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DECIDED BY THE

SUPREME COURT

OF THE

PHILIPPINES

FOR THE PERIOD

NOVEMBER 28, 2018 - DECEMBER 5, 2018

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Supreme Court
Manila
2020

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 187794. November 28, 2018]

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN, JOSE G. CUAYCONG, SIMPLICIO CIOCON, LUIS HOFILEÑA, JR., EVA YAPTINCHAY-LICHAUCO, LERRY PADLAN, THELMO SOLIVAN, ALFONSO CASAS, HORACIO YAPTINCHAY, COL. CESAR PIO DE RODA, G.S. LICAROS, ALICIA LL. REYES, JULIO V. MACUJA, LEONIDES S. VIRATA, RAFAEL A. SISON, PLACIDO MAPA, JR., JOSE TENGCO, JR., LEON O. TY, and RUBEN ANCHETA,**[1] *respondents.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; THE OFFICE OF THE OMBUDSMAN'S POWER TO DETERMINE PROBABLE CAUSE IS EXECUTIVE IN NATURE AND WITH ITS POWER TO INVESTIGATE, IT IS IN A BETTER POSITION THAN THE COURT

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[1] Some respondents have been dropped as party respondents in this case, namely, Alejandro A. Melchor *(*see *rollo,* p. 1311-B), Luis S. Hofileña, Sr., Carolina Y. Hofileña, Alberto A. Yaptinchay, Quirino Apacible (see *rollo*, p. 1479), and Vicente Paterno (see *rollo*, p. 1485).

TO ASSESS THE EVIDENCE ON HAND TO SUBSTANTIATE ITS FINDING OF PROBABLE CAUSE OR LACK OF IT.— This Court generally does not interfere with public respondent Office of the Ombudsman's finding or lack of finding of probable cause out of respect for its constitutionally granted investigatory and prosecutory powers. *Dichaves v. Office of the Ombudsman* pointed out that the Office of the Ombudsman's power to determine probable cause is executive in nature and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate its finding of probable cause or lack of it.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; PROBABLE CAUSE; DEFINED. —** Probable cause is: [T]he existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; FOR THE PETITION TO PROSPER, THE PETITIONER MUST PROVE THAT THE OFFICE OF THE OMBUDSMAN CONDUCTED THE PRELIMINARY INVESTIGATION IN SUCH A WAY THAT AMOUNTED TO A VIRTUAL REFUSAL TO PERFORM A DUTY UNDER THE LAW.—** x x x [D]espite [the] well-established principle, petitioner asks this Court to interfere with public respondent's assessment purportedly on the ground of grave abuse of discretion. However, disagreeing with public respondent's findings does not rise to the level of grave abuse of discretion. A court or tribunal is said to have committed grave abuse of discretion if it performs an act in "a capricious or whimsical exercise of judgment amounting to lack of jurisdiction." Ultimately, for the petition to prosper, it would have to prove that public respondent "conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law." Petitioner failed to do this.

4. CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (REPUBLIC ACT NO. 3019, AS AMENDED); SECTION 3(E) OF RA NO. 3019 REQUIRES A SHOWING THAT THE ACCUSED ACTED WITH MANIFEST PARTIALITY, EVIDENT BAD FAITH, OR INEXCUSABLE NEGLIGENCE; FOR LIABILITY TO ATTACH UNDER SECTION 3(G) OF RA NO. 3019, IT MUST BE SHOWN THAT THE ACCUSED ENTERED INTO A GROSSLY DISADVANTAGEOUS CONTRACT ON BEHALF OF THE GOVERNMENT; NOT PRESENT.— *Presidential Commission on Good Government* stated that for a charge to be valid under Section 3(e) of Republic Act No. 3019, it must be shown that the accused "acted with manifest partiality, evident bad faith, or inexcusable negligence." On the other hand, for liability to attach under Section 3(g), it must be shown that the accused "entered into a grossly disadvantageous contract on behalf of the government." x x x. The records corroborate the assertions of respondent bank officials and support the findings of public respondent that the release of loans to Pioneer Glass was preceded by a careful study and evaluation of the loan application. Respondent Reyes did not act with manifest partiality, evident bad faith, or inexcusable gross negligence when she made her recommendations because they were arrived at only after considering Pioneer Glass' capability to pay the loan obligations. Moreover, she also carefully considered how to best protect Development Bank's interests with the appropriate securities from Pioneer Glass to guarantee the loans. In the same manner, Development Bank's board members who relied on her report and recommendation in approving the loan applications also did not act with manifest partiality, evident bad faith, or inexcusable negligence.

5. ID.; ID.; ID.; SECTION 3(E) AND (G) OF RA 3019; PUBLIC RESPONDENT OFFICE OF THE OMBUDSMAN'S DISMISSAL OF THE COMPLAINT AGAINST RESPONDENTS FOR VIOLATIONS THEREOF, ON GROUND OF INSUFFICIENCY OF EVIDENCE, AFFIRMED.— [I]t cannot be inferred that the loan was undercollateralized or that a grossly disadvantageous contract to the government in violation of Section 3(g) of Republic Act No. 3019 was entered into. Development Bank's total exposure

of ₱63,202,884.44 was secured by the following: personal and real properties amounting to ₱46,822,362.00; assignment to Development Bank of sales contracts worth ₱13,413,000.00; personal undertakings by members of the Hofileña and Yaptinchay families and other Pioneer Glass stockholders; and the assignment to Development Bank of Luis' mining claims. Clearly, the loans were suitably secured when they were taken out. Section 3, paragraphs (e) and (g) of Republic Act No. 3019 should not be interpreted in such a way that they will prevent Development Bank, through its managers, to take reasonable risks in relation to its business. Profit, which will redound to the benefit of the public interests owning Development Bank, will not be realized if our laws are read constraining the exercise of sound business discretion. Thus, Section 3(e) requires "manifest partiality, evident bad faith or gross inexcusable negligence" and the element of arbitrariness and malice in taking risks must be palpable. Likewise, there must be a showing of "undue injury" to the government. Section 3(g), on the other hand, requires a showing of a "contract or transaction manifestly and grossly disadvantageous to the [government]." Definitely, this means that it must not only be proven that Development Bank suffered business losses but that these losses, in the ordinary course of business and with the exercise of sound judgment, were inevitably unavoidable. Public respondent's findings did not transgress these requirements. Thus, there is no reason to issue the discretionary writ of certiorari.

APPEARANCES OF COUNSEL

Trio & Regalado Law Offices for Alicia Ll. Reyes and Placido L. Mapa.

Bienvenido Santiago for Rafael A. Sison.

Cruz Durian Alday and Cruz Matters for Jose R. Tengco, Jr.

Santiago & Santiago for respondents Rafael A. Sison and Vicente T. Paterno.

D E C I S I O N

LEONEN, *J.*:

The Office of the Ombudsman's power to determine probable cause is executive in nature, and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate its finding of probable cause or lack of it.

This resolves the Petition for Certiorari[2] filed by the Presidential Commission on Good Government assailing the Office of the Ombudsman's August 15, 2006 Resolution[3] and May 16, 2008 Order[4] in OMB-C-C-03-0508-I. The assailed judgments dismissed the Presidential Commission on Good Government's complaint against Luis S. Hofileña, Sr. (Luis), Alberto A. Yaptinchay (Alberto),[5] Jose G. Cuaycong, Simplicio Ciocon, Carolina Yaptinchay-Hofileña (Carolina), Luis Hofileña, Jr., Eva Yaptinchay-Lichauco, Lerry Padlan, Thelmo Solivan, Alfonso Casas (Casas), Quirino Apacible (Apacible), Horacio Yaptinchay (Horacio), Col. Cesar Pio De Roda, G.S. Licaros, Alicia Ll. Reyes (Reyes), Julio V. Macuja, Leonides S. Virata, Rafael A. Sison (Sison), Placido Mapa, Jr. (Mapa), Jose Tengco, Jr. (Tengco), Alejandro A. Melchor (Melchor), Leon O. Ty, Vicente Paterno (Paterno), and Ruben Ancheta for insufficiency of evidence.

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[2] *Rollo,* pp. 8–53.

[3] *Id*. at 54–133. Both Graft Investigation and Prosecution Officer I Araceli R. Soñas-Crisostomo and Assistant Ombudsman Pelagio S. Apostol recommended the dismissal of the complaint and their recommendation was approved by Ombudsman Ma. Merceditas N. Gutierrez.

[4] *Id*. at 134–141. Both Graft Investigation and Prosecution Officer I Araceli R. Soñas-Crisostomo and Assistant Ombudsman, PAMO Jose T. De Jesus, Jr. recommended the denial of the motion and their recommendation was approved by Overall Deputy Ombudsman Orlando C. Casimiro.

[5] His name is not included in the Resolution but appears in the Order.

Pioneer Glass Manufacturing Corporation (Pioneer Glass) is a domestic corporation engaged in the business of mining silica and producing glass products from silica.[6]

It was incorporated on July 15, 1958 by Luis, Alberto, Casas, Apacible, Horacio, Fe Y. Quisumbing, and Ramon Lichauco. It had an initial authorized capital stock of ₱2,000,000.00, ₱20,000.00 of which was subscribed and ₱5,000.00 of which was paid up by its incorporators.[7]

On January 15, 1962, Pioneer Glass applied[8] for an industrial loan of ₱999,368.99 with Development Bank of the Philippines (Development Bank). This loan was for the purchase of machinery and construction of a building and warehouse for its silica processing business.[9]

From 1963 to 1977, Development Bank and Pioneer Glass entered into a total of 12 industrial loan and guarantee agreements, summarized as follows:[10]

Amount	Purpose	Board Resolution under which the loan was approved
₱597,000	Industrial Loan a.Payment of obligation b.Building construction c.Purchase of machinery and equipment	B.R. # 2328 dated March 26, 1963
₱3,900,000 (DM3.9M [or] $1M)	Guarantee – to finance 80% of the glass manufacturing plant	B.R. #9141 dated December 04, 1967

[6] *Rollo,* p. 163.

[7] *Id*.

[8] *Id*. at 327–332.

[9] *Id*. at 327.

[10] *Id*. at 151–152.

₱9,750,000 ($2,500,000.00)	Guarantee – to construct glass plant and office buildings; full liquidation of DBP Industrial Loan; acquisition of quarry glass plant & transportation machinery & equipment; for working capital	B.R. # 7873 dated October 04, 1968
₱500,000	Interim Guarantee – Bancom – for construction works	B.R. # 5786 dated December 03, 1970
₱7,700,000	Industrial Loan – for the completion of the plant	B.R. # 246 dated January 15, 1975
₱4,660,000 ($720,000)	Long-Term Guarantee – for the completion of the plant	B.R. # 3379 dated June 27, 1973
₱3,000,000	Industrial Loans – for capital expenditures and for payment of interests and charges due DBP	B.R. # 4847 dated December 17, 1975
₱2,300,000	Industrial Loan – to fund the fixed asset requirements of the project	B.R. # 2012 dated June 19, 1976
a) ₱4,500,000 b) ₱2,000,000	DBP Guarantee Discounting Line – a) to liquidate current liabilities; operating capital; to meet debt servicing requirements b) to cover purchase of raw materials and supplies	B.R. # 1036 dated March 30, 1977
₱366,615 (US$48,882)	Direct Foreign Currency Loan – to finance the importation of molds	B.R. # 2942 dated September 28, 1977
₱2,000,000	Guarantee for a short-term discounting line – to cover working capital requirements	B.R. # 3103 dated October 12, 1977[11]

[11] *Id*.

By January 31, 1978, Pioneer Glass' obligations to Development Bank reached ₱55,602,884.44, with ₱7,600,000.00 already past due. Furthermore, Development Bank expected Pioneer Glass' arrears to only increase since its sales proceeds could not cover its operational expenses.[12]

On February 22, 1978, Development Bank's Board of Governors issued Board Resolution No. 342[13] agreeing to a *dacion en pago* arrangement with Pioneer Glass for the full settlement of its account. Board Resolution No. 342 also authorized the sale[14] of Pioneer Glass to Union Glass and Container Corporation (Union Glass) for ₱100,920,000.00.

On March 31, 1978, Pioneer Glass and Hofileña Agricultural Corporation executed Deed of Cession of Property in Payment of Obligation (Dacion en Pago)[15] with Development Bank.

On May 3, 1978, some minority stockholders of Pioneer Glass wrote to then First Lady Imelda Marcos (Marcos) asking for assistance and reconsideration of Development Bank's sale of Pioneer Glass to Union Glass since their deal was supposedly inferior to the one being offered by San Miguel Corporation.[16]

Marcos sent the letter from Pioneer Glass' minority stockholders to Mapa, then Development Bank's Chairman, with the marginal note:

> Dear Chairman P. Mapa,
>
> This group of people is asking for justice in the name of the New Society. Please give to them their due. Thank you.
>
> (signed)
> Imelda Marcos
> May 15, 1978[17]

[12] *Id*. at 435.

[13] *Id*. at 456–462.

[14] *Id*. at 456–457.

[15] *Id*. at 463–466.

[16] *Id*. at 467–468.

[17] *Id*. at 188.

Sometime in April 1982, Union Glass shut down the Cavite glass plant due to low sales and financial difficulties. On June 28, 1984, Union Glass returned ownership of this glass plant to Development Bank, which it accepted on September 15, 1984.[18]

On February 27, 1987, as part of the government's program to rehabilitate select government financial institutions, Development Bank transferred some of its assets and liabilities to the National Government through a Deed of Transfer.[19] Pioneer Glass was one (1) of the 283 non-performing accounts included in the transfer. It was listed as an acquired asset with a booked exposure of ₱64,602,000.00.[20]

On October 8, 1992, then President Fidel V. Ramos (President Ramos) issued Administrative Order No. 13[21] creating the Presidential Ad-Hoc Fact-Finding Committee on Behest Loans (Committee), which was tasked to:

> Inventory all behest loans; identify the lenders and borrowers, including the principal officers and stockholders of the borrowing firms, as well as the persons responsible for granting the loans or who influenced the grant thereof;
>
> Identify the borrowers who were granted "friendly waivers", as well as the government officials who granted these waivers; determine the validity of these waivers;
>
> Determine the courses of action that the government should take to recover these loans, and to recommend appropriate actions to the Office of the President within sixty (60) days from the date hereof.[22]

The Committee was headed by the Chair of the Presidential Commission on Good Government as chairperson and the

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[18] *Id*. at 189.

[19] *Id*. at 199–226. Jaime V. Ongpin as Secretary of Finance and Chairman of the Committee on Privatization represented the National Government, while Jesus P. Estanislao, represented Development Bank of the Philippines.

[20] *Id*. at 212.

[21] *Id*. at 195–196.

[22] *Id*. at 196.

Solicitor General as vice-chair. The Committee members were representatives from the Office of the Executive Secretary, Department of Finance, Department of Justice, Development Bank, Philippine National Bank, Asset Privatization Trust, the Government Corporate Counsel, and Philippine Export and Foreign Loan Guarantee Corporation.[23]

On November 9, 1992, President Ramos issued Memorandum Order No. 61,[24] which broadened the Committee's scope by also including non-behest loans within its investigative power. Memorandum Order No. 61 gave the following criteria to determine if a loan is behest:

1. It is undercollater[al]ized.
2. The borrower corporation is undercapitalized.
3. Direct or indirect endorsement by high government officials like presence of marginal notes.
4. Stockholders, officers or agents of the borrower corporation are identified as cronies.
5. Deviation of use of loan proceeds from the purpose intended.
6. Use of corporate layering.
7. Non-feasibility of the project for which financing is being sought.
8. Extra-ordinary speed in which the loan release was made.[25]

On April 4, 1994, the Committee sent President Ramos its Terminal Report,[26] which was a summary of its inventory and review of the loan accounts transferred by government financial institutions[27] to Asset Privatization Trust. It included Pioneer

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[23] *Id*. at 195–196.

[24] *Id*. at 197–198.

[25] *Id*.

[26] *Id*. at 267–279.

[27] *Id*. at 269. The government financial institutions which transferred some of their accounts to the Asset Privatization Trust were Development Bank of the Philippines, Philippine National Bank, Philguarantee and National Development Corporation.

Glass[28] among the 130 companies or accounts with behest loans.[29] It explained that a loan account was classified as positive or behest "if at least two (2) or more attributes of a 'behest' loan are present in the loan account."[30]

On August 13, 2003, Presidential Commission on Good Government Legal Consultant Rene B. Gorospe filed an Affidavit-Complaint[31] against several officials of Pioneer Glass and Development Bank for violating Section 3, paragraphs (e) and (g) of Republic Act No. 3019, or the Anti-Graft and Corrupt Practices Act.[32]

The Affidavit-Complaint alleged that "[t]he undue and undeserved accommodation of [Pioneer Glass] as shown by [Development Bank's] grant and approval of loan [was] grossly disadvantageous to the government and the Filipino people warrant the prosecution of those responsible therefor."[33]

On August 15, 2006, the Office of the Ombudsman dismissed[34] the complaint for insufficiency of evidence.

The Office of the Ombudsman found nothing questionable or irregular with Development Bank's approval of Pioneer Glass' loan applications or its guarantees in favor of Pioneer Glass because the loans and guarantees were backed by numerous properties as collateral.[35] It also noted that the guarantees and

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[28] *Id*. at 309.

[29] *Id*. at 305–310.

[30] *Id*. at 301.

[31] *Id*. at 161–193.

[32] *Id*. at 190–192.

[33] *Id*. at 189.

[34] *Id*. at 54–133. Both Graft Investigation and Prosecution Officer I Araceli R. Sonas-Crisostomo and Assistant Ombudsman Pelagio S. Apostol recommended the dismissal of the complaint and their recommendation was approved by Ombudsman Ma. Merceditas N. Gutierrez.

[35] *Id*. at 120.

transactions between Pioneer Glass and Development Bank were audited by the Central Bank of the Philippines, now Bangko Sentral ng Pilipinas, which found them to be above-board.[36] The *fallo* of the Office of the Ombudsman August 15, 2006 Resolution read:

> **WHEREFORE**, premises considered, it is most respectfully recommended that the instant complaint against herein respondents for violation of Section 3 (e) and (g) [of] Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act be DISMISSED for insufficiency of evidence.[37]

The Presidential Commission on Good Government moved for the reconsideration[38] of the Office of the Ombudsman's Resolution, asserting that the bulk of Pioneer Glass' security for the approved loans and guarantees were depreciating assets like buildings and improvements, transportation equipment, and office equipment. Thus, by the time the loans would have matured, the value of the depreciable assets would have greatly diminished, leaving virtually no security for Pioneer Glass' loan obligations and Development Bank's guarantees.[39]

The Presidential Commission on Good Government reiterated that Pioneer Glass was undercapitalized and that its loan and guarantee agreements were undercollateralized, leading to the damage and prejudice of the government.[40]

On May 16, 2008, the Office of the Ombudsman denied[41] the motion. It stated that the proffered evidence proves the claim of Development Bank officials that they exercised sound business judgment and that they followed the established banking practices in dealing with Pioneer Glass. Furthermore, the Office

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[36] *Id*. at 121–122.

[37] *Id*. at 131.

[38] *Id*. at 150–160.

[39] *Id*. at 153.

[40] *Id*. at 154–155.

[41] *Id*. at 134–141.

of the Ombudsman emphasized that there was no evidence presented to support the allegation that Pioneer Glass and Development Bank conspired to cause injury to the government.[42]

On June 4, 2009, petitioner Presidential Commission on Good Government filed its Petition for Certiorari[43] before this Court. It asserts that Pioneer Glass was undercapitalized and that the loans granted to it were undercollateralized. Thus, Development Bank's repeated accommodation of Pioneer Glass, by approving its loan applications and guaranteeing its other debt obligations, showed manifest partiality or gross inexcusable negligence.[44]

Petitioner points out that the bulk of Pioneer Glass' securities and guarantees were depreciating assets and future assets. Considering that the loan agreements spanned a long period of time, it maintains that when the loans matured, the value of the securities would have greatly diminished, making the loans effectively unsecured. Furthermore, it asserts that the law prohibits future properties from becoming the object of contracts of mortgage, inasmuch as there was no way to validly appraise them when Pioneer Glass' loan application was processed.[45]

Petitioner claims that the question of whether or not Development Bank exercised sound business judgment in line with acceptable banking practices is ultimately factual in nature and should have been threshed out before a trial court. It asserts that public respondent Office of the Ombudsman should not have prematurely ruled on such matter and used it as one of its bases for denying the complaint.[46]

Petitioner underscores that the Committee, which had banking experts for its members, found that numerous transactions between Development Bank and Pioneer Glass had all the traits

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[42] *Id*. at 137–138.

[43] *Id*. at 8–53.

[44] *Id*. at 40.

[45] *Id*. at 39–40.

[46] *Id*. at 42–43.

of behest loans. It insists that public respondent should have respected the Commission's findings of fact since its members "are in a better position to determine whether standard banking practices are followed in the approval of a loan or what would generally constitute as adequate security for a given loan."[47]

Finally, petitioner maintains that public respondent committed grave abuse of discretion when it ruled upon the conflicting evidence instead of letting the parties thresh out their respective claims in a full-blown trial.[48]

On July 15, 2009, this Court[49] required respondents to comment on the petition.

On August 25, 2009, Atty. Estelito Mendoza (Atty. Mendoza) manifested[50] that respondent Melchor died[51] on July 12, 2002.

On September 1, 2009, respondents Mapa and Reyes filed their Joint Motion for Extension to File Comment.[52]

On September 16, 2009, Atty. Martin Vergel C. Dela Rosa (Atty. Dela Rosa), counsel for respondent Sison, filed a motion for extension of time[53] to file comment.

On September 23, 2009,[54] this Court granted the motions for extension filed by respondents Mapa, and Reyes and Sison, and noted Atty. Mendoza's manifestation.

On October 15, 2009, Atty. Lawrence L. Tanlu filed a second motion for extension and manifested that respondent Sison left his last known address without leaving any forwarding address.

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[47] *Id*. at 43.

[48] *Id*. at 44.

[49] *Id*. at 731-732-B.

[50] *Id*. at 799-803.

[51] *Id*. at 807.

[52] *Id*. at 833-835.

[53] *Id*. at 892-894.

[54] *Id*. at 896-898.

He also manifested that despite earnest efforts, he could not locate respondent Sison; if he would still fail to find him, he would file the necessary manifestation and motion to withdraw as counsel.[55]

On November 4, 2009, Atty. Dela Rosa filed his Manifestation and Motion to Withdraw as Counsel for respondent Sison.[56]

On November 18, 2009,[57] this Court granted Atty. Dela Rosa's second motion for extension and noted his withdrawal as counsel for respondent Sison.

On April 28, 2010,[58] this Court required respondent Paterno to show cause why he should not be held in contempt for failing to file his comment.

On August 9, 2010,[59] this Court noted Atty. Dela Rosa's entry of appearance as counsel for respondent Paterno, granted his motion for extension to file comment, and directed him to file a comment for respondent Sison as it merely noted his withdrawal as counsel but he still had the records as counsel of record. It also dropped the name of respondent Melchor as party respondent.

On September 20, 2010, noting that only respondents Mapa, Reyes, Sison, and Tengco filed counter-affidavits before public respondent Office of the Ombudsman and that the July 15, 2009 Resolution requiring respondents to comment on the petition was returned unserved, this Court deemed the 18 other respondents to have waived submission of their respective comments on the petition.[60]

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[55] *Id*. at 931–933.

[56] *Id*. at 987–990.

[57] *Id*. at 1172–1173.

[58] *Id*. at 1238–1240.

[59] *Id*. at 1311-A–1311-C.

[60] *Id*. at 1413–1414.

On September 29, 2010, Atty. Dela Rosa manifested[61] that even if he had the case records, they only contained copies of the petition, resolutions from this Court, and the motions for extension that he had filed as counsel for respondent Sison. He stated that aside from those documents, he did not have any other relevant documents which he could use to comment on the petition.[62] Furthermore, he emphasized that he still had not located respondent Sison; thus, considering the scenario, it would be impossible for him to file an intelligible comment for respondent Sison.[63]

Respondents Office of the Ombudsman,[64] Tengco,[65] Reyes,[66] Mapa,[67] and Paterno[68] filed their respective Comments to the Petition.

In its Comment,[69] public respondent Office of the Ombudsman denies that it committed grave abuse of discretion when it dismissed petitioner's complaint against respondents.[70] It insists that its findings of fact were supported by substantial evidence.[71]

Public respondent states that petitioner failed to prove the existence of bad faith on the part of respondent bank officials when they approved the loans and guarantees in favor of Pioneer Glass. Furthermore, it was not shown that the government suffered undue injury due to the transactions between Development Bank and Pioneer Glass.[72]

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[61] *Id*. at 1402-1406.

[62] *Id*. at 1402-1403.

[63] *Id*. at 1405.

[64] *Id*. at 1026-1067.

[65] *Id*. at 849-878.

[66] *Id*. at 899-913.

[67] *Id*. at 914-930.

[68] *Id*. at 1296-1311.

[69] *Id*. at 1026-1067.

[70] *Id*. at 1040.

[71] *Id*.

[72] *Id*. at 1052-1054.

Respondent Reyes was the department manager of Development Bank's Industrial Projects Department. As department manager, she studied and evaluated loan and guarantee proposals, and other bank transactions before recommending a course of action which would best protect Development Bank's interests.[73]

In her Comment,[74] respondent Reyes contends that public respondent's dismissal of petitioner's complaint for lack of probable cause was not tainted with grave abuse of discretion as its decision was only arrived at after it had diligently studied and scrutinized the records of the case and the submitted evidence.[75]

Respondent Tengco served as part-time Governor of Development Bank's Board of Governors from February 7, 1967 until he retired in February 1987.[76]

In his Comment,[77] respondent Tengco likewise states that public respondent did not commit grave abuse of discretion when it dismissed petitioner's complaint for insufficiency of evidence.[78]

He cited this Court's rulings in *Presidential Ad Hoc Fact-Finding Committee on Behest Loans, represented by PCGG v. Desierto*[79] and in *Presidential Commission on Good Government v. Desierto*,[80] which involved similar loan accommodations like those extended to Pioneer Glass. He pointed out that this Court in those two (2) cases upheld the Office of the Ombudsman's

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[73] *Id*. at 99.

[74] *Id*. at 899-913.

[75] *Id*. at 907-908.

[76] *Id*. at 108.

[77] *Id*. at 849-878.

[78] *Id*. at 849-851.

[79] 572 Phil. 71 (2008) [Per *J*. Nachura, *En Banc*].

[80] 563 Phil. 517 (2007) [Per *J*. Nachura, Third Division].

dismissal of the complaints filed by petitioner because, among others, Development Bank's officials evaluated the loan applications before approving them and exercised sound business judgment aligned with the existing acceptable banking practices when they approved the loan applications.[81]

Respondent Tengco also emphasized that "[a]ssets to be acquired and/or future assets are accepted loan securities in the banking system,"[82] contrary to petitioner's claim that future assets cannot be used as loan collateral.[83] Furthermore, he stresses that this Court in several cases has already ruled that after-acquired properties or assets to be acquired are acceptable as loan securities.[84]

Finally, respondent Tengco states that petitioner failed to indicate the roles played by each respondent in the alleged violations, to show conspiracy, and to demonstrate how respondents showed manifest partiality or unduly favored Pioneer Glass to the damage of the government.[85]

Respondent Mapa was a former member of Development Bank's Board of Directors and was a signatory in five (5) out of the twelve (12) Board Resolutions issued in Pioneer Glass' favor.[86]

In his Comment,[87] respondent Mapa underscores that this Court in *Mapa v. Sandiganbayan*[88] upheld his immunity from all civil cases and criminal proceedings initiated by petitioner. His immunity from suits initiated by petitioner was then

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[81] *Rollo*, pp. 851-852.

[82] *Id*. at 861.

[83] *Id*. at 860.

[84] *Id*. at 861-863.

[85] *Id*. at 868.

[86] *Id*. at 89-90.

[87] *Id.* at 914-930.

[88] 301 Phil. 794 (1994) [Per *J*. Puno, *En Banc*].

reaffirmed in several other cases before this Court and the Sandiganbayan. Thus, he insists that the petition against him should be dismissed outright.[89]

Nonetheless, respondent Mapa concurs with his co-respondents that public respondent did not commit grave abuse of discretion when it dismissed petitioner's complaint for insufficiency of evidence.[90]

Respondent Paterno was a former member of Development Bank's Board of Governors.[91] In his Comment,[92] he likewise denies that public respondent committed grave abuse of discretion in dismissing petitioner's complaint for insufficiency of evidence.[93]

On November 15, 2010,[94] this Court noted Atty. Dela Rosa's manifestation and deemed as waived respondent Sison's comment to the petition. It also directed petitioner to file a consolidated reply to the comments filed.

On December 10, 2010, Atty. Christian Dawn G. Molina entered his special appearance[95] as counsel for Felix Y. Hofileña, the son of respondents Luis and Carolina. He manifested that respondents Luis, Carolina, Alberto, and Apacible were already dead, as evidenced by their certificates of death.[96]

On March 2, 2011, petitioner filed its Consolidated Reply[97] where it continued to insist that it was able to prove the existence of probable cause against respondents for violation of Section

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[89] *Rollo,* pp. 915–916.

[90] *Id*. at 924–927.

[91] *Id*. at 1297.

[92] *Id*. at 1296–1311.

[93] *Id.* at 1299–1300.

[94] *Id*. at 1412-A–1412-B.

[95] *Id*. at 1436–1439.

[96] *Id*. at 1440–1446.

[97] *Id*. at 1461–1472.

3, paragraphs (e) and (g) of Republic Act No. 3019 since Pioneer Glass was undercapitalized and its loans were undercollateralized by mostly depreciating and future assets.[98]

Petitioner reiterates the points it raised in its Petition; nonetheless, it concedes that respondent Mapa should be excluded as party defendant due to his immunity in exchange for the information he had provided against Ferdinand and Imelda Marcos in New York.[99]

On April 4, 2011,[100] this Court directed that the names of respondents Luis, Carolina, Alberto, and Apacible be dropped as party respondents in view of their deaths.

On January 13, 2015, counsel for respondent Paterno manifested[101] his passing on November 21, 2014[102] and moved that his name be dropped as party respondent.[103]

On February 23, 2015,[104] this Court granted the motion and dropped respondent Paterno's name as party respondent.

The only issue for this Court's resolution is whether or not public respondent Office of the Ombudsman committed grave abuse of discretion in dismissing the complaint against Pioneer Glass Manufacturing Corporation and the officials of Development Bank of the Philippines for insufficiency of evidence.

I

This Court generally does not interfere with public respondent Office of the Ombudsman's finding or lack of finding of probable

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[98] *Id*. at 1463-1465.

[99] *Id*. at 1468-1469.

[100] *Id*. at 1479-1480.

[101] *Id*. at 1484-1487.

[102] *Id*. at 1488.

[103] *Id*. at 1485.

[104] *Id*. at 1490-1491.

cause out of respect for its constitutionally granted investigatory and prosecutory powers.[105] *Dichaves v. Office of the Ombudsman*[106] pointed out that the Office of the Ombudsman's power to determine probable cause is executive in nature and with its power to investigate, it is in a better position than this Court to assess the evidence on hand to substantiate its finding of probable cause or lack of it.[107]

Probable cause is:

> [T]he existence of such facts and circumstances as would lead a person of ordinary caution and prudence to entertain an honest and strong suspicion that the person charged is guilty of the crime subject of the investigation. Being based merely on opinion and reasonable belief, it does not import absolute certainty. Probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. Probable cause implies probability of guilt and requires more than bare suspicion but less than evidence which would justify a conviction.[108] (Citations omitted)

Nonetheless, despite this well-established principle, petitioner asks this Court to interfere with public respondent's assessment purportedly on the ground of grave abuse of discretion. However, disagreeing with public respondent's findings does not rise to the level of grave abuse of discretion.[109]

A court or tribunal is said to have committed grave abuse of discretion if it performs an act in "a capricious or whimsical

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[105] *Dichaves v. Office of the Ombudsman,* G.R. Nos. 206310-11, December 7, 2016, 813 SCRA 273, 297–299, [Per *J.* Leonen, Second Division].

[106] G.R. Nos. 206310-11, December 7, 2016, 813 SCRA 273 [Per *J.* Leonen, Second Division].

[107] *Id*. at 298–299.

[108] *Chan v. Formaran III, et al.*, 572 Phil. 118, 132 (2008) [Per *J.* Nachura, Third Division].

[109] *Reyes v. Office of the Ombudsman,* G.R. No. 208243, June 5, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/208243.pdf> [Per *J.* Leonen, Second Division].

exercise of judgment amounting to lack of jurisdiction."[110] Ultimately, for the petition to prosper, it would have to prove that public respondent "conducted the preliminary investigation in such a way that amounted to a virtual refusal to perform a duty under the law."[111]

Petitioner failed to do this.

II

Petitioner posits that the loan accommodations between Development Bank and Pioneer Glass bore the characteristics of a behest loan as the loans were undercollateralized, and Pioneer Glass was undercapitalized when they were granted.[112]

Despite petitioner's assertions, public respondent dismissed its complaint for insufficiency of evidence and failed to find probable cause against respondents for violating Section 3, paragraphs (e) and (g) of Republic Act No. 3019, which provide:

> Section 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> . . . . . .
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

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[110] *Angeles v. Secretary of Justice*, 503 Phil. 93, 100 (2005) [Per *J.* Carpio, First Division].

[111] *Reyes v. Office of the Ombudsman,* G.R. No. 208243, June 5, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/208243.pdf> 7 [Per *J.* Leonen, Second Division].

[112] *Rollo,* p. 40.

. . . . . .

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

Presidential Commission on Good Government[113] stated that for a charge to be valid under Section 3(e) of Republic Act No. 3019, it must be shown that the accused "acted with manifest partiality, evident bad faith, or inexcusable negligence."[114] On the other hand, for liability to attach under Section 3(g), it must be shown that the accused "entered into a grossly disadvantageous contract on behalf of the government."[115]

On October 1, 1977, respondent Reyes sent Development Bank's Acting Chairman a report and recommendation[116] on Pioneer Glass' request for an additional ₱2,000,000.00 discounting line. She recommended the approval of the loan request subject to the following conditions:

1. In order to ensure the repayment of the discounting line covered by DBP guarantee, Pioneer Glass shall, prior to the issuance of the guarantee, make the necessary arrangements with Tanduay Distillery, Inc. for the latter to remit directly to DBP the amount of ₱2,000,000 representing [Pioneer Glass'] receivables from Tanduay.
2. This DBP guarantee shall be secured as follows:

   a) By a first mortgage on the assets mentioned under Item III.A above.
   b) By the joint and several signatures of the parties presently liable for the existing DBP loans of Pioneer Glass Manufacturing Corporation and Peftok Investment and Development Corporation.
   c) By an assignment in favor of DBP of Pioneer's or Mr. Luis S. Hofileña's mining (silica) claims, this to be confirmed by the Bureau of Mines.

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[113] 563 Phil. 517 (2007) [Per *J*. Nachura, Third Division].

[114] *Id*. at 527.

[115] *Id*.

[116] *Rollo,* pp. 421–426.

d) By an assignment of sales contracts aggregating ₱13.413 million

3. Prior to the issuance of the letter/s of guarantee, Pioneer Glass Manufacturing Corporation shall also: (a) remit to DBP the processing fee of ₱5,000; and (b) submit evidence of payment of all taxes due the government including personal income and realty taxes. For this purpose, proofs of payment thereof shall be submitted or in lieu thereof a tax clearance shall be secured from the city, municipal treasurer that all local taxes due the government are paid (per Circular No. 873 dated April 29, 1977).

4. DBP shall continue to be represented by three (3) regular directors in borrower-firm's board. Moreover, if and when necessary, DBP shall designate a comptroller in the firm whose compensation shall be borne by borrower-firm.

5. The borrower's obligation shall be subjected to a 2% annual service fee computed on the outstanding principal balance of the loan (per Board Resolution No. 3672 dated September 15, 1976).

6. All such positive and negative covenants which may legally be imposed on Pioneer Glass Manufacturing Corporation for the protection of the DBP shall be included by the Legal Department in the financing agreement.[117]

On October 12, 1977, Development Bank's Board of Governors adapted and approved respondent Reyes' recommendation in Board Resolution No. 3103.[118]

On February 13, 1978, in recognition of Pioneer Glass' continuing financial troubles, respondent Reyes submitted another report and recommendation[119] to Development Bank's Chairman and Vice-Chairman detailing the available remedies to it as Pioneer Glass' debtor:

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[117] *Id*. at 425–426.

[118] *Id*. at 427–431.

[119] *Id*. at 432–455.

Over the years since DBP's first financial accommodation to Pioneer Glass was granted in 1962, Pioneer Glass' operations have been sharply marked with problems, most of them financial in nature. Concerned with the dim prospects of ever recovering its huge investments in the firm, the Bank presented to [Pioneer Glass] three alternative options for the disposition and settlement of [Pioneer Glass'] accounts, each of them designed to bring immediate relief to all parties directly involved in the project as follows:

1. Conveyance by [Pioneer Glass] to DBP through Dacion en Pago of all the assets now mortgaged to DBP (the silica mines, the glass plant in Rosario, Cavite and the personal properties of the Hofileñas); or

2. DBP to foreclose the existing mortgages executed by [Pioneer Glass] in favor of DBP; or

3. Liquidation of the assets of the corporation after a voluntary dissolution of the corporation has been effected in accordance with the provisions of the Rules of Court and the Corporation Law.

On January 24, 1978, Pioneer Glass Manufacturing Corporation, thru Col. Cesar L. Pio Roda, its Managing Director, informed DBP that [Pioneer Glass'] stockholders decided to accept a dacion en pago arrangement whereby all mortgaged assets of the corporation will be ceded to DBP in settlement of [the] firm's obligations.[120]

. . . . . .

Foregoing considered, we respectfully recommend approval of the following proposals for Pioneer Glass Manufacturing Corporation's accounts:

A. A Dacion en Pago arrangement wherein Pioneer Glass, in full settlement of its DBP obligations as of date the Dacion en Pago Agreement is signed, shall alienate/convey in favor of the Bank the glass factory in Rosario, Cavite, the silica mine properties in Sagay, Negros Occidental and the personal assets of the Hofileñas mortgaged to DBP, itemized under III.A.1, III.A.2, and III.A.3 above. Thereafter, DBP shall consider itself fully paid and shall release the Hofileña family, PEFTOK, and all other co-obligors from their joint and several signatures for [Pioneer Glass'] obligations.

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[120] *Id*. at 432-433.

B. After the transfer of said assets, DBP shall enter into two (2) separate agreements as follows:

B.1. Outright sale to Union Glass and Container Corporation of the glass plant under the following terms and conditions:

a. Total consideration for the sale of the glass factory shall be ₱100,920,000 which shall be paid to DBP as follows:[121]

. . . . . .

B.2. Lease/sale agreement with Pioneer Glass over the silica mine properties in Sagay, Negros Occidental under the following terms and conditions:

a. Total consideration for the lease shall be ₱2,709,970[.][122]

On February 22, 1978, Development Bank's Board of Governors in Board Resolution No. 542[123] adapted and approved respondent Reyes' recommendations.

The records corroborate the assertions of respondent bank officials and support the findings of public respondent that the release of loans to Pioneer Glass was preceded by a careful study and evaluation of the loan application.

Respondent Reyes did not act with manifest partiality, evident bad faith, or inexcusable gross negligence when she made her recommendations because they were arrived at only after considering Pioneer Glass' capability to pay the loan obligations. Moreover, she also carefully considered how to best protect Development Bank's interests with the appropriate securities from Pioneer Glass to guarantee the loans. In the same manner, Development Bank's board members who relied on her report and recommendation in approving the loan applications also did not act with manifest partiality, evident bad faith, or inexcusable negligence.

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[121] *Id*. at 447.

[122] *Id*. at 449.

[123] *Id*. at 456-462.

As public respondent found:

In this case, **it cannot be inferred that the submitted recommendations,** after undergoing rigid and thorough studies by the technical staff of Industrial Project Department (IPD I) and the Economic Research Unit of DBP **and the subsequent Board Resolutions** issued by the Board of Governors of DBP, having passed further studies and deliberations before their consideration, **were impelled by manifest partiality, gross negligence or evident bad faith.**

Records show that there are about three (3) recommendations on record.

First, is the APPLICATION FOR INDUSTRIAL LOAN A PORTION UNDER DEFERRED PAYMENT PLAN (Industrial Guarantee & Loan Fund) addressed to the Supervising Governor. [Pioneer Glass] had applied for an amount of ₱999,368.99 with [Development Bank]. The Manager of Industrial Department of [Development Bank], A.P. Sevilla, recommended for the grant of the loan in a reduced amount of ₱880,000.00;

Second, is the letter/memorandum of respondent public officer Alicia Ll. Reyes, then Manager of the Industrial Project Department I of [Development Bank], dated October 1, 1977, addressed to [Development Bank] Acting Chairman for the approval of the short term discounting line of ₱2 million; and

Third, is another letter/memorandum of Ms. Reyes, dated February 13, 1978 addressed to the [Development Bank] Chairman, recommending approval of a *dacion en pago* arrangement to relieve [Pioneer Glass] of its mounting obligations, and the creditor (DBP), of the serious deterioration of the borrower's accounts.

A close scrutiny of these documents reveal, however, that they passed through an exhaustive, detailed studies whereof sound terms and conditions were recommended to ensure protection of the bank's interests.[124] (Emphasis in the original)

This finds basis in *Presidential Commission on Good Government*,[125] which ruled that Development Bank's careful

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[124] *Id*. at 118–120.

[125] 563 Phil. 517, 527 (2007) [Per *J*. Nachura, Third Division].

study and evaluation of the loan application negated the existence of manifest partiality, gross inexcusable negligence, or evident bad faith in the eventual approval of the loan application:

> It is clear from the records that private respondents studied and evaluated the loan applications of Bagumbayan before approving them. There is no showing that the DBP Board of Governors did not exercise sound business judgment in approving the loans, or that the approval was contrary to acceptable banking practices at that time. No manifest partiality, evident bad faith, or gross inexcusable negligence can, therefore, be attributed to private respondents in approving the loans.[126]

Finally, it cannot be inferred that the loan was undercollateralized or that a grossly disadvantageous contract to the government in violation of Section 3(g) of Republic Act No. 3019 was entered into. Development Bank's total exposure of ₱63,202,884.44[127] was secured by the following: personal and real properties amounting to ₱46,822,362.00; assignment to Development Bank of sales contracts worth ₱13,413,000.00; personal undertakings by members of the Hofileña and Yaptinchay families and other Pioneer Glass stockholders; and the assignment to Development Bank of Luis' mining claims.[128] Clearly, the loans were suitably secured when they were taken out.

Section 3, paragraphs (e) and (g) of Republic Act No. 3019 should not be interpreted in such a way that they will prevent Development Bank, through its managers, to take reasonable risks in relation to its business. Profit, which will redound to the benefit of the public interests owning Development Bank, will not be realized if our laws are read constraining the exercise of sound business discretion.

Thus, Section 3(e) requires "manifest partiality, evident bad faith or gross inexcusable negligence" and the element of

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[126] *Id*. at 527.

[127] *Rollo,* pp. 436–437.

[128] *Id*. at 437–438.

arbitrariness and malice in taking risks must be palpable. Likewise, there must be a showing of "undue injury" to the government. Section 3(g), on the other hand, requires a showing of a "contract or transaction manifestly and grossly disadvantageous to the [government]."

Definitely, this means that it must not only be proven that Development Bank suffered business losses but that these losses, in the ordinary course of business and with the exercise of sound judgment, were inevitably unavoidable. Public respondent's findings did not transgress these requirements. Thus, there is no reason to issue the discretionary writ of certiorari.

WHEREFORE, premises considered, the Petition for Certiorari is **DISMISSED**. The Office of the Ombudsman's August 15, 2006 Resolution and May 16, 2008 Order in OMB-C-C-03-0508-I are **AFFIRMED.**

SO ORDERED.

Del Castillo,[*] *Jardeleza,*[**] *Reyes, J. Jr.,* and *Hernando, JJ.,* concur.

FIRST DIVISION

[G.R. No. 196499. November 28, 2018]

INGRID V. HILARIO, *petitioner, vs.* **THELMA V. MIRANDA and IRENEA BELLOC,** *respondents.*

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[*] Designated additional member per Raffle dated October 8, 2018.

[**] Designated additional member per Raffle dated November 28, 2018.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; THE PARTY WHO ALLEGES AN AFFIRMATIVE FACT HAS THE BURDEN OF PROVING IT AS MERE ALLEGATION OF THE FACT IS NOT EVIDENCE OF IT; CASE AT BAR.—** [W]e rule on the merits of the CA's Decision to declare Irenea as the sole heir of Antonio and Dolores. x x x There is, however, nothing to support the above finding but the bare declarations of Irenea. The record is bereft of any evidence to support Irenea's allegation that she was a niece of Antonio and first cousin of Dolores. In fact, the RTC held that she rested her case without presenting any documentary evidence. Neither did she present witnesses to corroborate her testimony. It is a basic rule that the party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it. The party who asserts, not he who denies, must prove. Since Irenea failed to present proof of her relationship with both Antonio and Dolores, there is no ground for the Court to affirm the CA ruling declaring her the sole heir of both decedents.

2. **ID.; CIVIL PROCEDURE; APPEALS; AS A RULE, A PARTY WHO DELIBERATELY ADOPTS A CERTAIN THEORY UPON WHICH THE CASE IS TRIED AND DECIDED BY THE LOWER COURT WILL NOT BE PERMITTED TO CHANGE SAID THEORY ON APPEAL; CASE AT BAR.—** As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change said theory on appeal. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit Thelma to change her theory in this proceeding would not only be unfair to Ingrid, it would also offend the basic rules of fair play, justice, and due process. Thelma is thus estopped from arguing before the Court that Magdalena is not a recognized illegitimate child of Antonio after submitting before the trial court that she is one of Antonio's heirs.

