the error in the designation of the offense in the information, the information remains effective insofar as it states the facts constituting the crime alleged therein. What is controlling is not the title of the complaint, nor the designation of the offense charged or the particular law or part thereof allegedly violated, but the description of the crime charged and the particular facts therein recited.

The above provision of the law has the following elements: (a) that the accused forged, counterfeited, mutilated or altered passport

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[21] *Id*. at 154-155.

or travel document or any passport validly issued which has become void by the occurrence of any condition prescribed by law; [b] that he willfully or knowingly uses or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated or altered passport or travel document or any passport validly issued which has become void by the occurrence of any condition therein prescribed.

In Criminal Cases Nos. 97-161314 to 97-161317, the prosecution duly proved that appellant forged documents in relation to her application for passport as well as those that pertained to the minor children and that she used the same forged documents in securing US visas. Thus, conviction in such cases under No. 2, Paragraph c, Section 19 of Republic Act No. 8239 is warranted.

Undoubtedly, the Regional Trial Court of Manila has jurisdiction over the aforesaid cases since one of the essential ingredients of the crime, that is, the act of using the forg[ed] document[s] was perpetrated in the City of Manila.[22] (Emphasis supplied, citation omitted)

Moreover, the Court of Appeals noted that there was an error in the designation of the offense charged. Aquino should have been charged under paragraph (c)2, instead of paragraph (c)1, of Republic Act No. 8239. The latter pertains to the act of forging and using the forged documents while the former concerns "[w]illfully or knowingly uses or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated or altered passport or travel document [.]"[23]

Nevertheless, the Court of Appeals explained that the title of the complaint is not controlling for it is a mere conclusion of law made by the prosecutor. It is the description of the crime charged that is controlling, and every element of the offense must be correctly stated in the information.[24]

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[22] *Id*. at 158-159.

[23] *Id*. at 157-158.

[24] *Id*. at 157.

On September 20, 2013, Aquino filed a Motion for Partial Reconsideration[25] of the Court of Appeals September 4, 2013 Decision, which was denied in the Court of Appeals March 19, 2015 Resolution.[26]

On May 14, 2015, Aquino filed a Petition for Review on Certiorari before this Court and raised the following issues as errors:

I

THE DECISION VIOLATES THE CONSTITUTIONAL RIGHT OF THE ACCUSED TO DUE PROCESS AND THE RIGHT TO BE INFORMED OF THE NATURE AND CAUSE OF ACCUSATION;

II

DESPITE MARRIAGE CONTRACT, BIRTH CERTIFICATES AND DRIVER[']S LICENSE/LTO RECEIPT ARE NOT PASSPORTS, TRAVEL DOCUMENTS OR PASSPORT VALIDLY ISSUED WHICH BECOME VOID AS ENUMERATED IN PAR. C OF R.A. 8239;

III

USING PURPORTEDLY FORGED MARRIAGE CONTRACT, BIRTH CERTIFICATES AND LTO RECEIPT FOR VISA APPLICATION DO NOT CONSTITUTE AN OFFENSE;

IV

THERE WAS NEITHER (1) FORGING OF DOCUMENTS FOR PASSPORT APPLICATIONS NOR (2) USE OF FORGED PASSPORTS, TRAVEL DOCUMENTS OR ANY PASSPORT VALIDLY ISSUED WHICH HAS BECOME VOID BY THE OCCURRENCE OF ANY CONDITION PRESCRIBED THEREIN[;]

V

IN RELATION TO CRIMINAL CASE NO. 97-161314, DESPITE NO PURPORTED FORGED MARRIAGE CONTRACT PERTAINING TO MA. PRECIOSA CRUZ AQUINO WAS PRESENTED AS ALLEGED IN THE INFORMATION;

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[25] *Id*. at 165-182.

[26] *Id*. at 186.

VI

IN RELATION TO CRIMINAL CASE NO. 97-161315, DESPITE NO DOCUMENTARY OR TESTIMONIAL EVIDENCE TO PROVE THAT THE BIRTH CERTIFICATE OF KIM MARIEL CRUZ AQUINO IS A FORGERY;

VII

DESPITE THE FACT THAT THE EXHIBITS VIOLATE (1) HEARSAY EVIDENCE, (2) BEST EVIDENCE RULE[,] AND (3) RULE ON AUTHENTICATION AND PROOF OF PUBLIC DOCUMENTS;

VIII

NOBODY TESTIFIED FROM THE NATIONAL STATISTICS OFFICE OR LAND TRANSPORTATION OFFICE TO ASCERTAIN AS AUTHENTIC THE NSO AND LTO CERTIFICATIONS, RESPECTIVELY[,] AND CATEGORICALLY STATE THE SUBJECT DOCUMENTS WERE FORGED DOCUMENTS.[27]

The issue in this case is whether or not the Court of Appeals erred in finding petitioner Maria Fe Cruz Aquino y Velasquez guilty of violating Section 19, paragraph (c)2 of Republic Act No. 8239.

I

The majority of errors raised in the Petition are factual issues that have already been passed upon, lengthily discussed, and decided by the lower courts.

Petitioner claims that the Court of Appeals erred in holding her liable under Section 19, paragraph (c)2 of Republic Act No. 8239 because what the paragraph punishes is:

2. Willfully or knowingly uses or attempts to use, or furnishes to another for use any such false, forged, counterfeited, mutilated or altered passport or travel document or any passport validly issued which has become void by the occurrence of any condition therein prescribed shall be punished by a fine of not less than Sixty thousand pesos (₱60,000) nor more than One hundred and fifty thousand pesos

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[27] *Id*. at 217-218.

(₱150,000) and imprisonment of not less than six (6) years nor more than fifteen (15) years: Provided, however, That officers of corporations, agencies or entities licensed in the travel and recruitment industry would be held similarly as their agents, liaison officers or representatives: Provided, finally, That forgeries of five or more passports or travel documents, would be considered as massive forgery tantamount to national sabotage and shall be punished by a fine of not less than Two hundred and fifty thousand pesos (₱250,000) nor more than One Million pesos (₱1,000,000) and imprisonment of not less than seven (7) years nor more than seventeen (17) years. (Emphasis supplied)

Petitioner argues that her due process rights were violated because the Information charged her under paragraph (c)1, which provides:

1. ***Falsely makes, forges, counterfeits, mutilates or alters any passport or travel document or any supporting document for a passport application, with the intent of using the same*** shall be punished by a fine of not less than Sixty thousand pesos (₱60,000) nor more than One hundred fifty thousand pesos (₱150,000) and imprisonment of not less than six (6) years nor more than fifteen (15) years[.] (Emphasis supplied)

She claims that the Information only alleges forgery and does not directly allege that she "willfully, unlawfully and feloniously used" the forged documents. On the contrary, the Information reads:

[H]erein accused, did then and there **willfully, unlawfully and feloniously** FORGE . . . ***and used the same*** *as a supporting document in the accused's application for a U.S. Visa* in flagrant violation of the aforesaid law[.][28] (Emphasis supplied.)

A basic reading of the Information shows that "use" of the forged documents was also alleged. The Information was couched in parallel structure. Petitioner's claim is, therefore, patently erroneous.

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[28] *Id*. at 19.

In *Socrates v. Sandiganbayan*,[29] this Court reiterated the variance doctrine:

> Axiomatic is the rule that what controls is not the designation of the offense but its description in the complaint or information. The real nature of the criminal charge is determined not from the caption or preamble of the information nor from the specification of the provision of law alleged to have been violated, they being conclusions of law, but by the actual recital of facts in the complaint or information. It is not the technical name given by the fiscal appearing in the title of the information that determines the character of the crime but the facts alleged in the body of the information.
>
> This Court has repeatedly held that when the facts, acts and circumstances are set forth in the body of an information with sufficient certainty to constitute an offense and to apprise the defendant of the nature of the charge against him, a misnomer or innocuous designation of a crime in the caption or other parts of the information will not vitiate it. In such a case, the facts set forth in the charge controls the erroneous designation of the offense and the accused stands indicted for the offense charged in the statement of facts. The erroneous designation may be disregarded as surplusage.[30] (Citations omitted)

The Regional Trial Court correctly found petitioner guilty beyond reasonable doubt of four (4) counts of violation of Section 19, paragraph (c)1 of Republic Act No. 8239 and not paragraph (c)2 as found by the Court of Appeals.

The elements of Section 19, paragraph (c)1 are:

1. The accused forged, counterfeited, mutilated, or altered any passport or travel document or any passport validly issued, which has become void by the occurrence of any condition prescribed by law; and
2. The accused used, uses, or attempts to use, or furnishes to another for use such false, forged, counterfeited, mutilated or altered passport or travel document or any

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[29] 324 Phil. 151 (1996) [Per *J*. Regalado, Second Division].

[30] *Id*. at 173-174.

> passport validly issued which has become void by the occurrence of any condition prescribed by law.

All the elements are present. As correctly found by the lower courts, the evidence proved beyond reasonable doubt that petitioner submitted false supporting documents in her passport application and in the passport applications of Kim Mariel Cruz Aquino and Leonore Coleen Cruz Aquino. She then used the fraudulently obtained passports and false supporting documents to apply for their United States visas.

Petitioner insists that she should not be held liable because when she was apprehended, she was applying for a United States visa and not for a Philippine passport. The intent to use and the act of using fraudulently obtained passports and false supporting documents are not qualified. These were definitely committed when she applied for United States visas.

The offenses were already consummated when she was arrested at the United States Embassy. She was in possession of the fraudulently obtained passports and false supporting documents when she applied for United States visas.

Petitioner also argues that all the essential elements of the crime took place in the Department of Foreign Affairs, Pasay City, and therefore, is under the jurisdiction of the Regional Trial Court, Pasay City. Clearly, however, the second element of the offense, the intent to use, was committed in the premises of the United States Embassy in Manila. Criminal acts are regarded to have been committed within the province or city where the appellant was found and arrested.[31]

This Court also notes that the counsel for this case is the same lawyer who notarized the pleadings filed in violation of the 2004 Rules on Notarial Practice.[32] In the interest of justice, this Court is suspending the application of these rules to prevent

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[31] See *Parulan v. Director of Prisons*, 130 Phil. 641 (1968) [Per *J.* Angeles, *En Banc*].

[32] *Rollo*, p. 1.

a miscarriage of justice for purposes of resolving the issues raised in those pleadings. This is without prejudice, however, to the administrative liability of the lawyer involved.

The lower courts incorrectly imposed a straight penalty of six (6)-year imprisonment. This Court modifies the penalty of imprisonment to a minimum of six (6) years to a maximum of eight (8) years pursuant to the Indeterminate Sentence Law, which provides that courts shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum provided by law and the minimum term of which shall not be less than the minimum prescribed by law.

WHEREFORE, this **PETITION FOR REVIEW ON *CERTIORARI*** is **DENIED**. The Court of Appeals September 4, 2013 Decision and March 19, 2015 Resolution in CA-G.R. CR No. 33654 are **AFFIRMED** with **MODIFICATION**. Petitioner Maria Fe Cruz Aquino y Velasquez is sentenced to suffer the penalty of imprisonment for a minimum of six (6) years to a maximum of eight (8) years and to pay a fine of ₱60,000.00 for each of the four (4) counts of Violation of Section 19, paragraph (c)1 of Republic Act No. 8239 in Criminal Case Nos. 97-161314 to 97-161317. The penalties shall be served successively.

SO ORDERED.

Peralta (*Chairperson*) and *Hernando, JJ.*, concur.

Gesmundo and *Reyes, J. Jr., JJ.*, on wellness leave.

SECOND DIVISION

[G.R. No. 218167. November 7, 2018]

HENRY R. ESPOSO, *petitioner, vs.* **EPSILON MARITIME SERVICES, INC., W-MARINE INC. and MR. ELPIDIO C. JAMORA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; GENERALLY LIMITED TO RESOLVING ONLY QUESTIONS OF LAW; EXCEPTION.— [T]he Court's jurisdiction in a Rule 45 petition for review on *certiorari* such as this case is generally limited to resolving only questions of law. However, as this case involves essentially conflicting findings of fact by the tribunals *a quo* and the CA, it falls under admitted exceptions to the proscription on questions of fact which had developed in jurisprudence through the years. The Court may and will, thus, take cognizance of this case without issue.

2. ID.; ID.; JUDGMENTS; FINALITY OF JUDGMENTS; A JUDGMENT BECOMES FINAL UPON THE LAPSE OF THE PERIOD TO APPEAL, WITHOUT AN APPEAL BEING PERFECTED OR A MOTION FOR RECONSIDERATION BEING FILED.— A judgment or order becomes final upon the lapse of the period to appeal, without an appeal being perfected or a motion for reconsideration being filed. The period or manner of appeal from the NLRC to the CA is governed by Rule 65, pursuant to the ruling of this Court in *St. Martin Funeral Home* v. *NLRC.* Section 4 of Rule 65, as amended, states that the petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed. In the present case, it is not disputed that respondents timely filed their Rule 65 Petition for *Certiorari* of the NLRC Decision with the CA. Hence, the issuance of the *Entry of Judgment* by the NLRC cannot render moot and academic the Petition for *Certiorari* before the CA and the latter was correct in taking cognizance of the same.

3. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DISABILITY BENEFITS; PERMANENT TOTAL DISABILITY;

CLAIMS FOR TOTAL AND PERMANENT DISABILITY BENEFITS, WHEN PROPER.— Under Article 192(c)(1) of the Labor Code, permanent total disability includes temporary total disability lasting continuously for more than one hundred twenty (120) days, except as otherwise provided in the Rules. The rule adverted to is Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code x x x. This must be read in conjunction with Section 20-B(3) of the POEA-SEC x x x. [T]he Court has held that in order for a claim for total and permanent disability benefits to prosper, any of the following circumstances must obtain: "(a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company[-] designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors whom he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods. In the present case, it is not disputed that Esposo was repatriated on June 20, 2013. He filed the present complaint 104 days therefrom or on October 2, 2013. In other words, Esposo filed his complaint

for total and permanent disability benefits before the lapse of the initial 120-day period from repatriation which the law affords a company-designated physician to determine the nature and extent of a seafarer's disability. This period may even be extended to a maximum period of 240 days on justifiable grounds. In this case, the company had no occasion at all to refer Esposo to its designated physician for assessment because x x x Esposo never submitted himself to the company physician for medical examination.

4. **ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; POST-EMPLOYMENT MEDICAL EXAMINATION; A SEAFARER HAS THE RIGHT TO SEEK THE OPINION OF OTHER DOCTORS BUT THIS IS ON THE ASSUMPTION THAT THERE IS ALREADY A CERTIFICATION BY THE COMPANY-DESIGNATED PHYSICIAN AS TO HIS FITNESS OR DISABILITY WHICH HE DISAGREES WITH.—** The medical certificate dated June 22, 2013 from Dr. Santos did not provide Esposo with a cause of action against respondents. While a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC, this is on the assumption that there is already a certification by the company-designated physician as to his fitness or disability which he disagrees with. It is the company-designated physician who is entrusted with the task of assessing a seafarer's disability and there is a procedure to contest his findings.

5. **ID.; ID.; ID.; ID.; ID.; THE SEAFARER'S FAILURE TO COMPLY WITH THE THREE-DAY REPORTING REQUIREMENT FORFEITS HIS RIGHT TO CLAIM DISABILITY BENEFITS.—** [T]he company was not at all able to assess Esposo's illness because he failed to submit himself for medical examination within the required three-day post-repatriation period under Section 20-B(3) of the POEA-SEC x x x. Hence, considering the allegations of Esposo that he had been suffering the symptoms of his illness while he was onboard the vessel, he should have then submitted himself to Epsilon for referral to a company-designated physician who could have conducted the necessary post-employment medical examination within three (3) days from his repatriation on June 20, 2013 or until June 22, 2013. x x x Having failed to comply with the mandatory reporting

requirements, Esposo's claim for disability benefits must fail. This holds true notwithstanding that he was examined by a private physician within the three-day period. Under the POEA-SEC, it is the company-designated physician who is required to assess a seaman's disability x x x. Hence, for failing to comply with the three-day reporting requirement, Esposo effectively had forfeited his right to claim disability benefits as expressly provided under Section 20-B(3) of the POEA-SEC.

6. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; REQUIRED IN LABOR CASES.— In labor cases, as in other administrative proceedings, **substantial evidence,** or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion, is required. The oft-repeated rule is that whoever claims entitlement to benefits provided by law should establish his right thereto by substantial evidence. Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent.

7. LABOR AND SOCIAL LEGISLATION; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION (POEA); POEA-STANDARD EMPLOYMENT CONTRACT; COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS; COMPENSABILITY OF DISABILITY; ELEMENTS.— For disability to be compensable under Section 20-B of the POEA SEC, two (2) elements must concur: **(1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.** Relevantly, the 2000 POEA-SEC defines **"[w]ork-[r]elated illness"** as **"any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of [the] Contract with the conditions set therein satisfied."** The conditions referred to are: SECTION 32-A. OCCUPATIONAL DISEASES "For an occupational disease and the resulting disability or death to be compensable, **all** of the following conditions must be satisfied: 1) The seafarers work must involve the risks described herein; 2) The disease was contracted as a result of the seafarer's exposure to the described risks; 3) The disease was contracted within a period of exposure and under such other factors necessary to contract it; 4) There was no notorious negligence on the part of the seafarer."

8. ID.; ID.; ID.; ID.; ID.; WHILE THE TEST OF PROOF IN COMPENSATION PROCEEDINGS IS MERELY PROBABILITY, AND NOT ULTIMATE DEGREE OF CERTAINTY, THE CONCLUSIONS OF THE COURTS MUST STILL BE BASED ON REAL EVIDENCE AND NOT JUST INFERENCES AND SPECULATIONS.— [T]he fact alone that Esposo was repatriated due to the termination of his contract and not due to a medical condition already weighs strongly against his claims. The Court had, in the past, ruled that repatriation for an expired contract belies a seafarer's submission that his ailment was aggravated by his working conditions and that it was existing during his term of employment. x x x While the test of proof in compensation proceedings is merely probability, and not ultimate degree of certainty, the conclusions of the courts must still be based on real evidence and not just inferences and speculations. x x x Hence, given Esposo's utter lack of evidence to support his claim that he was already suffering his illness when he was onboard respondents' vessel and that his illness was work-related as against the undisputed documentary evidence of respondents belying such claims coupled with the established fact that he was not medically repatriated, he cannot be compensated for his illness.

APPEARANCES OF COUNSEL

Carrera and Associates Law Office for petitioner.

Ortega, Bacorro, Odulio, Calma & Carbonell for respondents.

D E C I S I O N

CAGUIOA, *J.*:

This Petition for Review on *Certiorari*[1] (Petition) assails the Decision[2] dated January 22, 2015 and Resolution[3] dated

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[1] *Rollo,* pp. 10-30.

[2] *Id*. at 34-40. Penned by Associate Justice Eduardo B. Peralta, Jr. with Associate Justices Mario V. Lopez and Francisco P. Acosta, concurring.

[3] *Id*. at 41-43.

May 12, 2015, both of the Court of Appeals (CA) Special Seventh (7th) Division, in CA-G.R. SP No. 136385, which set aside the Decision[4] dated March 28, 2014 and Resolution[5] dated May 22, 2014, both of the National Labor Relations Commission (NLRC), and reinstated the Decision[6] dated January 16, 2014 of the Labor Arbiter (LA) dismissing the complaint[7] filed by Petitioner Henry Esposo (Esposo) against respondents.

The Facts

The following facts are settled:

Esposo had been continuously hired by respondent Epsilon Maritime Services, Inc. (Epsilon), for and in behalf of its foreign principal, respondent W-Marine, Inc. (W-Marine) as Chief Engineer since September 8, 2011. He was last hired on October 25, 2012 under a Philippine Overseas Employment Administration (POEA)-approved Contract of Employment (Contract) for six (6) months with the following terms and conditions:

1.1	Duration of Contract:	6 Months
1.2	Position:	CHIEF ENGINEER
1.3	Basic Monthly Salary:	USD 2,550.00 Per Month
1.4	Hours of Work:	44 Hours Per Week
1.5	Overtime:	USD 1,170.00 Per Month
1.6	Vacation Leave with Pay:	USD 765.00 Per Month
1.7	Point of Hire:	Makati City, Philippines

Prior to this, Esposo underwent a Pre-Employment Medical Examination (PEME) on October 19, 2012 and on October 25, 2012, wherein he was declared fit to work albeit with the recommendation, "Hypertension Controlled with medication."[8] On November 22, 2012, Esposo boarded the vessel M/V

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[4] *Id*. at 88-103.

[5] *Id*. at 104-108.

[6] *Id*. at 76-87.

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

[8] *Id*. at 89.

W-ACE (vessel).[9] On June 20, 2013, he returned to the Philippines after his contract expired. On October 2, 2013, he filed the present complaint for payment of disability benefits with the LA.[10]

Esposo and respondents differ in their version of the events that gave rise to this case, as follows:

According to Esposo, sometime in the last week of April 2013, while in the performance of his duties onboard the vessel, he felt uncomfortable and experienced severe chest pains, dizziness, difficulty of breathing, severe headache and persistent perspiration. He reported the matter to the Master of the vessel but was advised to just wait for his repatriation since his contract was then about to end. His discomfort continued and he was repatriated on June 20, 2013. The following day, he reported to Epsilon for his post-employment medical examination. However, Epsilon merely informed him to take a rest and to wait for their call.[11]

Due to his deteriorating condition, Esposo was not able to wait for Epsilon's call and instead sought medical examination and treatment from an independent physician – Dr. Romeo J. Santos (Dr. Santos) of the Philippine Heart Center.[12] In a Medical Certificate[13] dated June 22, 2013, Esposo was diagnosed with Coronary Heart Disease with a recommendation that he undergo further tests. Subsequently, a Medical Certificate dated November 7, 2013 was issued finding Esposo to be suffering from "S/P ACBG–4vessel" and declaring him unfit to work from October 1, 2013 – December 31, 2013.[14]

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[9] *Id*. at 35.

[10] *Id*.

[11] *Id*. at 15-16.

[12] *Id*. at 78.

[13] *Id*. at 51.

[14] *Id*. at 98-99.

Esposo claims that Epsilon never communicated with him nor provided him with the necessary medical attention or financial assistance. Hence, he was compelled to shoulder all expenses for his examinations, medications and hospitalization. Thus, alleging that his health condition did not improve despite the lapse of more than one hundred twenty (120) days and having been found unfit for seafaring duties in any capacity by his independent physician, Esposo filed the present complaint, against respondents, for disability benefits, permanent disability compensation in accordance with his Collective Bargaining Agreement (CBA), sickness allowance for 130 days, reimbursement of medical and hospitalization expenses especially the cost of his coronary artery by-pass, moral and exemplary damages and attorney's fees and other benefits provided by law and his CBA.[15]

On the other hand, respondents aver that during the entire stay of Esposo on board the vessel, he never complained of, suffered from, nor requested for, medical assistance for any health concerns except for one incident on December 17, 2012 involving "skin burn" as reflected in the vessel logbook. Towards the expiration of his contract, Esposo executed a Resignation Report[16] dated April 29, 2013, requesting to be repatriated due to the impending expiration of his contract on May 21, 2013.[17]

After completion of his contract, Esposo signed off from the vessel and arrived in Manila on June 20, 2013. Without submitting himself for mandatory post-employment medical examination within three (3) days from his arrival in the Philippines, Esposo filed the present complaint.

Ruling of the LA

In a Decision dated January 16, 2014, the LA dismissed Esposo's complaint for lack of merit, disposing of the case in the following manner:

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[15] *Id*. at 71-72.

[16] *Id*. at 70.

[17] *Id*. at 61.

WHEREFORE, premises considered, the above-entitled complaint for permanent disability benefits is hereby **DISMISSED** for lack of merit.

SO ORDERED.[18]

The LA held that Esposo failed to substantiate his allegation that he reported to Epsilon for post-employment medical examination by a company-designated physician within three (3) working days upon his return to the Philippines, as required under the POEA Standard Employment Contract (SEC). On the contrary, from the records, Esposo had no reason to seek post-employment medical examination as he was not medically repatriated; rather, his contract was terminated without any issues, much less medical problem. Moreover, he failed to prove that he experienced physical discomfort while on board the vessel and that he reported the same to the Master of the vessel. The medical logbook presented by respondents show that Esposo reported a single instance of skin burn on December 17, 2012. This, according to the LA, substantiates the version of respondents that Esposo never suffered from a medical condition while on board the vessel.[19]

On February 19, 2015,[20] Esposo filed a *Memorandum of Appeal* with the NLRC.

Ruling of the NLRC

In a Decision dated March 28, 2014, the NLRC reversed and set aside the appealed decision of the LA and ordered respondents to pay Esposo disability benefits corresponding to total and permanent disability under the 2010 POEA-SEC in the amount of US$60,000.00, sickness allowance and attorney's fees, disposing of the case as follows:

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[18] *Id*. at 87.

[19] *Id*. at 83-84.

[20] *Id*. at 13.

WHEREFORE, premises considered, the appeal is hereby declared with merit and the appealed decision **REVERSED** and **SET ASIDE;** Respondents are hereby ordered to pay Complainant the following in Philippine Peso at the rate of exchange prevailing at the time of payment:

1.	disability benefits	-	US$60,000.00
2.	130 days sick wage		
	(US$2,550.00 / 30 X 130 days)	-	11,050.00
	Sub-total	-	US$71,050.00
3.	10% attorney's fees which is due to Complainant himself only	-	7,105.00
	TOTAL	-	US$ 78,155.00

VVVVVVVVV

SO ORDERED.[21]

The NLRC ruled that Esposo's submission within 72 hours from repatriation for medical examination, albeit to a private physician, as proven by his Medical Certificate dated June 22, 2013, confirms his claims that he suffered his illness while on board the vessel and that with respondents having failed to provide him with the proper medical care within the required period, he was forced to seek medical treatment from a private physician.[22] According to the NLRC, it cannot be otherwise because his illness could not have been acquired by him between the date of his repatriation on June 20, 2013 to the date that he was issued a medical certification on June 22, 2013.[23]

Further, as Esposo was declared unfit to work until December 31, 2013 in his Medical Certificate dated November 7, 2013,

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[21] *Id*. at 101-102.

[22] *Id*. at 95-96.

[23] *Id*. at 96.

he was unable to return to work for more than 120 days from his repatriation, hence entitled to total and permanent disability benefits under Section 20-A of the POEA-SEC.[24]

Anent his claims for permanent disability benefits under the CBA, the NLRC ruled that Esposo failed to prove his entitlement to the same as his permanent disability was not a result of an accident.[25] Esposo is, however, entitled to sickness allowance for 130 days pursuant to Article 23 of the CBA.[26] Finally, Esposo is entitled to attorney's fees in its extraordinary concept, that is as indemnity damage to be paid by the losing party to the winning party because the latter had to hire a lawyer to protect his interest.[27]

Respondents filed a Motion for Reconsideration, which was, however, denied for lack of merit in a Resolution of the NLRC dated May 22, 2014.[28] This prompted respondents to file a Petition for *Certiorari* before the CA.

Meanwhile, after the issuance of the Entry of Judgment respondent opposed the issuance of a Writ of Execution on the ground of newly-discovered evidence: a printed copy of a POEA-certified Overseas Filipino Worker (OFW) Information[29] showing that Esposo was processed for deployment by the POEA on February 10, 2014 or within 240 days from his repatriation on June 20, 2014. Allegedly, respondents learned that Esposo had served as Chief Engineer subsequent to the filing of his Complaint with the LA, hence negating his claim of total and permanent disability.[30] Nevertheless, the NLRC issued the Writ of Execution dated October 10, 2014.[31]

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[24] *Id*. at 98-100.

[25] *Id*. at 100.

[26] *Id*.

[27] *Id*. at 101.

[28] *Id*. at 107.

[29] *Id*. at 110.

[30] *Id*. at 63.

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

Subsequently, respondents filed a Satisfaction of Judgment with Urgent Motion to Lift Garnishment[32] informing the NLRC that, in order to avert the adverse effect of the Notice of Garnishment served to their depositary bank on their business operations, respondents voluntarily deposited the judgment award with the Cashier of the NLRC on November 3, 2014[33] and that such satisfaction was acknowledged by Esposo in the latter's Urgent Ex-parte Motion to Issue an Order of Release (Directing the NLRC Cashier to Release the Judgment Award)[34] filed before the NLRC on November 5, 2014. As such, respondents prayed that the NLRC terminate the present case without prejudice to the pending Petitions for *Certiorari* and Extraordinary Remedies filed by respondents, and accordingly lift the garnishment issued by the Sheriff.[35]

Ruling of the CA

In the assailed Decision, the CA granted respondents' Petition for *Certiorari,* set aside the decision of the NLRC and accordingly reinstated the Decision of the LA which dismissed Esposo's complaint. The CA disposed of the case in this wise:

> **WHEREFORE,** with the foregoing disquisition, the Petition for Certiorari dated July 22, 2014 is hereby **GRANTED** and the Decision dated March 28, 2014 and Resolution dated May 22, 2014 of the National Labor Relations Commission are hereby **SET ASIDE.** Accordingly, the Decision dated January 16, 2014 of the Labor Arbiter which dismissed private respondent Henry Esposo's Complaint for permanent total disability benefits and other money claims is hereby **REINSTATED.**
>
> **SO ORDERED.**[36]

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[32] *Id*. at 44-46.

[33] *Id*. at 48.

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

[35] *Id*. at 45.

[36] *Id*. at 40.

According to the CA, while the POEA-SEC considers heart disease as occupational, Esposo failed to present any evidence of the mandatory conditions that his heart disease was known to have been present during employment and that an acute exacerbation was clearly precipitated by the unusual strain brought about by the nature of his work. The fact that he was repatriated for a finished contract and not for medical reasons undermined, if not negated, his claim of illness on board the vessel.[37] Moreover, even if his illness is to be considered work-related, his claim for disability benefits must still fail as he failed to comply with the mandatory post-employment medical examination by a company-designated physician within three (3) days from his repatriation.[38]

Esposo filed a Motion for Reconsideration on February 13, 2015[39] which was denied in the assailed Resolution dated May 12, 2015.[40]

Refusing to concede and after filing a *Motion for an Extension of Time to File Petition Under Rule 45*,[41] Esposo filed the present *Petition* on June 29, 2015, raising the following **issues**:

I

THAT THE HONORABLE COURT OF APPEALS HAD COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT REVERSED AND SET ASIDE THE JUDICIOUS AND MERITORIOUS DECISION OF THE HONORABLE NLRC ALTHOUGH THE SAME IS ALREADY FINAL AND EXECUTORY AND IT IS JUDICIOUS AND MERITORIOUS AS IT IS SUPPORTED BY SUBSTANTIAL EVIDENCE AND ARGUMENTS AND IT IS NOT TAINTED WITH PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION.

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

[38] *Id*. at 39.

[39] *Id*. at 14.

[40] *Id*. at 43.

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

II

THAT THE HONORABLE COURT OF APPEALS HAD COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT DID NOT DISMISS THE PETITION OF RESPONDENTS ALTHOUGH RESPONDENTS HAD SETTLED VOLUNTARILY THE JUDGMENT AWARD IN THIS CASE DURING THE TIME THAT THIS CASE WAS UNDER CONCILIATION AND PRE-EXECUTION PROCEEDINGS BEFORE THE HONORABLE NLRC.

III

THAT THE HONORABLE COURT OF APPEALS HAD COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT ERRONEOUSLY CONCLUDED THAT PETITIONER'S EMPLOYMENT CONTRACT HAD ALREADY COMPLETED ALTHOUGH IT IS CLEARLY ESTABLISHED BASED ON THE RECORDS OF THIS CASE THAT PETITIONER DURING THE TERM OF HIS EMPLOYMENT CONTRACT HAD ALREADY FELT THE SYMPTOMS OF HIS CARDIOVASCULAR DISEASE AS HE WAS ALREADY COMPLAINING OF SEVERE HEADACHE, CHEST PAIN, DIZZINESS, RAPID PULSE BEAT AND PERSISTENT PERSPIRATION ON THE LAST WEEK OF APRIL 2013 WHICH ON THIS PERIOD THE EMPLOYMENT CONTRACT OF PETITIONER HAS NOT YET EXPIRED.

IV

THAT THE HONORABLE COURT OF APPEALS HAD COMMITED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT CONCLUDED VERY ERRONEOUSLY THAT PETITIONER WAS NOT MEDICALLY REPATRIATED ALTHOUGH THE MASTER OF THE VESSEL OF RESPONDENTS HAD JUST ADVISED PETITIONER TO JUST WAIT FOR HIS REPATRIATION UPON THE EXPIRATION OF HIS EMPLOYMENT CONTRACT SO THAT HE COULD BE PROPERLY TAKEN CARED OF MEDICALLY IN MANILA.

V

THAT THE HONORABLE COURT OF APPEALS HAD COMMITTED PALPABLE ERROR AND GRAVE ABUSE OF DISCRETION WHEN IT ERRONEOUSLY SWALLOWED HOOK, LINE AND SINKER THE INACURRATE DECLARATION OF RESPONDENTS THAT ALLEGEDLY PETITIONER HAD FAILED TO REPORT FOR MANDATORY THREE DAY POST-EMPLOYMENT MEDICAL

EXAMINATION. ALTHOUGH THE RECORDS OF THIS CASE WILL READILY REVEAL THAT PETITIONER HAD REPORTED TO RESPONDENTS' OFFICE ON JUNE 21, 2013, HOWEVER HE WAS NOT PROPERLY ATTENDED TO BY RESPONDENTS SO THAT PETITIONER WAS EVENTUALLY COMPELLED TO SUBMIT HIMSELF FOR IMMEDIATE MEDICAL ATTENTION TO DR. ROMEO SANTOS AT THE PHILIPPINE HEART CENTER BECAUSE OF RESPONDENTS' UNRESPONSIVE TO PETITIONER'S REQUEST FOR IMMEDIATE MEDICAL ATTENTION HAD FALLEN ON DEAF EARS.

VI

THAT PETITIONER, ON ACCOUNT OF THE BY-PASS OPERATION, IS ALREADY TOTALLY UNFIT FOR WORK AS HE COULD NO LONGER PERFORM THE USUAL PHYSICAL, STRENUOUS AND STRESSFUL ACTIVITIES WHICH IS THE USUAL FUNCTION OF THE SEAFARERS, SO THAT THE HONORABLE NLRC HAD ACTED PROPERLY AND JUDICIOUSLY WHEN IT GRANTED TO PETITIONER HIS FULL DISABILITY COMPENSATION UNDER THE POEA STANDARD EMPLOYMENT CONTRACT PLUS HIS SICK WAGES AND ATTORNEY'S FEES.[42]

The Court's Ruling

The Petition raises procedural and substantive issues, which are mainly factual in nature. At this juncture, it bears stressing that the Court's jurisdiction in a Rule 45 petition for review on *certiorari* such as this case is generally limited to resolving only questions of law. However, as this case involves essentially conflicting findings of fact by the tribunals *a quo* and the CA, it falls under admitted exceptions to the proscription on questions of fact which had developed in jurisprudence through the years.[43]

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

[43] The ten (10) recognized exceptions, at present, were first listed in *Medina v. Mayor Asistio, Jr.*, 269 Phil. 225, 232 (1990); *Pascual v. Burgos,* 776 Phil. 167, 182-183 (2016), to wit:

> (1) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures x x x; (2) When the inference made is manifestly mistaken, absurd or impossible x x x; (3) Where there is a grave abuse of discretion x x x; (4) When the judgment is based on a misapprehension

The Court may and will, thus, take cognizance of this case without issue.

Nonetheless, the petition must fail.

First, the procedural matters raised.

The Entry of Judgment issued by the NLRC and the Satisfaction of the NLRC's Judgment made by the respondents did not render moot and academic, and was without prejudice to, the respondents' Petition for Certiorari before the CA.

Petitioner contends that the CA erred in reversing the Decision of the NLRC when the same had already become final and executory, there being no appeal provided by law therefrom.[44] Likewise, Esposo faults the CA for refusing to dismiss respondents' petition when respondents had already voluntarily settled the judgment award in the present case.[45]

These contentions deserve scant consideration.

A judgment or order becomes final upon the lapse of the period to appeal, without an appeal being perfected or a motion

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of facts x x x; (5) When the findings of fact are conflicting x x x; (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 x x x; (7) The findings of the Court of Appeals are contrary to those of the trial court x x x; (8) When the findings of fact are conclusions without citation of specific evidence on which they are based x x x; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents x x x; 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 x x x.

[44] *Rollo,* pp. 18-20.

[45] *Id*. at 18.

for reconsideration being filed.[46] The period or manner of appeal from the NLRC to the CA is governed by Rule 65, pursuant to the ruling of this Court in *St. Martin Funeral Home v. NLRC*.[47] Section 4 of Rule 65, as amended, states that the petition may be filed not later than sixty (60) days from notice of the judgment, or resolution sought to be assailed.[48] In the present case, it is not disputed that respondents timely filed their Rule 65 Petition for *Certiorari* of the NLRC Decision with the CA. Hence, the issuance of the *Entry of Judgment* by the NLRC cannot render moot and academic the Petition for *Certiorari* before the CA and the latter was correct in taking cognizance of the same.

Anent the issue of the satisfaction of judgment made by respondents which should have allegedly prompted the CA to dismiss respondents' petition filed before it, this contention is likewise untenable. The Satisfaction of Judgment with Urgent Motion to Lift Garnishment filed by respondents contains the categorical caveat that their prayer for the lifting of the garnishment over their depositary bank which hampered their business operations was *without* prejudice to the then pending petition with the CA. Likewise, such course of action by judgment creditors is expressly recognized by the 2011 NLRC Rules of Procedure, Rule XI on Execution Proceedings which provides for the remedy of restitution in similar situations, to wit:

Rule XI
EXECUTION PROCEEDINGS

x x x x x x x x x

SECTION 14. EFFECT OF REVERSAL OF EXECUTED JUDGMENT. – Where the executed judgment is totally or partially reversed or annulled by the Court of Appeals or the Supreme Court, the Labor

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[46] *Phil. Veterans Bank v. Solid Homes, Inc.,* 607 Phil. 14, 21 (2009).

[47] 356 Phil. 811 (1998).

[48] *Dela Rosa v. Michaelmar Philippines, Inc.,* 664 Phil. 154, 162 (2011).

Arbiter shall, on motion, issue such orders of restitution of the executed award, except wages paid during reinstatement pending appeal.

Hence, the satisfaction by respondents of the judgment award of the NLRC did not prejudice the proceedings before the CA. The CA correctly refused to dismiss the respondents' petition on this ground.

Esposo's Complaint for total and permanent disability benefits was prematurely filed.

Entitlement to disability benefits of seafarers is governed by law, contract and the applicable medical findings. The material legal provisions are Articles 191 to 193 of the Labor Code, in relation to Section 2, Rule X of the Amended Rules on Employees' Compensation. The relevant contracts are the POEA-SEC and the CBA, if any.[49]

Under Article 192(c)(1) of the Labor Code, permanent total disability includes temporary total disability lasting continuously for more than one hundred twenty (120) days, except as otherwise provided in the Rules. The rule adverted to is Section 2, Rule X of the Amended Rules on Employees' Compensation Implementing Title II, Book IV of the Labor Code, which states:

SECTION 2. Period of Entitlement. (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at any time after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System. (Underscoring supplied)

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[49] *Gomez v. Crossworld Marine Services, Inc.,* G.R. No. 220002, August 2, 2017, 834 SCRA 279, 294.

This must be read in conjunction with Section 20-B(3) of the POEA-SEC, which provides:

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

Marrying the foregoing, the Court has held that in order for a claim for total and permanent disability benefits to prosper, any of the following circumstances must obtain:

(a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lapse of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification being issued by the company[-] designated physician;

(c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors whom he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[50]

In the present case, it is not disputed that Esposo was repatriated on June 20, 2013. He filed the present complaint 104 days therefrom or on October 2, 2013.[51]

In other words, Esposo filed his complaint for total and permanent disability benefits before the lapse of the initial 120-day period from repatriation which the law affords a company-designated physician to determine the nature and extent of a seafarer's disability. This period may even be extended to a maximum period of 240 days on justifiable grounds. In this case, the company had no occasion at all to refer Esposo to its designated physician for assessment because, as will be discussed further, Esposo never submitted himself to the company physician for medical examination.

The medical certificate dated June 22, 2013 from Dr. Santos did not provide Esposo with a cause of action against respondents. While a seafarer has the right to seek the opinion of other doctors under Section 20-B(3) of the POEA-SEC,[52] this is on

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[50] *Status Maritime Corporation v. Doctolero,* 803 Phil. 453, 461-462 (2017), citing *C.F. Sharp Crew Management, Inc. v. Taok,* 691 Phil. 521, 538-539 (2012).

[51] *Rollo,* p. 71.

[52] B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

x x x x x x x x x

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

the assumption that there is already a certification by the company-designated physician as to his fitness or disability which he disagrees with.[53] It is the company-designated physician who is entrusted with the task of assessing a seafarer's disability and there is a procedure to contest his findings.[54]

Moreover, in their Comment,[55] respondents attached a POEA-certified OFW Information showing that Esposo was processed for employment on February 10, 2014 or within the maximum extended period of 240 days from his repatriation. Based on this evidence, Esposo was "engaged" as a Chief Engineer Officer by local manning agent Conautic Maritime Inc. in behalf of its principal HK Marine PTE, LTD. for six (6) months.[56]

The authenticity and the data contained in this evidence remains to be undisputed by Esposo whose Reply[57] is deafeningly silent on the matter. As such, the Court is left with no recourse but to seriously doubt the truthfulness of the allegations in his Petition that he is "totally unfit for work as x x x he has no more capacity to perform the usual physical, strenuous and stressful activities which is the usual function of the seafarers on board the vessel

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> **employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.**
>
> If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis and underscoring supplied)

[53] *New Filipino Maritime Agencies, Inc. v. Despabeladeras,* 747 Phil. 626, 642 (2014).

[54] *Coastal Safeway Marine Services, Inc. v. Esguerra,* 671 Phil. 56, 65-66 (2011).

[55] *Rollo,* pp. 60-69.

[56] *Id.* at 110.

[57] *Id.* at 120-136.

x x x [and with his] deteriorated physical and medical condition of petitioner, petitioner may not be qualified anymore to resume his seafaring duties as very certainly he may not pass or comply with the rigid and rigorous PEME that is being required under POEA regulation as a condition of redeployment abroad."[58] These appear to be falsehoods and cast serious questions on Esposo's general credibility.

Indeed, prior to his subsequent engagement as reflected in the OFW Information, Esposo underwent a PEME and was therein found fit for sea duty; otherwise, he would not have been hired. In other words, Esposo could have been found by Epsilon's designated physician as fit again for sea duty within the required period of time under the POEA-SEC had Esposo submitted himself for medical examination and such finding would have negated his claim for total and permanent disability benefits. In *Oriental Shipmanagment Co., Inc. v. Nazal,*[59] the Court dismissed the claim of a seafarer who was able to secure a seafaring job after his repatriation and ruled:

> **If Nazal was able to secure an employment as a seaman with another vessel after his disembarkation in November 2001, how can there be a case against the petitioners, considering especially the lapse of time when the case was instituted? How could Nazal be accepted for another ocean-going job if he had not been in good health? How could he be engaged as a seaman after his employment with the petitioners if he was then already disabled?**
>
> **Surely, before he was deployed by Crossocean, he went through a pre-employment medical examination and was found fit to work and healthy; otherwise, he would not have been hired.** Under the circumstances, his ailments resulting in his claimed disability could only have been contracted or aggravated during his engagement by his last employer or, at the very least, during the period after his contract of employment with the petitioners expired.[60] (Emphasis supplied)

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[58] *Id*. at 29.

[59] 710 Phil. 45 (2013).

[60] *Id*. at 56.

Esposo reneged on his duty to submit to a post-employment medical examination within three (3) working days from his repatriation.

As mentioned, the company was not at all able to assess Esposo's illness because he failed to submit himself for medical examination within the required three-day post-repatriation period under Section 20-B(3) of the POEA-SEC, which reads:

B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:

x x x x x x x x x

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

For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits.

If a doctor appointed by the seafarer disagrees with the assessment, a third doctor may be agreed jointly between the Employer and the seafarer. The third doctor's decision shall be final and binding on both parties. (Emphasis and underscoring supplied)

In *Jebsens Maritime, Inc., and/or Alliance Marine Services, Ltd. v. Undag*,[61] the Court explained the rationale for the three-day mandatory requirement, thus:

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[61] 678 Phil. 938 (2011).

x x x The rationale behind the rule can easily be divined. Within three days from repatriation, it would be fairly easier for a physician to determine if the illness was work-related or not. After that period, there would be difficulty in ascertaining the real cause of the illness.

To ignore the rule would set a precedent with negative repercussions because it would open the floodgates to a limitless number of seafarers claiming disability benefits. It would certainly be unfair to the employer who would have difficulty determining the cause of a claimant's illness considering the passage of time. In such a case, the employers would have no protection against unrelated disability claims.[62]

Hence, considering the allegations of Esposo that he had been suffering the symptoms of his illness while he was onboard the vessel, he should have then submitted himself to Epsilon for referral to a company-designated physician who could have conducted the necessary post-employment medical examination within three (3) days from his repatriation on June 20, 2013 or until June 22, 2013.

Esposo's claim that, upon his repatriation, he immediately reported to Epsilon for medical examination but that the latter failed to provide him with any medical attention, does not inspire belief. The records are bereft of any proof that he reported to Epsilon. Being a veteran seafarer knowledgeable in the employers' obligations under compensation laws, as Esposo himself claims in his Petition,[63] Esposo must have known that bare allegations are hardly the required substantial evidence to warrant award of disability benefits. The Court fails to see why he did not obtain any tangible proof or evidence to corroborate his claims. Indeed, his self-serving and unsubstantiated declarations are insufficient to establish his case considering the required quantum of evidence in labor cases.

In labor cases, as in other administrative proceedings, **substantial evidence,** or such relevant evidence as a reasonable

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[62] *Id*. at 948-949.

[63] *Rollo,* p. 24.

mind might accept as sufficient to support a conclusion, is required. The oft-repeated rule is that whoever claims entitlement to benefits provided by law should establish his right thereto by substantial evidence.[64] Substantial evidence is more than a mere scintilla. The evidence must be real and substantial, and not merely apparent.[65]

Notably, as to this factual issue, the CA and the LA both arrived at the conclusion that Esposo did not submit himself to Epsilon for post-employment medical test. The NLRC, who gave credence to Esposo's claim of compliance, did not make any discussion as to how it arrived at its conclusion that respondents had indeed denied Esposo the medical care which the latter had asked for.[66] Hence, under the circumstances, it is reasonable for the Court to lean favorably towards the CA's and LA's findings on this factual matter.

Having failed to comply with the mandatory reporting requirements, Esposo's claim for disability benefits must fail. This holds true notwithstanding that he was examined by a private physician within the three-day period. Under the POEA-SEC, it is the company-designated physician who is required to assess a seaman's disability, as expounded by the Court in the following wise:

> The foregoing provision has been interpreted to mean that **it is the company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment.** Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued

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[64] *Jebsens Maritime, Inc., and/or Alliance Marine Services, Ltd. v .Undag, supra* note 61, at 946-947.

[65] *Panganiban v. Tara Trading Shipmanagement Inc.,* 647 Phil. 675, 688 (2010).

[66] *Rollo,* p. 98.

by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. **For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC.**[67] (Emphases supplied)

Hence, for failing to comply with the three-day reporting requirement, Esposo effectively had forfeited his right to claim disability benefits as expressly provided under Section 20-B(3) of the POEA-SEC.

Esposo failed to present substantial evidence that his illness was work-related and was existing during the time of his employment; hence the same is not compensable.

Even if the requirement as discussed above is dispensed with, Esposo still failed to show that his illness was work-related and compensable. For disability to be compensable under Section 20-B of the POEA SEC,[68] two (2) elements must concur: **(1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract.**[69]

Relevantly, the 2000 POEA-SEC defines **"[w]ork-[r]elated illness"** as **"any sickness resulting to disability or death as a result of an occupational disease listed under**

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[67] See *Coastal Safeway Marine Services Inc. v. Esguerra, supra* note 54.

[68] B. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS

The liabilities of the employer when the seafarer suffers **work-related injury or illness during the term of his contract** are as follows: (Emphasis supplied)

[69] *De Leon v. Maunlad Trans, Inc.*, 805 Phil. 531, 539 (2017).

Section 32-A of [the] Contract with the conditions set therein satisfied."[70] The conditions referred to are:

SECTION 32-A. OCCUPATIONAL DISEASES

For an occupational disease and the resulting disability or death to be compensable, **all** of the following conditions must be satisfied:

1) The seafarers work must involve the risks described herein;

2) The disease was contracted as a result of the seafarer's exposure to the described risks;

3) The disease was contracted within a period of exposure and under such other factors necessary to contract it;

4) There was no notorious negligence on the part of the seafarer. (Emphasis supplied)

Cardio-Vascular diseases are explicitly listed by Section 32-A(11) as occupational diseases when contracted under the conditions therein set, thus:

The following diseases are considered as occupational **when contracted under working conditions involving the risks described herein:**

x x x x x x x x x

11. Cadrio-Vascular Diseases. Any of the following conditions must be met:

a) **If the heart disease was known to have been present during employment, there must be proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.**

b) The strain of the work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship;

c) If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of

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[70] Definition of Terms, par. (12); emphasis supplied.

> cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship. (Emphasis and underscoring supplied)

Hence, although cardio-vascular diseases are listed as occupational diseases, still, to be compensable under the POEA-SEC, all of the four (4) general conditions for occupational diseases under Section 32, **plus any one (1) of the conditions listed under Section 32-A for cardio-vascular diseases,** must nonetheless be proven to have obtained and/or be obtaining. Moreover, the same must be work-related and must have existed during the term of the seafarer's employment.

In the present case, Esposo failed to substantially prove his claim that his illness was work-related or that it was existing during the time of his employment with Epsilon. He failed to show that his illness was known to have been present during his employment or that the nature of his work brought an acute exacerbation thereof as required under Section 32-A (11)(a).

Although there is no dispute that he was suffering from a cardio-vascular disease at the time that he filed the complaint, no proof was presented that such illness subsisted prior to the expiration of his employment contract or even up to the day of his repatriation. Much as he claims that as early as in April 2013, during his employment, he was already feeling severe chest pains and other discomfort, Esposo never presented any written note, request or record about any medical condition to that effect or any medical check-up, consultation or treatment prior to his repatriation.

On the other hand, respondents submitted in evidence a copy of the Medical Vessel Logbook which shows that the only time Esposo complained of a medical condition was on December 17, 2012 when he reported experiencing "skin burn."[71] It is difficult to believe that Esposo merely neglected to enter in the vessel logbook or sought assistance for his "severe chest pain, dizziness, difficulty of breathing, severe headache and persistent

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[71] *Rollo,* p. 84.

perspiration"[72] which, to the Court, sound much graver than a simple skin burn. Likewise, the respondents presented Esposo's "Resignation Report" dated April 29, 2013 where he categorically affirmed that his health condition was not the cause of the termination of his employment contract and hence, his repatriation, thus:

> The undersigned C/E HENRY R[.] ESPOSO
>
> I hereby inform you that my contract with the Company will be terminated on 21st May 2013. In this respect[,] I give notice of termination of my contract with the Company and I wish to be repatriated from Discharging Port Shanghai, China to my country Philippines.
>
> This Notice of Termination is due to personal reasons **having nothing to do with the condition of my health or the general condition on the vessel**[.] In this respect, I declare that I do not have any claim for compensation[.] All the expenses of my repatriation as well as the expenses associated with the boarding of my replacement will be paid by the Company.[73] (Emphasis supplied)

Indeed, the fact alone that Esposo was repatriated due to the termination of his contract and not due to a medical condition already weighs strongly against his claims. The Court had, in the past, ruled that repatriation for an expired contract belies a seafarer's submission that his ailment was aggravated by his working conditions and that it was existing during his term of employment.[74]

Neither can the Court subscribe to the ratio of the NLRC that the lone evidence of Esposo – his June 22, 2013 medical certificate obtained from a private physician – outweighs all evidence and arguments proving that his illness was not work-related nor subsisting during his employment and that he failed to submit himself to a company-designated physician.[75] The

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[72] *Id*. at 15.

[73] *Id*. at 70.

[74] *Villanueva v. Baliwag Navigation, Inc.*, 715 Phil. 299 (2013).

[75] *Rollo,* pp. 95-96.

medical certificate does not prove the work-causation or work-aggravation of Esposo's disease. Neither does it prove that Esposo, prior to proceeding to a private doctor, asked for, and was refused, medical attention by respondents. This holds especially true in light of the substantial documentary evidence of respondents against which Esposo's medical certificate issued by a private physician cannot stand.

While the test of proof in compensation proceedings is merely probability, and not ultimate degree of certainty,[76] the conclusions of the courts must still be based on real evidence and not just inferences and speculations.[77] In *Scanmar Maritime Services, Inc. v. De Leon,*[78] the Court overturned the factual conclusions of the LA, NLRC and the CA that since there was no reported incident befalling the seafarer from the time he disembarked from the vessel to the time he underwent medical examination about two (2) months after, whatever causative circumstances led to his permanent disability must have transpired during his 22 years of employment. In that case, the Court likewise rejected the deduction that the illness subsisted during the seafarer's employment from medical reports and certifications issued after such employment and disembarkation. The Court therein discussed the need to have evidentiary bases, instead of speculations, to conclude the compensability of a seafarer's illness, to wit:

> Noticeably, *Nisda* and *Seagull* did not use the proximity of the development of the injury to the time of disembarkation as the basis for compensability. This Court in those cases made an effort to find out the recognized elements in resolving seafarers' claims: the description of the work, the nature of the injury or illness contracted, and the connection between the two.

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[76] *Villamor v. Employees' Compensation Commission,* 800 Phil. 269, 281-282 (2016).

[77] See *Scanmar Maritime Services, Inc. v. De Leon,* 804 Phil. 279, 291-292 (2017).

[78] *Id.*

Here, the courts *a quo* merely speculated that because respondent worked for 22 years, it then follows that his injury was caused by his engagement as a seafarer. **This blanket speculation alone will not rise to the level of substantial evidence. Whilst the degree of determining whether the illness is work-related requires only probability, the conclusions of the courts must be still be based on real, and not just apparent, evidence.** Especially egregious is the error of the CA when it augmented the speculative conclusions of the LA and the NLRC, by referring to a medical website that has not even been vetted to introduce into the CA Decision a modicum presence of the causality requirement for compensable injuries. **The tribunals should have gone beyond their inferences. They should have determined the duties of De Leon as a seafarer and the nature of his injury, so that they could validly draw a conclusion that he labored under conditions that would cause his purported permanent and total disability.**[79] (Emphasis supplied)

Hence, given Esposo's utter lack of evidence to support his claim that he was already suffering his illness when he was onboard respondents' vessel and that his illness was work-related as against the undisputed documentary evidence of respondents belying such claims coupled with the established fact that he was not medically repatriated, he cannot be compensated for his illness.

In sum, Esposo cannot be awarded the total and permanent disability benefits that he seeks. His complaint was filed prematurely, he was in breach of his contractual obligation to submit to a company-designated physician within the required period, and he failed to prove by substantial evidence the compensability of his illness.

As a final word, while the Court commiserates with Esposo, it cannot ignore the fatal flaws of his case and grant his claims, lest a clear injustice be caused to respondents. As the Court has often held, "consistent with the purposes underlying the formulation of the POEA [Contract], its provisions must be applied fairly, reasonably and liberally in favor of the seafarers,

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[79] *Id*.

for it is only then that its beneficent provisions can be fully carried into effect. This exhortation cannot, however, be taken to sanction the award of disability benefits and sickness allowances based on flimsy evidence and/or even in the face of an unjustified non-compliance with the mandatory reporting requirement under the POEA [Contract]."[80]

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED.** The Decision dated January 22, 2015 and the Resolution dated May 12, 2015 of the Court of Appeals are **AFFIRMED.**

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe,* and *Reyes, A. Jr., JJ.,* concur.

Reyes, J. Jr.,[*] *J.,* on wellness leave.

SECOND DIVISION

[G.R. No. 218428. November 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SEGUNDO BRICERO *y* FERNANDEZ,** *accused-appellant.*

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[80] *Coastal Safeway Marine Services, Inc. v. Esguerra, supra* note 54, at 70.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.

2. **ID.; ID.; DRUG CASES; IN ALL DRUG CASES, COMPLIANCE WITH THE CHAIN OF CUSTODY RULE IS CRUCIAL BECAUSE THE DANGEROUS DRUG ITSELF IS THE VERY *CORPUS DELICTI* OF THE VIOLATION OF THE LAW.—** In cases involving dangerous drugs, the State bears not only the burden of proving x x x [the] elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded. In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.

3. **ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; PROCEDURE; FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY THEREWITH DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID PROVIDED THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED**

ITEMS ARE PROPERLY PRESERVED; SAVING CLAUSE, WHEN APPLICABLE.— In this connection, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. This must be so because with the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great. Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses. x x x Section 21 of the IRR of RA 9165 provides 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." For this provision to be effective, however, the prosecution must first **(1) recognize any lapse on the part of the police**

officers and (2) be able to justify the same. Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.

4. ID.; ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHY OF SEIZED ITEMS; MUST BE CONDUCTED IMMEDIATELY AFTER SEIZURE AND CONFISCATION, AND THE INVENTORY MUST BE DONE IN THE PRESENCE OF THE REQUIRED WITNESSES.— Section 21, paragraph 1 of RA 9165 plainly requires the apprehending team to conduct a **physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation.** Further, the inventory must be done **in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official**, who shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses at the time of the conduct of the physical inventory of the seized items which x x x must be immediately present at the place of seizure and confiscation** — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. In other words, the members of the buy-bust team have enough time and opportunity to bring with them said witnesses. Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, **the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.** The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

5. ID.; REVISED PENAL CODE; ENTRAPMENT; BUY-BUST OPERATION; A FORM OF ENTRAPMENT IN WHICH THE VIOLATOR IS CAUGHT *IN FLAGRANTE DELICTO*.— A buy-bust operation is a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime. However, where there really was no buy-bust operation conducted, it cannot be denied that the elements for illegal sale of prohibited drugs cannot be duly proved despite the presumption of regularity in the performance of official duty and the seeming straightforward testimony in court by the arresting police officers. After all, the indictment for illegal sale of prohibited drugs will not have a leg to stand on.

6. REMEDIAL LAW; EVIDENCE; DEFENSES OF FRAME-UP AND DENIAL; A DEFENSE OF FRAME-UP MAY BE GIVEN CREDENCE WHEN THERE IS SUFFICIENT PROOF MAKING IT VERY PLAUSIBLE OR TRUE, AND THE DEFENSE OF DENIAL ASSUMES SIGNIFICANCE ONLY WHEN THE PROSECUTION'S EVIDENCE IS SUCH THAT IT DOES NOT PROVE GUILT BEYOND REASONABLE DOUBT.— The defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties. Nonetheless, such a defense may be given credence when there is sufficient evidence or proof making it very plausible or true. We are of the view that Bricero's defenses of denial and frame-up are credible given the circumstances of the case. Indeed, jurisprudence has established that the defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt, as in the instant case. At the very least, there is reasonable doubt that there was a buy-bust operation conducted and that Bricero sold the seized *shabu*. After all, a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense.

7. ID.; ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.— The right of

the accused to be presumed innocent until proven guilty is a constitutionally protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Here, the reliance by the CA on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. What further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13(c), Rule 124 of the Rules of Court from the Decision[2] dated May 30, 2014 of the Court of Appeals, Special Fourth Division (CA) in CA-G.R. CR-HC. No. 05594, which affirmed the Decision[3] dated April 11, 2012

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[1] *See* Notice of Appeal dated June 25, 2014; *rollo*, p. 9.

[2] *Id*. at 2-8. Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Amelita G. Tolentino and Danton Q. Bueser concurring.

[3] CA *rollo*, pp. 31-34. Penned by Acting Judge Jaime N. Salazar, Jr.

rendered by the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case No. Q-08-150991, which found herein accused-appellant Segundo Bricero y Fernandez (Bricero) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, as amended (RA 9165).

The Facts

An Information was filed against Bricero for violating Section 5, Article II of RA 9165, the accusatory portion of which reads:

> That on or about the 17th day of February 2008 in Quezon City, accused without lawful authority did then and there willfully and unlawfully sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport, or act as broken (sic) in the said transaction, a dangerous drug, to wit: one (1) plastic sachet of white crystalline substance containing zero point twelve (0.12) gram of Methylamphetamine Hydrochloride, a dangerous drug.
>
> Contrary to law.[4]

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

> On February 17, 2008, a confidential informant came to the office of the District Anti-Illegal Drugs (DAID) in Camp Karingal, Quezon City, and reported to P/Insp. Medrano about the illegal drug activities of an alias Budoy or [Gudoy].[5] Having knowledge of the report, P/Insp. Medrano relayed the matter to their Commanding Officer, P/Supt. Nilo Pagtalunan, who thereafter formed a team for the conduct of a buy-bust operation headed by P/Insp. Medrano. Prosecution witness PO1 Teresita Reyes ["PO1 Reyes"] was designated as the *poseur-buyer*, while PO3 Ramos, PO1 Vargas, PO1 Jimenez and PO2

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[4] *Id*. at 2.

[5] Also "Bugoy" in some parts of the record.

Joseph Ortiz ["PO2 Ortiz"] were assigned as back-up members. Thereafter, PO1 Vargas prepared the Pre-Operation Report in compliance with orders of P/Insp. Medrano.

The evidence on record shows that at past 4:00 o'clock in the afternoon of that same day, the team proceeded to the target area located at Ilagan Street, Brgy. Paltok, San Francisco Del Monte, Quezon City. It appears that PO1 Reyes, who acted as poseur-buyer, was accompanied by the confidential informant, who introduced her to appellant as a friend and a buyer of *shabu*. When appellant asked them "*kukuha ba kayo*?," the latter expressed their desire to buy *shabu* and answered: "*oo, pakuha ng tatlong daan*." Appellant thereafter took out from his pocket and handed to PO1 Reyes a small plastic sachet containing a white crystalline substance, which turned out to be *methylamphetamine hydrochloride*, or *shabu*, in exchange for three (3) One Hundred Peso bills (₱100.00), or a total of Three Hundred Pesos (₱300.00), earlier marked with her initial "TBR." At this juncture, PO1 Reyes executed the pre-arranged signal by rubbing her nose. Appellant was apprehended by PO2 Ortiz who rushed at the scene at the signal given by PO1 Reyes. Appellant was informed of his constitutional rights and was placed under arrest.

Inventory of the items were made at the place where they were confiscated and appellant was later turned over to the investigator for further questioning. Immediately thereafter, PO2 Ortiz personally brought the confiscated items (sic) to PNP Crime Laboratory for examination. The examination results showed that the sachet taken from the appellant contained 0.12 grams of white crystalline substance tested positive for *methylamphetamine hydrochloride* or *shabu*.[6]

Version of the Defense

On the other hand, the defense's version, as summarized by the CA, is as follows:

As expected, appellant denied possession and ownership of the sachet of *shabu*, contending that he saw them for the first time at the police station, where he was brought by the police officers. When asked about what PO1 Reyes and PO2 Ortiz testified in Court about his involvement to the case, appellant answered "That is what they

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[6] *Id*. at 3-4.

are telling, sir." He alleged that he was inside his house at No. 17 Ilagan Street, Brgy. Paltok, San Francisco Del Monte, Quezon City in the afternoon of 17 February 2008, together with his wife and two children, sleeping. Suddenly, several persons from DAID, about 15 of them, entered the house. He was handcuffed by a police officer, whom he later learned to be PO2 Joseph Ortiz, who asked him if he was the one called alias "Bugoy." When PO2 Ortiz asked him if he was selling *shabu*, appellant answered in the negative. He was thereafter brought to DAID office in Project 2, Quezon City, where he was asked to call his employer "*amo*" to ask for help. When appellant answered that he had no employer, "*tinuluyan nila ako*" and PO2 Ortiz demanded money in the amount of Two Hundred Thousand Pesos (₱200,000.00). Thereafter, appellant pleaded to PO2 Ortiz to forgive him not because he admitted that he was selling *shabu* as testified by PO1 Reyes, but because he was sick and was suffering from spinal ache.

On cross examination, appellant insisted that since he does not know the police officers who raided their house, nor have any transaction or argument with them prior to his arrest, there is no reason for them to file charges against him. Appellant added that he only told his wife about the money demanded from him by PO2 Ortiz and to no other person.[7]

Ruling of the RTC

In the assailed Decision[8] dated April 11, 2012, the RTC found Bricero guilty of the crime charged, convinced that the chain of custody of evidence was not broken and that the integrity and the evidentiary value of the seized items had been duly preserved. The dispositive portion of the Decision reads:

ACCORDINGLY, judgment is rendered finding the accused SEGUNDO BRICERO y FERNANDEZ GUILTY beyond reasonable doubt of violating Sec. 5 of R.A. 9165 (for drug pushing) as charged, and he is hereby sentenced to a jail term of LIFE IMPRISONMENT and to pay a fine of ₱500,000.00 to be held by the Court in trust for PDEA.

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

[8] *Supra* note 3.

The sachet involved in this case is hereby ordered transmitted to PDEA thru DDB for disposal per R.A. 9165.

SO ORDERED.[9]

The RTC took against Bricero the latter's admission that he had asked for forgiveness from the police and told them to take pity on him.[10] It also ruled that the buy-bust team complied with RA 9165.[11] According to the RTC, the buy-bust team obtained a pre-operation and coordination report from PDEA before its operation, and marked money was used to buy *shabu* from the accused, which marked money was seized from him.[12] The plastic sachet purchased was marked at the crime scene and an inventory thereof was made at the crime scene despite the being blocked by people as well as their shouting, and stone-throwing at the buy-bust team.[13] The fact that there was no representative from the Department of Justice (DOJ), media, nor there was an elected person at the crime scene is, according to the RTC, understandable for the buy-bust team too would have been exposed to unnecessary and unwanted risk.[14] Lastly, the PNP Crime Laboratory found the purchased substance positive for *methylamphetamine hydrochloride* or *shabu*.[15]

Aggrieved, Bricero appealed to the CA.

Ruling of the CA

In the assailed Decision[16] dated May 30, 2014, the CA affirmed Bricero's conviction. The dispositive portion of the decision reads:

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[9] CA *rollo*, p. 34.

[10] *Id*. at 33.

[11] *Id*. at 34.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*.

[16] *Supra* note 2.

WHEREFORE, the Decision of the Regional Trial Court of Quezon City, Branch 79 dated 11 April 2012 in Criminal Case No. Q-08-150991, finding Segundo Bricero y Fernandez guilty of sale of zero point twelve (0.12) gram of *methylamphetamine hydrochloride* or *shabu*, in violation of Section 5, Article II of Republic Act No. 9165, and sentencing him to life imprisonment with a fine of Five Hundred Thousand Pesos (₱500,00.00), is **AFFIRMED**.

SO ORDERED.[17]

The CA held that the police officers conducted a valid buy-bust operation against Bricero.[18] It likewise ruled that the chain of custody of the seized substance was not broken and the drug seized from Bricero was properly identified before the trial court.[19] The prosecution clearly established that PO1 Reyes received the sachet of *shabu* from Bricero in the course of the buy-bust operation.[20] The subject specimen was marked in the same place where it was seized.[21] Also, the substance was inventoried in the presence of the police officers.[22] Thereafter, PO2 Ortiz personally turned over the item to the PNP Crime Laboratory for examination, while Forensic Chemist Bernardino M. Banac, Jr. tested the content of the marked sachet which turned out positive for *methylamphetamine hydrochloride* as stated in his Chemistry Report No. D-59-08 dated February 18, 2008.[23] Finally, during trial, the marked sachet was identified by PO1 Reyes and PO2 Ortiz as the same item confiscated from Bricero.[24] It thus ruled that the police officers complied

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[17] *Rollo*, pp. 7-8.

[18] *Id*. at 6.

[19] *Id*.

[20] *Id*.

[21] *Id*. at 6-7.

[22] *Id*. at 7.

[23] *Id*.

[24] *Id*.

with the proper procedure in the custody of the seized prohibited drugs.[25]

Hence, the instant appeal.

Issue

Whether or not Bricero's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Bricero as the prosecution admittedly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165, which thus results in its failure to prove his guilt beyond reasonable doubt.

Bricero was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[26]

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.[27] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[28] the law

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[25] *Id.*

[26] *People v. Opiana*, 750 Phil. 140, 147 (2015).

[27] *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

[28] *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[29] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.[30]

In this connection, Section 21,[31] Article II of RA 9165, the applicable law at the time of the commission of the alleged

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[29] *People v. Guzon*, *supra* note 27 at 451, citing *People v. Dumaplin*, 700 Phil. 737 (2012).

[30] *Id*., citing *People v. Remigio*, 700 Phil. 452 (2012).

[31] The said section reads 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 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[.]

crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the DOJ, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

This must be so because with the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.[32]

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witnesses**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items void and invalid. However, this is with the caveat that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[33] The Court

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[32] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

[33] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, 834 SCRA 613, 624-625.

has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[34]

The buy-bust team failed to comply with the requirements of Section 21 of RA 9165.

In present case, the buy-bust team committed several patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug — which thus created reasonable doubt as to the identity and integrity of the drug and, consequently, reasonable doubt as to the guilt of the accused. Moreover, none of the three required witnesses was present at the time of seizure and apprehension. As PO1 Reyes, the poseur-buyer, herself testified:

Q: Now, Madam Witness, when you conducted your buy bust operation, who were with you, Madam witness?
A: The informant, sir.

Q: Aside from your informant, the rest of the team who are they?
A: Insp. Medrano, PO3 Ramos, PO2 Ortiz, PO1 Vargas, PO1 Jimenez and myself, sir.

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Q: I am showing to [you] Exhibit "F" on page 14 of the record, it appears it was signed and prepared in the presence of the witness, am I correct?
A: Yes, sir.

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[34] *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

Q: You said that you are well aware of the requirement of the law, is that the proper procedure now that the preparation of your inventory should be witnessed by the police officer also?
A: Yes, sir.

Q: Now, Madam Witness, you said your team made coordination with PDEA before you proceeded to your buy bust operation?
A: Yes, sir.

Q: Now, after your buy bust operation did you as a member of the team coordinated with PDEA regarding the result of your operation?
A: What I know, sir, is that after the operation, we send an after operation report to the PDEA.

Q: The question is directed to you, Madam Witness, being the person who recovered the drug subject matter of this case allegedly did you, yourself, coordinated with PDEA?
A: No, sir.

Q: What did you do after you arrested the accused?
A: We turned him over to the investigator, sir.[35] (Emphasis supplied).

The failure of the buy-bust team to comply with the requirements of Section 21 of RA 9165 is further bolstered by the testimony of PO2 Ortiz, likewise a member of the apprehending team:

Q: You said that after the arrest of the accused you waited for Officer Jimenez at the site, why did you wait for him?
A: Because he was outside, he was our driver of our vehicle.

Q: Now, Mr. witness, Am I correct to say that you were the first person who actually recovered the buy-bust money from the accused?
A: Yes, sir.

Q: How about the drug, who recovered the drug?
A: It was PO1 Reyes, sir.

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[35] TSN dated January 29, 2010, pp. 15-18.

Q: My question is directed to you, being the first person who actually took custody of the confiscated buy-bust money, did you prepare an inventory?
A: Yes, sir.

Q: You were the one who prepared the inventory?
A: It was PO1 Jimenez who prepared the inventory, sir.

Q: You are changing your answer?
A: I made a mistake, sir.

Q: How about Reyes who recovered the illegal drug, did she prepare an inventory in your presence?
A: No, sir.

Q: Why did you have to wait for Jimenez considering that he did not recover any contraband in connection with the case?
A: We waited for Jimenez to write down the items that we recovered and after that, we signed.

Q: In other words, the person who prepared the inventory was not the person who recovered the prohibited items?
A: No, sir.

Q: You said you arrested the accused now, immediately after the arrest of the accused did you coordinate with the PDEA regarding the fact of arrest?
A: No, sir.

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Q: Under the law Mr. witness you should also take picture of the accused along with the recovered evidences at the site where the illegal drugs were recovered, did you take pictures of the accused?
A: We were not able to take pictures, sir.

Q: And did you not also prepare an inventory, why is it that you did not take picture and prepare an inventory for yourself?
A: Because there were people blocking the Alley.

Q: And would they prevent you in taking pictures?
A: Yes, sir, because they were shouting and throwing stones.

Q: Did you put that in your affidavit so that you could explain why you failed to comply the requisite requirement of Section 21 R.A. 9165? Did you state that in your affidavit?
A: No, sir.

x x x x x x x x x

Q: Under the law the inventory should be signed by the representative of the accused or his lawyer or member of the Media or any elected official of the place where the accused was arrested, why is it that you did not apply the requirements of the law instead and allowed a member of the team a certain PO1 Leonardo Ramos to sign that inventory, why is that so?
A: We did not ask any Media to sign because were not accompanied by any media.[36]

Section 21, paragraph 1 of RA 9165 plainly requires the apprehending team to conduct a **physical inventory of the seized items and the photographing of the same immediately after seizure and confiscation.** Further, the inventory must be done **in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official**, who shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately present at the place of seizure and confiscation** — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation

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[36] TSN dated August 17, 2009, pp. 16-20.

is, by its nature, a planned activity. In other words, the members of the buy-bust team have enough time and opportunity to bring with them said witnesses.

Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, **the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.** The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

Here, the buy-bust team utterly failed to comply with the foregoing requirements.

First, records show that the apprehending team did not conduct an inventory nor did it photograph the confiscated item in the presence of the accused-appellant or his representative or counsel, a representative from the media and the DOJ, and any elected public official. PO1 Reyes, the poseur buyer, merely testified that the subject specimen was marked and inventoried in the same place it was seized only in the presence of the police officers. They did not even state that they exerted earnest efforts to ensure the presence of the required witnesses. Neither did they explain the absence of the three required witnesses.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory, is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[37] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

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[37] G.R. No. 228890, April 18, 2018.

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People vs. Mendoza*,[38] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of 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 subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[39]

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready

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[38] 736 Phil. 749 (2014).

[39] *Id*. at 764.

to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[40] (Emphasis in the original)

In this connection, the prosecution has the burden of (1) proving the police officers' compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court *en banc* unanimously held in the recent case of *People v. Lim*,[41]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[42] (Emphasis omitted, underscoring added)

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the buy-bust arrest; such that they are required to be at or near the intended place of the arrest

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[40] *Supra* note 40 at 11-12.

[41] G.R. No. 231989, September 4, 2018.

[42] *Id*. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation". In this case, none of the required witnesses was present during the apprehension of the accused-appellant and the preparation of the inventory. They did not even offer any explanation as to the absence of the required witnesses.

Second, the inventory was not prepared by the police officer who recovered the prohibited item. It was prepared by PO1 Jimenez **who was not present at the time and place of apprehension** as he was the designated driver of the team waiting in the car. He was merely called to go to the crime scene after the apprehension and seizure were already done. Clearly, the law requires that the marking and inventory of the seized drugs should be done by the apprehending officer himself or the poseur-buyer. In *People v. Gonzales*,[43] the Court explained that:

> The first stage in the chain of custody rule is the marking of the dangerous drugs or related items. **Marking, which is the affixing on the dangerous drugs or related items by the apprehending officer or the poseur-buyer of his initials or signature or other identifying signs, should be made in the presence of the apprehended violator immediately upon arrest.** The importance of the prompt marking cannot be denied, because succeeding handlers of dangerous drugs or related items will use the marking as reference. Also, the marking operates to set apart as evidence the dangerous drugs or related items from other material from the moment they are confiscated until they are disposed of at the close of the criminal proceedings, thereby forestalling switching, planting or contamination of evidence. In short, the marking immediately upon confiscation or recovery of the dangerous drugs or related items is indispensable in the preservation of their integrity and evidentiary value.[44] (Emphasis and underscoring supplied)

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[43] 708 Phil. 121 (2013).

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

Third, no photographs of the seized drug were taken at the place of seizure or at the police station where the inventory was conducted. To be sure, the taking of photographs of the seized drug is not a menial requirement that can be easily dispensed with. **Photographs provide credible proof of the state or condition of the illegal drugs and/or paraphernalia recovered from the place of apprehension to ensure that the identity and integrity of the recovered items are preserved.** The explanation of the members of the buy-bust team, that the reason they could not take photographs was because there were people blocking the alley and throwing stones at them is hollow and not worthy of belief. Notably, the buy-bust team was composed of seven armed police officers. And if it was able to conduct the inventory at the place of apprehension, it could easily have also taken photographs at the same time. Moreover, the police officers were able to wait for PO1 Jimenez who came from his car to do the inventory, therefore there was no sense of urgency for them to leave the place of apprehension. Thus, the explanation of the members of the buy-bust team that there were people blocking the way and throwing stones at them deserves scant consideration. To the mind of the Court, this excuse is untrue and conjured up to cover the team's failure to follow the procedure set by law — assuming there was even a buy-bust that really happened.

Lastly, the prosecution did not even attempt to offer any justification for the failure of the apprehending team to follow the prescribed procedures in the handling of the seized drug. The prosecution also did not bother to explain how the subject specimen was safely turned over from PO1 Reyes to PO2 Ortiz. These failures certainly cast doubt on the *corpus delicti* of the offense. The police officers did not even coordinate with the PDEA after the apprehension of Bricero and seizure of the prohibited drug. The Court stresses that the justifiable grounds for non-compliance must be adequately explained; the Court cannot presume what these grounds are or that they even exist.

As the seized drug itself is the *corpus delicti* of the crime charged, it is of utmost importance that there be no doubt or

uncertainty as to its identity and integrity. The State, and no other party, has the responsibility to explain the lapses in the procedures taken to preserve the chain of custody of the dangerous drug. Without the explanation by the State, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[45]

The saving clause does not apply to this case.

Section 21 of the IRR of RA 9165 provides 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." For this provision to be effective, however, the prosecution must first **(1) recognize any lapse on the part of the police officers and (2) be able to justify the same.**[46] Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.[47] As the Court explained in *People v. Reyes*:[48]

> Under the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.**

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[45] *Id.* at 123.

[46] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[47] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

[48] 797 Phil. 671 (2016).

Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal.[49] (Emphasis supplied)

Here, none of the requirements for the saving clause to be triggered is present:

First, the prosecution did not even concede that there were lapses in the conduct of the buy-bust operation. Also, no explanation was offered as to the absence of the three witnesses at the place and time of seizure, or as to the failure to photograph the confiscated item immediately after seizure or during inventory in the presence of the insulating witnesses. It must be noted that the requirements under Section 21 are not unknown to the buy-bust team, who is presumed to be knowledgeable of the law demanding the preservation of the links in the chain of custody.[50] It is duty bound to fully comply with the requirements thereof, and if its compliance is not full, it should at least have the readiness to explain the reason for the step or steps omitted from such compliance.[51]

Second, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the procedure laid down in Section 21 of RA 9165. It did not even explain why the three required witnesses were not present during the buy-bust operation.

The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, Bricero must perforce be acquitted.

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[49] *Id.* at 690.

[50] *People v. Geronimo*, G.R. No. 180447, August 23, 2017, p. 8.

[51] *Id.*

The buy-bust operation was merely fabricated by the police officers.

A buy-bust operation is a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.[52] However, where there really was no buy-bust operation conducted, it cannot be denied that the elements for illegal sale of prohibited drugs cannot be duly proved despite the presumption of regularity in the performance of official duty and the seeming straightforward testimony in court by the arresting police officers. After all, the indictment for illegal sale of prohibited drugs will not have a leg to stand on.[53]

This is the situation in the instant case.

Generally, non-compliance with Sections 21 and 86 of RA 9165 does not mean that no buy-bust operation against Bricero ever took place.[54] But where there are other pieces of evidence putting in doubt the conduct of the buy-bust operation, these irregularities take on more significance which are, well nigh, fatal to the prosecution.[55]

Putting in doubt the conduct of the buy-bust operation are the uncontroverted testimonies of PO1 Reyes and PO2 Ortiz, which gave credence to Bricero's denial and frame-up theory. The Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information from or even to harass civilians.[56] This Court has been issuing

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[52] *People v. Mateo*, 582 Phil. 390, 410 (2008), citing *People v. Ong*, 476 Phil. 533 (2004) and *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

[53] See *People v. Dela Cruz*, 666 Phil. 593, 604-605 (2011).

[54] *People v. Naquita*, 582 Phil. 422, 440 (2008).

[55] *People v. Dela Cruz*, *supra* note 56 at 610.