3. CIVIL LAW; PATERNITY AND FILIATION; ILLEGITIMATE CHILDREN; KINDS; CASE AT BAR.— At the onset, we observe a flaw in the CA ruling, which is that it failed to expound on how it found Magdalena to be a spurious child. Under the Civil Code, there are three kinds of illegitimate children, namely, natural children, natural children by legal fiction, and illegitimate children who belong to neither of the first two classifications and are also known as spurious. The Civil Code provides that natural children are those born of parents who had legal capacity to contract marriage at the time of conception, while natural children by legal fiction are those conceived or born of marriages which are void from the beginning. In *De Santos v. Angeles*, we described spurious children as those with doubtful origins. There is no marriage, valid or otherwise, that would give any semblance of legality to the child's existence. Paternity presupposes adultery, concubinage, incest, or murder, among others. These classifications are significant as the Civil Code provides for varying degrees of rights for the use of surname, succession, and support depending on the child's filiation. Here, there is no evidence that Magdalena was a spurious child. The record shows that Antonio, who begot three children from three different women, never married any of them. Indeed, since Antonio died in 1974, nobody came forward to claim that he or she is Antonio's legitimate child. Moreover, Magdalena had been known in the community as one of Antonio's illegitimate children. The CA itself acknowledged this fact. In light of these circumstances, it may well be concluded that Magdalena was a natural child.

4. ID.; ID.; ID.; ILLEGITIMATE CHILDREN MAY ESTABLISH THEIR ILLEGITIMATE FILIATION IN THE SAME WAY AND ON THE SAME EVIDENCE AS LEGITIMATE CHILDREN MAY ESTABLISH THEIR FILIATION; PROOF OF FILIATION IS NECESSARY ONLY WHEN THE LEGITIMACY OF THE CHILD IS BEING QUESTIONED; CASE AT BAR.— The Family Code provides that illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children. The manner in which legitimate children may establish their filiation is laid down in Article 172 of the Family Code. x x x

[T]he law itself establishes the status of a child from the moment of his birth. Proof of filiation is necessary only when the legitimacy of the child is being questioned. This rule also applies to illegitimate children. In her Handbook on the Family Code of the Philippines, Alicia Sempio-Diy, a member of the Civil Code and Family Code Committees, discussed that like legitimate children, illegitimate children are already given by the Family Code their status as such from the moment of birth. There is, therefore, no need for an illegitimate child to file an action against his parent for recognition if he has in fact already been recognized by the latter by any of the evidences mentioned in Article 172 of the Family Code. If, however, the status of the illegitimate child is impugned, or he is required by circumstances to establish his illegitimate filiation, then he can do so in the same way and on the same evidence as legitimate children as provided in Article 172. It is settled that Magdalena was an illegitimate child of Antonio. Since the law gave her that status from birth, she had no need to file an action to establish her filiation. Looking at the circumstances of the case, she was only compelled by the CA to present a "higher standard of proof" to establish her filiation as a result of an unsubstantiated claim of a better status raised by Irenea. We hold, however, that such unsubstantiated claim is no claim at all. It is not an effective impugnation that shifts to Magdalena the onus to establish her filiation. To rule otherwise will only embolden and encourage unscrupulous lawsuits against illegitimate children, especially those who enjoyed recognition under paragraph 2, Article 172 of the Family Code, as they can no longer defend their rights after the prescriptive period has set in.

5. ID.; ID.; ID.; ID.; "FINAL JUDGMENT" AS A MEANS OF ESTABLISHING FILIATION; REFERS TO A DECISION OF A COMPETENT COURT FINDING THE CHILD LEGITIMATE OR ILLEGITIMATE; CASE AT BAR.— The Court is also compelled to rule in favor of petitioner on the basis of the final judgment rendered by the RTC in Civil Case No. AV-929 which established Magdalena's filiation. Under paragraph 1, Article 172 of the Family Code, "final judgment" is a means of establishing filiation. It refers to a decision of a competent court finding the child legitimate or illegitimate. We find no need to disturb the RTC's findings which are based

on the evidence presented for its consideration in the course of the proceeding. While the subject of Civil Case No. AV-929 is the declaration of nullity of certain documents, the ruling on Magdalena's filiation cannot be considered *obiter dictum* since the RTC determinedly discussed and settled that issue as a means to decide the main issue brought for its disposition. Being a final judgment, the Decision in Civil Case No. AV-929 constitutes *res judicata*.

6. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; REFERS TO THE RULE THAT A FINAL JUDGMENT OR DECREE ON THE MERITS BY A COURT OF COMPETENT JURISDICTION IS CONCLUSIVE OF THE RIGHTS OF THE PARTIES OR THEIR PRIVIES IN ALL LATER SUITS ON POINTS AND MATTERS DETERMINED IN THE FORMER SUIT; CASE AT BAR.— *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate. x x x The CA held that the declaration of nullity of the marriage of Antonio and Silveria in Civil Case No. AV-929 is settled by *res judicata*. There is no reason why the same principle will not apply with respect to the issue of Magdalena's filiation which has been settled by the same Decision.

APPEARANCES OF COUNSEL

Edwin M. Reyes for petitioner.

Bienvenido Baring, Jr. for respondent Thelma Miranda.

Eric C. Tormis for Ramon A. Belloc (in substitution of the late Irenea Belloc).

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] assailing the October 13, 2009 Decision[2] and April 4, 2011 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 01703. The assailed Decision reversed and set aside the January 25, 2006 Decision[4] of Branch 26 of the Regional Trial Court, Argao, Cebu (RTC) in Special Proceeding (SP) Nos. A-522 and A-523, and declared respondent Irenea Belloc (Irenea) as sole heir of Antonio Belloc (Antonio) and Dolores Retiza (Dolores).[5] The assailed Resolution, on the other hand, denied petitioner's motion for reconsideration of the assailed Decision, ordered petitioner to surrender the letters of administration issued in her favor and render an account within 30 days from notice, and issued new letters of administration in favor of Ramon Belloc, Jr., the legal representative of Irenea's estate.[6]

Petitioner Ingrid V. Hilario (Ingrid) filed two petitions[7] for the issuance of letters of administration with urgent application for appointment of a special administratrix, both dated June 22, 2001, involving the properties of Antonio and Dolores,

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

[2] *Id.* at 17-31; penned by Acting Executive Justice Franchito N. Diamante, with Associate Justices Edgardo L. Delos Santos and Samuel H. Gaerlan, concurring.

[3] *Id.* at 33-35; penned by Associate Justice Edgardo L. Delos Santos, with Associate Justices Eduardo B. Peralta, Jr. and Gabriel T. Ingles, concurring.

[4] *Id.* at 50-57; rendered by Judge Maximo A. Perez.

[5] *Id.* at 30.

[6] *Id.* at 35.

[7] SP No. A-522 entitled *Intestate Estate of Deceased Antonio Belloc, Ingrid V. Hilario, Petitioner*, records (SP No. A-522), pp. 1-4; and SP No. A-523 entitled *Intestate Estate of Deceased Dolores Retiza, Ingrid V. Hilario, Petitioner*, records (SP No. A-523), pp. 1-4.

respectively. The petitions, docketed as SP Nos. A-522 and A-523, contained similar allegations except for the names of the decedents. Pertinently, they alleged that Ingrid is the daughter of Magdalena Varian (Magdalena), who, in turn, is the heir of Antonio and Dolores, who both died intestate and left real properties located in Sibonga, Cebu. Petitioner prayed for her appointment as special administratrix of the properties of the decedents, and to be issued letters of administration after notice, publication, and hearing, pursuant to the Rules of Court.

Ingrid anchored the filing of the said petitions on the May 31, 2000 Decision[8] rendered by the same RTC in Civil Case No. AV-929 filed by Magdalena against respondent Thelma Varian-Miranda (Thelma) and Santiago Miranda (Miranda spouses). The case sought the declaration of nullity of five deeds of sale involving Dolores' properties, allegedly executed by either all of Magdalena, Dolores, Silveria Retiza, and Teresito Belloc, or Dolores alone, in favor of the Miranda spouses, which deeds Magdalena claimed were simulated or fictitious.[9]

The RTC made the following pronouncements in the said May 31, 2000 Decision:

> The evidence on record disclosed that plaintiff Magdalena Varian is an illegitimate daughter of the deceased Antonio Belloc with Balbina dela Cruz. Aside from the plaintiff Magdalena Varian, the deceased Antonio Belloc has another illegitimate child named Dolores Retiza whose mother is Silveria Retiza and another illegitimate child Alberto whose mother is a certain Hipolita, whose surname probably is Flamor. This child Alberto, predeceased the deceased Antonio

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[8] *Rollo*, pp. 42-49.

[9] *Id.* at 43-44. The action, entitled *Magdalena B. Varian v. Thelma Varian-Miranda and Santiago Miranda*, sought the declaration of nullity of the following, the award of damages, and other remedies:

1. Extrajudicial Declaration of Heirs with Deed of Sale dated April 4, 1975;
2. Deed of Absolute Sale dated February 24, 1976;
3. Deed of Absolute Sale dated March 3, 1976;
4. Deed of Absolute Sale dated November 24, 1976; and
5. Deed of Absolute Sale dated November 30, 1976.

Belloc and is survived by his only son, x x x named TeresitoFlamor, x x x. Antonio Belloc x x x died on August 20, 1974 at 4:25 P.M. in Cebu City at Cebu Community Hospital while Dolores Retiza and her mother Silveria Retiza died sometime in 1995 and on December 30, 1994, respectively.[10]

x x x x x x x x x

With respect to defendants' claim or assertion, to the effect that the deceased Antonio Belloc was, during his lifetime, married to his live-in partner Silveria Retiza on August 20, 1974 as shown in a marriage contract presented by the defendants x x x, the same does not inspire acceptance upon the mind of the court. While the marriage contract between the deceased Antonio Belloc and Silveria Retiza shown by the defendants during the hearing is a public record, that does not standing alone necessarily prove the fact of marriage by and between the deceased Antonio Belloc and his live-in partner Silveria Retiza, because the circumstances and facts of their alleged marriage appears highly suspicious and seriously doubtful upon the mind of the court with respect to the validity of the alleged marriage for the following reasons, viz:

Evidence on record disclosed, that days before his death on August 20, 1974, Antonio Belloc was already confined in the Cebu Community Hospital in Cebu City. When he was visited by his friend and neighbor, plaintiff's rebuttal witness, Alfredo Bacacao, on August 20, 1974 at about 10:40 A.M., in his death bed, he was not only seriously ill, but was in a comatose condition, could no longer talk and was hovering between life and death or at the point of death so to speak, and in his death bed, was his live-in partner, Silveria Retiza. In the afternoon of the same day, about 4:15 P.M. he expired. Hence, his alleged marriage with his live-in partner is highly doubtful and seriously open to question. There was no iota of evidence in the record, that at anytime during the day, particularly before 10:00 A.M. or thereafter, but before his death in the afternoon, that he was taken out from the hospital and brought to San Nicolas Parish which is very far from the hospital, where the alleged marriage took place and allegedly solemnized by one Rev. Fr. Nicolas Batucan.

Even assuming for the sake of argument, without, however, admitting, that the marriage between deceased Antonio Belloc and his live-in partner Silveria Retiza was done in Articulo Mortis, whether

[10] *Id.* at 45.

the same took place inside Cebu Community Hospital or in the church of San Nicolas Parish, such marriage could not be considered legally valid for the simple reason that one of the essential elements in valid marriage which is consent, to be freely given, was totally wanting or not present as said Antonio Belloc was then unconscious and under comatose condition and was hovering between life and death. Hence, he cannot give his consent freely. Even again assuming for the sake of argument, without however, admitting, that such marriage in articulo mortis, assuming there was such, the same cannot be considered in evidence as it was not formally offered in evidence, although marked during the hearing x x x. In fact, by defendants' acts, either wittingly or unwittingly, they miserably failed to formally offer any documentary evidence as the records clearly show. The non formal offer of evidence by the defendants was fatal to their cause, because evidence when not formally offered, cannot be considered. x x x. (Underscoring in the original.)

x x x x x x x x x

Under the facts and evidence adverted to above, it is very clear that the deceased Antonio Belloc during his lifetime was never married to Silveria Retiza contrary to the claim of the defendants, and therefore, the conclusion is inevitable, that he died single, survived by his two illegitimate children, plaintiff Magdalena Varian, Dolores Retiza and his grandson Teresito Flamor. Accordingly, he died intestate and his intestate estate will pass on and will be inherited by his intestate heirs upon his death.

With respect to the properties of the deceased Dolores Retiza, subject matter in the different Deeds of Sale, the same likewise should pass on and be inherited by her intestate heirs because at the time of the alleged sale, she was insane and no showing was made by defendants that she executed the supposed sale during lucid interval; in fact, in 1995 she was placed under guardianship because of her incompetency. Evidence disclosed further that at the time of her death sometime in 1995, her only surviving heir is her half-sister, the plaintiff and her nephew, Teresito Flamor who, under the law on intestate succession will be the ones entitled to inherit her properties.[11]

The dispositive portion of the above Decision in Civil Case No. AV-929 nullified the subject deeds of sale, and among others, declared all the parcels of land subject matter of the deeds to

[11] *Id.* 47-48.

form part of the intestate estate of Antonio and Dolores, which should be inherited by "the latter's intestate heirs, upon proper showing or proof of filiation/paternity."[12] The Decision became final on May 12, 2001.[13]

As mentioned, this Decision in Civil Case No. AV-929 became the basis of the filing of SP Nos. A-522 and A-523, which were both raffled to the same branch of the RTC. Ingrid eventually filed a motion for issuance of letters of administration[14]dated July 2, 2001, alleging that since the appointment of a special administratrix will take time, there will be no one who can receive delivery of the properties of Antonio and Dolores consisting of seven parcels of coconut and corn land with an aggregate area of 147,653 square meters which the RTC ordered returned to the estates of the decedents in Civil Case No. AV-929.[15] On September 10, 2001, after finding that both Antonio and Dolores died without leaving any will and left several properties, and that Ingrid is qualified and entitled to the issuance of letters of administration, the RTC ordered the issuance of letters of administration to Ingrid upon posting of an administrator's bond in the aggregate sum of ₱100,000.00.[16] The letters of administration were issued to Ingrid on October 3, 2001.[17]

On July 31, 2002, Magdalena, notwithstanding the fact that she was not a party to SP Nos. A-522 and A-523, filed an *ex-parte* motion to be declared sole heir of both Antonio and Dolores.[18] This was opposed[19] by Thelma, Magdalena's other

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[12] *Id*. at 49.

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

[14] Records (SP No. A-522), pp. 7-13.

[15] *Id.* at 8.

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

[17] *Id.* at 66.

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

[19] *Id.* at 72-74.

daughter, and one of the defendants in Civil Case No. AV-929. Thelma alleged that Magdalena is not the sole heir of Antonio and that she could not be an heir of Dolores. Purportedly, Antonio begot three children in his lifetime, namely, Magdalena, Dolores, and Alberto Flamor (Alberto). Magdalena and Alberto were illegitimate children of Antonio. Alberto and Dolores are already deceased. Dolores died without issue, but Alberto is survived by his son, TeresitoFlamor, who, in turn, is entitled to inherit from the estate of Antonio in representation of his father. Moreover, Thelma asserted that since the status of Dolores was elevated from illegitimate to legitimate child by the subsequent marriage of her mother, Silveria Retiza, with Antonio, Magdalena, an illegitimate child, cannot inherit from Dolores under Article 992[20] of the Civil Code.

On August 26, 2002, Magdalena filed an amended *ex-parte* motion for declaration as heir of both Antonio and Dolores,[21] insisting that Antonio did not have any other heir except her and Dolores, and that upon the latter's death, she became the sole heir of her half-sister. Magdalena stated that she did not furnish Thelma a copy of the motion since the latter did not show any legal interest in the estates under administration. She then prayed to be declared an heir (no longer "sole" heir) of Antonio and Dolores.[22] Magdalena also filed a motion to strike the opposition filed by Thelma,[23] which the latter subsequently opposed.[24]

On February 27, 2003, the RTC issued an Order[25] denying the motion to strike opposition and declaring the need for a trial to determine the lawful heirs of the decedents.

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[20] Art. 992. An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor such children or relatives inherit in the same manner from the illegitimate child.

[21] Records (SP No. A-522), pp. 76-79.

[22] *Id.* at 77.

[23] *Id.* at 83-84.

[24] *Id.* at 85-89.

[25] *Id.* at 157-158.

On June 9, 2003, Magdalena died.[26] Upon their motion,[27] the following were declared as legal representatives of Magdalena: 1) Violet V. Miller; 2) Joseph Varian, Jr.; 3) Elizabeth V. Tongson; 4) Ingrid V. Hilario; and 5) Lalaine V. Ong.[28]

On August 25, 2004, Irenea filed a motion for leave to intervene[29] and opposition-in-intervention.[30] She claimed that she is the daughter of Teodoro Belloc (Teodoro) and Eugenia Retiza (Eugenia). Teodoro was the brother of Antonio, while Eugenia was the sister of Silveria, the mother of Dolores. Thus, she is the niece both of Antonio on the father side and Silveria on the mother side of Dolores, and the latter was her first cousin. She claimed that Magdalena cannot inherit from Dolores because she (Magdalena) is not a daughter of Antonio. Even granting that Magdalena is Antonio's illegitimate child, she cannot inherit from Dolores pursuant to Article 992 of the Civil Code because Dolores was a legitimate child. Irenea also alleged that since she is the nearest surviving relative of both Antonio and Dolores, she is entitled to be appointed as sole administrator of their estate.[31] The RTC granted the motion for intervention on February 3, 2005.[32]

After joint trial, the RTC rendered a Decision on January 25, 2006, the dispositive portion of which states:

WHEREFORE, foregoing premises considered, Decision is hereby rendered in favor of the petitioner and against oppositor-intervenor Irenea Belloc by:

1. Declaring the petitioner Magdalena Varian as heir of decedents Antonio Belloc and Dolores Retiza, to be represented by the following

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

[27] *Id.* at 171-173.

[28] *Id.* at 183.

[29] *Id.* at 214-217.

[30] *Id.* at 218-222.

[31] *Id.* at 219-221.

[32] *Id.* at 237.

legal representatives: 1) Violet V. Miller; 2) Joseph Varian, Jr.; 3) Elizabeth V. Tongson; 4) Ingrid V. Hilario; 5) Lalaine V. Ong; and 6) Thelma V. Miranda who shall inherit the estate of the said decedents in equal shares; and

2. Denying the claim of intervenor-oppositor Irenea Belloc for declaration as sole heir of decedents Antonio Belloc and Dolores Retiza, and denying her claim for appointment as administratrix of the estate of the said decedents.

IT IS SO DECIDED.[33]

The RTC resolved the following issues:

1. Whether or not Magdalena is entitled to be declared heir of decedents Antonio and Dolores; and

2. Whether or not intervenor Irenea is entitled to be declared **sole** heir of decedents Antonio and Dolores.[34]

On the first issue, the RTC held that Magdalena had established sufficient proof to be declared an heir of Antonio and Dolores. Magdalena was the daughter of Antonio and Balbina dela Cruz, who were not married to each other, while Dolores was the daughter of Antonio and Silveria. Antonio and Silveria died intestate before Dolores died on January 2, 1995 without children and without a will. Thus, Magdalena, who is Antonio's illegitimate daughter and Dolores' half-sister, is the relative nearest in degree to Antonio and Dolores.[35]

On the second issue, the RTC did not find that Irenea can be declared sole heir of Antonio and Dolores on the basis of Article 962 of the Civil Code which provides that "[i]n every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place." Irenea is the niece of Antonio and the first cousin of Dolores, and thus related to Dolores within the fourth civil degree.

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[33] *Rollo*, p. 57.

[34] *Id.* at 54.

[35] *Id.* at 55.

Magdalena being the relative nearest in degree to Antonio and Dolores excludes collateral and distant relatives including Irenea.[36]

The RTC also ruled on the invalidity of the marriage of Antonio and Silveria. It considered the May 31, 2000 Decision of the RTC in Civil Case No. AV-929 to be well-taken, noting that the Decision had been affirmed by the CA and this Court.[37] The RTC further noted that Irenea did not categorically state that she personally witnessed the alleged wedding of Antonio and Silveria. She did not present as witness any of those she mentioned who allegedly attended said wedding, and even rested her case without presenting any documentary evidence. Hence, the RTC found that Irenea failed to substantiate her claim that Antonio and Silveria were legally married to each other.[38]

As regards Thelma's opposition, the RTC held that she is one of the heirs of Magdalena, being one of the latter's children.[39] Thus, Thelma is entitled to a share in the subject properties, equal to the share of one of Magdalena's legal representatives.[40]

Dissatisfied with the Decision, Thelma and Irenea filed their respective motions for reconsideration. On April 3, 2006, the RTC issued Orders[41] denying the motions on the ground that the issues raised therein had already been passed upon in the final and executory May 31, 2000 Decision of the RTC in Civil Case No. AV-929, as well as in the January 25, 2006 Decision in SP Nos. A-522 and A-523. Feeling aggrieved, Thelma and

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[36] *Id.* at 55-56.

[37] *Id.* at 56. Thelma elevated the Decision in Civil Case No. AV-929 to the Court of Appeals via petition for annulment of judgment, but it was dismissed. She filed a petition for *certiorari* with the Supreme Court, but it was also dismissed. Records (SP No. A-522), p. 301.

[38] *Rollo*, p. 56.

[39] Records show that Thelma is the daughter of Magdalena and Joseph Miranda, *id.* at 30.

[40] *Id.* at 57.

[41] Records (SP No. A-522), p. 335; records (SP No. A-523), p. 291.

Irenea elevated the case to the CA, mainly arguing that the RTC erred in declaring Magdalena as an intestate heir of Antonio and Dolores.

On October 13, 2009, the CA rendered a Decision, the dispositive portion of which states:

> **WHEREFORE**, in the light of the foregoing, the assailed judgment dated January 25, 2006 by the Regional Trial Court, Branch 26, in Argao, Cebu is hereby **REVERSED AND SET ASIDE** and a new one entered **declaring IRENEA BELLOC as the sole heir of Antonio Belloc and Dolores Retiza.**
>
> **SO ORDERED**.[42]

The CA held that the RTC erred in declaring Magdalena and her legal heirs as heirs of the estates of Antonio and Dolores since Magdalena's right to inherit depends upon "the acknowledgment or recognition of her continuous enjoyment and possession of the status of child of her supposed father."[43] No evidence was presented to support either premise. Although Magdalena was Antonio's spurious daughter, the CA held that she nevertheless cannot inherit from his estate because she was not recognized by him either voluntarily or by court action.[44]

The CA noted that in actions to establish illegitimate filiation, a high standard of proof is required. If petitions for recognition and support are dismissed for failure to meet such high standard, with more reason that the court cannot declare a person to be an illegitimate heir of a decedent without any evidence to support such declaration in a proceeding for declaration of nullity of documents.[45] Even if proof of filiation of Magdalena to Antonio was presented in a case for declaration of nullity of documents involving the same parties in this case, such proof is not sufficient to confer upon Magdalena any hereditary right in the estates

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[42] *Rollo*, p. 30.

[43] *Id.* at 26.

[44] *Id*. at 26-27.

[45] *Id*. at 27.

of Antonio and Dolores because it is necessary to allege that her putative father had acknowledged and recognized her as an illegitimate child.[46]

The CA added that Article 887 of the Civil Code, which enumerates who are compulsory heirs, categorically states that "[i]n all cases of illegitimate children, their filiation must be duly proved." Considering that Magdalena's filiation to Antonio was not sufficiently established, she is not entitled to any successional right from him or his daughter, Dolores. For the same reason, Ingrid cannot succeed from the estate of the decedents.[47]

Thus, applying Articles 961[48] and 962[49] of the Civil Code, the CA ruled that Irenea, being the niece of Antonio and first cousin of Dolores who died without issue, is entitled to inherit from the decedents.[50]

Finally, the CA ruled that Thelma is not entitled to inherit from Antonio and Dolores as her filiation with them was not established. Records show that she is the daughter of Magdalena with one Joseph Miranda.[51]

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[46] *Id*. at 27-28, citing *Baluyut v. Baluyut*, G.R. No. L-33659, June 14, 1990, 186 SCRA 506.

[47] *Id.* at 29.

[48] Art. 961. In default of testamentary heirs, the law vests the inheritance, in accordance with the rules hereinafter set forth, in the legitimate and illegitimate relatives of the deceased, in the surviving spouse, and in the State.

[49] Art. 962. In every inheritance, the relative nearest in degree excludes the more distant ones, saving the right of representation when it properly takes place.

Relatives in the same degree shall inherit in equal shares, subject to the provisions of Article 1006 with respect to relatives of the full and half blood, and of Article 987, paragraph 2, concerning division between the paternal and maternal lines.

[50] *Rollo*, pp. 29-30.

[51] *Id*. at 30.

Displeased with the CA Decision, Ingrid filed a motion for reconsideration.[52] On April 4, 2011, the CA issued a Resolution[53]denying her motion for lack of grounds sufficient to compel the reversal of its Decision. It also granted: 1) the motion for substitution of party filed by the heirs of Irenea in view of her death; 2) the motion for revocation of letters ofadministration issued to Ingrid; and 3) the motion for issuance of new letters of administration in favor of the heirs of Irenea.

Ingrid now appeals the Decision and Resolution of the CA before us, arguing that Magdalena's and Dolores' status as illegitimate children of Antonio and his intestate heirs have already been settled by the final and executory judgment in Civil Case No. AV-929. Ingrid claims that this judgment has attained the character of *res judicata* and can no longer be challenged.[54] Concomitantly, she insists that under the Family Code, "final judgment" is a basis for establishing illegitimate filiation.[55]

We grant the petition.

I.

First, we rule on the merits of the CA's Decision to declare Irenea as the sole heir of Antonio and Dolores. On this point, the CA held:

> Herein intervenor-appellant Irenea Belloc is the daughter of Teodoro Belloc and Eugenia Retiza. Her father is the brother of the decedent Antonio Belloc. Her mother Eugenia Retiza also happened to be the sister of Antonio's common-law wife Silveria. Hence, Dolores Retiza is her first cousin. The siblings of decedent Antonio Belloc are all dead as well as his wife Silveria. Dolores also died without issue. In fine, the relative nearest in degree to both decedents is intervenor-appellant Irenea Belloc, who is the niece of decedent Antonio Belloc and first cousin of Dolores Retiza.[56]

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[52] *Id*. at 36-41.

[53] *Supra* note 3.

[54] *Rollo*, pp. 7-8.

[55] *Id.* at 10.

[56] *Id.* at 29-30.

There is, however, nothing to support the above finding but the bare declarations of Irenea. The record is bereft of any evidence to support Irenea's allegation that she was a niece of Antonio and first cousin of Dolores. In fact, the RTC held that she rested her case without presenting any documentary evidence.[57] Neither did she present witnesses to corroborate her testimony.[58] It is a basic rule that the party who alleges an affirmative fact has the burden of proving it because mere allegation of the fact is not evidence of it. The party who asserts, not he who denies, must prove.[59] Since Irenea failed to present proof of her relationship with both Antonio and Dolores, there is no ground for the Court to affirm the CA ruling declaring her the sole heir of both decedents.

II.

Second, we dispose of the arguments of respondent Thelma Miranda.

Thelma filed an opposition[60] in SP Nos. A-522 and A-523 not as an heir of Antonio but as someone who has an interest in Antonio's properties. She was one of the defendants in Civil Case No. AV-929, the supposed buyer of parcels of land forming part of Antonio's estate. She raised only two grounds in her opposition, namely: that Magdalena was not the sole heir of Antonio since the latter had a grandchild from a deceased illegitimate son, and Magdalena cannot inherit from Dolores under Article 992 of the Civil Code since the latter had been legitimized by the marriage of Antonio and Silveria, Dolores' mother. In her comment[61] to the instant petition, however, she changed her stance and argued that Magdalena was not a recognized illegitimate daughter of Antonio so that she could

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[57] *Id.* at 56.

[58] *Id.*; records (SP No. A-522), p. 249.

[59] *Far East Bank & Trust Company v. Chante*, G.R. No. 170598, October 9, 2013, 707 SCRA 149, 162.

[60] Records (SP No. A-522), pp. 72-74.

[61] *Rollo*, pp. 81-86.

not inherit from both Antonio and Dolores. Apparently, Thelma based her comment on the assailed CA Decision.

As a rule, a party who deliberately adopts a certain theory upon which the case is tried and decided by the lower court will not be permitted to change said theory on appeal. It would be unfair to the adverse party who would have no opportunity to present further evidence material to the new theory, which it could have done had it been aware of it at the time of the hearing before the trial court. To permit Thelma to change her theory in this proceeding would not only be unfair to Ingrid, it would also offend the basic rules of fair play, justice, and due process.[62] Thelma is thus estopped from arguing before the Court that Magdalena is not a recognized illegitimate child of Antonio after submitting before the trial court that she is one of Antonio's heirs.

In any event, Thelma's participation in this case has no bearing on the resolution of the main issue. Her interest in the properties forming part of Antonio's estate had been settled in Civil Case No. AV-929 which nullified the deeds of sale in her and her husband's favor. As pointed to above, said Decision has become final.

III.

The central issue that we must now resolve is whether Magdalena is an intestate heir of both Antonio and Dolores.

It must be noted that the RTC has consistently found Magdalena to be an illegitimate child of Antonio, and thus his intestate heir. In its Decision in Civil Case No. AV-929, the RTC held that "the conclusion is inevitable, that [Antonio] died single, survived by his two illegitimate children, plaintiff Magdalena Varian, Dolores Retiza and his grandson Teresito Flamor. Accordingly, he died intestate and his intestate estate will pass on and will be inherited by his intestate heirs upon his death."[63] Further, the RTC held in the same Decision that

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[62] See *Maxicare PCIB Cigna Healthcare v. Contreras*, G.R. No. 194352, January 30, 2013, 689 SCRA 763, 772.

[63] *Rollo*, p. 48.

"[e]vidence disclosed x x x that at the time of [Dolores'] death sometime in 1995, her only surviving heir is her half-sister, the plaintiff and her nephew, Teresito Flamor who, under the law on intestate succession will be the ones entitled to inherit her properties."[64] Likewise, the RTC held in its Decision in SP Nos. A-522 and A-523 that "the petitioner had established sufficient proof to be declared heir of decedents Antonio Belloc and Dolores Retiza."[65] The CA itself concluded that Magdalena was a child of Antonio, albeit spurious.

The CA, however, held that Magdalena cannot inherit from Antonio's estate just the same since there is no evidence that she was recognized by Antonio either voluntarily or by court action.[66] In this regard, the CA hammered on the pronunciation of the Court in *Baluyut v. Baluyut* that to be entitled to support and successional rights from his putative or presumed parents, an illegitimate (spurious) child must prove his filiation to them, which may be established by the voluntary or compulsory recognition of the illegitimate child.[67] The CA also cited Article 887 of the Civil Code which states that in all cases of illegitimate children, their filiation must be duly proved.[68] The CA held that mere declaration by the RTC that Magdalena is an illegitimate daughter of Antonio, without evidence to sustain such filiation, is improper and not the kind of recognition contemplated by law.[69]

At the onset, we observe a flaw in the CA ruling, which is that it failed to expound on how it found Magdalena to be a spurious child. Under the Civil Code, there are three kinds of illegitimate children, namely, natural children, natural children by legal fiction, and illegitimate children who belong to neither

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[64] *Id.*

[65] *Rollo*, p. 55.

[66] *Id*. at 26-27.

[67] *Id.* at 27-28.

[68] *Id*. at 29.

[69] *Id*. at 27.

of the first two classifications and are also known as spurious.[70] The Civil Code provides that natural children are those born of parents who had legal capacity to contract marriage at the time of conception,[71] while natural children by legal fiction are those conceived or born of marriages which are void from the beginning.[72] In *De Santos v. Angeles*,[73] we described spurious children as those with doubtful origins. There is no marriage, valid or otherwise, that would give any semblance of legality to the child's existence.[74] Paternity presupposes adultery, concubinage, incest, or murder, among others.[75] These classifications are significant as the Civil Code provides for varying degrees of rights for the use of surname, succession, and support depending on the child's filiation.[76]

Here, there is no evidence that Magdalena was a spurious child. The record shows that Antonio, who begot three children from three different women, never married any of them.[77] Indeed, since Antonio died in 1974, nobody came forward to claim that he or she is Antonio's legitimate child. Moreover, Magdalena had been known in the community as one of Antonio's illegitimate children.[78] The CA itself acknowledged this fact.[79] In light of these circumstances, it may well be concluded that Magdalena was a natural child.[80]

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[70] CIVIL CODE, Art. 287.

[71] CIVIL CODE, Art. 277.

[72] CIVIL CODE, Art. 89.

[73] G.R. No. 105619, December 12, 1995, 251 SCRA 206.

[74] *Id.* at 214.

[75] *Vda. De Clemeña v. Clemeña*, G.R. No. L-24845, August 22, 1968, 24 SCRA 720, 725.

[76] *De Santos v. Angeles*, *supra* at 214-215.

[77] *Rollo*, pp. 45-48.

[78] *Id.* at 51; records (SP No. A-523), pp. 42-43.

[79] *Rollo*, p. 26.

[80] We note, of course, that the Family Code now recognizes only two classes of children: legitimate and illegitimate. See *De Santos v. Angeles*, *supra* at 219.

Coming now to the main point, the CA held that it is not enough for Magdalena to prove that she was a child of Antonio. She must also prove that Antonio recognized her as a child before she may inherit from his estate. While Ingrid asserted the final judgment of the RTC in Civil Case No. AV-929 to support her argument that her mother, Magdalena, had duly established her filiation with Antonio, the CA was unconvinced, holding that mere declaration by the RTC of Magdalena's filiation without evidence to support it is not the recognition contemplated by law.[81]

The Family Code[82] provides that illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.[83] The manner in which legitimate children may establish their filiation is laid down in Article 172 of the Family Code, which states:

> Art. 172. The filiation of legitimate children is established by any of the following:
>
> (1) The record of birth appearing in the civil register or a final judgment; or
> (2) An admission of legitimate filiation in a public document or a private handwritten instrument and signed by the parent concerned.
>
> In the absence of the foregoing evidence, the legitimate filiation shall be proved by:
>
> (1) The open and continuous possession of the status of a legitimate child; or
> (2) Any other means allowed by the Rules of Court and special laws.

The Code provides that the action by an illegitimate child must be brought within the same period specified in Article

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[81] *Rollo*, pp. 26-27.

[82] Parenthetically, the Family Code has retroactive effect as provided by its Article 256 insofar as it does not prejudice or impair vested or acquired rights in accordance with the Civil Code or other laws.

[83] FAMILY CODE, Art. 175.

173,[84] except when the action is based on the second paragraph of Article 172, in which case the action may be brought during the lifetime of the alleged parent.[85] This is similar to Article 285 of the Civil Code which provides that the action for the recognition of natural children may be brought only during the lifetime of the presumed parents, except in certain cases.

In *Paulino v. Paulino*,[86] we held that acknowledgment of the putative father is essential and is the basis of an illegitimate child's right to inherit. If there is no allegation of acknowledgment, the action filed by the illegitimate child to be given a share in the estate of the putative father becomes one to compel recognition, which cannot be brought after the death of the putative father.[87]

The rationale for the time limit fixed by law to bring an action for compulsory recognition is to protect the legitimate family. In *Vda. de Clemeña v. Clemeña*[88] we explained:

> Illegitimate paternity, natural or not natural, is not paraded for everyone to see; but it is normally enshrouded in secrecy, and kept hidden from the members of the legitimate family. The latter are not in a position to explain or contradict the circumstances surrounding the procreation of the illegitimate progeny. To inquire into those circumstances after the parent has died, when he or she alone has full knowledge thereof, when no one else can fully prove the truth or falsity of the alleged filiation of a claimant, is to penalize unnecessarily the legitimate family that constitutes one of the foundation blocks of society.

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[84] Art. 173. The action to claim legitimacy may be brought by the child during his or her lifetime and shall be transmitted to the heirs should the child die during minority or in a state of insanity. In these cases, the heirs shall have a period of five years within which to institute the action.

The action already commenced by the child shall survive notwithstanding the death of either or both of the parties.

[85] FAMILY CODE, Art. 175.

[86] G.R. No. L-15091, December 28, 1961, 3 SCRA 730.

[87] *Id.* at 734-735.

[88] *Supra* note 75.

xxxNor can it be denied that by allowing the one who claims illegitimate filiation to wait for the death of the putative parent, when he had opportunity to confront the latter while alive, is to facilitate, if not encourage, blackmailing suits. And as illegitimate not natural paternity presupposes either adultery (concubinage) or incest or murder, the magnitude of the threatened scandal is a weapon that becomes more difficult to resist for the legitimate family that desires to protect the memory of the deceased.[89] (Citation omitted.)

Here, following the enumeration in paragraph 1, Article 172 of the Family Code, the record is bereft of any evidence showing that Magdalena had been recognized by Antonio through a record of birth appearing in the civil registrar, or an admission of legitimate filiation in a public document or a private handwritten instrument signed by Antonio. The CA, too, held that the final judgment rendered by the RTC on Magdalena's filiation has no basis. On the other hand, Magdalena could no longer raise as grounds for recognition the evidence enumerated in paragraph 2, Article 172, since she could only have raised them during the lifetime of her father, who is now deceased.

Will the confluence of these circumstances prevent Magdalena from being declared an heir of Antonio's and Dolores' estates?

We hold that they do not.

The law itself establishes the status of a child from the moment of his birth. Proof of filiation is necessary only when the legitimacy of the child is being questioned.[90] This rule also applies to illegitimate children. In her Handbook on the Family Code of the Philippines, Alicia Sempio-Diy, a member of the Civil Code and Family Code Committees, discussed that like legitimate children, illegitimate children are already given by the Family Code their status as such from the moment of birth.[91] There is, therefore, no need for an illegitimate child to file an

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[89] *Id.* at 725.

[90] *Concepcion v. Court of Appeals*, G.R. No. 123450, August 31, 2005, 468 SCRA 438, 453-454.

[91] 1995 Ed., p. 281.

action against his parent for recognition if he has in fact already been recognized by the latter by any of the evidences mentioned in Article 172 of the Family Code. If, however, the status of the illegitimate child is impugned, or he is required by circumstances to establish his illegitimate filiation, then he can do so in the same way and on the same evidence as legitimate children as provided in Article 172.

It is settled that Magdalena was an illegitimate child of Antonio. Since the law gave her that status from birth, she had no need to file an action to establish her filiation. Looking at the circumstances of the case, she was only compelled by the CA to present a "higher standard of proof" to establish her filiation as a result of an unsubstantiated claim of a better status raised by Irenea.[92] We hold, however, that such unsubstantiated claim is no claim at all. It is not an effective impugnation that shifts to Magdalena the onus to establish her filiation. To rule otherwise will only embolden and encourage unscrupulous lawsuits against illegitimate children, especially those who enjoyed recognition under paragraph 2, Article 172 of the Family Code, as they can no longer defend their rights after the prescriptive period has set in.

We have held that it is the policy of the Family Code to liberalize the rule on the investigation of the paternity and filiation of children, especially of illegitimate children.[93]

Significantly, the evils that the law seeks to prevent in placing a time limit to prove filiation if the grounds fall under paragraph 2, Article 172 of the Family Code, namely, to protect the legitimate family, does not exist in this case. Antonio had no legitimate family and Dolores died without issue. For more than 20 years since Dolores' death, there had been no claimants to her and Antonio's estates but Magdalena, Thelma, and Irenea. As discussed, Thelma does not even claim to be an heir, and

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[92] *Rollo*, p. 27.

[93] *Aguilar v. Siasat*, G.R. No. 200169, January 28, 2015, 748 SCRA 555, 571-572, citing *Dela Cruz v. Gracia*, G.R. No. 177728, July 31, 2009, 594 SCRA 649, 660.

Irenea's claim of legitimate relationship with the decedents remained unsubstantiated.

The Court is also compelled to rule in favor of petitioner on the basis of the final judgment rendered by the RTC in Civil Case No. AV-929 which established Magdalena's filiation. Under paragraph 1, Article 172 of the Family Code, "final judgment" is a means of establishing filiation. It refers to a decision of a competent court finding the child legitimate or illegitimate.[94] We find no need to disturb the RTC's findings which are based on the evidence presented for its consideration in the course of the proceeding. While the subject of Civil Case No. AV-929 is the declaration of nullity of certain documents, the ruling on Magdalena's filiation cannot be considered *obiter dictum* since the RTC determinedly discussed and settled that issue as a means to decide the main issue brought for its disposition. Being a final judgment, the Decision in Civil Case No. AV-929 constitutes *res judicata*.

Res judicata literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties should not to be permitted to litigate the same issue more than once. When a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.[95]

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[94] See *Geronimo v. Santos*, G.R. No. 197099, September 28, 2015, 771 SCRA 508, in relation to Articles 172 and 175 of the Family Code.

[95] *Degayo v. Magbanua-Dinglasan*, G.R. No. 173148, April 6, 2015, 755 SCRA 1, 8-9.

This judicially-created doctrine exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public tranquillity. Moreover, public policy, judicial orderliness, economy of judicial time, and the interest of litigants, as well as the peace and order of society, all require that stability should be accorded judgments, that controversies once decided on their merits shall remain in repose, that inconsistent judicial decision shall not be made on the same set of facts, and that there be an end to litigation which, without the doctrine of *res judicata*, would be endless.[96]

The CA held that the declaration of nullity of the marriage of Antonio and Silveria in Civil Case No. AV-929 is settled by *res judicata*.[97] There is no reason why the same principle will not apply with respect to the issue of Magdalena's filiation which has been settled by the same Decision.

WHEREFORE, the petition is **GRANTED.** The assailed October 13, 2009 Decision and April 4, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 01703 are **REVERSED and SET ASIDE**. The Decision dated January 25, 2006 of Branch 26 of the Regional Trial Court, Argao, Cebu, in Special Proceeding Nos. A-522 and A-523 is **REINSTATED**.

SO ORDERED.

Bersamin, C.J. (Chairperson), del Castillo, and *Gesmundo, JJ.,* concur.

Tijam, J., on official business.

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[96] *Id.* at 9.

[97] *Rollo*, p. 26.

SECOND DIVISION

[G.R. No. 198026. November 28, 2018]

NARCISO MELENDRES, substituted by his wife, OFELIA MELENDRES and children JOSE MARI MELENDRES, and NARCISO MELENDRES, JR., *petitioners, vs.* **ALICIA CATAMBAY, LORENZA BENAVIDEZ, in substitution of her husband EDMUNDO BENAVIDEZ, and the REGISTER OF DEEDS OF RIZAL (MORONG BRANCH),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; SHALL RAISE ONLY QUESTIONS OF LAW; EXCEPTIONS.— Rule 45, Section 1 of the Rules of Court is unequivocal in stating that an appeal *via* petition for review on *certiorari* under Rule 45 shall raise only questions of law which must be distinctly set forth. The Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the lower courts are conclusive and binding upon the Court. However, the Court has ruled in a *catena* of cases that such rule is not inflexible. The Court has recognized several exceptions to the rule that only questions of law can be raised in a Rule 45 petition. Questions of fact may be revisited by the Court: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when

the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

2. **CIVIL LAW; LAND TITLES AND DEEDS; TORRENS SYSTEM; THE INCONTESTABLE AND INDEFEASIBLE CHARACTER OF A TORRENS CERTIFICATE OF TITLE DOES NOT OPERATE WHEN THE LAND COVERED THEREBY IS NOT CAPABLE OF REGISTRATION; AN ACTION FOR RECONVEYANCE IS A RECOGNIZED REMEDY AVAILABLE TO A PERSON WHOSE PROPERTY HAS BEEN WRONGFULLY REGISTERED UNDER THE TORRENS SYSTEM IN ANOTHER'S NAME.—** While the Court is not unaware that upon the expiration of one year, the decree of registration and the certificate of title issued shall become incontrovertible and indefeasible, the indefeasibility of title could be claimed only if a previous valid title to the same parcel of land does not exist. As a matter of fact, an action for reconveyance is a recognized remedy available to a person whose property has been wrongfully registered under the Torrens system in another's name; reconveyance is always available as long as the property has not passed to an innocent third person for value. Further, the incontestable and indefeasible character of a Torrens certificate of title does not operate when the land covered thereby is not capable of registration.

3. **ID.; ID.; COMMONWEALTH ACT NO. 141 (PUBLIC LAND ACT); SECTION 44, CHAPTER VI THEREOF; REQUISITES FOR THE ISSUANCE OF A FREE PATENT; NOT ESTABLISHED IN CASE AT BAR.—** Section 44, Chapter VI of Commonwealth Act No. 141 or the Public Land Act, states that a free patent may issue in favor of an applicant **only if** (1) the applicant has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public lands subject to disposition, or (2) who shall have paid the real estate tax thereon while the same has not been occupied by any person. A hard second look at the factual findings of the various courts and administrative

bodies, as well as the evidence on record, reveals that Free Patent No. (IV-1) 001692 issued in favor of Alejandro did not satisfy the abovementioned requisites for the issuance of a free patent, making it null and void.

4. REMEDIAL LAW; EVIDENCE; FINDINGS OF FACT OF ADMINISTRATIVE BODIES ARE GENERALLY ACCORDED GREAT RESPECT, IF NOT FINALITY, BY THE COURTS BY REASON OF THE SPECIAL KNOWLEDGE AND EXPERTISE OF SAID ADMINISTRATIVE AGENCIES OVER MATTERS FALLING UNDER THEIR JURISDICTION.— [I]t must be stressed that the findings of fact of administrative bodies, such as the DARAB, will not be interfered with by the courts in the absence of grave abuse of discretion on the part of the former, or unless the aforementioned findings are not supported by substantial evidence. **Findings of fact by administrative agencies are generally accorded great respect, if not finality, by the courts by reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction**.

5. CIVIL LAW; OWNERSHIP; WHILE IT IS TRUE THAT THE TAX RECEIPTS AND TAX DECLARATIONS ARE NOT INCONTROVERTIBLE EVIDENCE OF OWNERSHIP, THEY CONSTITUTE CREDIBLE PROOF OF A CLAIM OF TITLE OVER THE PROPERTY; CASE AT BAR.— While tax declarations are not *per se* conclusive evidence of ownership, they cannot simply be ignored especially where, as here, since the 1940s, Tax Declarations had already been registered in the name of petitioners' predecessors-in-interest. While it is true that tax receipts and tax declarations are not incontrovertible evidence of ownership, **they constitute credible proof of a claim of title over the property**. Coupled with actual possession of the property, **tax declarations become strong evidence of ownership.** The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. **Such an act strengthens one's *bona fide* claim of acquisition of ownership.** Hence, the constant filing by the Melendreses of tax declarations covering the subject

property spanning several decades, taken together with the other pieces of evidence, shows that petitioners' claim of title over the subject property is consistent, providing sufficient basis in proving their possession over the said property.

6. ID.; LAND TITLES AND DEEDS; COMMONWEALTH ACT NO. 141 (PUBLIC LAND ACT); REQUISITES TO BE ENTITLED TO A CERTIFICATE OF TITLE; OPEN, CONTINUOUS, EXCLUSIVE, AND NOTORIOUS POSSESSION AND OCCUPATION BY THEMSELVES OR THROUGH THEIR PREDECESSORS-IN-INTEREST OF AGRICULTURAL LANDS OF THE PUBLIC DOMAIN, UNDER A BONA FIDE CLAIM OF ACQUISITION OR OWNERSHIP, FOR AT LEAST 30 YEARS IMMEDIATELY PRECEDING THE FILING OF THE APPLICATION FOR CONFIRMATION OF TITLE EXCEPT WHEN PREVENTED BY WAR OR *FORCE MAJEURE*; CASE AT BAR.— [T]aking all the available evidence on record, and recognizing the persuasive effect of factual findings made by different administrative agencies and courts, the Court finds and so holds that (a) respondent Catambay and her predecessor-in-interest did not actually occupy the subject property, (b) that respondent Catambay and her predecessor-in-interest actually occupied and cultivated the adjoining property adjacent to the subject property and not the subject property, and (c) that petitioners, through their predecessors-in-interest, have actually, publicly, openly, adversely and continuously possessed the subject property in the concept of an owner since the 1940s, cultivating the said property as a rice field. **The open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period, *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property.** In connection with the foregoing doctrine, the Public Land Act states that those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, for at least 30 years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure* shall be conclusively presumed to have

performed all the conditions essential to a Government grant and shall be entitled to a certificate of title.

7. ID.; ID.; TORRENS SYSTEM; ACTION FOR RECONVEYANCE; THE STATE, REPRESENTED BY THE SOLICITOR GENERAL, IS NOT THE REAL PARTY-IN-INTEREST IN THE NULLIFICATION OF A FREE PATENT AND TITLE AS THERE WAS NO REVERSION OF THE DISPUTED PROPERTY TO THE PUBLIC DOMAIN; CASE AT BAR.— An action for reversion involves property that is alleged to be of State ownership, aimed to be reverted to the public domain. As held by the Court in *Heirs of Santiago v. Heirs of Santiago*, there is no merit to the contention that only the State may bring an action for reconveyance with respect to property proven to be private property by virtue of open, continuous, exclusive and notorious possession. The nullification of the free patent and title would not therefore result in its reversion to the public domain. Hence, the State, represented by the Solicitor General, is not the real party-in-interest; inasmuch as there was no reversion of the disputed property to the public domain, the State is not the proper party to bring a suit for reconveyance. In the instant case, by virtue of the actual, public, open, adverse, and continuous possession of the subject property by petitioners in the concept of an owner since 1940s, the subject property ceased to be a land of the public domain and became private property.

8. ID.; ID.; ID.; INDEFEASIBILITY OF TITLE DOES NOT EXTEND TO TRANSFEREES WHO TAKE THE CERTIFICATE OF TITLE IN BAD FAITH; THE BURDEN OF PROVING THE STATUS OF AN INNOCENT PURCHASER FOR VALUE AND IN GOOD FAITH LIES UPON HIM WHO ASSERTS THAT STATUS; CASE AT BAR.— Despite the fact that the title of respondents Sps. Benavidez is traced from the defective title of respondent Catambay, the Court takes notice of the rule that the purchaser of a piece of property is not required to explore further than what the Certificate indicates on its face. This rule, however, applies only to **innocent purchasers for value and in good faith**; it excludes a purchaser who has knowledge of a defect in the title of the vendor, or of facts sufficient to induce a reasonable prudent man to inquire into the status of the property. Time and time again, this Court has stressed that registration

does not vest, but merely serves as evidence of, title. Our land registration laws do not give the holders any better title than that which they actually have prior to registration. Mere registration is not enough to acquire a new title. Good faith must concur. One cannot rely upon the indefeasibility of a TCT in view of the doctrine that the defense of indefeasibility of a Torrens title does not extend to transferees who take the certificate of title in bad faith. In a long line of cases, the Court has defined a purchaser in good faith or innocent purchaser for value as one who buys property and pays a full and fair price for it at the time of the purchase or before any notice of some other person's claim on or interest in it. It has been held that **the burden of proving the status of a purchaser in good faith lies upon him who asserts that status and it is not sufficient to invoke the ordinary presumption of good faith, that is, that everyone is presumed to have acted in good faith.** To stress, the *onus probandi* is borne by respondents Sps. Benavidez to prove that they are innocent purchasers in good faith and for value. Upon exhaustive review of the records of the instant case, the Court is very much convinced that respondents Sps. Benavidez failed to satisfy this burden.

APPEARANCES OF COUNSEL

A.R. Fulgado & Associates for petitioners.
Angara Abello Concepcion Regala & Cruz 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 filed by the now deceased petitioner Narciso Melendres (Narciso), substituted by his wife, Ofelia Melendres, and children Jose Mari Melendres and Narciso Melendres, Jr., assailing the Decision[2] dated May

[1] *Rollo*, pp. 17-75.

[2] *Id.* at 87-105. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Celia C. Librea-Leagogo and Elihu A. Ybañez concurring.

27, 2011 (assailed Decision) and Resolution[3] dated August 3, 2011 (assailed Resolution) issued by the Court of Appeals (CA) Special Second Division and Former Special Second Division, respectively in CA-G.R. CV No. 93082, which affirmed the Decision[4] dated September 14, 2007 of the Regional Trial Court of Morong, Rizal, Branch 80 (RTC) in Civil Case No. 324-T.

The Facts and Antecedent Proceedings

As narrated by the CA in its assailed Decision, and as culled from the records of the case, the essential facts and antecedent proceedings of the instant case are as follows:

> [The instant case is centered on a **1,622-square-meter property** located in Plaza Aldea, Tanay, Rizal, described as **Lot No. 3302**, Cad-393, Tanay Cadastre (subject property).]
>
> [Petitioner Narciso claimed that] he inherited the [subject property] from Ariston Melendres [(Ariston)], who died on January 1, 1992[.]
>
> [Petitioner Narciso likewise alleged that respondent] Alicia Catambay's [(Catambay) predecessor-in-interest, Alejandro Catambay (Alejandro),] like the other previous tenants and adjoining farmers of the subject property, [had previously] attested that he and Ariston owned the subject property, which had an original area of 13,742 square meters[,] and [that Petitioner Narciso and his father Ariston] were actually, publicly, openly, adversely and continuously in possession of the subject property for more than thirty (30) years[.]
>
> [Petitioner Narciso also maintained that] they planted it with palay on a regular seasonal basis; the subject property became a private land by operation of law and it may not be treated as a public land falling under the jurisdiction of the Bureau of Lands for the purpose of issuance of Homestead Patent[.] [Petitioner Narciso also asserted that] Ariston paid the taxes on the subject property [as evidenced by various tax declaration receipts spanning several years.]
>
> [Petitioner Narciso also alleged that what respondent] Catambay [actually owns is] the 1,353-square-meter parcel of land adjoining the subject property [on the eastern side of the subject property, which

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[3] *Id*. at 108-109.

[4] *Rollo*, pp. 76-85. Penned by Judge Maria Teresa Cruz-San Gabriel.

respondent Catambay inherited] from the late Alejandro[.] [Immediately adjoining the aforesaid 1,353-square-meter lot of respondent Catambay on the eastern side is a parcel of land owned by a certain Mercedes Amonoy (Amonoy).]

[According to petitioner Narciso,] in 1971, unknown to him and Ariston, a Cadastral Survey Team from the Bureau of Lands surveyed the subject property, the property of [respondent] Catambay, and other properties in Barangay Plaza Aldea, Tanay, Rizal[.]

[An alleged] gross error [was] committed by the [Cadastral Survey Team of the Bureau of Lands, which] resulted in the reduction of the original area of the subject property from 13,742 square meters to 4,762 square meters[, docketed as **Lot No. 3300**]. **Original Certificate of Title [(OCT)] No. 1112**, which contains an area of only 4,762 square meters, was issued to Ariston[.]

On the other hand, **OCT No. M-2177** for **Lot No. 3302**[, which covers the subject property] was [supposedly mistakenly] issued [in favor of Alejandro] with an area of 1,622 square meters[.] [Upon the death of Alejandro,] Transfer Certificate of Title [(TCT)] No. M-28802 was issued [in favor of respondent Catambay after the extrajudicial settlement of the estate of Alejandro.]

[Eventually, TCT No. M-28802 was cancelled and **TCT No. M-39517 was issued in favor of respondents Spouses Edmundo (Edmundo) and Lorenza (Lorenza) Benavidez (collectively, respondents Sps. Benavidez) who bought the property from respondent Catambay.**]

[Petitioner Narciso] discovered the grave errors in the survey and registration of the subject property sometime on September 13, 1989 and brought the same to the attention of [respondent] Catambay who pointed to [respondent] Edmundo as her persistent buyer of the subject property[.]

[***DENR Case***]

[O]n November 24, 1989, a petition for reinvestigation was filed [by petitioner Narciso] before the [Community Environment and Natural Resources Office (CENRO) of the Department of Environment and Natural Resources (DENR)] in Taytay, Rizal. It was claimed by [petitioner Narciso] that a serious error was committed by the Cadastral Survey Team of the Bureau of Lands in the conduct of the cadastral survey of Cad-393 of the Tanay Cadastre.]

[O]n December 12, 1989, the CENRO ordered [respondents] Catambay and Edmundo to observe and maintain the status quo on the subject property until such time that the case is finally resolved by the said office[.]

[According to petitioner Narciso,] in spite of his written advice [to respondents Catambay and Edmundo] to desist from any untoward action or from performing any act that would disturb or alter the status quo condition of the subject property, [respondents Sps. Benavidez] proceeded with the possession and occupation of the subject property by putting filling materials on it and converting it into a commercial area[, specifically a gasoline station.]

[In its Order[5] dated January 21, 1993, the DENR Regional Office No. IV denied the petition filed by petitioner Narcisio, holding that there was no error committed in the cadastral survey of the Tanay Cadastre.

The matter was elevated to the Office of the Secretary, DENR, which, in a Decision[6] dated June 27, 1995, denied the appeal for lack of merit.

The matter was again elevated to the Office of the President (OP), which, in a Decision[7] dated June 30, 2003, reversed the decisions of the DENR Regional Office and the Office of the Secretary, directing the DENR to institute reversion proceedings respecting Lot Nos. 3302 and 3304 so that appropriate free patents and corresponding titles be issued in favor of petitioner Narciso, respondent Catambay, and Mercedes Amonoy.

In the OP's Decision, the OP found that based on the evidence on record and the findings of the DENR investigators themselves, "the area being actually worked and cultivated by [respondent] Catambay through her overseer was included in the title of [Amonoy]"[8] and not the subject property. The OP also found that petitioner Narciso

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[5] Records, pp. 709-713.

[6] *Id*. at 714-719.

[7] *Id*. at 842-847.

[8] *Id*. at 845, quoting the Investigation Report dated January 15, 1990 of Miguel Zacarias, Land Investigator and Acting Chief of the Investigation Section, CENRO DENR Region IV.

and his predecessors-in-interest were the ones "in actual possession" of the subject property and that petitioner Narciso "was still occupying and tilling the same area, which was not actually possessed and occupied by both Catambay and Amonoy." Further, the OP held that the OCT issued in favor of Catambay is "void".][9]

[***Forcible Entry Case***]

[During the pendency of the abovementioned petition for reinvestigation filed before the CENRO, petitioner Narciso] sued [respondent] Edmundo for Forcible Entry and Damages with Prayer for Preliminary Injunction and Restraining Order before the Municipal Trial Court of Tanay, Rizal [(MTC)].

[On January 14, 1994 the MTC declared Ariston as the rightful possessor of the land in controversy and ordering respondent Edmundo to remove the improvements introduced on the property and to vacate and restore petitioner Narciso to its physical possession.[10]

The MTC considered the admission of respondent Edmundo that he proceeded in filling the subject lot with soil and other filling materials and constructed a gasoline station thereon without asking permission from tenant Mendez. The MTC disregarded the claim of respondent Edmundo that he was the owner of the land as ownership of the property was not material in actions for recovery of possession. Moreover, such claim of ownership, even if valid, was belied by the Deed of Sale respondent Edmundo presented before the MTC as it was only executed on February 5, 1990 or more than two (2) months after the date of his unlawful entry on November 29, 1989.[11]

On appeal, the RTC reversed the decision of the MTC. It held that the issue involved in the case was not merely physical or *de facto* possession but one of title to or ownership of the subject property; consequently, the MTC did not acquire jurisdiction over it.[12]

Petitioner Narciso appealed the case to the CA Special Twelfth Division. The appellate court sustained the arguments of petitioner Narciso. It reversed the decision of the RTC and reinstated that of

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[9] *Id*. at 847.

[10] See *Benavidez v. CA*, 372 Phil. 615, 619 (1999).

[11] *Id*. at 620.

[12] *Id*.

the MTC, affirming the latter court's decision ejecting respondent Edmundo from the subject property. The matter was then elevated to the Court.[13]

This Court, in *Edmundo Benavidez v. Court of Appeals*[14] (*Benavidez v. CA*), sustained the CA, Special Twelfth Division's Decision, affirming the ejectment of respondent Edmundo from the subject property.

In the said case, the Court, in sustaining the CA, Special Twelfth Division's Decision affirming the ejectment of respondent Edmundo from the subject property, upheld the MTC's finding that Ariston Melendres is the rightful possessor of the subject property.[15]

The Court also sustained the MTC's assessment that a prior judgment issued by the Department of Agrarian Reform Adjudicatory Board (DARAB) declaring Mendez, who is the tenant of petitioners, as the agricultural tenant of the subject lot and ordering respondents to reinstate Mendez to the possession of the property was a persuasive proof of possession by petitioners through their agricultural tenant, Mendez.[16]]

[***DARAB Case***]

[[Petitioner Narciso] and his tenant, Mendez, likewise filed a complaint for illegal conversion against respondents Catambay and Benavidez before the [DARAB]. The case titled *Ariston Melendres, rep. by Narciso Melendres, Jr., and Felino Mendez v. Alicia Catambay, rep. by the Heirs of Alejandro Catambay and Edmundo Benavidez*, was docketed as DARAB Case No. IV-Ri-369-91.]

[O]n March 4, 1992, the DARAB found [respondent] Edmundo guilty of illegal conversion and ordered the payment of damages to him and Mendez. [T]he DARAB [D]ecision[17] became final and executory and a writ of execution was issued on August 24, 1992[.]

[In the aforementioned Decision, the DARAB found that "the records are replete with evidence adequately establishing the claim

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[13] *Id*. at 621.

[14] 372 Phil. 615 (1999).

[15] *Id*.

[16] *Id*.

[17] Records, pp. 396-406.

of [petitioner Narciso and Mendez] that they were in possession of the landholding in question until they were ejected by the Respondents in 1989."[18]

The DARAB ordered respondents Catambay and Edmundo to pay petitioners' tenant, Mendez, ₱61,875.00 as disturbance compensation. In an [Acknowledgment][19] dated November 5, 1992, tenant Mendez certified that he had received an amount of ₱61,875.00 from respondents in compliance with the DARAB's Decision.]

[The Instant Complaint for Annulment of Deed of Absolute Sale with Reconveyance]

[On November 6, 1992, [petitioner Narciso] filed before the RTC a Complaint for Annulment of Deed of Absolute Sale with Reconveyance and Damages with Prayer for Preliminary Injunction and Restraining Order against [respondents] Catambay, [the Sps. Benavidez,] and the Register of Deeds of Rizal, Morong Branch [(RD)]. The case was docketed as Civil Case No. 324-T.]

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[Respondents filed their Answer with Grounds for Dismissal and Compulsory Counterclaim, refuting the allegations of petitioner Narciso. Eventually, respondents filed an Amended and Supplemental Answer with Grounds for Dismissal and Compulsory Counterclaim and a Second Amended and Supplemental Answer with Grounds for Dismissal and Compulsory Counterclaim. However, the parties decided to put aside the grounds for dismissal and proceeded with the presentation of the witnesses of petitioner.]

On May 17, 1996, [respondents] filed their Motion to Dismiss and/or Demurrer to Evidence on [the] grounds that [petitioner Narciso] [had] no legal capacity to sue and for insufficiency of cause of action.

On November 8, 1996, the [RTC] dismissed the case [for lack of cause of action].

On appeal by [petitioner Narciso before the CA, Former Third Division, the appeal was initially denied.] [However,] an Amended Decision[20] was [subsequently] issued by the [CA Former Third

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[18] *Id*. at 401.

[19] *Id*. at 408.

[20] *Rollo*, pp. 111-115.

Division] on August 30, 2000 in CA-G.R. CV No. 55641 [reversing the RTC's dismissal of the case and] remanding this case to the lower court [for further reception of evidence].

[In its Amended Decision, the CA Former Third Division found that the RTC's finding that there is a lack of cause of action was incorrect considering that based on its review of the records of the case, the subject property was held and occupied by petitioner Narciso and his predecessors-in-interest, "publicly, adversely, and uninterruptedly, and in the concept of owner, for a very long time (some 50 years), before Ariston's death on January 1, 1991."[21] The CA Former Third Division also found that the patent title covering the subject property that "was issued in favor of Alejandro Catambay, father to Alicia Catambay, is a fraudulently issued title because Alejandro Catambay was never an actual occupant of that lot in his lifetime, nor had he laid any claim thereover during his lifetime."][22]

x x x On April 4, 2001, a Resolution was issued by [this Court] in G.R. No. 146025 declaring [CA-G.R. CV No. 55641] terminated for failure of [respondents Sps.] Benavidez to file their petition for certiorari within the extended period which expired on January 6, 2001.

[In the remanded proceedings before the RTC, respondent] Lorenza Benavidez substituted [respondent] Edmundo, who passed away on November 9, 2003.

[Petitioner Narciso] died on November 18, 2003 and he was substituted by [petitioners Ofelia, the wife of Narciso, and the children of Narciso, *i.e.*, Jose Mari and Narciso, Jr.]

x x x x x x x x x

On September 14, 2007, [the RTC rendered its Decision[23] dated September 14, 2007 dismissing petitioner Narciso's Complaint for lack of merit.

[Hence, petitioner Narciso, substituted by his wife and children, appealed the RTC's Decision before the CA.][24]

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[21] *Id*. at 112.

[22] *Id*. at 114.

[23] *Id*. at 76-85.

[24] *Id.* at 88-102.

The Ruling of the CA

In its assailed Decision, the CA denied petitioners' appeal, affirming the RTC Decision dated September 14, 2007, which dismissed petitioner Narciso's Complaint for Annulment of Deed of Absolute Sale and Reconveyance against respondents. The dispositive portion of the assailed Decision of the CA reads:

> **WHEREFORE**, premises considered, the Decision dated September 14, 2007 of the RTC, Branch 80, Morong, Rizal in Civil Case No. 324-T is hereby **AFFIRMED**.
>
> **SO ORDERED.**[25]

The solitary reason why the CA denied petitioners' appeal is due to its belief that the proper recourse to remedy the situation is an action for reversion to be filed solely and exclusively by the Republic of the Philippines, through the Solicitor General, and not an action filed by a private person.[26]

Hence, the instant Petition.

Issue

Stripped to its core, the central question is whether there is sufficient cause to cancel the certificate of title covering the subject property currently in the name of respondents Sps. Benavidez, *i.e.,* TCT No. M-39517, which traces its origin from OCT No. M-2177 issued in favor of Alejandro Catambay, and to reconvey the subject property in favor of petitioners.

The Court's Ruling

I. Procedural Issue

Before delving into the substantive issues of the instant case, the lone procedural issue raised by respondents shall be first resolved by the Court.

Respondents ask the Court to dismiss the instant Petition outright because it does not raise pure questions of law. The

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[25] *Id*. at 105.

[26] *Id*. at 104.

instant Petition admittedly raises certain questions of fact for the Court's appreciation and consideration; the instant Petition thus involves mixed questions of fact and law.

Rule 45, Section 1 of the Rules of Court is unequivocal in stating that an appeal *via* petition for review on *certiorari* under Rule 45 shall raise only questions of law which must be distinctly set forth. The Court is not a trier of facts and does not normally undertake the re-examination of the evidence presented by the contending parties during the trial of the case considering that the findings of facts of the lower courts are conclusive and binding upon the Court.[27]

However, the Court has ruled in a *catena* of cases that such rule is not inflexible. The Court has recognized several exceptions to the rule that only questions of law can be raised in a Rule 45 petition. Questions of fact may be revisited by the Court: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of facts are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[28]

Here, the Court exercises its discretion in delving into the questions of fact involved in the instant Petition. As will be

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[27] *Insular Life Assurance Company, Ltd. v. CA*, 472 Phil. 11, 22 (2004).

[28] *Id*. at 22-23.

discussed at length below, the findings of facts of the courts and various administrative bodies are in conflict with each other.

Further, the findings of fact made by the RTC in its Decision that are adverse to petitioners, as concurred in by the CA in its Assailed Decision and Resolution, are premised on the supposed absence of evidence presented by petitioners. However, a careful re-examination of the records sheds some light on the possibility that such conclusion made by the lower courts are contradicted by the available evidence on record.

Hence, for the foregoing reasons, the Court exercises its discretion in setting aside the general rule that only pure questions of law may be examined by the Court in assessing the instant Petition.

Having dispensed with the sole procedural issue raised against the instant Petition, the Court now addresses the substantive issues.

II. The Validity of Free Patent No. (IV-1) 001692 and OCT No. M-2177 registered in the name of Alejandro Catambay

At the heart of petitioners' Complaint for Annulment of Deed of Absolute Sale and Reconveyance is the allegation that OCT No. M-2177, which was issued in favor of Alejandro Catambay, and from where respondents Benavidez trace their title over the subject property, was invalidly issued and that they, petitioners, are the true owners of the subject property by virtue of their actual, public, open, adverse and continuous possession of the subject property for more than 30 years.

The records show that in 1974, Alejandro filed with the DENR an application for free patent docketed as Free Patent Application No. (IV-1) 6363-B covering the subject property. With the DENR considering the subject property as alienable and disposable land of the public domain, it issued, on November 22, 1977, **Free Patent No. (IV-1) 001692**[29] covering the subject property

[29] Records, p. 708.

in the name of Alejandro. Pursuant thereto, the RD issued the corresponding OCT, *i.e*., the assailed OCT No. M-2177 in the name of Alejandro.

In its Decision denying petitioners' Complaint, the RTC essentially invoked the indefeasibility of OCT No. M-2177 and held that petitioners failed to present sufficient evidence that the said title was invalidly issued in the name of respondents' predecessor-in-interest, Alejandro.[30]

While the Court is not unaware that upon the expiration of one year, the decree of registration and the certificate of title issued shall become incontrovertible and indefeasible,[31] the indefeasibility of title could be claimed only if a previous valid title to the same parcel of land does not exist.[32] As a matter of fact, an action for reconveyance is a recognized remedy available to a person whose property has been wrongfully registered under the Torrens system in another's name; reconveyance is always available as long as the property has not passed to an innocent third person for value. Further, the incontestable and indefeasible character of a Torrens certificate of title does not operate when the land covered thereby is not capable of registration.[33]

In connection with these doctrines, the Court has previously held in *Agne, et al. v. The Director of Lands, et al*.,[34] that if the land in question is proven to be of **private ownership** and, therefore, beyond the jurisdiction of the Director of Lands, **the free patent and subsequent title issued pursuant thereto are null and void. The indefeasibility and imprescriptibility of a Torrens title issued pursuant to a patent may be invoked only, when the land involved originally formed part of the public domain. If it was a private land, the patent and certificate of title issued upon the patent are a nullity.**[35]

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[30] *Rollo*, p. 83.

[31] Presidential Decree No. (PD) 1529, Sec. 32.

[32] *Register of Deeds v. Philippine National Bank,* 121 Phil. 49, 51 (1965).

[33] *Dizon, et al. v. Rodriguez*, 121 Phil. 681, 686 (1965).

[34] 261 Phil. 13 (1990).

[35] *Id*. at 25.

The Court, in the aforesaid case, further explained that the rule on the incontrovertibility of a certificate of title does not apply where an action for the cancellation of a patent and a certificate of title issued pursuant thereto is instituted on the ground that they are null and void because the Bureau of Lands had no jurisdiction to issue them, the land in question having been withdrawn from the public domain prior to the subsequent award of the patent and the grant of a certificate of title to another person.[36]

Similarly, in *Heirs of Santiago v. Heirs of Santiago*,[37] the Court explained that it is a settled rule that a free patent issued over a private land is null and void, and produces no legal effects whatsoever. Private ownership of land — as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants — is not affected by the issuance of a free patent over the same land, because the Public Land Law applies only to lands of the public domain. The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character and have passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain.[38]

Therefore, with OCT No. M-2177 being susceptible to attack on the basis of petitioners' claim that there was an invalid issuance of a free patent, as the subject property was already private property, the question that must be resolved by the Court is this: Based on the evidence on record, is there sufficient proof that the free patent issued to Alejandro, *i.e.*, Free Patent No. (IV-1) 001692, from which OCT No. M-2177 and the subsequent TCT issued in favor of respondents Sps. Benavidez trace their origin, is null and void?

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[36] *Id*.

[37] 452 Phil. 238 (2003).

[38] *Id*. at 248.

Section 44, Chapter VI of Commonwealth Act No. 141 or the Public Land Act, states that a free patent may issue in favor of an applicant **only if** (1) the applicant has continuously occupied and cultivated, either by himself or through his predecessors-in-interest, a tract or tracts of agricultural public lands subject to disposition, or (2) who shall have paid the real estate tax thereon while the same has not been occupied by any person.

A hard second look at the factual findings of the various courts and administrative bodies, as well as the evidence on record, reveals that Free Patent No. (IV-1) 001692 issued in favor of Alejandro did not satisfy the abovementioned requisites for the issuance of a free patent, making it null and void.

In sum, based on an exhaustive review of the records of the instant case, as well as the clear and unequivocal factual findings made by several courts, including various administrative bodies, the Court finds that:

(1) **respondent Catambay and her predecessor-in-interest did not actually occupy the subject property as to warrant the issuance of Free Patent No. (IV-1) 001692;**

(2) **respondent Catambay and her predecessor-in-interest actually occupied and cultivated the adjoining property adjacent to the subject property and not the subject property;** and

(3) **petitioners, through their predecessors-in-interest, have actually, publicly, openly, adversely and continuously possessed the subject property in the concept of an owner since the 1940's, cultivating the said property as a rice field.**

A. ***Factual Findings of the Various Courts and Administrative Bodies***

The Court takes cognizance of the various factual findings of several lower courts, including findings previously made by this Court, that petitioners were in actual possession of the

subject property for several decades and that respondents actually did not occupy the subject property.

1. *Factual Findings by the Court in the Forcible Entry Case (G.R. No. 125848)*

First, it must be recalled that in *Benavidez v. CA*, this Court ruled with respect to the forcible entry case filed by petitioner Narciso against respondents. The Court sustained the CA Special Twelfth Division's Decision, which in turn affirmed the MTC's Decision ordering the ejectment of respondent Edmundo from the subject property.

In the said case, the Court, in sustaining the CA Special Twelfth Division's Decision, upheld the MTC's finding that **Ariston is the rightful possessor of the subject property, as he had always been consistently possessing and cultivating the land as a rice field through his tenants.**[39] The Court also sustained the MTC's assessment that the prior judgment of the DARAB declaring Mendez as the agricultural tenant of the subject lot and ordering Benavidez to reinstate Mendez to the possession of the property was a persuasive proof of possession by petitioners through their agricultural tenant, Mendez.[40]

In fact, it must be stressed that the Court upheld the MTC's finding that an ocular inspection conducted on October 11, 1990 established that **the subject property, wherein a Petron gasoline station and some new structures were forcibly put up by respondent Edmundo, is one and the same lot being claimed by petitioner Narciso, and that said property is the same lot being managed by Mendez as the tenant of petitioners**.[41] During the ocular inspection, the MTC held that other tenants and farmers of adjoining and adjacent ricelands confirmed this factual finding. In fact, this factual finding led the MTC to issue a writ of preliminary injunction against respondents.[42]

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[39] See *supra* note 14.

[40] *Id*. at 620.

[41] *Id*. at 619.

[42] *Id*.

While it is true that the aforementioned factual findings sustained by the Court in G.R. No. 125848 are not by all means conclusive upon this Court in deciding the issue at hand, considering that in a forcible entry case, the only issue for adjudication is the physical or material possession over the real property and not ownership,[43] the Court deems such factual findings as having persuasive effect, **taken together with the other factual findings and the evidence on record**. To stress, the Court in G.R. No. 125848, in sustaining both the findings of the MTC and CA Special Twelfth Division, upheld the ejectment of respondent Edmundo from the subject property on the basis of the established fact that Ariston and his predecessors-in-interest have been in continuing possession over the subject property and cultivated such property as a rice land for several decades. At the very least, this factual finding convinces the Court that, contrary to the unsupported assertion of respondents, the Catambays were not in actual and continued possession of the subject property, which was an essential and indispensable requisite for the granting of the free patent in favor of Alejandro.

2. Factual Findings by the CA Former Third Division (CA-G.R. CV No. 55641)

Moreover, the Court notes that on November 8, 1996, the RTC initially issued a Resolution dismissing the instant case for lack of cause of action which was affirmed by the CA on March 31, 2000. However, after a more thorough review of the evidence on record, the CA Former Third Division issued an Amended Decision dated August 30, 2000 in CA-G.R. CV No. 55641.

In the said Amended Decision, the CA Former Third Division reversed the RTC's finding that there is a lack of cause of action and found cause to remand the case for further reception of evidence. **After its extensive review of the records of the case, it was found by the CA Former Third Divison that the subject property was held and occupied by petitioner**

[43] *De Luna v. Court of Appeals*, 287 Phil. 298, 302 (1992).

Narciso, through his predecessors-in-interest, publicly, adversely, and uninterruptedly, and in the concept of owner, for some 50 years:

This Lot 3302 was by A. Melendrez (sic), a native resident of Tanay, Rizal, held and occupied publicly, adversely, and uninterruptedly, and in concept of an owner, for a very long time (some 50 years), before his death on January 1, 1991.[44]

The CA Former Third Division also made the unequivocal finding that the free patent title covering the subject property that "was issued in favor of Alejandro Catambay, father to Alicia Catambay, is a **fraudulently issued title** because **Alejandro Catambay was never an actual occupant of that lot in his lifetime, nor had he laid any claim thereover during his lifetime**."[45]

The aforementioned Amended Decision became final and executory, with respondents failing to assail it.

Again, the abovementioned factual findings of the CA Former Third Division were arrived at after a thorough review of the evidence on record. This dovetails with what the Court now finds in the records which reveal that, indeed, the Catambays were never actual occupants of the subject property, and that petitioner Narciso, through his predecessors-in-interest, occupied the subject property publicly, adversely, uninterruptedly, and in the concept of owner, for several decades.

3. *Factual Findings by the DARAB (DARAB Case No. IV-Ri-369-91)*

In addition to the foregoing, it must likewise be recalled that petitioner Narciso and his tenant, Mendez, filed a complaint for illegal conversion against respondents Catambay and Sps. Benavidez before the DARAB. The case titled *Ariston Melendres, rep. by Narciso Melendres, Jr. and Felino Mendez v. Alicia Catambay, rep. by the Heirs of Alejandro Catambay and*

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[44] *Rollo*, p. 112.

[45] *Id*. at 114; emphasis and underscoring supplied.

Edmundo Benavidez, was docketed as DARAB Case No. IV-Ri-369-91.

In its Decision[46] dated March 4, 1992, the DARAB found respondents guilty of illegal conversion and ordered the payment of damages to him and Mendez. The DARAB Decision became final and executory and a writ of execution[47] dated September 3, 1992 was eventually issued against respondents.

In the said Decision, the DARAB's findings unequivocally state that the claim of petitioners that they were in constant possession of the subject property is adequately supported by the evidence on record:

> Anent the first and second issues, **the records are replete with evidence adequately establishing the claim of the Complainants that they were in possession of the landholding in question until they were ejected therefrom by the Respondents in 1989. Complainant Ariston Melendres by himself or thru his predecessor-in-interest Maria Paz Catolos, has been in continuous, uninterrupted, peaceful, open and public possession of the questioned property with an original area of 13,742 square meters in the concept of an owner as evidenced by Old Tax Declarations going far back as 1949**. When a cadastral survey was undertaken sometime in 1971, portions thereof were apparently erroneously included in the individual titles of the adjoining owners namely Alejandro Catambay, (respondent Alicia Catambay's predecessor-in-interest) and Mercedes Amonoy. x x x **[I]t cannot be denied that all these many years, the Complainant Melendres remained in material possession of the subject property as owner/legal possessor**.[48] (Emphasis and underscoring supplied)

Further, the DARAB likewise found that Mendez "was validly instituted as a tenant-lessee over the subject landholding by fellow **Complainant Melendres who is the legal possessor thereof** x x x."[49]

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[46] Records, pp. 396-406.

[47] *Id*. at 407.

[48] *Id*. at 401-402.

[49] *Id*. at 403; emphasis supplied.

In its Decision, the DARAB also ordered respondents to pay petitioners' tenant, Mendez, ₱61,875.00 as disturbance compensation. The records bear an Acknowledgment[50] dated November 5, 1992, wherein tenant Mendez certified that he had received an amount of ₱61,875.00 from respondents in compliance with the DARAB's Decision. This actually shows that respondents readily acknowledged and recognized the validity of the aforementioned DARAB's Decision. Hence, respondents cannot now be allowed to assail the findings of the DARAB after willingly accepting, recognizing, and expressing its acquiescence over the DARAB's Decision.

At this juncture, it must be stressed that the findings of fact of administrative bodies, such as the DARAB, will not be interfered with by the courts in the absence of grave abuse of discretion on the part of the former, or unless the aforementioned findings are not supported by substantial evidence.[51] **Findings of fact by administrative agencies are generally accorded great respect, if not finality, by the courts by reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction**.[52]

4. *Factual Findings by the OP (O.P. Case No. 95-1-6253)*

Aside from the factual findings of the Court in G.R. No. 125848, the CA Former Third Division in CA-G.R. CV No. 55641, and the DARAB in DARAB Case No. IV-Ri-369-91, it must be emphasized that the OP, in O.P. Case No. 95-1-6253, also arrived at a similar conclusion that petitioners, and not respondents, have actually, publicly, openly, adversely and continuously possessed the subject property in the concept of an owner since the 1940s, cultivating the said property as a rice field.

It must be recalled that on November 24, 1989, a petition for reinvestigation was filed by petitioner Narciso before the

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[50] *Id*. at 408. Erroneously labeled as "ACKOWLEDGEMENT."

[51] *Encinas v. Agustin, Jr., et al.,* 709 Phil. 236, 260 (2013).

[52] *Spouses Hipolito, Jr. v. Cinco,* 677 Phil. 331, 334 (2011).

CENRO, claiming that there was a serious error committed by the Cadastral Survey Team of the Bureau of Lands in the conduct of the cadastral survey of Cad-393 of the Tanay Cadastre and that the subject property has been in the open, continuous, notorious, and public possession of the Melendreses and their predecessors-in-interest for several decades.

In its Order[53] dated January 21, 1993, the DENR Regional Office No. IV denied the petition filed by petitioner Narciso. The said Order was sustained by the Office of the Secretary of the DENR in a Decision[54] dated June 27, 1995.

However, the matter was elevated to the OP which, in a Decision[55] dated June 30, 2003, reversed the decisions of the DENR Regional Office and the Office of the DENR Secretary, directing the DENR to institute reversion proceedings respecting Lot Nos. 3302 and 3304 so that the correct and appropriate free patents and corresponding titles be issued in favor of petitioner Narciso, respondent Catambay, and Mercedes Amonoy.

In the OP's Decision, it must be stressed that the OP, after exhaustively going through the available evidence, found that **the area actually being worked on and cultivated by respondent Catambay does not pertain to the subject property**. The OP found credence in the Investigation Report of the CENRO, DENR Region IV, which found that:

> [Respondent] Catambay is an owner of Lot No. 3302 with an area of (1,622) previously issued Free Patent No. 001692. **On the basis of her title she cause (sic) the relocation of the same, but to her surprise her title appears to be issued in the land owned by [petitioner Narciso], and not to one they were actually cultivating and occupying**;
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> x x x x x x x x x
>
> That in the course of the same investigation, **it was finally ascertained that the area being actually worked and cultivated**

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[53] Records, pp. 709-713.

[54] *Id*. at 714-719.

[55] *Id*. at 842-847.

by Miss Alicia Catambay through her overseer was included in the title of Mrs. Mercedes Amonoy for Lot No. 3304 is the reason why the area was enlarged unconscionably and this fact was supported by the findings during the relocation conducted within the premises of said two lots. The property of [respondent] Catambay is in between the land of [petitioner Narciso] and Mrs. Amonoy. The tenants of these three adjoining owners like Messers. Felino Mendez, Arturo J. Catambay and Melchor Samonte were of the same opinion that the land owned by [respondent] Catambay were (sic) exactly included in the title of Mrs. Mercedes Amonoy, and this was further attested to by several old reliable residents of the place, like the person of Mr. Bernardo Piguing, President of the Farmer's Cooperative, and Chairman of the BARC-Barangay Agrarian Reform Council and his two members, Mr. Florentino Bernal and Mr. Pedro Pendre, and many others within the locality.[56] (Emphasis and underscoring supplied)

Hence, after reviewing the careful and thorough investigation conducted by the DENR on the matter at hand, the OP held that respondent Catambay was actually surprised when she discovered that her title referred to the subject property, as it was not the land her family was actually cultivating and occupying. Thus, the OP held that "[w]ith such findings and admissions by the DENR lower officials themselves, **it cannot be said that x x x the evidence for [petitioner Narciso] was not convincing enough to support his contention that a mistake was committed by the Department's survey team in 1971**."[57]

The OP also found that **petitioner Narciso and his predecessors-in-interest were the ones "in actual possession" of the subject property and that petitioner Narciso "was still occupying and tilling the same area, x x x which was not actually possessed and occupied by both Catambay and Amonoy.**"[58]

Further, the OP held that **since the free patent issued in favor of Alejandro covered an area which was not actually**

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[56] *Id*. at 845-846.

[57] *Id*. at 846-847; emphasis supplied.

[58] *Id*. at 847; emphasis supplied.

possessed and occupied by him, the corresponding OCT is "void."[59]

To reiterate once more, findings of fact by administrative agencies are generally accorded great respect, if not finality, by the courts by reason of the special knowledge and expertise of said administrative agencies over matters falling under their jurisdiction.[60] The confluence of factual findings made by the courts and several administrative bodies supports petitioners' claim that they, through their predecessors-in-interest, have actually, publicly, openly, adversely and continuously possessed the subject property for more than 30 years prior to the issuance of Free Patent No. (IV-1) 001692 in favor of Alejandro in 1977, making the issuance of the said Free Patent null and void.

B. *The Evidence on Record*

As earlier intimated, that is not all. Aside from the aforementioned factual findings of the courts and the administrative bodies, the Court finds, upon its own exhaustive review of the records of the instant case, that the pieces of evidence presented by petitioners, if weighed against the evidence presented by respondents, more convincingly show that the subject property was not at all possessed by respondents' predecessor-in-interest, *i.e.*, Alejandro, and that the subject property was occupied, possessed, and cultivated by petitioners, through their predecessors-in-interest, as a rice field for several decades.

1. *Tax Declarations in the name of Petitioners' Predecessors-In-Interest*

First, the evidence on record bear that Tax Declarations in the name of the Melendreses covering the subject property were issued spanning several decades, with the earliest Tax Declaration being issued in favor of petitioner Narciso's grandmother, Maria Paz Catolos, in the 1940s.[61]

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[59] *Id*.; emphasis supplied.

[60] *Spouses Hipolito v. Cinco, et al., supra* note 50.

[61] Tax Declaration Nos. 01-2843, 01-0870, 5768, 3445, 4265, 597 and Declaration of Real Property Tax No. 2475, 28856; see Records, pp. 357-365.

While tax declarations are not *per se* conclusive evidence of ownership, they cannot simply be ignored especially where, as here, since the 1940s, Tax Declarations had already been registered in the name of petitioners' predecessors-in-interest.[62] While it is true that tax receipts and tax declarations are not incontrovertible evidence of ownership, **they constitute credible proof of a claim of title over the property**. Coupled with actual possession of the property, **tax declarations become strong evidence of ownership.**[63]

The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. **Such an act strengthens one's *bona fide* claim of acquisition of ownership.**[64]

Hence, the constant filing by the Melendreses of tax declarations covering the subject property spanning several decades, taken together with the other pieces of evidence, shows that petitioners' claim of title over the subject property is consistent, providing sufficient basis in proving their possession over the said property.

To the contrary, the earliest tax declarations produced by respondent Catambay covering the subject property are Tax Declaration No. 01-2717[65] registered on April 30, 1985 in the name of Alejandro and Tax Declaration No. 01-3460[66] registered on September 29, 1988 in the name of respondent Catambay.

Aside from the fact that such tax declarations were registered only several years AFTER the application and granting of

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[62] *Id*.

[63] See *Ranola v. CA*, 379 Phil. 1, 11 (2000).

[64] *Heirs of Santiago v. Heirs of Santiago*, *supra* note 36 at 248.

[65] Records, p. 373.

[66] *Id.* at 372.

Alejandro's free patent over the subject property, very telling is the fact that upon close examination of such tax declarations, they are traceable from previous tax declarations in the name of their predecessor-in-interest, Susana Catolos de Medenacelli.

It must be emphasized that under Tax Declaration Nos. 01-1555, 01-0876, 604, 4194, and 3440,[67] all in the name of Susana Catolos de Medenacelli, who is the predecessor-in-interest of the Catambays, the property indicated in the said tax declarations refer to the 1,353-square-meter property adjacent to the subject property, and *NOT* the subject property. This lends support to the persistent claim of petitioners that the property actually owned and possessed by the Catambays refer to the 1,353-square-meter property and not the subject property, which was consistently covered by tax declarations in the name of petitioners' predecessors-in-interest.

2. *The Sworn Testimony of Arturo Catambay, respondent Catambay's First Cousin*

To provide further credence to petitioners' assertion that the property actually occupied and owned by respondent Catambay is not the subject property, but another property adjacent to it, the Court takes notice of the testimony of respondent Catambay's first cousin, Arturo Catambay (Arturo).

In his *Malayang Salaysay*[68] dated July 11, 1989, Arturo unequivocally declared under oath that he is the caretaker of the land owned by the deceased Alejandro. He further declared that **the land actually owned and possessed by Alejandro is NOT the subject property, but a piece of land that is adjacent to the subject property which is owned by Ariston**. He likewise declared under oath that **the subject property was being continuously occupied by the tenants of petitioners**.

A review of the pleadings submitted by respondents reveals that this testimony was never rebutted by them. The Court finds

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[67] *Id*. at 374-378.

[68] *Id*. at 410.

this evidence persuasive as it comes from a relative of respondents who was the one who actually occupied and maintained the lands owned by respondents' predecessor-in-interest, Alejandro. As caretaker, Arturo had first-hand knowledge as to the state and condition of the lands involved in the instant case.

3. *The Sworn Testimonies of Petitioner Narciso and Mendez*

The evidence on record also reveals that petitioner Narciso unequivocally testified under oath, which was never contradicted by respondents, that, as administrator of his father, Ariston, the subject property was already being cultivated by his family as a rice field for several decades prior to the free patent application of Alejandro, and that he supervised the cultivation and harvesting of palay gathered from the subject property by their farmer tenants.[69]

Petitioner Narciso also testified that the subject property was devoted to the planting of palay until November 1989 when respondent Edmundo forcibly entered the subject property and filled up the area with materials, eventually putting up a gasoline station.[70] Petitioner Narciso was even able to present an Extrajudicial Partition of Real Estate dated February 18, 1991 covering the subject property, which was executed upon the death of his father, Ariston.[71] Without doubt, this shows that petitioner Narciso and his family have always and consistently viewed and treated the subject property as their own.

Petitioner Narciso's above testimony that the subject property has always been used by petitioners' family as a rice field was corroborated by the family's tenant, Mendez, who testified in his *Malayang Salaysay*[72] dated January 13, 1990, that he had been the caretaker and tenant of the subject property. He also testified under oath that the land being farmed by respondents

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[69] *See* TSN dated July 21, 1993, pp. 15-16.

[70] *Id*.

[71] Records, pp. 438-441.

[72] *Id*. at 411.

is the property adjoining the subject property and not the subject property, which was being managed by him as tenant.[73]

To provide further proof that the subject property was under the control of petitioners' family and that such property was being utilized as a rice field, with Mendez as the assigned tenant, petitioner Narciso was even able to produce photographic evidence showing the rice fields located in the subject property.[74]

The Court notes that respondents again failed to disprove and repudiate the testimonies provided by petitioner Narciso and his witnesses that, for several decades prior to the free patent application of Alejandro, the subject property was utilized by the Melendreses as a rice field, which was overseen by Mendez as their tenant, until 1989 when respondent Edmundo forcibly entered the property.

The Court takes notice that, aside from the questioned Free Patent No. (IV-1) 001692, OCT No. M-2177, and the subsequent certificates of title that are traceable from OCT No. M-2177, the only evidence provided by respondents in substantiating their claim that Alejandro had been in open, continuous, exclusive, actual, and notorious possession, occupation, and cultivation of the subject property are the self-serving testimonies of respondents Catambay and Lorenza.

Therefore, taking all the available evidence on record, and recognizing the persuasive effect of factual findings made by different administrative agencies and courts, the Court finds and so holds that (a) respondent Catambay and her predecessor-in-interest did not actually occupy the subject property, (b) that respondent Catambay and her predecessor-in-interest actually occupied and cultivated the adjoining property adjacent to the subject property and not the subject property, and (c) that petitioners, through their predecessors-in-interest, have actually, publicly, openly, adversely and continuously possessed the subject property in the concept of an owner since the 1940s, cultivating the said property as a rice field.