[56] *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

cautionary warnings to trial courts to exercise **extra vigilance** in trying drug cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.[57]

The defense of frame-up in drug cases requires strong and convincing evidence because of the presumption that the law enforcement agencies acted in the regular performance of their official duties.[58] Nonetheless, such a defense may be given credence when there is sufficient evidence or proof making it very plausible or true. We are of the view that Bricero's defenses of denial and frame-up are credible given the circumstances of the case. Indeed, jurisprudence has established that the defense of denial assumes significance only when the prosecution's evidence is such that it does not prove guilt beyond reasonable doubt,[59] as in the instant case. At the very least, there is reasonable doubt that there was a buy-bust operation conducted and that Bricero sold the seized *shabu*. After all, a criminal conviction rests on the strength of the evidence of the prosecution and not on the weakness of the defense.[60]

In the case at bar, given the circumstances surrounding the case, the Court gives credence to the testimony of accused-appellant Bricero that the policemen merely entered his house; handcuffed him and asked him if he is alias "Bugoy;" and thereafter immediately took him to the police station.[61] The fact that the buy-bust operation was merely fabricated is bolstered even more by the following circumstances: *First*, the buy-bust team did not coordinate with the PDEA before or after the alleged buy-bust operation.[62] This is a standard operating

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[57] *Sales v. People,* 602 Phil. 1047, 1053 (2009).

[58] *People v. Steve*, 740 Phil. 727, 741 (2014).

[59] *People v. Mejia*, 612 Phil. 668, 687 (2009).

[60] *Dizon v. People*, 524 Phil. 126, 146 (2006), citing *People v. Fronda*, 384 Phil. 732, 743-744 (2000).

[61] TSN dated June 25, 2010, p. 4.

[62] TSN dated January 29, 2010, p. 18.

procedure for every buy-bust operation, which every policemen should know. *Second*, there were no witnesses to the buy-bust operation, apprehension, and preparation of the inventory of the seized item aside from the policemen members of the buy-bust team themselves. Hence, there are no unbiased witnesses who can testify as to the veracity of the events that transpired on the day of the incident or whether the said buy-bust operation actually took place. *Third*, the unjustified failure of the arresting officers to mark the seized item at the place of arrest and to inventory and photograph the same in the presence of the other statutory witnesses lends credence to the defense of frame-up by Bricero.

Thus, taking into consideration the defense of denial by Bricero, in light of the testimonies of PO1 Reyes and PO2 Ortiz, the Court cannot conclude that there was a buy-bust operation conducted by the arresting police officers as they attested to and testified on. The prosecution's story is like a sieve full of holes.

The presumption of innocence of the accused vis-a-vis the presumption of regularity in performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[63] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[64]

Here, the reliance by the CA on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally

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[63] CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, xxx."

[64] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

unsound because the lapses themselves are affirmative proofs of irregularity.[65] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[66] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[67]

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. What further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual,[68] the conduct of buy-bust operations requires the following:

> Anti-Drug Operational Procedures
>
> Chapter V. Specific Rules
>
> x x x x x x x x x
>
> **B. Conduct of Operation:** (As far as practicable, all operations must be officer led)
>
> 1. Buy-Bust Operation - in the conduct of buy-bust operation, the following are the procedures to be observed:
>
> a. Record time of jump-off in unit's logbook;
>
> b. Alertness and security shall at all times be observed:
>
> c. Actual and timely coordination with the nearest PNP territorial units must be made;

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[65] *People v. Mendoza*, 736 Phil. 749, 769 (2014).

[66] *Id.* at 770.

[67] *People v. Catalan*, 669 Phil. 603, 621 (2012).

[68] Philippine National Police Drug Enforcement Manual, PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

d. Area security and dragnet or pursuit operation must be provided:

e. Use of necessary and reasonable force only in case of suspect's resistance:

f. If buy-bust money is dusted with ultra violet powder make sure that suspect gel hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;

g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/transaction between suspect and the poseur-buyer;

h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms reach;

i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;

j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;

k. **Take actual inventory of the seized evidence by means of weighing and/or physical counting**, as the case may be;

l. **Prepare a detailed receipt of the confiscated evidence** for issuance to the possessor (suspect) thereof;

m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence** with their initials and also indicate the date, time and place the evidence was confiscated/seized;

n. **Take photographs of the evidence while in the process of taking the inventory, especially**

> **during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera**; and
>
> o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination.[69] (Emphasis supplied)

The Court has ruled in *People v. Zheng Bai Hui*[70] that it will not presume to set an a *priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized item according to the procedures in their own operations manual.

A review of the facts of the case negates this presumption of regularity in the performance of official duties supposedly in favor of the arresting officers. The procedural lapses committed by the apprehending team showed glaring gaps in the chain of custody which cast doubt on whether the dangerous drug allegedly seized from Bricero was the same drug brought to the crime laboratory and eventually offered in court as evidence.

One final point, the RTC's reliance on the so-called admission of Bricero because of his plea for forgiveness from the police as a basis for his conviction is misplaced. A review of the transcript of records would reveal that he asked for forgiveness after PO2 Ortiz demanded for money from him. It was then that he asked them to take pity on him as he is only a painter and could not pay.[71] When asked why he pleaded for forgiveness,

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[69] *Id*.

[70] 393 Phil. 68, 133 (2000).

[71] TSN dated June 25, 2010, p. 7.

he explained that it was only because he was sick and was suffering from spinal ache.[72] Evidently, his plea for forgiveness was not because he was guilty of the crime charged, but because he could not accede to the brazen demand of PO2 Ortiz for money. In fact, it should be the police officers who should ask for forgiveness for their act of extortion from an innocent man.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its Implementing Rules and Regulations, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[73]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated May 30, 2014 of the Court of Appeals, Special Fourth Division in CA-G.R. CR-HC. No. 05594 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **SEGUNDO BRICERO y FERNANDEZ** is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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[72] *Id*.

[73] See *People v. Jugo*, *supra* note 34.

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

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Reyes, A. Jr., JJ.*, concur.

Reyes, J. Jr.,* *J.*, on wellness leave.

SECOND DIVISION

[G.R. No. 218805. November 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALVIN FATALLO *y* ALECARTE *a.k.a.* "ALVIN PATALLO *y* ALECARTE,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— To sustain a conviction for illegal sale of dangerous drugs, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.

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* Designated additional Member per Special Order No. 2587 dated August 28, 2018.

2. ID.; ID.; DANGEROUS DRUGS CASES; THE IDENTITY AND INTEGRITY OF THE SEIZED DRUGS MUST BE ESTABLISHED WITH MORAL CERTAINTY BECAUSE THE CONFISCATED DRUGS CONSTITUTE THE VERY *CORPUS DELICTI* OF THE OFFENSE.— In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction. It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty. The prosecution must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime. Each link to the chain of custody must be accounted for. This resonates even more in buy-bust operations because "[b]y the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."

3. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; PROCEDURE; THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY THEREWITH DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID, BUT THE LAW REQUIRES THE PROSECUTION TO STILL SATISFACTORILY PROVE THAT THERE IS JUSTIFIABLE GROUND FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; SAVING CLAUSE, WHEN APPLICABLE.— Section 21, Article II of R.A. 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; (2) the physical inventory and photographing must be done **in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ)**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after

seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of R.A. 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. This also means that the three (3) required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team has enough time to gather and bring with them the said witnesses. Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three (3) required witnesses to be physically present at the time or near the place of apprehension is not dispensed with. The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three (3) witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence. Also, while it is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. 9165 does not *ipso facto* render the seizure and custody over the items void and invalid; the law requires the prosecution to still satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses. Without any justifiable explanation, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt. x x x [F]ollowing the IRR of R.A. 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.** If these elements

are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the noncompliance with the mandatory requirements of Section 21. It has also been emphasized that the State bears the burden of proving the justifiable cause. Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and thereafter justify or explain the same. In the present case, prosecution neither recognized, much less tried to justify or explain, the police officers' deviation from the procedure contained in Section 21. Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.

4. **ID.; ID.; ID.; ID.; A MATTER OF SUBSTANTIVE LAW AND CANNOT BE BRUSHED ASIDE AS A SIMPLE PROCEDURAL TECHNICALITY.—** [I]t was error for the CA to rule that deviations from the requirements of Section 21 relate only to minor procedural matters which do not affect the guilt of Fatallo. To be sure, case law states that the **procedure enshrined in Section 21, Article II of R.A. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.** For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.

5. **ID.; ID.; ID.; CHAIN OF CUSTODY; UNBROKEN CHAIN OF CUSTODY, HOW ESTABLISHED.—** In *People v. Dahil*, this Court explained that the starting point of the custodial link is the marking of the seized drug immediately after seizure. This is vital because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence. Hence, while marking is not explicitly found in the law (but such is indispensable for the required inventory to be credible), this Court had consistently stressed

that **failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti***. Notably, in this case, the two (2) plastic sachets were allegedly bought by the confidential informant from Fatallo, but the markings were made not in the place of seizure and not by the person who recovered the drugs from Fatallo. Moreover, this Court has consistently ruled that to establish an unbroken chain of custody, "[i]t is necessary that every person who touched the seized item describe how and from whom he or she received it; where and what happened to it while in the witness' possession; its condition when received and at the time it was delivered to the next link in the chain." This requirement was, however, not complied in this case.

6. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.— The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein. Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. x x x The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. Trial courts have been directed by the Court to apply this differentiation. **In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of R.A. 9165.** x x x [W]hat further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed.

7. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002);

CUSTODY AND DISPOSITION OF SEIZED ITEMS; PROCEDURE; WHEN THERE IS NON-COMPLIANCE THEREWITH, THE APPREHENSION OF THE ACCUSED BY THE POLICE OFFICERS BECOMES ILLEGAL AND THE DRUG TEST CONDUCTED ON HIM IS LIKEWISE ILLEGAL FOR IT IS AN INDIRECT RESULT OF HIS ARREST.— Fatallo was subjected to a drug test **as a result of his apprehension** which x x x was conducted in violation of Section 21, R.A. 9165. Section 21, R.A. 9165 is a statutory exclusionary rule of evidence, bearing in mind that, under the Rules of Court, "evidence is admissible when it is relevant to the issue **and is not excluded by the law** or these rules." The results of the drug test cannot therefore be used against Fatallo for they are considered, under the law, as the "fruit of the poisonous tree." x x x Applied in the present case, since the apprehension of Fatallo by the police officers was illegal for non-compliance with the procedure provided by Section 21, R.A. 9165, it therefore follows that the drug test conducted on him was likewise illegal for it is an ***indirect result*** of his arrest. Otherwise stated, if Fatallo was not arrested in the first place, he would not have been subjected to a drug test because Section 38 refers to "any person apprehended or arrested **for violating the provisions of this Act**," As Fatallo was not proved to have violated any of the provisions of R.A. 9165, then the drug test conducted on him has no leg to stand on. Fatallo's acquittal for the charge of violating Section 15, R.A. 9165 must necessarily follow.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Alvin Fatallo y Alecarte (Fatallo) assailing the

[1] See Notice of Appeal dated May 13, 2015, *rollo*, pp. 15-16.

Decision[2] dated April 30, 2015 of the Court of Appeals, Twenty-Third Division, Cagayan de Oro City (CA), in CA-G.R. CR-HC No. 01034-MIN, which affirmed the Omnibus Decision[3] March 1, 2012 of Regional Trial Court of Butuan City, Branch 4 (RTC) in Criminal Case Nos. 10471 and 10473, finding Fatallo guilty beyond reasonable doubt of violating Sections 5 and 15, Article II of Republic Act No. 9165 (R.A. 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

Fatallo was charged for violation of Sections 5 and 15, Article II of R.A. 9165 under the Informations dated March 2, 2004, the accusatory portions of which state:

Criminal Case No. 10471

"That on or about 9:00 o'clock in the evening of March 1, 2004 at T. Calo, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above-named without authority of law, did then and there willfully, unlawfully and feloniously sell, trade and deliver two (2) sachet of methamphetamine hydrochloride, otherwise known as shabu, weighing zero point zero seven eight eight (0.[0]788) gram, more or less, which is a dangerous drug to a poseur buyer for a consideration of 8 pcs. of one hundred peso bill marked money."

Criminal Case No. 10473

"That on or about 9:00 o'clock in the evening of March 1, 2004 at T. Calo, Butuan City, Philippines, and within the jurisdiction of this Honorable Court, the above named without authority of law, did then and there willfully, unlawfully and feloniously use a methamphetamine hydrochloride otherwise known as shabu, a dangerous drug and found positive for use, after confirmatory test."[4]

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[2] *Rollo*, pp. 3-14. Penned by Associate Justice Edward B. Contreras with Associate Justices Edgardo T. Lloren and Rafael Antonio M. Santos, concurring.

[3] CA *rollo*, pp. 45-68. Penned by Judge Godofredo B. Abul, Jr.

[4] *Rollo*, p. 4.

When arraigned, Fatallo pleaded not guilty to the indictment.[5]

Version of the prosecution

To prove the crimes charged, the prosecution presented SPO1 Joselito Fajardo Delos Santos (SPO1 Delos Santos), SPO1 Angelito Estepa Avila (SPO1 Avila), PO2 Pablito Coquilla y Nacorda (PO2 Coquilla) and PSI Virginia Sison Gucor (PSI Gucor), who testified to the following:

> On the strength of an information about the drug selling activity of [Fatallo] relayed by the confidential informant to the concerned operatives, Police Inspector Excelso Lawzaga, Jr. formed a buy bust team composed of SPO2 Fulveo Joloyohoy, [SPO1 Delos Santos], [SPO1 Avila], [PO2 Coquilla], PO1 Cultura and the confidential informant, [who acted as the poseur-buyer].
>
> On March 1, 2004, at around 9:00 o'clock in the evening, the team conducted a buy-bust operation on [Fatallo] at Jean's Store located at T. Calo, Butuan City. Eyewitness SPO[1] Delos Santos testified that as soon as the poseur-buyer arrived at the store of [Fatallo], the latter immediately came out from the store and the two had a conversation. Not long after, [Fatallo] handed something to the poseur-buyer x x x and the latter, in return, got something from his pocket and handed the same to [Fatallo]. SPO[1] Delos Santos admitted that he saw clearly the transaction between [Fatallo] and [the] poseur-buyer because the team was positioned in front of the store, across the street and there was a street lighting near the store. After the exchange of items between [Fatallo] and [the] poseur-buyer, the latter removed his cap to signal the team that the transaction has been consummated already. The poseur-buyer then walked towards the dark area of the premises and disappeared in darkness.
>
> Thereafter, the team headed by Captain Lazaga, Jr. rushed towards [Fatallo] to arrest him. However, [Fatallo] immediately ran towards the upper portion of his house. The team followed him. Upstairs, the team cornered [Fatallo] inside his bedroom and arrested him. The buy-bust team informed [Fatallo] of his constitutional rights. They also asked [Fatallo] to produce the marked eight (8) pieces of one hundred-peso bill (₱100.00). [Fatallo] obeyed, got the money from

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[5] *Id*.

his pocket and gave them to the police officers. When the operatives compared the marked monies taken from the pocket of [Fatallo] to the machine copies they made of the marked monies prior to the operation, the serial numbers of the former tallied with that of the latter.

The buy-bust team then immediately brought [Fatallo] to the team's office for booking and documentation. From the crime scene to the office, SPO2 Joloyohoy got hold of the two (2) sachets of shabu seized from [Fatallo]. In the office, SPO2 Joloyohoy marked the two (2) sachets of shabu with identifying marks A-l and A-2. The team also prepared four request for laboratory examinations. Afterwards, pictures were taken on [Fatallo] and on the shabu recovered from him. From the office, SPO2 Joloyohoy, accompanied by PO1 Cultura, brought the two (2) sachets of shabu and the written requests to the crime laboratory for examination.[6]

Version of the defense

For his defense, Fatallo denied the charges against him and narrated that:

x x x at around 7:00 o'clock in the evening of March 1, 2004, while [Fatallo] and his live-in partner were sleeping in their room located upstairs in their house at T. Calo Street, Butuan City, he heard someone knocking on the door. When [Fatallo] opened the door, he saw two (2) persons pointing their guns at him. Thereafter, the two (2) persons ordered [Fatallo] to lie down, facing towards the floor. Afterwards, without the presence of any barangay official and without showing any piece of paper or any sort of authority, the operatives frisked x x x him and searched his room for about thirty (30) minutes. The police officers found nothing from [Fatallo]. However, on top of the bed of [Fatallo], the police officers confiscated his wallet containing ₱4,500.00 to make it as evidence. [Fatallo] protested the confiscation of his wallet but the police officers stepped on his back and told him not to move or complain, or else they will maul him. Thereafter, the police officers brought [Fatallo], his live-in partner, Jing-jing, RR Esguerra and RR's live-in partner, Vanjing Lozada, to their office. RR and Vanjing were the ones allegedly renting a room at [Fatallo's] house. In the office, the operatives showed the alleged

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

marked monies to [Fatallo] but did not show to him any shabu. There were also no barangay officials present in the office.

The foregoing testimony x x x was corroborated by [Fatallo's] sister, Elvie Fatallo Poson.[7]

Ruling of the RTC

In its Omnibus Decision dated March 1, 2012, the RTC found Fatallo guilty beyond reasonable doubt for violations of Sections 5 and 15 of R.A. 9165, the dispositive portion of which reads:

WHEREFORE, premises considered, accused Alvin Fatallo y Alecarte is found guilty beyond reasonable doubt in Criminal Case No. 10471, and is hereby sentenced to suffer the penalty of life imprisonment and pay a fine of Five Hundred Thousand (₱500,000.00) Pesos, without subsidiary imprisonment in case of insolvency.

Accused shall serve his sentence at the Davao Prison and Penal Farm at Braulio E. Dujali, Davao del Norte. He shall be credited in the service of his sentence with his preventive imprisonment conformably with Article 29 of the Revised Penal Code, as amended.

The sachets of shabu are declared forfeited in favor of the government to be dealt in accordance with law.

Likewise, in Criminal Case No. 10473, accused is found guilty for violation of Section 15 of Article II, of Republic Act 9165, is hereby sentenced to undergo drug rehabilitation in any government drug rehabilitation facility.

SO ORDERED.[8]

The RTC found that the prosecution, by testimonial and documentary evidence, successfully proved the elements of the offenses and established the guilt of the accused beyond reasonable doubt. The RTC gave full weight and credit to the prosecution's version of the events, which it found more logical, ordinary and in the course of human experience; as opposed to the accused's narration, which lacks candor and sincerity.[9]

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[7] *Id*. at 6-7.

[8] CA *rollo*, p. 68.

[9] *Rollo*, p. 13.

Aggrieved, Fatallo appealed to the CA.[10] In this appeal, Fatallo raised the following grounds: (1) the non-presentation of the poseur buyer as a witness is fatal to the case;[11] (2) the police officers failed to comply with the requirements under Section 21 of R.A. 9165;[12] and (3) the chain of custody of the confiscated drugs was not established.[13]

Ruling of the CA

In the assailed Decision, the CA sustained Fatallo's conviction and held that the prosecution sufficiently discharged its burden of establishing the elements of the crimes charged[14] and proving Fatallo's guilt beyond reasonable doubt.[15] The CA held that the non-presentation of the poseur-buyer as a witness is not fatal to the prosecution's case since the police officers were able to testify positively and categorically that the sale of illegal drugs actually took place.[16] The CA added that what is crucial is that the integrity and evidentiary value of the seized drugs were properly preserved in this case.[17] It ruled that while Section 21, Article II of R.A. 9165 was not strictly complied with by the police officers insofar as the photos, inventory and presence of the witnesses were concerned, the prosecution substantially complied the requirements of the law and sufficiently established the crucial links of the chain of custody. The CA explained that the deviations from the guidelines of R.A. 9165 relate only to minor procedural matters, which by any means, do not operate to tilt the scales of justice in favor of Fatallo.

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[10] Records, pp. 216-217.

[11] CA *rollo*, pp. 32-36.

[12] *Id*. at 36-39.

[13] *Id*. at 39-43.

[14] *Rollo*, p. 9.

[15] *Id*.

[16] *Id*.

[17] *Id*. at 10.

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whether the RTC and CA erred in convicting Fatallo of the crimes charged.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit Fatallo as the prosecution **utterly failed** to prove that the buy-bust team complied with the mandatory requirements of Section 21 of R.A. 9165 and for its failure to establish the unbroken chain of custody of the seized drugs.

The buy-bust team failed to comply with the mandatory requirements under Section 21.

Fatallo was charged with the crimes of illegal sale and illegal use of dangerous drugs, defined and penalized under Sections 5 and 15, Article II of R.A. 9165, respectively. To sustain a conviction for illegal sale of dangerous drugs, the prosecution must prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[18]

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[19] and the fact of its existence is vital to sustain a judgment of conviction.[20] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[21] The prosecution

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[18] *People v. Opiana*, 750 Phil. 140, 147 (2015).

[19] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

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

[21] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 9.

must prove, beyond reasonable doubt, that the substance seized from the accused is exactly the same substance offered in court as proof of the crime. Each link to the chain of custody must be accounted for.[22]

This resonates even more in buy-bust operations because "[b]y the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great."[23]

In this connection, Section 21, Article II of R.A. 9165,[24] the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must strictly follow to preserve the integrity of the confiscated drugs and/or paraphernalia used as evidence. The provision requires that: (1) the seized items be inventoried and photographed **immediately after seizure or confiscation**; (2) the physical inventory and photographing must be done **in the presence**

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[22] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

[23] *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 543-544.

[24] The said section provides:

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

(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof[.]

of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of R.A. 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[25] This also means that the three (3) required witnesses should already be physically present at the time of apprehension — **a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team has enough time to gather and bring with them the said witnesses.

Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, the requirement of having the three (3) required witnesses to be physically present at the time or near the place of apprehension is not dispensed with. The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three (3) witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

Also, while it is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of R.A. 9165 does not *ipso facto* render the seizure and custody over the items void and invalid; the law requires the prosecution to still satisfactorily prove that: (a) there is justifiable ground for non-

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[25] IRR of R.A. 9165, Art. II, Sec. 21 (a).

compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[26] The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[27] Without any justifiable explanation, the evidence of the *corpus delicti* is unreliable, and the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[28]

In the present case, **none** of the three (3) required witnesses was present at the time of seizure and confiscation and even during the conduct of the inventory. Based on the narrations of SPO1 Delos Santos[29] and PO2 Coquilla,[30] not one of the required witnesses was present at the time the plastic sachets were allegedly seized from Fatallo or during the inventory of the recovered drugs at the police station.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis,*[31] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

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[26] *People v. Ceralde,* G.R. No. 228894, August 7, 2017, 834 SCRA 613, 625.

[27] *People v. Almorfe*, 631 Phil. 51, 60 (2010); *People v. Alvaro*, *supra* note 21, at 7; *People v. Villanueva*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Dionisio*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Sagaunit*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6.

[28] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

[29] See TSN, October 5, 2006, pp. 1-30.

[30] See TSN, January 29, 2009, pp. 1-22.

[31] G.R. No. 228890, April 18, 2018.

The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People vs. Mendoza*,[32] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.

The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[33]

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[32] 736 Phil. 749 (2014).

[33] *People v. Tomawis*, *supra* note 31, at 11-12.

Moreover, it was error for the CA to rule that deviations from the requirements of Section 21 relate only to minor procedural matters which do not affect the guilt of Fatallo. To be sure, case law states that the **procedure enshrined in Section 21, Article II of R.A. 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.**[34] For indeed, however noble the purpose or necessary the exigencies of the campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.[35]

The saving clause does not apply to this case.

As earlier stated, following the IRR of R.A. 9165, the courts may allow a deviation from the mandatory requirements of Section 21 in exceptional cases, where the following requisites are present: **(1) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.**[36] If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the noncompliance with the mandatory requirements of Section 21. It has also been emphasized that the State bears the burden of proving the justifiable cause.[37] Thus, for the said saving clause to apply, the prosecution must first recognize the lapse or lapses on the part of the buy-bust team and there after justify or explain the same.[38]

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[34] See *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

[35] *Id.* at 1039.

[36] R.A. 9165, as amended by R.A. 10640, Sec. 21(1).

[37] *People v. Beran*, 724 Phil. 788, 822 (2014).

[38] *People v. Reyes*, 797 Phil. 671, 690 (2016).

In the present case, prosecution neither recognized, much less tried to justify or explain, the police officers' deviation from the procedure contained in Section 21. Breaches of the procedure outlined in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.[39] As the Court explained in *People v. Reyes*:[40]

> Under the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal. x x x[41] (Emphasis supplied)

Moreover, contrary to the findings of the RTC and CA, the prosecution failed to establish the unbroken chain of custody of the seized drugs. The records reveal that **gaps exist** in the chain of custody of the seized items which create reasonable doubt on the identity and integrity thereof.

In *People v. Dahil*,[42] this Court explained that the starting point of the custodial link is the marking of the seized drug immediately after seizure. This is vital because succeeding

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[39] See *People v. Sumili*, 753 Phil. 342, 352 (2015).

[40] *Supra* note 38.

[41] *Id.* at 690.

[42] 750 Phil. 212 (2015).

handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence. Hence, while marking is not explicitly found in the law (but such is indispensable for the required inventory to be credible), this Court had consistently stressed that **failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti***.[43]

Notably, in this case, the two (2) plastic sachets were allegedly bought by the confidential informant from Fatallo, but the markings were made not in the place of seizure and not by the person who recovered the drugs from Fatallo.

Moreover, this Court has consistently ruled that to establish an unbroken chain of custody, "[i]t is necessary that every person who touched the seized item describe how and from whom he or she received it; where and what happened to it while in the witness' possession; its condition when received and at the time it was delivered to the next link in the chain."[44] This requirement was, however, not complied in this case.

The Court understands that confidentiality protects the informant, who acted as the poseur-buyer, from testifying in court; nevertheless, SPO2 Fulveo Barillo Joloyohoy (SPO2 Joloyohoy), the police officer who supposedly received the confiscated drugs from the poseur-buyer and delivered the same to the police station for marking and inventory, was never presented in court.

While SPO1 Delos Santos positively and categorically stated he saw the exchange of items between Fatallo and the poseur-buyer, he never saw the poseur-buyer hand over the seized

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[43] *Id*.; emphasis and underscoring supplied.

[44] *People v. Gajo*, G.R. No. 217026, January 22, 2018, p. 8.

items to SPO2 Joloyohoy. In fact, SPO1 Delos Santos merely presumed that the illegal drugs bought by the poseur-buyer were the ones delivered by SPO2 Joloyohoy to the police station:

> Q Mr. Witness, going back to the time when your poseur-buyer left the place after the buy-bust operation was consummated, where did he go and how may sachet of shabu was he able to buy?
>
> A Our poseur-buyer walked away going towards the dark part and disappeared in the darkness. And I only came to know that there were two sachets that was bought by our poseur-buyer when Joloyohoy went after us upstairs, because it was Joloyohoy who was tasked to get the shabu from the poseur-buyer.[45]

Verily, without the testimony of SPO2 Joloyohoy, there is doubt on whether the drugs supposedly bought from Fatallo were the very same drugs marked, inventoried, delivered to the laboratory for examination and presented in court as evidence. There is no evidence on record on how the confiscated drugs passed from the confidential informant to SPO2 Joloyohoy, and how the integrity of said items were preserved while they remained in the latter's custody until they were turned over to the police station for marking and inventory.

Furthermore, while SPO1 Delos Santos claimed that it was SPO2 Joloyohoy who delivered the plastic sachets to the crime laboratory for examination, the dorsal portion of Request for Laboratory Examination,[46] showed that the seized drugs were received from a certain PO1 Monton, JRU, by PSI Gucor, the forensic chemist who conducted the examination. This creates doubt as to who actually delivered the drugs from the police station to the crime laboratory. More, importantly, the records are again bereft of any evidence as to how the seized items were passed on and placed in the hands of PO 1 Monton and/or SPO2 Joloyohoy, or how the integrity of said items was preserved while they remained in their custody.

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[45] TSN, October 5, 2006, p. 12.

[46] Exhibit "F", index of exhibits, p. 9.

Nothing can also be gained from the testimony of the forensic chemist PSI Gucor. She never identified in court the police officer from whom she received the seized items for examination. Her testimony also lacked details on how the specimens were handled from the time they were submitted for laboratory examination up to time they were formally offered to the court. PSI Gucor's narrations were limited to the results of the examination she conducted on the seized items and the urine sample taken from Fatallo.[47]

It is clear from the foregoing that no intact or unbroken chain of custody was established by the prosecution. The identity and integrity of the seized drugs were compromised. Consequently, Fatallo must perforce be acquitted.

The presumption of innocence of the accused vis-à-vis the presumption of regularity in performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[48] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[49]

Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. In *People v. Enriquez*,[50] the Court held:

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[47] See TSN, August 3, 2007, pp. 1 -15.

[48] CONSTITUTION, Art. III, Sec. 14, par. (2) provides. "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[49] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[50] 718 Phil. 352 (2013).

xxx [A]ny divergence from the prescribed procedure must be justified and should not affect the integrity and evidentiary value of the confiscated contraband. Absent any of the said conditions, the **non-compliance is an irregularity**, a red flag, that casts reasonable doubt on the identity of the *corpus delicti*.[51] (Emphasis supplied)

The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[52] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[53] Trial courts have been directed by the Court to apply this differentiation.[54]

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of R.A. 9165.

Indeed, what further militates against according the apprehending officers in this case the presumption of regularity is the fact that even the pertinent internal anti-drug operation procedures then in force were not followed. Under the 1999 Philippine National Police Drug Enforcement Manual (PNPDEM), the conduct of buy-bust operations required the following:[55]

CHAPTER V

x x x x x x x x x

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x x x x x x

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[51] *Id*. at 366; emphasis supplied.

[52] *People v. Mendoza*, *supra* note 32, at 770.

[53] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[54] *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 20.

[55] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

V. SPECIFIC RULES

x x x x x x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation – in the conduct of buy-bust operation, the following are the procedures to be observed:

a. Record time of jump-off in unit's logbook;

b. Alertness and security shall at all times be observed:

c. Actual and timely coordination with the nearest PNP territorial units must be made;

d. Area security and dragnet or pursuit operation must be provided:

e. Use of necessary and reasonable force only in case of suspect's resistance:

f. If buy-bust money is dusted with ultra violet powder make sure that suspect ge[t] hold of the same and his palm/s contaminated with the powder before giving the pre-arranged signal and arresting the suspects;

g. In pre-positioning of the team members, the designated arresting elements must clearly and actually observe the negotiation/ transaction between suspect and the poseur-buyer;

h. Arrest suspect in a defensive manner anticipating possible resistance with the use of deadly weapons which maybe concealed in his body, vehicle or in a place within arms reach;

i. After lawful arrest, search the body and vehicle, if any, of the suspect for other concealed evidence or deadly weapon;

j. Appraise suspect of his constitutional rights loudly and clearly after having been secured with handcuffs;

k. **Take actual inventory of the seized evidence by means of weighing and/or physical counting**, as the case may be;

l. **Prepare a detailed receipt of the confiscated evidence** for issuance to the possessor (suspect) thereof;

m. **The seizing officer (normally the poseur-buyer) and the evidence custodian must mark the evidence** with their initials and

also indicate the date, time and place the evidence was confiscated/seized;

n. **Take photographs of the evidence while in the process of taking the inventory, especially during weighing, and if possible under existing conditions, the registered weight of the evidence on the scale must be focused by the camera**; and

o. Only the evidence custodian shall secure and preserve the evidence in an evidence bag or in appropriate container and thereafter deliver the same to the PNP CLG for laboratory examination. (Emphasis and underscoring supplied)

The Court has ruled in *People v. Zheng Bai Hui*[56] that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual and Section 21.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drugs. In other words, the prosecution was not able to overcome the presumption of innocence of Fatallo.

With the acquittal of Fatallo in relation to the charge of violation of Section 5, R.A. 9165, it follows then that he should likewise be acquitted as to the charge of violation of Section 15, R.A. 9165.

The case for violation of Section 15, R.A. 9165 was filed because Fatallo tested positive for use of methamphetamine hydrochloride after he was subjected to a drug test following

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[56] 393 Phil. 68, 133 (2000).

his arrest. This was done in compliance with Section 38, R.A. 9165, which states:

> SEC. 38. *Laboratory Examination or Test on Apprehended/Arrested Offenders.*— Subject to Section 15 of this Act, **any person apprehended or arrested for violating the provisions of this Act shall be subjected to screening laboratory examination or test within twenty-four (24) hours**, if the apprehending or arresting officer has reasonable ground to believe that the person apprehended or arrested, on account of physical signs or symptoms or other visible or outward manifestation, is under the influence of dangerous drugs. If found to be positive, the results of the screening laboratory examination or test shall be challenged within fifteen (15) days after receipt of the result through a confirmatory test conducted in any accredited analytical laboratory equipment with a gas chromatograph/mass spectrometry equipment or some such modern and accepted method, if confirmed the same shall be *prima facie* evidence that such person has used dangerous drugs, which is without prejudice for the prosecution for other violations of the provisions of this Act: *Provided*, That a positive screening laboratory test must be confirmed for it to be valid in a court of law. (Emphasis and underscoring supplied)

Thus, Fatallo was subjected to a drug test **as a result of his apprehension** which, as already explained, was conducted in violation of Section 21, R.A. 9165. Section 21, R.A. 9165 is a statutory exclusionary rule of evidence, bearing in mind that, under the Rules of Court, "evidence is admissible when it is relevant to the issue and **is not excluded by the law** or these rules."[57]

The results of the drug test cannot therefore be used against Fatallo for they are considered, under the law, as the "fruit of the poisonous tree." In the case of *People v. Alicando*,[58] it was explained thus:

> x x x. According to this rule, once the primary source (the "tree") is shown to have been unlawfully obtained, any *secondary or*

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[57] RULES OF COURT, Rule 128, Sec. 3.

[58] 321 Phil. 656 (1995).

derivative evidence (the "fruit") derived from it is also inadmissible. Stated otherwise, illegally seized evidence is obtained as a *direct result* of the illegal act, whereas the "*fruit of the poisonous tree*" is the *indirect result* of the same illegal act. The "*fruit of the poisonous tree*" is at least once removed from the illegally seized evidence, but it is equally inadmissible. **The rule is based on the principle that evidence illegally obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence *taints* all evidence subsequently obtained.**[59] (Emphasis, italics and underscoring supplied)

Applied in the present case, since the apprehension of Fatallo by the police officers was illegal for non-compliance with the procedure provided by Section 21, R.A. 9165, it therefore follows that the drug test conducted on him was likewise illegal for it is an ***indirect result*** of his arrest. Otherwise stated, if the Fatallo was not arrested in the first place, he would not have been subjected to a drug test because Section 38 refers to "any person apprehended or arrested **for violating the provisions of this Act**,"[60] As the Fatallo was not proved to have violated any of the provisions of R.A. 9165, then the drug test conducted on him has no leg to stand on. Fatallo's acquittal for the charge of violating Section 15, R.A. 9165 must necessarily follow.

As a final note, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of R.A. 9165, and its IRR, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **The procedure outlined in Section 21 is, to the Court's mind, straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court

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[59] *Id*. at 690.

[60] Emphasis and underscoring supplied.

included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[61]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated April 30, 2015 of the Court of Appeals, Twenty-Third Division, Cagayan de Oro City, in CA-G.R. CR-HC No. 01034-MIN is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Alvin Fatallo y Alecarte a.k.a. Alvin Patallo y Alecarte is **ACQUITTED** of the crimes charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

Let a copy of this Decision be sent to the Superintendent, Davao Prison and Penal Farm, for immediate implementation. The said Superintendent is **ORDERED** to **REPORT** to this Court within five (5) days from receipt of this Decision the action he has taken.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Reyes, A. Jr., JJ.*, concur.

Reyes, J. Jr.,[*] *J.*, on wellness leave.

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[61] See *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

FIRST DIVISION

[G.R. No. 219340. November 7, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **STANDARD INSURANCE CO., INC.,** *respondent.*

SYLLABUS

1. **TAXATION; TAXES; BEING THE LIFEBLOOD OF THE GOVERNMENT, TAXES SHOULD BE COLLECTED PROMPTLY AND WITHOUT HINDRANCE OR DELAY.—** We start by reminding the respondent about the inflexible policy that taxes, being the lifeblood of the Government, should be collected promptly and without hindrance or delay. Obeisance to this policy is unquestionably dictated by law itself. Indeed, Section 218 of the NIRC expressly provides that "*[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by th[e] [NIRC]*." Also, pursuant to Section 11 of R.A. No. 1125, as amended, the decisions or rulings of the Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their tax liabilities are immediately executory, and their enforcement is not to be suspended by any appeals thereof to the Court of Tax Appeals unless "*in the opinion of the Court [of Tax Appeals] the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer*," in which case the Court of Tax Appeals "*at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount*."

2. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; REQUISITES.—** An action for declaratory relief is governed by Section 1, Rule 63 of the *Rules of Court*. It is predicated on the attendance of several requisites, specifically: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are

doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.

3. **ID.; ID.; ID.; ID.; CANNOT PROSPER WHEN THE SUBJECT OF THE ACTION HAS BEEN INFRINGED OR TRANSGRESSED PRIOR TO THE INSTITUTION OF THE ACTION.—** [T]he third requisite was not met due to the subject of the action (*i.e.* statute) having been infringed or transgressed *prior to* the institution of the action. x x x [T]he RTC seemed to believe that the tax assessments issued had merely created a liability against the respondent as the taxpayer, and that its suit for declaratory relief was but consistent with protesting the assessments. The RTC's belief was absolutely devoid of legal foundation, however, simply because internal revenue taxes, being self-assessing, required no further assessment to give rise to the liability of the taxpayer. Specifically, the assessments for DST deficiencies of the respondent for the years 2011, 2012 and 2013, as imposed pursuant to Section 184 of the NIRC were the subject of the respondent's petition for declaratory relief. x x x What was being x x x taxed was the privilege of issuing insurance policies; hence, *the taxes accrued at the time the insurance policies were issued*. Verily, the violation of Section 184 of the NIRC occurred upon the taxpayer's failure or refusal to pay the correct DST due at the time of issuing the non-life insurance policies. Inasmuch as the cause of action for the payment of the DSTs pursuant to Section 108 and Section 184 of the NIRC accrued upon the respondent's failure to pay the DST at least for taxable year 2011 despite notice and demand, the RTC could not procedurally take cognizance of the action for declaratory relief.

4. **ID.; ID.; ID.; ID.; THE ISSUE MUST FALL WITHIN THE PURVIEW OF AN ACTUAL CONTROVERSY THAT IS RIPE FOR JUDICIAL DETERMINATION; JUSTICIABLE CONTROVERSY, DEFINED.—** [T]he apprehension of the respondent that it could be rendered technically insolvent through the imposition of the iniquitous taxes imposed by Section 108 and Section 184 of the NIRC, laws that were valid and binding,

did not render the action for declaratory relief fall within the purview of an actual controversy that was ripe for judicial determination. The respondent was thereby engaging in speculation or conjecture, or arguing on probabilities, not actualities. Therein lay the prematurity of its action, for a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for respondent.

D E C I S I O N

BERSAMIN, *J.*:

At issue is the authority of the Regional Trial Court (RTC) to enjoin the enforcement or implementation of Section 108 and Section 184 of the *National Internal Revenue Code of 1997* (NIRC) through an original action for declaratory relief.

The Case

This appeal by petition for review on *certiorari* is being directly brought by the Commissioner of Internal Revenue (petitioner)[1] to challenge the judgment rendered on May 8, 2015[2] and the order issued on July 10, 2015,[3] whereby the Regional Trial Court (RTC), Branch 66, in Makati City in Civil Case No. 14-1330, an action for declaratory relief initiated by the respondent, respectively permanently enjoined the petitioner, or any persons acting on her behalf from proceeding with the implementation or enforcement of Section 108 and Section 184

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[1] Hon. Commissioner Kim Jacinto-Henares.

[2] *Rollo*, pp. 76-85; penned by Presiding Judge Joselito C. Villarosa.

[3] *Id*. at 73-75.

of the NIRC against the respondent, and denied her motion for reconsideration.

Antecedents

On February 13, 2014, the respondent received from the Bureau of Internal Revenue (BIR) a Preliminary Assessment Notice (PAN) regarding its liability amounting to ₱377,038,679.55 arising from a deficiency in the payment of documentary stamp taxes (DST) for taxable year 2011. The respondent contested the PAN through its letter dated February 27, 2014, but the petitioner nonetheless sent to it a formal letter of demand dated March 27, 2014. Although the respondent requested reconsideration on April 22, 2014,[4] it received on December 4, 2014 the Final Decision on Disputed Assessment (FDDA) dated November 25, 2014, declaring its liability for the DST deficiency, including interest and compromise penalty, totaling ₱418,830,567.46.[5] On December 11, 2014, it sought reconsideration of the FDDA, and objected to the tax imposed pursuant to Section 184 of the NIRC as violative of the constitutional limitations on taxation.[6]

Meanwhile, the respondent also received a demand for the payment of its deficiency income tax, value-added tax, premium tax, DST, expanded withholding tax, and fringe benefit tax for taxable year 2012,[7] and deficiency DST for taxable year 2013.[8]

On December 19, 2014, the respondent commenced Civil Case No. 14-1330 in the RTC (with prayer for issuance of a temporary restraining order (TRO) or of a writ of preliminary injunction) for the judicial determination of the constitutionality of Section 108 and Section 184 of the NIRC with respect to the taxes to be paid by non-life insurance companies. In its

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[4] *Id*. at 76.

[5] *Id*. at 135.

[6] *Id*.

[7] *Id*.

[8] *Id*. at 136.

petition, the respondent contended that the facts of the case must be appreciated in light of the effectivity of Republic Act (R.A.) No. 10001 entitled *An Act Reducing the Taxes on Life Insurance Policies*, whereby the tax rate for life insurance premiums was reduced from 5% to 2%; and the pendency of deliberations on House Bill (H.B.) No. 3235 entitled *An Act Rationalizing the Taxes Imposed on Non-Life Insurance Policies*, whereby an equal treatment for both life and non-life companies was being sought as a response to the supposed inequality generated by the enactment of R.A. No. 10001.

On December 23, 2014, the RTC issued the TRO prayed for by enjoining the BIR, its agents, representatives, assignees, or any persons acting for and in its behalf from implementing the provisions of the NIRC adverted to with respect to the FDDA for the respondent's taxable year 2011, and to the pending assessments for taxable years 2012 and 2013.

Later, on January 13, 2015, the RTC issued the writ of preliminary injunction.

On May 8, 2015, the RTC rendered the assailed judgment wherein it opined that although taxes were self-assessing, the tax system merely created liability on the part of the taxpayers who still retained the right to contest the particular application of the tax laws; and holding that the exercise of such right to contest was not considered a breach of the provision itself as to deter the action for declaratory relief,[9] and decreed thusly:

> **WHEREFORE**, premises considered, the respondent, its agents, representatives, or any persons acting on its behalf is hereby permanently enjoined from proceeding with the implementation or enforcement of Sections 108 and 184 of the National Internal Revenue Code against petitioner Standard Insurance Co., Inc. until the Congress shall have enacted and passed into law House Bill No. 3235 in conformity with the provisions of the Constitution.
>
> **SO ORDERED.**[10]

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[9] *Id*. at 76-85.

[10] *Id*. at 85.

The petitioner moved for reconsideration of the judgment, but on July 10, 2015 the RTC denied the motion for reconsideration.[11]

Hence, the petitioner has appealed directly to the Court,[12] stating that:

I.

THE TRIAL COURT ERRED IN TAKING COGNIZANCE OF THE INSTANT CASE BECAUSE A PETITION FOR DECLARATORY RELIEF IS NOT APPLICABLE TO CONTEST TAX ASSESSMENTS.

II.

THE TRIAL COURT ERRED IN TAKING COGNIZANCE OF THE INSTANT CASE BECAUSE THE PETITION FOR DECLARATORY RELIEF IS FATALLY DEFECTIVE FOR FAILING TO SATISFY THE BASIC REQUISITES UNDER RULE 63 OF THE RULES OF COURT.

III.

THE TRIAL COURT ERRED IN ADJUDGING SECTIONS 108 AND 184 OF THE NIRC AS VIOLATIVE OF THE EQUAL PROTECTION CLAUSE.

IV.

THE TRIAL COURT GRAVELY ERRED IN GRANTING INJUNCTIVE RELIEF IN FAVOR OF RESPONDENT, THE SAME (I) BEING SPECIFICALLY PROHIBITED BY SECTION 218 OF THE NIRC; AND (II) HAVING BEEN GRANTED WITHOUT FACTUAL OR LEGAL BASIS.

V.

THE TRIAL COURT ERRED IN ACCORDING THE RELIEF ADJUDGED, GIVEN THAT: (A) THE RESULTANT REMEDY FALLS OUTSIDE THE PURVIEW OF AN ACTION FOR DECLARATORY RELIEF; AND (II) IT IS VIOLATIVE OF THE

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[11] *Id*. at 73-75.

[12] *Id*. at 25-68.

RULE THAT JUDICIAL DECISIONS MUST FINALLY DETERMINE THE RIGHTS, OBLIGATIONS AND RESPONSIBILITIES OF PARTIES.[13]

Two substantial issues are presented for resolution. The first is the propriety of the action for declaratory relief; the other, the legal competence of the RTC to take cognizance of the action for declaratory relief.

Ruling of the Court

The appeal is meritorious.

1.

The injunctive relief is not available as a remedy to assail the collection of a tax

The more substantial reason that should have impelled the RTC to desist from taking cognizance of the respondent's petition for declaratory relief except to dismiss the petition was its lack of jurisdiction.

We start by reminding the respondent about the inflexible policy that taxes, being the lifeblood of the Government, should be collected promptly and without hindrance or delay. Obeisance to this policy is unquestionably dictated by law itself. Indeed, Section 218 of the NIRC expressly provides that "*[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by th[e] [NIRC].*"[14] Also, pursuant to Section 11[15] of R.A. No. 1125, as amended, the decisions or rulings of the

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

[14] *Angeles City v. Angeles Electric Corporation*, G.R. No. 166134, June 29, 2010, 622 SCRA 43, 51-52.

[15] Section 11. *Who may appeal; effect of appeal.* — Any person association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling.

Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their tax liabilities are immediately executory, and their enforcement is not to be suspended by any appeals thereof to the Court of Tax Appeals unless "*in the opinion of the Court [of Tax Appeals] the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer*," in which case the Court of Tax Appeals "*at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount*."

In view of the foregoing, the RTC not only grossly erred in giving due course to the petition for declaratory relief, and in ultimately deciding to permanently enjoin the enforcement of the specified provisions of the NIRC against the respondent, but even worse acted without jurisdiction.

2.

Action for declaratory relief was procedurally improper as a remedy

We further indicate that even assuming, *arguendo*, that the RTC had jurisdiction to act on the petition in Civil Case No. 14-1330, it nevertheless misappreciated the propriety of declaratory relief as a remedy.

No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law; *Provided*, however, That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.

An action for declaratory relief is governed by Section 1, Rule 63 of the *Rules of Court*.[16] It is predicated on the attendance of several requisites, specifically: (1) the subject matter of the controversy must be a deed, will, contract or other written instrument, statute, executive order or regulation, or ordinance; (2) the terms of said documents and the validity thereof are doubtful and require judicial construction; (3) there must have been no breach of the documents in question; (4) there must be an actual justiciable controversy or the "ripening seeds" of one between persons whose interests are adverse; (5) the issue must be ripe for judicial determination; and (6) adequate relief is not available through other means or other forms of action or proceeding.[17]

The third, fourth, fifth and sixth requisites were patently wanting.

Firstly, the third requisite was not met due to the subject of the action (*i.e.* statute) having been infringed or transgressed *prior to* the institution of the action.[18] We observe in this regard that the RTC seemed to believe that the tax assessments issued had merely created a liability against the respondent as the taxpayer, and that its suit for declaratory relief was but consistent with protesting the assessments. The RTC's belief was absolutely devoid of legal foundation, however, simply because internal

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[16] Section 1. *Who May File Petition*. — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

x x x x x x x x x

[17] *Republic v. Roque*, G.R. No. 204603, September 24, 2013, 706 SCRA 273, 283.

[18] *Tambunting, Jr. v. Sumabat*, G.R. No. 144101, September 16, 2005, 470 SCRA 92, 96.

revenue taxes, being self-assessing, required no further assessment to give rise to the liability of the taxpayer.[19]

Specifically, the assessments for DST deficiencies of the respondent for the years 2011, 2012 and 2013, as imposed pursuant to Section 184 of the NIRC were the subject of the respondent's petition for declaratory relief. Said legal provision states:

> Section 184. *Stamp Tax on Policies of Insurance Upon Property*. – On all policies of insurance or other instruments by whatever name the same may be called, by which insurance shall be made or renewed upon property of any description, including rents or profits, against peril by sea or on inland waters, or by fire or lightning, there shall be collected a documentary stamp tax of Fifty centavos (₱0.50) on each Four pesos (₱4.00), or fractional part thereof, of the amount of premium charged: *Provided, however*, That no documentary stamp tax shall be collected on reinsurance contracts or on any instrument by which cession or acceptance of insurance risks under any reinsurance agreement is effected or recorded.

What was being thereby taxed was the privilege of issuing insurance policies; hence, *the taxes accrued at the time the insurance policies were issued*. Verily, the violation of Section 184 of the NIRC occurred upon the taxpayer's failure or refusal to pay the correct DST due at the time of issuing the non-life insurance policies. Inasmuch as the cause of action for the payment of the DSTs pursuant to Section 108[20] and

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[19] *Tupaz v. Ulep*, G.R. No. 127777, October 1, 1999, 316 SCRA 118, 126.

[20] SECTION 108. *Value-added Tax on Sale of Services and Use or Lease of Properties*.—

(A) *Rate and Base of Tax*. — There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) of gross receipts derived from the sale or exchange of services, including the use or lease of properties.

The phrase '*sale or exchange of services*' means the performance of all kinds of services in the Philippines for others for a fee, remuneration or consideration, including those performed or rendered by construction and service contractors; stock, real estate, commercial, customs and immigration brokers; lessors of property, whether personal or real; warehousing services;

Section 184 of the NIRC accrued upon the respondent's failure to pay the DST at least for taxable year 2011 despite notice and demand, the RTC could not procedurally take cognizance of the action for declaratory relief.

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lessors or distributors of cinematographic films; persons engaged in milling, processing, manufacturing or repacking goods for others; proprietors, operators or keepers of hotels, motels, resthouses, pension houses, inns, resorts; proprietors or operators of restaurants, refreshment parlors, cafes and other eating places, including clubs and caterers; dealers in securities; lending investors; transportation contractors on their transport of goods or cargoes, including persons who transport goods or cargoes for hire and other domestic common carriers by land, air and water relative to their transport of goods or cargoes; services of franchise grantees of telephone and telegraph, radio and television broadcasting and all other franchise grantees except those under Section 119 of this Code; services of banks, non-bank financial intermediaries and finance companies; and non-life insurance companies (except their crop insurances), including surety, fidelity, indemnity and bonding companies; and similar services regardless of whether or not the performance thereof calls for the exercise or use of the physical or mental faculties. The phrase '*sale or exchange of services*' shall likewise include:

(1) The lease or the use of or the right or privilege to use any copyright, patent, design or model, plan, secret formula or process, goodwill, trademark, trade brand or other like property or right;

(2) The lease or the use of, or the right to use of any industrial, commercial or scientific equipment;

(3) The supply of scientific, technical, industrial or commercial knowledge or information;

(4) The supply of any assistance that is ancillary and subsidiary to and is furnished as a means of enabling the application or enjoyment of any such property, or right as is mentioned in subparagraph (2) or any such knowledge or information as is mentioned in subparagraph (3);

(5) The supply of services by a nonresident person or his employee in connection with the use of property or rights belonging to, or the installation or operation of any brand, machinery or other apparatus purchased from such nonresident person;

(6) The supply of technical advice, assistance or services rendered in connection with technical management or administration of any scientific, industrial or commercial undertaking, venture, project or scheme;

(7) The lease of motion picture films, films, tapes and discs; and

(8) The lease or the use of or the right to use radio, television, satellite transmission and cable television time.

Lease of properties shall be subject to the tax herein imposed irrespective of the place where the contract of lease or licensing agreement was executed if the property is leased or used in the Philippines.

Secondly, the apprehension of the respondent that it could be rendered technically insolvent through the imposition of the iniquitous taxes imposed by Section 108 and Section 184 of the NIRC,[21] laws that were valid and binding, did not render the action for declaratory relief fall within the purview of an actual controversy that was ripe for judicial determination. The respondent was thereby engaging in speculation or conjecture, or arguing on probabilities, not actualities. Therein lay the prematurity of its action, for a justiciable controversy refers to an existing case or controversy that is appropriate or ripe for judicial determination, not one that is conjectural or merely anticipatory.[22]

The term '*gross receipts*' means the total amount of money or its equivalent representing the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments actually or constructively received during the taxable quarter for the services performed or to be performed for another person, excluding value-added tax.

(B) *Transactions Subject to Zero Percent (0%) Rate*. — The following services performed in the Philippines by VAT-registered persons shall be subject to zero percent (0%) rate:

(1) Processing, manufacturing or repacking goods for other persons doing business outside the Philippines which goods are subsequently exported, where the services are paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(2) Services other than those mentioned in the preceding paragraph, the consideration for which is paid for in acceptable foreign currency and accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP);

(3) Services rendered to persons or entities whose exemption under special laws or international agreements to which the Philippines is a signatory effectively subjects the supply of such services to zero percent (0%) rate;

(4) Services rendered to vessels engaged exclusively in international shipping; and

(5) Services performed by subcontractors and/or contractors in processing, converting, or manufacturing goods for an enterprise whose export sales exceed seventy percent (70%) of total annual production. x x x

[21] *Rollo*, p. 144.

[22] *Republic v. Roque*, *supra* note 17, at 284.

Admittedly, the respondent sought in the RTC the determination of its right to be assessed the correct taxes under Section 108 and Section 184 of the NIRC by contending said tax provisions to be invalid and unconstitutional for their unequal treatment of life and non-life insurance policies. The respondent cited R.A. No. 10001 and House Bill No. 3235 in support of its contention. Obviously, the challenge mounted by the respondent against the tax provisions in question could be said to be based on a contingency that might or might not occur. This is because the Congress has not yet addressed the difference in tax treatment of the life and non-life insurance policies. Under the circumstances, the respondent would not be entitled to declaratory relief because its right – still dependent upon contingent legislation – was still inchoate.

Lastly, the respondent's adequate remedy upon receipt of the FDDA for the DST deficiency for taxable year 2011 was not the action for declaratory relief but an appeal taken in due course to the Court of Tax Appeals. Instead of appealing in due course to the CTA, however, it resorted to the RTC to seek and obtain declaratory relief. By choosing the wrong remedy, the respondent lost its proper and true recourse. Worse, the choice of the wrong remedy rendered the assessment for the DST deficiency for taxable year 2011 final as a consequence. As such, the petition for declaratory relief, assuming its propriety as a remedy for the respondent, became mooted by the finality of the assessment.

With not all the requisites for the remedy of declaratory relief being present, the respondent's petition for declaratory relief had no legal support and should have been dismissed by the RTC.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **ANNULS** and **SETS ASIDE** the decision rendered in Civil Case No. 14-1330 on May 8, 2015 by the Regional Trial Court, Branch 66, in Makati City; **DISMISSES** Civil Case No. 14-1330 on the ground of lack of jurisdiction; **QUASHES** the writ of preliminary injunction issued against the Commissioner of Internal Revenue in Civil Case No. 14-1330

for being issued without jurisdiction; and **ORDERS** the respondent to pay the costs of suit.

SO ORDERED.

Jardeleza, Tijam, and *Reyes, A. Jr.*,[*] *JJ.*, concur.

Gesmundo,[**] *J.*, on wellness leave.

FIRST DIVISION

[G.R. No. 222480. November 7, 2018]

AVON PRODUCTS MANUFACTURING, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; EXCISE TAXES ON CERTAIN GOODS; EXCISE TAX ON ALCOHOL PRODUCTS; DISTILLED SPIRITS; EXCISE TAX IS APPLIED ONLY IF THE DENATURED ALCOHOL IS REPROCESSED TO A DISTILLED SPIRIT.— Section 129 of the NIRC provides that *excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported*. x x x [U]nder the current definition, the liability for excise tax on distilled spirit attaches upon its

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[*] In lieu of Associate Justice Mariano C. Del Castillo, who inhibited due to close relations to the lawyer of a party, per the raffle of September 24, 2018.

[**] Additional Member, per Special Order No. 2607 dated October 10, 2018.

existence. Section 141, as amended by Republic Act (R.A.) No. 9334, specifically provides that "*the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process*." Thus, as soon as the substance known as ethyl alcohol or ethanol has been processed, rectified or distilled, liability for payment of excise tax correspondingly attaches. x x x As shown in the Formal Letter of Demand of the BIR, it is specifically indicated that the denatured alcohol purchased by Avon, which evaporated during transit has 189° proof or 94.5% absolute alcohol. As such, in this aspect, the denatured alcohol is rendered unfit for oral intake, therefore exempt from excise tax. x x x Having established that the denatured alcohol is more than 180° proof or 90% absolute alcohol, it now becomes necessary to determine whether the denatured alcohol purchased by Avon underwent rectification, distillation or other similar processes to render it fit for oral intake. After scrutiny of the records, We hold that the denatured alcohol which evaporated during transit did not go through the process of distillation or rectification to a distilled spirits. As such, the liability for excise tax was not attached. To reiterate, excise tax is applied only if the denatured alcohol is reprocessed to a distilled spirit.

2. **ID.; ID.; ID.; EXEMPTION OR CONDITIONAL TAX-FREE REMOVAL OF CERTAIN ARTICLES; DOMESTIC DENATURED ALCOHOL; DENATURED ALCOHOL IS COMPLETELY EXEMPTED FROM EXCISE TAX; EXCEPTION.—** Rectification refers to the process of refining, purifying or enhancing the quality of ethyl alcohol only by distillation. Other processes intended to improve or enhance the quality of alcohol such as, but not limited to, aging, purification, filtration, carbon-treatments, etc., without distillation undertaken by the rectifier or rectifier-compounder itself, are deemed excluded under the term rectification. While distillation is the process of separating the components or substances from a liquid mixture by selective boiling and condensation. Section 134 of the NIRC provides that denatured alcohol of not less than 180° degrees proof or ninety-percent (90%) absolute alcohol shall, when suitably denatured and rendered unfit for oral intake, be exempt from excise tax as provided for under Section 141 of the NIRC x x x. [D]enatured

alcohol is completely exempted from excise tax, unless: 1) the denatured alcohol is less than 180° proof or 90% absolute alcohol, when suitably denatured and rendered unfit for oral intake; or, when 2) the denatured alcohol previously unfit for oral intake underwent fermentation, dilution, purification, or other similar process, in both instances, the denatured alcohol will be subjected to excise tax.

3. ID.; TAX STATUTES; MAY NOT BE EXTENDED BY IMPLICATION BEYOND THE CLEAR IMPORT OF THEIR LANGUAGE, NOR THEIR OPERATION ENLARGED SO AS TO EMBRACE MATTERS NOT SPECIFICALLY PROVIDED.— It is well-settled that tax statutes are construed *strictissimi juris* against the government. "Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided." Here, CTA applied Section 22 of RR No. 3-2006 which treats losses on distilled spirit to losses on denatured alcohol without any legal basis. The CIR failed to present any proof that the denatured alcohol which evaporated was reprocessed to a distilled spirit. Neither did the CIR show any legal justification in applying Section 22 of RR No. 3-2006 to a completely different article. As such, the 21,163.48 liters of denatured alcohol which evaporated during transit are still exempt from excise tax without any specific law subjecting the same to excise tax.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & De Los Angeles for petitioner.

The Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

Before Us is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by petitioner Avon Products

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[1] *Rollo*, pp. 12-59.

Manufacturing, Inc. (Avon) assailing the Decision[2] dated March 16, 2015 and the Resolution[3] dated January 15, 2016 of the Court of Tax Appeals (CTA) En Banc in CTA EB No. 1062 (CTA Case No. 8174), affirming the deficiency assessment of excise tax issued to Avon for the total shortage of 21,163.48 liters of denatured ethyl alcohol, which evaporated during transit from its supplier to Avon's warehouse in Calamba, Laguna.

The antecedent facts

Avon is a manufacturer of perfumes, toilet waters, splash colognes and body sprays. It uses denatured alcohol as a raw ingredient in the manufacture of the above products.[4]

The Bureau of Internal Revenue (BIR) issued a Permit to Buy/Use Denatured Alcohol[5] to Avon dated January 7, 2008. The permit provides that as long as denatured alcohol is used solely in the production of the latter's products, it will be exempted from excise tax. However, the BIR permit imposed a condition[6] that in the event the volume of denatured alcohol

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[2] Penned by Associate Justice Erlinda P. Uy with Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito M. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringis-Liban, concurring. *Id*. at 62-89.

[3] *Id*. at 90-100.

[4] *Id*. at 15 and 64.

[5] *Id*. at 296-299.

[6] Condition No. 3 — All purchases of denatured alcohol from the distiller/dealer shall be supported by an Official Delivery Invoice (ODI) issued to you. In case of purchases from the dealer/trader, the ODI shall be issued to the name of the dealer with a notation that such delivery is for your account. The said ODI shall be signed and attested to by the Revenue Officer on-Premise (ROOP) assigned at the source distillery plant. In addition, the corresponding BIR-registered Sales Invoice and Delivery Receipt shall accompany each and every shipment until it reaches your production premises.

In the event that the volume of purchased denatured alcohol actually received is more than or less than the volume reflected in the aforementioned accompanying documents, the excise tax due on the differences shall be assessed, inclusive of all applicable penalties; *Id*. at 296.

purchased by Avon from its suppliers is more than or less than the volume of denatured alcohol actually received by Avon, the latter will be assessed excise tax due on the difference.

From January to December 2008, Avon made various purchases of denatured alcohol from its suppliers amounting to 1,309,000 liters.[7] In accordance with Section 134[8] of the National Internal Revenue Code (NIRC) and the BIR Permit, such purchases were not subjected to excise tax.

However, during transit, marginal quantities of the purchased denatured alcohol evaporated. As such, the BIR issued a Formal Letter of Demand[9] finding Avon liable for deficiency excise tax on distilled spirits[10] on the evaporated denatured alcohol in the amount of Php1,135,500.85.

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[7] *Id*. at 16.

[8] Sec. 134. *Domestic Denatured Alcohol*. – Domestic alcohol of not less than one hundred eighty degrees (180°) proof (ninety percent [90%] absolute alcohol) shall, when suitably denatured and rendered unfit for oral intake, be exempt from the excise tax prescribed in Section 141: *Provided, however*, That such denatured alcohol shall be subject to tax under Section 106(A) of this Code: *Provided, further*, That if such alcohol is to be used for automotive power, it shall be taxed under Section 148(d) of this Code: *Provided, finally*, That any alcohol, previously rendered unfit for oral intake after denaturing but subsequently rendered fit for oral intake after undergoing fermentation, dilution, purification, mixture or any other similar process shall be taxed under Section 141 of this Code and such tax shall be paid by the person in possession of such reprocessed spirits.

[9] *Rollo*, pp. 283-284.

[10] Section 141. *Distilled Spirits*. – On distilled spirits, there shall be collected, subject to the provisions of Section 133 of this Code, excise taxes as follows:

(a) If produced from the sap of nipa, coconut, cassava, camote, or buri palm or from the juice, syrup or sugar of the cane, provided such materials are produced commercially in the country where they are processed into distilled spirits, per proof liter, Eight pesos (₱8.00): Provided, That if produced in a pot still or other similar primary distilling apparatus by a distiller producing not more than one hundred (100) liters a day, containing not more than fifty percent (50%) of alcohol by volume, per proof liter, Four pesos (₱4.00);

x x x x x x x x x

The BIR alleged that from the 1,309,000 liters of denatured alcohol purchased by Avon from January to December 2008, there were shortages of 21,163.48 liters.

Avon protested the assessment. The BIR issued a Final Decision on Disputed Assessment (FDDA) dated September 1, 2010[11] denying Avon's protest. The latter filed a Petition for Review before the CTA only assailing the deficiency assessment on the excise tax over the shortages of 21,163.48 liters in the amount of Php738,580.13.[12]

The CTA Second Division in its Decision[13] dated May 16, 2013 ruled in favor of the Commissioner of Internal Revenue (CIR), thus:

> WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED. Accordingly, the deficiency excise tax assessment issued by respondent against petitioner on the total shortage of 21,163.4[8] liters relating to deliveries of denatured ethyl alcohol from January to December 2008 is hereby upheld but in the modified amount of ₱628,948.21, inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, computed as follows:

Basic Tax	₱ 503,187.37
Surcharge	125,796.84
Total	₱ 628,984.21

> In addition, petitioner is ORDERED TO PAY:
>
> (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency excise tax of ₱503,187.37, computed from the delivery dates indicated in respondent's Computation of Deficiency Excise Tax Per Final Decision on Disputed Assessment until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and

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[11] *Rollo*, pp. 292-293.

[12] *Id*. at 17.

[13] *Id*. at 165-190.

(b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱628,984.21, and on the 20% deficiency interest which have accrued as afore-stated in (a), computed from September 7, 2010 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.[14]

Avon's motion for reconsideration was likewise denied[15] by the CTA Second Division.

Avon elevated the case to the CTA En Banc, the latter however denied[16] Avon's petition and affirmed the decision of the CTA Second Division in a Decision dated March 16, 2015. The motion for reconsideration of Avon suffered the same fate and was denied[17] by the CTA En Banc in a Resolution dated January 15, 2016.

Hence, this petition raising the following assignment of errors:

A.

THE CTA SERIOUSLY ERRED [THAT] THE PETITIONER FAILED TO PROVE THAT DENATURED ALCOHOL IS SUBJECT OF THE ASSESSMENT AND THAT IT IS EXEMPT FROM EXCISE TAX UNDER SECTION 141 OF THE NIRC.

B.

THE CTA SERIOUSLY ERRED IN RULING THAT RR 3-2006 APPLIES TO THE ASSESSMENT FOR THE EVAPORATED DENATURED ALCOHOL.

C.

THE CTA SERIOUSLY ERRED IN RULING THAT THE *LA TONDEÑA* CASE IS NOT APPLICABLE.

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[14] *Id*. at 189.

[15] Resolution dated August 15, 2013; *id*. at 192-198.

[16] *Id*. at 88.

[17] *Id*. at 90-100.

D.

THE CTA SERIOUSLY ERRED WHEN IT IGNORED AND FAILED TO RULE THAT THE CONDITION IN THE BIR PERMIT IS CONTRARY TO THE NIRC.

E.

THE CTA DECISION AND RESOLUTION RUN COUNTER TO THE PRINCIPLE THAT EXCISE TAX UNDER SECTION 141 OF THE NIRC ONLY BE IMPOSED ON A SPECIFIC TAXABLE ARTICLE.

F.

THE CTA SERIOUSLY ERRED IN ITS SIMULTANEOUS IMPOSITION OF [DEFICIENCY] AND DELINQUENCY INTEREST AS THE SAME IS EXCESSIVE AND UNCONSCIONABLE.[18]

Ultimately, the issue for Our resolution is whether Avon should be assessed deficiency excise tax over the shortages of denatured alcohol which evaporated during transit before its processing, rectification or distillation.

Avon's allegations

Avon claimed that Revenue Regulations (RR) No. 3-2006[19] is not applicable to the deficiency assessment for the evaporated denatured alcohol. The CTA erroneously applied the rules meant for distilled spirits to a completely different and tax-exempt article (denatured alcohol). Section 22[20] of RR No. 3-2006 applies

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

[19] Prescribing the Implementing Guidelines on the Revised Tax Rates on Alcohol and Tobacco Products Pursuant to the Provisions of Republic Act No. 9334, and Clarifying Certain Provisions of Existing Revenue Regulations Relative Thereto.

[20] SEC. 22. LOSSES ON DISTILLED SPIRITS. - No claim for excise tax refund or credit shall be allowed on distilled spirits that have been lost or destroyed after removal thereof from the place of production or released from the customs' custody. In case of losses incurred on bonded distilled spirits, the corresponding excise tax due on such losses shall be paid to the BIR.

to a distiller and to distilled spirits not to denatured alcohol.[21] Avon was not engaged in the business of producing distilled spirits. Hence, the denatured alcohol it purchased and stored should continue to be exempted from excise tax unless it is reprocessed into a distilled spirit. Thus, there was no legal basis to arbitrarily extend its application to denatured alcohol and to Avon, who is not a distiller.[22]

Further, Avon contended that the CTA erred in not applying the case of *La Tondeña Inc. v. Collector of Internal Revenue, et al.*,[23] where this Court held that "until the spirits requiring rectification has been converted into a finished product, no specific tax shall be due from the rectifier receiving them." Thus, "as long as the alcohol requires rectification, all unintentional, casual, unavoidable and/or natural losses prior to the conversion into some finished product, should not be subject to specific tax."[24] As such, the shortages of 21,163.48 liters of denatured alcohol that evaporated in transit from January to December 2008, which were not subject to rectification nor were converted to a finished product, should not be subject to an excise tax.[25]

Losses of distilled spirits or rectified alcohol incurred before removal thereof from the distillery premises shall be accounted for and recorded in the ORBs as they occur on a daily basis. For this purpose, a loss of not more than one percent (1%) for distillation and four percent (4%) of excise tax-paid distilled spirits for rectification may be allowed when such loss is not caused by fraud, negligence or carelessness of the distillers or owners of the rectifying establishments. However, no deduction for losses shall be allowed on bonded distilled spirits delivered and subsequently stored for rectification purposes as well as losses arising from rectification of such bonded distilled spirits. The total volume of losses incurred during the month less the allowable percentage of loss, if any, shall be computed and the corresponding excise tax due thereon shall be paid to the BIR on or before every eighth (8th) day of the month immediately following the month of operations.

[21] *Rollo*, p. 33.

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

[23] 116 Phil. 398, 404 (1962).

[24] *Rollo*, p. 38.

[25] *Id*. at 39.

Avon also claimed that Condition No. 3[26] contained in Avon's permit to Buy/Use Denatured Alcohol is contrary to the tax exemption as provided under Section 134 of the NIRC. The BIR cannot simply override the provision of the NIRC and arrogate upon itself the authority to impose the excise tax on distilled spirits on a tax-exempt article that evaporated prior to its conversion to a distilled or reprocessed spirit.[27]

Respondent's contentions

The Office of the Solicitor General (OSG), on behalf of the CIR, alleged that while it was not contested that the article subject of the case is denatured alcohol, Avon failed to prove that the same is exempted from excise tax. Avon failed to establish that the denatured alcohol in question was not less than 90% absolute alcohol to qualify exemption under Section 134 of the NIRC. As such, Section 22 of RR No. 3-2006 as to losses on distilled spirits is applicable in the present case.

The Court's ruling

The petition is impressed with merit.

Section 129 of the NIRC provides that *excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported*.

As held in *Commissioner of Internal Revenue v. Pilipinas Shell Petroleum Corporation*,[28] excise tax attaches upon goods manufactured or produced in the Philippines as soon as its existence, thus:

> The transformation undergone by the term "excise tax" from its traditional concept up to its current definition in our Tax Code was explained in the case of *Petron Corporation v. Tiangco*, as follows:

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[26] *Id*. at 296.

[27] *Id*. at 42.

[28] 727 Phil. 506 (2014).

> Admittedly, the proffered definition of an excise tax as "a tax upon the performance, carrying on, or exercise of some right, privilege, activity, calling or occupation" derives from the compendium *American Jurisprudence*, popularly referred to as *Am Jur* and has been cited in previous decisions of this Court, including those cited by Petron itself. Such a definition would not have been inconsistent with previous incarnations of our Tax Code, such as the NIRC of 1939, as amended, or the NIRC of 1977 because in those laws the term "excise tax" was not used at all. In contrast, the nomenclature used in those prior laws in referring to taxes imposed on specific articles was "specific tax." Yet beginning with the National Internal Revenue Code of 1986, as amended, the term "excise taxes" was used and defined as applicable "**to goods manufactured or produced in the Philippines... and to things imported.**" (Underscoring ours) This definition was carried over into the present NIRC of 1997. Further, these two latest codes categorize two different kinds of excise taxes: "specific tax" which is imposed and based on weight or volume capacity or any other physical unit of measurement; and "*ad valorem tax*" which is imposed and based on the selling price or other specified value of the goods. In other words, **the meaning of "excise tax" has undergone a transformation, morphing from the *Am Jur* definition to its current signification which is a tax on certain specified goods or articles.**

The change in perspective brought forth by the use of the term "excise tax" in a different connotation was not lost on the departed author Jose Nolledo as he accorded divergent treatments in his 1973 and 1994 commentaries on our tax laws. Writing in 1973, and essentially alluding to the *Am Jur* definition of "excise tax," Nolledo observed:

> Are specific taxes, taxes on property or excise taxes –
>
> In the case of *Meralco v. Trinidad* ([G.R.] 16738, 1925) it was held that specific taxes are property taxes, a ruling which seems to be erroneous. Specific taxes are truly excise taxes for the fact that the value of the property taxed is taken into account will not change the nature of the tax. It is correct to say that specific taxes are taxes on the privilege to import, manufacture and remove from storage certain articles specified by law.

In contrast, after the tax code was amended to classify specific taxes as a subset of excise taxes, Nolledo, in his 1994 commentaries, wrote:

> 1. *Excise taxes*, as used in the Tax Code, **refers to taxes applicable to certain specified goods or articles manufactured or produced in the Philippines for domestic sale or consumption or for any other disposition and to things imported into the Philippines.** *They are either specific or* ad valorem. (Underscoring ours)
>
> 2. *Nature of excise taxes*. – They are imposed directly on certain specified goods, (*infra*) They are, therefore, taxes on property, (see *Medina vs. City of Baguio*, 91 Phil. 854.)

A tax is not excise where it does not subject directly the product or goods to tax but indirectly as an incident to, or in connection with, the business to be taxed.

In their 2004 commentaries, De Leon and De Leon restate the *Am Jur* definition of excise tax, and observe that the term is "synonymous with 'privilege tax' and [both terms] are often used interchangeably." At the same time, they offer a caveat that "[ejxcise tax, as [defined by *Am Jur*], is not to be confused with excise tax imposed [by the NIRC] on certain specified articles manufactured or produced in, or imported into, the Philippines, 'for domestic sale or consumption or for any other disposition.'"

It is evident that *Am Jur* aside, the current definition of an excise tax is that of a tax levied on a specific article, rather than one "upon the performance, carrying on, or the exercise of an activity." This current definition was already in place when the Code was enacted in 1991, and we can only presume that it was what the Congress had intended as it specified that local government units could not impose "excise taxes on articles enumerated under the [NIRC]." This prohibition must pertain to the same kind of excise taxes as imposed by the NIRC, and not those previously defined "excise taxes" which were not integrated or denominated as such in our present tax law.[29] (Emphasis supplied.)

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[29] *Id*. at 514-516.

Thus, under the current definition, the liability for excise tax on distilled spirit attaches upon its existence. Section 141,[30] as amended by Republic Act (R.A.) No. 9334, specifically provides that "*the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process*."

Thus, as soon as the substance known as ethyl alcohol or ethanol has been processed, rectified or distilled, liability for payment of excise tax correspondingly attaches.

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[30] SEC. 141. *Distilled Spirits*. – On distilled spirits, there shall be collected, subject to the provisions of Section 133 of this Code, excise tax as follows:

"(a) If produced from the sap of nipa, coconut, cassava, camote, or buri palm or from the juice, syrup or sugar of the cane, provided such materials are produced commercially in the country where they are processed into distilled spirits, per proof liter, Eleven pesos and sixty-five centavos (₱11.65);

"(b) If produced from raw materials other than those enumerated in the preceding paragraph, the tax shall be in accordance with the net retail price per bottle of seven hundred fifty milliliter (750 ml.) volume capacity (excluding the excise tax and the value-added tax) as follows:

"(1) Less than Two hundred and fifty pesos (₱250.00) - One hundred twenty-six pesos (₱126.00), per proof liter;

"(2) Two hundred and fifty pesos (₱250.00) up to Six hundred and seventy-five pesos (₱675.00) - Two hundred fifty-two pesos (₱252.00), per proof liter; and

"(3) More than Six hundred and seventy five pesos (₱675.00) -Five hundred four pesos (₱504.00), per proof liter.

"(c) Medicinal preparations, flavoring extracts, and all other preparations, except toilet preparations, of which, excluding water, distilled spirits form the chief ingredient, shall be subject to the same tax as such chief ingredient.

"This tax shall be proportionally increased for any strength of the spirits taxed over proof spirits, and **the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process**.

'"**Spirits or distilled spirits' is the substance known as ethyl alcohol, ethanol or spirits of wine, including all dilutions, purifications and mixtures thereof, from whatever source, by whatever process produced, and shall include whisky, brandy, rum, gin and vodka, and other similar products or mixtures.** (Underscoring ours)

Rectification refers to the process of refining, purifying or enhancing the quality of ethyl alcohol only by distillation. Other processes intended to improve or enhance the quality of alcohol such as, but not limited to, aging, purification, filtration, carbon-

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'"Proof spirits' is liquor containing one-half (½) of its volume of alcohol of a specific gravity of seven thousand nine hundred and thirty-nine ten thousandths (0.7939) at fifteen degrees centigrade (15°C). A 'proof liter' means a liter of proof spirits.

'"Net retail price', as determined by the Bureau of Internal Revenue through a price survey to be conducted by the Bureau of Internal Revenue itself, or by the National Statistics Office when deputized for the purpose by the Bureau of Internal Revenue, shall mean the price at which the distilled spirits is sold on retail in at least ten (10) major supermarkets in Metro Manila, excluding the amount intended to cover the applicable excise tax and the value-added tax. For brands which are marketed outside Metro Manila, the 'net retail price' shall mean the price at which the distilled spirits is sold in at least five (5) major supermarkets in the region excluding the amount intended to cover the applicable excise tax and the value-added tax.

"Variants of existing brands and variants of new brands which are introduced in the domestic market after the effectivity of this Act shall be taxed under the proper classification thereof based on their suggested net retail price: *Provided, however*, That such classification shall not, in any case, be lower than the highest classification of any variant of that brand.

"A 'variant of a brand' shall refer to a brand on which a modifier is prefixed and/or suffixed to the root name of the brand.

"New brands, as defined in the immediately following paragraph, shall initially be classified according to their suggested net retail price.

"Willful understatement of the suggested net retail price by as much as fifteen percent (15%) of the actual net retail price shall render the manufacturer liable for additional excise tax equivalent to the tax due and difference between the understated suggested net retail price and the actual net retail price.

'"New brand' shall mean a brand registered after the date of effectivity of R.A. No. 8240.

'"Suggested net retail price' shall mean the net retail price at which new brands, as defined above,of locally manufactured or imported distilled spirits are intended by the manufacturer or importer to be sold on retail in major supermarkets or retail outlets in Metro Manila for those marketed nationwide, and in Other regions, for those with regional markets. At the end of three (3) months from the product launch, the Bureau of Internal Revenue shall validate the suggested net retail price of the new brand against the net retail

treatments, etc., without distillation undertaken by the rectifier or rectifier-compounder itself, are deemed excluded under the

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price as defined herein and determine the correct tax bracket to which a particular new brand of distilled spirits, as defined above, shall be classified. After the end of eighteen (18) months from such validation, the Bureau of Internal Revenue shall invalidate the initially validated net retail price against the net retail price as of the time of revalidation in order to finally determine the correct tax bracket which a particular new brand of distilled spirits shall be classified: *Provided, however*, That brands of distilled spirits introduced in the domestic market between January 1, 1997 and December 31, 2003 shall remain in the classification under which the Bureau of Internal Revenue has determined them to belong as of December 31, 2003. Such classification of new brands and brands introduced between January 1, 1997 and December 31, 2003 shall not be revised except by an act of Congress.

"The rates of tax imposed under this Section shall be increased by eight percent (8%) every two years starting on January 1, 2007 until January 1, 2011.

"Any downward reclassification of present categories, for tax purposes, of existing brands of distilled spirits duly registered at the time of the effectivity of this Act which will reduce the tax imposed herein, or the payment thereof, shall be prohibited.

"The classification of each brand of distilled spirits based on the average net retail price as of October 1, 1996, as set forth in Annex 'A', including the classification of brands for the same products which, although not set forth in said Annex 'A', were registered and were being commercially produced and marketed on or after October 1,1996, and which continue to be commercially produced and marketed after the effectivity of this Act, shall remain in force until revised by Congress.

"Manufacturers and importers of distilled spirits shall, within thirty (30) days from the effectivity of this Act, and within the first five (5) days of every third month thereafter, submit to the Commissioner a sworn statement of the volume of sales for each particular brand of distilled spirits sold at his establishment for the three-month period immediately preceding.