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[73] *Id*.

[74] *Id*. at 389.

The open, exclusive and undisputed possession of alienable public land for the period prescribed by law creates the legal fiction whereby the land, upon completion of the requisite period, *ipso jure* and without the need of judicial or other sanction, ceases to be public land and becomes private property.[75]

In connection with the foregoing doctrine, the Public Land Act states that those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive, and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition or ownership, for at least 30 years immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure* shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title.[76]

In *Heirs of Celso Amarante v. Court of Appeals*,[77] the Court similarly ruled that the open, exclusive and undisputed possession of public land for more than 30 years by a person who occupied the land by planting various coconut, mango, and bamboo trees, wherein the grandchildren of the planter likewise continued occupying the said property for several years, created the legal fiction whereby the said land, upon completion of the requisite period of possession, *ipso jure* became private property:

> We should consider next the character of the rights held by petitioners in respect of Lot 1236. The testimony of Celso Amarante showed that in 1974, the coconut trees planted by petitioners and their predecessors-in-interest were already approximately seventy (70) years of age. The mango trees had trunks with circumferences of about three (3) arm lengths; indicating once more that those trees were very old. x x x

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[75] *The Director of Lands v. IAC, et al.*, 230 Phil. 590, 599-600 (1986).

[76] Public Land Act, Sec. 48(b).

[77] 264 Phil. 174 (1990).

More importantly, there is Section 48(b) of Commonwealth Act No. 141, as amended by Republic Act No. 1942, otherwise known as the Public Land Act, which provides as follows:

> Section 48. The following described citizens of the Philippines occupying lands of the public domain or claiming to own any such land or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
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> x x x x x x x x x
>
> (b) Those who by themselves or through their predecessors in interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a bona fide claim of acquisition of ownership, for at least thirty years immediately preceding the filing of the application for confirmation of the title except when prevented by war or force majeure. These shall be conclusively presumed to have performed all the conditions essential to a Government grant, and shall be entitled to a certificate of title under the provisions of this Chapter.[77a]

There is no question that petitioners, at the time they had been forcibly driven off the Sitio Campulay parcel of land, had through their possession and that of their predecessors-in-interest complied with the requirements of long continued (at least 30 years), *bonafide*, open, exclusive and notorious possession and occupation of Lot 1236 which was of course, originally agricultural land of the public domain.[78]

The Court notes that the circumstances and issues surrounding the instant case find much resemblance to the previously decided case of *Heirs of Santiago v. Heirs of Santiago*,[79] wherein the Court similarly held that since the petitioners therein were able to prove their open, continuous, exclusive, and notorious

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[77a] Subsequently amended by Section 4, Presidential Decree No. 1073, January 25, 1977. See *Sps. Fortuna v. Republic*, 728 Phil. 373 (2014).

[78] *Supra* note 77, at 187-188.

[79] *Supra* note 36.

possession and occupation of the land for several decades, such land was deemed to have already been acquired by the petitioners therein by operation law, thus segregating such land from the public domain. This led the Court to invalidate the free patent covering such land, as well as the certificate of title issued by virtue of such void free patent:

> The settled rule is that a free patent issued over a private land is null and void, and produces no legal effects whatsoever. **Private ownership of land — as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants — is not affected by the issuance of a free patent over the same land, because the Public Land law applies only to lands of the public domain.** The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character and have passed to private ownership. Consequently, a certificate of title issued pursuant to a homestead patent partakes of the nature of a certificate issued in a judicial proceeding only if the land covered by it is really a part of the disposable land of the public domain.
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> In the instant case, **it was established that Lot 2344 is a private property of the Santiago clan since time immemorial, and that they have declared the same for taxation**. Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership.
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> **Considering the open, continuous, exclusive and notorious possession and occupation of the land by respondents and their predecessors-in-interests, they are deemed to have acquired, by operation of law, a right to a government grant without the necessity of a certificate of title being issued. The land was thus**

segregated from the public domain and the director of lands had no authority to issue a patent. Hence, the free patent covering Lot 2344, a private land, and the certificate of title issued pursuant thereto, are void.

Similarly in *Magistrado v. Esplana*, the applicant for a free patent declared that the lots subject of the application formed part of the public domain for the sole purpose of obtaining title thereto as cheaply as possible. We annulled the titles granted to the applicant after finding that the lots were privately owned and continuously possessed by the applicant and his predecessors-in-interest since time immemorial. Likewise, in *Robles v. Court of Appeals*, the free patent issued to the applicant was declared void because the lot involved was shown to be private land which petitioner inherited from his grandparents.

Respondents' claim of ownership over Lot 2344-C and Lot 2344-A is fully substantiated. Their open, continuous, exclusive, and notorious possession of Lot 2344-C in the concept of owners for more than seventy years supports their contention that the lot was inherited by Mariano from her grandmother Marta, who in turn inherited the lot from her parents. This fact was also corroborated by respondents' witnesses who declared that the house where Marta and Mariano's family resided was already existing in the disputed portion of Lot 2344 even when they were still children. It is worthy to note that although Lot 2344-C was within the property declared for taxation by the late Simplicio Santiago, he did not disturb the possession of Marta and Mariano. Moreover, while the heirs of Simplicio tried to make it appear that Mariano built his house only in 1983, Nestor Santiago admitted on cross-examination that Mariano Santiago's house was already existing in the disputed lot since he attained the age of reason. The fact that Mariano did not declare Lot 2344-C for taxation does not militate against his title. As he explained, he was advised by the Municipal Assessor that his 57 square meter lot was tax exempt and that it was too small to be declared for taxation, hence, he just gave his share in the taxes to his uncle, Simplicio, in whose name the entire Lot 2344 was declared for taxation.[80]

Hence, since the evidence on record, including the factual findings of the various courts and administrative bodies, indubitably establish that petitioners, through their predecessors-

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[80] *Id*. at 248-250. Emphasis and underscoring supplied.

in-interest, have actually, publicly, openly, adversely and continuously possessed the subject property in the concept of an owner, cultivating the subject property as a rice field, for more than 30 years, the subject property became the private property of petitioners *ipso jure* by virtue of law.

The Court notes that, in issuing its assailed Decision, the CA did not reverse, invalidate, or refute whatsoever the various factual findings made by the courts and administrative bodies on the validity of petitioners' claims. The CA's sole reason in denying the appeal filed by petitioners was its belief that the proper remedy of petitioners is an action for reversion that may only be filed by the Republic of the Philippines, through the Solicitor General, and not by any private party.[81] The CA's solitary basis in dismissing petitioners' appeal is erroneous.

An action for reversion involves property that is alleged to be of State ownership, aimed to be reverted to the public domain.[82] As held by the Court in *Heirs of Santiago v. Heirs of Santiago*,[83] there is no merit to the contention that only the State may bring an action for reconveyance with respect to property proven to be private property by virtue of open, continuous, exclusive and notorious possession. The nullification of the free patent and title would not therefore result in its reversion to the public domain. Hence, the State, represented by the Solicitor General, is not the real party-in-interest; inasmuch as there was no reversion of the disputed property to the public domain, the State is not the proper party to bring a suit for reconveyance.

In the instant case, by virtue of the actual, public, open, adverse, and continuous possession of the subject property by petitioners in the concept of an owner since 1940s, the subject property ceased to be a land of the public domain and became private property.

Hence, in line with established jurisprudence, **if the land in question is proven to be of private ownership** and, therefore,

[81] *Rollo*, p. 104.

[82] See *Heirs of Kionisala v. Heirs of Dacut*, 428 Phil. 249, 260 (2002).

[83] *Supra* note 36.

beyond the jurisdiction of the then Director of Lands (now Land Management Bureau), **the free patent and subsequent title issued pursuant thereto are null and void**. The indefeasibility and imprescriptibility of the Torrens title issued pursuant to such null and void patent do not prevent the nullification of the title. **If it was private land, the patent and certificate of title issued upon the patent are a nullity.**[84]

Therefore, the Court finds Free Patent No. (IV-1) 001692 issued in favor of Alejandro Catambay null and void. Necessarily, OCT No. M-2177 which was issued in accordance with Free Patent No. (IV-1) 001692 is deemed invalidly issued.

III. The Validity of the Contract of Sale Entered Between Respondent Catambay and Respondents Sps. Benavidez

In light of the nullity of Free Patent No. (IV-1) 001692 and OCT No. M-2177, the Court now proceeds to rule on whether or not respondents Sps. Benavidez's claim of title over the subject property should be upheld.

It must be recalled that respondents Sps. Benavidez' title over the subject property is sourced from a contract of sale entered with respondent Catambay, as evidenced by the Deed of Absolute Sale dated February 5, 1990.[85] By virtue of this contract of sale, TCT No. M-39517[86] was issued in the name of respondents Sps. Benavidez.

Despite the fact that the title of respondents Sps. Benavidez is traced from the defective title of respondent Catambay, the Court takes notice of the rule that the purchaser of a piece of property is not required to explore further than what the Certificate indicates on its face.[87]

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[84] *Agne, et al. v. The Director of Lands, et al.*, *supra* note 34.

[85] *Rollo*, pp. 201-202.

[86] *Id*. at 198.

[87] *Abad v. Guimba*, 503 Phil. 321-330 (2005).

This rule, however, applies only to **innocent purchasers for value and in good faith**; it excludes a purchaser who has knowledge of a defect in the title of the vendor, or of facts sufficient to induce a reasonable prudent man to inquire into the status of the property.[88] Time and time again, this Court has stressed that registration does not vest, but merely serves as evidence of, title. Our land registration laws do not give the holders any better title than that which they actually have prior to registration. Mere registration is not enough to acquire a new title. Good faith must concur.[89]

One cannot rely upon the indefeasibility of a TCT in view of the doctrine that the defense of indefeasibility of a Torrens title does not extend to transferees who take the certificate of title in bad faith.[90]

In a long line of cases, the Court has defined a purchaser in good faith or innocent purchaser for value as one who buys property and pays a full and fair price for it at the time of the purchase or before any notice of some other person's claim on or interest in it.[91] It has been held that **the burden of proving the status of a purchaser in good faith lies upon him who asserts that status and it is not sufficient to invoke the ordinary presumption of good faith, that is, that everyone is presumed to have acted in good faith.**[92]

To stress, the *onus probandi* is borne by respondents Sps. Benavidez to prove that they are innocent purchasers in good faith and for value. Upon exhaustive review of the records of the instant case, the Court is very much convinced that respondents Sps. Benavidez failed to satisfy this burden.

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[88] *Id*.

[89] See *Sps. Portic v. Cristobal*, 496 Phil. 456, 466 (2005).

[90] See *Baricuatro, Jr. v. Court of Appeals*, 382 Phil. 15, 33-34 (2000).

[91] *Sps. Tanglao v. Sps. Parungao*, 561 Phil. 254, 262 (2002), citing *Tanongon v. Samson*, 431 Phil. 32, 45 (2004).

[92] *Aguirre v. Court of Appeals*, 466 Phil. 32, 45 (2004).

While respondent Lorenza provided testimony that they committed acts verifying whether the title was clean, such as conducting an ocular inspection,[93] aside from this testimony being self-serving and uncorroborated, the evidence on record clearly show that respondents Sps. Benavidez had actual and not merely constructive knowledge that there were other persons claiming interest over the subject property.

The records[94] show that respondent Edmundo was represented by counsel, *i.e*, Atty. Pangalangan, in the petition for reinvestigation filed by petitioner Narciso before the CENRO, wherein petitioner Narciso made known his claim that he and his predecessors-in-interest are the lawful owners and possessors of the subject property.

In fact, on December 12, 1989, the CENRO issued an Order[95] addressed to respondents, including respondent Edmundo, to observe and maintain the status quo on the subject property until such time that the case is finally resolved by the said office. The said Order itself specifically indicates that respondent Edmundo was furnished a copy of the Order.

Further, a formal demand letter[96] dated November 29, 1989 was sent by petitioner Narciso, through counsel, specifically addressed to respondent Edmundo, apprising the latter as to the claim of ownership and possession of the Melendreses over the subject property.

Significantly, during the trial, respondent Catambay herself testified categorically that respondents Sps. Benavidez had knowledge of the claims of petitioner Narciso over the subject property **prior to the sale entered into with her**:

> Q. In other words categorically they have knowledge of the complaints of Narciso Melendres even before they purchased this subject parcel of land?

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[93] *Rollo*, pp. 533-537.

[94] TSN dated June 16, 2005, pp. 13-15.

[95] Records, p. 409.

[96] *Id*. at 388.

A. **Yes, they did**.[97]

In fact, it bears stressing that even the RTC itself, in its Decision dated September 14, 2007, found that "defendants Alicia Catambay and defendants-spouses Benavidez had knowledge of the conflicts over the subject property during their sale transaction, x x x."[98]

A person who deliberately ignores a significant fact which would create suspicion in an otherwise reasonable man is not an innocent purchaser for value. A purchaser cannot close his eyes to facts which should put a reasonable man upon his guard, and then claim that he acted in good faith under the belief that there was no defect in the title of the vendor.[99]

All told, there is absolutely no doubt in the mind of the Court that respondents Sps. Benavidez were not innocent purchasers of the subject property.

It should be clarified, however, that notwithstanding the Court's declaration that the subject property is private property belonging to petitioners and that Free Patent No. (IV-1) 001692, as well as all the certificates of title originating therefrom, are null and void, the title of petitioners over the subject property is still imperfect; the issuance of a certificate of title in favor of petitioners is still subject to the rules on confirmation of title under Section 48 (b) of the Public Land Act. Nevertheless, as similarly held in *Heirs of Santiago v. Heirs of Santiago*,[100] this imperfect title of the petitioners is enough to defeat the free patent and certificate of title issued over the subject property in favor of respondents and their predecessors-in-interest. As petitioners are deemed the lawful owners of the subject property

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[97] TSN dated January 27, 2005, at p. 15; emphasis and underscoring supplied.

[98] *Rollo*, p. 84.

[99] *Development Bank of the Philippines v. Court of Appeals, et al.,* 387 Phil. 283, 303 (2000).

[100] *Supra* note 37.

ipso jure by virtue of their open, continuous, exclusive, and notorious possession and occupation of the subject property, they have the exclusive right to apply for the issuance of a certificate of title through judicial confirmation of an imperfect title under Section 48 of the Public Land Act.

WHEREFORE, premises considered, the instant appeal is hereby **GRANTED**. The Decision dated May 27, 2011 and Resolution dated August 3, 2011 issued by the Court of Appeals, Special Second Division and Former Special Second Division, respectively, in CA-G.R. CV No. 93082 are **REVERSED and SET ASIDE**. Judgment is hereby rendered:

1. Declaring **NULL and VOID** the Deed of Absolute Sale dated February 5, 1990 executed between respondent Alicia Catambay and respondents Spouses Edmundo and Lorenza Benavidez in so far as the subject property is concerned; and

2. Ordering the Register of Deeds of Rizal, Morong Branch to **CANCEL** any and all certificates of title traced from Original Certificate of Title No. M-2177.

SO ORDERED.

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

Perlas-Bernabe, J., on wellness leave.

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

THIRD DIVISION

[G.R. No. 210528. November 28, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **J.P. MORGAN CHASE BANK, N.A. – PHILIPPINE CUSTOMER CARE CENTER,** *respondent.*

SYLLABUS

1. REMEDIAL LAW APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES OF COURT; PROPER REMEDY WHEN THE ISSUES RAISED INVOLVE PURELY QUESTIONS OF LAW; THERE IS A QUESTION OF LAW WHEN THERE IS DOUBT OR CONTROVERSY AS TO WHAT THE LAW IS ON A CERTAIN SET OF FACTS; CASE AT BAR.— The Commissioner of Internal Revenue invoked the correct remedy. Rule 45 applies to issues raised before this Court that involve purely questions of law. In *Villamor, Jr. v. Umale*, this Court held: There is a question of law "when there is doubt or controversy as to what the law is on a certain [set] of facts." The test is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence." Meanwhile, there is a question of fact when there is "doubt . . . as to the truth or falsehood of facts." The question must involve the examination of probative value of the evidence presented. To resolve the issue on the taxability of the transaction between respondent and PeopleSupport, this Court is required to interpret Task Order #2 to the Agreement. Petitioner asserts that the Agreement between respondent and PeopleSupport merely involved a lease of information technology infrastructure, which is not covered by PeopleSupport's PEZA registration. This issue is a question of law. It does not require us to examine the probative value of the evidence presented. The Petition essentially requires this Court to determine the scope of the Agreement and the scope of activities covered by the fiscal incentives granted to PeopleSupport.

2. TAXATION; REPUBLIC ACT NO. 7916 (SPECIAL ECONOMIC ZONE ACT OF 1995, AS AMENDED);

IMPLEMENTING RULES AND REGULATIONS; RULE XIII, SECTION 5 THEREOF; PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA)-GRANTED INCENTIVES SHALL APPLY ONLY TO REGISTERED OPERATIONS OF THE ECOZONE ENTERPRISE AND ONLY DURING ITS REGISTRATION WITH PEZA; CASE AT BAR.— Rule XIII, Section 5 of the Implementing Rules and Regulations of Republic Act No. 7916 specifies that PEZA-granted incentives shall apply only to registered operations of the Ecozone Enterprise and only during its registration with PEZA. In other words, tax incentives to which an Ecozone Enterprise is entitled do not necessarily include all kinds of income received during the period of entitlement. Only income actually gained or received by the Ecozone Enterprise related to the conduct of its registered business activity are covered by fiscal incentives. x x x Following the rulings and the PEZA Memorandum Circular, it is clear that the registration of an activity with PEZA is an essential requirement to enjoy tax incentives under the law, and only income arising from or directly related to the conduct of the Ecozone Enterprises' registered activities are covered by tax incentives under the Philippine Economic Zone Act of 1995. Hence, to qualify for the income tax holiday incentive, respondent must satisfactorily show that its transaction with PeopleSupport is a registered activity or embraced within the latter's registered activities with the PEZA.

3. **ID.; ID.; ID.; ID.; TAX INCENTIVES PARTAKE OF THE NATURE OF TAX EXEMPTION WHICH MUST BE STRICTLY CONSTRUED AGAINST THE TAXPAYER; CASE AT BAR.—** As Court of Tax Appeals Presiding Justice Del Rosario pointed out in his Dissenting Opinion: While Certification No. 2007-067 dated June 27, 2013 states that [PeopleSupport] has a site in 6780 Ayala, there is nothing therein that shows that the leasing activity conducted by [People Support] in the 6780 Ayala site is registered with PEZA and entitled to incentives. In my mind, respondent has the burden of proving by preponderant evidence that [People Support] is registered with PEZA as a facility-provider and that [PeopleSupport]'s income from the lease of its physical plant space, infrastructure[,] and other transmission facilities to respondent is entitled to the ITH incentive. Considering that respondent failed to establish that [PeopleSupport] is registered with PEZA as a facility-

> provider and that [PeopleSupport]'s income from the lease of physical plant space, infrastructure[,] and other transmission facilities to respondent is entitled to ITH incentive, it is my humble view that the income received by PPI from respondent is subject to regular corporate income tax imposed under Section 27(A) of the 1997 [National Internal Revenue Code], as amended. Tax incentives partake of the nature of tax exemptions. They are a privilege to which the rule that tax exemptions must be strictly construed against the taxpayer apply. One who seeks an exemption must justify it by words "too plain to be mistaken and too categorical to be misinterpreted."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

LEONEN, *J.*:

Respondent's lease of the physical plant space, infrastructure, and other transmission facilities of PeopleSupport (Philippines), Inc., a Philippine Economic Zone Authority (PEZA)-registered Export Enterprise, is not covered within its registered activities. Thus, income derived from it is subject to the regular corporate income tax.

This Petition for Review on Certiorari[1] seeks to reverse and set aside the Court of Tax Appeals En Banc Decision[2] dated

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[1] *Rollo,* pp. 36-55.

[2] *Id*. at 56-70. The Decision was penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas of the Court of Tax Appeals *En Banc*, Quezon City. It was dissented by Presiding Justice Roman G. Del Rosario (pp. 71-76). Associate Justice Ma. Belen M. Ringpis-Liban inhibited.

July 15, 2013 and Resolution[3] dated December 18, 2013 in CTA EB No. 876. The Court of Tax Appeals En Banc denied the Commissioner of Internal Revenue's appeal and affirmed the December 21, 2011[4] and February 17, 2012[5] Resolutions of the Court of Tax Appeals Second Division, which ruled that the income from the lease of PeopleSupport (Philippines) Inc.'s transmission facilities is exempt from withholding tax, and granted J.P. Morgan Chase Bank N.A.–Philippine Customer Care Center's claim for refund.[6]

JP Morgan Chase Bank, N.A. – Philippine Customer Care Center (J.P. Morgan–Philippines) is the Philippine branch of American corporation J.P. Morgan Chase Bank, N.A. It is registered with the Securities and Exchange Commission to engage in call center and business process services, information technology, information technology–enabled services, and customer care services.[7]

On May 1, 2007,[8] J.P. Morgan–Philippines entered into Task Order #2 to the Master Service Provider Agreement (Agreement) with PeopleSupport (Philippines), Inc. (PeopleSupport), a

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[3] *Id*. at 77-79. The Resolution was penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas of the Court of Tax Appeals *En Banc*, Quezon City. It was dissented by Presiding Justice Roman G. Del Rosario. Associate Justice Ma. Belen M. Ringpis-Liban inhibited.

[4] *Id*. at 96-102. The Resolution, in the case docketed as CTA Case No. 7962, was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla of the Second Division of the Court of Tax Appeals, Quezon City.

[5] *Id*. at 110-113. The Resolution, in the case docketed as CTA Case No. 7962, was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla of the Second Division of the Court of Tax Appeals, Quezon City.

[6] *Id*. at 101-102.

[7] *Id*. at 57.

[8] *Id*. at 139, Comment.

Philippine Economic Zone Authority (PEZA)-registered Economic Zone IT (Export) Enterprise, which enjoys an income tax holiday period from May to July 2007. Under the Agreement, PeopleSupport would provide and lease transmission facilities to J.P. Morgan-Philippines for a fee.[9]

The Agreement stated:

III. DESCRIPTION AND SCOPE OF SERVICES

Supplier shall provide the following services to [JP Morgan]:

A. Scope of Services.

Supplier will provide physical plant space in its facility located at 6780 Ayala Avenue, Makati City 1227 Philippines (the "Facility") that will allow JPMC personnel to perform certain services for the benefit of JPMC. Supplier will provide all voice and data infrastructure needed for JPMC personnel to perform their intended function(s). Supplier will further provide all workstation infrastructure (as further detailed below) that is compatible with JPMC specifications to support JPMC work types to be performed at Supplier's location. Supplier will provide workstation voice and data bandwidth as set forth below. Supplier will also provide all infrastructure necessary to conduct telephone call recording, workstation screen data capture, and data storage per the requirements of JPMC. Additionally, Supplier will provide the platform and support for inbound telemarketing activities that will be performed by JPMC employees located in the Facility. This platform and support will be consistent with all service requirements as set forth in Task Order #1 currently executed between PeopleSupport, Inc. and JPMorgan Chase Bank, National Association.

. . . . . .

V[.] SUPPLIER/JPMC INTERACTION

Supplier and JPMC agree to the following:

- Supplier will assign an account manager mutually agreeable to JPMC and Supplier.
- The account manager must be proactive, responsive[,] and solution oriented.

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[9] *Id*. at 57.

- The account manager should have expertise in, or direct linkage to, Supplier's facilities, security and information technology.
- The account manager must have the ability to effectively manage or address the Services to ensure optimum results for JPMC.
- The account manager will be responsible for facilitating communication between JPMC and Supplier.
- Supplier will notify JPMC of any staff reassignments involving the account manager or other designated [k]ey personnel.
- JPMC will provide a point of contact(s) ("POC") that will serve as a liaison between the Supplier and JPMC.
- JPMC will provide POC(s) during Supplier's hours of operations.
- JPMC POC(s) will provide feedback or updates regarding escalations or concerns made by the Supplier."[10] (Emphasis in the original)

From May to July 2007, J.P. Morgan-Philippines paid PeopleSupport ₱56,913,080.40, and withheld tax amounting to ₱2,845,654.02.[11]

On August 10, 2007, J.P. Morgan-Philippines filed its Monthly Remittance Return of Creditable Income Taxes Withheld for July and paid ₱3,705,125.61, including the ₱2,845,654.02 withheld tax from PeopleSupport.[12]

On August 16, 2007, however, J.P. Morgan–Philippines reimbursed PeopleSupport the amount of ₱2,845,654.02 after having realized that it had erroneously withheld taxes on its payments to PeopleSupport, as the latter enjoys the income tax holiday. PeopleSupport acknowledged the reimbursement in

[10] *Id*. at 19-20.

[11] *Id*. at 57.

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

its August 16, 2007 Official Receipt No. 1660 and July 23, 2008 letter.[13]

On August 7, 2008, J.P. Morgan–Philippines filed before the Bureau of Internal Revenue District Office No. 50 (South Makati) an application for refund of ₱2,845,654.02.[14] However, due to the latter's inaction, it later filed on August 10, 2009 a Petition for Review before the Court of Tax Appeals.[15]

The Commissioner of Internal Revenue filed an Answer on September 9, 2009, arguing that J.P. Morgan–Philippines failed to show that the tax was erroneously or illegally collected.[16] Assuming it was, she added that J.P. Morgan–Philippines was not the proper party to ask for refund as it was merely a withholding agent. She further argued that the claim for refund, if allowed, should be in the name and with the express authority of PeopleSupport.[17]

In its September 23, 2011 Decision,[18] the Court of Tax Appeals Second Division denied J.P. Morgan–Philippines' claim for refund. It found that while J.P. Morgan–Philippines was the proper party to file the claim for refund,[19] the lease of transmission facilities was outside PeopleSupport's registered activities with PEZA.[20] It ruled that the income from the lease was subject to the regular income tax, and thus, the tax was correctly withheld.[21]

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[13] *Id*. at 58.

[14] *Id*.

[15] *Id.*

[16] *Id*. at 82-83, Court of Tax Appeals September 23, 2011 Decision.

[17] *Id*. at 58.

[18] *Id*. at 80-95. The Decision, docketed as CTA Case No. 7962, was penned by Associate Justice Caesar A. Casanova and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Cielito N. Mindaro-Grulla of the Second Division of the Court of Tax Appeals, Quezon City.

[19] *Id*. at 87.

[20] *Id*. at 93.

[21] *Id*. at 94.

On J.P. Morgan–Philippines' Motion for Reconsideration, the Court of Tax Appeals Second Division reversed itself in its December 21, 2011 Resolution,[22] and granted the claim for refund. It ruled that under the Agreement, PeopleSupport would supply the whole package of infrastructure and information technology support services to J.P. Morgan–Philippines, which includes the lease of its transmission facilities. Consequently, the lease of transmission facilities was an activity related to PeopleSupport's registered activities; hence, the rental income from this lease was exempt from withholding tax.[23]

The Commissioner of Internal Revenue filed a Motion for Reconsideration, but it was denied in the Court of Tax Appeals Second Division Resolution[24] dated February 17, 2012.

The Commissioner of Internal Revenue filed an Appeal before the appealed to the Court of Tax Appeals En Banc, but it was denied. In its July 15, 2013 Decision,[25] the Court of Tax Appeals En Banc ruled that the scope of PeopleSupport's services under the Agreement was within its registered activities with PEZA, i.e. the establishment of a contact center to provide outsourced customer care and business process outsourcing services. It also held that providing support services for maintenance and repair of the facility was part of PeopleSupport's obligation to J.P. Morgan-Philippines.[26]

The Commissioner of Internal Revenue filed a Motion for Reconsideration, but it was likewise denied in the Court of Tax Appeals En Banc Resolution[27] dated December 18, 2013.

Hence, this Petition was filed.

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[22] *Id*. at 96-102.

[23] *Id.* at 101-102.

[24] *Id*. at 110-113.

[25] *Id*. at 56-70.

[26] *Id*. at 67.

[27] *Id*. at 77-79.

To comply with this Court's April 21, 2014 Resolution,[28] J.P. Morgan–Philippines filed its Comment,[29] to which the Commissioner of Internal Revenue filed a Reply.[30]

The issues for this Court's resolution are:

First, whether or not the Petition for Review on Certiorari raises a factual question; and

Second, whether or not J.P. Morgan–Philippines' lease of physical plant space, infrastructure, and other transmission facilities is related to the PEZA–registered activities of PeopleSupport, and is thus, exempt from withholding taxes.

Petitioner states that PeopleSupport is registered with PEZA to provide outsourced customer care and business process outsourcing services.[31] It is granted an income tax holiday and other fiscal incentives, which apply only to income derived from its registered activities under the Implementing Rules and Regulations of Republic Act No. 7916, or the Special Economic Zone Act of 1995.[32]

The Agreement, petitioner argues, was essentially a lease of physical plant space, infrastructure, and other transmission facilities of PeopleSupport for the use of respondent's personnel.[33] She submits that this activity is not necessarily related to PeopleSupport's PEZA–registered operations, but an entirely different activity that should be covered by a separate registration.[34] Thus, PeopleSupport's income from the lease is subject to regular income tax.[35]

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[28] *Id.* at 128.

[29] *Id*. at 138–153.

[30] *Id.* at 171–186.

[31] *Id*. at 42.

[32] *Id.* at 44.

[33] *Id*. at 45–46.

[34] *Id.* at 47.

[35] *Id.* at 49.

Respondent counters that the Petition should be dismissed for failure to raise questions of law.[36]

Respondent points out that the terms "outsourced customer care services"[37] and "business process outsourcing services"[38] commonly mean the "contracting out of operations and responsibilities of specific business functions (or processes) to a third-party service provider."[39] Under their Agreement, respondent contracted out to PeopleSupport the operations of maintaining and managing the infrastructure and transmission facilities that the latter provided. From PeopleSupport's standpoint, it rendered to respondent business process outsourcing services that are information technology-based.[40]

Finally, respondent argues that PeopleSupport's services under the Agreement fall within or are related to its registered activities with PEZA.[41] Thus, the income that PeopleSupport derived from its services is exempt from income tax.[42]

In her Reply,[43] petitioner contends that: (1) a factual review is warranted as she has discussed in her Petition how the inference of the Court of Tax Appeals was manifestly mistaken,[44] and the Decision was based on a misapprehension of facts;[45] (2) the Agreement was essentially a lease of physical facilities[46] and the information technology support services PeopleSupport

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[36] *Id*. at 143.

[37] *Id*. at 146.

[38] *Id*.

[39] *Id*.

[40] *Id*.

[41] *Id*. at 149.

[42] *Id*. at 150.

[43] *Id*. at 171-187.

[44] *Id.* at 173.

[45] *Id*. at 175.

[46] *Id.* at 178.

would provide were merely incidental;[47] and (3) the lease of facilities is a new and additional product line that requires PEZA approval,[48] and respondent presented no evidence that PeopleSupport is registered with PEZA as a facility provider.[49]

Tax refunds must be granted only by a clear and unequivocal provision of law. Thus, petitioner submits that PeopleSupport's income derived from the lease of its facilities to respondent, not being a PEZA–registered activity, is subject to corporate income tax.[50]

I

The Commissioner of Internal Revenue invoked the correct remedy. Rule 45 applies to issues raised before this Court that involve purely questions of law. In *Villamor, Jr. v. Umale*,[51] this Court held:

> There is a question of law "when there is doubt or controversy as to what the law is on a certain [set] of facts." The test is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence." Meanwhile, there is a question of fact when there is "doubt . . . as to the truth or falsehood of facts." The question must involve the examination of probative value of the evidence presented.[52] (Citation omitted)

To resolve the issue on the taxability of the transaction between respondent and PeopleSupport, this Court is required to interpret Task Order #2 to the Agreement. Petitioner asserts that the Agreement between respondent and PeopleSupport merely involved a lease of information technology infrastructure, which

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[47] *Id.* at 179.

[48] *Id.*

[49] *Id.* at 180.

[50] *Id*. at 182.

[51] 744 Phil. 31 (2014) [Per *J.* Leonen, Second Division].

[52] *Id*. at 44.

is not covered by PeopleSupport's PEZA registration. This issue is a question of law. It does not require us to examine the probative value of the evidence presented. The Petition essentially requires this Court to determine the scope of the Agreement and the scope of activities covered by the fiscal incentives granted to PeopleSupport.

II (A)

Under Section 23 of Republic Act No. 7916, or the Special Economic Zone Act of 1995, as amended, business enterprises operating within economic zones are entitled to fiscal incentives. It states:

> Section 23. *Fiscal Incentives.* — Business establishments *operating within the ECOZONES* shall be entitled to the fiscal incentives as provided for under Presidential Decree No. 66, the law creating the Export Processing Zone Authority, or those provided under Book VI of Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987.
>
> Furthermore, tax credits for exporters using local materials as inputs shall enjoy the same benefits provided for in the Export Development Act of 1994.

Article 39(a)(1), Book VI of Executive Order No. 226, as amended,[53] enumerates the fiscal incentives granted to a registered enterprise, which include income tax holiday from four (4) to six (6) years, depending on whether the enterprise is registered as a pioneer or non-pioneer firm. It reads:

> Art. 39. *Incentives to Registered Enterprises.* — **All registered enterprises shall be granted the following incentives to the extent engaged in a preferred area of investment**;
>
> (a) *Income Tax Holiday.* —
>
> (1) For six (6) years from commercial operation for pioneer firms and four (4) years for non-pioneer firms, new registered firms shall be fully exempt from income taxes levied by the National Government. Subject to such guidelines as may be prescribed by

[53] Republic Act No. 7918 (1995), Sec. 1.

> the Board, the income tax exemption will be extended for another year in each of the following cases: . . . (Emphasis supplied)

However, Rule XIII, Section 5 of the Implementing Rules and Regulations of Republic Act No. 7916 specifies that PEZA-granted incentives shall apply only to registered operations of the Ecozone Enterprise and only during its registration with PEZA. In other words, tax incentives to which an Ecozone Enterprise is entitled do not necessarily include all kinds of income received during the period of entitlement. Only income actually gained or received by the Ecozone Enterprise related to the conduct of its registered business activity are covered by fiscal incentives.

Executive Order No. 226 also provides that the incentives shall only be "to the extent engaged in a preferred area of investment."[54] The purpose of the income tax holiday was explained, thus:

> An income tax holiday is bestowed on a new project to encourage investors to set up businesses and to contribute to the country's economic growth. The fiscal incentive is also meant to help registered enterprises recoup their substantial initial investments by giving them a reprieve from paying income tax for a few years. *However, like any privilege, the income tax holiday comes with conditions and requirements which must be fulfilled for its continued enjoyment.*[55] (Emphasis supplied)

Revenue Regulations No. 20-2002[56] of the Bureau of Internal Revenue clarifies the tax treatment of income earned from

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[54] Executive Order No. 226 (1987), Sec. 39. The Omnibus Investments Code of 1987.

[55] *J.* Leonen, Dissenting Opinion in *Board of Investments v. SR Metals, Inc.,* G.R. No. 219927, October 3, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/october2018/219927.pdf> 7 [Per *J.* Del Castillo, First Division].

[56] Revenue Regulations No. 20-2002 (2002). Clarifying the Tax Treatment of Income Earned from Unregistered Activities by Enterprises Registered under the Bases Conversion and Development Act of 1992 and the Philippine Economic Zone Act of 1995.

unregistered activities by enterprises under the Bases Conversion and Development Act of 1992 and the Philippine Economic Zone Act of 1995. It states:

SECTION 1. TAX TREATMENT — Income derived by an enterprise registered with the Subic Bay Metropolitan Authority (SBMA), the Clark Development Authority (CDA), or the Philippine Economic Zone Authority (PEZA) from its registered activity/ies shall be subject to such tax treatment as may be specified in its terms of registration (i.e., the 5% preferential tax rate, the income tax holiday, or the regular income tax rate, as the case may be). *Nonetheless, whatever the tax treatment of said enterprise with respect to its registered activity/ies, income realized by such registered enterprise that is not related to its registered activity/ies shall be subject to the regular internal revenue taxes*, such as the 20% final income tax on interest from Philippine Currency bank deposits and yield or any other monetary benefit from deposit substitutes, and from trust funds and similar arrangements, the 7.5% tax on foreign currency deposits and the 5%/10% capital gains tax or ½% stock transaction tax, as the case may be, on the sale of shares of stock.[57] (Emphasis supplied)

Several Bureau of Internal Revenue rulings later determined the tax treatment of certain income derived by PEZA-registered enterprises.

In its Ruling No. DA-023-03,[58] the Bureau of Internal Revenue held that the sale by a PEZA-registered enterprise of its manufacturing plant and equipment, such as generator sets and others, is not within its registered activity, and therefore, is subject to regular income tax. The registered enterprise was engaged in the sale of disk drives.

Likewise, in Bureau of Internal Revenue Ruling No. DA-166-04,[59] the gain derived by a PEZA-registered enterprise from the sale of machineries and equipment, resulting from the foreign

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[57] Revenue Regulations No. 20-2002 (2002), Sec. 1.

[58] The Ruling was signed by Deputy Commissioner Jose Mario C. Buñag on January 28, 2003.

[59] The Ruling was signed by Deputy Commissioner Jose Mario C. Buñag on April 5, 2004.

exchange translation of their US Dollar denominated book value in pesos, was held subject to regular income tax. The company was registered with PEZA as an Ecozone Export Enterprise engaged in the assembly of semiconductor devices in plastic packages (integrated circuits).

Also, the granting of a foreign currency denominated loan to an affiliate[60] and investment in a time deposit account or any other Philippine currency bank deposit[61] were considered not related to the registered activities of an Ecozone Export Manufacturing Enterprise and Clark Freeport Zone Enterprise, respectively.

On September 15, 2005, PEZA issued Memorandum Circular No. 2005-032,[62] which provided:

On Gains on Foreign Exchange Transactions:

Foreign currency is normally used by Ecozone Export Enterprises for their registered activities, either as the functional currency or as a supplemental currency. On the other hand, it is also used by some Ecozone Export Enterprises for other activities which can be considered as "additional business opportunities" which PEZA has no control of.

The tax treatment of foreign exchange (forex) gains shall depend on the activities from which these arise. Thus, if the forex gain is attributed to an activity with income tax incentive (Income Tax Holiday or 5%

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[60] Bureau of Internal Revenue Ruling No. DA-209-06 was signed by Officer-in-Charge Pablo M. Bastes, Jr. on April 5, 2006. In it, the grant by Hitachi Cable Philippines, Inc. of a foreign currency denominated loan to its affiliate was considered not related to its registered activities.

[61] Bureau of Internal Revenue Ruling No. 320-11 was signed by Commissioner of Internal Revenue Kim S. Jacinto-Henares on August 22, 2011. In it, the investment of Our Lady of Mt. Carmel Medical Center in a time deposit account was held an unregistered business activity.

[62] Philippine Economic Zone Authority, Memorandum Circular No. 2005-032 (2005). Clarification of the Tax Treatment of (a) Gains on Foreign Exchange Transactions; and, (b) Sales of Production "Rejects" and "Seconds[,"] Scrap, Raw Materials, Packaging Materials and Other Production Supplies.

Gross Income Tax), said forex gain shall be covered by the same income tax incentive. On the other hand, if the forex gain is attributed to an activity without income tax incentive, said forex gain shall likewise be without income tax incentive, *i.e.,* therefore, subject to normal corporate income tax.

The tax treatment of forex gains is illustrated as follows:

Activity	*Income Tax Incentive*	*Tax Treatment of Forex Gain*
Registered 1st Project	5% Gross Income Tax	5% Gross Income Tax
Registered 2nd Project	Income Tax Holiday	Income Tax Holiday
Other Activities	None	Normal Corporate Income Tax

On Sales of Production "Rejects" and "Seconds[,"] Scrap, Raw Materials, Packaging Materials and Other Production Supplies:

1. All local sales shall be subject to applicable duties and taxes (including VAT) prior to withdrawal thereof from the Ecozone.

2. For purposes of entitlement to income tax incentives (Income Tax Holiday or 5% Gross Income Tax), the following shall apply:

a. Sale of production "rejects" and "seconds" from the registered activity of the Export Enterprise shall be considered covered by the registered activity of said Enterprise. Thus, any income derived therefrom shall be covered by the applicable income tax incentive, *i.e.,* Income Tax Holiday or 5% Gross Income Tax.

b. Sale of recovered waste/scrap generated from processing of raw materials, including used packaging materials and other direct/indirect materials/supplies that have undergone processing/which have been used in production/processing activity registered with PEZA shall likewise be considered covered by the registered activity of an Export Enterprise. Any income derived therefrom shall likewise be covered by the applicable income tax incentive.

c. Sale of unprocessed, unused, obsolete or "off-specs" production inputs (direct/indirect materials/supplies) shall not be covered by

the registered activity of an Ecozone Enterprise. Thus, any income derived therefrom shall be subject to normal corporate income tax, provided that the related cost shall be deducted only once for purposes of computing income.

For purposes of proper reckoning of incentives, Ecozone Export Enterprises with multiple activities are required to maintain separate books of accounts for each activity.[63]

Following the rulings and the PEZA Memorandum Circular, it is clear that the registration of an activity with PEZA is an essential requirement to enjoy tax incentives under the law, and only income arising from or directly related to the conduct of the Ecozone Enterprises' registered activities are covered by tax incentives under the Philippine Economic Zone Act of 1995.

Hence, to qualify for the income tax holiday incentive, respondent must satisfactorily show that its transaction with PeopleSupport is a registered activity or embraced within the latter's registered activities with the PEZA.

II (B)

PEZA lists on its website ten (10) activities[64] that are eligible for registration and fiscal incentives. These are:

1. **Export Manufacturing** — manufacturing, assembly or processing activity resulting in the exportation of at least 70% of production . . . Eligible firms shall qualify for registration as "Economic Zone Export Manufacturing Enterprise."
2. **IT (Information Technology) Service Export** — IT service activities, of which 70% of total revenues is derived from clients abroad. ("IT Service Activities" are activities which involve the use of any IT software and/or system for value

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[63] Philippine Economic Zone Authority, Memorandum Circular No. 2005-032 (2005).

[64] *Activities Eligible for PEZA Registration and Incentives*, Philippine Economic Zone Authority <http://www.peza.gov.ph/index.php/eligible-activities-incentives> (last accessed on November 28, 2018).

addition) . . . Eligible firms shall qualify for registration as "IT Enterprise."

3. **Tourism** — establishment and operation within PEZA Tourism Special Economic Zones of sports and recreation centers, accommodation, convention, and cultural facilities and their special interest attraction activities/establishments, with foreign tourists as primary clientele. Eligible firms shall qualify for registration as "Tourism Economic Zone Locator Enterprise."

. . . . . .

4. **Medical Tourism** — medical health services, endorsed by the Department of Health, with foreign patients as primary clientele. Eligible firms shall qualify for registration as "Medical Tourism Enterprise" in a Medical Tourism Special Economic Zone Park or Center.

. . . . . .

5. **Agro-industrial Export Manufacturing** — processing and or manufacturing of agricultural products resulting in the exportation of its production . . . Eligible firms shall qualify for registration as "Agro-Industrial Economic Zone Export Enterprise."

. . . . . .

6. **Agro-industrial Bio-Fuel Manufacturing** — specialized manufacturing of agricultural crops and eventual commercial processing which shall result in the production of clean energy such as bio-fuels and the like. Eligible firms shall qualify for registration as "Agro-Industrial Economic Zone Enterprise."

. . . . . .

7. **Logistics and Warehousing Services** — (a) operation of a warehouse facility for the storage, deposit, safekeeping of goods for PEZA-registered Economic Zone Export Manufacturing Enterprises, and or (b) importation or local sourcing of raw materials, semi-finished goods for resale to - or for packing/covering (including marking / labeling) cutting or altering to customers' specification, mounting and/or packaging into kits or marketable lots for subsequent sale

to - PEZA-registered Export Manufacturing Enterprises for use in their export manufacturing activities, or for direct export, or for consignment to PEZA-registered Export Manufacturing Enterprises and eventual export. Eligible firms shall qualify for registration as "Economic Zone Logistics Services Enterprise."

. . . . . .

8. Economic Zone Development and Operation:

8.a. Manufacturing Economic Zone Development / Operation —

. . . . . .

8.b. IT Park Development / Operation — development, operation and maintenance of an area as a complex capable of providing infrastructures and other support facilities required by IT Enterprises, as well as amenities required by professionals and workers involved in IT Enterprise, or easy access to such amenities. Eligible firms shall qualify for registration as "IT Park Developer / Operator."

. . . . . .

8.c. Tourism Economic Zone Development / Operation—

. . . . . .

8.d. Medical Tourism Economic Zone Development / Operation —

. . . . . .

8.e. Agro-Industrial Economic Zone Development / Operation —

. . . . . .

8.f. Retirement Economic Zone Development /Operation — . . .

9. Facilities Providers:

9.a. Facilities for Manufacturing Enterprises — . . .

> **9.b. Facilities for IT Enterprises** — construction as owner/operator of buildings and other facilities inside IT Parks which are leased to PEZA-registered IT Enterprises. Eligible firms shall qualify for registration as "IT Park Facilities Enterprise."
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> . . . .
>
> **9.c. Retirement Facilities** – . . .
>
> **10. Utilities** — establishment, operation and maintenance of light and power systems, water supply and distribution systems inside Special Economic Zones. Eligible firms shall qualify for registration as "Economic Zone Utilities Enterprise."[65]

PEZA Board Resolution No. 00-411[66] or The "Guidelines on the Registration of Information Technology (IT) Enterprises and the Establishment and Operation of IT Parks / Buildings" defines "information technology," "IT enterprises," "IT parks and buildings," and "facilities-providers" in connection with PEZA registration and availment of incentives. It states:

I. Definition of Terms

… ... ...

"Information Technology" or "IT" is the collective term for the various technologies involved in processing and transmitting information, which include computing, multimedia, telecommunications, microelectronics[,] and their interdependencies. Also called "informatics" or "telematics," the term "IT" is now also often used to refer to the convergence of various information-based, broadcast[,] and mass media communication technologies (NITC 1997);

"IT Service Activities" are activities which involve the use of any IT software and/or system for value addition;

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[65] *Activities Eligible for PEZA Registration and Incentives*, Philippine Economic Zone Authority <http://www.peza.gov.ph/index.php/eligible-activities-incentives> (last accessed on November 28, 2018).