"Any manufacturer or importer who, in violation of this Section, knowingly misdeclares or misrepresents in his or its sworn statement herein required any pertinent data or information shall, upon final findings by the Commissioner that the violation was committed, be penalized by a summary cancellation or withdrawal of his or its permit to engage in business as manufacturer or importer of distilled spirits.

"Any corporation, association or partnership liable for any of the acts or omissions in violation of this Section shall be fined treble the amount of deficiency taxes, surcharges and interest which may be assessed pursuant to this Section.

term rectification.[31] While distillation is the process of separating the components or substances from a liquid mixture by selective boiling and condensation.[32]

Section 134 of the NIRC provides that denatured alcohol of not less than 180° degrees proof or ninety-percent (90%) absolute alcohol shall, when suitably denatured and rendered unfit for oral intake, be exempt from excise tax as provided for under Section 141 of the NIRC, thus:

SEC. 134. *Domestic Denatured Alcohol.* – **Domestic alcohol of not less than one hundred eighty degrees (180°) proof (ninety percent (90%) absolute alcohol) shall, when suitably denatured and rendered unfit for oral intake, be exempt from the excise tax prescribed in Section 141**: *Provided, however*, That such denatured alcohol shall be subject to tax under Section 106(A) of this Code: *Provided, further*, That if such alcohol is to be used for automotive power, it shall be taxed under Section 148(d) of this Code: ***Provided, finally*, That any alcohol, previously rendered unfit for oral intake after denaturing but subsequently rendered fit for oral intake after undergoing fermentation, dilution, purification, mixture or any other similar process shall be taxed under Section 141 of this Code and such tax shall be paid by the person in possession of such reprocessed spirits**. (Emphasis ours)

As stated above, denatured alcohol is completely exempted from excise tax, unless: 1) the denatured alcohol is less than 180° proof or 90% absolute alcohol, when suitably denatured[33]

"Any person liable for any of the acts or omissions prohibited under this Section shall be criminally liable and penalized under Section 254 of this Code. Any person who willfully aids or abets in the commission of any such act or omission shall be criminally liable in the same manner as the principal.

"If the offender is not a citizen of the Philippines, he shall be deported immediately after serving the sentence, without further proceedings for deportation." (Emphasis supplied)

[31] Section 14 of Revenue Regulations No. 3-2006.

[32] https://en.wikipedia.org/wiki/Distillation.

[33] Section 2(p) of RR No. 3-2006, provides:

and rendered unfit for oral intake; or, when 2) the denatured alcohol previously unfit for oral intake underwent fermentation, dilution, purification, or other similar process, in both instances, the denatured alcohol will be subjected to excise tax.

Thus, to resolve the question of whether the evaporated denatured alcohol subject in the present case should be subjected to excise tax, We must determine whether the denatured alcohol is less than 180° proof or 90% absolute alcohol or, whether it underwent reprocess, rectification, fermentation, dilution, purification, or other similar process to render it fit for oral intake.

The CIR, claimed that Avon failed to sufficiently show that the evaporated denatured alcohol was more than 180° proof or 90% absolute alcohol in order for it to be exempted from excise tax. We rule in the negative.

As shown in the Formal Letter of Demand[34] of the BIR, it is specifically indicated that the denatured alcohol purchased by Avon, which evaporated during transit has 189° proof or 94.5% absolute alcohol. As such, in this aspect, the denatured alcohol is rendered unfit for oral intake, therefore exempt from excise tax.

To consider the CIR's allegation that Avon was not able to show that the denatured alcohol was more than 180° proof or 90% absolute alcohol was belied by the Formal Letter of Demand and the FDDA.[35] If the CIR, believed that the denatured alcohol purchased by Avon was not suitably denatured, then it could have rendered a deficiency assessment on the whole 1,309,000 liters of denatured alcohol purchased from January to December

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(p) SUITABLY DENATURED – shall refer to the condition of ethyl alcohol when a material or substance, known as denaturant, has been added to the ethyl alcohol, in accordance with the approved formula of the BIR, to destroy the character of the same and making the added denaturant difficult to separate therefrom.

[34] *Rollo*, pp. 283-284.

[35] *Id*. at 292.

2008, instead it only assessed excise tax on the 21,163.48 liters denatured alcohol that evaporated during transit, on the belief that losses of distilled spirits under Section 22 of RR No. 3-2006 can be equally applied to losses of denatured alcohol.

Having established that the denatured alcohol is more than 180° proof or 90% absolute alcohol, it now becomes necessary to determine whether the denatured alcohol purchased by Avon underwent rectification, distillation or other similar processes to render it fit for oral intake.

After scrutiny of the records, We hold that the denatured alcohol which evaporated during transit did not go through the process of distillation or rectification to a distilled spirits. As such, the liability for excise tax was not attached. To reiterate, excise tax is applied only if the denatured alcohol is reprocessed to a distilled spirit.

The CTA therefore erred when it applied Section 22[36] of RR No. 3-2006 on the denatured alcohol that evaporated during transit. As clearly provided, Section 22 deals with losses on

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[36] SEC. 22. LOSSES ON DISTILLED SPIRITS. – No claim for excise tax refund or credit shall be allowed on distilled spirits that have been lost or destroyed after removal thereof from the place of production or released from the customs' custody. In case of losses incurred on bonded distilled spirits, the corresponding excise tax due on such losses shall be paid to the BIR.

Losses of distilled spirits or rectified alcohol incurred before removal thereof from the distillery premises shall be accounted for and recorded in the ORBs as they occur on a daily basis. For this purpose, a loss of not more than one percent (1%) for distillation and four percent (4%) of excise tax-paid distilled spirits for rectification may be allowed when such loss is not caused by fraud, negligence or carelessness of the distillers or owners of the rectifying establishments. However, no deduction for losses shall be allowed on bonded distilled spirits delivered and subsequently stored for rectification purposes as well as losses arising from rectification of such bonded distilled spirits. The total volume of losses incurred during the month less the allowable percentage of loss, if any, shall be computed and the corresponding excise tax due thereon shall be paid to the BIR on or before every eighth (8th) day of the month immediately following the month of operations.

distilled spirits. In this case, the evaporated denatured alcohol did not undergo any rectification, distillation, fermentation or other similar processes. It would be absurd to treat the 1,287,836.52 liters of denatured alcohol that Avon received as free of excise tax and to treat the shortages of 21,163.48 liters that evaporated during transit and did not undergo any rectification or distillation process as liable for excise tax, since the spring cannot rise higher than its source.

It is well-settled that tax statutes are construed *strictissimi juris* against the government.[37] "Tax laws may not be extended by implication beyond the clear import of their language, nor their operation enlarged so as to embrace matters not specifically provided."[38] Here, CTA applied Section 22 of RR No. 3-2006 which treats losses on distilled spirit to losses on denatured alcohol without any legal basis. The CIR failed to present any proof that the denatured alcohol which evaporated was reprocessed to a distilled spirit. Neither did the CIR show any legal justification in applying Section 22 of RR No. 3-2006 to a completely different article. As such, the 21,163.48 liters of denatured alcohol which evaporated during transit are still exempt from excise tax without any specific law subjecting the same to excise tax.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is **GRANTED**. The Decision dated March 16, 2015 and the Resolution dated January 15, 2016 of the Court of Tax Appeals En Banc in CTA EB No. 1062 are hereby **REVERSED and SET ASIDE**. The Final Decision on Disputed Assessment No. 2009-1-A-159 dated September 1, 2010 is declared **VOID and WITHOUT LEGAL EFFECT**.

SO ORDERED.

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[37] *CIR v. Court of Appeals*, 363 Phil. 130 (1999).

[38] *Health Care Providers Inc. v. Commissioner of Internal Revenue*, 616 Phil. 387, 411 (2009).

Bersamin[*] (*Acting Chairperson*) and *Jardeleza, JJ.*, concur.

Del Castillo, J., on official business.

Gesmundo,[**] *JJ.*, on official leave.

THIRD DIVISION

[G.R. No. 223785. November 7, 2018]

LAJAVE AGRICULTURAL MANAGEMENT and DEVELOPMENT ENTERPRISES, INC., *petitioner, vs.* **SPOUSES AGUSTIN JAVELLANA and FLORENCE APILIS-JAVELLANA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTION TO DISMISS; LITIS PENDENTIA**; REQUISITES.—** *[L]itis pendentia*, as a ground for the dismissal of a civil action, refers to that situation wherein another action is pending, between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. For the bar of *litis pendentia* to be invoked, the following requisites must concur: (a) identity of parties, or at least, such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other.

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[*] Designated Acting Chairperson per Special Order No. 2606 dated October 10, 2018.

[**] Designated Additional Member per Special Order No. 2607-A dated October 24, 2018.

2. ID.; ID.; ID.; ID.; THE SAME SUBJECT MATTER SHOULD NOT BE THE SUBJECT OF CONTROVERSY IN COURTS MORE THAN ONCE, IN ORDER THAT POSSIBLE CONFLICTING JUDGMENTS MAY BE AVOIDED FOR THE SAKE OF THE STABILITY OF THE RIGHTS AND STATUS OF PERSONS, AND ALSO TO AVOID THE COSTS AND EXPENSES INCIDENT TO NUMEROUS SUITS.— The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits. Consequently, a party will not be permitted to split up a single cause of action and make it a basis for several suits as the whole cause must be determined in one action. To be sure, splitting a cause of action is a mode of forum shopping by filing multiple cases based on the same cause of action, but with different prayers, where the ground of dismissal is *litis pendentia* (or *res judicata*, as the case may be).

3. ID.; ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY OR UNLAWFUL DETAINER; THE ONLY ISSUE RAISED THEREIN IS THAT OF RIGHTFUL POSSESSION, AND 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.— [I]n 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. While the court has the authority to fix the reasonable value for the continued use and occupancy of

the premises, the said authority can only be exercised after termination of the lease contract. During the term of the lease contract, the agreement therein is binding to the parties to the contract.

4. ID.; ID.; CAUSE OF ACTION; JOINDER OF CAUSE OF ACTION; AN ORDINARY CIVIL ACTION CANNOT BE PROPERLY JOINED WITH A SPECIAL CIVIL ACTION.— [A]n action for collection of sum of money may not be properly joined with the action for ejectment. The former is an ordinary civil action requiring a full-blown trial, while an action for unlawful detainer is a special civil action which requires a summary procedure. The joinder of the two actions is specifically enjoined by Section 5, Rule 2 of the Rules of Court x x x. Indeed, in the instant case, Agustin's filing of a complaint for collection of sum of money other than those sustained as a result of their dispossession or those caused by the loss of their use and occupation of their properties could not thus be considered as splitting of a cause of action. The cause of action is different. There is no splitting of action because the complaint for collection of money prays for the payment of the differential amount representing the unpaid balance in rental fees after the deduction of the actual payment made by Lajave. Since the damages prayed for in the collection case before the MeTC pertain to deficiency in the rental payments for the contested period before the dispossession, the claims have no direct relation to the loss of possession of the premises. Insofar as the collection case is concerned, Agustin's claim had to do with Lajave's deficiency in the payment of rentals only, without regard to the unlawfulness of the occupancy. This cannot be litigated in the ejectment suits before the MeTC by reason of *misjoinder of causes of action*.

5. ID.; ID.; JUDGMENTS; RES JUDICATA**; CANNOT APPLY IN AN UNLAWFUL DETAINER CASE BECAUSE THE COURT HAS NO JURISDICTION OVER CLAIMS FOR DAMAGES OTHER THAN THE USE AND OCCUPATION OF THE PREMISES AND ATTORNEY'S FEES; CASE AT BAR.—** *Res judicata* will not apply because the court in an unlawful detainer case has no jurisdiction over claims for damages other than the use and occupation of the premises and attorney's fees. Agustin's filing of an independent action for collection of sum of money other than those sustained as

a result of their dispossession or those caused by the loss of their use and occupation of their properties could not thus be considered as splitting of a cause of action. The causes of action in the subject cases are not the same; the rights violated are different; and the reliefs sought are also different. Hence, Civil Case No. 12-41648 stands to be reinstated and remanded to the Metropolitan Trial Court of Quezon City for further proceedings.

APPEARANCES OF COUNSEL

Sobreviñas Hayudini Navarro & San Juan for petitioner.
Florence Apilis-Javellana for respondents.

D E C I S I O N

PERALTA, J.:

Before us is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Civil Procedure seeking to nullify the Court of Appeals Decision[1] dated August 28, 2015 and its Resolution[2] dated March 21, 2016 in CA-G.R. SP No. 134659 entitled "*Spouses Agustin Javellana and Florence Apilis-Javellana v. Lajave Agricultural Management and Development Enterprises, Inc.*"[3]

The facts of the case are as follows:

On July 7, 1987, Agustin Javellana's (*Agustin*) father, the late Justice Luis Javellana, executed a Deed of Absolute Sale transferring ownership of a property containing an area of forty-nine (49) hectares located in Silay City, Negros Occidental in favor of Agustin and his six (6) siblings. The ownership over

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Mario V. Lopez and Myra V. Garcia-Fernandez, concurring; *rollo*, pp. 46-54.

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

[3] Agustin Javellana representing *pro se* and as counsel of Florence Apilis-Javellana.

the remaining area of the Silay City property was transferred to Agustin and his co-owners through intestate succession when the late Justice Javellana passed away on August 25, 1993 without leaving any last will and testament.

On May 13, 1998, for the purpose of planting sugarcane and other agricultural crops, petitioner Lajave Agricultural Management and Development Enterprises, Inc. (*Lajave*) entered into a Contract of Lease[4] with Agustin for the lease of the latter's portion of the property, consisting of seven (7) hectares of sugar land in Hacienda San Isidro, Silay City for a period of ten (10) years, beginning with the crop year 1988-1989 to 1997-1998. The property is covered by Transfer Certificate of Title No. T-7203 of the Register of Deeds of Silay City. Lajave agreed that it shall pay Agustin an annual rental of thirteen (13) piculs of sugar per hectare of the land. It was also agreed therein that upon the expiration of the term of the lease or any extension and renewals thereof, Lajave would peaceably and voluntarily surrender to Agustin the land leased without need of demand.[5]

After the death of Agustin's father, Lajave continued to lease the said property in Silay City and even expanded the coverage of the lease to include the other shares of Agustin in other properties he inherited from his father located in *Barangay* Matab-ang, Talisay City, Negros Occidental, and covered by Transfer Certificate of Title No. T-142126 of the Register of Deeds of Negros Occidental. No new contract of lease was executed for these additional areas.

When the contract of lease expired after the crop year 1997-1998, Lajave continued to use and occupy the sugar farms in Hacienda San Isidro in Silay City without any renewal or extension of the contract. Agustin alleged that Lajave's occupancy was merely tolerated. Lajave paid Agustin the annual compensation for the use and occupancy of the said properties, but the latter alleged that they were never apprised of how the

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[4] *Rollo*, pp. 106-108.

[5] *Id.*

annual rental was determined and the payment of lease rentals was more often delayed.

Thus, on March 1, 2010, Agustin sent a demand letter[6] to Lajave to vacate the property in Silay City. The same demand to vacate was reiterated in a letter[7] dated March 5, 2012. Subsequently, on March 5, 2012, Agustin also sent a demand letter[8] to Lajave to vacate the property in Talisay City. However, despite demands to vacate the subject properties, Lajave continued to occupy the latter.

Thus, on March 26, 2012, Agustin and his wife Florence Apilis-Javellana filed a Complaint[9] for unlawful detainer in the Municipal Trial Court in Cities (MTCC), Silay City, docketed as Civil Case No. 1149-C, involving the property in Hacienda San Isidro, Silay City. On July 16, 2012, Agustin filed another Complaint[10] for unlawful detainer in the MTCC, Talisay City, docketed as Civil Case No. (12)-925, pertaining to the property in Hacienda Sta. Maria, Talisay City. Both cases were dismissed for lack of jurisdiction to try the case (Civil Case No. 1149-C) and lack of cause of action and jurisdiction (Civil Case No. 12-925).

Agustin also claimed that from January 22, 2003 to June 25, 2010, Lajave paid the total amount of ₱928,928.27 only as rentals for the use and occupancy of the leased property in Silay City. However, Agustin averred that based on the statistics provided by the Sugar Regulatory Administration on the national average millsite composite price of sugar, Lajave should have paid the total amount of ₱1,253,423.15, thus, there is still an unpaid balance of ₱324,494.88.

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

[7] *Id.* at 111.

[8] *Id.* at 147.

[9] *Id.* at 58-66.

[10] *Id.* at 117-123.

Consequently, on September 24, 2012, *albeit* the pendency of the unlawful detainer cases, Agustin and his wife also filed a Complaint[11] for collection of sum of money, docketed as Civil Case No. 12-41648 representing the deficiency in rentals paid for Lajave's use and occupancy of the properties covering the period 2000-2001 up to 2008-2009.

On October 29, 2012, Lajave filed a Motion to Dismiss[12] on the following grounds: (1) the complaint violates the rules against splitting a single cause of action under Rule 2, Section 4 of the Rules of Court and *litis pendentia*; and (2) Agustin is guilty of forum shopping as there are other pending actions between the same parties for the same cause. It claimed that although described as a collection of sum of money, Lajave argued that it was, in fact, an action for compensation for the use and occupation of the properties which were already subject of the unlawful detainer cases. Thus, Lajave argued that the complaint for collection of money should be dismissed on the ground of *litis pendentia*, stating that the parties, the rights asserted and reliefs sought in this complaint are one and the same with the unlawful detainer cases pending before the courts in Silay City and Talisay City.

On November 5, 2012, Agustin filed an Opposition (to the Motion to Dismiss)[13] where he argued that there is no splitting of cause of action and no violation of *litis pendentia*, since the damages sought to be recovered in the complaint for collection of sum of money have no direct relation to their loss of material possession because they were sustained prior to the time when Lajave's possession of the leased premises became unlawful.

On December 10, 2012, the Metropolitan Trial Court (*MeTC*) of Quezon City, Branch 38, issued an Order[14] granting Lajave's motion to dismiss, and dismissed the complaint for collection

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[11] *Id.* at 151-159.

[12] *Id.* at 178-197.

[13] *Id.* at 198-220.

[14] *Id.* at 221-223.

of sum of money. The trial court ruled that the deficiency in rentals of the property leased by Lajave for the crop years 2000-2001 to 2008-2009 must be recovered in the ejectment suits and the present suit cannot be allowed to prosper as it would violate the rule on splitting of cause of action.

On October 14, 2013, on appeal, the Regional Trial Court of Quezon City, Branch 84, affirmed with modification the MeTC's ruling.[15] The dispositive portion of the Decision reads:

> WHEREFORE, in light of the foregoing considerations, the Order of Dismissal of the Court *a quo* is hereby AFFIRMED with modification, that the Dismissal is without prejudice.
>
> SO ORDERED.

Petitioner's motion for reconsideration was, likewise, denied in the Order dated March 5, 2014.

Unperturbed, petitioners filed a petition for review under Rule 42 of the Rules of Court before the Court of Appeals.

In the assailed Decision dated August 28, 2015, the Court of Appeals set aside the Decision dated October 14, 2013 and the Order dated March 5, 2014. The dispositive portion of the Court of Appeals Decision reads:

> IN VIEW OF ALL THE FOREGOING, the instant petition is GRANTED. The assailed Decision dated October 14, 2013 and the Order dated March 5, 2014 are SET ASIDE. The Metropolitan Trial Court (MeTC) of Quezon City, Branch 38, is hereby ordered to conduct further proceedings in Civil Case No. 38-41648 with deliberate dispatch.
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> SO ORDERED.[16]

Thus, the instant appeal before us raising the following arguments:

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[15] *Id.* at 224-231.

[16] *Id.* at 53.

I

UNDER PREVAILING LAW AND SETTLED JURISPRUDENCE ON EJECTMENT ACTIONS BROUGHT UNDER RULE 70 OF THE RULES OF COURT, ARREARS IN RENTALS/COMPENSATION FOR THE USE AND OCCUPATION OF THE LEASED PREMISES ARE "DAMAGES" WHICH SHOULD BE RECOVERED IN THE ACTION FOR UNLAWFUL DETAINER INSTITUTED BY THE LANDOWNER TO EJECT THE ALLEGED DEFORCIANT FROM THE PREMISES. THE QUESTIONED DECISION OF THE COURT OF APPEALS ALLOWING RESPONDENT SPOUSES' PURSUIT OF AN INDEPENDENT ACTION FOR "COLLECTION OF SUM OF MONEY" IN MTC QUEZON CITY NOTWITHSTANDING THE EXISTENCE OF THE UNLAWFUL DETAINER CASES IN MTCC SILAY AND MTCC TALISAY INVOLVING THE SAME PARTIES AND PROPERTIES IS THEREFORE BLATANTLY NOT IN ACCORD WITH THE LAW OR WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT AS TO CALL FOR THE EXERCISE OF REVIEW POWERS BY THE HONORABLE COURT.

II

CONSIDERING THE COURT'S ABHORRENCE FOR SPLITTING CAUSES OF ACTION AND MULTIPLICITY OF SUITS AS BEING CONTRARY TO THE OBJECT OF THE RULES OF AFFORDING LITIGANTS A JUST, SPEEDY, AND INEXPENSIVE ADJUDICATION OF THEIR DISPUTES, THE COURT OF APPEALS' REFUSAL TO AFFIRM THE ORDERED DISMISSAL OF RESPONDENT SPOUSES' COLLECTION CASE IN MTC QUEZON CITY CONSTITUTES A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHICH EMINENTLY WARRANTS CORRECTION BY THE HONORABLE COURT.

III

THE PECULIAR FACTS OF THE CASE ESTABLISH A CLEAR CASE OF FORUM-SHOPPING IN VEXATIOUS MULTIPLE SUITS BEFORE VARIOUS FORUMS AS TO WARRANT THE OUTRIGHT DISMISSAL OF THE COLLECTION CASE BELOW. THIS WAS INEXPLICABLY OVERLOOKED OR OTHERWISE IGNORED BY THE COURT OF APPEALS IN PLAIN DISREGARD OF THE EXPRESS LAW AND JURISPRUDENCE ON THE MATTER,

DESERVING CORRECTION IN THE PRESENT REVIEW PROCEEDINGS.[17]

Lajave asserted that the complaint for collection of sum of money violated the rules against splitting a single cause of action. It argued that the complaint for collection of money should be dismissed on the ground of *litis pendentia* because the parties, the rights asserted and reliefs sought in the complaint for collection of sum of money were one and the same with the unlawful detainer cases pending before the courts in Silay City and Talisay City.

On the other hand, Agustin claimed that in the unlawful detainer cases, the damages being prayed for pertained to the unpaid rentals for the crop years 2009-2010 and 2010-2011 and every crop year thereafter which were directly related to their loss of material possession after Lajave refused to heed their demand to vacate the subject properties. While in the complaint for collection of sum of money, Agustin asserted that his cause of action was to recover differential payment in view of Lajave's payment of incorrect amount of rentals, and has no direct relation to their loss of material possession of the leased properties since the damages were sustained *prior* to the time when Lajave's possession of the leased properties became unlawful.

In a nutshell, the issue is whether, during the pendency of Agustin's complaints for unlawful detainer, he can also independently maintain an action for collection of sum of money which allegedly stemmed from incidents occurring before the possession by Lajave of the leased properties became unlawful, without violating the prohibition on splitting of a single cause of action, *litis pendentia* and forum shopping.

Stated otherwise, did Agustin commit violation of the rules on forum shopping, on splitting of a single cause of action, and on *litis pendentia* when he filed the complaint for collection of sum of money during the pendency of the unlawful detainer cases?

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[17] *Id.* at 22-23.

We answer in the negative.

To lay down the basics, *litis pendentia*, as a ground for the dismissal of a civil action, refers to that situation wherein another action is pending, between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious. For the bar of *litis pendentia* to be invoked, the following requisites must concur: (a) identity of parties, or at least, such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars is such that any judgment rendered in the pending case, regardless of which party is successful would amount to *res judicata* in the other.[18]

The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons, and also to avoid the costs and expenses incident to numerous suits. Consequently, a party will not be permitted to split up a single cause of action and make it a basis for several suits as the whole cause must be determined in one action. To be sure, splitting a cause of action is a mode of forum shopping by filing multiple cases based on the same cause of action, but with different prayers, where the ground of dismissal is *litis pendentia* (or *res judicata*, as the case may be).[19]

Applying this concept of *litis pendentia*, Lajave asserts that Agustin is guilty of forum shopping. It argued that the complaint for collection of sum of money should be dismissed on the ground of *litis pendentia* and forum shopping because the parties,

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[18] *Brown-Araneta v. Araneta*, 719 Phil. 293, 316 (2013); *Yap v. Chua*, 687 Phil. 392, 400 (2012).

[19] *Marilag v. Martinez*, 764 Phil. 576, 586 (2015).

the rights asserted and reliefs sought in the complaint for sum of money are one and the same with the unlawful detainer cases pending before the courts in Silay City and Talisay City.

However, in determining whether a party violated the rule against forum shopping, the most important factor to consider is whether the elements of *litis pendentia* concur, to reiterate: "(a) [there is] identity of parties, or at least, such parties who represent the same interests in both actions; (b) [there is] identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) [that] the identity with respect to the two preceding particulars in the two cases is such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case."

In the instant case, a perusal of the records shows that the *second* and *third requirements* are lacking. While the complaints appear to involve the same parties and properties, we find, however, no identity of causes of action. In the unlawful detainer cases filed by Agustin, in view of Lajave's failure to vacate the subject properties and non-payment of rentals, his cause of action stemmed from the prejudice he suffered due to the loss of possession of his properties and the damages incurred after the dispossession.

Meanwhile, in the complaint for collection of sum of money, the same was founded upon alleged violation of Lajave, as lessee, of certain stipulations with regard to payment of the lease, *i.e.*, whether Lajave correctly paid the rental fees for the subject period as stipulated in the lease agreement.

It must be emphasized anew 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.[20]

While the court has the authority to fix the reasonable value for the continued use and occupancy of the premises, the said authority can only be exercised after termination of the lease contract. During the term of the lease contract, the agreement therein is binding to the parties to the contract.

In the instant case, insofar as the complaint for collection of sum of money is concerned, it is not a simple case of recovering the unpaid balance of rentals. It must be pointed out that there are several factors to consider if and when the collection of sum of money will prosper, *i.e.*, the determination if indeed recovery of the alleged balance is proper, the correct amount of rental to be paid or recovered, the intention and/or agreement of the parties as to the terms of payment of rental in order to arrive at a correct amount, among others. Indeed, as correctly observed by the appellate court, the resolution of whether Lajave paid the correct rental fees and if there is a deficiency in the payment of rentals requires a full-blown trial through the submission of documentary and testimonial evidence by the parties which cannot be passed upon in a summary proceeding.

Moreover, in unlawful detainer, the recoverable damages are reckoned from the time the possession of the property becomes unlawful. In the instant case, the initial demand to vacate was only made on March 1, 2010, thus, it was only after said demand that Lajave's continued possession of the leased properties became unlawful. Prior to the lapse of the fifteen-day period to vacate the property as stated in the demand letter, the damages sustained from January 2003 to February 2010 do not have a direct relation to Agustin's loss of material possession since they do not result from Lajave's refusal to vacate the leased premises. These damages must be claimed in an ordinary action, as in the subject complaint for collection of sum of money.

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[20] *Araos v. Court of Appeals*, 302 Phil. 813, 819 (1994); *C & S Fishfarm Corporation v. Court of Appeals, et al.*, 442 Phil. 279, 292 (2002); *Dumo v. Espinas*, 515 Phil. 685, 692 (2006).

The ratiocination of the Court of Appeals is enlightening, to wit:

> The Court observes, however, that these rentals in arrears or back rental which the trial court can award in ejectment cases pertain to rentals with specific or determinable amount from the time the cause of action for illegal detainer accrued.
>
> The case before Us is different. The deficiency in rentals cannot be ascertained during the crop years 2000-2001 up to 2008-2009 for it was only in 2012 that petitioners discovered that respondent had a shortfall in the payment of rentals based on the data provided by the Sugar Regulatory Administration on the composite price of sugar. Before 2009, petitioner has no cause of action for illegal detainer against private respondent. Thus, We agree with the contention of petitioners that the damages recoverable in an ejectment case must have a direct relation to the loss of material possession giving rise to an action for illegal detainer. These are damages caused by the loss of the use and possession of the premises. As We have explained, the deficiency in rentals could not be included in the damages to be awarded in the ejectment cases for these were sustained prior to the dispossession or the unlawful withholding of possession by respondent which happened only after 2009 when they failed to pay the rentals and heed the demand to pay and vacate.[21]

In the case of *Proguard Security Services Corporation v. Tormil Realty and Development Corporation*,[22] the Court was instructive as to the reckoning period of the recovery of damages in unlawful detainer:

> "While indeed Tormil, as the victor in the unlawful detainer suit, is entitled to the fair rental value for the use and occupation of the unit in the building, such compensation **should not be reckoned from the time Pro-Guard began to occupy the same, but from the time of the demand to vacate. "In unlawful detainer cases, the defendant is necessarily in prior lawful possession of the property but his possession eventually becomes unlawful upon termination or**

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[21] *Rollo*, pp. 52-53.

[22] 738 Phil. 417 (2014).

expiration of his right to possess." In other words, the entry is legal but the possession thereafter became illegal. x x x[23]

Suffice it to say, an action for collection of sum of money may not be properly joined with the action for ejectment. The former is an ordinary civil action requiring a full-blown trial, while an action for unlawful detainer is a special civil action which requires a summary procedure. The joinder of the two actions is specifically enjoined by Section 5, Rule 2 of the Rules of Court, which provides:

> Section 5. *Joinder of causes of action*. – A party may in one pleading assert, in the alternative or otherwise, as many causes of action as he may have against an opposing party, subject to the following conditions:
>
> (a) The party joining the causes of action shall comply with the rules on joinder of parties;
>
> **(b) The joinder shall not include special civil actions or actions governed by special rules;**
>
> (c) Where the causes of action are between the same parties but pertain to different venues or jurisdictions, the joinder may be allowed in the Regional Trial Court provided one of the causes of action falls within the jurisdiction of said court and the venue lies therein; and
>
> (d) Where the claims in all the causes of action are principally for recovery of money, the aggregate amount claimed shall be the test of jurisdiction. [Underscoring supplied.]

Indeed, in the instant case, Agustin's filing of a complaint for collection of sum of money other than those sustained as a result of their dispossession or those caused by the loss of their use and occupation of their properties could not thus be considered as splitting of a cause of action. The cause of action is different. There is no splitting of action because the complaint for collection of money prays for the payment of the differential amount representing the unpaid balance in rental fees after the deduction of the actual payment made by Lajave. Since the

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[23] *Id.* at 425-426. (Emphasis ours).

damages prayed for in the collection case before the MeTC pertain to deficiency in the rental payments for the contested period before the dispossession, the claims have no direct relation to the loss of possession of the premises. Insofar as the collection case is concerned, Agustin's claim had to do with Lajave's deficiency in the payment of rentals only, without regard to the unlawfulness of the occupancy. This cannot be litigated in the ejectment suits before the MeTC by reason of *misjoinder of causes of action*.

As to the third requisite of *litis pendentia* – that the identity between the pending actions, with respect to the parties, rights asserted and reliefs prayed for, is such that any judgment rendered on one action will, regardless of which is successful, amount to *res judicata* in the action under consideration - the same is not present, hence, *litis pendentia* may not be invoked to dismiss Agustin's complaint for collection of sum of money.

Res judicata will not apply because the court in an unlawful detainer case has no jurisdiction over claims for damages other than the use and occupation of the premises and attorney's fees. Agustin's filing of an independent action for collection of sum of money other than those sustained as a result of their dispossession or those caused by the loss of their use and occupation of their properties could not thus be considered as splitting of a cause of action. The causes of action in the subject cases are not the same; the rights violated are different; and the reliefs sought are also different. Hence, Civil Case No. 12-41648 stands to be reinstated and remanded to the Metropolitan Trial Court of Quezon City for further proceedings.

WHEREFORE, the petition is **DENIED**. The Decision dated August 28, 2015 and the Resolution dated March 21, 2016 of the Court of Appeals in CA-G.R. SP No. 134659 are hereby **AFFIRMED**. Civil Case No. 12-41648 is **REINSTATED** and **REMANDED** to the Metropolitan Trial Court of Quezon City, Branch 38, for further proceedings.

SO ORDERED.

Leonen and *Hernando, JJ.*, concur.

Gesmundo and *Reyes, J. Jr., JJ.*, on wellness leave.

THIRD DIVISION

[G.R. No. 224389. November 7, 2018]

HIGHPOINT DEVELOPMENT CORPORATION, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; JUDGMENTS; *PRO HAC VICE* RULING; CANNOT BE RELIED UPON AS A PRECEDENT TO GOVERN OTHER CASES.— [I]t is important to explain the meaning of a *pro hac vice* ruling as defined by this Court. In *Partido ng Manggagawa (PM) v. COMELEC*, *pro hac vice* is defined as a Latin term meaning "***for this one particular occasion***." Similarly, in *Tadeja, et al. v. People*, the Court held that a *pro hac vice* ruling is a "***ruling expressly qualified as such cannot be relied upon as a precedent to govern other cases***." x x x [I]t cannot be denied that petitioner erred in relying on the Court's ruling in [Republic of the Phils. v.] *Vega*, [et al.,] as such case cannot be relied upon as a precedent to govern other cases.

2. CIVIL LAW; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (THE PROPERTY REGISTRATION DECREE); ALIENABLE AND DISPOSABLE PUBLIC LANDS; THE COMMUNITY ENVIRONMENT AND NATURAL RESOURCES OFFICE CERTIFICATION IS INSUFFICIENT TO PROVE THAT THE SUBJECT PROPERTY HAS BEEN DECLARED ALIENABLE AND DISPOSABLE, FOR IT IS THE DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES SECRETARY WHO IS AUTHORIZED TO APPROVE LAND CLASSIFICATION, INCLUDING THE RELEASE OF LAND FROM PUBLIC DOMAIN.— [P]etitioner cannot simply forego the submission of the DENR certification as a requirement for the registration of title and claim that it has substantially complied with the requirements of law. The certification issued by the DENR Secretary is essential since he or she is the official authorized to approve land classification, including the release of land from public domain. x x x

> [P]etitioner cannot compel the courts to approve an application simply on the ground of substantial compliance, as such falls within their "sound discretion and based solely on the evidence presented on record," as properly exercised by the CA in its assailed decision. In fine, the Court holds that the CENRO certification offered by petitioner in this case is insufficient to prove that the subject property has indeed been declared alienable and disposable. Accordingly, we find no cogent reason to disturb the ruling in *Rep. of the Phils. v. T.A.N. Properties, Inc.*

APPEARANCES OF COUNSEL

Galiciano M. Arriesgado, Jr. and Largo Law Office for petitioner.

Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

In this Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, petitioner Highpoint Development Corporation assails the Decision[1] dated December 17, 2015 and the Resolution[2] dated March 16, 2016 of the Court of Appeals (*CA*) in CA G.R. CEB CV No. 03996. The assailed Decision reversed and set aside the Decision[3] dated September 28, 2009 of the Regional Trial Court (*RTC*) of Mandaue City, Branch 55 in LRC Case No. N-676, for original registration of title, whereas the assailed Resolution denied the reconsideration thereof.

The factual antecedents are as follows:

On June 29, 2006, petitioner filed an Application for Original Registration of Title under Presidential Decree (*P.D.*) No. 1529,

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[1] *Rollo*, pp. 33-47. Penned by Associate Justice Edgardo L. Delos Santos, and concurred in by Associate Justice Edward B. Contreras and Associate Justice Gabriel T. Robeniol.

[2] *Id.* at 50-54.

[3] *Id.* at 55-65. Penned by Presiding Judge Ulric R. Cañete.

otherwise known as the *Property Registration Decree*, over a parcel of land situated at Lot 7217, Barangay Lataban, Municipality of Lilo-an, Province of Cebu (*the subject property*) before the RTC of Mandaue City, Branch 55 and docketed as LRC Case No. N-676 (LRA Rec. No. N-78293). The subject property is particularly described as follows:

> A parcel of land (Lot 7217, Lilo-an, PLS-823, described on plan, AP-07-002817), situated in the Barangay of Lataban. Municipality of Lilo-an, province of Cebu, Island of Cebu. Bounded on x x x: containing an area of FORTY-THREE THOUSAND NINE HUNDRED NINETEEN (43,919) square meters, more or less.[4]

During the hearing conducted on January 22, 2008, petitioner offered several documents in evidence; and the witnesses corroborate the same and establish the jurisdictional facts of its application. Petitioner presented Artemio Pitogo, Jesusa Longakit, Buenaventura Pendo, and Lydia G. Reuma as its witnesses.

Artemio Pitogo testified that he was the documentary officer in charge of securing the certifications and compliance with all the documentary requirements of petitioner. He traced the ownership and possession of the subject property, starting from the ownership of one Leoncio Sasing until petitioner's purchase of the same from one Jose Gildo S. Tiu, by virtue of a Deed of Sale executed between petitioner and Merllen T. Lee, Jose Gildo S. Tiu's authorized representative, evidenced by a Special Power of Attorney.[5]

Afterwards, petitioner's Finance Manager, Lydia G. Reuma, corroborated Artemio Pitogo's testimony, and further testified that the subject property was declared by Leoncio Sasing for taxation purposes as early as 1945. In addition, Lydia G. Reuma testified that the Community Environment and Natural Resources Office (CENRO) Certification certified that the subject property was found to be within the "Alienable and Disposable Block,

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[4] *Id.* at 55.

[5] *Id.* at 13.

Project No. 29, Land Classification Map 1391, Forestry Administrative Order 4-537 dated July 31, 1940."[6]

Jesusa Longakit and Buenaventura Pendo, both residents of Lataban, Lilo-an, Cebu, testified as to their familiarity with the subject property, particularly the possession and ownership of its previous owners. Moreover, Jesusa Longakit alleges that she was one of the agents who sold the subject property to Merllen T. Lee.[7]

On September 28, 2009, the RTC rendered the decision granting petitioner's application for registration of title. The RTC held that all the requisites for the registration of the subject property were present, and that the subject property was indeed alienable and disposable as indicated from the CENRO Certificate classifying said property as such since July 31, 1940.[8] The RTC was also convinced that petitioner has adverse possession of the subject property, indicated in the tax declarations in the names of petitioner's predecessors-in-interest, the oldest of which was issued in 1945. These tax declarations strengthened the testimonies of the witnesses presented on the predecessors-in-interest's possession of the subject property for more than 30 years.

Aggrieved, respondent Republic of the Philippines, through the Office of the Solicitor General, filed its Motion for Reconsideration, alleging failure on the part of petitioner to prove that: (a) the subject property was indeed alienable and disposable land of the public domain; and (b) it had sufficiently established possession of the subject property for the period required by law.[9] However, the RTC, in its Order dated March 30, 2011, denied respondent's Motion for Reconsideration, prompting the latter to file an appeal before the CA.

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[6] *Id.*

[7] *Id.*

[8] *Id.* at 14.

[9] *Id.* at 15.

In its appeal, respondent argued that petitioner cannot solely rely on the CENRO Certification to prove that the subject land is alienable and disposable. Respondent further explained that in addition to said certification, jurisprudence requires the presentation of a certified true copy of the original classification approved by the Department of Environment and Natural Resources (*DENR*) Secretary, as certified by the legal custodian of the official records. Respondent, in addition, disagrees with the findings of the RTC that the witnesses sufficiently showed that petitioner and its predecessors-in-interest proved their open, continuous, exclusive, and notorious possession for the period required by law. Lastly, respondent assails that petitioner's reliance on the tax declarations is unmeritorious since the same only show signs of possession in the concept of an owner and require further proof of specific acts of ownership.[10]

The CA found respondent's appeal to be meritorious. The *fallo* of the Decision states:

> **WHEREFORE**, premises considered, the instant appeal is GRANTED. The November 21, 2007 Decision dated 28 September 2009 rendered by the Regional Trial Court (RTC) of Mandaue City, Branch 55, 7th Judicial Region, in Land Reg. Case No. N-676 (LRA Record No. N-78293) is hereby REVERSED and SET ASIDE. Accordingly, the Application for Registration of Title of applicant-appellee Highpoint Development Corporation in the said case is DENIED.
>
> **SO ORDERED**.[11]

In reversing the RTC Decision, the CA found that petitioner failed to show any express declaration by the national government or any branch of the local government that the subject property has ceased to be part of the public domain, and is thus alienable and disposable, as required under Section 14(1) of P.D. No. 1529.[12]

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[10] *Id.* at 38.

[11] *Id.* at 46.

[12] *Id.* at 45.

A motion for reconsideration was filed by petitioner but the CA denied the same on March 16, 2016. Hence, the present Petition.

Petitioner raises the following issues: (a) whether the *pro hac vice* ruling in *Republic of the Phils. v. Vega, et al.*[13] can be applied in favor of petitioner, contrary to the ruling in *Rep. of the Phils. v. T.A.N. Properties, Inc.*;[14] and (b) whether there is cogent reason to revisit the Court's ruling in *Rep. of the Phils. v. TA.N. Properties, Inc.*[15]

We rule in the negative.

At the outset, it is important to explain the meaning of a *pro hac vice* ruling as defined by this Court. In *Partido ng Manggagawa (PM) v. COMELEC*,[16] *pro hac vice* is defined as a Latin term meaning "***for this one particular occasion***."[17] Similarly, in *Tadeja, et al. v. People*,[18] the Court held that a *pro hac vice* ruling is a "***ruling expressly qualified as such cannot be relied upon as a precedent to govern other cases***."[19]

Notably, in reversing the RTC Decision, the CA appropriately cited the case of *Rep. of the Phils. v. T.A.N Properties, Inc.*,[20] *viz.*:

> x x x [I]t is not enough for the PENRO or CENRO to certify that a land is alienable and disposable. The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for

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[13] 654 Phil. 511 (2011).

[14] 578 Phil. 441 (2008).

[15] *Id.*; *rollo*, p. 16.

[16] 519 Phil. 644 (2006).

[17] *Id.* at 671.

[18] 704 Phil. 260 (2013).

[19] *Id.* at 277.

[20] *Supra* note 14.

registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable. Respondent failed to do so because the certifications presented by respondent do not, by themselves, prove that the land is alienable and disposable.[21]

Hence, it cannot be denied that petitioner erred in relying on the Court's ruling in *Vega*, as such case cannot be relied upon as a precedent to govern other cases. As correctly pointed out by respondent, the *Vega* ruling held:

> It must be emphasized that the present ruling on substantial compliance applies *pro hac vice*. ***It does not in any way detract from our rulings in Republic v. T.A.N. Properties, Inc., and similar cases which impose a strict requirement to prove that the public land is alienable and disposable***, especially in this case when the Decisions of the lower court and the Court of Appeals were rendered prior to these rulings. To establish that the land subject of the application is alienable and disposable public land, the general rule remains: all applications for original registration under the Property Registration Decree must include both (1) a CENRO or PENRO certification and (2) a certified true copy of the original classification made by the DENR Secretary.[22] (Citation omitted, emphasis ours)

Highly relevant is the Court's ruling in the recent case of *Republic of the Philippines v. Alaminos Ice Plant and Cold Storage, Inc., etc.*,[23] to wit:

> x x x [T]he appellate court erred in relying solely on the CENRO certification in order to affirm the approval of the application for the original registration of the subject public land. Significantly – and this point serves to stress the gravity of the CA's mistake – ***the CA ruling came after this Court had promulgated Republic v. T.A.N. Properties, wherein the strict requirement in land registration cases***

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[21] *Id.* at 452-453.

[22] *Republic of the Phils. v. Vega, et al., supra* note 13, at 527.

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

for proving public dominion lands as alienable and disposable had been duly recognized.

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

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

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

Moreover, it must be emphasized that petitioner cannot simply forego the submission of the DENR certification as a requirement for the registration of title and claim that it has substantially complied with the requirements of law. The certification issued by the DENR Secretary is essential since he or she is the official authorized to approve land classification, including the release of land from public domain.[24] *Republic of the Philippines v. Spouses Go*[25] further provides a comprehensive explanation of such requirement, to wit:

> x x x [A]n applicant has the burden of proving that the public land has been classified as alienable and disposable. To do this, the applicant must show a positive act from the government declassifying the land from the public domain and converting it into an alienable

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[24] *Republic of the Philippines v. Malijan-Javier*, G.R. No. 214367, April 4, 2018, citing *Republic of the Philippines v. Spouses Go*, G.R. No. 197297, August 2, 2017.

[25] *Id.*

and disposable land. "[T]he exclusive prerogative to classify public lands under existing laws is vested in the Executive Department." In *Victoria v. Republic*:

> To prove that the land subject of the application for registration is alienable, an applicant must establish the existence of a positive act of the government such as a presidential proclamation or an executive order; an administrative action; investigation reports of Bureau of Lands investigators; and a legislative act or statute. The applicant may secure a certification from the government that the lands applied for are alienable and disposable, but the certification must show that the DENR Secretary had approved the land classification and released the land of the pub[l]ic domain as alienable and disposable[.]

Section X (1) of the DENR Administrative Order No. 1998-24 and Section IX (1) of DENR Administrative Order No. 2000-11 affirm that the DENR Secretary is the approving authority for "[l]and classification and release of lands of the public domain as alienable and disposable." Section 4.6 of DENR Administrative Order No. 2007-20 defines land classification as follows:

> Land classification is the process of demarcating, segregating, delimiting and establishing the best category, kind, and uses of public lands. Article XII, Section 3 of the 1987 Constitution of the Philippines provides that lands of the public domain are to be classified into agricultural, forest or timber, mineral lands, and national parks.

These provisions, read with *Victoria v. Republic*, establish the rule that before an inalienable land of the public domain becomes private land, the DENR Secretary must first approve the land classification into an agricultural land and release it as alienable and disposable. The DENR Secretary's official acts "may be evidenced by an official publication thereof or by a copy attested by the officer having legal custody of the record, or by his deputy."

x x x x x x x x x

The CENRO certification is issued only to verify the DENR Secretary issuance through a survey.[26] (Citations omitted)

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[26] *Republic of the Philippines v. Malijan-Javier, supra* note 24, citing *Republic of the Philippines v. Spouses Go, supra* note 24.

Lastly, petitioner cannot compel the courts to approve an application simply on the ground of substantial compliance, as such falls within their "sound discretion and based solely on the evidence presented on record,"[27] as properly exercised by the CA in its assailed decision.

In fine, the Court holds that the CENRO certification offered by petitioner in this case is insufficient to prove that the subject property has indeed been declared alienable and disposable. Accordingly, we find no cogent reason to disturb the ruling in *Rep. of the Phils. v. T.A.N. Properties, Inc.*[28]

WHEREFORE, based on the foregoing premises, the petition is **DENIED**. The Decision dated December 17, 2015 of the Court of Appeals in CA-G.R. CEB CV No. 03996, reversing and setting aside the Decision of the Regional Trial Court of Mandaue City, Branch 55, dated September 28, 2009, in LRC Case No. N-676, is **AFFIRMED** *in toto*. The application for original registration of title filed by petitioner Highpoint Development Corporation in said registration case is hereby **DISMISSED**.

SO ORDERED.

Leonen and *Hernando, JJ.*, concur.

Gesmundo and *Reyes, J. Jr., JJ.*, on wellness leave.

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[27] *Republic of the Phils. v. Vega, et al., supra* note 13, at 527.

[28] *Supra* note 14.

SECOND DIVISION

[G.R. No. 227865. November 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RODEL MAGBUHOS*** ***y*** **DIOLA** ***alias*** **"BODIL,"** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY; FACTUAL FINDINGS OF THE TRIAL COURTS ARE GENERALLY ACCORDED GREAT WEIGHT; EXCEPTION.—** It is settled that findings of fact of the trial courts are generally accorded great weight, except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result. This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.

2. **CRIMINAL LAW; REVISED PENAL CODE; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; WITHOUT UNLAWFUL AGGRESSION, THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE CANNOT BE APPRECIATED.—** An accused who pleads self-defense has the burden to prove, by clear and convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense. All three, including unlawful aggression, are important and indispensable.

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* Spelled as "Magbujos" in some parts of the CA *rollo.*

Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person." Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.

3. ID.; ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; REQUISITES.— There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.

4. ID.; ID.; ID.; ID.; CANNOT BE APPRECIATED WHEN THERE IS NO SHOWING THAT THE ACCUSED DELIBERATELY CHOSE A PARTICULAR MODE OF ATTACK THAT PURPORTEDLY ENSURED THE EXECUTION OF THE CRIMINAL PURPOSE WITHOUT RISK TO HIMSELF ARISING FROM THE DEFENSE THAT THE VICTIM MIGHT OFFER.— [I]n [People v.] *Caliao*, the Court found accused therein guilty of homicide only, not Murder, because there was no showing that the accused consciously adopted the sudden attack against the victim. The Court, in not appreciating treachery, further noted that the assault was done "in a public market, in the afternoon, with the victim's family and other vendors nearby who could have foiled accused-appellant's actions." Similar to *Caliao*, the prosecution in this case also failed to prove that Rodel intentionally sought Enrique for the purpose of killing him or that Rodel carefully and deliberately planned the killing in a manner that would ensure his safety and success. To be sure, the testimonies of Angelito and Michael reveal that Rodel attacked the victim in the place familiar to the latter and in the presence of at least four other people, two of whom are related to the victim. Under these circumstances, the Court finds it difficult to agree with the CA that Rodel deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to himself arising from the defense that the victim

might offer. To reiterate, the victim was with at least four (4) other people, two of whom are his relatives, who could have helped him repel the attack. Thus, the Court fails to see how the mode of attack chosen by Rodel, who stabbed Enrique once on the chest, in a place familiar to the victim and in the presence of the latter's relatives, supposedly guaranteed the execution of the criminal act without risk on his end.

5. **ID.; ID.; ID.; EVIDENT PREMEDITATION; REQUISITES.—** For evident premeditation to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act. In other words, the prosecution must be able to show concrete evidence on how and when the plan to kill was hatched or how much time had elapsed before it was carried out.

6. **ID.; ID.; HOMICIDE; PENALTY IN CASE AT BAR.—** With the removal of the qualifying circumstances of treachery and evident premeditation, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*, which ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, accused is to be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor* (the penalty next lower in degree which ranges from six (6) years and one (1) day to twelve (12) years) and whose maximum shall be within the range of *reclusion temporal*. There being the mitigating circumstance of voluntary surrender which was not controverted in this case, the penalty in its minimum period should be applied. Hence, an indeterminate sentence of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, should be imposed.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

This is an appeal[1] from the Decision[2] dated September 29, 2015 ("assailed Decision") of the Court of Appeals, Fifth (5th) Division (CA), in CA-G.R. CR-HC No. 05812, which affirmed with modification as to the award of damages, the Decision[3] dated July 17, 2012 of the Regional Trial Court of Rosario, Batangas, Fourth Judicial Region, Branch 87 (RTC), in Criminal Case No. R03-046, finding accused-appellant Rodel Magbuhos y Diola alias "Bodil" (Rodel) guilty beyond reasonable doubt of the crime of Murder defined and penalized by Article 248 of the Revised Penal Code (RPC).

The Facts

Rodel was charged with the crime of Murder under the following Information:

"That on or about the 6th day of October 2002, at about 1:30 o'clock in the afternoon, at Barangay Buhaynasapa, Municipality of San Juan, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a fan knife (balisong), with intent to kill, with the qualifying circumstances of treachery and evident premeditation and without any justifiable cause, did then and there willfully, unlawfully and feloniously attack, assault and stab with the said fan knife, suddenly and without warning one Enrique E. Castillo, thereby inflicting upon the latter stab wound on his left chest, which directly cause his death.

CONTRARY TO LAW."[4]

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[1] CA *rollo*, pp. 154-156.

[2] *Rollo*, pp. 2-23. Penned by Associate Justice Stephen C. Cruz with Associate Justices Jose C. Reyes, Jr. (now a Member of this Court) and Ramon Paul L. Hernando (now a Member of this Court), concurring.

[3] CA *rollo*, pp. 71-81. Penned by Presiding Judge Marie Manalang-Austria.

[4] *Rollo*, p. 3.

Rodel pleaded not guilty to the offense charged.[5]

The prosecution presented as witnesses Angelito Yolola (Angelito) and Michael Castillo (Michael), the victim's nephew and son, respectively.[6]

Angelito testified that on October 6, 2002 at about 2 o'clock in the afternoon, he was at the billiard hall of his father and brother at Barangay Buhay na Sapa, San Juan, Batangas, when he saw Rodel approach his uncle, Enrique Castillo (Enrique), who was then sitting.[7] Angelito noticed that when Rodel arrived at the billiard hall, he was already under the influence of liquor as his body was swaying while walking towards the billiard hall.[8] Without saying a word, Rodel suddenly stabbed Enrique on his left chest.[9] Rodel then ran towards the south direction and left the billiard hall. Enrique was brought to a hospital in San Juan, Batangas but died on the way to the Villa Hospital in Lipa City where he was about to be transferred.[10]

Michael testified that at about 1:30 o'clock in the afternoon of October 6, 2002, he was watching billiard games at the billiard hall of his uncle Juanito Yolola (Juanito) at Brgy. Buhay Na Sapa, San Juan, Batangas.[11] There were a lot of people inside the billiard hall.[12] His father, Enrique, was also inside the billiard hall, seated at the bamboo bench at the right side of the entrance, when Rodel approached his father and using a fan knife, stabbed his father once at the left chest.[13] Michael immediately attended

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[5] CA *rollo*, p. 72.

[6] *Rollo*, p. 3.

[7] *Id*. at 4.

[8] *Id*.

[9] *Id*.

[10] *Id*.

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

[12] *Id*. at 5.

[13] *Id*.

to his father and noticed that Rodel had run away.[14] They brought his father to the San Juan District Hospital and they decided later on to transfer him to the Villa Hospital in Lipa City but he died on the way to said hospital.[15]

Rodel, on the other hand, raised self-defense. He testified that at 8:00 o'clock in the morning of October 6, 2002, he went to the house of his cousin Arnold Diola and had a drinking session with four other persons. From the said drinking session, he proceeded to the billiard hall owned by Juanito at more or less 12:00 o'clock in the afternoon. When he arrived at the billiard hall, there were many people playing, whose names he could not recall anymore. He seated near the billiard table, watched the game and fell asleep. He was awakened when Enrique tapped his chest telling him to leave because he was just causing disturbance inside the billiard hall. Rodel told Enrique that he would leave later as he was still feeling dizzy. Enrique stood up and boxed him. Enrique then drew a fan knife but was pacified by the people inside the billiard hall. While Enrique was uttering invectives, Rodel told the latter not to utter those words at him. Rodel then noticed that Enrique drew his fan knife and attempted to attack. Somebody from behind handed Rodel a fan knife but Rodel did not notice who gave it to him because there were many people inside the billiard hall and he was too drunk at that time. As soon as he got hold of the knife, and while Enrique was approaching him, Rodel was able to stab Enrique once in the chest. After hitting the victim, Rodel left the place and went home. He surrendered to Councilor Maring Umali of San Juan, Batangas and later on to the Police Station.[16]

RTC Ruling

In its Decision dated July 17, 2012, the RTC found Rodel guilty of Murder, to wit:

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[14] *Id*.

[15] *Id*.

[16] *Id*. at 6-7.

WHEREFORE, in view of the foregoing, judgement is hereby rendered finding the accused **Rodel Magbujos y Diola alias "Bodil", GUILTY beyond reasonable doubt** of the crime of **MURDER** defined in and penalized by Article 248 of the Revised Penal Code as amended by Republic Act 7659 hereby imposes on said accused the penalty of ***RECLUSION PERPETUA***, with all the accessory penalties of the law. Furthermore, the accused is ordered to pay the heirs of the deceased the amount of Seventy Five Thousand Pesos (Php75,000.00) as civil indemnity; Seventy Five Thousand Pesos (₱75,000.00) as moral damages; Seventy Five Thousand Pesos (₱75,000.00) as exemplary damages and, Twenty Five Thousand Pesos (₱25,000.00) as temperate damages.

SO ORDERED.[17]

The RTC rejected Rodel's claim of self-defense for failing to substantiate it with clear and convincing proof. According to the RTC, Rodel failed to present any evidence of unlawful aggression on the part of the victim to prove that there was a justification for him to defend himself.

The RTC, however, failed to discuss the presence of treachery and evident premeditation, the two qualifying circumstances alleged in the Information.

CA Ruling

In the assailed Decision, the CA affirmed with modification the ruling of the RTC, to wit:

WHEREFORE, in view of the foregoing, the Decision dated July 17, 2012 of the Regional Trial Court of Rosario, Batangas, Branch 87, is hereby **AFFIRMED with MODIFICATION**. Accused-appellant Rodel Magbuhos y Diola is found **GUILTY** beyond reasonable doubt of Murder as defined in Article 248 of Revised Penal Code, as amended, and he is sentenced to suffer the penalty of *Reclusion Perpetua*. Accused-appellant is **ORDERED** to pay the heirs of the victim, Enrique Castillo the amount of: (a) ₱75,000.00 as civil indemnity for the death of said victim; (b) ₱50,000.00 as moral damages; and (c) ₱30,000.00 exemplary damages provided

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[17] CA *rollo*, p. 81.

by the Civil Code in line with recent jurisprudence, with cost. In addition, all award for damages, shall bear legal interest at the rate of six [percent] (6%) per annum from the date of finality of judgment until fully paid.

SO ORDERED.[18]

The CA held that the testimonies of the prosecution witnesses clearly established that Rodel was the one who killed Enrique. The CA also ruled that the killing of Enrique was attended by the qualifying circumstance of treachery because the assault was totally unexpected by the victim that the latter had no opportunity to defend himself, much less retaliate.[19]

Further, the CA agreed with the RTC that Rodel fell short of proving his claim that he acted in self-defense. Thus, the CA found no reason for disturbing the factual findings of the trial court as to the guilt of the accused.[20]

As regards the award of damages, the CA modified the same in consonance with the case of *People v. Lucero*.[21]

Hence, this appeal.

Issues

Whether the CA gravely erred in affirming Rodel's conviction for Murder despite clear and convincing proof that his action was justified under the circumstances of the case.

Granting, for the sake of argument, that Rodel may be held criminally liable, the CA gravely erred in qualifying the crime to Murder despite the absence of clear and convincing evidence supporting the presence of treachery or evident premeditation as alleged in the information.

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[18] *Id*. at 22-23.

[19] *Id*. at 17-18.

[20] *Id*. at 21.

[21] *Id*. at 22; 651 Phil. 251 (2010).

Whether the award of exemplary damages should be modified to conform with prevailing jurisprudence.[22]

The Court's Ruling

The appeal is partly meritorious.

It is settled that findings of fact of the trial courts are generally accorded great weight, except when it appears on the record that the trial court may have overlooked, misapprehended, or misapplied some significant fact or circumstance which if considered, would have altered the result.[23] This is axiomatic in appeals in criminal cases where the whole case is thrown open for review on issues of both fact and law, and the court may even consider issues which were not raised by the parties as errors.[24] The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[25]

In the present case, Rodel was charged with Murder, qualified by treachery and evident premeditation. The RTC did not discuss the presence of the qualifying circumstances and yet found Rodel guilty of the crime of Murder. The CA, on the other hand, found that the qualifying circumstance of treachery was established.

After a careful review and scrutiny of the records, the Court holds that Rodel can only be convicted of Homicide, not Murder.

The accused failed to prove self-defense.

In this case, Rodel admits to stabbing Enrique but claims that his action was necessary to defend himself. An accused who pleads self-defense has the burden to prove, by clear and

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[22] See *id*. at 57-58.

[23] *People v. Duran, Jr.*, G.R. No. 215748, November 20, 2017, p. 14.

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

[25] *Ramos v. People*, 803 Phil. 775, 783 (2017).

convincing evidence, that the killing was attended by the following circumstances: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel such aggression; and (3) lack of sufficient provocation on the part of the person resorting to self-defense.[26] All three, including unlawful aggression, are important and indispensable. Unlawful aggression refers to "an actual physical assault, or at least a threat to inflict real imminent injury, upon a person."[27] Without unlawful aggression, the justifying circumstance of self-defense has no leg to stand on and cannot be appreciated.[28]

In this case, the Court agrees with the courts *a quo* that Rodel failed to discharge his burden. Rodel failed to show by clear and convincing evidence that Enrique committed unlawful aggression by hurling invectives at him and attempting to stab him. Rodel's self-serving and uncorroborated claim pales in comparison to and loses probative value when compared to the positive testimony of the prosecution's witnesses, who identified the accused as the one who was armed with a fan knife and stabbed the victim. The Court, in *Dela Cruz v. People*,[29] ruled that the plea of self-defense cannot be justifiably entertained where it is uncorroborated by any separate competent evidence and is in itself extremely doubtful.

All told, the Court finds Rodel's evidence sorely lacking to establish self-defense.

Treachery and evident premeditation were not established beyond reasonable doubt.

It is established that qualifying circumstances must be proved with the same quantum of evidence as the crime itself, that is,

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[26] *Guevarra v. People*, 726 Phil. 183, 194 (2014).

[27] *People v. Dolorido*, 654 Phil. 467, 475 (2011).

[28] *SPO2 Nacnac v. People*, 685 Phil. 223, 229 (2012).

[29] 747 Phil. 376, 388 (2014).

beyond reasonable doubt.[30] Thus, for Rodel to be convicted of Murder, the prosecution must not only establish that he killed Enrique; it must also prove, beyond reasonable doubt, that the killing was attended by treachery or evident premeditation.

There is treachery when the offender commits any of the crimes against persons, employing means and methods or forms in the execution thereof which tend to directly and specially ensure its execution, without risk to himself arising from the defense which the offended party might make. To qualify an offense, the following conditions must exist: (1) the assailant employed means, methods or forms in the execution of the criminal act which give the person attacked no opportunity to defend himself or to retaliate; and (2) said means, methods or forms of execution were deliberately or consciously adopted by the assailant.[31]

Further, in *People v. Caliao*,[32] the Court explained that:

> Treachery cannot be appreciated from the mere fact that the attack was sudden and unexpected. The Court has held that "the circumstance that an attack was sudden and unexpected on the person assaulted did not constitute the element of *alevosia* necessary to raise homicide to murder, where it did not appear that the aggressor consciously adopted such mode of attack to facilitate the perpetration of the killing without risk to himself. **Treachery cannot be appreciated if the accused did not make any preparation to kill the deceased in such manner as to insure the commission of the killing or to make it impossible or difficult for the person attacked to retaliate or defend himself.**
>
> **The Court has also ruled that when aid was easily available to the victim, such as when the attendant circumstances show that there were several eyewitnesses to the incident, including the victim's family, no treachery could be appreciated because if the accused indeed consciously adopted means to insure the**

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[30] *People v. Biso*, 448 Phil. 591, 601 (2003).

[31] *People v. Duran, Jr.*, *supra* note 23, at 11, citing *People v. Dulin*, 762 Phil. 24, 40 (2015).

[32] G.R. No. 226392, July 23, 2018.

facilitation of the crime, he could have chosen another place or time.[33] (Emphasis supplied and citations omitted)

Thus, in *Caliao*, the Court found accused therein guilty of homicide only, not Murder, because there was no showing that the accused consciously adopted the sudden attack against the victim. The Court, in not appreciating treachery, further noted that the assault was done "in a public market, in the afternoon, with the victim's family and other vendors nearby who could have foiled accused-appellant's actions."[34]

Similar to *Caliao*, the prosecution in this case also failed to prove that Rodel intentionally sought Enrique for the purpose of killing him or that Rodel carefully and deliberately planned the killing in a manner that would ensure his safety and success. To be sure, the testimonies of Angelito and Michael reveal that Rodel attacked the victim in the place familiar to the latter and in the presence of at least four other people, two of whom are related to the victim. Under these circumstances, the Court finds it difficult to agree with the CA that Rodel deliberately chose a particular mode of attack that purportedly ensured the execution of the criminal purpose without any risk to himself arising from the defense that the victim might offer. To reiterate, the victim was with at least four (4) other people, two of whom are his relatives, who could have helped him repel the attack. Thus, the Court fails to see how the mode of attack chosen by Rodel, who stabbed Enrique once on the chest, in a place familiar to the victim and in the presence of the latter's relatives, supposedly guaranteed the execution of the criminal act without risk on his end.

The Court further notes that the attack against Enrique was frontal. In *People v. Tugbo*,[35] the Court held that treachery was not present because the attack was frontal, and hence, the victim had opportunity to defend himself. While a frontal attack, by

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[33] *Id*. at 7.

[34] *Id*. at 8.

[35] 273 Phil. 346, 352 (1991).

itself, does not negate the existence of treachery, when the same is considered along with the other circumstances as previously discussed, it already creates a reasonable doubt in the existence of the qualifying circumstance. As earlier stated, treachery must be proven as fully and convincingly as the crime itself; and any doubt as to existence must be resolved in favor of the accused.[36]

There is also no basis for the Court to appreciate the qualifying circumstance of evident premeditation. For evident premeditation to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.[37] In other words, the prosecution must be able to show concrete evidence on how and when the plan to kill was hatched or how much time had elapsed before it was carried out.[38]

In this case, evident premeditation was not established because the prosecution's evidence was limited to what transpired between 12:00 o'clock noon to 2:00 o'clock in the afternoon of October 6, 2002, when Rodel arrived in the billiard hall and stabbed Enrique. The prosecution, however, did not present any proof showing when and how Rodel planned and prepared to kill Enrique and the sufficient lapse of time between such determination and execution to allow Rodel to reflect upon the circumstance of his act.[39] The fact that Rodel approached and stabbed the victim does not unequivocally establish that Rodel earlier devised a deliberate plot to murder Enrique.[40] To qualify an offense, the circumstance must not merely be "premeditation"

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[36] *People v. Latag*, 465 Phil. 683, 695 (2004).

[37] *Dorado v. People*, 796 Phil. 233, 254 (2016).

[38] *People v. Biso*, *supra* note 30, at 602.

[39] See *Dorado v. People*, *supra* note 37, at 254-255.

[40] *Id*. at 255.

but must be "evident premeditation."[41] Hence, absent a clear and positive proof of the overt act of planning the crime, mere presumptions and inferences thereon, no matter how logical and probable, would not be enough.[42]

Proper penalty and award of damages.

With the removal of the qualifying circumstances of treachery and evident premeditation, the crime is therefore Homicide and not Murder. The penalty for Homicide under Article 249 of the RPC is *reclusion temporal*, which ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, accused is to be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor* (the penalty next lower in degree which ranges from six (6) years and one (1) day to twelve (12) years) and whose maximum shall be within the range of *reclusion temporal*.

There being the mitigating circumstance of voluntary surrender which was not controverted in this case, the penalty in its minimum period should be applied. Hence, an indeterminate sentence of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum, should be imposed.[43]

Finally, in view of the Court's ruling in *People v. Jugueta*,[44] the damages awarded in the questioned Decision are hereby modified that Rodel is ordered to pay the heirs of the victim ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages.

WHEREFORE, in view of the foregoing, the appeal is hereby **PARTIALLY GRANTED**. The Court **DECLARES** accused-

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[41] *People v. Ordona*, G.R. No. 227863, September 20, 2017, p. 7, citing *People v. Abadies*, 436 Phil. 98, 106 (2002).

[42] *People v. Almendras*, 423 Phil. 1035, 1044-1045 (2001).

[43] *People v. Duavis*, 678 Phil. 166 (2011); *People v. Santillan*, G.R. No. 227878, August 9, 2017, 837 SCRA 71, 87.

[44] 783 Phil. 806 (2016).

appellant Rodel Magbuhos y Diola **GUILTY** of **HOMICIDE**, for which he is sentenced to suffer the indeterminate penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to twelve (12) years and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of Enrique Castillo the amount of Fifty Thousand Pesos (₱50,000.00) as civil indemnity, and Fifty Thousand Pesos (₱50,000.00) as moral damages. All monetary awards shall earn interest at the legal rate of six percent (6%) per annum from the date of finality of this Decision until fully paid.

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe, Tijam,*[**] and *Reyes, A. Jr., JJ.*, concur.

SECOND DIVISION

[G.R. No. 231843. November 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NADER MUSOR *y* ACMAD,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution shall prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.

[**] Designated additional Member per Special Order No. 2587-P dated October 31, 2018.

2. ID.; ID.; DRUG CASES; THE DANGEROUS DRUG ITSELF IS THE VERY *CORPUS DELICTI* OF THE VIOLATION OF THE LAW.— In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law. While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors, the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

3. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; CHAIN OF CUSTODY; REFERS TO THE DULY RECORDED AUTHORIZED MOVEMENTS AND CUSTODY OF SEIZED DRUGS FROM THE TIME OF SEIZURE TO RECEIPT IN THE FORENSIC LABORATORY TO SAFEKEEPING TO PRESENTATION IN COURT FOR DESTRUCTION.— In all drugs cases, x x x compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/ confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.

4. ID.; ID.; ID.; PROCEDURE; FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID; SAVING CLAUSE, WHEN APPLICABLE.— Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing

must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof. x x x It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items as void and invalid. However, this is with the caveat x x x that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses. x x x Section 21 (a) of the IRR of RA 9165 provides 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." For this provision to be effective, however, the prosecution must first **(1) recognize any lapse on the part of the police officers and (2) be able to justify the same.** Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised. x x x Here, none of the requirements for the saving clause to be triggered is present: *First*, the prosecution did not even concede that there were lapses in the conduct of the buy-bust operation. Also, no explanation was offered as to the absence of the three witnesses at the place and time of seizure, or as to the failure to photograph the confiscated items immediately after seizure or during inventory in the presence of the insulating witnesses. x x x *Second*, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. Their explanation — that there might be a commotion since the place was very dark and there were plenty of persons drinking at the place — is hollow and not worthy of belief.

5. ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHY OF SEIZED ITEMS; MUST BE CONDUCTED IMMEDIATELY AFTER SEIZURE AND CONFISCATION AND THE INVENTORY MUST BE DONE IN THE PRESENCE OF THE REQUIRED WITNESSES.— Section 21 of RA 9165 x x x requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the x x x required witness**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team. **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

6. ID.; ID.; ID.; ID.; THREE-WITNESS RULE; THE PRESENCE OF THE REQUIRED WITNESSES AT THE TIME OF THE APPREHENSION AND INVENTORY IS MANDATORY.— [W]hile the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, **the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.** The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence. x x x [T]he presence of the required witnesses

at the time of the apprehension and inventory, is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. x x x The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to "witness" the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs. To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the buy-bust arrest, such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."

7. **ID.; ID.; ID.; ID.; TAKING OF PHOTOGRAPHS CANNOT BE DISPENSED WITH BECAUSE THE PHOTOGRAPHS PROVIDE CREDIBLE PROOF OF THE STATE OR CONDITION OF THE ILLEGAL DRUGS OR PARAPHERNALIA RECOVERED FROM THE PLACE OF APPREHENSION TO ENSURE THAT THE IDENTITY AND INTEGRITY OF THE RECOVERED ITEMS ARE PRESERVED.—** [N]o photographs of the seized drugs were taken at the place of seizure or at the police station where the inventory was conducted. To be sure, the taking of photographs of the seized drugs is not a menial requirement that can be easily dispensed with. Photographs provide credible proof of the state or condition of the illegal drugs and/or paraphernalia recovered from the place of apprehension to ensure that the identity and integrity of the recovered items are preserved.

8. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE IN FAVOR OF THE ACCUSED.—** The right of the accused to be presumed innocent until proven guilty is a constitutionally-protected right. The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime

or for any other crime necessarily included therein. Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused. Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Lozano & Lozano-Endriano Law Office for accused-appellant.

D E C I S I O N

CAGUIOA, *J.*:

This is an Appeal[1] under Section 13, Rule 124 of the Rules of Court from the Decision[2] dated July 25, 2016 of the Court of Appeals, Thirteenth Division (CA) in CA-G.R. CR-HC. No. 07592, which affirmed the Decision[3] dated January 21, 2015 and Order[4] dated May 11, 2015 rendered by the Regional Trial Court, Branches 26 & 66, respectively, of San Fernando City, La Union (RTC) in Criminal Case No. 9055, which found herein accused-appellant Nader Musor y Acmad (Musor) guilty beyond reasonable doubt of violating Section 5, Article II of

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[1] *See* Notice of Appeal dated August 1, 2016; *rollo*, pp. 17-18.

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

[3] CA *rollo*, pp. 11-18. Penned by Judge Caroline S. Rojas Jaucian.

[4] Records, pp. 283-284. Penned by Judge Victor O. Concepcion.

Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act, as amended (RA 9165).

The Facts

An Information was filed against accused-appellant Musor for violating Section 5, Article II of RA 9165, the accusatory portion of which reads:

> That on or about the 28th day of February, 2011 in the City of San Fernando, La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully, and feloniously, deliver and sell two (2) small heat sealed transparent plastic sachets containing methamphetamine hydrochloride otherwise known as "shabu" with an individual weight of zero point one two nine seven (0.1297) gram and zero point zero eight zero two (0.0802) gram to PO2 Armand Bautista, who posed as poseur buyer, and in consideration of said shabu, used marked money consisting of one (1) piece of FIVE HUNDRED (₱500.00) Philippine Currency bill with serial number MH450138 without first securing the necessary permit, license or authority from the proper government agency.
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> Contrary to law.[5]

Version of the Prosecution

The version of the prosecution, as summarized by the CA, is as follows:

> In the evening of February 28, 2011, a confidential informant (CI) went to PNP, San Fernando City, La Union and relayed to PO2 Armand Bautista accused-appellant's illegal drug activities. The CI told PO2 Bautista that accused-appellant would be selling drugs later at Wil-Jan Bar and Inn (Wil-Jan). PO2 Bautista immediately conveyed the same to their Chief. After the PNP coordinated with PDEA and RAIDSOTG for a buy-bust operation, they conducted a briefing wherein PO2 Bautista was designated as the poseur-buyer while PO1 Jose Maria Bersola as the back-up.

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

Thereafter the marked money was prepared and the buy-bust team proceeded to Wil-Jan at 9:00 o'clock in the evening. When they arrived near the area, the informant pointed to the person standing in front of Wil-Jan as the accused Musor. When they approached the accused, the informant introduced PO2 Bautista as the interested buyer of shabu. The accused then asked PO2 Bautista how much shabu he wanted to buy. The latter told him that he wanted to buy ₱500.00 worth of shabu. The accused got something from his pocket and gave it to PO2 Bautista. When PO2 Bautista confirmed that it was a [*sic*] genuine shabu he put it in his right pocket. Then, he gave the marked money to the accused. After he received the money, PO1 Bersola announced his arrest. PO2 Bautista frisked the accused and recovered another plastic sachet containing white crystalline substance, and put the same in his left pocket. Thereupon, their team leader ordered them to return to the police station to avert any commotion, as their location was dark and there were persons drinking in the area.

At the police station, the team asked for the presence of a barangay official and a media representative to witness the marking and preparation of the inventory. PO2 Bautista marked the plastic sachets as "ASB1" and "ASB2" and prepared the inventory. He also prepared a request for laboratory examination which was submitted together with the sachets containing crystalline substance to PO2 Baceloña at the crime laboratory. After receiving them, PO2 Bacelonia [*sic*] immediately turned over the same to the forensic chemist, P/Ins. Manuel.

At the crime laboratory, P/Ins. Manuel checked the markings of each specimen and conducted an examination and found the presence of methamphetamine hydrochloride or a substance known as "shabu". Thereafter, she put the sachets in a sealed brown envelope and turned it over to the Evidence Custodian. The evidence was placed in the evidence room where they keys were being kept by P/Ins. Manuel.[6]

Version of the Defense

On the other hand, the defense's version, as summarized by the CA, is as follows:

Accused alleged that around 2:00 o'clock in the afternoon of February 28, 2011, he received a call from his friend "Tisay." She

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[6] *Id*. at 3-4.

told him that she will go to the beach at Pagudpud to celebrate his [*sic*] wedding. Accused told her that he will go there after he finished helping his uncle. Thereafter, he proceeded to Pagudpud by riding a tricycle. Unfortunately, he was not able to reach the destination because a van blocked their way. Five persons instructed him to alight from the tricycle. He was blindfolded and forced to ride the van. When his blindfold was removed, he was already at the police station.

After the conference of the policemen, they brought the accused to the van again and proceeded to a place where the police called a media personnel to take pictures of the accused. He did not allow the personnel to take pictures of him. So, the police brought him back to the police station and locked him inside a prison cell.[7]

Musor was arraigned on June 28, 2011, in which he pleaded "not guilty" to the offense charged. Thereafter, trial on the merits ensued.

Ruling of the RTC

In the assailed Decision[8] dated January 21, 2015, the RTC found Musor guilty of the crime charged and was convinced that the chain of custody of evidence was not broken and that the integrity and the evidentiary value of the seized items were duly preserved. The dispositive portion of the decision reads:

WHEREFORE in light of the foregoing, judgment is hereby rendered finding the accused Nader Musor GUILTY beyond reasonable doubt of Violation of Section 5[,] Article II of Republic Act No. 9165 for Sale of Dangerous Drugs and sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.

Considering that penalty imposed is life imprisonment, the immediate confinement of the accused to the [New Bilibid Prison] is ordered.

Accused Nader Musor who has been detained since his arrest shall be credited on the service of his sentence consisting of deprivation

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

[8] *Supra* note 3.

of liberty with the full time during which he has undergone preventive imprisonment if he agreed voluntarily in writing to abide by the same disciplinary rules imposed upon corrected prisoners.

The items subject matter of this case are hereby forfeited in favor of the Government, the same to be disposed in accordance with the law.

Given in Chambers, this 21st day of January 2015 in the City of San Fernando, La Union.[9]

The RTC ruled that all the prosecution witnesses were able to authenticate the evidence before the court by their respective testimonies on the chain of custody from the moment it was seized from the accused up to the time it was presented in court. The elements necessary to consummate the crime, that is, proof that the illicit transaction took place, coupled with the presentation in court of the *corpus delicti* or the shabu as evidence, are present. It also ruled that although the inventory and marking were not done at the scene of the crime, but inside the police station where they proceeded right after the arrest, PO2 Bautista was able to explain that it was necessary to move out because the place was a bar and people were drinking in the said place. While it is true that it appears from his testimony that there were no photographs taken of the inventory and marking, the RTC said that the lack thereof does not disprove that a sale took place and the demands of the chain of custody of dangerous drugs were sufficiently complied with. It further stated that the failure of the police officers to conduct the required physical inventory and photographing of the confiscated drugs pursuant to the guidelines is not fatal and does not automatically render the arrest of the accused illegal or the items seized and/or confiscated inadmissible. What is of utmost importance, the RTC pointed out, is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt of the accused.[10] It

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[9] *Id*. at 17-18.

[10] *Id*. at 15-16.

further ruled that the accused's defenses of denial of the crime and frame-up are inherently weak defenses.[11]

Undeterred with the decision, Musor asked for a *reconsideration with inhibition*. In an Order dated April 6, 2015, the RTC Branch 26 did not act on the motion for reconsideration, but granted the motion for inhibition on the ground of *delicadeza* and not on the grounds cited by Musor. It was the RTC Branch 66 which issued the assailed Order denying his motion for reconsideration thereon.[12]

Aggrieved, Musor appealed to the CA.

Ruling of the CA

In the assailed Decision[13] dated July 25, 2016, the CA affirmed Musor's conviction. The dispositive portion of the decision reads:

WHEREFORE, in view of the foregoing, the appeal is **DENIED**. The assailed January 21, 2015 Decision and May 11, 2015 Order of the RTC, Branches 26 and 66, respectively, San Fernando City, La Union in Criminal Case No. 9055, are hereby **AFFIRMED**.

SO ORDERED.[14]

The CA held that the prosecution was able to establish all the essential elements of the crime charged. PO2 Bautista categorically testified regarding the consummation of the sale when Musor gave him the sachet with crystalline substance after the latter received the ₱500.00 marked money, which substance was later on confirmed to be shabu.[15] It further ruled that non-compliance with Section 21 does not render the accused's arrest illegal or the items seized/confiscated from

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[11] *Id*. at 16.

[12] *Rollo*, p. 6.

[13] *Supra* note 2.

[14] *Rollo*, p. 16.

[15] *Id*. at 8.

him inadmissible for as long as the integrity and evidentiary value of the seized items are preserved.[16] It held that the chain of custody was not broken from the time of marking and inventory, to laboratory examination, and up to the presentation of the sachets containing shabu to the court.[17] The sachets containing methamphetamine hydrochloride or shabu were properly presented and identified by PO2 Bautista in the court *a quo* as the same sachets he marked and inventoried at the time of their buy-bust operation against Musor.[18]

Hence, the instant appeal.

Issue

Whether or not Musor's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious.

After a review of the records, the Court resolves to acquit accused-appellant Musor as the prosecution utterly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165 which thus results in its failure to prove his guilt beyond reasonable doubt.