[66] *PEZA Board Resolution No. 00-411*, Philippine Economic Zone Authority, December 29, 2000 <http://www.peza.gov.ph/issuances/guidelines/Guidelines_IT.pdf> (last accessed on November 28, 2018).

"IT Enterprises" are companies operating/offering IT services;

"IT Park" is an area which has been developed into a complex capable of providing infrastructures and other support facilities required by IT Enterprises, as well as amenities required by professionals and workers involved in IT Enterprises, or easy access to such amenities.

"IT Building" is a building, the whole or part of which has been developed to provide infrastructures and other support facilities required by IT Enterprises, and which may also provide amenities required by professionals and workers involved in IT Enterprises, or easy access to such amenities.

"Facilities-Providers" are owners/operators of buildings and other facilities inside economic zones/IT Parks which are leased to PEZA-registered locator enterprises.[67]

The Board Resolution also enumerates the information technology service activities eligible for registration with PEZA, which include:

- Software development and application, including programming and adaptation of system softwares (*sic*) and middlewares (*sic*), for business, media, e-commerce, education, entertainment, etc.;
- IT-enabled services, encompassing call centers, data encoding, transcribing and processing; directories; etc.;
- Content development for multi-media or internet purposes;
- Knowledge-based and computer-enabled support services, including engineering and architectural design services, consultancies, etc.;
- Business process out-sourcing using e-commerce;
- IT research and development; and
- Other IT[-]related service activities, as may be identified and approved by the PEZA Board.

An IT Enterprise operating any of the above-listed IT service activities may register with PEZA for availment of incentives provided under R. A. No. 7916, as amended by Republic Act No. 8748, provided it physically locates inside a PEZA-registered IT Park, Building or

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[67] *Id*.

special economic zone, which is covered by the required Presidential Proclamation.[68]

II (C)

PEZA certified in its June 27, 2007 Certification No. 2007-067 that PeopleSupport is registered as an Economic Zone IT (Export) Enterprise with sites at the Asiatown I.T. Park, PeopleSupport Center, 6780 Ayala, Makati and SM Baguio Cyberzone Building.[69]

The Certification further confirms that PeopleSupport is registered with PEZA to "engage in the establishment of a contact center which will provide outsourced customer care services and [business process outsourcing] services."[70]

Moreover, the incentives granted to PeopleSupport under the Registration Agreement with PEZA dated August 12, 2003, and Supplemental Agreements dated February 20, 2004, July 14, 2005, May 15, 2007 and June 6, 2007,[71] are as follows:

1. Incentives under Book VI of EO 226 which includes the following:

    a. Corporate income tax holiday (ITH) for six (6) years for pioneer project and four (4) years for non-pioneer project effective on the committed date of start of commercial operations or the actual date of start of commercial operations, whichever is earlier; ITH entitlement can also be extended but in no case to exceed a total period of eight (8) years for pioneer project and seven (7) years for non-pioneer project provided specific criteria are met for each additional year and prior PEZA approval is obtained. Duly approved and registered 'Expansion' and 'New' projects are entitled to a three-year, and four-year ITH, respectively;

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[68] *Id*.

[69] *Rollo*, p. 42.

[70] *Id*.

[71] *Id*. at 16.

b. Tax and duty free importation of merchandise which include raw materials, capital equipment, machineries and spare parts;

c. Exemption from wharfage dues and export tax, impost or fees;

d. VAT zero-rating of local purchases subject to compliance with BIR and PEZA requirements; and

e. Exemption from payment of any and all local government imposts, fees, licenses or taxes except real estate tax; however, machineries installed and operated in the ecozone for manufacturing, processing[,] or for industrial purposes shall not be subject to payment of real estate taxes for the first three (3) years of operation of such machineries; production equipment not attached to real estate shall be exempt from real property taxes.[72]

All income that PeopleSupport derived from its registered activities are "subject to such tax treatment as may be specified in its terms of registration."[73] Apropos, all income that it earned from rendering outsourced customer care and business process outsourcing services during its registration with PEZA are entitled to income tax holiday, and thus, are exempt from the payment of regular corporate income tax under Section 27(A). Consequently, they are not subject to the creditable withholding tax under Section 57(B) of the National Internal Revenue Code of 1997, as amended, and Section 2.57.2 of Revenue Regulations No. 2-98,[74] as amended.

II (C)

Respondent contends that "business process outsourcing," in its common use, refers to "the contracting out of operations and responsibilities of specific business functions (or processes) to a third-party service provider. Such functions are frequently

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[72] *Id*. at 16–17.

[73] Revenue Regulations No. 20-2002 (2002) Sec. 1.

[74] Revenue Regulations No. 2-98 (1998), Sec. 2.57.2.

information-technology based and not limited to telemarketing activities."[75]

Respondent insists that it contracted out to PeopleSupport the function of "maintaining and managing the infrastructure and transmission facilities" provided by [PeopleSupport]."[76] It further contends that "information technology infrastructure and support services" is a business process, which it outsourced to PeopleSupport.[77]

This is misleading.

Tax incentives under the Philippine Economic Zone Act of 1995 are granted to information technology service activities, which refer to activities that involve the use of any information technology software and/or system for value addition, as defined in Board Resolution No. 00-411. These include "business processes outsourced using e-commerce."

The Department of Trade and Industry defines "business process outsourcing" as the "delegation of service-type business processes to a third-party service provider."[78] In the Philippines, this industry is generally divided into the following sectors: (1) contact centers; (2) back office services; (3) data transcription; (4) animation; (5) software development; (6) engineering development; and (7) game development.[79]

Inbound and outbound voice operation services for sales, customer service, and technical support comprise the contact center sector. Back office services, or knowledge outsourcing, refer to services related to finance, accounting, and human resource administration.[80]

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[75] *Rollo*, p. 146.

[76] *Id*.

[77] *Id*.

[78] *BPO Industry at a Glance*, Senate, January 2010 <https://senate.gov.ph/publications/AG%202010-01%20-%20BPO%20Industry.pdf> (last accessed on November 19, 2018).

[79] *Id.*

[80] *Id*.

Providing information technology-enabled services is different from providing information technology facilities, infrastructure, or equipment. Service entails "useful labor or work rendered or to be rendered by one person to another."[81] Information technology facilities or infrastructures are the medium used to support the business processes and functions of companies.

PeopleSupport's registered activity of rendering "business process outsourcing services" refer to provision of information technology-enabled services that support certain business processes of its clients.

The Agreement between respondent and PeopleSupport pertains to the provision of physical plant space, voice and data infrastructure, all workstation infrastructure, and platform and support for inbound telemarketing activities.[82] In his Dissenting Opinion[83] to the Court of Tax Appeals July 15, 2013 Decision, Presiding Justice Roman G. Del Rosario observed that "respondent is not actually outsourcing its customer care functions or business processes to [PeopleSupport]. Respondent's own personnel shall actually perform the services using [PeopleSupport]'s physical plant space, infrastructure[,] and other transmission facilities."[84] Thus, the Agreement is essentially a lease of facilities outside the latter's registered activities, and thus, is not exempt from income tax.

PeopleSupport's leasing services to respondent are within the scope of the activity of a facilities provider/enterprise. Tax incentives that may be granted to an information technology service enterprise[85] are different from tax incentives granted to an information technology facilities provider/enterprise.[86]

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[81] *Commissioner of Internal Revenue v. American Express International, Inc.,* 500 Phil. 586, 598 (2005) [*J*. Panganiban, Third Division].

[82] *Rollo*, pp. 19–20.

[83] *Id*. at 25–30.

[84] *Id*. at 29.

[85] *Fiscal Incentives to PEZA-Registered Economic Zone Enterprises*, http://www.peza.gov.ph/index.php/eligible-activities-incentives/fiscal-incentives (last accessed on November 20, 2018).

[86] *Id.*

PeopleSupport is registered with PEZA as an Economic Zone Information Technology (Export) Enterprise, not an Information Technology Facilities Provider/Enterprise. Incidentally, the Registration Agreement states the scope of PeopleSupport's registered activity, as follows:

> Article II
> Scope of Registrant's Registered Activity
>
> 2. The scope of the REGISTRANT's registered activity shall be limited to the establishment of a contact center which will provide outsourced customer care services and the importation of machinery, equipment, tools, goods, wares, articles, or merchandise directly used in its registered operations at Asiatown IT Park. *In the event the REGISTRANT decides to engage in a new or additional product line, directly or indirectly related to its registered activity, it shall apply anew with PEZA for the latter's approval.*[87] (Emphasis supplied)

The Registration Agreement explicitly requires the approval anew of the PEZA for new or additional activities of the registered enterprise, even though the same may be directly or indirectly related to its registered activity.

As Court of Tax Appeals Presiding Justice Del Rosario pointed out in his Dissenting Opinion:

> While Certification No. 2007-067 dated June 27, 2013 states that [PeopleSupport] has a site in 6780 Ayala, there is nothing therein that shows that the leasing activity conducted by [PeopleSupport] in the 6780 Ayala site is registered with PEZA and entitled to incentives. In my mind, respondent has the burden of proving by preponderant evidence that [PeopleSupport] is registered with PEZA as a facility-provider and that [PeopleSupport]'s income from the lease of its physical plant space, infrastructure[,] and other transmission facilities to respondent is entitled to the ITH incentive.
>
> Considering that respondent failed to establish that [PeopleSupport] is registered with PEZA as a facility-provider and that [PeopleSupport]'s income from the lease of physical plant space, infrastructure[,] and other transmission facilities to respondent is entitled to ITH incentive, it is my humble view that the income received

[87] *Rollo*, pp. 42–43.

by PPI from respondent is subject to regular corporate income tax imposed under Section 27(A) of the 1997 [National Internal Revenue Code], as amended.[88]

Tax incentives partake of the nature of tax exemptions. They are a privilege to which the rule that tax exemptions must be strictly construed against the taxpayer apply.[89] One who seeks an exemption must justify it by words "too plain to be mistaken and too categorical to be misinterpreted."[90]

WHEREFORE, the Petition for Review on Certiorari is **GRANTED**. The July 15, 2013 Decision and December 18, 2013 Resolution of the Court ofs Tax Appeals *En Banc* in CTA EB No. 876 are **SET ASIDE**. Respondent's claim for refund is **DENIED**.

SO ORDERED.

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

Peralta, J., on official business.

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[88] *Id*. at 30.

[89] *PLDT v. City of Davao,* 447 Phil. 571 (2003) [Per *J*. Mendoza, *En Banc*]; *Luzon Stevedoring Corp. v. Court of Tax Appeals,* 246 Phil. 666 (1988) [Per *J*. Paras, Second Division].

[90] *Sea-Land Service, Inc. v. Court of Appeals,* 409 Phil. 508, 513 (2001) [Per *J*. Pardo, First Division] citing *Commissioner of Internal Revenue v. P. J. Kiener Co., Ltd.,* 160 Phil. 149 (1975) [Per *J*. Martin, First Division].

SECOND DIVISION

[G.R. No. 212819. November 28, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARLON CASCO *y* VILLAMER,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); IN PROSECUTION OF CASES INVOLVING DANGEROUS DRUGS, IT IS ESSENTIAL THAT THE IDENTITY AND INTEGRITY OF THE SEIZED DRUGS BE ESTABLISHED WITH MORAL CERTAINTY; PROCEDURE WHICH THE POLICE OFFICERS MUST STRICTLY FOLLOW TO PRESERVE THE INTEGRITY OF THE SEIZED DRUGS AND/OR PARAPHERNALIA USED AS EVIDENCE.— 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. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. In this regard, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers 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**; 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 of the same and the seized drugs must be turned over to the PNP Crime

Laboratory within twenty-four (24) hours from confiscation for examination. x x x In this connection, 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 normally has enough time to gather and bring with them the said witnesses.

2. ID.; ID.; ID.; ID.; STRICT COMPLIANCE WITH THE PROCEDURE DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID; THE PROSECUTION MUST PROVE THAT THERE IS JUSTIFIABLE GROUND, PROVEN AS A FACT, FOR NON-COMPLIANCE AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR.— The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, 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. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, 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. In this case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the identity and evidentiary value of the item purportedly seized from accused-appellant Casco.

3. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; CANNOT BE RELIED ON WHEN THERE ARE LAPSES IN THE PROCEDURES UNDERTAKEN BY THE BUY-BUST TEAM, THE LAPSES

BEING AFFIRMATIVE PROOFS OF IRREGULARITY; CASE AT BAR.— The Court likewise finds the CA's reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team 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. x x x What further militates against according the police 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.

4. **ID.; ID.; DEFENSE OF FRAME-UP; ASSUMES SIGNIFICANCE WHEN THE PRESUMPTION OF REGULARITY HAD BEEN UNDOUBTEDLY OVERCOME BY EVIDENCE THAT LAPSES WERE COMMITTED IN THE CONDUCT OF THE BUY-BUST OPERATION; CASE AT BAR.—** 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. However, such defense assumes significance when the presumption of regularity had been undoubtedly overcome by evidence that the police officers who conducted the buy-bust operation committed lapses in the seizure and handling of the allegedly seized plastic sachet of *shabu*, as in this case. The police officers' deliberate disregard of the requirements under the law, puts in doubt the conduct of the buy-bust operation and leads the Court to believe that the buy-bust against accused-appellant Casco was a mere pretense.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Leopoldo C. Tomas for accused-appellant.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Marlon Casco y Villamer (accused-appellant Casco) assailing the Decision[2] dated March 24, 2014 of the Court of Appeals, Seventeenth Division (CA), in CA-G.R. CR-HC No. 05820, which affirmed the Decision[3]dated July 23, 2012 of the Regional Trial Court (RTC) of Quezon City, Branch 82 in Criminal Case No. Q-08-153250, finding accused-appellant Casco 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

Accused-appellant Casco was charged with Illegal Sale of Dangerous Drugs, defined and punished under Section 5, paragraph 1, Article II of RA 9165, in an Information[5]dated July 23, 2008, the accusatory portion of which reads:

> That on or about the 21st day of July, 2008, in Quezon City, Philippines, the said 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 broker in said transaction, a dangerous drug, to wit: zero point zero two gram (0.02 grm) of white crystalline substance containing Methamphetamine Hydrochloride, a dangerous drug.

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[1] See Notice of Appeal dated April 4, 2014; CA *rollo,* pp. 102-103.

[2] CA *rollo,* pp. 87-100. Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Rodil V. Zalameda and Myra V. Garcia-Fernandez concurring.

[3] *Id*. at 51-58. Penned by Presiding Judge Severino B. De Castro, Jr.

[4] 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).

[5] Records, pp. 1-2.

CONTRARY TO LAW.[6]

When arraigned, accused-appellant Casco pleaded not guilty to the indictment.[7] During the pre-trial conference, the parties agreed to dispense with the testimony of PSI May Andrea Bonifacio (PSI Bonifacio) and instead, stipulated on the following: (a) that PSI Bonifacio is a Forensic Chemist of the Philippine National Police (PNP); (b) that her office received a request for laboratory examination; (c) that, together with said request, was a plastic sachet which contained one (1) heat-sealed transparent plastic sachet; (d) that PSI Bonifacio conducted the requested laboratory examination and, in connection therewith, she submitted a Chemistry Report showing that the specimen was positive for methylamphetamine hydrochloride; and (e) that PSI Bonifacio turned over the specimen to the Evidence Custodian and retrieved the same for the pre-trial.[8]

Similarly, the testimony of PO1 Carlito Gula, Jr. (PO1 Gula) was dispensed withand the parties instead stipulated on the following: (a) that PO1 Gula was the police investigator assigned to the case; (b) that in connection with the investigation he conducted, he took the Joint Affidavit of Arrest of PO1 Percival T. Kalbi (PO1 Kalbi) and PO1 Rommel Quinio (PO1 Quinio); (c) that the specimen subject of the case was turned over to him by the arresting officers; (d) that in connection therewith, he prepared a request for laboratory examination and relative thereto, he received a copy of the Chemistry Report; (e) that he likewise received a photocopy of the buy-bust money, the Coordination Form, the Pre-Operation Report and the picture of accused-appellant Casco; (f) that he likewise prepared an Inventory Receipt, Arrest and Booking Sheet, and Affidavit of Attestation; and (g) that he, thereafter, prepared a letter-referral to the Office of the City Prosecutor of Quezon City.[9]

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[6] *Id*. at 1.

[7] CA *rollo*, p. 88.

[8] *Id*.

[9] *Id*. at 88-89.

Thereafter, trial ensued. The prosecution presented PO1 Kalbi whose testimony was summarized by the CA as follows:

> x x x[O]n July 21, 2008 at around 11:00 o'clock in the morning, the District Anti-Illegal Drugs (DAID) Special Operations Task Force in Quezon City received a tip from an informant that a certain "Marco" was selling illegal drugs along Loans Street, Project 8, Barangay Sangandaan, Quezon City. A team was immediately formed, [who conducted a surveillance in the area at around 1:00 p.m.[10]]. At about 4:20 in the afternoon, the team arrived at the place, [with PO1 Kalbi acting as the poseur buyer.] PO1 Kalbi and the informant went to a sari-sari store where Marco was standing. The informant then talked to Marco and told him, "*Ito yung sinasabi ko sa iyo na kasama ko, gustong kumuha ng item, SHABU sa halagang limangpiso, panggamit lang."* Marco then asked "*Atin ba 'yan?",* to which the informant replied that "*Oo atin 'yan, hindi'yan kalaban."* Marco then took from his pocket a sachet with white crystalline substance and handed it to PO1 Kalbi, who, in exchange, gave a ₱500.00 bill which had been marked with his initials "PK". After that, PO1 Kalbi removed his cap as a pre-arranged signal of the completion of the buy-bust operation. The other members of the team immediately descended on the place, arrested Marco and brought him to the police station. The buy-bust money and the plastic sachet taken from Marco were turned over to [PO1 Gula], the police investigator. During the trial, PO1 Kalbi identified accused-appellant as Marco. He also identified the buy-bust money (Exhibit "E") and the plastic sachet (Exhibit "B").[11]

For his defense, accused-appellant Casco denied the charge and narrated that:

> x x x [O]n July 21, 2008, at around 4:00 o'clock in the afternoon, he was at home at 3-C Loans Street, Barangay Sangandaan, Quezon City, watching television together with his wife and two kids, when all of a sudden, three armed men entered the house and pointed their guns at him. One of the armed men was prosecution witness PO1 Kalbi. They immediately handcuffed accused-appellant and boarded him in a red van. They also searched the house but found nothing. Accused-appellant was then brought to Camp Karingal in Quezon City. There, [PO1 Gula] demanded ₱200,000.00 in exchange for his

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[10] *Id*. at 53.

[11] *Id*. at 89.

freedom. When he failed to produce the money, he was then brought to jail and the next thing he knew, he was charged with selling illegal drugs.[12]

To corroborate accused-appellant Casco's claim that he was arrested and his house was searched without lawful basis, the defense presented accused-appellant Casco's daughter, Michelle Casco, and two neighbors, Rowena Luna and Ma. Theresa Recamata, whose testimonies are summarized as follows:

[Michelle Casco testified that]: Accused Casco is her father and she is living with him on July 21, 2008. On said date, at around 4:30 p.m., she was at the second floor of their house at 3-C Loans St., Bgy. Sangandaan, Quezon City together with her parents watching TV when three (3) armed men in civilian clothes went upstairs. One of them poked a gun at his father. Her mother asked them what the violation of [her] father was. They answered they were policemen from Karingal. The armed men dragged his father outside the house and brought him inside a red van parked infront, and they proceeded to CampKaringal. They followed. At Camp Karingal they saw the accused handcuffed. The investigator told them that the accused is charged with selling drugs. During the investigation of the accused, the investigator asked the amount of Php200,000.00 for his release. He was given until midnight to produce the amount and when he was unable to do so, he was detained. x x x

x x x x x x x x x

[Rowena Luna] x x x testified [that] [o]n July 21, 2008, at about 4:00 p.m., she was at 3-C Loan Ext. Bgy. Sangandaan, Quezon City about to buy biscuit from the wife of the accused. When she was about to go upstairs, three (3) armed men came rushing. She then heard a commotion. The three men, together with accused, who was already handcuffed, went out and the latter was dragged outside and boarded in a red van. She learned later that the three men were police officers. She saw the wife and daughter of the accused crying. After seeing the red van leave, she went home. She did not know why the three men brought the accused.

x x x x x x x x x

[12] *Id*. at 89-90.

x x x[Ma. Theresa Recamata narrated that]: On July 21, 2008, between 3:00 and 4:00 p.m., she was at home at Loans St., Proj. 8, Bgy. Sangandaan, Quezon City cooking for dinner when three unidentified men entered the door of accused. They were armed. She heard a commotion inside and when they went out they had the accused with them already handcuffed. She did not know what happened next because she went to her kids who were inside the house of the accused.

On cross-examination she testified that there was no buy bust operation conducted on July 21, 2008 involving the accused who is her neighbor.[13]

Ruling of the RTC

In its Decision[14] dated July 23, 2012, the RTC found accused-appellant Casco guilty beyond reasonable doubt for violation of Section 5 of RA 9165, sentenced him to life imprisonment and ordered him to pay ₱500,000.00. The RTC found nothing irregular in the buy-bust operation conducted against accused-appellant Casco; and thus, held that from the evidence on record, the prosecution was able to establish all the elements of illegal sale of dangerous drugs.[15]

Ruling of the CA

On appeal, the CA, in the assailed Decision,[16] sustained accused-appellant Casco's conviction. The CA held that the prosecution, through the testimony of PO1 Kalbi, together with the stipulations with respect to the proposed testimony of PSI Bonifacio and PO1 Gula, was able to establish an unbroken chain of custody of the seized drug from the time it came into the possession of the police officers until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[17]

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[13] *Id*. at 55-56.

[14] *Id*. at 51-58.

[15] *Id*. at 56-58.

[16] *Id*. at 87-100.

[17] *Id*. at 96-97.

The CA also found accused-appellant Casco's claim of "frame-up" weak and self-serving vis-à-vis the positive testimony of PO1 Kalbi, the police officer, who is presumed to have performed his duties regularly, in the absence of evidence to the contrary.[18]

Hence, the instant appeal.[19]

Issue

Whether the CA erred in sustaining accused-appellant Casco's conviction for violation of Section 5, Article II of RA 9165.

The Court's Ruling

The appeal is meritorious. Accused-appellant Casco is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[20] and the fact of its existence is vital to sustain a judgment of conviction.[21] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[22] Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[23]

In this regard, Section 21,[24] Article II of RA 9165, the applicable law at the time of the commission of the alleged

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[18] *Id*. at 99.

[19] *Id*. at 102-103.

[20] See *People v. Sagana,* G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

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

[22] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, pp. 6 and 9.

[23] *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

[24] 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*

crime, outlines the procedure which the police officers 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**; 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 of the same and the seized drugs must be turned over to the PNP Crime Laboratory within twenty-four (24) hours from confiscation for examination.

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 allow 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

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Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

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

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination[.]

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, abuy-bust team normally has enough time to gather and bring with them the said witnesses.[25]

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;[26] and, 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.[27] It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.[28] Without any justifiable explanation, which must be proven as a fact,[29] 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.[30]

In this case, the Court finds that the police officers committed unjustified deviations from the prescribed chain of custody rule, thereby putting into question the identity and evidentiary value of the item purportedly seized from accused-appellant Casco.

The police officers failed to comply with the mandatory requirements under Section 21.

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[25] *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 10.

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

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

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

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

[30] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

An examination of the records reveals that the buy-bust team failed to comply with the mandatory witnesses' rule. Here, **none** of the three (3) required witnesses under Section 21 was present at the time the subject drug was allegedly seized from accused-appellant Casco or during the conduct of the inventory at the police station. As admitted by PO1 Kalbi himself, only the buy-bust team and their confidential asset were present at the place of arrest.[31] Moreover, the inventory of the seized drug was made not in the presence of accused-appellant Casco or his representative or counsel, an elected public official, a representative from media and a representative from the DOJ, as mandated by Section 21. To be sure, the only witnesses who signed the Inventory Receipt[32] were the police officers themselves – PO3 Leonardo Ramos and SPO2 Arnold H. Yu.

In *People v. Callejo,*[33] the Court explained that the presence of the three (3) witnesses must be secured not only during inventory but more importantly at the time or near the place of the buy-bust arrest, because it is at this point when their presence is most needed to ensure the source, identity, and integrity of the seized drug. Thus, if the buy-bust operation was legitimately conducted, the presence of the insulating witnesses would controvert the usual defense of frame-up and extortion. Conversely, without the presence of any of the required witnesses at the time of apprehension or during inventory, or worse, the police officers themselves acting as witnesses, as in this case; then, doubt exists whether there was actuallya buy-bust operation as there are no unbiased witnesses to prove the source, identity and integrity of the *corpus delicti*.[34]

Indeed, case law states that the procedure enshrined in Section 21, Article II of **RA 9165 is a matter of substantive law, and cannot be brushed aside as a simple procedural technicality;**

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[31] See TSN, August 17, 2009, pp. 7-12 and 24-25.

[32] Records, p. 18.

[33] *Supra* note 25.

[34] *Id*. at 13.

or worse, ignored as an impediment to the conviction of illegal drug suspects.[35] 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.[36]

The saving clause does not apply to this case.

As earlier stated, following the IRR of RA 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.**[37] If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the non-compliance with the mandatory requirements of Section 21. It has also been emphasized that the State bears the burden of proving the justifiable cause.[38] 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 justify or explain the same.[39]

In the present case, the prosecution neither recognized, much less tried to justify or explain, the police officers' deviation from the procedure contained in Section 21. Even in the Joint Affidavit of Arrest[40]of PO1 Kalbi and PO1 Quinio, there was no attempt whatsoever to place on record that the buy-bust team failed to

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[35] *People v. Gamboa*, 799 Phil. 584, 597 (2016), citing *People v. Umipang*, 686 Phil. 1024, 1038-1039 (2012).

[36] *Id*. at 597.

[37] *People v. Callejo*, *supra* note 25, at 9-10, citing *People v. Cayas*, 789 Phil. 70, 79-80 (2016).

[38] *People v. Beran*, 724 Phil. 788, 822 (2014).

[39] *People v. Reyes,* 797 Phil. 671, 690 (2016).

[40] Records, pp. 8-9.

secure the presence of the three (3) witnesses and the reasons for their non-compliance. Undeniably, the police officers did not exert even the slightest effort to secure the attendance of the required witnesses considering that they had ample time to comply with the requirements established by law from the time they were informed of an alleged peddling of illegal drugs by accused-appellant Casco.

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.[41] As the Court explained in *People v. Reyes*:[42]

> 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[43] (Emphasis supplied)

Moreover, contrary to the findings of the CA, the prosecution failed to establish the unbroken chain of custody of the seized drug. Records reveal that **gaps exist** in the chain of custody of the seized item which create reasonable doubt as to the identity and integrity thereof.

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[41] See *People v. Sumili*, 753 Phil. 342, 350-352 (2015).

[42] *Supra* note 39.

[43] *Id*. at 690.

While PO1 Kalbi narrated that he marked the item he bought and recovered from accused-appellant Casco with his initials,[44] there is no evidence as to when and where the seized drug was marked and whether the marking was made in accused-appellant Casco's presence. In *People v. Ameril,*[45] the Court stressed that marking of the seized items should be done immediately upon seizure and in the presence of the accused to ensure that they are the same items that enter the chain and are eventually the ones offered in evidence.

In addition, it has been 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."[46] This requirement was, however, not complied with in this case.

PO1 Kalbi testified that he turned over the confiscated drug to PO1 Gula for inventory, and then personally delivered the same to the PNP Crime Laboratory for examination.[47] However, the Court does not see from the records the details on how the specimen was handled from the time it was handed to PO1 Gula to the time it was returned to PO1 Kalbi until it was submitted to PSI Bonifacio for examination. PO1 Kalbi's testimony was sorely lacking on these details; while the stipulations on the proposed testimony of PO1 Gula do not relate to or do not cover the specific manner by which the seized drug was handled while in the latter's possession. Further, they do not indicate how the item was subsequently turned over to the next responsible person.

Similarly, PSI Bonifacio did not testify on how she handled the seized item during examination and before it was transferred

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[44] TSN, August 17, 2009, p.14.

[45] 799 Phil. 484, 494-495 (2016).

[46] *People v. Gajo*, G.R. No. 217026, January 22, 2018, p. 8.

[47] TSN, August 17, 2009, pp. 13-15.

to the court — which testimony is required to ensure that there was no change in the condition of the seized drug and no opportunity for someone not in the chain to have possession while in her custody. Instead of the forensic chemist turning over the substance to the court and testifying, the parties merely made stipulations, which do not in any way prove how the drugs were handled by said chemist.

As the seized drugs themselves are the *corpus delicti* of the crime charged, it is of utmost importance that there be no doubt or uncertainty as to their 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 drugs. Without the explanation by the State, the evidence of the *corpus delicti* is unreliable,[48] as in this case. Consequently, accused-appellant Casco must perforce be acquitted.

The presumption of innocence of the accused vis-à-vis the presumption of regularity in performance of official duties.

The Court likewise finds the CA's reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[49] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[50] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[51]This Court, in *People v. Catalan*,[52] had already warned the lower courts against this pitfall:

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[48] *People v. Supat,* G.R. No. 217027, June 6, 2018, p. 16.

[49] See *People v. Mendoza*, 736 Phil. 749, 770 (2014).

[50] *Id.* at 770.

[51] *Id*.

[52] 699 Phil. 603, 621 (2012).

Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.

We hold that both lower courts committed gross error in relying on the presumption of regularity.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[53] (Emphasis supplied)

What further militates against according the police 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,[54] the conduct of buy-bust operations required the following:

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[53] *Id*. at 621.

[54] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x x x x x x

V. SPECIFIC RULES

x x x x x x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation - in the conduct of buy-bust operation, the following are the procedures to be observed:

a. Record time of jump-off in unit's logbook;

b. Alertness and security shall at all times be observed[;]

c. Actual and timely coordination with the nearest PNP territorial units must be made;

d. Area security and dragnet or pursuit operation must be provided[;]

e. Use of necessary and reasonable force only in case of suspect's resistance[;]

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)

Given the above 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.[55]

All told, the prosecution failed to prove the *corpus delicti* of the offense due to the police officers' unjustified deviations from the requirements of the law. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant Casco.

Accused-appellant Casco's defense of frame-up.

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.[56] However, such defense assumes significance when the presumption of regularity had been undoubtedly

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[55] *People v. Supat, supra* note 48, at 18-19.

[56] *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

overcome by evidence that the police officers who conducted the buy-bust operation committed lapses in the seizure and handling of the allegedly seized plastic sachet of *shabu*, as in this case.[57] The police officers' deliberate disregard of the requirements under the law, puts in doubt the conduct of the buy-bust operation and leads the Court to believe that the buy-bust against accused-appellant Casco was a mere pretense.

To recall, the three (3) required witnesses were not present during the buy-bust operation when the alleged drug was seized from accused-appellant Casco; hence, there was no unbiased witness to prove the veracity of the events that transpired on the day of the incident or whether the said buy-bust operation actually took place. Also, the police officers unjustifiably failed to mark the seized drug at the place of arrest[58] and to inventory and photograph the same in the presence of the other statutory witnesses,[59] which again, are required under the law to prevent planting, switching and contamination of evidence. **These circumstances lend credence to accused-appellant Casco's testimony, as corroborated by his witnesses, that the policemen entered his house, pointed their guns at him, immediately handcuffed him, and boarded him in a red van; that he was brought to Camp Karingal where PO1 Gula demanded ₱200,000.00 in exchange for his freedom; and when he failed to produce the money, he was then brought to jail and was charged with selling illegal drugs.**[60] The Court is totally bewildered how the CA could arrive at its finding, in the presence of testimonies coming from three (3) other witnesses whose credibility was never questioned by the prosecution.

Indeed, the Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract

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[57] See *People v. Pepino-Consulta,* 716 Phil. 733, 761 (2013).

[58] See CA *rollo,* pp. 89-90.

[59] See *id*. at 94-95.

[60] *Id*. at 89-90.

information or even to harass civilians.[61] This is despicable. Thus, the Court reminds the trial courts to exercise extra vigilance in trying drug cases, and directs the PNP to conduct an investigation on this incident and other similar cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

Finally, 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 IRR, 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.[62]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated March 24, 2014 of the Court of Appeals, Seventeenth Division in CA-G.R. CR-HC No. 05820 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant **MARLON CASCO y VILLAMER** 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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[61] *People v. Daria, Jr.*, *supra* note 56, at 767.

[62] *People v. Otico*, G.R. No. 231133, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

Let a copy of this Decision be sent to 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.

Further, the National Police Commission is hereby **DIRECTED** to **CONDUCT AN INVESTIGATION** on the police officers involved in the buy-bust operation conducted in this case.

SO ORDERED.

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

Perlas-Bernabe, J., on wellness leave.

SECOND DIVISION

[G.R. No. 214472. November 28, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NOVA DE LEON *y* WEVES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— In this case, accused-appellant De Leon was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. To sustain a conviction for illegal sale of dangerous drugs, the prosecution must prove the following elements: (1) the identity of the buyer

[*] Designated additional member per Special Order No. 2587 dated August 28, 2018.

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

2. ID.; ID.; PROCEDURE THAT MUST BE STRICTLY FOLLOWED TO PRESERVE THE INTEGRITY OF THE CONFISCATED DRUGS AND/OR PARAPHERNALIA USED AS EVIDENCE; WHEN STRICT COMPLIANCE WITH THE PROCEDURE MAY BE EXCUSED; CASE AT BAR.— 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 must 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. x x x 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 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) 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 [w]hile 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; 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. In the present case, the police officers failed to comply with the foregoing requirements.

3. ID.; ID.; ID.; PRESENCE OF THE REQUIRED WITNESSES AT THE TIME OF APPREHENSION AND INVENTORY IS MANDATORY; PURPOSE.— 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.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE, ESPECIALLY WHEN THERE ARE LAPSES IN THE PERFORMANCE OF DUTY WHICH ARE THEMSELVES AFFIRMATIVE PROOFS OF IRREGULARITY; CASE AT BAR.— The Court likewise finds the CA's reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team 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. x x x What further militates against according the police 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.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF

2002); ILLEGAL SALE OF DANGEROUS DRUGS; BUY-BUST OPERATION; 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; CASE AT BAR.— 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, the elements of illegal sale of prohibited drugs cannot be proved and the indictment against the accused will have no leg to stand on. This is the situation in this case. What puts in doubt the conduct of the buy-bust operation is the police officers' deliberate disregard of the requirements of the law, which leads the Court to believe that the buy-bust operation against accused-appellant De Leon was a mere pretense, a sham.

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 the Court is an ordinary appeal[1] filed by accused-appellant Nova De Leon y Weves (accused-appellant De Leon) assailing the Decision[2] dated October 31, 2013 of the Court of Appeals, Sixth (6th) Division (CA), in CA-G.R. CR.-HC No.

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[1] See Notice of Appeal dated December 2, 2013; *rollo,* pp. 17-19.

[2] *Rollo,* pp. 2-16. Penned by Associate Justice Marlene Gonzales-Sison, with Associate Justices Hakim S. Abdulwahid and Edwin D. Sorongon concurring.

05465, which affirmed the Decision[3] dated February 27, 2012 of the Regional Trial Court (RTC) of the City of Parañaque, Branch 259 in Criminal Case No. 09-0617, finding accused-appellant De Leon 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

An Information[5] was filed against accused-appellant De Leon for violating Section 5, Article II of RA 9165, the accusatory portion of which reads:

> That on or about the 31st day of May, 2009, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport a one (1) heat-sealed transparent plastic sachet weighing 0.01 gram to Police Poseur Buyer SPO1 Luminog Lumabao, which contents of the said plastic sachet when tested was found positive to be **Methamphetamine Hydrochloride**, a dangerous drug.
>
> CONTRARY TO LAW.
> Parañaque City
> June 1, 2009[6]

When arraigned, accused-appellant De Leon entered a plea of not guilty to the charge.[7]

After pre-trial, the prosecution and defense admitted the following: (1) identity of the accused; (2) the jurisdiction of

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[3] Records, pp. 373-380. Penned by Assisting Judge Jansen R. Rodriguez.

[4] 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).

[5] Records, p. 1.

[6] *Id*.

[7] *Rollo,* p. 4.

the trial court; (3) that P1 Abraham Verde Tecson (P1 Tecson) would testify on the fact that he was the one who conducted the examination on the specimen subject matter of this case; (4) that P1 Tecson reduced his findings into Physical Science Report No. D-268-09S stating therein that the specimen he examined gave positive result for Methamphetamine Hydrochloride, and (5) that P1 Tecson is not an eyewitness to the circumstances leading to the arrest of accused-appellant De Leon.[8]

Thereafter, trial on the merits ensued. The prosecution presented SPO1 Luminog Lumabao[9] (SPO1 Lumabao) and SPO1 Ricky Macaraeg (SPO1 Macaraeg). The defense, on the other hand, presented accused-appellant De Leon.[10] The prosecution's version of events as well as that of the defense was summarized by the RTC as follows:

FOR THE PROSECUTION

[SPO1 LUMABAO]

He testified that on May 31, 2009 at around 5:30 in the afternoon, an informant went to their office at the Station Anti-Illegal Drugs Special Operations Task Force (SAIDSOTF) of the Para[ñ]aque City Police, and reported the illegal drug activities of a certain "Nova De Leon" along the area of Mayuga St., Brgy. Tambo, Para[ñ]aque City. The same was relayed to their chief, Col. Alfredo Valdez, who formed a team to conduct a buy bust operation against the suspect. He x x x was designated poseur buyer tasked to purchase Php200.00 worth of shabu from the suspect, with SPO1 Ricky Macaraeg, PO2 Domingo Julaton, PO2 Elbert Ocampo and SPO2 Alberto Sanggalang as back-up operatives. After preparing the Pre-Operation and Coordination Form submitted to the PDEA, the team, with the informant, proceeded to the target area. Upon arrival, he x x x and the informant alighted first while the rest of the team discreetly followed. They spotted the suspect standing in an alley whom they approached. He x x x was introduced to the suspect as a bus driver in need of shabu. The suspect

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[8] *Id.*

[9] Also spelled as "Lumibao" in some parts of the records.

[10] *Rollo,* p. 4.

replied that she had some with her. He x x x handed the suspect the buy bust money and in turn, the suspect handed him a sachet of suspected shabu. At this juncture, he x x x then executed the pre-arranged signal of removing his cap to signal the rest of the team that the transaction had materialized. SPO1 Macaraeg rushed to their location and they effected the arrest of the accused. He x x x instructed the suspect to empty her pockets, to which SPO1 Macaraeg recovered the buy bust money, but they did not recover anymore illegal drugs in her possession. They brought the suspect to the Barangay Hall of Tambo, Para[ñ]aque City and requested Tanod Melchor Alconaba to witness the preparation of the inventory. There, he x x x placed the markings "LL" on the recovered evidence in his custody, which stand for the initials of his name Luminog Lumabao and the date of arrest indicated as 05/31/09 and he likewise prepared the inventory of recovered/seized evidence, signed by Tanod Alconaba as witness. They identified the suspect as Nova De Leon y Weves whom he identified in court. At the Barangay Hall, pictures were taken of the accused and the recovered evidence, the inventory together with the Barangay Tanod. From the Barangay Hall, they proceeded to their office at Brgy. La Huerta, Para[ñ]aque City where the Booking Sheet and Arrest Report of the accused was prepared. Their investigator, PO2 Domingo Julaton, prepared a request for laboratory examination. He x x x brought the specimen to PNP Crime Laboratory for examination on the same date and the same later on tested positive for methamphetamine hydrochloride as shown in Physical Science Report No. D-268-09S. They executed a joint affidavit relative to the arrest of the accused. He identified the specimen subject of the sale (Exhibit "B-1"), the request of examination (Exhibit "A"), Physical Science Report No. D-268-09S (Exhibit "C"), the Joint Affidavit (Exhibit "D"), the Pre-Operation Report and Coordination Forms (Exhibits "E" and "F"), the pictures taken at the Barangay Hall (Exhibits "H" to "L"), the inventory (Exhibit "G"), the Spot Report (Exhibit "M") and the Booking Sheet of the accused (Exhibit "N").

On cross examination, he testified that the team arrived at the target area at around 7:25 in the evening. They spotted the accused standing in an alley. The transaction lasted for only about five (5) to ten (10) minutes. He placed markings on the recovered specimen at the Barangay Hall and not at the scene of arrest as it was raining at [that] time. There was no representative from the DOJ or media present during the inventory. He personally placed markings on the buy bust money but he was not able to include the buy bust money in the inventory at the time the pictures were taken.

On re-direct examination, he testified that there was no available representative from the media or the DOJ as it was raining hard at the time. He inadvertently failed to include the buy bust money in the inventory as he was focused on the sachet of shabu.

[SPO1 MACARAEG]

He testified that they arrested the accused on May 31, 2009 at around 7:25 in the evening at Mayuga St., Tambo, Para[ñ]aque City, in a buy bust operation. SPO1 Lumabao was the designated poseur buyer while he (Macaraeg) was an immediate back-up operative. He placed himself about 10 to 15 meters from where the transaction was made and he could see the actuations made during the transaction. He rushed to SPO1 Lumabao's location after seeing the latter execute the pre-arranged signal of removing his cap to signal them that the transaction had materialized. When the rest of the team arrived, they introduced themselves as police officers and apprised the accused of her rights. SPO1 Lumabao was in custody of the sachet of shabu subject of the sale. He x x x instructed the accused to empty her pockets and was able to recover from her the buy bust money. SPO1 Lumabao placed markings on the shabu subject of the sale. They executed a joint affidavit relative to the arrest of the accused. SPO1 Lumabao prepared an inventory in the presence of Tanod Alconaba. Pictures were taken of the accused, the evidence recovered and during the inventory at the Brgy. Hall of Tambo.

On cross examination, he testified that he could only see the actuations but the conversation during the transaction was inaudible to him. He confirmed that the transaction had materialized after SPO1 Lumabao executed the pre-arranged signal or removing his cap.

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FOR THE DEFENSE

[Accused-appellant DE LEON]

As appearing in her Judicial Affidavit (Exhibit "1"), the contents of which she affirmed in court, she testified that on June 02, 2009 at around 2:00 o'clock in the afternoon, she was at her house at Brgy. Tambo, Para[ñ]aque City. She heard someone knocking at the door, and when she opened it, a man suddenly entered and asked about the whereabouts of a certain "Bolaret Mayuga." She told the man that she did not know the person and he does not live there. She was forced to point to where Mayuga was and insisted that he live

in the area. She was then brought to the Drug Enforcement Unit (DEU) where she was threatened that if she does not cooperate in pointing to the whereabouts of Mayuga, she would remain there. The police asked from her money in exchange for her liberty but she refused to give any as she did not do anything illegal. She was told that charges would be filed against her. She was incarcerated and was charged for violation of Section 5 of RA 9165. She denies the charge filed against her.

On cross examination, she testified that it was the first time she saw the men who arrested her. Prior to her arrest, she did not have any misunderstanding or untoward encounter with the policemen who arrested her.[11]

Ruling of the RTC

In its Decision[12] dated February 27, 2012, the RTC convicted accused-appellant De Leon of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, premises considered the court finds accused **NOVA WEVES DE LEON in Criminal Case No. 09-0617 for Violation of Section 5, Article II of RA 9165, GUILTY** beyond reasonable doubt and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of Php500,000.00.

Further it appearing that the accused **NOVA WEVES DE LEON** is detained at the Para[ñ]aque City Jail and considering the penalty imposed, the OIC-Branch Clerk of Court is hereby directed to prepare the *Mittimus* for the immediate transfer of said accused from the Para[ñ]aque City Jail to the Women's Correctional Facility, Mandaluyong City.

The specimen are forfeited in favor of the government and the OIC-Branch Clerk of Court is likewise directed to immediately turn over the same with dispatch to the Philippine Drug Enforcement Agency (PDEA) for proper disposal pursuant to Supreme Court OCA Circular No. 51-2003.

SO ORDERED.[13]

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[11] Records, pp. 374-376.

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

[13] *Id*. at 379-380.

The RTC gave full weight and credit to the version of events of the prosecution ruling that while the arresting officers failed to strictly comply with the requirements of Section 21 of RA 9165 relative to the preparation of the inventory, there was substantial compliance with said law and the integrity of the drug seized from accused-appellant De Leon was preserved.[14]

Aggrieved, accused-appellant De Leon appealed to the CA.

Ruling of the CA

In the assailed Decision,[15] the CA sustained accused-appellant De Leon's conviction and held that the prosecution sufficiently discharged its burden of establishing the elements of illegal sale of dangerous drugs and proving accused-appellant De Leon's guilt beyond reasonable doubt.[16] The CA further held that in violation of RA 9165, credence is given to the prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner.[17] It also ruled that there is a valid justification for the arresting officers' non-compliance with the requirements of Section 21 of RA 9165;[18] and at any rate, the prosecution was able to adequately show the continuous and unbroken possession and subsequent transfer of the illegal drug from the time it was confiscated up to the time the marked plastic sachet of *shabu* was offered in court.[19] Thus, the failure of the police officers to make an inventory and to take a photograph of the seized drug as required under Section 21 of RA 9165, will not render accused-appellant De Leon's arrest and the item seized from her inadmissible.[20]

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[14] *Id*. at 378; *rollo,* p. 8.

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

[16] *Id*. at 10.

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

[18] See *id*. at 14-15.

[19] *Id*. at 15.

[20] *Id*.

Hence, the instant appeal.[21]

Issue

Whether or not accused-appellant De Leon's guilt for violating Section 5, Article II of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. The Court acquits accused-appellant De Leon for failure of the prosecution to prove her guilt beyond reasonable doubt.

The buy-bust team failed to comply with the requirements of Section 21.

In this case, accused-appellant De Leon was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5, Article II of RA 9165. 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.[22]

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[23] and the fact of its existence is vital to sustain a judgment of conviction.[24] It is essential, therefore, that the identity and integrity of the seized drugs must be established with moral certainty.[25] 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.[26]

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[21] *Id*. at 17-19.

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

[23] See *People v. Sagana,* G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

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

[25] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, pp. 6 and 9.