The accused-appellant was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. In order to convict a person charged with the crime of illegal sale of dangerous drugs under Section 5, Article II of RA 9165, the prosecution shall prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[19]

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[16] *Id*. at 10.

[17] *Id*.

[18] *Id*. at 14.

[19] *People v. Opiana*, 750 Phil. 140, 147 (2015).

In cases involving dangerous drugs, the State bears not only the burden of proving these elements, but also of proving the *corpus delicti* or the body of the crime. In drug cases, the dangerous drug itself is the very *corpus delicti* of the violation of the law.[20] While it is true that a buy-bust operation is a legally effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[21] the law nevertheless also requires strict compliance with procedures laid down by it to ensure that rights are safeguarded.

In all drugs cases, therefore, compliance with the chain of custody rule is crucial in any prosecution that follows such operation. Chain of custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction.[22] The rule is imperative, as it is essential that the prohibited drug confiscated or recovered from the suspect is the very same substance offered in court as exhibit; and that the identity of said drug is established with the same unwavering exactitude as that requisite to make a finding of guilt.[23]

In this connection, Section 21, Article II of RA 9165,[24] the applicable law at the time of the commission of the alleged

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[20] *People v. Guzon*, 719 Phil. 441, 450-451 (2013).

[21] *People v. Mantalaba*, 669 Phil. 461, 471 (2011).

[22] *People v. Guzon*, *supra* note 20 at 451, citing *People v. Dumaplin*, 700 Phil. 737 (2012).

[23] *Id*., citing *People v. Remigio*, 700 Phil. 452 (2012).

[24] The said section reads as follows:

Section. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment*. – The PDEA shall take charge and have custody of all dangerous drugs, 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:

crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence. The provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

This must be so because with

> the very nature of anti-narcotics operations, the need for entrapment procedures, the use of shady characters as informants, the ease with which sticks of marijuana or grams of heroin can be planted in pockets of or hands of unsuspecting provincial hicks, and the secrecy that inevitably shrouds all drug deals, the possibility of abuse is great.[25]

Section 21 of RA 9165 further requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation**. The said inventory must be done **in the presence of the aforementioned required witness**, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the

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(1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

[25] *People v. Santos, Jr.*, 562 Phil. 458, 471 (2007), citing *People v. Tan*, 401 Phil. 259, 273 (2000).

place of apprehension. It is only when the same is not practicable that the Implementing Rules and Regulations (IRR) of RA 9165 allows the inventory and photographing to be done as soon as the buy-bust team reaches the nearest police station or the nearest office of the apprehending officer/team.[26] **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items which, as aforementioned, must be immediately done at the place of seizure and confiscation — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity**. Verily, a buy-bust team normally has enough time to gather and bring with them the said witnesses.

It is true that there are cases where the Court had ruled that the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 does not *ipso facto* render the seizure and custody over the items as void and invalid. However, this is with the caveat, as the CA itself pointed out, that the prosecution still needs to satisfactorily prove that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved.[27] The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[28]

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[26] IRR of RA 9165, Art. II, Sec. 21 (a).

[27] *People v. Ceralde*, G.R. No. 228894, August 7, 2017, p. 7.

[28] *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 6; *People v. Descalso*, G.R. No. 230065, March 14, 2018, p. 8; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 6; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 8; *People v. Magsano*, G.R. No. 231050, February 28, 2018, p. 7; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 6; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 7; *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 9; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 7; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 7; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 7; *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe*, 631 Phil. 51, 60 (2010).

In the present case, the buy-bust team committed several and patent procedural lapses in the conduct of the seizure, initial custody, and handling of the seized drug — which thus created reasonable doubt as to the identity and integrity of the drugs and, consequently, reasonable doubt as to the guilt of the accused.

The required witnesses were not present at the time of seizure and apprehension.

In the case at bar, none of the three required witnesses were present at the time of seizure and apprehension as they were only called to the police station for the conduct of inventory. As PO2 Bautista, part of the apprehending team, himself testified:

Q After you arrested Nader Musor after you conducted the body search on his person, what did you do next?
A We proceeded to the police station, sir.

Q And from the place of arrest up to the police station, who was in possession of the two sachets believed to be shabu?
A Me, sir.

Q When you were in the police station, what did you do there?
A We called for a barangay official and representative of the media, sir.

Q For what purposes, mr. witness?
A To be witnesses in the inventory, sir.

Q When these witnesses arrived, what happened next?
A We conducted inventory and placed the marking on the items, sir.

Q Who conducted the said markings?
A Me, sir.[29]

x x x x x x x x x

[29] TSN dated October 2, 2013, p. 7.

Q Mr. witness, how come that you conducted the inventory taking of the seized items at the police station instead of the place of arrest?

A That was the instruction of our team leader because there might be a commotion since it is already in the evening and very dark and there were plenty of persons drinking at the place, sir.[30]

x x x x x x x x x

Q After you confiscated those items, you immediately brought the accused to your police station?
A Yes, sir.

Q You did not make any marking at the place where you allegedly confiscated the prohibited drugs?
A We were supposed to conduct the marking at the place of arrest but it was dark at the place and there were persons drinking at the Pub sir, so as per instructions of our team leader, we will be going back to the police station.

Q Who is that team leader who instructed you that you will make the inventory in the police station?
A Police Senior Inspector Quezada, sir.

Q Are you aware or do you know Section 21 of the Prohibited Drugs Law?
A Yes, sir.

Q And of course, you will agree with me that the physical inventory shall be made at the place where the items were confiscated and/or seized, is it not?
A Yes, sir.

Q It did not say that if there are, at any rate reasons, you will not make it there?
A Yes, sir.

Q It is very strict in saying that such items confiscated shall be inventoried at the place where they were confiscated, is it not?
A It depends upon the situation, sir.

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[30] *Id*. at 8.

Q **But you know that there is a law on that matter?**
A **Yes, sir because I came from PDEA.**

Q And the law says that it is to be marked or inventoried in the place where they were confiscated?
A Yes, sir.

Q Likewise, the law requires the photographing, is it not?
A Yes, sir

Q There was no photographs [*sic*] taken?
A None sir, because that was the instruction of our team leader?

Q And you followed that?
A Yes, sir.

Q You did not follow Section 21?
A The lawyer from PDEA informed us that it is okay to bring the matter to the police station, sir.[31] (Emphasis ours)

Section 21, paragraph 1 of RA 9165 plainly requires the apprehending team to conduct a physical inventory of the seized items and the photographing of the same **immediately after seizure and confiscation.** Further, the inventory must be done **in the presence of the accused, his counsel, or representative, a representative of the DOJ, the media, and an elected public official**, who shall be required to sign the copies of the inventory and be given a copy thereof.

The phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if this is not practicable that the IRR allows the inventory and photographing at the nearest police station or the nearest office of the apprehending officer/team. This also means that the three required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. In other words, the buy-bust team has enough time and opportunity to bring with them said witnesses.

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[31] *Id.* at 15-16.

Moreover, while the IRR allows alternative places for the conduct of the inventory and photographing of the seized drugs, **the requirement of having the three required witnesses to be physically present at the time or near the place of apprehension is not dispensed with.** The reason is simple: it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence.

Here, the buy-bust team utterly failed to comply with the foregoing requirements.

To start with, no photographs of the seized drugs were taken at the place of seizure or at the police station where the inventory was conducted. To be sure, the taking of photographs of the seized drugs is not a menial requirement that can be easily dispensed with. Photographs provide credible proof of the state or condition of the illegal drugs and/or paraphernalia recovered from the place of apprehension to ensure that the identity and integrity of the recovered items are preserved.

Neither were the inventory and marking of the alleged seized items in this case done in the presence of accused Musor. There was no justifiable ground offered by the prosecution on why the marking was not done in his presence. The absence of the accused in the marking and inventory of the alleged seized items and the lack of photographing as required by law without justifiable ground would open the alleged seized items to tampering, alteration or even planting of evidence against him. Thus, the integrity and evidentiary value of the alleged seized items were not preserved by the apprehending team.

More importantly, there was no compliance with the three-witness rule. Based on the narrations of PO2 Bautista, not one of the witnesses required under Section 21 was present at the time the plastic sachets were allegedly seized from Musor. They were only present during the conduct of inventory in the police station. There was also no explanation as to their absence during

the apprehension and their belated appearance at the police station.

It bears emphasis that the presence of the required witnesses at the time of the apprehension and inventory, is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis*,[32] the Court elucidated on the purpose of the law in mandating the presence of the required witnesses as follows:

> The presence of the witnesses from the DOJ, media, and from public elective office is necessary to protect against the possibility of planting, contamination, or loss of the seized drug. Using the language of the Court in *People v. Mendoza*,[33] without the ***insulating presence*** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of 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 subject sachet that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[34]

> The presence of the three witnesses must be secured not only during the inventory but more importantly **at the time of the warrantless arrest**. It is at this point in which the presence of the three witnesses is most needed, as it is their presence at the time of seizure and confiscation that would belie any doubt as to the source, identity, and integrity of the seized drug. If the buy-bust operation is legitimately conducted, the presence of the insulating witnesses would also controvert the usual defense of frame-up as the witnesses would be able testify that the buy-bust operation and inventory of the seized drugs were done in their presence in accordance with Section 21 of RA 9165.

> The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so —

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[32] G.R. No. 228890, April 18, 2018.

[33] 736 Phil. 749 (2014).

[34] *Id*. at 764.

and "calling them in" to the place of inventory to witness the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the warrantless arrest; such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing of the seized and confiscated drugs "immediately after seizure and confiscation."[35] (Emphasis in the original)

It is important to point out that the buy-bust team, most especially, PO2 Bautista, as a former PDEA officer, knew that the presence of the three witnesses is required at the time of the warrantless arrest. However, they only secured the presence of the required witnesses at the police station. Moreover, there were only two witnesses present – a barangay official and a media representative, when the law explicitly requires three witnesses. Neither did the police officers nor the prosecution – during the trial – offer any explanation for their deviation from the law.

In addition, the explanation of PO2 Bautista that they could not conduct the physical inventory and photographing of the seized drugs at the place where Musor was apprehended because the place was dark and there were other people drinking is nothing but a flimsy and hollow excuse. The mere allegation that the appellant's arrest could draw unpredictable reactions to the bar-goers is not a sufficient reason for the buy-bust team to deviate from the requirements of Section 21.[36]

It bears stressing that the prosecution has the burden of (1) proving its compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance.

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[35] *People v. Tomawis*, *supra* note 32 at 11-12.

[36] TSN dated October 2, 2013, p. 8.

As the Court *en banc* unanimously held in the recent case of *People v. Lim*:[37]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drug seized was not obtained due to reason/s such as:
>
> > (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[38] (Underscoring added, emphasis omitted)

In this case, none of the abovementioned reasons is present. The practice of police operatives of not bringing to the intended place of arrest the three witnesses, when they could easily do so — and "calling them in" to the place of inventory to "witness" the inventory and photographing of the drugs only after the buy-bust operation has already been finished — does not achieve the purpose of the law in having these witnesses prevent or insulate against the planting of drugs.

To restate, the presence of the three witnesses at the time of seizure and confiscation of the drugs must be secured and complied with at the time of the buy-bust arrest, such that they are required to be at or near the intended place of the arrest so that they can be ready to witness the inventory and photographing

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[37] G.R. No. 231989, September 4, 2018.

[38] *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

of the seized and confiscated drugs "immediately after seizure and confiscation."

The saving clause does not apply to this case.

Section 21 (a) of the IRR of RA 9165 provides 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." For this provision to be effective, however, the prosecution must first **(1) recognize any lapse on the part of the police officers and (2) be able to justify the same.**[39] Breaches of the procedure contained in Section 21 committed by the police officers, left unacknowledged and unexplained by the State, militate against a finding of guilt beyond reasonable doubt against the accused as the integrity and evidentiary value of the *corpus delicti* had been compromised.[40] As the Court explained in *People v. Reyes*:[41]

> Under the last paragraph of Section 21 (a), Article II of the IRR of R.A. No. 9165, a saving mechanism has been provided to ensure that not every case of non-compliance with the procedures for the preservation of the chain of custody will irretrievably prejudice the Prosecution's case against the accused. **To warrant the application of this saving mechanism, however, the Prosecution must recognize the lapse or lapses, and justify or explain them. Such justification or explanation would be the basis for applying the saving mechanism.** Yet, the Prosecution did not concede such lapses, and did not even tender any token justification or explanation for them. **The failure to justify or explain underscored the doubt and suspicion about the integrity of the evidence of the *corpus delicti*.** With the chain of custody having been compromised, the accused deserves acquittal.[42] (Emphasis supplied)

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[39] See *People v. Alagarme*, 754 Phil. 449, 461 (2015).

[40] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

[41] 797 Phil. 671 (2016).

[42] *Id*. at 690.

Here, none of the requirements for the saving clause to be triggered is present:

First, the prosecution did not even concede that there were lapses in the conduct of the buy-bust operation. Also, no explanation was offered as to the absence of the three witnesses at the place and time of seizure, or as to the failure to photograph the confiscated items immediately after seizure or during inventory in the presence of the insulating witnesses. It must be noted that the requirements under Section 21 are not unknown to the buy-bust team, who are presumed to be knowledgeable of the law demanding the preservation of the links in the chain of custody.[43] They are dutybound to fully comply with the requirements thereof, and if their compliance is not full, they should at least have the readiness to explain the reason for the step or steps omitted from such compliance.[44]

Second, the prosecution failed to provide justifiable grounds for the apprehending team's deviation from the rules laid down in Section 21 of RA 9165. Their explanation — that there might be a commotion since the place was very dark and there were plenty of persons drinking at the place — is hollow and not worthy of belief. They did not even state that their safety would be threatened by an immediate retaliatory action of the accused or any person/s acting for and in his behalf if the inventory and photographing of the seized drugs were done in the place of apprehension.[45]

The integrity and evidentiary value of the *corpus* delicti have thus been compromised. In light of this, accused-appellant must perforce be acquitted.

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[43] *People v. Geronimo*, G.R. No. 180447, August 23, 2017, p. 8.

[44] *Id*.

[45] *People v. Lim*, *supra* note 37 at 11-12.

The presumption of innocence of the accused vis-a-vis the presumption of regularity in performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally-protected right.[46] The burden lies with the prosecution to prove his guilt beyond reasonable doubt by establishing each and every element of the crime charged in the information as to warrant a finding of guilt for that crime or for any other crime necessarily included therein.[47]

Here, reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[48] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[49] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[50]

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established procedures under Section 21 of RA 9165. The Court has ruled in *People v. Zheng Bai Hui*[51] that it will not presume to set an *a priori* basis what detailed acts police authorities might credibly undertake and carry out in their entrapment operations. However, given the police operational procedures and the fact that buy-bust is a planned operation, it strains credulity why the buy-

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[46] CONSTITUTION, Art. III, Sec. 14 (2): "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[47] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[48] *People v. Mendoza*, 736 Phil. 749, 769 (2014).

[49] *Id*. at 770.

[50] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[51] 393 Phil. 68, 133 (2000).

bust team could not have ensured the presence of the required witnesses pursuant to Section 21 or at the very least marked, photographed and inventoried the seized items according to the procedures in their own operations manual.

All told, the prosecution failed to prove the *corpus delicti* of the offense of sale of illegal drugs due to the multiple unexplained breaches of procedure committed by the buy-bust team in the seizure, custody, and handling of the seized drug. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant Musor.

As a reminder, the Court exhorts the prosecutors to diligently discharge their onus to prove compliance with the provisions of Section 21 of RA 9165, as amended, and its Implementing Rules and Regulations, which is fundamental in preserving the integrity and evidentiary value of the *corpus delicti*. **To the mind of the Court, the procedure outlined in Section 21 is straightforward and easy to comply with.** In the presentation of evidence to prove compliance therewith, the prosecutors are enjoined to recognize any deviation from the prescribed procedure and provide the explanation therefor as dictated by available evidence. Compliance with Section 21 being integral to every conviction, the appellate court, this Court included, is at liberty to review the records of the case to satisfy itself that the required proof has been adduced by the prosecution whether the accused has raised, before the trial or appellate court, any issue of non-compliance. If deviations are observed and no justifiable reasons are provided, the conviction must be overturned, and the innocence of the accused affirmed.[52]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated July 25, 2016 of the Court of Appeals, Thirteenth Division (CA) in CA-G.R. CR-HC. No. 07592 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Nader Musor y Acmad is **ACQUITTED** of the crime charged on the ground of reasonable

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[52] See *People v. Jugo*, *supra* note 28 at 10.

doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless he is being lawfully held for another cause. Let an entry of final judgment be issued immediately.

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

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Reyes, A. Jr.*, *JJ.*, concur.

Reyes, J. Jr.,[*] *J.*, on wellness leave.

SECOND DIVISION

[G.R. No. 234821. November 7, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BOBBY PACNISEN *y* BUMACAS,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.— [I]n the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court. Thus, when the case pivots on the issue of the credibility of the testimonies of the witnesses, the findings of the trial courts necessarily carry great weight and respect as

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[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial.

2. **CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** [I]n the prosecution for violation of Section 5, RA 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of the dangerous drug is a condition *sine qua non* for conviction for the illegal sale dangerous drug, it being the very *corpus delicti* of the crime. What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*. *Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed.

3. **ID.; ID.; SECTION 21 ON THE CHAIN OF CUSTODY; REQUIREMENT FOR THE APPREHENDING TEAM TO CONDUCT PHYSICAL INVENTORY OF THE SEIZED ITEMS AND PHOTOGRAPH THE SAME IMMEDIATELY AFTER SEIZURE AND CONFISCATION IN THE PRESENCE OF THE ACCUSED AND THE REQUIRED WITNESSES; DISCUSSED.—** In dangerous drugs cases, it is essential in establishing the *corpus delicti* that the procedure provided in Section 21 of RA 9165 is followed. x x x Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and photograph the same immediately after seizure and confiscation in the presence of the accused, with (1) an elected public official, (2) a representative of the DOJ, and (3) a representative of the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof. In buy-bust situations, or warrantless arrests, the physical inventory and photographing are allowed to be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. But even in these alternative places, such inventory and photographing are still required to be done in the presence of the accused and the aforementioned witnesses. To the mind of the Court, the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be

made immediately after, or at the place of apprehension. And only if it is not practicable can the inventory and photographing then be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending team. There can be no other meaning to the plain import of this requirement. By the same token, however, this also means that the required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the apprehending team has enough time and opportunity to bring with them said witnesses.

4. ID.; ID.; ID.; ID.; RULE IN CASE OF NON-COMPLIANCE OF THE THREE WITNESSES REQUIREMENT.— As the Court held in the recent case of *People v. Lim*: It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drag seized was not obtained due to reason/s such as: x x x (5) **time constraints and urgency of the anti-drug operations**, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape. In this relation, the ruling of the Court in *People v. Ramos* is instructive: It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. **However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary

arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. **As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.**

APPEARANCES OF COUNSEL

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

D E C I S I O N

CAGUIOA, *J.*:

Before this Court is an ordinary appeal[1] filed by the accused-appellant Bobby Pacnisen y Bumacas (Pacnisen) assailing the Decision[2] dated June 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08271, which affirmed the Decision[3] dated March 30, 2016 of the Regional Trial Court, City of San Fernando, La Union, Branch 66 (RTC) in Criminal Case No. 9665, finding Pacnisen guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. (RA) 9165, otherwise known as "The Comprehensive Dangerous Drugs Act of 2002,"[4] as amended.

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[1] See Notice of Appeal dated July 12, 2017; *rollo*, pp. 20-21.

[2] *Id*. at 2-19. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Celia C. Librea-Leagogo and Pedro B. Corales, concurring.

[3] CA *rollo*, pp. 55-63. Penned by Presiding Judge Victor O. Concepcion.

[4] Titled "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

On October 1, 2012, an Information was filed against the accused-appellant in this case, the accusatory portion of which reads as follows:

> That on or about the 18th day of September 2012, at Brgy. Urbiztondo, Municipality of San Juan, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without first securing the necessary permit, license or authority from the proper government agency, did then and there willfully, unlawfully and feloniously sell, dispense, and deliver to PDEA Agent Efren E. Esmin, who acted as a poseur-buyer, two (2) bricks of Marijuana, a dangerous drug, with an individual net weight of One Thousand Eight Hundred Fifty Seven Point Sixteen (1857.16) grams and Eight Hundred Fifty Two Point Nineteen (852.19) grams with a total weight of Two Thousand Seven Hundred Nine Point Thirty Five (2709.35) grams in consideration of Six Thousand Pesos (₱6,000.00) consisting of one (1) genuine One Thousand Peso (₱1,000.00) boodle money bills with similar serial numbers PP191620 used as marked money.
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> CONTRARY TO LAW.[5]

Upon arraignment, Pacnisen pleaded not guilty. Thereafter, pre-trial and trial ensued. The prosecution's version, as summarized by the CA, is as follows:

> On September 18, 2012, a confidential informant arrived at the PDEA office, Camp Diego Silang, Carlatan, San Fernando City, La Union and reported that a certain Bobby Pacnisen, who turned out to be appellant, was selling marijuana at Santol and San Juan, La Union. The informant related to Agents Dexter Asayco and Efren Esmin that he had already won appellant's trust and so he was able to arrange with appellant a transaction involving ₱6,000.00 worth of marijuana. Agent Asayco verified appellant's name from their office's Intelligence Investigation Division. He learned that appellant's name was included in the so-called "Summary of Information," a record of complaints brought by the citizens against persons engaged

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[5] *Rollo*, p. 3.

in selling drugs. Based thereon, Agent Asayco formed a buy-bust team composed of himself as team leader, Agent Esmin as poseur buyer, Agent Suminigay Mirindato as immediate back-up, and Agents Marlon Apolog, Seymoure Sanchez, and Ramos as regular back-up. Agent Esmin prepared the buy-bust money worth ₱6,000.00 composed of one genuine piece of ₱l,000.00 bill and five pieces of boodle money, each marked with the initials "ELE" on the lower right portion. Agent Esmin then photocopied the buy-bust money and entered it in the blotter.

The team proceeded to the agreed place of transaction in a vacant lot between Pentecostal Missionary Church and Ozoteo Building, Brgy. Urbiztondo, San Juan, La Union. The confidential informant and agent Esmin alighted from the team's vehicle and proceeded to the place on foot. Once there, the confidential informant introduced Agent Esmin to the appellant as the person interested to buy the ₱6,000.00 worth of marijuana. Agent Esmin asked appellant if he had the "merchandise", to which the latter answered in the affirmative. Agent Esmin then asked appellant if the price for the "merchandise" can be lowered. When the appellant did not agree, Agent Esmin handed him the buy-bust money worth ₱6,000.00. Appellant, in turn, gave him a plastic bag containing 2 packaged bricks. Agent Esmin asked appellant to show him the "merchandise" which appellant did by cutting a portion of a packaged brick. Thereafter, Agent Esmin wiped off his sweat with a handkerchief to signal the other team members to arrest the appellant.

When the other team members arrived, they introduced themselves as PDEA agents. Agent Mirindato informed appellant of his constitutional rights and placed handcuffs on him. Agent Esmin then conducted a body search on appellant and made an inventory of the confiscated items in the presence of the buy-bust team, Brgy. Captain of Urbiztondo Erickson N. Valdriz, and DXNL anchor Dominador Dacanay. Photographs were also taken by team leader Agent Asayco during the conduct of inventory.

After the inventory, the team returned to their office where Agent Mirindato prepared the Booking Sheet and Arrest Report. Agent Esmin, on the other hand, made the request for laboratory examination which he, along with the seized items, personally delivered to forensic chemist Lei-Yen Valdez.

Per Chemistry Report No. PDEAROI-DDO12-0025 dated September 18, 2012, the contents of the 2 packaged bricks were found positive for marijuana, a dangerous drug.[6]

On the other hand, the version of the defense, as also summarized by the CA, is as follows:

On September 18, 2012, he went to Balaoan, La Union to buy his food supply from the market and eat at Dangle's eatery. While eating, he received a call from his former live-in partner Maida, asking for his help because she was detained in San Fernando Police Station. Maida asked him to bring her some clothes and food which he should get from a certain Liza. He agreed to help Maida and rode a bus to meet with Liza at the crossing of San Juan Costa Villa Resort, San Juan, La Union. There, he saw Liza carrying a plastic bag which he presumed were the clothes for Maida. They walked towards a shaded area where Liza asked him to hold the plastic bag because she needed to pee. When Liza left, a man sitting inside an "owner" type jeep suddenly choked him. The man's two other companions then handcuffed him. He was brought to a hut near the seashore and was charged with selling the marijuana found inside the plastic bag.[7]

Ruling of the RTC

After trial on the merits, in its Decision dated March 30, 2016[8] the RTC convicted Pacnisen of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused Bobby-Pacnisen y Bumacas **GUILTY** beyond reasonable doubt for violating Section 5, Art II of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 and is hereby sentenced to life imprisonment and a (*sic*) to pay fine of five hundred thousand pesos (₱500,000.00)

The two bricks of marijuana, which are the subject matter of this case, are hereby ordered forfeited in favor of the government. The

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[6] *Id*. at 4-6.

[7] *Id*. at 6-7.

[8] *Supra* note 3.

Branch Clerk of Court is directed to transmit to the Philippine Drug Enforcement Agency the bricks of marijuana for said agency's appropriate disposition.

SO ORDERED.[9]

The RTC ruled that the evidence on record was sufficient to pronounce a verdict of conviction against the accused-appellant. It held that the prosecution was able to establish all the elements of the crimes charged, namely: (1) the identities of the buyer and seller, *viz*., the poseur-buyer Philippine Drug Enforcement Agency (PDEA) Agent Efren Esmin (Agent Esmin), and the accused-appellant as the seller, with the two bricks of marijuana as the object of the sale; and (2) the delivery of the thing sold and the receipt of the payment.[10]

The RTC did not give credence to the accused-appellant's defense of denial as it deemed the same self-serving. It held that the flimsy defense of denial could not stand against the positive testimony of the poseur-buyer, whose testimony the defense failed to impeach.[11] The RTC ultimately held that the prosecution sufficiently discharged its burden of proving the accused-appellant's guilt beyond reasonable doubt.

Aggrieved, the accused-appellant appealed to the CA.

Ruling of the CA

In his appeal to the CA, the accused-appellant questioned his conviction by the RTC because, according to him, the prosecution failed to prove (1) that a legitimate buy-bust operation took place, and (2) that the proper chain of custody was complied with. According to the accused-appellant, the prosecution failed to establish that a legitimate buy-bust operation took place because it only presented Agent Esmin, and no one else, to establish the fact that it happened. The accused-appellant raised

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

[10] *Id*. at 57, 61.

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

as issue the fact that the PDEA agents did not conduct any prior surveillance or test buy before he was apprehended. He also argued that the chain of custody was not properly established because there was no Department of Justice (DOJ) representative at the conduct of the inventory, and that the prosecution likewise failed to show who took custody of the seized items from the moment Agent Esmin seized them until they were delivered to the forensic chemist.

In the questioned Decision[12] dated June 21, 2017, the CA affirmed the RTC's conviction of the accused-appellant, holding that the prosecution was able to prove the elements of the crime charged. The CA upheld the finding that the prosecution was able to establish (1) the identity of the buyer, as well as the seller, the object, and the consideration of the sale; (2) the delivery of the thing sold and the payment therefor.[13] The CA gave credence to the testimony of the prosecution witnesses to establish the integrity and evidentiary value of the dangerous drugs seized. The CA added that the prosecution need not present anyone else, particularly the supposed informant, to testify on the buy-bust operation because any such testimony would only be corroborative or cumulative.[14]

As regards compliance with Section 21 of RA 9165, the CA held that the prosecution was able to establish the proper chain of custody. The CA ruled that since the prosecution was able to establish an unbroken chain of custody from Agent Esmin to the forensic chemist and then to the court, "the absence of a DOJ representative here would not destroy the established identity and integrity of the seized drugs."[15]

The CA then held that the lack of prior surveillance did not affect the legality of the buy-bust operation. Quoting *Quinicot*

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[12] *Supra* note 2.

[13] *Rollo*, p. 11.

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

[15] *Id*. at 16.

v. People,[16] the CA held that a prior surveillance was not necessary especially when the police operatives were accompanied by their informant during the entrapment. It further added that when time is of the essence, the police may dispense with the need for prior surveillance.

Lastly, the CA reiterated that the accused-appellant's alibi and denial do not deserve credence in light of his positive identification by the prosecution witnesses.[17] The CA thus upheld the accused-appellant's conviction.

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting the accused-appellant of the crime charged.

The Court's Ruling

The appeal is unmeritorious.

At the outset, it bears mentioning that the accused-appellant raises the same issues as those raised in — and duly passed upon by — the CA. It is well settled that in the absence of facts or circumstances of weight and substance that would affect the result of the case, appellate courts will not overturn the factual findings of the trial court.[18] Thus, when the case pivots on the issue of the credibility of the testimonies of the witnesses, the findings of the trial courts necessarily carry great weight and respect as they are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial.[19] Here, after examining the records of this case, the Court finds

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[16] 608 Phil. 259 (2009).

[17] *Rollo*, p. 17.

[18] *People v. Gerola*, G.R. No. 217973, July 19, 2017, pp. 5-6.

[19] *People v. Aguilar*, 565 Phil. 233, 247 (2007).

no cogent reason to vacate the RTC's appreciation of the testimonial evidence, which was affirmed *in toto* by the CA.

The Court is thus convinced that the accused-appellant is guilty beyond reasonable doubt.

Well settled in jurisprudence is the principle that in the prosecution for violation of Section 5, RA 9165, the following elements must be proven beyond reasonable doubt: (1) proof that the transaction took place; and (2) presentation in court of the *corpus delicti* or the illicit drug as evidence. The existence of the dangerous drug is a condition *sine qua non* for conviction for the illegal sale of dangerous drug, it being the very *corpus delicti* of the crime.[20] What is material is the proof that the transaction or sale transpired, coupled with the presentation in court of the *corpus delicti*.[21] *Corpus delicti* is the body or substance of the crime, and establishes the fact that a crime has been actually committed.[22]

In dangerous drugs cases, it is essential in establishing the *corpus delicti* that the procedure provided in Section 21 of RA 9165 is followed. The said section 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 charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

> (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were

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[20] *People v. Magat*, 588 Phil. 395, 402 (2008).

[21] *People v. Dumangay*, 587 Phil. 730, 739 (2008).

[22] *Id*.

confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours[.]

Furthermore, Section 21 (a), Article II of the Implementing Rules and Regulations of RA No. 9165 filled in the details as to where the physical inventory and photographing of the seized items that had to be done immediately after seizure could be done: *i.e.*, at the place of seizure, at the nearest police station or at the nearest office of the apprehending officer/team, thus:

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 was served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is**

practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. (Emphasis supplied)

Section 21 plainly requires the apprehending team to conduct a physical inventory of the seized items and photograph the same immediately after seizure and confiscation in the presence of the accused, with (1) an elected public official, (2) a representative of the DOJ, and (3) a representative of the media, all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

In buy-bust situations, or warrantless arrests, the physical inventory and photographing are allowed to be done at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. But even in these alternative places, such inventory and photographing are still required to be done in the presence of the accused and the aforementioned witnesses.

To the mind of the Court, the phrase "immediately after seizure and confiscation" means that the physical inventory and photographing of the drugs were intended by the law to be made immediately after, or at the place of apprehension. And only if it is not practicable can the inventory and photographing then be done as soon as the apprehending team reaches the nearest police station or the nearest office of the apprehending team. There can be no other meaning to the plain import of this requirement. By the same token, however, this also means that the required witnesses should already be physically present at the time of apprehension — a requirement that can easily be complied with by the buy-bust team considering that the buy-bust operation is, by its nature, a planned activity. Simply put, the apprehending team has enough time and opportunity to bring with them said witnesses.

In other words, while the physical inventory and photographing are allowed to be done "at the nearest police

station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures," this does not dispense with the requirement of having all the required witnesses to be physically present at the time or near the place of apprehension. The reason is simple, it is at the time of arrest — or at the time of the drugs' "seizure and confiscation" — that the presence of the three witnesses is most needed, **as it is their presence at the time of seizure and confiscation that would insulate against the police practice of planting evidence**.

Recent jurisprudence is clear that the procedure enshrined in Section 21 of RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality; or worse, ignored as an impediment to the conviction of illegal drug suspects.[23] For indeed, however noble the purpose or necessary the exigencies of our campaign against illegal drugs may be, it is still a governmental action that must always be executed within the boundaries of law.

Using the language of the Court in *People v. Mendoza*,[24] without the **insulating presence** of the representative from the media or the DOJ and any elected public official during the seizure and marking of the drugs, the evils of switching, "planting" or contamination of the evidence that had tainted the buy-busts conducted under the regime of RA No. 6425 (Dangerous Drugs Act of 1972) again reared their ugly heads

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[23] *People v. Dela Victoria*, G.R. No. 233325, April 16, 2018, p. 10; *People v. Ramos*, G.R. No. 233744, February 28, 2018, p. 9; *People v. Año*, G.R. No. 230070, March 14, 2018, p. 7; *People v. Lumaya*, G.R. No. 231983, March 7, 2018, p. 12; *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 9; *People v. Guieb*, G.R. No. 233100, February 14, 2018, p. 9; *People v. Paz*, G.R. No. 229512, January 31, 2018, p. 11; *People v. Miranda*, G.R. No. 229671, January 31, 2018, p. 11; *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 9; *People v. Mamangon*, G.R. No. 229102, January 29, 2018, p. 9; *People v. Calibod*, G.R. No. 230230, November 20, 2017, p. 9; *People v. Ching*, G.R. No. 223556, October 9, 2017, p. 10; *People v. Geronimo*, G.R. No. 225500, September 11, 2017, p. 10; *People v. Segundo*, G.R. No. 205614, July 26, 2017, p. 17; *People v. Macapundag*, G.R. No. 225965, March 13, 2017, p. 7; *Gamboa v. People*, 799 Phil. 584, 597 (2016).

[24] 736 Phil. 749 (2014).

as to negate the integrity and credibility of the seizure and confiscation of the subject drugs that were evidence of the *corpus delicti*, and thus adversely affected the trustworthiness of the incrimination of the accused.[25]

Thus, it is compliance with this most fundamental requirement — the presence of the "insulating" witnesses — that the pernicious practice of planting of evidence is greatly minimized if not foreclosed altogether. Stated otherwise, this is the first and foremost requirement provided by Section 21 to ensure the preservation of the "integrity and evidentiary value of the seized drugs" in a buy-bust situation whose nature, as already explained, is that it is a planned operation.

In the present case, however, only two of the three required witnesses – the elected official and the representative from the media – were present at the time of seizure, apprehension, and the conduct of the inventory. Nevertheless, the Court notes, based on the evidence, that the absence of the DOJ representative could be explained by the urgency with which the operation needed to be conducted. As the testimony of Agent Esmin reveals, there was only a two-hour period from the time they received the information from their confidential informant to the time that they needed to conduct the buy-bust operation. Agent Esmin testified as follows:

Q Now, on September 18, 2012, Mr. Witness, at around **1:00 o'clock in the afternoon**, can you please tell us where were you?
A We are at our office, sir.

Q You are at your office at Camp Diego Silang?
A Yes, sir.

Q When you were at your office at that time, do you remember receiving an information from a certain confidential informant?
A Yes, sir.

x x x x x x x x x

[25] *Id*. at 764.

Q And what was that information relayed by the confidential informant?

A He also revealed that **he already talked to Bobby Pacnisen** that there is a person who is interested in buying worth Six Thousand (6,000) worth of marijuana. He told to the subject Bobby Pacnisen, and this Bobby Pacnisen agreed, sir, and **Bobby Pacnisen arranged the place and time of transaction, sir.**

x x x x x x x x x

Q So you said that the time and the place has already been arranged by the confidential informant, where was supposed to be the transaction and when?

A **At around 3:00 p.m. of September 18, 2012**, at a vacant lot of Pentecostal Missionary Church and Osoteo Building, sir at barangay Urbiztondo, San Juan, La Union.[26] (Emphasis and underscoring supplied)

The absence of the DOJ representative was likewise explained by Agent Esmin. According to Agent Esmin, a colleague of his tried to contact a DOJ representative but there was no one available. Agent Esmin testified in this wise:

Q How about a personal (*sic*) from the DOJ, Mr. Witness?

A IO1 Marlon Apolog arrived but he told us that no one is available, sir.

Q No one is available from the DOJ?

A Yes, sir.

Q For the record who again, Mr. Witness?

A IO1 Marlon Apolog, sir.

Q So when the barangay captain and the representative from DZNL arrived, what did you do?

A I conducted markings of the seized evidence, sir and inventory, sir.[27]

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[26] TSN dated February 26, 2013, pp. 3-5.

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

It bears stressing that the prosecution has the burden of (1) proving their compliance with Section 21, RA 9165, and (2) providing a sufficient explanation in case of non-compliance. As the Court held in the recent case of *People v. Lim*:[28]

> It must be **alleged** and **proved** that the presence of the three witnesses to the physical inventory and photograph of the illegal drag seized was not obtained due to reason/s such as:
>
> (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and an elected public official within the period required under Article 125 of the Revised Penal Code prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) **time constraints and urgency of the anti-drug operations**, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the required witnesses even before the offenders could escape.[29] (Emphasis supplied)

In this relation, the ruling of the Court in *People v. Ramos*[30] is instructive:

> It is well to note that the absence of these required witnesses does not *per se* render the confiscated items inadmissible. **However, a justifiable reason for such failure or a showing of any genuine and sufficient effort to secure the required witnesses** under Section 21 of RA 9165 must be adduced. In *People v. Umipang*, the Court held that the prosecution must show that **earnest efforts** were employed in contacting the representatives enumerated under the law for "a sheer statement that representatives were unavailable without

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[28] G.R. No. 231989, September 4, 2018.

[29] *Id*. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[30] G.R. No. 233744, February 28, 2018.

so much as an explanation on whether serious attempts were employed to look for other representatives, given the circumstances is to be regarded as a flimsy excuse." Verily, mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand knowing full well that they would have to strictly comply with the set procedure prescribed in Section 21 of RA 9165. **As such, police officers are compelled not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstances, their actions were reasonable.**[31] (Emphasis and underscoring supplied)

In this case, the Court finds that the prosecution was able to provide a sufficient explanation for its deviation from the requirements of Section 21, RA 9165. While the Court emphasizes the importance of strictly following the procedure outlined in Section 21, it likewise recognizes that there may be instances where a *slight* deviation from the said procedure is justifiable, much like in this case where the officers exerted *earnest efforts* to comply with the law.

It should be recognized that, with the limited time they had to prepare for the operation, the apprehending team was still able to secure the attendance of two of the three required witnesses: the elected official and the media representative. This fact alone fortifies, in the eyes of the Court, the testimony of Agent Esmin that they really did attempt to secure the attendance of a DOJ representative but that there was no one available. The absence of a DOJ representative was thus attributable to factors beyond their control. **The officers in this case thus showed earnest efforts to comply with the mandated procedure**; they showed that they did their duties

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[31] *Id*. at 8.

bearing in mind the requirements of the law. It would therefore be error for the Court not to reward their efforts towards compliance.

It must also be pointed out that the apprehending officers in this case not only followed the procedure on inventory, but they were likewise able to follow the rest of the procedure outlined in Section 21. Agent Esmin testified that after the inventory, they proceeded to the PDEA office, prepared the Request for Chemical Laboratory examination, and delivered the seized items to the PDEA's resident chemist.[32] This is well-within the 24-hour period provided under Section 21. On the same day, the chemist issued a report, with Chemistry Report Number PDEAROI-DDO12-0025, which noted that the seized items tested positive of marijuana.[33] This is likewise within the second 24-hour period provided in Section 21. Prior to the submission to the RTC of the seized items, they were kept by the forensic chemist in their evidence vault that only she had access to.[34]

It is indubitable, therefore, that the integrity of the dangerous drugs in this case was properly preserved as the prosecution was able to convincingly show an unbroken link in the chain of custody of the seized items. As the *corpus delicti* of the crime and the transaction in which they were sold were properly established in evidence, coupled with the fact that the accused-appellant only offered denial as his defense, then the RTC and the CA could not have erred in convicting the accused-appellant. The Court has oft pronounced that denial is an inherently weak defense which cannot prevail over the positive and credible testimony of the prosecution witnesses that the accused committed the crime. Thus, as between categorical testimonies which have the ring of truth on the one hand, and a mere denial on the other, the former is generally held to prevail.[35]

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[32] TSN dated February 26, 2013, pp. 20-21.