[26] See *People v. Viterbo*, 739 Phil. 593, 601 (2014).

This resonates even more in buy-bust operations because "by 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."[27]

In this connection, Section 21,[28] 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 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) 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.

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[27] *People v. Saragena*, G.R. No. 210677, August 23, 2017, 837 SCRA 529, 543-544, citing *People v. Tan*, 401 Phil. 259, 273 (2000).

[28] 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 [.]

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 allow 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 (3) required witnesses should already be physically present at the time of the conduct of the physical inventory of the seized items, which, again, 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.[29]

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 RA 9165 does not *ipso facto* render the seizure and custody over the items as 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.[30] The Court has

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[29] *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 10.

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

repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses;[31] 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.[32]

In the present case, the police officers failed to comply with the foregoing requirements.

First, while the IRR provides alternative places for the physical inventory and photographing of the seized drugs, whenever practicable, a barangay hall, is not one of them. In fact, the apprehending police officers failed to even acknowledge such procedural lapse and provide a reasonable explanation why they did not proceed to the nearest police station for the physical inventory and photographing of the illegal drug allegedly seized from accused-appellant De Leon.

Also, the illegal drug was not marked immediately upon seizure and confiscation. In *People v. Dahil,*[33] this Court held that:

> x x x "Marking" means the placing by the apprehending officer or the poseur-buyer of his/her initials and signature on the items seized. Marking after seizure is the starting point in the custodial link; hence, it is vital that the seized contraband be immediately marked because succeeding handlers of the specimens will use the markings as reference. The marking of the evidence serves to separate the marked evidence from the corpus of all other similar or related evidence from the time they are seized from the accused until they are disposed of at the end of the criminal proceedings, thus, preventing switching, planting or contamination of evidence.
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> It must be noted that marking is not found in R.A. No. 9165 and is different from the inventory-taking and photography under Section

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[31] *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).

[32] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

[33] 750 Phil. 212 (2015).

21 of the said law. Long before Congress passed R.A. No. 9165, however, **this Court had consistently held that failure of the authorities to immediately mark the seized drugs would cast reasonable doubt on the authenticity of the *corpus delicti*.**[34] (Emphasis and underscoring supplied)

SPO1 Lumabao's explanation that he could not mark the plastic sachet recovered from accused-appellant De Leon at the place of apprehension because of the weather condition[35] is nothing but a flimsy excuse. It should not be hard for SPO1 Lumabao to immediately mark the seized item because only one (1) plastic sachet was recovered from accused-appellant De Leon and considering further that the buy-bust team was able to pull off the entire operation, which only took about ten (10) minutes,[36] under the same weather condition.

Second, the police officers failed to comply with the mandatory three (3)-witness rule. As SPO1 Lumabao, the poseur-buyer himself, testified, the marking, inventory and photographing of the seized drug were witnessed only by a Barangay *Tanod*:

Q: Who were present at the Barangay Hall of Brgy. Tambo?
A: The Team Leader Tanod Melchor Alconaba.

Q: Now, what happened to the plastic sachet containing white crystalline substance?
A: After the marking of the plastic sachet and the Barangay Tanod signing as witness, we proceeded to our office.

x x x x x x x x x

Q: Was there any DOJ representative present during the inventory?
A: None, sir.

Q: How about any media representative?
A: None, sir.

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[34] *Id*. at 232.

[35] TSN, February 28, 2011, p. 18; records, p. 66.

[36] See *id*. at 39; *id.* at 87.

Q: How about any legal counsel for the accused?
A: None, sir.[37]

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,*[38] 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*,[39] 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.
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> 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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[37] *Id*. at 19, 46; *id*. at 67, 94.

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

[39] 736 Phil. 749 (2014).

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".[40] (Emphasis in the original)

Moreover, records do not show that the prosecution was able to establish a justifiable ground as to why the police officers were not able to secure the presence of the DOJ and media representatives. The Court finds SPO1 Lumabao's excuse that there were no available DOJ and media representatives because of the weather condition,[41] insufficient and uncorroborated by evidence. It must be noted that the buy-bust team in this case had ample time to comply with the requirements established by law from the time they were informed of an alleged peddling of illegal drugs. Hence, they could have complied with the requirements of the law had they intended to. However, the police officers in this case did not exert even the slightest of efforts to secure the attendance of the DOJ and media representatives.

In *People v. Gamboa,*[42] the Court held that the prosecution must show that earnest efforts were employed in contacting the witnesses required under the law. Mere statements that the witnesses are unavailable, without any showing of serious attempts to contact them,are unacceptable as justified grounds for non-compliance. Considering that buy-bust is a planned operation, "police officers are ordinarily given sufficient time

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[40] *People v. Tomawis*, *supra* note 38, at 11-12.

[41] TSN, February 28, 2011, p. 48; records, p. 96.

[42] G.R. No. 233702, June 20, 2018.

x x x to prepare x x x 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, Article II of RA 9165."[43] They are therefore compelled "not only to state reasons for their non-compliance, but must in fact, also convince the Court that they exerted earnest efforts to comply with the mandated procedure, and that under the given circumstance, their actions were reasonable."[44]

Indeed, while it is laudable that the drug enforcement agencies exert relentless efforts in eradicating the proliferation of prohibited drugs in the country, they must always be advised to do so within the bounds of the law.[45]Without the insulating presence of the representatives from the media and the DOJ during the seizure, marking and physical inventory of the sachet of *shabu*, the evils of switching, "planting" or contamination of the evidence again rear their ugly heads as to negate the integrity and credibility of the seized drug that is evidence herein of the *corpus delicti*.[46]Thus, accused-appellant De Leon must perforce be acquitted.

The presumption of innocence of the accused vis-à-vis the presumption of regularity in performance of official duties.

The Court likewise finds the CA's reliance on the presumption of regularity in the performance of official duty despite the lapses in the procedures undertaken by the buy-bust team fundamentally unsound because the lapses themselves are affirmative proofs of irregularity.[47] The presumption of regularity in the performance of duty cannot overcome the stronger

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[43] *Id*. at 9.

[44] *Id*.

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

[46] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[47] See *id*. at 770.

presumption of innocence in favor of the accused.[48] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[49] This Court, in *People v. Catalan*,[50] had already warned the lower courts against this pitfall:

> Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.
>
> We hold that both lower courts committed gross error in relying on the presumption of regularity.
>
> Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.
>
> **Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air.** To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[51] (Emphasis supplied)

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[48] *Id.*

[49] *Id*.

[50] 699 Phil. 603 (2012).

[51] *Id*. at 621.

What further militates against according the police 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,[52] the conduct of buy-bust operations required the following:

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x x x x x x

V. SPECIFIC RULES

x x x x x x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation - in the conduct of buy-bust operation, the following are the procedures to be observed:

a. Record time of jump-off in unit's logbook;

b. Alertness and security shall at all times be observed[;]

c. Actual and timely coordination with the nearest PNP territorial units must be made;

d. Area security and dragnet or pursuit operation must be provided[;]

e. Use of necessary and reasonable force only in case of suspect's resistance[;]

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;

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[52] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

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)

Given the above 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.[53]

All told, the prosecution failed to prove the *corpus delicti* of the offense due to the police officers' unjustified deviations from the requirements of the law. In other words, the prosecution was not able to overcome the presumption of innocence of accused-appellant De Leon.

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[53] *People v. Supat,* G.R. No. 217027, June 6, 2018, pp. 18-19.

The buy-bust operation was merely fabricated.

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.[54] However, where there really was no buy-bust operation conducted, the elements of illegal sale of prohibited drugs cannot be proved and the indictment against the accused will have no leg to stand on.[55]

This is the situation in this case.

What puts in doubt the conduct of the buy-bust operation is the police officers' deliberate disregard of the requirements of the law, which leads the Court to believe that the buy-bust operation against accused-appellant De Leon was a mere pretense, a sham. To recall, the three (3) required witnesses were not present during the buy-bust operation when the alleged drug was seized from accused-appellant De Leon; hence, there was no unbiased witness to prove the veracity of the events that transpired on the day of the incident or whether the said buy-bust operation actually took place. Also, the police officers unjustifiably failed to mark the seized drug at the place of arrest[56] and to inventory and photograph the same in the presence of the other statutory witnesses[57] which, again, are required under the law to prevent planting, switching and contamination of evidence. These circumstances lend credence to accused-appellant De Leon's testimony that a policeman merely knocked on the door of her house, asked about the whereabouts of a certain Bolaret Mayuga, and when she told him and his

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[54] *People v. Mateo*, 582 Phil. 390, 410 (2008), citing *People v. Ong*, 476 Phil. 553 (2004) and *People v. Juatan*, 329 Phil. 331, 337-338 (1996).

[55] *People v. Dela Cruz,* 666 Phil. 593, 605 (2011).

[56] TSN, February 28, 2011, pp. 43-44; records, pp. 90-91.

[57] *Id*. at 46-47; *id*. at 94-95.

companions that she did not know the person they were looking for, she was brought to the police station, where the police officers asked money from her in exchange of liberty and was told that if she did not cooperate, she would remain incarcerated.[58]

Indeed, the Court is not unaware that, in some instances, law enforcers resort to the practice of planting evidence to extract information or even to harass civilians.[59] This is despicable. Thus, the Court reminds the trial courts to exercise extra vigilance in trying drug cases, and directs the Philippine National Police to conduct an investigation on this incident and other similar cases, lest an innocent person is made to suffer the unusually severe penalties for drug offenses.

Finally, 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 IRR, 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.[60]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated October 31, 2013 of the Court

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[58] See Judicial Affidavit, records, pp. 326-327.

[59] *People v. Daria, Jr.*, 615 Phil. 744, 767 (2009).

[60] *People v. Otico*, G.R. No. 231133, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

of Appeals, Sixth (6th) Division, in CA-G.R. CR.-HC No. 05465 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **NOVA DE LEON y WEVES** is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she 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, Correctional Institution for Women, Mandaluyong 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 she has taken.

Further, the National Police Commission is hereby **DIRECTED** to **CONDUCT AN INVESTIGATION** on the police officers involved in the buy-bust operation conducted in this case.

SO ORDERED.

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

Perlas-Bernabe, J., on wellness leave.

SECOND DIVISION

[G.R. No. 215599. November 28, 2018]

HEIRS OF GEMINIANO FRANCISCO, as represented by ORLANDO FRANCISCO; HEIRS OF MARCIANO FRANCISCO, herein represented by VICENTE

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[*] Designated additional member per special Order No. 2587 dated August 28, 2018.

FRANCISCO; HEIRS OF ISIDORA DAGALEA, herein represented by ERASMO F. DAGALEA; HEIRS OF PRESENTACION F. BRAGANZA, herein represented by CIRIO F. BRAGANZA; IGMIDIO FRANCISCO, herein represented by LUDGARDA F. LIMEN; DONATO FRANCISCO, herein represented by RAQUEL GAZMIN; and PERFECTA F. GARCIA, herein represented by MARIA LUISA G. GASPAR, *petitioners, vs.* **THE HON. COURT OF APPEALS SPECIAL FORMER TWENTY SECOND (22ND) DIVISION, WELLINGTON VELASCO, and his Attorney-In-Fact DR. EMILIANO TORRALBA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* ABUSE OF DISCRETION ALLEGED MUST BE SO PATENT AND GROSS.—** In order for a *Certiorari* petition to prosper, the abuse of discretion alleged must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.

2. **ID.; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS; MODES OF FILING; ONLY BY PERSONAL FILING AND BY REGISTERED MAIL.—** [U]nder Section 3, Rule 13 of the Rules of Court, there are only two (2) modes by which a party may file a pleading before the courts: (1) by **personal filing** - presenting the original copies thereof personally to the clerk of court, or (2) by **registered mail**. x x x Filing *via* **private courier or courier service is NOT a manner of filing allowed or recognized by the Rules of Court**.

3. **ID.; ID.; MOTION FOR RECONSIDERATION; PERIOD FOR FILING; ONLY WITHIN FIFTEEN (15) DAYS FROM NOTICE THEREOF.—** [A]ccording to Rule 52 of the Rules of Court, as well as Rule 7 of the 2002 Internal Rules of the Court of Appeals, a party may file a motion for reconsideration of a judgment or final resolution issued by the appellate court

only within fifteen (15) days from notice thereof, with proof of service on the adverse party.

APPEARANCES OF COUNSEL

Mendoza Cruz & Associates for petitioners.
Faundo Esguerra & Associates for private respondents.

R E S O L U T I O N

CAGUIOA, *J.*:

Before the Court is a Petition for *Certiorari*[1] (Petition) under Rule 65 of the Rules of Court filed by the petitioners Heirs of Geminiano Francisco, *et al.* (collectively, the petitioners Heirs of Francisco) assailing the Resolution[2] dated August 20, 2014 (assailed Resolution) promulgated by the Court of Appeals[3] (CA) in CA-G.R. CV No. 02277-MIN, which (1) denied outright the petitioners Heirs of Francisco's Motion for Reconsideration[4] dated October 15, 2013 for being filed beyond the reglementary period and (2) directed the Division Clerk of Court to issue an Entry of Judgment,[5] considering that the Decision[6] dated August 19, 2013 of the CA attained finality due to the lack of a timely filed Motion for Reconsideration.

The Facts and Antecedent Proceedings

As narrated by the CA in its Decision dated August 19, 2013, the essential facts and antecedent proceedings of the instant case are as follows:

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

[2] *Id*. at 34. Issued by Division Clerk of Court Melody Sherry R. Chan.

[3] Cagayan De Oro City, Special Former Twenty-Second (22nd) Division, composed of Associate Justices Edgardo A. Camello, Henri Jean-Paul B. Inting, and Pablito A. Perez.

[4] *Rollo*, pp. 77-90.

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

[6] *Id*. at 50-76. Penned by Associate Justice Henri Jean-Paul B. Inting with Associate Justices Edgardo A. Camello and Jhosep Y. Lopez, concurring.

The crux of this dispute is a parcel of land located at Lot No. 9, Cad. 124, Boalan, Zamboanga City, containing an area of twenty (20) hectares [(subject property)], x x x

x x x x x x x x x

On August 1, 1995, the [petitioners Heirs of Francisco] filed a [C]omplaint[7] for Annulment of Title, Reconveyance of Real Property and Damages with a Prayer for a Writ of Preliminary Injunction or Temporary Restraining Order [(Complaint)] before the Regional Trial Court, Branch 12, Zamboanga City [(RTC)] [against the private respondents herein Wellington Velasco (Velasco) and Dr. Emiliano Torralba (Torralba)].

The [petitioners Heirs of Francisco] allege, among other things, that they are the heirs of the late Jaime Francisco, who, they claim, is the original occupant and owner of the subject property since 1918 up to the time of his death in 1957 or for a period of more than thirty (30) years; that even after the latter's death until the present, the [petitioners Heirs of Francisco], as heirs, continued to occupy the subject property and had established their residence therein under a claim of ownership in open, exclusive, adverse and continuous occupation thereof for a total of seventy-seven (77) years.

x x x x x x x x x

For his part, [Torralba] avers in his [A]nswer that he was designated by [Velasco] as a caretaker of the subject property but denies any assertion made by the [petitioners Heirs of Francisco] that he is the lawful representative of [Velasco].

x x x x x x x x x

Subsequently, [Velasco] filed an [A]nswer with counterclaim before the [RTC] stating, among other things, that he is the true, lawful and absolute owner in fee simple of the subject property. He claims that his possession over the same was unlawfully and wantonly disturbed by the [petitioners Heirs of Francisco].

x x x [T]he claim of the [petitioners Heirs of Francisco] has been waived, abandoned or otherwise extinguished in view of their execution of a Deed of Quitclaim on July 8, 1968 and x x x has prescribed since reconveyance of property under the Land Registration Act on the ground of fraud prescribes in four (4) years from the issuance of the certificate of title.

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[7] *Id*. at 35-47.

Velasco further contends that the principle of *res judicata* is applicable in the case at bar since the cause of action is barred by prior judgment, the same having been decided between the same parties in the case entitled *Francisco Dagalea vs. Wellington Velasco*, docketed as MNR Case No. 6099 which has long become final and executory on May 2, 1983, and that on October 3, 1983, the National Land Titles and Deeds Registration Administration (NLTDRA) issued Original Certificate of Title No. P-3,760 in his favor.

x x x x x x x x x

On July 28, 2009, the [private respondents] filed a Motion for Demurrer to Evidence which the [RTC] granted in its Order dated November 26, 2009. The dispositive portion of which reads:

> WHEREFORE, in view of the foregoing, the motion to dismiss on demurrer to evidence filed by the defendant, Wellington Velasco through counsels is hereby GRANTED and the above-entitled case is hereby ordered DISMISSED for insufficiency of evidence and that the action filed is not the proper remedy available to the plaintiffs based on the facts and circumstances as presented which this Court believes should have been one for action for reversion which nevertheless may only be initiated by the Solicitor General as mandated by law.

Hence, [the petitioner filed an appeal with the CA assailing the Order dated November 26, 2009 issued by the RTC dismissing their Complaint.][8] (Italics supplied)

The Ruling of the CA

In its Decision dated August 19, 2013, the CA dismissed the petitioners Heirs of Francisco's appeal for lack of merit.

As claimed by the petitioners Heirs of Francisco, they received a copy of the CA's Decision dated August 19, 2013 on September 30, 2013. The petitioners Heirs of Francisco admit that they only had until October 16, 2013[9] to file a Motion for Reconsideration.[10]

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[8] *Id*. at 51-62.

[9] *Id*. at 11. October 15, 2013 was declared a regular holiday (*Eidul Adha*) by virtue of Presidential Proclamation No. 658.

[10] *Id*.

The petitioners Heirs of Francisco maintain that they were able to serve and file their Motion for Reconsideration dated October 15, 2013 *via* **courier service** on October 16, 2013.[11]

However, in the assailed Resolution, the CA found that petitioners Heirs of Francisco's Motion for Reconsideration was filed **only on December 6, 2013**.[12] Hence, the CA denied outright the petitioners Heirs of Francisco's Motion for Reconsideration, "considering that the period to file a Motion for Reconsideration is not extendible."[13]

Consequently, the CA directed the Division Clerk of Court to issue "an Entry of Judgment for the above entitled case, pursuant to to (*sic*) Section 3(b), Rule IV and Section 1, Rule VII, of the Internal Rules of the Court of Appeals, as amended, considering that the August 19, 2013 Decision has attained finality for lack of a timely filed Motion for Reconsideration or a petition before the Supreme Court."[14]

Hence, the instant Petition.

On April 28, 2015, the private respondents filed their Comment[15] to the Petition. On February 29, 2016, the private respondents filed a Manifestation and Motion to Deny Petition.[16]

On April 19, 2016, the Court issued a Resolution[17] requiring the petitioners Heirs of Francisco to file a Reply to the private respondents' Manifestation and Motion to Deny Petition within ten (10) days from notice. The records reveal that the petitioners Heirs of Francisco failed to file a Reply as required by the Court.

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[11] *Id*. at 11, 13-14.

[12] *Id*. at 34.

[13] *Id*., citing *V.C. Ponce Company, Inc. v. Municipality of Parañaque*, 698 Phil. 338 (2012); *Habaluyas Enterprises, Inc. v. Judge Japson*, 226 Phil. 144 (1981).

[14] *Id*.

[15] *Id.* at 99-106.

[16] *Id*. at 120-129.

[17] *Id*. at 133.

Issue

In the instant Petition, the petitioners Heirs of Francisco raise a singular issue to be resolved by the Court: whether the CA committed grave abuse of discretion in issuing the assailed Resolution denying outright the petitioners Heirs of Francisco's Motion for Reconsideration and ordering Entry of Judgment due to the failure of petitioners Heirs of Francisco to timely file a Motion for Reconsideration.

The Court's Ruling

The Court resolves to deny the instant Petition for utter lack of merit.

Being a Rule 65 Petition, the petitioners Heirs of Francisco allege that that the CA acted in a capricious, whimsical, arbitrary or despotic manner in the exercise of its jurisdiction as to be equivalent to lack of jurisdiction.

In order for a *Certiorari* petition to prosper, the abuse of discretion alleged must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[18]

In the instant case, the Court finds that there was no error whatsoever, more so grave abuse of discretion, committed by the CA in issuing its assailed Resolution.

First and foremost, the Court stresses at the outset that under Section 3, Rule 13 of the Rules of Court, there are only two (2) modes by which a party may file a pleading before the courts: (1) by **personal filing** - presenting the original copies thereof personally to the clerk of court, or (2) by **registered mail**.

The petitioners Heirs of Francisco admit that they did not file their Motion for Reconsideration through personal filing, but by or through ***private courier/courier service***.[19]

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[18] *Chua v. People*, G.R. No. 195248, November 22, 2017.

[19] *Rollo*, pp. 13, 14.

Filing *via* **private courier or courier service is NOT a manner of filing allowed or recognized by the Rules of Court**. On this point alone, the instant Petition merits dismissal.

Moreover, even assuming *arguendo* that the Court could accept the petitioners Heirs of Francisco's act of filing by private courier as an alternative mode of filing, it must be stressed that according to Rule 52 of the Rules of Court, as well as Rule 7 of the 2002 Internal Rules of the Court of Appeals, a party may file a motion for reconsideration of a judgment or final resolution issued by the appellate court **only within fifteen (15) days from notice thereof**, with proof of service on the adverse party.[20]

As readily acknowledged by the petitioners Heirs of Francisco, as they received a copy of the CA's Decision dated August 19, 2013 on September 30, 2013, they had until **October 16, 2013** to file their Motion for Reconsideration.[21]

However, the CA found that the petitioners Heirs of Francisco only filed their Motion for Reconsideration **almost two (2) months after October 16, 2013**, or on **December 6, 2013**.

Basic is the rule in evidence that the burden of proof lies upon him who asserts it.[22] Hence, the petitioners Heirs of Francisco had the burden to refute the CA's finding that the Motion for Reconsideration was filed out of time on December 6, 2013 and substantiate their claim that the said pleading was filed on October 16, 2013.

However, in the instant Petition itself, the petitioners Heirs of Francisco **failed to present even a shred of evidence, aside from their own self-serving allegation**, to prove that they indeed couriered their Motion for Reconsideration on October 16, 2013. The Court cannot rely on the mere say-so of the petitioners

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[20] *V.C. Ponce Company, Inc. v. Municipality of Parañaque*, *supra* note 13, at 349.

[21] *Rollo*, p. 11.

[22] *MOF Company, Inc. v. Shin Yang Brokerage Corp.*, 623 Phil. 424, 436 (2009).

Heirs of Francisco to repudiate the clear and unequivocal finding of the CA that the Motion for Reconsideration was filed only on December 6, 2013.

Hence, with the Rules of Court stating that if no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments,[23] the CA merely followed the letter of law in issuing the assailed Entry of Judgment.

WHEREFORE, premises considered, the instant appeal is hereby **DENIED**. The Resolution dated August 20, 2014 issued by the Court of Appeals, Cagayan de Oro City, Special Former Twenty-Second Division in CA-G.R. CV No. 02277-MIN is **AFFIRMED**.

SO ORDERED.

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

Perlas-Bernabe, J., on wellness leave.

SECOND DIVISION

[G.R. No. 218343. November 28, 2018]

JUN MIRANDA, *petitioner, vs.* **SPS. ENGR. ERNESTO and AIDA MALLARI and SPS. DOMICIANO C. REYES and CARMELITA PANGAN,** *respondents.*

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[23] RULES OF COURT, Rule 36, Sec. 2.

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

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; *ACCION PUBLICIANA*; NATURE; THE ISSUE IN AN *ACCION PUBLICIANA* IS THE "BETTER RIGHT OF POSSESSION" OF REAL PROPERTY WHICH MAY OR MAY NOT PROCEED FROM A TORRENS TITLE.—** *Accion publiciana* is a plenary action to recover the better right of possession (possession *de jure*), which should be brought in the proper inferior court or Regional Trial Court (depending upon the value of the property) when the dispossession has lasted for more than one year (or for less than a year in cases other than those mentioned in Rule 70 of the Rules). The issue in an *accion publiciana* is the "better right of possession" of real property independently of title. This "better right possession" may or may not proceed from a Torrens title. Thus, a lessee, by virtue of a registered lease contract or an unregistered lease contract with a term longer than one year may file, as against the owner or usurper, an *accion publiciana* if he has been dispossessed for more than one year. In the same manner, a registered owner or one with a Torrens title can likewise file an *accion publiciana* to recover possession if the one-year prescriptive period for forcible entry and unlawful detainer has already lapsed.

2. **ID.; ID.; ID.; THE COURT HEARING AN *ACCION PUBLICIANA* HAS THE POWER TO RULE PROVISIONALLY ON THE ISSUE OF OWNERSHIP, ONLY TO DETERMINE WHO BETWEEN THE PARTIES HAS THE RIGHT TO POSSESS THE PROPERTY; THUS, THE DEFENSE OF OWNERSHIP RAISED BY THE DEFENDANT WILL NOT TRIGGER A COLLATERAL ATTACK ON THE PLAINTIFF'S CERTIFICATE OF TITLE.—** Unlike forcible entry and unlawful detainer where there is an express grant for the provisional determination of the issue of ownership for the sole purpose of determining the issue of possession pursuant to Sections 16 and 18 of Rule 70, there is no express grant in the Rules that the court hearing an *accion publiciana* can provisionally resolve the issue of ownership. Despite the lack of an express Rule, however, there is ample jurisprudential support for upholding the power of a

court hearing an *accion publiciana* to also rule provisionally on the issue of ownership. In *Supapo v. Sps. De Jesus (Supapo)* the Court stated x x x. This Court has held that the objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. This adjudication is not a final determination of the issue of ownership, it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property. The adjudication, in short, is not conclusive on the issue of ownership. x x x. Since the resolution of the issue of ownership in *accion publiciana*, like forcible entry and unlawful detainer, is passed upon only to determine the issue of possession, the defense of ownership raised by the defendant (*i.e*., that he, and not the plaintiff, is the rightful owner) will **not** trigger a collateral attack on the plaintiff's certificate of title.

3. CIVIL LAW; CIVIL CODE; SALES; NATURE OF CONTRACT OF SALE; OWNERSHIP OF THE THING SOLD SHALL BE TRANSFERRED TO THE VENDEE UPON THE ACTUAL OR CONSTRUCTIVE DELIVERY THEREOF.— Article 1458 of the Civil Code provides that by the contract of sale one of the contracting parties obligates himself to transfer ownership and to deliver a determinate thing, and the other to pay a price certain in money or equivalent. Pursuant to Article 1475 of the Civil Code, a contract of sale is a consensual one because it is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price. As to transfer of ownership, Article 1477 of the Civil Code provides that the **ownership** of the thing sold shall be **transferred** to the vendee **upon the actual or constructive delivery** thereof. Under Article 712 of the same Code, ownership and other real rights over property are acquired and transmitted in consequence of certain contracts, by **tradition**. However, the parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price under Article 1478. The Deed of Absolute Sale between Spouses Reyes, the then registered owners of the subject property, and

Miranda was executed in March 1996 and possession was alredy transferred to Miranda, through constructive delivery when the Deed of Absolute Sale, a public instrument, was executed conformably to Article 1498 of the Civil Code, and through real delivery when actual possession was turned over to Miranda pursuant to Article 1497 of the Civil Code. Pursuant to the applicable provisions of the Civil Code on the contract of sale and modes of acquiring ownership, Miranda acquired ownership of the subject property when he took actual physical, or at least constructive, possession thereof.

4. ID.; ID.; ID.; THE NON-REGISTRATION OF THE DEED OF ABSOLUTE SALE WITH THE REGISTRY OF DEEDS WILL NOT AFFECT THE VALIDITY AND EFFECTIVITY OF THE SALE. — The non-registration of the Deed of Absolute Sale with the Registry of Deeds for the Province of Nueva Ecija did not affect the sale's validity and effectivity. In the 1958 case of *Sapto v. Fabiana (Sapto)* penned by Justice J.B.L. Reyes, the Court stated: x x x. In a long line of cases already decided by this Court, we have consistently interpreted sec. 50 of the Land Registration Act providing that "no deed x x x shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration" in the sense that as between the parties to a sale registration is not necessary to make it valid and effective, for actual notice is equivalent to registration x x x. x x x . And in the recent case of Casica *vs*. Villaseca. G.R. No. L-9590, April 30, 1957, we reiterated that "the purpose of registration is merely to notify and protect the interests of strangers to a give transaction, who may be ignorant thereof, and the non-registration of the deed evidencing said transaction does not relieve the parties thereto of their obligations thereunder."

5. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; EXECUTION AND SATISFACTION OF JUDGMENTS; IF THE JUDGMENT OBLIGOR NO LONGER HAS ANY RIGHT, TITLE OR INTEREST IN THE PROPERTY LEVIED UPON, THEN THERE CAN BE NO LIEN THAT MAY BE CREATED IN FAVOR OF THE JUDGMENT OBLIGEE BY REASON OF THE LEVY, AS ONLY PROPERTY INCONTROVERTIBLY OR UNQUESTIONABLY BELONGING TO THE JUDGMENT

OBLIGOR MAY BE SUBJECT OF A LEVY ON EXECUTION.— Since ownership of the subject property had been transferred to Miranda in 1996, it ceased to be owned by Spouses Reyes as early as then. Not being owned by Spouses Reyes, the subject property could not therefore be made answerable for any judgment rendered against them. Section 9(b), Rule 39 of the Rules, which authorizes a "levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution" presupposes that the property to be levied belongs to and is owned by the judgment debtor. Also, according to Section 12, Rule 39, the effect of levy on execution as to third persons is to create a lien in favor of the judgment obligee over the right, title and interest of the judgment obligor in such property at the time of the levy, subject to liens and encumbrances then existing. **If the judgment obligor no longer has any right, title or interest in the property levied upon, then there can be no lien that may be created in favor of the judgment obligee by reason of the levy.** Based on Section 9(b), Rule 39 of the Rules, the purpose of a levy on execution is to subject real and personal properties of the judgment debtor and make them answerable to the obligation in favor of the judgment obligee in case the former is not able to pay the judgment debt in cash, certified check, or similar means; and only property **incontrovertibly or unquestionably belonging to the judgment obligor** may be subject of a levy on execution.

6. ID.; ID.; ID.; ID.; A JUDGMENT CREDITOR OR PURCHASER AT AN EXECUTION SALE ACQUIRES ONLY WHATEVER RIGHTS THAT THE JUDGMENT OBLIGOR MAY HAVE OVER THE PROPERTY AT THE TIME OF LEVY; THUS, IF THE JUDGMENT OBLIGOR HAS NO RIGHT, TITLE OR INTEREST OVER THE LEVIED PROPERTY THERE IS NOTHING FOR HIM TO TRANSFER.— It is well-settled pursuant to *Balbuena v. Sabay (Balbuena)* that a judgment debtor can only transfer property in which he has interest to the purchaser at a public execution sale **and the principle of *caveat emptor* applies even to such sale**: x x x. x x x, [A]s held by the Court in *Panizales v. Palmares,* cited in *Balbuena,* the purchaser acquires absolutely nothing if at the execution sale the judgment debtor no longer has any right to or interest in the property purportedly belonging

to him: x x x. **Based on the above rulings, a judgment creditor or purchaser at an execution sale acquires only whatever rights that the judgment obligor may have over the property at the time of levy. Thus, if the judgment obligor has no right, title or interest over the levied property — as in this case — there is nothing for him to transfer.** Applied to this, the levy made on the subject property could not have created any lien in favor of Spouses Mallari because their judgment debtors, Spouses Reyes, had no more right, title or interest thereto or therein at the time of the levy. To recall, they had sold the property in question to Miranda a whole seven years earlier. Needless to add, there was nothing that was sold and transferred to Spouses Mallari at the time of the execution.

7. **ID.; ID.; ID.; ID.; THE RULE THAT PREFERENCE IS TO BE GIVEN TO A DULY REGISTERED LEVY ON ATTACHMENT OR EXECUTION OVER A PRIOR UNREGISTERED SALE APPLIES IN CASE OWNERSHIP HAS NOT VESTED IN FAVOR OF THE BUYER IN THE PRIOR UNREGISTERED SALE BEFORE THE REGISTERED LEVY ON ATTACHMENT OR EXECUTION, WHILE THE RULE THAT A JUDGMENT DEBTOR CAN ONLY TRANSFER PROPERTY IN WHICH HE HAS INTEREST TO THE PURCHASER AT A PUBLIC EXECUTION SALE APPLIES WHEN, BEFORE THE LEVY, OWNERSHIP OF THE SUBJECT PROPERTY HAS ALREADY BEEN VESTED IN FAVOR OF THE BUYER IN THE PRIOR UNREGISTERED SALE.—** The jurisprudential rule that preference is to be given to a duly registered levy on attachment or execution over a prior unregistered sale, which the CA adverted to in ruling that the right of Spouses Mallari prevails over that of Miranda, is to be circumscribed within another well-settled rule — that a judgment debtor can only transfer property in which he has interest to the purchaser at a public execution sale. Thus, the former rule applies in case ownership has not vested in favor of the buyer in the prior unregistered sale before the registered levy on attachment or execution, and the latter applies when, before the levy, ownership of the subject property has already been vested in favor of the buyer in the prior unregistered sale. In conclusion, the Court holds that Miranda has a better right of possession over the subject property having acquired ownership

thereof prior to the levy on execution that Spouses Mallari had caused to be made upon the subject property.

APPEARANCES OF COUNSEL

Joel V. Garma for petitioner.
Edwin Alaestante for respondents Sps. Mallari.
Domiciano Reyes for respondents Reyes and Pangan.

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 September 26, 2014 and the Resolution[3] dated May 19, 2015 of the Court of Appeals[4] in CA-G.R. CV No. 97437. The CA Decision denied the appeal filed by petitioner Jun Miranda (Miranda) and affirmed the Decision[5] dated June 3, 2010 of the Regional Trial Court of Gapan City, Nueva Ecija, Branch 87 (RTC) in Civil Case No. 2773, ordering Miranda to surrender possession of the 7.3 hectares lot (subject property) located at Barangay Papaya, San Antonio, Nueva Ecija and embraced in Transfer Certificate of Title No. (TCT) NT-226485 of the Register of Deeds for the Province of Nueva Ecija, and dismissing the third-party complaint by Miranda against Spouses Domiciano Reyes and Carmelita Pangan (Spouses Reyes). The CA Resolution denied Miranda's motion for reconsideration.

The Facts and Antecedent Proceedings

The antecedents as narrated in the CA Decision follow:

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[1] *Rollo*, pp. 3-23, excluding Annexes.

[2] *Id*. at 24-36. Penned by Associate Justice Normandie B. Pizarro, with Associate Justices Manuel M. Barrios and Pedro B. Corales concurring.

[3] *Id*. at 48-50.

[4] Seventeenth Division and Former Seventeenth Division, respectively.

[5] *Rollo*, pp. 72-81. Penned by Presiding Judge Wilfredo L. Maynigo.

On January 24, 2000, a *Decision* was rendered by the RTC of Balanga City granting the complaint for damages docketed therein as Civil Case No. 6701, entitled Spouses Ernesto and Aida Mallari (Spouses Mallari) versus Japhil Construction Corp. and its owners, the Spouses Domiciano and Carmelita Reyes (Spouses Reyes). The decretal portion of the disposition reads as follows:

> *WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering the latter to jointly and severally pray* (sic);
>
> *1. Plaintiffs Spouses Engr. Ernesto S. Mallari and Aida P. Mallari the sum of ₱1,200,000.00 Philippine Currency, plus interest at the rate of 6% per annum counted from the date of the filing of this case until the said amount is paid in full;*
>
> *2. ₱50,000.00 for moral damages;*
>
> *3. ₱25,000.00 for exemplary damages;*
>
> *4. ₱25,000.00 for Attorney's fees;*
>
> *5. The cost of the suit.*
>
> *SO ORDERED.*

The Spouses Reyes appealed the foregoing disposition, but the same was dismissed by [the CA], through the former Special Second Division, on January 30, 2002. The RTC's disposition [was] declared final and executory on February 20, 2002 and was annotated in Transfer Certificate of Title (TCT) No. NT-266485 as Entry No. 2195 on February 10, 2003.

On March 10, 2003, a Writ of Execution was then issued by the RTC of Balanga. Pursuant thereto, a Notice of Levy, dated April 2, 2003, was issued covering the parcel of land, located at San Antonio, Nueva Ecija, registered under TCT No. NT-266485 (subject property) in the names of therein judgment debtors, Spouses Reyes. The date of the inscription of the notice in TCT No. NT-266485 was indicated as *April 3, 2002*, when the same should have been April 3, 2003.

On September 12, 2003 and after due notice, a public auction was held whereby the subject property was sold to the Spouses Mallari, as highest bidder[s], who came out with a bid of One Million Six Hundred Forty-Five Thousand Pesos (PhP 1,645,000.00). On September 16, 2003, a Certificate of Sale was then issued to the said

spouses who, in turn, caused the same to be annotated in TCT No. NT-266485 as Entry No. 11122 on September 17, 2003.

The Present Controversy:

On March 3, 2004, the Spouses Mallari filed the suit [for recovery of possession] below against Jun Miranda (Miranda). Thereunder, they alleged that, sometime after causing the Certificate of Sale in their favor to be annotated in TCT No. NT-266485, they conducted an inspection of the subject property. At which time, they discovered that the same was in the possession of Miranda who claimed to be the owner thereof, having bought the property from the Spouses Reyes sometime in 1996. Claiming to be entitled to the ownership and possession of the property, they prayed that Miranda be ordered to vacate and to surrender the possession thereof to them.

In his Answer, Miranda denied all the material allegations in the Spouses Mallari's complaint. He averred that he is already, and continues to be, the owner of the subject property as he bought the same from the Spouses Reyes way back March 20, 1996[6] despite that he failed to cause the registration of the sale as he lost the owner's copy of TCT No. NT-266485. Asserting that the Spouses Reyes no longer have rights or interests over the subject property at the time of the levy, he maintained that the Spouses Mallari acquired no right over the same. Further, he insisted that the Spouses Mallari have no cause of action since the said spouses are mere claimants in an execution sale and no formal demand to vacate was made upon him. Claiming to be an innocent purchaser for value who cannot be deprived of possession over the subject property, he prayed that the complaint be dismissed, that he be declared the rightful owner of the subject property, and for an award of damages.

On July 12, 2004 and with leave of court, Miranda filed a Third-Party Complaint against the Spouses Reyes. In essence, he alleged that he would have immediately transferred the ownership of the subject property in his name had he known of the suit between the Spouses Reyes and the Spouses Mallari; and, that because of such lack of knowledge, he is now in extreme danger of losing his property. Maintaining that the Spouses Reyes, as sellers, impliedly warranted his protection against eviction, he, thus, prayed that the said spouses be held liable for any and all damages that he may incur should he be deprived of the subject property.

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[6] According to the Petition, the date of the Deed of Absolute Sale (Exhibit "2") is March 21, 1996. *Id.* at 6.

In his Answer, Domiciano Reyes admitted that he and his now deceased wife, Carmelita, sold the subject property to Miranda in 1996. He, however, claimed that he and his wife are no longer liable to Miranda should the latter be ordered to surrender the possession and ownership of the property to the Spouses Mallari. According to him, Miranda was grossly negligent in that he did not cause the registration of the property in his name or to annotate his interest over the property despite that, after the sale in 1996, he and his wife, as sellers, surrendered to Miranda all the documents pertinent to the subject property that would have enabled the latter to cause such registration. Further, he claimed that he could not be blamed as regards the levy since, prior thereto, he already informed the Spouses Mallari that the same was no longer his. Insisting that Miranda could not shift the blame on him and his wife, he prayed that the third-party complaint be dismissed for (*sic*) damages.

[Miranda executed an affidavit of adverse claim over the subject property and had it registered only on December 9, 2003.[7]]

The issues having been joined and for lack of an amicable settlement between the parties, a full-blown trial ensued.

On June 3, 2010, the RTC rendered the assailed *Decision* granting the Spouses Mallari's complaint and dismissing Miranda's third-party complaint. It pronounced that Miranda is estopped from claiming ownership over the subject property in view of his failure to annotate his interest thereto in TCT No. NT-266485; and, that the levy, execution, and sale of the subject property to the Spouses Mallari is valid because Miranda's claim of ownership, even if true, cannot prevail over the rights of the said spouses.

In dismissing the third-party complaint, the RTC ratiocinated that the warranty against eviction does not apply because, first, the Spouses Reyes, as vendors, had no participation in the execution sale and, second, it was Miranda who failed to safeguard his right over the property. The *fallo* of the disposition thus reads:

> ***WHEREFORE****, premises considered, judgment is hereby rendered in favor of the plaintiffs-spouses Ernesto and Aida Mallari and against defendant Jun Miranda in the following manner:*

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[7] *Rollo*, p. 79.

a) Ordering defendant Jun Miranda to peacefully surrender the material and actual possession of the 7.3 hectares lot located at Brgy. Papaya, San Antonio, Nueva Ecija, and embraced in TCT No. NT 226485 of the Register of Deeds for the Province of Nueva Ecija; and,

b) Dismissing the third-party complaint by defendant Jun Miranda against Sps. Domiciano Reyes and Carmelita Pangan for lack of merit.

SO ORDERED.

Dissatisfied, Miranda sought x x x recourse [to the CA].[8]

The CA Ruling

The CA in its Decision[9] dated September 26, 2014 denied Miranda's appeal and affirmed the RTC Decision.

The CA ruled that the right of Spouses Ernesto and Aida Mallari (Spouses Mallari) having been annotated on TCT NT-266485 through the Notice of Levy prevails over that of Miranda "in line with the jurisprudential rule that preference is given to a duly registered levy on attachment or execution over a prior unregistered sale."[10] The CA found Miranda's invocation that he is an innocent purchaser for value erroneous, and Spouses Mallari are the ones who can claim the right of being innocent purchasers for value.[11] On Miranda's third-party complaint against Spouses Reyes, the CA ruled that Miranda cannot anymore seek refuge under the Civil Code provisions on breach of warranty against eviction because almost eight years have lapsed from the execution of the deed of sale in 1996 up to the filing of the instant complaint on March 3, 2004.[12]

The dispositive portion of the CA Decision states:

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[8] *Id*. at 25-30.

[9] *Id*. at 24-36.

[10] *Id*. at 32.

[11] *Id*. at 34.

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

WHEREFORE, the appeal is **DENIED**. The assailed disposition is **AFFIRMED** *in toto*. No costs.

SO ORDERED.[13]

Miranda moved for reconsideration of the CA Decision, but the motion was denied in the CA Resolution[14] dated May 19, 2015.

Hence, Miranda filed the instant Petition. Spouses Mallari filed their Comment[15] dated September 3, 2015. Miranda filed a Reply[16] dated December 24, 2015.

Issues

The Petition raises the following issues:

Whether the CA erred when it upheld the supposed rights of Spouses Mallari as attaching creditors of the subject property despite their knowledge of the prior unregistered sale to Miranda;

Whether the CA erred when it did not award damages to Miranda;

Whether the CA erred when it dismissed the third-party complaint of Miranda against Spouses Reyes; and

Whether the CA erred in not reconsidering its Decision despite more than compelling reasons for its reversal.[17]

The Court's Ruling

The Petition is impressed with merit.

Before the Court delves into the substantive issues, the Court deems it proper to discuss a preliminary procedural matter.

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[13] *Id*. at 36.

[14] *Id*. at 48-50.

[15] *Id*. at 65-71, excluding Annexes.

[16] *Id*. at 91-100.

[17] *Id*. at 9.

The present Petition originated from a "verified complaint for Recovery of Possession with Damages."[18] The narration of facts both in the RTC Decision and the CA Decision reveals that recovery of possession was sought by Spouses Mallari from Miranda through an *accion publiciana* because there are no averments of facts that would support an action for either forcible entry or unlawful detainer. Besides, the complaint was filed before a Regional Trial Court, a third-party complaint was even allowed, and the proceedings were not summary as a full-blown trial was conducted.

Spouses Mallari's case against Miranda being an *accion publiciana*, a review of its nature and attributes is in order.

Accion publiciana is a plenary action to recover the better right of possession (possession *de jure*), which should be brought in the proper inferior court or Regional Trial Court (depending upon the value of the property)[19] when the dispossession has

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[18] *Id*. at 72.

[19] Sections 19 and 33, Batas Pambansa Blg. No. 129 as amended by Republic Act No. 7691 (March 25, 1994) provide:

SEC. 19. *Jurisdiction in civil cases*. — Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(2) In all civil actions which involve the **title to, or possession of, real property, or any interest therein**, where the **assessed value** of the property involved **exceeds Twenty thousand pesos (₱20,000.00)** or, for civil actions **in Metro Manila**, where **such value exceeds Fifty thousand pesos (₱50,000.00)** except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts[.]

x x x x x x x x x

SEC. 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in Civil Cases*. – Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x x x x x x

(3) Exclusive original jurisdiction in all civil actions which involve **title to, or possession of, real property, or any interest therein** where the

lasted for more than one year (or for less than a year in cases other than those mentioned in Rule 70 of the Rules).[20]

The issue in an *accion publiciana* is the "better right of possession" of real property independently of title. This "better right of possession" may or may not proceed from a Torrens title. Thus, a lessee, by virtue of a registered lease contract or an unregistered lease contract with a term longer than one year may file, as against the owner or usurper, an *accion publiciana* if he has been dispossessed for more than one year. In the same manner, a registered owner or one with a Torrens title can likewise file an *accion publiciana* to recover possession if the one-year prescriptive period for forcible entry and unlawful detainer has already lapsed.

Unlike forcible entry and unlawful detainer where there is an express grant for the provisional determination of the issue of ownership for the sole purpose of determining the issue of possession pursuant to Sections 16[21] and 18[22] of Rule 70, there

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assessed value of the property or interest therein does **not exceed Twenty thousand pesos (₱20,000.00)** or, in civil actions in **Metro Manila**, where such **assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs:** *Provided*, That in cases of land not declared for taxation purposes, the value of such property shall be determined by the assessed value of the adjacent lots. (Emphasis supplied)

[20] See *Gumiran v. Gumiran*, 21 Phil. 174, 178-179 (1912), cases cited omitted. Rule 70 of the Rules of Court was formerly Section 80 of the Code of Procedure in Civil Actions, as amended by Act No. 1778.

[21] Section 16, Rule 70, Rules of Court provides:

SEC. 16. *Resolving defense of ownership*. – When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.

[22] Section 18, Rule 70, Rules of Court provides:

SEC. 18. *Judgment conclusive only on possession; not conclusive in actions involving title or ownership.* – The judgment rendered in an action for forcible entry or detainer shall be conclusive with respect to the possession only and shall in no wise bind the title or affect the ownership of the land or building. Such judgment shall not bar an action between the same parties respecting title to the land or building.

is no express grant in the Rules that the court hearing an *accion publiciana* can provisionally resolve the issue of ownership. Despite the lack of an express Rule, however, there is ample jurisprudential support for upholding the power of a court hearing an *accion publiciana* to also rule provisionally on the issue of ownership.

In *Supapo v. Sps. de Jesus*,[23] (*Supapo*) the Court stated:

> In the present case, the Spouses Supapo filed an action for the recovery of possession of the subject lot but they based their better right of possession on a claim of ownership [based on TCT C-28441 registered and titled under the Spouses Supapo's names[24]].
>
> This Court has held that the objective of the plaintiffs in *accion publiciana* is to recover possession only, not ownership. However, where the parties raise the issue of ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property.
>
> This adjudication is not a final determination of the issue of ownership; it is only for the purpose of resolving the issue of possession, where the issue of ownership is inseparably linked to the issue of possession. The adjudication of the issue of ownership, being provisional, is not a bar to an action between the same parties involving title to the property. The adjudication, in short, is not conclusive on the issue of ownership.[25]

The Court, recognizing the nature of *accion publiciana* as enunciated above and without dwelling on whether the attack on Spouses Supapo's title was direct or collateral, simply, and rightly, proceeded to provisionally resolve the conflicting claims of ownership. The Court's pronouncement in *Supapo* upholding the indefeasibility and imprescriptibility of Spouses Supapo's

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[23] 758 Phil. 444 (2015). It must be noted that while *accion publiciana* was the remedy sought by Spouses Supapo, the Court, through Justice Brion, ruled that their position that their cause of action was imprescriptible since the subject property was registered and titled under the Torrens system was legally correct. *Id.* at 460.

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

[25] *Id*. at 456; citations omitted.

title was, however, subject to a Final Note that emphasized that even this resolution on the question of ownership would not be a final and binding determination of ownership, but merely provisional:

Final Note

As a final note, we stress that our ruling in this case is limited only to the issue of determining who between the parties has a better right to possession. This adjudication is not a final and binding determination of the issue of ownership. As such, this is not a bar for the parties or even third persons to file an action for the determination of the issue of ownership.[26]

Since the resolution of the issue of ownership in an *accion publiciana*, like forcible entry and unlawful detainer, is passed upon only to determine the issue of possession, the defense of ownership raised by the defendant (*i.e.*, that he, and not the plaintiff, is the rightful owner) will **not** trigger a collateral attack on the plaintiff's certificate of title.

Given these procedural parameters, the Court now proceeds to determine who as between Spouses Mallari and Miranda has a better right of possession over the subject property.

Spouses Mallari anchor their right on their being the highest bidders in an execution sale of the subject property that was conducted on September 12, 2003[27] to enforce a judgment debt that they obtained against its registered owners, Spouses Reyes. The notice of levy on execution and certificate of sale were duly annotated on April 3, 2003[28] and September 17, 2003, respectively, on Spouses Reyes' title.[29] In short, Spouses Mallari claim that they are entitled to the possession of the subject property, being its rightful owners by virtue of a registered execution sale.

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[26] *Id*. at 467.

[27] *Rollo*, p. 26.

[28] Indicated as April 3, 2002; *id*.

[29] *Rollo*, pp. 26 and 79.

On the other hand, Miranda claims a superior right as an owner of the subject property by virtue of an unregistered Deed of Absolute Sale dated March 21, 1996 (Exhibit "2").[30] From then on, Miranda asserts that he occupied the subject property in the concept of an owner and is the actual tiller thereof.[31]

The RTC in its Decision, which is favorable to Spouses Mallari, made this finding:

> There is no dispute that the entire process of satisfaction of the judgment debt is in accordance with the procedure prescribed by law. Still, the defendant [(Miranda)] raised question concerning the ownership of the subject land. Defendant made self-serving assertion that at the time of levy, the subject land is no longer owned by third party defendant Domiciano Reyes. It is already transferred to and owned by the defendant through a deed of sale executed prior to levy. As such, the execution sale is no longer valid. The transfer of the land and its sale in favor of plaintiffs-spouses is likewise invalid. This bare assertion of the defendant cannot be countenanced by the court. It is baseless and unsupported by evidence. At the time of levy, the subject parcel of land is registered in the name of defendant Domiciano Reyes and embraced in TCT No. NT-226485 of the Register of Deeds for the Province of Nueva Ecija. It was a clean title which did not reflect the adversarial claim on the lot of any person including the defendant. As such, plaintiffs-spouses and the Court Sheriff correctly relied on it. They validly conducted the levy and execution sale. The reliance on the clean title is in accordance with the Supreme Court ruling[s] x x x that a Torrens title is generally a conclusive evidence of the ownership of the land referred to therein.
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> x x x x x x x x x
>
> Also, the Court is aware of the superior right of plaintiffs-spouses who first registered the notice of levy and certificate of sale vis-a-vis the defendant who alleged a prior unregistered sale and late registration of adverse claim. x x x[32]

The CA, relying on Section 51 of Presidential Decree No. 1529, also known as the Property Registration Decree, which

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[30] *Id*. at 6.

[31] *Id*.

[32] *Id*. at 78-80.

provides that no deed, mortgage, lease or other voluntary instrument shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the Registry of Deeds to make a registration, and Section 52, which provides that every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument or entry affecting registered land shall, if registered, filed or entered in the Office of the Register of Deeds for the province or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing or entering, ruled:

> At bench, the Spouses Reyes [and] Miranda both claim that a sale covering the subject property was made by the former to the latter in 1996. There is no dispute, however, that the purported sale was not registered. On the other hand, the Notice of Levy covering the subject property that was issued in favor of the Spouses Mallari was, without a doubt, annotated on TCT No. NT-266485. The right, therefore, of the Spouses Mallari prevails over that of Miranda's, in line with the jurisprudential rule that preference is given to a duly registered levy on attachment or execution over a prior unregistered sale. x x x[33]

Given the nature of *accion publiciana*, as explained above, the rulings of the RTC and the CA on the issue of ownership should be considered as merely provisional and not conclusive.

Since both parties, Spouses Mallari and Miranda, claim exclusive ownership over the subject property, the right of ownership recognized in favor of one necessarily excludes the other of such right since this is not a case of co-ownership.

Article 1458 of the Civil Code provides that by the contract of sale one of the contracting parties obligates himself to transfer ownership and to deliver a determinate thing, and the other to pay a price certain in money or equivalent. Pursuant to Article 1475 of the Civil Code, a contract of sale is a consensual one because it is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

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[33] *Id.* at 32.

As to transfer of ownership, Article 1477 of the Civil Code provides that the **ownership** of the thing sold shall be **transferred** to the vendee **upon the actual or constructive delivery** thereof. Under Article 712 of the same Code, ownership and other real rights over property are acquired and transmitted in consequence of certain contracts, by **tradition**. However, the parties may stipulate that ownership in the thing shall not pass to the purchaser until he has fully paid the price under Article 1478.

The Deed of Absolute Sale between Spouses Reyes, the then registered owners of the subject property, and Miranda was executed in March 1996 and possession was already transferred to Miranda, through constructive delivery when the Deed of Absolute Sale, a public instrument, was executed conformably to Article 1498[34] of the Civil Code, and through real delivery when actual possession was turned over to Miranda pursuant to Article 1497[35] of the Civil Code.

Pursuant to the applicable provisions of the Civil Code on the contract of sale and modes of acquiring ownership, Miranda acquired ownership of the subject property when he took actual physical, or at least constructive, possession thereof.

The non-registration of the Deed of Absolute Sale with the Registry of Deeds for the Province of Nueva Ecija did not affect the sale's validity and effectivity. In the 1958 case of *Sapto v. Fabiana*[36] (*Sapto*) penned by Justice J. B. L. Reyes, the Court stated:

The issue is whether the deed of sale executed by appellants' predecessors in favor of the appellee over the land in question, although

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[34] ART. 1498. When the sale is made through a public instrument, the execution thereof shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot be clearly inferred.

x x x x x x x x x

[35] ART. 1497. The thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee.

[36] 103 Phil. 683 (1958).

never registered, is valid and binding on appellants and operated to convey title and ownership to the appellee.

The question is not new. In a long line of cases already decided by this Court, we have consistently interpreted sec. 50 of the Land Registration Act providing that "no deed x x x shall take effect as a conveyance or bind the land, but shall operate only as a contract between the parties and as evidence of authority to the clerk or register of deeds to make registration" in the sense that as between the parties to a sale registration is not necessary to make it valid and effective, for actual notice is equivalent to registration x x x. "The peculiar force of a title under Act No. 492", we said in Medina *vs*. Imaz and Warner Barnes & Co., 27 Phil., 314 (syllabus), "is exhibited only when the purchaser has sold to innocent third parties the land described in the conveyance. Generally speaking, as between vendor and vendee, the same rights and remedies exist in relation to land not so registered." In Galanza *vs*. Nuesa, 95 Phil., 713, we held that "registration is intended to protect the buyer against claims of third persons arising from subsequent alienations by the vendor, and is certainly not necessary to give effect as between the parties to their deed of sale." And in the recent case of Casica *vs*. Villaseca, G.R. No. L-9590, April 30, 1957, we reiterated that "the purpose of registration is merely to notify and protect the interests of strangers to a given transaction, who may be ignorant thereof, and the non-registration of the deed evidencing said transaction does not relieve the parties thereto of their obligations thereunder."[37]

Since ownership of the subject property had been transferred to Miranda in 1996, it ceased to be owned by Spouses Reyes as early as then. Not being owned by Spouses Reyes, the subject property could not therefore be made answerable for any judgment rendered against them.

Section 9(b), Rule 39 of the Rules, which authorizes a "levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution" presupposes that the property to be levied belongs to and is owned by the judgment debtor. Also, according to Section 12, Rule 39, the effect of levy on execution as to third persons is to create a lien in favor of the

[37] *Id*. at 684-685.

judgment obligee over the right, title and interest of the judgment obligor in such property at the time of the levy, subject to liens and encumbrances then existing. **If the judgment obligor no longer has any right, title or interest in the property levied upon, then there can be no lien that may be created in favor of the judgment obligee by reason of the levy**.

Based on Section 9(b), Rule 39 of the Rules, the purpose of a levy on execution is to subject real and personal properties of the judgment debtor and make them answerable to the obligation in favor of the judgment obligee in case the former is not able to pay the judgment debt in cash, certified check, or similar means; and only property **incontrovertibly or unquestionably belonging to the judgment obligor** may be subject of a levy on execution.

In *Gagoomal v. Spouses Villacorta*,[38] the Court held:

> **It is a basic principle of law that money judgments are enforceable only against property incontrovertibly belonging to the judgment debtor**, and if property belonging to any third person is mistakenly levied upon to answer for another man's indebtedness, such person has all the right to challenge the levy through any of the remedies provided for under the Rules of Court. x x x[39] (Emphasis supplied)

In *Bayer Philippines, Inc. v. Agana,*[40] citing *Manila Herald Publishing Co., Inc. v. Ramos*,[41] the Court ruled that the court issuing a writ of execution and the sheriff making the levy act beyond the limits of their authority when the property levied upon does not unquestionably belong to the judgment debtor, but to a third party, like Miranda in this case, *viz*.:

> x x x **[T]he levy by the sheriff of a property by virtue of a writ of attachment may be considered as made under authority of**

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[38] 679 Phil. 441 (2012).

[39] *Id*. at 451.

[40] 159 Phil. 953 (1975).

[41] 88 Phil. 94 (1951).

the court only when the property levied upon unquestionably belongs to the defendant. If he attach[es] properties other than those of the defendant, he acts beyond the limits of his authority. Otherwise stated, the court issuing a writ of execution is supposed to enforce its authority only over properties of the judgment-debtor, and should a third party appear to claim the property levied upon by the sheriff, the procedure laid down by the Rules is that such claim should be the subject of a separate and independent action.[42] (Emphasis and underscoring supplied)

It is well-settled pursuant to *Balbuena v. Sabay*[43] (*Balbuena*) that a judgment debtor can only transfer property in which he has interest to the purchaser at a public execution sale **and the principle of *caveat emptor* applies even to such sale**:

Nothing is more settled than that a judgment creditor (or more accurately, the purchaser at an auction sale) only acquires at an execution sale the identical interest possessed by the judgment debtor in the auctioned property; in other words, the purchaser takes the property subject to all existing equities applicable to the property in the hands of the debtor. The fact, too, that the judgment debtor is in possession of the land to be sold at public auction, and that the purchaser did not know that a third-party had acquired ownership thereof, does not protect the purchaser, because he is not considered a third-party, and the rule of *caveat emptor* applies to him. Thus, if it turns out that the judgment debtor has no interest in the property, the purchaser at an auction sale also acquires no interest therein.[44] (Emphasis and underscoring supplied)

Consequently, as held by the Court in *Panizales v. Palmares*,[45] cited in *Balbuena*, the purchaser acquires absolutely nothing if at the execution sale the judgment debtor no longer has any right to or interest in the property purportedly belonging to him:

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[42] *Bayer Philippines, Inc. v. Agana*, *supra* note 40, at 965-966.

[43] 614 Phil. 402 (2009).

[44] *Id*. at 412.

[45] 150-C Phil. 164 (1972).

x x x "The Rules of Court provide that a purchaser of real property at an execution sale 'shall be substituted to and acquire all the right, title, interest, and claim of the judgment debtor thereto.' (Rule 39, Section 24 [now Section 12].) In other words, the purchaser acquires only such right or interest as the judgment debtor had on the property at the time of the sale. x x x **It follows that if at that time the judgment debtor had no more right to or interest in the property because he had already sold it to another then the purchaser acquires nothing.**" x x x "Under the jurisprudence established by this Court **a bona fide sale and transfer of real property, although not recorded, is good and valid against a subsequent attempt to levy execution on the same property by a creditor of the vendor**." x x x[46] (Emphasis and underscoring supplied)

Based on the above rulings, a judgment creditor or purchaser at an execution sale acquires only whatever rights that the judgment obligor may have over the property at the time of levy. Thus, if the judgment obligor has no right, title or interest over the levied property — as in this case — there is nothing for him to transfer.

Applied to this, the levy made on the subject property could not have created any lien in favor of Spouses Mallari because their judgment debtors, Spouses Reyes, had no more right, title or interest thereto or therein at the time of the levy. To recall, they had sold the property in question to Miranda a whole seven years earlier. Needless to add, there was nothing that was sold and transferred to Spouses Mallari at the time of the execution.

The jurisprudential rule that preference is to be given to a duly registered levy on attachment or execution over a prior unregistered sale, which the CA adverted to in ruling that the right of Spouses Mallari prevails over that of Miranda, is to be circumscribed within another well-settled rule — that a judgment debtor can only transfer property in which he has interest to the purchaser at a public execution sale. Thus, the former rule applies in case ownership has not vested in favor of the buyer in the prior unregistered sale before the registered levy on attachment or execution, and the latter applies when, before

[46] *Id*. at 170-171.

the levy, ownership of the subject property has already been vested in favor of the buyer in the prior unregistered sale.

In conclusion, the Court holds that Miranda has a better right of possession over the subject property having acquired ownership thereof prior to the levy on execution that Spouses Mallari had caused to be made upon the subject property.

That held, the Court also adopts the Final Note in *Supapo* that the ruling in this case, being one of *accion publiciana*, is limited only to the issue of determining who between the parties has a better right to possession — and this adjudication is not a final and binding determination of the issue of ownership. As such, this is not a bar for the parties or even third persons to file an action for the determination of the issue of ownership.

The resolution of the issues on the dismissal of the third-party complaint and the reconsideration of the CA Decision is rendered superfluous by the foregoing.

As to Miranda's claim for damages, the Petition has not alleged sufficient factual basis to justify their award.

WHEREFORE, the Petition is hereby **PARTLY GRANTED**. The Decision of the Court of Appeals dated September 26, 2014 and its Resolution dated May 19, 2015 in CA-G.R. CV No. 97437 are **REVERSED** and **SET ASIDE**.

SO ORDERED.

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

*Perlas-Bernab*e, *J.*, on wellness leave.

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

THIRD DIVISION

[G.R. No. 224558. November 28, 2018]

UNIVERSAL ROBINA SUGAR MILLING CORPORATION,[*] *petitioner, vs.* **NAGKAHIUSANG MAMUMUO SA URSUMCO-NATIONAL FEDERATION OF LABOR (NAMA-URSUMCO-NFL),** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; A COLLECTIVE BARGAINING AGREEMENT (CBA) IS A NEGOTIATED CONTRACT ON THE TERMS AND CONDITIONS OF EMPLOYMENT BETWEEN A LEGITIMATE LABOR ORGANIZATION AND THE EMPLOYER.—** A CBA is a negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work, and all other terms and conditions of employment in a bargaining unit — it is the law between the parties absent any ambiguity or uncertainty. Like any other contract, the parties agree on the terms and stipulations by which their relationship is to be governed. Thus, under the CBA, the employer and the employees' representative define the terms of employment, *i.e.*, wages, work hours, and the like.

2. **ID.; ID.; ID.; NEGOTIATION THEREIN CANNOT INCLUDE EMPLOYMENT STATUS.—** As defined, the parties are given wide latitude on what may be negotiated and agreed upon in the CBA. Nevertheless, the employment status cannot be bargained away with as the same is defined by law. In other words, notwithstanding the stipulations in an employment contract or a duly negotiated CBA, the employment status of an employee is ultimately determined by law. x x x [W]hen it comes to the employment status itself of the concerned employees, the CBA is subservient to what the law says their employment status is.

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[*] Identified as "Universal Robina Sugar Milling Company" in the petition.

3. ID.; ID.; EMPLOYMENT; TYPES OF EMPLOYMENT; SEASONAL EMPLOYMENT; CONCERNED EMPLOYEES IN CASE AT BAR WERE REGULAR EMPLOYEES AS THEY WERE ENGAGED TO PERFORM ACTIVITIES USUALLY NECESSARY OR DESIRABLE IN THE USUAL TRADE OR BUSINESS OF THE EMPLOYER.— Under Article 295 of the Labor Code, as amended, four types of employment status are enumerated: (a) regular employees; (b) project employees; (c) seasonal employees; and (d) casual employees. Meanwhile, the landmark case of *Brent School, Inc. v. Zamora* identified fixed-term employment as another valid type of employment. x x x Article 295 of the Labor Code defines seasonal employees as those whose work or engagement is seasonal in nature and the employment is only for the duration of the season. Seasonal employment becomes regular seasonal employment when the employees are called to work from time to time. On the other hand, those who are employed only for a single season remain as seasonal employees. x x x Here, the concerned URSUMCO employees are performing work for URSUMCO even during the off-milling season as they are repeatedly engaged to conduct repairs on the machineries and equipment. x x x The nature of the activities performed by the employees, considering the employer's nature of business, and the duration and scope of work to be done factor heavily in determining the nature of employment. [The concerned employees here are] regular employees, engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer. x x x It cannot be gainsaid that the conduct of repairs on URSUMCO's machineries and equipment is reasonably necessary and desirable in its sugar milling business. It is unreasonable to limit only to activities pertaining to the actual milling process as those necessary in URSUMCO's usual trade or business. Without the constant repairs conducted during the off-milling season, the equipment used during the milling season would not have worked efficiently and productively.

APPEARANCES OF COUNSEL

Fernandez-Estavillo Flores Ballicud & Associates Law Offices for petitioner.

Armando M. Alforque for respondent.

D E C I S I O N

J. REYES, JR., *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the April 15, 2015 Decision[1] and the April 21, 2016 Resolution[2] of the Court of Appeals (CA) in CA-G.R. CEB-SP. No. 06909, which affirmed the May 30, 2012 Decision[3] of the Voluntary Arbitrator, National Conciliation and Mediation Board, Region VII, Cebu City (VA).

Factual background

Petitioner Universal Robina Sugar Milling Corporation (URSUMCO) is a duly registered domestic corporation engaged in sugar milling business. On the other hand, respondent Nagkahiusang Mamumuo sa URSUMCO-National Federation of Labor (NAMA-URSUMCO-NFL) is a legitimate labor organization acting as the sole and exclusive bargaining representative of all regular monthly paid and daily paid rank-and-file employees of URSUMCO.[4]

URSUMCO and NAMA-URSUMCO-NFL were able to successfully negotiate and enter into a Collective Bargaining Agreement (CBA) valid from January 1, 2010 to December 31, 2014. Article VI, Section 2 of the CBA enumerated the employment classification in URSUMCO, *i.e.*, Permanent or Regular Employees and Regular Seasonal Employees.[5]

From August to September 2011, NAMA-URSUMCO-NFL filed several grievances on behalf of 78 URSUMCO regular

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[1] Penned by Associate Justice Renato C. Francisco, with Associate Justices Marilyn B. Lagura-Yap and Germano Francisco D. Legaspi, concurring; *rollo*, pp. 33-43.

[2] Penned by Associate Justice Germano Francisco D. Legaspi, with Associate Justices Marilyn B. Lagura-Yap and Edward B. Contreras, concurring; *id*. at 45-46.

[3] Not attached in the *rollo*.

[4] *Rollo*, p. 10.

[5] *Id*. at 34.

seasonal employees. It sought for the change in the employment status of the concerned employees from regular seasonal to permanent regular and for the leveling of the salaries. After the grievance machinery failed to resolve the issue, NAMA-URSUMCO-NFL requested that the employees' concerns be submitted to voluntary arbitration. The VA required the parties to submit their respective position papers.[6]

In its Position Paper, NAMA-URSUMCO-NFL alleged that permanent or regular employees practically performed the same work as the regular seasonal employees during milling season; some regular seasonal employees would perform skilled jobs during the off-milling season, while regular or permanent employees would be assigned to utility jobs; regular seasonal employees acted as leadmen, while regular permanent or regular employees were the helpers; longer tenured employees were stuck as regular seasonal employees, while new hires were given regular or permanent status; and regular seasonal employees received lower salaries than regular or permanent employees even if they performed the same functions.[7]

On the other hand, URSUMCO countered in its Position Paper that NAMA-URSUMCO-NFL was estopped from questioning the classification of employees agreed upon by the parties in the CBA; regular seasonal employees only performed work during the milling season; there is no work done during the off-milling season as the period is devoted for repairs; it assigned regular seasonal employees to repair works during the off-milling season out of its own volition even if it could contract the same to third parties; it was a valid exercise of management prerogative to assign some of its regular seasonal employees as regular employees during off-milling season who would, in effect, be working as regular employees during the off-milling season; and to compel it to convert all of its regular seasonal employees as regular or permanent employees would give rise to a situation wherein employees are hired and classified as permanent or regular to do nothing but repair work.[8]

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[6] *Id*.

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

[8] *Id*. at 35.

In its May 30, 2012 Decision, the VA sided with NAMA-URSUMCO-NFL. It held that URSUMCO's act of providing work to regular seasonal employees for several years is deemed a waiver on its part on the effects of Article VI, Section 2 of the CBA. The VA explained that URSUMCO's alleged generosity was immaterial as it should have informed the concerned regular seasonal employees that performing repair works during the off-milling season did not convert them to regular or permanent employees. It ruled:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered:
>
> 1. Declaring the concerned regular seasonal employees as permanent or regular employees provided they have rendered an accumulated service of 300 days during the period they worked during off-season.
>
> 2. Denying the prayer of the Union in the standardization of pay of employees who are holding the same positions.[9]

Aggrieved, URSUMCO appealed before the CA.

CA Decision

In its April 15, 2015 Decision, the CA affirmed the VA Decision. The appellate court stated that the concerned regular seasonal employees were not temporarily laid off during the off-milling season as they were tasked to perform repair and up-keep works. It explained that the tasks assigned to them during the off-milling season were necessary to ensure the smooth and continuous operation of petitioner's machines and equipment during milling season. The CA added that there was no showing that the regular seasonal employees in question were allowed and were able to secure employment elsewhere during the off-milling season. The appellate court postulated that NAMA-URSUMCO-NFL was not estopped from questioning the CBA provisions because the nature of employment is determined by law, regardless of any contract expressing otherwise. Thus, it disposed:

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[9] *Id*. at 36.

WHEREFORE, the Petition is DENIED. The Decision dated 30 May 2012 rendered by the Office of the Voluntary Arbitrator, National Conciliation and Mediation Board, Region VII, Cebu City is hereby AFFIRMED.

SO ORDERED.[10]

URSUMCO moved for reconsideration, but it was denied by the CA in its April 21, 2016 Resolution.

Hence, this present petition raising:

ISSUE

WHETHER THE COURT OF APPEALS RULED IN A MANNER THAT IS CONTRARY TO LAW AND JURISPRUDENCE WHEN IT SUSTAINED THE VA DECISION THAT URSUMCO'S REGULAR SEASONAL EMPLOYEES ARE ALL PERMANENT/ REGULAR EMPLOYEES.[11]

URSUMCO argued that the CBA is the law between the parties and that they are bound to comply with its provisions. It pointed out that NAMA-URSUMCO-NFL's contention to regularize all its regular seasonal employees disregards the provisions of the CBA. URSUMCO explained that its act of magnanimity in assigning its regular seasonal employees to repair works during the off-milling season is in consonance with the express provision of the CBA that regular seasonal employees would be given preference in the performance of such repair jobs during the off-milling season. It also pointed out that the regular seasonal employees concerned are hired to perform repairs which are in the nature of specific projects or undertaking with a predetermined termination or completion at the time of the engagement.

Further, URSUMCO lamented that the VA's sweeping declaration that all regular seasonal employees are deemed regular or permanent employees violated its management prerogatives in determining its appropriate organizational structure. Lastly, it noted that the complaint for regularization had been mooted

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

[11] *Id*. at 12.

by the fact that most of the concerned employees had been regularized, while others had resigned, retired or died.

In its Comment[12] dated August 14, 2017, NAMA-URSUMCO-NFL countered that the VA never made a sweeping declaration that all regular seasonal employees of URSUMCO are now regular or permanent employees as the VA decision only referred to the 78 concerned employees. It elucidated that the concerned employees had been performing tasks related to the operation of URSUMCO for the entire year as they are engaged even during the off-milling season. NAMA-URSUMCO-NFL pointed out that the concerned employees do not fall within the purview of regular seasonal employees as defined in the CBA because they occupied the same positions and performed the same functions every off-milling season.

In its Reply[13] dated September 11, 2017, URSUMCO rebutted that the regular seasonal employees do not perform work related to its regular operations during off-milling season as they are merely engaged in repairs of the machineries and equipment. It also reiterated that the case had been mooted by the regularization or the severance from service of the concerned employees.

The Court's Ruling

The petition is without merit.

A CBA is a negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work, and all other terms and conditions of employment in a bargaining unit — it is the law between the parties absent any ambiguity or uncertainty.[14] Like any other contract, the parties agree on the terms and stipulations by which their relationship is to be governed. Thus, under the CBA, the employer and the employees'

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[12] *Id*. at 62-71.

[13] *Id*. at 78-85.

[14] *Lepanto Ceramics, Inc. v. Lepanto Ceramics Employees Association*, 627 Phil. 691, 700 (2010).

representative define the terms of employment, *i.e.*, wages, work hours, and the like.

As defined above, the parties are given wide latitude on what may be negotiated and agreed upon in the CBA. Nevertheless, the employment status cannot be bargained away with as the same is defined by law.[15] In other words, notwithstanding the stipulations in an employment contract or a duly negotiated CBA, the employment status of an employee is ultimately determined by law. Hence, URSUMCO errs in claiming that NAMA-URSUMCO-NFL is estopped from seeking regularization of the concerned employees because the CBA had already laid out the categories of employment in the company. It is true that the CBA between URSUMCO and NAMA-URSUMCO-NFL is binding between the parties such that they cannot disregard the terms of employment agreed upon — the employer cannot deny employees' benefits granted by the CBA and the employee cannot renege on the obligations imposed by it. Nonetheless, when it comes to the employment status itself of the concerned employees, the CBA is subservient to what the law says their employment status is.

Under Article 295 of the Labor Code, as amended, four types of employment status are enumerated: (a) regular employees; (b) project employees; (c) seasonal employees; and (d) casual employees. Meanwhile, the landmark case of *Brent School, Inc. v. Zamora*[16] identified fixed-term employment as another valid type of employment.

In the present case, URSUMCO argues that the concerned employees are regular seasonal employees as they only perform work during the milling season, and the tasks assigned during the off-milling season are limited only to repairs. On the other hand, NAMA-URSUMCO-NFL believes that the employees in question are regular employees as they are not laid off during the off-milling season.

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[15] *Innodata Knowledge Services, Inc. v. Inting*, G.R. No. 211892, December 6, 2017.

[16] 260 Phil. 747 (1990).

Article 295 of the Labor Code defines seasonal employees as those whose work or engagement is seasonal in nature and the employment is only for the duration of the season. Seasonal employment becomes regular seasonal employment when the employees are called to work from time to time.[17] On the other hand, those who are employed only for a single season remain as seasonal employees.[18] As a consequence of regular seasonal employment, the employees are not considered separated from service during the off-milling season, but are only temporarily laid off or on leave until re-employed.[19] Nonetheless, in both regular seasonal employment and seasonal employment, the employee performs no work during the off-milling season.

Here, the concerned URSUMCO employees are performing work for URSUMCO even during the off-milling season as they are repeatedly engaged to conduct repairs on the machineries and equipment. Strictly speaking, they cannot be classified either as regular seasonal employees or seasonal employees as their work extended even beyond the milling season. The nature of the activities performed by the employees, considering the employer's nature of business, and the duration and scope of work to be done factor heavily in determining the nature of employment.[20]

On the other hand, regular employees are those who are engaged to perform activities which are usually necessary or desirable in the usual trade or business of the employer.[21] In *Abasolo v. National Labor Relations Commission*,[22] the Court

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[17] *Hacienda Cataywa v. Lorezo*, 756 Phil. 263, 273 (2015).

[18] *Hacienda Fatima v. National Federation of Sugarcane Workers-Food and General Trade*, 444 Phil. 587, 596 (2003).

[19] *Universal Robina Sugar Milling Corporation v. Acibo*, 724 Phil. 489, 505 (2014).

[20] *Abasolo v. National Labor Relations Commission*, 400 Phil. 86, 103 (2000).

[21] Article 295 of the Labor Code, as amended.

[22] *Supra* note 20, citing *De Leon v. National Labor Relations Commission*, 257 Phil. 626, 632-633 (1989).

expounded on the standard observed in determining regular employment status, to wit:

> The primary standard, therefore, of determining a regular employment is the reasonable connection between the particular activity performed by the employee in relation to the usual business or trade of the employer. The test is whether the former is usually necessary or desirable in the usual business or trade of the employer. The connection can be determined by considering the nature of the work performed and its relation to the scheme of the particular business or trade in its entirety. Also, if the employee has been performing the job for at least one year, even if the performance is not continuous or merely intermittent, the law deems the repeated and continuing need for its performance as sufficient evidence of the necessity if not indispensability of that activity to the business. Hence, the employment is also considered regular, but only with respect to such activity and while such activity exists.

It cannot be gainsaid that the conduct of repairs on URSUMCO's machineries and equipment is reasonably necessary and desirable in its sugar milling business. It is unreasonable to limit only to activities pertaining to the actual milling process as those necessary in URSUMCO's usual trade or business. Without the constant repairs conducted during the off-milling season, the equipment used during the milling season would not have worked efficiently and productively.

URSUMCO does not deny that the concerned employees are engaged to work during the off-milling season to conduct repairs on the machineries and equipment used in sugar milling. It, however, claims that it hired them out of its own magnanimity as it could have outsourced the same at a cheaper cost. In addition, URSUMCO posits that the repairs conducted fall within the purview of a "project" as defined in *ALU-TUCP v. National Labor Relations Commission*,[23] which is a particular job or undertaking that is not within the regular business of the corporation.

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[23] 304 Phil. 844 (1994).

In *ALU-TUCP*, the Court agreed that the employees therein who were hired in connection with the Five Year Expansion Program of the National Steel Corporation (NSC) were project employees, to wit:

> The term "project" could also refer to, secondly, a particular job or undertaking that is *not* within the regular business of the corporation. Such a job or undertaking must also be identifiably separate and distinct from the ordinary or regular business operations of the employer. The job or undertaking also begins and ends at determined or determinable times. The case at bar presents what appears to our mind as a typical example of this kind of "project."
>
> NSC undertook the ambitious Five[-]Year Expansion Program I and II with the ultimate end in view of expanding the volume and increasing the kinds of products that it may offer for sale to the public. The Five[-] Year Expansion Program had a number of component projects: *e.g.*, (a) the setting up of a "Cold Rolling Mill Expansion Project"; (b) the establishment of a "Billet Steel-Making Plant" (BSP); (c) the acquisition and installation of a "Five Stand TDM"; and (d) the "Cold Mill Peripherals Project." Instead of contracting out to an outside or independent contractor the tasks of *constructing* the buildings with related civil and electrical works that would house the new machinery and equipment, the *installation* of the newly acquired mill or plant machinery and equipment and the *commissioning* of such machinery and equipment, NSC opted to execute and carry out its Five[-] Year Expansion Projects "in house," as it were, by administration. The carrying out of the Five[-]Year Expansion Program (or more precisely, each of its component projects) constitutes a distinct undertaking identifiable from the ordinary business and activity of NSC. Each component project, of course, begins and ends at specified times, which had already been determined by the time petitioners were engaged. We also note that NSC did the work here involved — the construction of buildings and civil and electrical works, installation of machinery and equipment and the commissioning of such machinery — *only for itself*. Private respondent NSC was *not* in the business of constructing buildings and installing plant machinery for the general business community, *i.e.*, for unrelated, third party, corporations. NSC did *not* hold itself out to the public as a construction company or as an engineering corporation.[24]

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[24] *Id*. at 852-853.

The repairs performed by the concerned URSUMCO employees cannot be treated similarly with the Five-Year Expansion Program of NSC. In *ALU-TUCP*, the employees engaged to work in the Five-Year Expansion Program was correctly categorized as project employees because the expansion program is separate and distinct from NSC's steel manufacturing business. It was a singular, predetermined project with the goal of increasing NSC's business capacity.

On the other hand, the repairs conducted by URSUMCO's regular seasonal employees during the off-milling season are closely intertwined with its sugar milling business as they were for the upkeep and maintenance of equipment and machineries to be used once the milling season commences anew. In addition, the concerned employees were repeatedly and continuously tasked to handle the repairs during the off-milling season. Their repeated engagement to conduct repairs during the off-milling season is a manifestation of the necessity and desirability of their work to URSUMCO's business.[25] Thus, it is erroneous to label the repairs as "projects" because they were done within URSUMCO's regular business.

Further, the fact that URSUMCO hired the regular seasonal employees to do the repairs during the off-milling season out of its own magnanimity is immaterial. To reiterate, employment status is primarily determined by the nature of the employer's business and the duration and connection of the tasks performed by the employee — not by the intent or motivations of the parties.

In fact, even a plain reading of the CBA between URSUMCO and NAMA-URSUMCO-NFL would lead to a conclusion that the concerned employees fall under the category of a regular or permanent employee and not a regular seasonal employee. It is axiomatic that in interpreting contracts, the words shall be given their natural and ordinary meaning unless a technical meaning was intended.[26] The CBA between URSUMCO and

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[25] See *Fuji Television Network, Inc. v. Espiritu*, 749 Phil. 388, 438 (2014).

[26] *Spouses Serrano v. Caguiat*, 545 Phil. 660, 667 (2007).

NAMA-URSUMCO-NFL defines a regular employee as one who has passed the probation requirement of a job or position which is connected with the regular operation of URSUMCO. On the other hand, a regular seasonal employee is defined as one who regularly works only during the milling season and may be laid off during the off-milling season or is given preference to work on tasks of variable duration.

URSUMCO, in its Reply, explained that the concerned employees cannot be considered regular employees as repairs are not part of its regular milling operation. It added that it merely complied with the provisions of the CBA that regular seasonal employees would be given preference for engagement for tasks of variable duration, such as repairs that are dependent on what machines are to be fixed.

A reading of the CBA between URSUMCO and NAMA-URSUMCO-NFL would show that the definition of a regular employee is not limited to those whose functions are related only to the milling operation of URSUMCO, but to its **regular operation**. As pointed out by the VA, the concerned employees were repeatedly hired in the off-milling season to conduct repairs on URSUMCO's machineries. Thus, it could readily be seen that the conduct of repairs is part of URSUMCO's regular operation — albeit done only after the milling season. URSUMCO's regular operations should not be confined to its milling operation because to do so would minimize an otherwise integral part of its business. The repairs made on the machineries and equipment used in the milling season are necessary for their upkeep and maintenance so that any damage or concern brought about by ordinary wear and tear of the machines will not be a problem once the milling season comes back.

Thus, the concerned employees cannot be categorized as regular seasonal employees as defined under the law, jurisprudence or even the parties' CBA. *First*, they perform work for URSUMCO even during the off-milling season and there is no showing that they were free to work for another during the same period. *Second*, the tasks done are reasonably necessary and desirable in URSUMCO's regular operation or business.

Further, URSUMCO errs in claiming that the VA Decision, as affirmed by the CA, has the effect of treating all of its regular seasonal employees as regular or permanent employees. The ruling of the courts *a quo* only had an impact to the 78 concerned employees and did not have a sweeping declaration that all of URSUMCO's regular seasonal employees are now regular or permanent employees. As discussed above, they were correctly treated as regular employees considering the nature and duration of the functions and tasks they performed for URSUMCO. In fact, URSUMCO recognized that the ruling of the VA, as affirmed by the CA, did not involve all of its regular seasonal employees when it claimed that the case had become moot and academic, since a majority of the employees had been converted to regular or permanent status while others were no longer connected with URSUMCO due to their voluntary retirement, resignation, or death.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

Leonen[**] (*Acting Chairperson)*, *Gesmundo*, and *Hernando, JJ.*, concur.

Peralta, J., on official business.

THIRD DIVISION

[G.R. No. 229762. November 28, 2018]

AAA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

[**] Designated as Acting Chairperson of the Third Division per Special Order No. 2617 dated November 23, 2018.

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9262 (ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); VIOLATION OF SECTION 5 (I) THEREOF; ELEMENTS.— The information charges petitioner of violating Sec. 5(i) of R.A. No. 9262. x x x In *Dinamling v. People of the Philippines,* the Court enumerated the elements that must be present for the conviction of an accused, *viz*: (1) The offended party is a woman *and/or* her child or children; (2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode; (3) The offender causes on the woman and/or child mental or emotional anguish; and (4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions.

2. ID.; ID.; ID.; ID.; PSYCHOLOGICAL VIOLENCE; REFERS TO ACTS OR OMISSIONS CAUSING OR LIKELY TO CAUSE MENTAL OR EMOTIONAL SUFFERING TO THE VICTIM; CASE AT BAR.— [Section 5 (i) of R.A. No. 9262] has been ruled to penalize certain forms of psychological violence. As defined in law, psychological violence refers to acts or omissions causing or likely to cause mental or emotional suffering to the victim. Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused upon or the damage sustained by the offended party. To establish this as an element, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i). To establish mental or emotional anguish, the testimony of the victim must be presented, as these experiences are personal to the party. The courts *a quo* found this element present as supported by private complainant's testimony.

3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO BE PRESUMED INNOCENT; PROOF BEYOND REASONABLE DOUBT IS NECESSARY TO OVERCOME PRESUMPTION OF INNOCENCE; CASE AT BAR.—

Petitioner claims that he has the right to be presumed innocent. Surely, Art. III, Section 14 of the 1987 Constitution guarantees that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven. To overcome this presumption, proof beyond reasonable doubt is needed. Proof beyond reasonable doubt does not mean such degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind. All the elements of the crime are deemed present; thus, the presumption of innocence is overcome.

4. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEAL; IN CRIMINAL CASES, AN APPEAL THROWS THE ENTIRE CASE WIDE OPEN FOR REVIEW AND ALLOWS THE REVIEWING TRIBUNAL TO CORRECT ERRORS, THOUGH UNASSIGNED, IN THE APPEALED JUDGMENT.—** It must be stressed that in criminal cases, an appeal throws the entire case wide open for review and allows the reviewing tribunal to correct errors, though unassigned, in the appealed judgment. 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. This principle has been applied by the Court even in petitions for review on certiorari.

5. **CRIMINAL LAW; MITIGATING CIRCUMSTANCES; PASSION AND OBFUSCATION; ELEMENTS; CASE AT BAR.—** In order to be entitled to the mitigating circumstance of passion and obfuscation, the following elements should occur: (1) there should be an act both unlawful and sufficient to produce such condition of mind; and (2) said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his moral equanimity. This circumstance is considered mitigating because by reason of causes naturally producing powerful excitement in a person, he loses his reason and self-control, thereby diminishing the exercise of his will power. The elements for the consideration of the mitigating circumstance are missing. Private complainant did not commit any unlawful act against petitioner that would cause such a reaction from him. Private complainant's acts also cannot be considered as

providing a legitimate stimulus justifying petitioner's reaction – where he lost reason and self-control.

6. ID.; REPUBLIC ACT NO. 9262 (ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004); VIOLATION OF SECTION 5 (I) THEREOF; PENALTIES IN CASE AT BAR.— [T]he Court notes that both the RTC and the CA failed to include the imposition of a fine on petitioner and to require him to undergo psychological counseling or treatment. These are additional penalties that are set by Sec. 6 of R.A. No. 9262 *in addition* to imprisonment.

APPEARANCES OF COUNSEL

Office of the Solicitor General for respondent.
Public Attorney's Office for petitioner.

R E S O L U T I O N

GESMUNDO, *J.*:

This is a petition for review on certiorari filed by AAA[1] *(petitioner),* praying for the reversal of the July 22, 2016 Decision[2] of the Court of Appeals *(CA)* in CA-G.R. CR No. 01170-MIN and its January 12, 2017 Resolution,[3] which affirmed the January 22, 2013 Decision[4] of the Regional Trial Court of Iligan City, Branch 2 (*RTC*), in Criminal Case No. II-14837,

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[1] The complete names and personal circumstances of the victim's family members or relatives, who may be mentioned in the court's decision or resolution have been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 *(Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/Personal Circumstances).*

[2] *Rollo*, pp. 30-38; penned by Associate Justice Oscar V. Badelles, with Associate Justice Romulo V. Borja and Associate Justice Ronaldo B. Martin, concurring.

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

[4] *Id*. at 49-55; penned by Presiding Judge Anisah B. Amanodin-Umpa.

finding petitioner guilty of violating Republic Act *(R.A.)* No. 9262, or the *Anti-Violence Against Women and Their Children Act of 2004.*

Antecedents

The information filed against petitioner reads:

That on or about February 17, 2010 in the City of [XXX],[5] Philippines, and within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously commit acts of violence against his wife [BBB],[6] as follows: by taking their conjugal properties and bring[ing] them to the house of his mother without regard to her feelings and against her will which caused mental, emotional anguish to his legal wife [BBB].

Contrary to and in violation of Section 5(i) of Republic Act No. 9262 otherwise known as the Anti-Violence against women and their Children Act of 2004.[7]

When arraigned, petitioner pleaded not guilty to the charge.

Evidence for the Prosecution

The prosecution presented two (2) witnesses, BBB (*private complainant*) and CCC, private complainant's daughter.

Private complainant testified that she and petitioner are husband and wife, then being married for 19 years. They have

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[5] The city where the crime was committed is blotted to protect the identity of the victim pursuant to Administrative Circular No. 83-2015 issued on 27 July 2015.

[6] The true name of the victim has been replaced with fictitious initials in conformity with Administrative Circular No. 83-2015 *(Subject: Protocols and Procedures in the Promulgation, Publication, and Posting on the Websites of Decisions, Final Resolutions, and Final Orders Using Fictitious Names/ Personal Circumstances).* The confidentiality of the identity of the victim is mandated by Republic Act (R.A.) No. 7610 *(Special Protection of Children Against Abuse, Exploitation and Discrimination Act)*; R.A. No. 8505 *(Rape Victim Assistance and Protection Act of 1998);* R.A. No. 9208 *(Anti-Trafficking in Persons Act of 2003);* R.A. No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*); and R.A. No. 9344 *(Juvenile Justice and Welfare Act of 2006).*

[7] *Rollo*, p. 49.

two children, one of whom was witness CCC. Petitioner worked abroad while private complainant was a full-time housewife. Petitioner sent money to private complainant and the children. From this money, private complainant was able to buy household items: television set, refrigerator, karaoke, washing machine, dining table, and "sleeprite" bed. The family lived in a house owned by petitioner's mother, while petitioner's parents lived in a separate house in the same city.

On February 17, 2010, petitioner and private complainant had a heated argument regarding private complainant's supposed indebtedness, to which the family's television set and refrigerator were used as collateral. Private complainant said she incurred the debt to pay her siblings the money she borrowed in relation to petitioner's applications for work. Petitioner hauled the family's television set, refrigerator, divider, "sleeprite" bed, and dining table to his parents' house. Private complainant tried to stop him but petitioner "mauled" her.

The couple's daughter, witness CCC, testified that she saw her parents arguing, but she did not know what the argument was about. She later saw petitioner removing several appliances and furniture from their house.

Evidence for the Defense

The defense presented petitioner as its sole witness. Petitioner claimed that private complainant incurred debts from a lending institution and from their neighbors without his knowledge or approval. The collateral for the loans were their television set and refrigerator. Petitioner admitted that he brought the appliances and some furniture to his parents' house for safety because the debt collector had told him that the sheriff would confiscate these the following day. While petitioner was bringing out the items, private complainant blocked the door. Petitioner was enraged and he pushed private complainant aside. He asserted that the household items were acquired through his hard work. Further, he said that he did not know why private complainant incurred debts when he regularly sent her support.