[33] *Id*. at 22.

[34] TSN dated December 4, 2013, pp. 14-15.

[35] *People v. Piosang*, 710 Phil. 519, 527 (2013).

In sum, the Court is convinced that the accused-appellant was indeed engaged in the illegal sale of *shabu*, thereby violating Section 5, Article II of RA 9165.

WHEREFORE, in view of the foregoing, the appeal is hereby **DISMISSED**. The Court **ADOPTS** the findings of fact and conclusions of law in the Decision dated June 21, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08271 and **AFFIRMS** the said Decision finding accused-appellant Bobby Pacnisen y Bumacas **GUILTY** beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165. Accordingly, he is hereby sentenced to suffer the penalty of life imprisonment and a fine in the amount of Five Hundred Thousand Pesos (₱500,000.00).

SO ORDERED.

Carpio, Senior Associate Justice (*Chairperson*), *Perlas-Bernabe*, and *Reyes, A. Jr., JJ*., concur.

Reyes, J. Jr.,[*] *J*., on wellness leave.

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[*] Designated additional Member per Special Order No. 2587 dated August 28, 2018.

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ACTIONS

Joinder of causes of action — An action for collection of sum of money may not be properly joined with the action for ejectment; the former is an ordinary civil action requiring a full-blown trial, while an action for unlawful detainer is a special civil action which requires a summary procedure; the joinder of the two actions is specifically enjoined by Section 5, Rule 2 of the Rules of Court. (Lajave Agricultural Mgm't. and Dev't. Enterprises, Inc. *vs.* Sps. Javellana, G.R. No. 223785, Nov. 7, 2018) p. 1119

Payment of insufficient docket fees — With respect to petitioner's payment of insufficient docket fees, this Court's ruling in *The Heirs of the Late Ruben Reinoso, Sr. v. Court of Appeals, et al.*, is instructive, to wit: x x x in the more recent case of *United Overseas Bank v. Ros*, the Court explained that where the party does not deliberately intend to defraud the court in payment of docket fees, and manifests its willingness to abide by the rules by paying additional docket fees when required by the court, the liberal doctrine enunciated in *Sun Insurance Office, Ltd.*, and not the strict regulations set in *Manchester*, will apply; the Court, in several instances, allowed the relaxation of the rule on non-payment of docket fees in order to afford the parties the opportunity to fully ventilate their cases on the merits; unlike in *Manchester* where the complainant specified in the body of the complaint the amount of damages sought to be recovered but omitted the same in its prayer, petitioner in the instant case consistently indicated both in the body of his Complaint and in his prayer, the number of shares sought to be recovered, albeit without their corresponding values; there was no deliberate intent to defraud the court in the payment of docket fees. (Ku *vs.* RCBC Securities, Inc., G.R. No. 219491, Oct. 17, 2018) p. 349

ADMINISTRATIVE PROCEEDINGS

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AGGRAVATING CIRCUMSTANCES

Evident premeditation — For evident premeditation to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act. (People *vs*. Magbuhos *y* Diola, G.R. No. 227865, Nov. 7, 2018) p. 1145

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given out of his or her own free will. (People *vs*. Bandojo, Jr., G.R. No. 234161, Oct. 17, 2018) p. 511

— In *People v. Casio*, the Court defined the elements of trafficking in persons, as derived from Sec. 3(a) of R.A. No. 9208, to wit: (1) The *act* of "recruitment, transportation, transfer or harbouring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders." (2) The *means* used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another;" (3) and The *purpose* of trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs"; further qualified under Sec. 6(a) of R.A. No. 9208 when the trafficked person is a child. (*Id*.)

— Under Sec. 6(a) of R.A. No. 9208, Trafficking in Persons automatically becomes qualified upon proof that the trafficked person is a minor or a person below 18 years of age; knowledge of the accused-appellants with regard to AAA's minority is inconsequential with respect to qualifying the crime of Trafficking in Persons; all elements of the crime of Violation of Sec. 4(a), in relation to Sec. 6(a), of R.A. No. 9208, duly established by the prosecution. (*Id*.)

APPEALS

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Petition for review on certiorari to the Supreme Court under Rule 45 — As a general rule, only questions of law can be raised in a petition for review on certiorari under Rule 45 of the Rules of Court; the distinction between a question of fact and a question of law is settled; there is a question of law if the issue can be determined without reviewing or evaluating the evidence on record; otherwise, the issue raised is a question of fact. (Noell Whessoe, Inc. *vs*. Independent Testing Consultants, Inc., G.R. No. 199851, Nov. 7, 2018) p. 899

—— As a rule, "in appeals by *certiorari* under Rule 45 of the Rules of Court, the task of the Court is generally to review only errors of law since it is not a trier of facts, a rule which definitely applies to labor cases"; as held in *Scanmar Maritime Services, Inc. v. Conag*: "But while the NLRC and the LA are imbued with expertise and authority to resolve factual issues, the Court has in exceptional cases delved into them where there is insufficient evidence to support their findings, or too much is deduced from the bare facts submitted by the parties, or the LA and the NLRC came up with conflicting

the allegations in their complaints by substantial evidence; an attorney enjoys the legal presumption that he is innocent of the charges proffered against him until the contrary is proved, and that, as an officer of the Court, he has performed his duties in accordance with his oath; complainant's claims of deceit, malpractice, and gross misconduct on the part of respondent are mere allegations that are unsupported by substantial evidence. (Alag *vs*. Atty. Senupe, Jr., A.C. No. 12115, Oct. 15, 2018) p. 1

Conflict of interest — The rule concerning conflict of interest prohibits a lawyer from representing a client if that representation will be directly adverse to any of his present clients; respondent was faithfully acting in pursuit of his client's legitimate interests; given that there is no evidence to prove that the Affidavit was merely wrangled from him in exchange for the dropping of his name in the direct contempt charge, the Court is hard-pressed to find any ethical violation on the part of respondent. (Alag *vs*. Atty. Senupe, Jr., A.C. No. 12115, Oct. 15, 2018) p. 1

Disbarment proceedings — The Supreme Court exercises exclusive jurisdiction to regulate the practice of law; it exercises such disciplinary functions through the IBP, but it does not relinquish its duty to form its own judgment; disbarment proceedings are exercised under the sole jurisdiction of the Court, and the IBP's recommendations imposing the penalty of suspension from the practice of law or disbarment are always subject to this Court's review and approval. (Alag *vs*. Atty. Senupe, Jr., A.C. No. 12115, Oct. 15, 2018) p. 1

Misconduct — The lawyer-client relationship is one imbued with utmost trust and confidence; clients could understandably expect that their attorney would accordingly exercise the required degree of diligence in handling their legal dilemmas; an overriding prohibition against any form of misconduct is enshrined in Rule 1.01, Canon 1 of the CPR which provides that: Canon 1 — A lawyer shall uphold the Constitution, obey the

is proved; in an "and" joint account, as in this case, the depositors are joint creditors of the bank and the signatures of all depositors are necessary to allow withdrawal; the intestate court erred in allowing the withdrawal of funds *sans* the consent of a co-depositor. (In the Matter of the Intestate Estate of Miguelita C. Pacioles *vs*. Pacioles, Jr., G.R. No. 214415, Oct. 15, 2018) p. 35

BILL OF RIGHTS

Right to speedy disposition of cases — In resolving cases involving inordinate delay this Court has been adopting the "balancing test" to determine whether the defendant's right to speedy disposition of cases has been violated; the four-fold factors are: (1) the length of the delay; (2) the reason for the delay; (3) the defendant's assertion or non-assertion of his right; and (4) the prejudice to defendant resulting from the delay. (Tumbocon *vs*. Sandiganbayan [Sixth Div.], G.R. Nos. 235412-15, Nov. 5, 2018) p. 641

— The right to a speedy disposition of a case, is deemed violated when the proceeding is attended by vexatious, capricious, and oppressive delays; or when unjustified postponements of the trial are asked for and secured, or when without justifiable cause, a long period of time is allowed to lapse without the party having his case tried; delay, however, is not determined through mere mathematical computation but through the examination of the facts and circumstances peculiar in each case. (*Id*.)

Right to travel — Based on Sec. 6, Art. III of the 1987 Constitution, the right to travel may be impaired, if necessary, in interest of national security, public safety or public health; apart from the presence of these exclusive grounds, there is a further requirement that there must be a law authorizing the impairment; the strict requirement for the concurrence of these two elements are formidable enough to serve as safeguard in the full enjoyment of the right to travel. (Garcia *vs*. Sandiganbayan, G.R. Nos. 205904-06, Oct. 17, 2018) p. 240

— In *Leave Division, Office of the Administrative Services (OAS)-Office of the Court Administrator (OCA) v. Wilma Salvacion P. Heusdens*, the Court enumerated some of the statutory limitations on the right to travel: 1) *The Human Security Act of 2010 (R.A. No. 9372)*; the law restricts the right to travel of an individual charged with the crime of terrorism even though such person is out on bail; 2) *The Philippine Passport Act of 1991 (R.A. No. 8239)*; the Secretary of Foreign Affairs or his authorized consular officer may refuse the issuance of, restrict the use of, or withdraw, a passport of a Filipino citizen; 3) *The Anti-Trafficking in Persons Act of 2003 (R.A. No. 9208)*; the BI, in order to manage migration and curb trafficking in persons, issued Memorandum Order No. 2011-011, allowing its Travel Control and Enforcement Unit to "offload passengers with fraudulent travel documents, doubtful purpose of travel, including possible victims of human trafficking" from our ports; 4) *The Migrant Workers and Overseas Filipinos Act of 1995 (R.A. No. 8042, as amended by R.A. No. 10022)*; the Philippine Overseas Employment Administration (POEA) may refuse to issue deployment permit to a specific country that effectively prevents our migrant workers to enter such country; 5) *The Act on Violence against Woman and Children (R.A. No. 9262)*; the law restricts movement of an individual against whom the protection order is intended; 6) *Inter-Country Adoption Act of 1995 (R.A. No. 8043)*; the Inter-Country Adoption Board may issue rules restrictive of an adoptee's right to travel "to protect the Filipino child from abuse, exploitation, trafficking and/or sale or any other practice in connection with adoption which is harmful, detrimental, or prejudicial to the child." (*Id.*)

— Upon posting bail, the accused subjects himself to the jurisdiction of the court and may validly be restricted in his movement and prohibited from leaving this jurisdiction; "a person facing a criminal indictment and provisionally released on bail does not have an unrestricted right to travel, the reason being that a person's right to

travel is subject to the usual constraints imposed by the very necessity of safeguarding the system of justice"; the issuance of the HDO is a process complementary to the granting of bail. (*Id*.)

BUY-BUST

Entrapment — A buy-bust operation is a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized but duty bound to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime; however, where there really was no buy-bust operation conducted, it cannot be denied that the elements for illegal sale of prohibited drugs cannot be duly proved despite the presumption of regularity in the performance of official duty and the seeming straightforward testimony in court by the arresting police officers. (People *vs*. Bricero *y* Fernandez, G.R. No. 218428, Nov. 7, 2018) p. 1028

CERTIORARI

Petition for — Appeals from the judgment or final rulings of quasi-judicial agencies are appealable to the CA *via* petition for review under Rule 43 of the Rules of Court; while the enumeration of such agencies provided for under Sec. 1 of the said Rule is not exclusive, the Court had the occasion to rule in *Orosa v. Roa* that the exclusion of the Department of Justice from the list is a deliberate one; "recourse from the decision of the Secretary of Justice should be to the President"; in subsequent cases, the Court has been consistent in ruling that the remedy of a party from an adverse resolution of the Secretary of Justice is a petition for *certiorari* under Rule 65; here, the proper venue for the actions is the CA and not the RTC in accordance with Sec. 4, Rule 65 of the Rules of Court; consolidated cases of *Association of Medical Clinics for Overseas Workers, Inc. (AMCOW) v. GCC Approved Medical Centers Association, Inc., et al.* (Hon. De Lima *vs*. City of Manila, G.R. No. 222886, Oct. 17, 2018) p. 407

seizure or confiscation; (2) that the physical inventory and photographing must be done in the presence of (a) the accused or his/her representative or counsel, (b) an elected public official, (c) a representative from the media, and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof. (People *vs.* Musor *y* Acmad, G.R. No. 231843, Nov. 7, 2018) p. 1159

(People *vs.* Bricero *y* Fernandez, G.R. No. 218428, Nov. 7, 2018) p. 1028

— The Court, in *People v. Miranda*, issued a definitive reminder to prosecutors when dealing with drug cases; "since the procedural requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review." (People *vs.* Sembrano *y* Cruz, G.R. No. 238829, Oct. 15, 2018) p. 120

— 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 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, "[a]n elected public official and a representative of the National Prosecution Service or the media. (People *vs.* Sanchez *y* Edera, G.R. No. 239000, Nov. 5, 2018) p. 719

(People *vs.* Cuevas *y* Martinez, G.R. No. 238906, Nov. 5, 2018) p. 709

— In illegal sale of dangerous drugs, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charge; it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. (People *vs.* Señeres, Jr. *y* Ajero, G.R. No. 231008, Nov. 5, 2018) p. 589

— In order to convict a person charged with the crime of illegal sale of dangerous drugs under Sec. 5, Art. II of R.A. No. 9165, the prosecution shall prove the following elements: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. (People *vs*. Musor *y* Acmad, G.R. No. 231843, Nov. 7, 2018) p. 1159

(People *vs*. Fatallo *y* Alecarte, G.R. No. 218805, Nov. 7, 2018) p. 1060

(People *vs*. Bricero *y* Fernandez, G.R. No. 218428, Nov. 7, 2018) p. 1028

(People *vs*. Jamila *y* Viray, G.R. No. 206398, Nov. 5, 2018) p. 553

— The elements of Illegal Sale of Dangerous Drugs under Sec. 5, Art. II of R.A. No. 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 Sec. 11, Art. II of R.A. No. 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. (People *vs*. Cuevas *y* Martinez, G.R. No. 238906, Nov. 5, 2018) p. 709

— The existence of the dangerous drug is a condition *sine qua non* for conviction for the illegal sale of a dangerous drug, it being the very *corpus delicti* of the crime; what is material is the proof that the transaction or sale

(People *vs*. Reyes *y* Paulina, G.R. No. 225736, Oct. 15, 2018) p. 45

Three-witness rule — Earnest effort to secure the attendance of the necessary witnesses must be proven; *People v. Ramos* and *People v. Umipang,* cited; mere statements of unavailability, absent actual serious attempts to contact the required witnesses are unacceptable as justified ground for non-compliance; rationale. (People *vs*. Jimenez *y* Delgado, G.R. No. 230721, Oct. 15, 2018) p. 87

–– Sec. 21, Art. II of R.A. No. 9165, the applicable law at the time of the commission of the alleged crime, lays down the procedure that police operatives must follow to maintain the integrity of the confiscated drugs used as evidence; the provision requires that: (1) the seized items be inventoried and photographed immediately after seizure or confiscation; and (2) the physical inventory and photographing must be done in the presence of: (a) the accused or his/her representative or counsel; (b) an elected public official; (c) a representative from the media; and (d) a representative from the Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof; rationale. (People *vs*. Reyes *y* Paulina, G.R. No. 225736, Oct. 15, 2018) p. 45

–– The amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of: (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) with an elected public official; and (3) a representative of the National Prosecution Service or the media who shall sign the copies of the inventory and be given a copy thereof; in this case, the old provisions of Sec. 21 and its IRR shall apply since the alleged crime was committed before their amendment by R.A. No. 10640. (People *vs*. Jimenez *y* Delgado, G.R. No. 230721, Oct. 15, 2018) p. 87

COMPROMISES

Judicial compromise — Art. 2028 of the Civil Code defines a compromise as a "contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced"; a compromise intended to resolve a matter under litigation is referred to as a *judicial* compromise; once stamped with judicial *imprimatur*, a compromise agreement becomes more than a mere contract binding upon the parties; it has the effect and authority of *res judicata*, although no execution may issue until it would have received the corresponding approval of the court where the litigation pends and its compliance with the terms of the agreement is thereupon decreed. (Rep. of the Phils. *vs*. Heirs of Eligio Cruz, G.R. No. 208956, Oct. 17, 2018) p. 280

CONSPIRACY

Elements — The elements of conspiracy are the following: (1) two or more persons came to an agreement; (2) the agreement concerned the commission of a felony; and (3) the execution of the felony was decided upon; proof of the conspiracy need not be based on direct evidence. (People *vs*. Bandojo, Jr., G.R. No. 234161, Oct. 17, 2018) p. 511

CONTRACTS

Autonomy of contracts — According to the autonomy characteristic of contracts, the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals good customs, public order, or public policy; the stipulation of the MOA at issue is the provision enumerating requirements (Requirements for Claim Clause) that must be presented by petitioner in order to make a valid claim against the surety bond. (Industrial Personnel and Mgm't. Services, Inc. *vs*. Country Bankers Insurance Corp., G.R. No. 194126, Oct. 17, 2018) p. 216

the enforcement of legal rights by a creditor, in this case, the Rehabilitation Plan which absolutely lacks feasibility and the lack of any abuse appurtenant to the provisions therein. (*Id*.)

Liability of directors or officers — Respondents should be held liable for damages to petitioner but not the Cruzes who are the directors and stockholders of respondent CMS Construction; Sec. 31 of the Corporation Code is the governing law on personal liability of officers for the debts of the corporation, to wit: Sec. 31. *Liability of directors, trustees or officers*. – Directors or trustees who willfully and knowingly vote for or assent to patently unlawful acts of the corporation or who are guilty of gross negligence or bad faith in directing the affairs of the corporation or acquire any personal or pecuniary interest in conflict with their duty as such directors or trustees shall be liable jointly and severally for all damages resulting therefrom suffered by the corporation, its stockholders or members and other persons; petitioner failed to show that the Cruzes committed any of those above-quoted acts to make them personally liable. (Metroheights Subd. Homeowners Assoc., Inc. *vs*. CMS Construction and Dev't. Corp., G.R. No. 209359, Oct. 17, 2018) p. 293

COURT PERSONNEL

Dishonesty — Defined as "the disposition to lie, cheat, deceive, defraud, or betray; unworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness" which renders a person unfit to serve in the judiciary. (Judge Contreras *vs*. De Leon, A.M. No. P-15-3400 [Formerly OCA IPI No. 12-3896], Nov. 6, 2018) p. 732

COURTS

Hierarchy of courts — The instances when direct resort to this Court is allowed are enumerated in *The Diocese of Bacolod* as follows: (a) when there are genuine issues of constitutionality that must be addressed at the most

Jurisdiction — Emphasis must be made on the jurisdiction of a trial court, sitting as an intestate court, as regards the proper disposition of the estate of the deceased; such jurisdiction continues until after the payment of all the debts and the remaining estate delivered to the heirs entitled to receive the same; thus, proper proceedings must be had before the intestate court so that the subject joint account should be administered solely by the lone administrator. (In the Matter of the Intestate Estate of Miguelita C. Pacioles *vs*. Pacioles, Jr., G.R. No. 214415, Oct. 15, 2018) p. 35

CRIMINAL PROCEDURE

Information — The accused was supposedly charged with the crime of illegal sale of dangerous drugs, defined and penalized under Sec. 5, Art. II of R.A. No. 9165 – the prosecution of which requires that the following elements be proven: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor; *People v. Posada*, cited; an Information is fatally defective when it is clear that it does not really charge an offense or when an essential element of the crime has not been sufficiently alleged. (People *vs*. Reyes *y* Paulina, G.R. No. 225736, Oct. 15, 2018) p. 45

— The Information filed in this case was defective, for which reason alone the accused should be acquitted; sufficiency of the Information is an essential component of the right to due process in criminal proceedings as the accused possesses the right to be sufficiently informed of the cause of the accusation against him; implemented through Rule 110, Secs. 8 and 9 of the Rules of Court; test in determining whether the information validly charges an offense; purpose. (*Id*.)

— The test in determining whether the information validly charges an offense is whether the material facts alleged in the complaint or information will establish the essential elements of the offense charged as defined in the law; in this examination, matters *aliunde* are not considered;

ESTAFA

***ESTAFA* THROUGH MISAPPROPRIATION**

Elements — Art. 315, par. 1(b) requires proof of receipt by the offender of the money, goods, or other personal property in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same; it is essential to prove that the accused acquired both material or physical possession and juridical possession of the thing received. (Legaspi *y* Navera *vs.* People, G.R. No. 225753, Oct. 15, 2018) p. 72

— *Estafa* through misappropriation is defined and penalized under Art. 315, par. 1(b) of the RPC, as amended by R.A. No. 10951; elements: (a) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (b) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (c) the misappropriation, conversion or denial is to the prejudice of another; and (d) demand by the offended party that the offender return the money or property received; to secure conviction, it behooves upon the State to prove the existence of all essential elements of the offense charged beyond reasonable doubt. (*Id.*)

— *Tria v. People*, cited; the words "convert" and "misappropriate" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon; a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts; here, the application of said legal presumption is utterly misplaced. (*Id.*)

EVIDENCE

Circumstantial evidence — For circumstantial evidence to be sufficient to support a conviction, all circumstances must be consistent with each other, consistent with the

an impending death; c) That the declarant is competent as a witness; and d) That the declaration is offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim. (People *vs*. Mercado *y* Anticla, G.R. Nos. 218702, Oct. 17, 2018) p. 327

Required proof for criminal conviction — Every criminal conviction requires the prosecution to prove two things: (1) the fact of the crime, *i.e.,* the presence of all the elements of the crime for which the accused stands charged, and (2) the fact that the accused is the perpetrator of the crime; when a crime is committed, it is the duty of the prosecution to prove the identity of the perpetrator of the crime beyond reasonable doubt for there can be no conviction even if the commission of the crime is established. (People *vs*. Cadenas, G.R. No. 233199, Nov. 5, 2018) p. 608

Substantial evidence — In labor cases, as in other administrative proceedings, substantial evidence**,** or such relevant evidence as a reasonable mind might accept as sufficient to support a conclusion, is required; the oft-repeated rule is that whoever claims entitlement to benefits provided by law should establish his right thereto by substantial evidence; substantial evidence is more than a mere scintilla. (Esposo *vs*. Epsilon Maritime Services, Inc., G.R. No. 218167, Nov. 7, 2018) p. 997

— The CA cannot be faulted for concluding that petitioner's Joint Decision was not supported by substantial evidence; generally, "while administrative or quasi-judicial bodies, such as the Office of the Ombudsman, are not bound by the technical rules of procedure, this rule cannot be taken as a license to disregard fundamental evidentiary rules; the decision of the administrative agencies and the evidence it relies upon must, at the very least, be substantial"; *Miro v. Mendoza,* cited; substantial evidence is, more than a mere scintilla; it means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." (Office of the Ombudsman *vs*. Col. Mislang, G.R. No. 207926, Oct. 15, 2018) p. 12

HRET's jurisdiction is constitutionally mandated. (Reyes *vs*. House of Representatives Electoral Tribunal, G.R. No. 221103, Oct. 16, 2018) p. 133

HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL RULES (2015)

Rule 6(b) and 6(c) — Rule 6(b) and 6(c) of the 2015 HRET Rules provide for instances when the members of the tribunal can constitute themselves as an Executive Committee; the Rules clearly state that any action or resolution of the Executive Committee "shall be included in the order of business of the immediately succeeding meeting of the Tribunal for its confirmation"; hence, even if only three members of the HRET acted as an Executive Committee, and even if all these three members are Justices of the Supreme Court, their actions are subject to the confirmation by the entire Tribunal or at least five of its members who constitute a quorum. (Reyes *vs*. House of Representatives Electoral Tribunal, G.R. No. 221103, Oct. 16, 2018) p. 133

Rule 69 — As pointed out by the HRET in its Comment, a member of the Tribunal who inhibits or is disqualified from participating in the deliberations cannot be considered present for the purpose of having a quorum; Rule 69 clearly shows that the Supreme Court and the House of Representatives have the authority to designate a Special Member or Members who could act as temporary replacement or replacements in cases where one or some of the Members of the Tribunal inhibit from a case or are disqualified from participating in the deliberations of a particular election contest when the required quorum cannot be met. (Reyes *vs*. House of Representatives Electoral Tribunal, G.R. No. 221103, Oct. 16, 2018) p. 133

Section 6(a) — Rule 6 of the 2015 HRET Rules does not grant additional powers to the Justices but rather maintains the balance of power between the members from the Judicial and Legislative departments as envisioned by the framers of the 1935 and 1987 Constitutions; purpose of the presence of the three Justices; Rule 6(a) of the

JUDGES

Gross inefficiency — It has been "consistently held that failure to decide cases and other matters within the reglementary period constitutes gross inefficiency which warrants the imposition of administrative sanction against the erring magistrate"; the rules prescribing the time within which the judicial duty to decide and resolve cases are mandatory in nature; Sec. 15(1) of the 1987 Constitution states that cases or matters must be decided or resolved within three months for the lower courts; under Canon 3, Rule 3.05 of the Code of Judicial Conduct, judges shall dispose of the court's business promptly and decide cases within the required periods; under Canon 6, Sec. 5 of the New Code of Judicial Conduct for the Philippine Judiciary, judges shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly, and with reasonable promptness. (Re: Report on the Judicial Audit Conducted in the RTC, Br. 24, Cebu City, A.M. No. 13-8-185-RTC, Oct. 17, 2018) p. 167

Undue delay in rendering decisions and orders — This Court, "in its pursuit of speedy dispensation of justice, is not unmindful of circumstances that may delay the disposition of the cases assigned to judges; it remains sympathetic to seasonably filed requests for extensions of time to decide cases"; despite the availability of the remedy which consists in simply asking for an extension of time from the Court, the judge altogether passed up this opportunity; penalty. (Re: Report on the Judicial Audit Conducted in the RTC, Br. 24, Cebu City, A.M. No. 13-8-185-RTC, Oct. 17, 2018) p. 167

JUDGMENTS

Finality of — A judgment or order becomes final upon the lapse of the period to appeal, without an appeal being perfected or a motion for reconsideration being filed. (Esposo *vs.* Epsilon Maritime Services, Inc., G.R. No. 218167, Nov. 7, 2018) p. 997

JURISDICTION

Jurisdiction over intra-corporate controversies — In the case of *Medical Plaza Makati Condominium Corporation v. Cullen*, this Court held as follows: In determining whether a dispute constitutes an intra-corporate controversy, the Court uses two tests, namely, the relationship test and the nature of the controversy test; an intra-corporate controversy is one which pertains to any of the following relationships: 1) between the corporation, partnership or association and the public; 2) between the corporation, partnership or association and the State insofar as its franchise, permit or license to operate is concerned; 3) between the corporation, partnership or association and its stockholders, partners, members or officers; and 4) among the stockholders, partners or associates themselves; under the relationship test, the existence of any of the above intra-corporate relations makes the case intra-corporate; under the nature of the controversy test, "the controversy must not only be rooted in the existence of an intra-corporate relationship, but must as well pertain to the enforcement of the parties' correlative rights and obligations under the Corporation Code and the internal and intra-corporate regulatory rules of the corporation"; the case is not an intra-corporate dispute and, instead, is an ordinary civil action. (Ku *vs.* RCBC Securities, Inc., G.R. No. 219491, Oct. 17, 2018) p. 349

— Jurisdiction over intra-corporate controversies is transferred by law (R.A. No. 8799) from the SEC to the RTCs in general, but the authority to exercise such jurisdiction is given by the Supreme Court, in the exercise of its rule-making power under the Constitution, to RTCs which are specifically designated as Special Commercial Courts; on the other hand, the cases enumerated under Sec. 19 of B.P. 129, as amended, are taken cognizance of by the RTCs in the exercise of their general jurisdiction; the case falls under the jurisdiction of the RTC; however, whether or not the RTC shall take cognizance of the case in the exercise of its general jurisdiction, or as a

after the lapse of 60 days, a party could already proceed and seek relief in court; in *Hagonoy Market Vendor Association v. Municipality of Hagonoy*, the Court explained the importance of observing the timeframe provided for under Sec. 187 of the LGC and emphasized that the same is not a mere technicality that can easily be brushed aside by the parties; the Court enunciated the purpose of the said periods within the context of the nature and relevance of revenue measures and tax ordinances; as the revenue measures are the source of funds that give life and support the operations of the local government, it is imperative that any question as to its validity must be resolved with utmost dispatch; towards this end, the LGC has set limits which the parties must strictly comply with. (Hon. De Lima *vs*. City of Manila, G.R. No. 222886, Oct. 17, 2018) p. 407

LOCAL GOVERNMENTS

Power to levy — The Local Government Code provides two (2) specific limitations on local government units' power of taxation; the first is Sec. 133(o); the first limitation provides a general rule, that is, that local government units cannot levy any taxes, fees, or charges of any kind on the national government or its agencies and instrumentalities; the provision, however, also provides for an exception: unless otherwise provided herein; the implication, therefore, is that while a government agency or instrumentality is generally tax-exempt, the Local Government Code may provide for instances when it could be taxable; the second limitation is provided for under Sec. 234 of the Local Government Code, which enumerates the properties that are specifically exempted from the payment of real property taxes; the second limitation likewise provides for its own exceptions; under Sec. 234(a), the general rule is that any real property owned by the Republic or its political subdivisions is exempt from the payment of real property tax except when the beneficial use thereof has been granted, for consideration or otherwise, to a taxable person.

the date of payment, or the date that the taxpayer is entitled to the refund or credit; among the reliefs it sought in its Amended and Supplemental Petition before the Regional Trial Court is the refund of any and all subsequent payments of taxes under Sec. 21(A) from the time of the filing of its Petition until the finality of the case: x x x petitioner's entitlement to the refund would only arise upon a judicial declaration of the invalidity of Sec. 21(A) of Manila Ordinance No. 7794, as amended by Sec. 1(G) of Manila Ordinance No 7807; the judicial action for petitioner's claim for refund had not yet expired as of the filing of the Amended and Supplemental Petition. (*Id*.)

— Secs. 195 and 196 of the Local Government Code govern the remedies of a taxpayer for taxes collected by local government units, except for real property taxes: x x x. If the taxpayer receives an assessment and does not pay the tax, its remedy is strictly confined to Sec. 195 of the Local Government Code; "once the assessment is set aside by the court, it follows as a matter of course that all taxes paid under the erroneous or invalid assessment are refunded to the taxpayer"; if no assessment notice is issued by the local treasurer, and the taxpayer claims that it erroneously paid a tax, fee, or charge, or that the tax, fee, or charge has been illegally collected from him, then Sec. 196 applies; discussed. (*Id*.)

MITIGATING CIRCUMSTANCES

Voluntary surrender — People v. Saul, cited; the following elements must be present: a) the offender has not actually been arrested; b) the offender surrendered himself to a person in authority; and c) the surrender must be voluntary; a surrender, to be voluntary must be spontaneous, *i.e*., there must be an intent to submit oneself to authorities, either because he acknowledges his guilt or because he wishes to save them the trouble and expenses in capturing him. (People *vs*. Mercado *y* Anticla, G.R. Nos. 218702, Oct. 17, 2018) p. 327

Rules of procedure — In the determination of the plausibility of the written explanation (if there is one) or in the exercise of discretion as to whether a pleading should be expunged (in the absence thereof), the court/tribunal ought to be guided by the principle that substantial justice far outweighs rules of procedure. (Bismonte *vs*. Golden Sunset Resort and Spa, G.R. No. 229326, Nov. 5, 2018) p. 575

— Since the 2011 NLRC Rules of Procedure do not provide for specific rules on filing and service of pleadings, the Rules of Court provisions pertaining thereto, *i.e.*, Rule 13 thereof, shall apply in a suppletory manner, pursuant to Sec. 3, Rule I of the 2011 NLRC Rules of Procedure. (*Id*.)

NOTARIAL RULES (2004)

Notarization — Notarization is not an empty, meaningless, or routinary act; it converts a private document into a public one and renders it admissible in court without further proof of its authenticity. (Balbin *vs*. Atty. Baranda, Jr., A.C. No. 12041, Nov. 5, 2018) p. 544

— Under Sec. 2 (b), Rule IV of the prevailing 2004 Rules on Notarial Practice, "a person shall not perform a notarial act if the person involved as signatory to the instrument or document is not in the notary's presence personally at the time of the notarization"; a notary public should not notarize a document unless the persons who signed it are the same persons who personally appeared before him to attest to its contents and truth; the physical presence of the parties to the instrument is required to enable the notary public to verify the genuineness of their signatures therein and the due execution of the documents. (*Id*.)

OBLIGATIONS

Solidary obligations — One in which each debtor is liable for the entire obligation, and each creditor is entitled to demand the whole obligation. (Noell Whessoe, Inc. *vs*. Independent Testing Consultants, Inc., G.R. No. 199851, Nov. 7, 2018) p. 899

satisfied. (Esposo *vs*. Epsilon Maritime Services, Inc., G.R. No. 218167, Nov. 7, 2018) p. 997

— While the test of proof in compensation proceedings is merely probability, and not ultimate degree of certainty, the conclusions of the courts must still be based on real evidence and not just inferences and speculations. (*Id*.)

Compensation and benefits — Sec. 20(A)(2) and (3) of the POEA-SEC; *The Late Alberto B. Javier v. Philippine Transmarine Carriers, Inc.*, cited; three liabilities of the employer when a seafarer is medically repatriated: (a) payment of medical treatment of the employee, (b) payment of sickness allowance, both until the seafarer is declared fit to work or when his disability rating is determined, and (c) payment of the disability benefit (total or partial), in case the seafarer is not declared fit to work after being treated by the company-designated physician. (Cariño *vs*. Maine Marine Phils., Inc., G.R. No. 231111, Oct. 17, 2018) p. 487

Duties of the seafarer and the company-designated physician — As a principle, the POEA-SEC is imbued with public interest; and "its provisions must be construed fairly, reasonably and liberally in favor of the seafarer in the pursuit of his employment on board ocean-going vessels"; in reading the provisions of POEA-SEC, the full protection of labor, both local and overseas must be guaranteed; the provision of Sec. 20(A) of the POEA-SEC should be read reasonably and favorably in favor of the seafarer; the duty of the seafarer to be present during the appointments with the company-designated physician should be viewed together with the duty of the employer to provide medical treatment and pay the sickness allowance of the seafarer; *Elburg Shipmanagement Phils., Inc. v. Quiogue, Jr.*, cited. (Cariño *vs*. Maine Marine Phils., Inc., G.R. No. 231111, Oct. 17, 2018) p. 487

Permanent and total disability benefits — In order for a claim for total and permanent disability benefits to prosper, any of the following circumstances must obtain: "(a) the company-designated physician failed to issue a declaration

3. Where the trial court acquires jurisdiction over a claim by the filing of the appropriate pleading and payment of the prescribed filing fee but, subsequently, the judgment awards a claim not specified in the pleading, or if specified the same has been left for determination by the court, the additional filing fee therefor shall constitute a lien on the judgment; it shall be the responsibility of the Clerk of Court or his duly authorized deputy to enforce said lien and assess and collect the additional fee. (*Id*.)

— There is no showing that petitioner intended to deliberately defraud the court when it did not pay the correct docket fees for its Amended and Supplemental Petition; on the contrary, petitioner has been consistent in its assertion that it will undertake to pay any additional docket fees that may be found due by this Court; further, it is well settled that any additional docket fees shall constitute a lien on the judgment that may be awarded. (*Id*.)

PRESUMPTIONS

Presumption of regularity in the performance of official duty — Judicial reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the agents of the law is fundamentally unsound because the lapses themselves are affirmative proofs of irregularity; the presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused; otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. (People *vs*. Fatallo *y* Alecarte, G.R. No. 218805, Nov. 7, 2018) p. 1060

— The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused; otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent. (People *vs*. Bricero *y* Fernandez, G.R. No. 218428, Nov. 7, 2018) p. 1028

acquired by prescription, and cannot be registered under the land registration law, and accordingly assume the nature of patrimonial property of the State that is property owned by the State in its private capacity. (*Id.*)

Property of public dominion and patrimonial property of the State — Pursuant to Art. 419 of the Civil Code, property, in relation to the person to whom it belongs, is either in a public capacity (*dominio publico*) or in a private capacity (*propiedad privado*); there are three kinds of property of public dominion: (1) those intended for public use; (2) those intended for some public service; and (3) those intended for the development of national wealth; provided in Art. 420 of the Civil Code; with respect to provinces, cities and municipalities or local government units (LGUs), property for public use, enumerated; the Civil Code classifies property of private ownership into three categories: 1) patrimonial property of the State under Arts. 421 and 422; 2) patrimonial property of LGUs under Art. 424; and 3) property belonging to private individuals under Art. 425. (Rep. of the Phils. *vs.* Sps. Alejandre, G.R. No. 217336, Oct. 17, 2018) p. 312

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Alienable and disposable public lands — Petitioner cannot simply forego the submission of the DENR certification as a requirement for the registration of title and claim that it has substantially complied with the requirements of law; the certification issued by the DENR Secretary is essential since he or she is the official authorized to approve land classification, including the release of land from public domain. (Highpoint Dev't. Corp. *vs.* Rep. of the Phils., G.R. No. 224389, Nov. 7, 2018) p. 1135

Application for registration — The real property tax declarations, the Deed of Absolute Sale, and the technical descriptions of the subject property are insufficient evidence to overcome the presumption that the land subject of the registration is inalienable land of public domain or dominion; respondents' application for land registration

intrinsic nature of the crime where only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense; this must be so as the guilt of an accused must be proved beyond reasonable doubt. (People *vs*. XXX, G.R. No. 226467, Oct. 17, 2018) p. 465

REGIONAL TRIAL COURT

Jurisdiction — It is settled that jurisdiction over the subject matter is conferred by law and the allegations of the complaint or in case of appeals, the nature and origin of the resolution questioned; appellate jurisdiction over the resolution of the Secretary of Justice is determined by the nature of the power exercised by the latter under Sec. 187 of the LGC, pursuant to which she has issued the resolution that is subject of the petition for review *ad cautelam*; the RTC, by virtue of a specific grant by the 1987 Constitution has the jurisdiction to resolve the constitutionality of a statute, presidential decree, executive order, or administrative regulation; at any rate, the RTC cannot at first instance, rule upon the constitutionality or legality of tax ordinances and revenue measures by virtue of the mandatory procedure set forth under Sec. 187 of the LGC, which vests upon the Secretary of Justice the jurisdiction over the same. (Hon. De Lima *vs*. City of Manila, G.R. No. 222886, Oct. 17, 2018) p. 407

RES GESTAE

Requisites — A declaration made spontaneously after a startling occurrence is deemed as part of the *res gestae* when: 1) the principal act, the *res gestae*, is a startling occurrence; 2) the statements were made before the declarant had time to contrive or devise; and 3) the statements concern the occurrence in question and its immediately attending circumstances; the rule on *res gestae* encompasses the exclamations and statements made by either the participants, victims, or spectators to a crime immediately

— Sec. 129 of the NIRC provides that excise taxes apply to goods manufactured or produced in the Philippines for domestic sales or consumption or for any other disposition and to things imported. (*Id*.)

— The liability for excise tax on distilled spirit attaches upon its existence; Sec. 141, as amended by R.A. No. 9334, specifically provides that "the tax shall attach to this substance as soon as it is in existence as such, whether it be subsequently separated as pure or impure spirits, or transformed into any other substance either in the process of original production or by any subsequent process;" thus, as soon as the substance known as ethyl alcohol or ethanol has been processed, rectified or distilled, liability for payment of excise tax correspondingly attaches. (*Id*.)

Lifeblood doctrine — Taxes, being the lifeblood of the Government, should be collected promptly and without hindrance or delay. (Commissioner of Internal Revenue *vs*. Standard Insurance Co., Inc., G.R. No. 219340, Nov. 7, 2018) p. 1087

National Internal Revenue Code — The decisions or rulings of the Commissioner of Internal Revenue, among others, assessing any tax, or levying, or distraining, or selling any property of taxpayers for the satisfaction of their tax liabilities are immediately executory, and their enforcement is not to be suspended by any appeals thereof to the Court of Tax Appeals unless "in the opinion of the Court [of Tax Appeals] the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer," in which case the Court of Tax Appeals "at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount. (Commissioner of Internal Revenue *vs*. Standard Insurance Co., Inc., G.R. No. 219340, Nov. 7, 2018) p. 1087

are afforded the unique opportunity to ascertain the demeanor and sincerity of witnesses during trial. (People *vs*. Pacnisen *y* Bumacas, G.R. No. 234821, Nov. 7, 2018) p. 1185

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