Ruling of the RTC

In its decision, the RTC found that all the elements of the crime of violence against women under Sec. 5(i) of R.A. No. 9262 were satisfied. There was no question that petitioner and private complainant were married, as required by the first element. The RTC viewed as constituting violence the petitioner's act of taking away all their properties over the objection of his wife to the extent of physically harming and verbally abusing her. Petitioner's allegation that he only wanted to protect their properties was not given credit for being uncorroborated and unjustified. The dispositive portion of the decision reads:

> WHEREFORE, the court finds accused [AAA] guilty beyond reasonable doubt of the crime of violation of Section 5(i) of R.A. No. 9262 otherwise known as the Anti-Violence Against Women and their Children Act of 2004, and the said accused is hereby sentenced to suffer an indeterminate penalty of six (6) months and one (1) day of *prision correccional,* as minimum to eight (8) years and one (1) day of *prision mayor,* as maximum.
>
> SO ORDERED.[8]

Aggrieved, petitioner appealed to the CA.

Ruling of the CA

The CA denied petitioner's appeal. The appellate court echoed the RTC's factual findings and conclusions. The CA found that the prosecution sufficiently established the elements of the crime as defined in Section 5(i) of R.A. No. 9262 and as alleged in the information filed against petitioner. The CA highlighted that the element of mental or emotional anguish was proved through the victim's testimony. The CA, however, found it proper to apply the mitigating circumstance of passion and obfuscation. Petitioner's outburst was triggered by the indebtedness incurred by private complainant without his knowledge and consent. The CA remarked that petitioner's emotional response was a natural reaction of a person who found that the fruits of his hard work had been squandered. Thus, the CA reduced the penalty imposed by the RTC. The *fallo* reads:

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[8] *Id*. at 55.

WHEREFORE, the Decision dated January 22, 2013 of the Regional Trial Court, Branch 2, [XXX], in Criminal Case No. II-14837, finding accused-appellant [AAA] guilty beyond reasonable doubt of Violation of Section 5(i), of Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Children Act of 2004" is **AFFIRMED with MODIFICATION**. Accused-Appellant [AAA] is hereby sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to six (6) years and one (1) day of *prision mayor*, as maximum.

SO ORDERED.[9]

Petitioner filed a motion for reconsideration, which was denied by the CA in its January 12, 2017 resolution.

Hence, this petition.

ISSUES

I.

WHETHER THE PROSECUTION HAS OVERTHROWN THE CONSTITUTIONAL RIGHT OF THE PETITIONER TO BE PRESUMED INNOCENT; and

II.

WHETHER THE ACT OF THE PETITIONER CONSTITUTES EMOTIONAL AND PSYCHOLOGICAL ABUSE.

Petitioner argues that: his act of moving their personal properties to his parents' house was not intended to inflict any emotional pain on private complainant. He only did so to protect their properties from being taken away by the creditors. He did not deprive his wife of the use of their properties and did not inflict any emotional violence upon her. He reasoned that the act of protecting the family's properties against seizure cannot be considered as abuse or violence under R.A. No. 9262. Private complainant's testimony is insufficient to prove psychological violence being bereft of details as to her hurt feelings that can be directly attributed to petitioner. Lastly, the evidence proffered

[9] *Id*. at 37.

by the prosecution failed to overcome petitioner's right to be presumed innocent.

In its August 11, 2017 Comment,[10] the Office of the Solicitor General maintained that: private complainant testified candidly that petitioner's acts had caused her mental or emotional anguish and humiliation. Private complainant averred that she was hurt, confused, and shamed when petitioner verbally abused her in the presence of their children. In fine, good faith and absence of criminal intent are not valid defenses in offenses punished under R.A. No. 9262, the latter being a special law.

OUR RULING

The petition lacks merit.

The information charges petitioner of violating Sec. 5(i) of R.A. No. 9262, which states:

> SECTION 5. *Acts of Violence Against Women and Their Children*. – The crime of violence against women and their children is committed through any of the following acts:
>
> x x x x x x x x x
>
> (i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children or denial of access to the woman's child/children.

In *Dinamling v. People of the Philippines,*[11] the Court enumerated the elements that must be present for the conviction of an accused, *viz*:

(1) The offended party is a woman *and/or* her child or children;

(2) The woman is either the wife or former wife of the offender, or is a woman with whom the offender has or had a sexual or dating relationship, or is a woman with whom such offender

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[10] *Id*. at 84-93.

[11] 761 Phil. 356 (2015).

has a common child. As for the woman's child or children, they may be legitimate or illegitimate, or living within or without the family abode;

(3) The offender causes on the woman and/or child mental or emotional anguish; and

(4) The anguish is caused through acts of public ridicule or humiliation, repeated verbal and emotional abuse, denial of financial support or custody of minor children or access to the children or similar such acts or omissions.[12] (Citations omitted)

The Court will address the final two elements as the first two are undoubtedly present in this case.

The cited section has been ruled to penalize certain forms of psychological violence. As defined in law, psychological violence refers to acts or omissions causing or likely to cause mental or emotional suffering to the victim.[13] Psychological violence is the means employed by the perpetrator, while mental or emotional anguish is the effect caused upon or the damage sustained by the offended party. To establish this as an element, it is necessary to show proof of commission of any of the acts enumerated in Section 5(i). To establish mental or emotional anguish, the testimony of the victim must be presented, as these experiences are personal to the party.[14]

The courts *a quo* found this element present as supported by private complainant's testimony:

Q: On February 17, 2010 at around 7:00 in the evening, could you still remember where were you?
A: Yes, sir. I was at home.

Q: Was there anything unusual incident happened at that time?
A: Yes, sir.

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[12] *Id*. at 373.

[13] R.A. No. 9262, Sec. 3(C).

[14] *Dinamling v. People, supra* note 11, at 376.

Q: What was that?
A: He mauled me.

Q: Do you know the reason why [the] accused mauled you?
A: Because I had incurred debts.

x x x x x x x x x

Q: Before you were mauled by the accused, what happened prior to that incident?
A: He verbally abused me.

Q: What else, if any?
A: He put me into shamed.[sic]

x x x x x x x x x

Q: What were those things that were taken away from the house?
A: Our conjugal things.

Q: What are those things taken from the house?
A: TV, Refrigerator, Divider, Sleep Rite, Dining Table.

x x x x x x x x x

Q: What did you do, if any when the accused took these properties?
A: I tried to stop [him] and I was so hurt.

x x x x x x x x x

Q: Who were with you at the time of the incident?
A: My children.

x x x x x x x x x

Q: When your husband, the accused in this case, took those properties, what did you feel?
A: I was so hurt.

Q: What else?
A: I was confused what I want supposed to do.[15]

The trial court observed that private complainant was "so hurt and humiliated." Augmenting the pain brought about by

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[15] *Rollo*, pp. 68-70 (Appellee's Brief, TSN, dated October 5, 2011, pp. 5-7).

the situation was that petitioner "abandoned her and their children."[16] The CA, for its part, remarked that petitioner admitted to pushing private complainant. CCC also testified that the incident was not isolated, as similar arguments and even physical abuse had already happened between them.[17] Evidently, the above portions of private complainant's testimony, as well as the other statements made by private complainant mentioned in the CA and RTC decisions, all prove petitioner had caused mental and emotional anguish upon private complainant.

Finally, private complainant's anguish was clearly caused by acts of petitioner parallel to those provided by the law. Private complainant's suffering was due to petitioner's denying the use of the appliances and furniture commonly owned by the family. Anguish causes distress to someone, or makes someone suffer intense pain or sorrow.[18] It is doubtless that private complainant, by her own recount of the situation, was thoroughly distressed by petitioner's acts, contrary to petitioner's averments.

In defense, petitioner insists that he was only preventing the appliances and furniture from being taken away and that he did not intend to inflict emotional abuse on private complainant. His assertions deserve scant consideration. The Court highlights that he not only gathered the appliances that were used as collateral for the loan, *i.e.,* the television set and refrigerator, but also took away the divider and even the "sleeprite" bed the family slept on. His very act of depriving the entire family of such sleeping fixture does not justify his reasons. Moreover, his defense of lack of intent to commit the crime is contradicted by what transpired. Private complainant tried to prevent petitioner from removing the appliances and furniture from their house, but petitioner did it against her will and even hurt her. He could not deny causing her harm, mental and emotional anguish, and humiliation when he also "mauled" her in front of their children.

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

[17] *Id*. at 34.

[18] *Webster's Third New International Dictionary*.

Petitioner claims that he has the right to be presumed innocent. Surely, Art. III, Section 14 of the 1987 Constitution guarantees that in all criminal prosecutions, the accused shall be presumed innocent until the contrary is proven. To overcome this presumption, proof beyond reasonable doubt is needed. Proof beyond reasonable doubt does not mean such degree of proof as to exclude the possibility of error and produce absolute certainty. Only moral certainty is required or that degree of proof which produces conviction in an unprejudiced mind.[19] All the elements of the crime are deemed present; thus, the presumption of innocence is overcome.

The Court agrees with the RTC and the CA in finding the petitioner guilty of violating Sec. 5(i) of R.A. No. 9262. However, the Court disagrees with the penalty imposed by the CA, most especially the application of the mitigating circumstance of passion and obfuscation. It must be stressed that in criminal cases, an appeal throws the entire case wide open for review and allows the reviewing tribunal to correct errors, though unassigned, in the appealed judgment. The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law.[20] This principle has been applied by the Court even in petitions for review on certiorari.[21]

A number of cases state that an offense is defined and is ostensibly punished under a special law, when the penalty therefor is actually taken from the Revised Penal Code in its technical nomenclature; necessarily, its duration, correlation, and legal effects under the system of penalties native to said Code also apply. Modifying circumstances may be appreciated to determine the periods of the corresponding penalties, or even to reduce

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[19] *People v. Manson*, G.R. No. 215341, November 28, 2016, 810 SCRA 551, 560.

[20] *Manansala v. People*, 775 Phil. 514, 520 (2015).

[21] *Id*., see also *Curammeng v. People*, 799 Phil. 575, 583 (2016); *Guelos v. People*, G.R. No. 177000, June 19, 2017, 827 SCRA 224, 239.

the penalty by degrees.[22] However, in this case, the circumstance of passion and obfuscation should not mitigate the penalty imposed on petitioner.

In order to be entitled to the mitigating circumstance of passion and obfuscation, the following elements should occur: (1) there should be an act both unlawful and sufficient to produce such condition of mind; and (2) said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his moral equanimity.[23] This circumstance is considered mitigating because by reason of causes naturally producing powerful excitement in a person, he loses his reason and self-control, thereby diminishing the exercise of his will power.[24]

The elements for the consideration of the mitigating circumstance are missing. Private complainant did not commit any unlawful act against petitioner that would cause such a reaction from him. Private complainant's acts also cannot be considered as providing a legitimate stimulus justifying petitioner's reaction – where he lost reason and self-control.

Further, the Court notes that both the RTC and the CA failed to include the imposition of a fine on petitioner and to require him to undergo psychological counseling or treatment. These are additional penalties that are set by Sec. 6 of R.A. No. 9262 *in addition* to imprisonment, thus:

> SECTION 6. *Penalties*. – The crime of violence against women and their children, under Section 5 hereof shall be punished according to the following rules:
>
> x x x x x x x x x
>
> (f) Acts falling under Section 5(h) and Section 5(i) shall be punished by *prision mayor*.

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[22] *People v. Mantalaba*, 669 Phil. 461, 484 (2011), citing *People v. Simon,* 304 Phil. 725, 761 (1994).

[23] *People v. Javier*, 370 Phil. 596, 605 (1999).

[24] *People v. Caber, Sr.*, 399 Phil. 743, 753 (2000).

x x x x x x x x x

In addition to imprisonment, the perpetrator shall (a) pay a fine in the amount of not less than One hundred thousand pesos (₱100,000.00) but not more than Three hundred thousand pesos (₱300,000.00); (b) undergo mandatory psychological counseling or psychiatric treatment and shall report compliance to the court. (Underscoring supplied)

WHEREFORE, premises considered, the petition is **DENIED.** The July 22, 2016 Decision and the January 12, 2017 Resolution of the Court of Appeals in CA-G.R. CR No. 01170-MIN are **AFFIRMED with MODIFICATION.** Petitioner AAA is hereby sentenced to suffer an indeterminate penalty of six (6) months and one (1) day of *prision correccional,* as minimum, to eight (8) years and one (1) day of *prision mayor,* as maximum. He is also ordered to (a) pay a fine in the amount of One Hundred Thousand Pesos (₱100,000.00); (b) to undergo mandatory psychological counseling or psychiatric treatment; and (c) to report to the court his compliance with counseling or treatment.

SO ORDERED.

Leonen[*] *(Acting Chairperson)*, *Reyes, J. Jr.,* and *Hernando, JJ.,* concur.

Peralta, J., on official business.

SECOND DIVISION

[G.R. No. 232357. November 28, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDWIN CABEZUDO *y* RIEZA,** *accused-appellant.*

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[*] Per special Order No. 2617 dated November 23, 2018.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS UNDER SECTION 5 THEREOF; ELEMENTS.—** Cabezudo was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5 of RA 9165. To convict a person under a charge of 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.

2. **ID.; ID.; CHAIN OF CUSTODY, DEFINED; PROCEDURE WHICH THE POLICE OFFICERS MUST STRICTLY FOLLOW TO PRESERVE THE INTEGRITY OF THE SEIZED DRUGS AND/OR PARAPHERNALIA USED AS EVIDENCE.—** [T]he Court, in each case, looks into whether the police officers involved adhered to the step-by-step procedure outlined in Section 21 of RA 9165. This is because, in all drugs cases, 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 is indispensable to make a finding of guilt. In this connection, Section 21, 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: (1) that 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.

3. ID.; ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHING OF THE SEIZED ITEMS MUST BE CONDUCTED IMMEDIATELY AFTER SEIZURE AND CONFISCATION IN THE PRESENCE OF THE REQUIRED WITNESSES.— Section 21, 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 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 Implementing Rules and Regulations (IRR) of RA 9165 allow 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, the phrase also means that the three required witnesses should already be physically present at the time of inventory — 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.

4. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURE UNDER THE JUSTIFIABLE GROUNDS, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED, DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID; CASE AT BAR.— 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 and custody over said items." For this provision to be effective, however, the prosecution must (1) first recognize any lapse on the part of the police officers and (2) then be able to justify the same. While 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, 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 this case, the prosecution failed to recognize and justify the police officers' deviation from the procedure provided in Section 21, RA 9165.**

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTY; CANNOT STAND WHEN THERE IS BLATANT DISREGARD OF THE ESTABLISHED PROCEDURES BY THE BUY-BUST TEAM.— [I]t was egregious error for both the RTC and the CA to convict the accused by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. 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. x x x **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, as previously demonstrated.**

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 the Court is an ordinary appeal[1] filed by the accused-appellant Edwin Cabezudo y Rieza (Cabezudo) assailing the

[1] See Notice of Appeal dated November 28, 2016, *rollo*, pp. 20-23.

Decision[2] dated November 16, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 07071, which affirmed the Decision[3] dated June 10, 2014 of the Regional Trial Court of Daet, Camarines Norte, Branch 39(RTC) in Criminal Case No. 14882, finding Cabezudo 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," as amended.

The Facts

An Information[5] was filed against Cabezudo in this case, the accusatory portion of which reads as follows:

"That on or about 12:20 in the afternoon of August 16, 2011 in Brgy. Palanas, [M]unicipality of Paracale, [P]rovince of Camarines Norte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there, willfully, unlawfully and feloniously sell to a poseur-buyer one (1) plastic sachet containing white crystalline substance weighing more or less 0.10 grams, which when subjected to laboratory examination turned positive for methamphetamine hydrochloride or shabu, a dangerous drug, as stated in Chemistry Report No. D-85-11, without authority of law."

CONTRARY TO LAW.[6]

Upon arraignment, Cabezudo pleaded not guilty to the charge. Thereafter, pre-trial and joint trial on the cases ensued.[7] The prosecution's version, as summarized by the CA, is as follows:

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[2] *Rollo*, pp. 2-19. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Normandie B. Pizarro and Samuel H. Gaerlan, concurring.

[3] CA *rollo*, pp. 42-50. Penned by Judge Winston S. Racoma.

[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).

[5] Records, p. 1.

[6] *Id*.

[7] *Rollo*, p. 3.

At about 9:30 in the morning of August 16, 2011, a confidential informant (CI) went to the Office of the [Philippine] Drug Enforcement Agency (PDEA) Camarines Norte Unit and informed the officers therein that accused-appellant is engaged in illegal drug trade in Paracale, Camarines Norte. A verification from PDEA office files revealed that accused-appellant is included in the watchlist. SO2 Christopher Viaña asked the CI if he can contact accused-appellant so that they can buy shabu from him. When the CI agreed, the buy-bust team decided to conduct an entrapment operation against accused-appellant. SO2 Viaña was designated as the arresting officer while SI2 Erwin Magpantay as the poseur-buyer. The plan is to buy a Php 500.00 worth of shabu.

Before leaving, SO2 Viaña prepared the Pre-Operation Report and forwarded the same to the Regional Office for coordination. At around 11:00 o'clock in the morning, they proceeded to Brgy. Palanas, Paracale, Camarines Norte to entrap accused-appellant. The CI and SI2 Magpantay waited in a store near a cockpit while others strategically positioned themselves waiting for the pre-arranged signal. At around 12:20 in the afternoon, accused-appellant arrived and alighted from a tricycle. The CI approached the latter and they talked. Then, the CI introduced accused-appellant to SI2 Magpantay. Accused-appellant asked the latter to walk further in an attempt to conceal the sale. While walking, he handed to SI2 Magpantay a sachet containing white crystalline substance. In exchange, SI2 Magpantay gave the Php 500.00 to him. After the sale was consummated, he raised his bull cap as a pre-arranged signal to the other officers for them to arrest accused-appellant. Immediately, SO2 Viaña and the rest of the team rushed to the area and arrested him. The latter tried to resist but was subdued by the team. The arrest resulted to the recovery of eleven(11) pieces of Php 1,000.00 bills and fourteen (14) pieces of Php 500.00 bills, and one (1) plastic shachet (*sic*) containing white crystalline substance believed to be shabu. SI2 Magpantay confiscated other bills as he believed that the same were proceeds of accused-appellant's illegal drug activities.

At the scene of the crime, SI2 Magpantay marked the confiscated items. Other members of the team photographed the accused and the seized items. Later on, they transferred to the barangay hall where the witnesses (Barangay Chairman and the representatives from the media and DOJ) signed the inventory report. SI2 Magpantay was in possession of the seized drugs from Brgy. Palanan to the Office of

PDEA until the same were delivered to the laboratory for examination. PCI Grace Tugas conducted laboratory examination of the seized white crystalline substance which yielded a positive result for methamp[h]etamine hydrochloride or shabu. After the examination, she placed the shabu in an envelope with her integrity seal (masking tape sealed with her signature) and kept the same together with other documents in a steel cabinet. The shabu and other confiscated items were presented in court and positively identified by the witnesses for the prosecution.[8]

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

Accused-appellant told a different story. He claimed that at around 9:00 o'clock in the morning of August 16, 2011, he was in Talisay, Camarines Norte looking for somebody to accompany him to Paracale, Camarines Norte to redeem his motorcycle that was impounded by the PNP. He was able to convince his friend Ruel to go with him. At around 12:00 noon, they arrived at PNP Office in Paracale. There, he was required to pay fine at the Office of the Municipal Treasurer in the Municipal Hall. He paid the said fine. However, instead of getting first his motorcycle, they proceeded to Paracale Cockpit on board a tricycle. When he alighted from the tricycle, a man suddenly wrapped his arm around his neck and pulled him from behind. He noticed another man running and trying to put something in his pocket. This allegedly prompted him to shout, "*Ruel tulong, tinaniman ako*[.]*"* The men handcuffed him and pushed him down to the ground. While he was frisked, someone got his money amounting to Php 18,000.00.

Thereafter, he was brought to the Barangay Hall of Palanas, Paracale where he was made to wait for the *Punong Barangay*. At around 1:00 o'clock in the afternoon, the *Punong Barangay* arrived. Accused-appellant requested the latter to put on record the confiscation of the amount of Php 18,000.00 from him by SO2 Viaña.

At 3:00 o'clock in the afternoon, a representative from the DOJ arrived. That was the time that he saw the arresting group and the representatives signed a document.

After his arrest, he was brought to Daet, Camarines Norte. While on their way, SO2 Viaña allegedly told him to produce the amount

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

of Php 100,000.00. He replied that he has no means of producing the same as he was merely engaged in buying and selling birds nests. SO2 Viaña replied, "*Magkano ang kaya mo, para wala nang problema, pera pera lang naman eto*[.]*"*He told him that he is willing to add the amount of Php 60,000.00 to the Php 18,000.00 that has been confiscated from him. Viaña allegedly replied that they have to talk it over at the office but they have not yet agreed anything at that moment. At the PDEA office, he texted his wife to bring the proceeds of the sale of the bird's nest that he has just sold to a businessman. Later on, his wife arrived with Php 21,000.00. While he was counting the money, SO2 Viaña suddenly grabbed the money and shouted, *"Nanunuhol ka?"* allegedly because of the presence of a mediaman. In response to Viaña's statement, accused-appellant told him that they have not agreed on anything and that he is not bribing him. This prompted Viaña to threaten his wife that they will file a case against her. He begged Viaña to spare his wife and so the latter was instructed to sign in a logbook to make it appear that she just visited him. Before his wife left the office, Viaña handed the amount of Php 16,000.00 to her while the rest of the Php21,000.00 amounting to Php 5,000.00 was handed over to accused-appellant. Viaña told him that, *"Itong Php 5,000.00 ay sadyang pinaiwan niya para sa mga kasamahan niya, panggastos*[.]*"*But before he was jailed, SO2 Viaña allegedly took back the Php 5,000.00 from him.[9]

Ruling of the RTC

After trial on the merits, in its Decision dated June 10, 2014 the RTC convicted Cabezudo of the crime charged. The dispositive portion of the said Decision reads:

> WHEREFORE, all the foregoing premises considered, the accused EDWIN CABEZUDO y RIEZA is hereby found **GUILTY** beyond reasonable doubt of the crime of Violation of Section 5, Article II of Republic Act No. 9165, otherwise known as The Comprehensive Dangerous Drugs Act of 2002. He is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT, and to pay a fine of Five Hundred Thousand Pesos (PhP500,000.00).
>
> The 0.10 gram of methamphetamine hydrochloride or shabu is hereby confiscated in favor of the government to be turned over to the Philippine Drug Enforcement Agency (PDEA) for proper disposition.

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

The amount of PhP18,000.00 confiscated from the accused is hereby ordered released to the accused for lack of any legal basis.

SO ORDERED.[10]

The RTC ruled that the evidence on record were sufficient to pronounce a verdict of conviction against Cabezudo.[11] It held that there was testimony to the effect that the buy-bust operation was a legitimate one; hence, there was sufficient proof on record that the sale took place. Furthermore, it ruled that the defenses of denial and frame-up are commonly looked by the courts with disfavor as they could easily be concocted and are, in fact, common defenses in prosecutions for sale of dangerous drugs. The RTC added that the apprehending officers in this case enjoy the presumption of regularity in the performance of their official functions.[12]

Aggrieved, Cabezudo appealed to the CA.

Ruling of the CA

In the questioned Decision dated November 16, 2016, the CA affirmed the RTC's conviction of Cabezudo, holding that the prosecution was able to prove the elements of the crimes charged.The CA declared that since the main issue of the case was the integrity and evidentiary value of the seized item, then the findings of the trial court should be given great weight and respect as it was in a better position to decide the credibility of evidence.[13] It likewise upheld the finding of the RTC that the elements of illegal sale of dangerous drugs were sufficiently proven in the present case.[14]

The CA added that, contrary to Cabezudo's contention, the integrity of the *corpus delicti* was preserved because "the chain of custody [was] unbroken from the time of markings, inventory

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[10] CA *rollo*, p. 50.

[11] *Id*. at 47.

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

[13] *Rollo*, pp. 7-8.

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

and laboratory examination up to the presentation to the court of the sachet containing *shabu*." The CA noted that "non-compliance with Section 21 [of RA 9165] does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible [and the] requirements under R.A. No. 9165 and its Implementing Rules and Regulations (IRR) are not inflexible."[15]

The CA was also not persuaded by Cabezudo's defense. It held that bare denials and accusations of frame-up could not prevail over the affirmative testimonies of the witnesses. The CA thus upheld the conviction of Cabezudo.

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whether the RTC and the CA erred in convicting Cabezudo of the crime charged.

The Court's Ruling

The appeal is meritorious. The Court acquits Cabezudo for failure of the prosecution to prove his guilt beyond reasonable doubt.

Cabezudo was charged with the crime of illegal sale of dangerous drugs, defined and penalized under Section 5 of RA 9165. To convict a person under a charge of 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.[16]

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.[17] While it is true that a buy-bust operation is a legally

[15] *Id*. at 13.

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

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

effective and proven procedure, sanctioned by law, for apprehending drug peddlers and distributors,[18] the law nevertheless requires strict compliance with the procedures laid down by it to ensure that rights are safeguarded.

Thus, the Court, in each case, looks into whether the police officers involved adhered to the step-by-step procedure outlined in Section 21 of RA 9165. This is because, in all drugs cases, 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.[19] 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 is indispensable to make a finding of guilt.[20]

In this connection, Section 21, 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: (1) that 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 of the very nature of anti-narcotics operations, where the need for entrapment procedures, the use

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

[19] *People v. Guzon*, *supra* note 17, citing *People v. Dumaplin*, 700 Phil. 737, 747 (2012).

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

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 are prevalent, the possibility of abuse is great.[21]

Section 21, 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** **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 Implementing Rules and Regulations (IRR) of RA 9165 allow 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.**[22] **In this connection, the phrase also means that the three required witnesses should already be physically present at the time of inventory — 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.

In the present case, while all three required witnesses **signed** the inventory receipt, a thorough review of the records reveals that (a) none of them was present at the time of seizure and apprehension, and (b) only one of them was present during the actual conduct of the inventory. As SI2 Erwin Magpantay (SI2 Magpantay), the poseur-buyer, testified:

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

[22] IRR of RA 9165, Art. II, Section 21(a).

Q How many members are there in the operation?

A More or less five (5) persons.

Q Who are these five (5) persons?

A SO2 Christopher Viaña, me and the remaining are members of PACTAF Operatives.

x x x x x x x x x

Q And [a]fter that Mr. Witness, isn't not that Edwin Cabezudo wastrying to shout, if you recall?

A Yes, ma'am.

Q And he was shouting Mr. Witness particularly for help, or "*tulong tulong tinatamnan ako*"

A He shouted ma'am.

Q And he shouted that somewhere at the middle of the road?

A Yes, ma'am.

Q And after that you subdue (*sic*) the accused?

A Yes, sir. (*sic*)

Q And that is why he was lying facing the ground?

A Yes, ma'am.

Q And isn't it Mr. Witness that immediately you marked the alleged object?

A Yes, ma'am.

Q But when you marked them, it was only your members who were present?

A Barangay Officials.

Q Barangay Officials of Brgy. Palanas

A Yes, at that time, ma'am.

Q So at that time when you first marked the documents there were looking officials?

A There was no DOJ.

Q So when you were marking the object, there was no media and DOJ representative?

A Marking the evidence; yes, ma'am.

Q And after that that (*sic*) is the only time you went to the barangay hall?

A Yes, ma'am.

Q And in the Barangay Hall, you continued with the documentation?

A Yes, ma'am.

Q When you arrived at the barangay hall, did you immediately write the Enventory (*sic*) Receipt?

A Upon the arrival of the other witnesses.

x x x x x x x x x

Q And you will agree with me Mr. Witness that when the media and DOJ representatives arrived at the barangay, the object evidence was already marked?

A Yes, ma'am.[23] (Emphasis supplied)

The testimony of SO2 Cristopher Viaña (SO2 Viaña), a part of the apprehending team, further reveals that it was only the *barangay* official who was present at the time of the inventory:

Q At that time Mr. Witness, there was no barangay official either DOJ representative?

A Yes, ma'am. Media.

Q After he was subdued Mr. Witness, what did you do to whim (*sic*)?

A We waited for the barangay official

Q What do you mean, "he was there"?

A He was lying faced down.

Q What time did the barangay captain arrived (*sic*)?

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[23] TSN, September 26, 2012, pp. 4-20.

A I cannot exactly remember the time but it was only for a short time after we subdued him.

Q Where did you mark the shabu, Mr. Witness?

A On the road where the incident happened.[24] (Emphasis supplied)

The above facts were likewise corroborated by the testimonies of Cabezudo and Reno Pisalbon (Pisalbon), the *barangay* captain who signed the inventory receipt. *Barangay* captain Pisalbon's testimony further confirms that two of the three required witnesses – the DOJ representative and the member of the media – were not present ***at the time of the inventory***:

Q Do you recall of any unusual incident Mr. witness, at that time?

A Yes, ma'am.

Q Will you please tell us?

A At that time when I was eating[,] Barangay Tanod arrived and he told me that there was someone caught by a PDEA who is selling drugs.

Q Upon hearing that information[,] what did you do Mr. witness?

A We went to the barangay hall and I saw Edwin Cabezudo with handcuff.

x x x x x x x x x

Q So, what else happened when they were still inside the barangay hall?

A None, ma'am. I can not recall.

Q Aside from the PDEA members were you able to see a member of the media?

A None, ma'am.

Q What about a member from the DOJ?

A None, ma'am.[25] (Emphasis supplied)

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[24] TSN, January 30, 2013, pp. 21-22.

[25] TSN, March 7, 2013, pp. 3-5.

On the other hand, it may be inferred from Cabezudo's testimony that the other witnesses were already "called-in" to sign the inventory receipt, and that the inventory had already been completed at the place of apprehension – where only the *barangay* official was present:

Q When you were already in the barangay hall of Palanas, what happened next, if any?

A They let me sit in the chair and we waited for the barangay captain.

x x x x x x x x x

Q What time did the barangay captain of Palanas arrive, Mr. Witness?

A At about 1:00 o'clock, ma'am.

x x x x x x x x x

Q After that, Mr. Witness, what happened?

A They put me in the blotter, in the barangay.

Q After the blotter what happened next?

A After that I saw them that they were looking for a Xerox machine because they will photocopy the Five Hundred peso (Php500.00) bill.

Q Did you find photocopy machine?

A Yes, ma'am in the barangay hall.

Q Was the money photocopied, Mr. Witness.

A Yes, ma'am.

Q After the money was photocopied, what did they do next, Mr. Witness?

A They instructed the barangay secretary to put it in the blotter.

Q And then after that what happened?

A We waited for the DOJ representative.

Q For how long did you wait for that DOJ representative?

A At about 3:00 o'clock the DOJ representative arrived.

Q After the DOJ representative arrived, what did they do next?

A I saw them signing a document, ma'am.

Q What was the document that they were signing?

A I don't know.

Q After they signed the document, what did they do next?

A They left.[26] (Emphasis supplied)

It is important to point out that the members of the apprehending team in this case had more than ample time to comply with the requirements established by law. By their own version of the facts, as previously narrated, they received the information from their confidential informant at 9:30 a.m. on August 16, 2011, and they had ample discretion as to when to conduct the buy-bust operation because the confidential informant supposedly had direct contact with Cabezudo. They even had time to prepare a Pre-Operation Report[27] and coordinate with their Regional Office before the operation was actually conducted.[28] **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 effort to secure the attendance of two of the three required witnesses. Worse, neither the police officers nor the prosecution – during the trial – offered any explanation for their deviation from the strict requirements of the law.

It is worth emphasizing that Section 21, RA 9165 and its IRR requires the apprehending team to conduct the physical inventory of the seized items and the photographing of the same **in the presence of the required witness,** all of whom shall be required to sign the copies of the inventory and be given a copy thereof:

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[26] TSN, April 23, 2013, pp. 9-12.

[27] Records, pp. 29-30.

[28] *Rollo*, p. 3.

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

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, **physically inventory and photograph the same in the presence of** the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof**: *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided*, *further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.] (Emphasis and underscoring supplied)

In this case, clear from the afore-quoted testimonies is the fact that while the inventory was conducted at the place of the apprehension, **it was conducted only in the presence of the *barangay* official.** To repeat, the representatives from the media and the DOJ were only "called-in" to sign the inventory receipt at the *barangay* hall. Parenthetically, even the place where the other witnesses were "called-in" was improper, for the rules require the inventory to be conducted at the place of the arrest or, if impracticable, **at the nearest police station**.

The insufficient compliance with Section 21, RA 9165 was likewise acknowledged by the CA,but it merely justified the same as follows:

> The disquisition of the Supreme Court in the case of *People vs. Mapan Le* is instructive that non-compliance with Section 21 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. The requirements under R.A. No. 9165 and its Implementing Rules and Regulations (IRR) are not inflexible. What is essential is "*the preservation of the integrity and the evidentiary value of the seized items,*["] as the same would be utilized in the determination of the guilt or innocence of the accused.[29]

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 and custody over said items." For this provision to be effective, however, the prosecution must (1) first recognize any lapse on the part of the police officers and (2) then be able to justify the same.[30]

While 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, 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.[31] The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[32]

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[29] *Id*. at 13.

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

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

[32] *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 this case, the prosecution failed to recognize and justify the police officers' deviation from the procedure provided in Section 21, RA 9165.

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.[33] As the Court explained in *People v. Reyes*:[34]

> 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[35] (Emphasis supplied)

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

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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.

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

[34] 797 Phil. 671 (2016).

[35] *Id*. at 690.

presence serves an essential purpose. The Court elucidated on the purpose of the law in mandating the presence of the required witnesses in *People v. Tomawis*[36] 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 vs. Mendoza,*[37] 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 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**.
>
> 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.
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> 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

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

[37] 736 Phil. 749 (2014).

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."[38] (Emphasis and underscoring supplied)

Notably, Roberto Heraldo, Jr. (Heraldo), a witness to the whole incident, testified to the effect that he saw the police officers putting something in Cabezudo's back-pocket:

Q Mr. Witness, do you know the accused in this case in the person of Edwin Cabezudo?

A No, ma'am.

Q Can you tell the court where were youon August 16, 2011 at about 12:30 o'clock in the afternoon?

A Yes, ma'am I was at the barangay hall.

Q Barangay hall of what barangay, Mr. Witness?

x x x x x x x x x

A Brgy. Palanas, Paracale, Camarines Norte, ma'am.

Q While you were there, do you recall of any unusual incident that happened?

A I remember the incident about Edwin Cabezudo, ma'am.

Q What is that incident about, Mr. Witness?

A What I only saw is the arrest of Edwin Cabezudo, ma'am.

Q Mr. Witness, can you describe before this Honorable Court how was Edwin Cabezudo arrested?

A His hands were held and his face was laid down on the ground.

x x x x x x x x x

Q You said, Mr. Witness, that there was, what is that the Police Officers do after Edwin Cabezudo was already lying on his stomach?

A The Policeman is trying to put something on his back pocket, ma'am.

[38] *People v. Tomawis*, *supra* note 36, at 11-12.

ATTY. ADMANA:

Q And who is that policeman, Mr. Witness?

A I don't know him personally but I recognized his face, ma'am.[39]

This is precisely the purpose of the three-witness rule required by RA 9165. While the Court is not making a pronouncement that the seized item in this case was indeed merely "planted," the above contention of planting of evidence – claimed by Cabezudo himself, as supported by the testimony of an eyewitness – highlights the required witnesses' role in ensuring the preservation of the integrity of the *corpus delicti*. **Simply stated,if only the police officers in this case complied with the procedure outlined in Section 21, then the above claim of Cabezudo would have been easily rebutted and disproved, as there would be three witnesses that could have attested to the fact that the dangerous drug did come from him.**

The Court emphasizes that while it is laudable that police officers exert earnest effort in catching drug pushers, they must always be advised to 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 sachet of *shabu*, the evils of switching, "planting" or contamination of the evidence again rear their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachet of *shabu* that is evidence herein of the *corpus delicti*. Thus, this 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]

It bears stressing that the prosecution has the burden of (1) proving compliance with Section 21, RA 9165, and (2) providing

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[39] TSN, September 26, 2013, pp. 3-7.

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

[41] *People v. Mendoza*, *supra* note 37, at 764.

a sufficient explanation in case of non-compliance. As the Court *en banc* held in the recent case of *People v. Lim*:[42]

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.**[43]

In *People v. Umipang*,[44] 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 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

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

[43] *Id*. at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[44] 686 Phil. 1024 (2012).

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.**[45] (Emphasis and underscoring supplied)

The prosecution did not present any other witness to offer a version different from the foregoing. In a similar way, there was no explanation offered as to why none of the three required witnesses was present in the buy-bust operation conducted against Cabezudo, and why only one was present in the conduct of the inventory. Thus, 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 Cabezudo's conviction.

In this connection, it was egregious error for both the RTC and the CA to convict the accused by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[46] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[47]As the Court, in *People v. Catalan*,[48] reminded the lower courts:

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

[46] *People v. Mendoza*, *supra* note 37, at 769-770.

[47] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[48] *Id*.

Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.

We hold that both lower courts committed gross error in relying on the presumption of regularity.

Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[49] (Emphasis supplied and italics in the original)

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, as previously demonstrated.

It bears emphasis that, in cases involving dangerous drugs, the prosecution therefore **always** has the burden of proving

[49] *Id*.

compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:[50]

> x x x. We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us.** If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.
>
> **Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.**[51] (Emphasis and underscoring 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 of the *corpus delicti* were thus compromised. In light of this, Cabezudo must perforce be acquitted as regards the charge of violation of Section 5, RA 9165.

As a final 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 IRR, 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**

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[50] 745 Phil. 237 (2014).

[51] *Id*. at 250-251.

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 November 16, 2016 of the Court of Appeals in CA-G.R. CR-HC No. 07071is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Edwin Cabezudo y Rieza 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 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 (Chairperson), *Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.,* concur.

Perlas-Bernabe, J., on wellness leave.

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[52] 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.

SECOND DIVISION

[G.R. No. 232649. November 28, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIO BULUTANO *y* ALVAREZ,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF 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; CASE AT BAR.—** 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. Thus, when the case pivots on the issue of the credibility 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. Here, after examining the records of this case, the Court finds no cogent reason to vacate the RTC's appreciation of the evidence, particularly on the credibility of the eyewitnesses, which was also affirmed *in toto* by the CA. In any event, the inconsistencies pointed out by Bulutano refer to trivial matters which would not cast reasonable doubt on the finding of his guilt.

2. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; NOT TO BE PRESUMED FROM A MERE STATEMENT THAT "THE ATTACK WAS SUDDEN"; THERE MUST BE A CLEAR SHOWING FROM THE NARRATION OF FACTS WHY THE ACT OR ASSAULT IS SAID TO BE 'SUDDEN'.—** It was error for both the RTC and the CA to conclude that the killing was attended by the qualifying circumstance of treachery simply because the victim was **suddenly** attacked by Serad, and he was already defenseless at the time that Bulutano continued attacking him. It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery. As the Court held in *People v. Santos,* "[t]reachery, just like any other element of the crime committed,

must be proved by clear and convincing evidence — evidence sufficient to establish its existence beyond reasonable doubt. It is not to be presumed or taken for granted from a mere statement that 'the attack was sudden;' there must be a clear showing from the narration of facts why the attack or assault is said to be 'sudden.'"

3. ID.; ID.; ID.; THERE CANNOT BE TREACHERY IF THE MEETING BETWEEN THE ACCUSED AND THE VICTIM WAS CASUAL AND THE ATTACK WAS IMPULSIVELY DONE; CASE AT BAR.— In the same vein, jurisprudence provides that there cannot be treachery if the meeting between the accused and the victim was casual and the attack was impulsively done. x x x In the case at bar, the testimonies of the prosecution witnesses reveal that the melee was only a chance encounter between the warring groups. More importantly, the deceased Wilbert "was just passing by after making a phone call at a nearby site" when he was hit in the head by Serad with a piece of wood and then later on continually hit by Bulutano. The foregoing thus negates the existence of the second requisite for treachery to be appreciated, namely, that the offenders deliberately and consciously adopted the particular means, method or form of attack employed by him. The meeting between the parties – Bulutano, Serad, and the victim Wilbert – was casual, and the attack was done impulsively. Therefore, the killing could not have been attended by treachery.

4. ID.; REVISED PENAL CODE; HOMICIDE; CRIME COMMITTED WHEN THE QUALIFYING CIRCUMSTANCE OF TREACHERY WAS REMOVED; PENALTY IN CASE AT BAR.—With the removal of the qualifying circumstance of treachery, the crime committed by Bulutano is therefore homicide and not murder. The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the appellant may be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor*, the penalty next lower in degree and whose maximum shall be within the range of *reclusion temporal* in its medium period. Thus, Bulutano shall suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.

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 Mario Bulutano y Alvarez (Bulutano) assailing the Decision[2] dated May 23, 2016 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06502, which affirmed the Decision[3] dated July 11, 2013 of the Regional Trial Court (RTC) of Makati City, Branch 144 in Criminal Case No. 98-920, finding Bulutano guilty beyond reasonable doubt of the crime of murder.

The Facts

An Information was filed against the accused-appellant and Jhun Serad (Serad) for the murder of Wilbert Augusto (Wilbert), the accusatory portion of which reads:

> That on or about the 16th day of February 1998, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with wooden clubs, conspiring and confederating together with Vermel "Panot" Cablores[,] Pengpeng Estrella[,] and Dennis Cabangon[,] whose exact addresses remain uncertain and all of them mutually helping and aiding one another, with intent to kill and with treachery and evident premeditation, and superior strength did then and there willfully, unlawfully and feloniously struck with wooden clubs one WILBERT AUGUSTO Y ERA hitting the latter's head thereby inflicting mortal wounds which directly caused his untimely death.

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[1] *See* Notice of Appeal dated June 15, 2016; *rollo,* pp. 23-24.

[2] *Id.* at 2-22. Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Ramon R. Garcia and Ramon Paul L. Hernando (now a member of this Court) concurring.

[3] CA *rollo,* pp. 27-41. Penned by Presiding Judge Liza Marie R. Picardal-Tecson.

CONTRARY TO LAW.[4]

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

On February 16, 1998 at around 11:30 in the evening, Reynaldo Astrolavio (Reynaldo) and his friend Mark Gil Desono (Mark Gil) were at M. Aquino corner M.H. Del Pilar Streets, Barangay Rizal, Makati City. Reynaldo saw Abeng Tabeng (Abeng), Jeremy, and another person known as alias "Panot" as well as three (3) other persons buying at a nearby store. Abeng stared at Reynaldo and said "*Why are you staring at me"* to which the latter replied "*You are not the person I am looking at"*. Abeng then turned to Mark Gil and said "*Ikaw, papalag ka ba? Ang sama mo makatingin ah"*, but Mark Gil did not respond.

Reynaldo urged Mark Gil to just leave the place but as soon as Mark Gil stepped forward, Abeng boxed him. Mark Gil retaliated and the two engaged in a fist fight. Reynaldo tried to pacify them but Abeng's brother, known as alias "Kulot", arrived. "Kulot" also boxed Reynaldo which made the latter fall [into] the canal. When Reynaldo stood up, he saw the group of Mario Bulutano [Bulutano] and Jhun Serad [Serad] rushing towards them.

Sensing danger, Reynaldo ran away and hid at a nearby street which was seven (7) to eight (8) meters away from the place of the incident. From where he was hiding, he saw [Serad] hit Wilbert on his head. Afraid, Reynaldo went home.

Around the same time of that fateful night, Allan Ramos (Allan) was at his house in Blk. 137, Lot 10, A. Bonifacio Street, Zone 3, Barangay Rizal, Makati City. He was then having a drinking spree with some of his friends when he suddenly heard a commotion. Afraid that his friends were involved, he immediately went outside the house and proceeded to M. Aquino corner M.H. Del Pilar Streets which was just five hundred (500) meters away from his house.

Upon reaching the place, Allan saw [Bulutano], [Serad], Dennis Cabangon (Dennis), Pengpeng Estelera (Pengpeng) and Vermel, also known as "Panot", rushing towards the same place. He suspected that the group was there to take revenge because of an earlier fight

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[4] *Rollo,* p. 3.

with another group. He also noticed that [Bulutano] and his group were drunk and carrying bladed weapons, stones, and pieces of wood.

Allan inquired from the group what the problem was and tried to talk them into settling it. Allan was then facing the group while Wilbert, who was just passing by after making a phone call at a nearby site, stood next to him. At that moment, Vermel told his group members not to hurt Allan because the latter was his classmate. Suddenly, [Serad] surreptitiously went behind Wilbert and hit the latter with a piece of wood. Wilbert fell on the ground, shaking. Allan was shocked and his immediate reaction was to punch [Serad]. However, [Serad] was able to parry Allan's fist with the same piece of wood he had used to hit Wilbert. Thereafter, a fight ensued. Allan was pulled away by one of his companions while the others retreated upon seeing that their adversaries were armed with weapons.

While Allan was retreating from the place, he looked back and there he saw [Bulutano] hit Wilbert on the head even if the latter was already lying on the ground gasping for breath. Pengpeng, Vermel and Dennis likewise kicked and mauled the hapless Wilbert.

Meanwhile, Gerald Manaog, who was standing at a post in M. Aquino corner M.H. Del Pilar Sreets, also witnessed the brawl as he was only five (5) or six (6) meters away. Before the affray, Gerald saw Wilbert just standing and doing nothing. But then, [Serad] suddenly hit Wilbert on the right side of the latter's face. As a result, Wilbert fell on the ground. But despite Wilbert's state, [Bulutano] still hit him with a piece of wood. Gerald shouted at [Bulutano] to stop hitting Wilbert but [Bulutano] just replied "*Bakit, papalag ka ba?*["]. Gerald then could only warn them that if something happened to Wilbert, they will all be held responsible.

At that point, operatives from Bantay Bayan arrived. Allan then rushed to the bloodied Wilbert. With the assistance of concerned citizens, they carried Wilbert's body and boarded him on a vehicle. Wilbert was brought to the hospital where he was subsequently pronounced dead.[5]

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

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

In his defense, accused-appellant Mario Bulutano presented a different version of the facts. To disprove the charge filed against him, he denies participation in the crime yet points at his co-accused, Jhun Serad, as the sole perpetrator thereof. He thus claims that he was in front of his house taking some fresh air when [Serad], Delfin Tabing (Delfin), Raffy Estillero (Raffy) and Gerry Solima (Gerry), happened to pass by and invited him for a drink in celebration of having found a new job. On their way to the store, they chanced upon Endy Tabing (Endy), Vermel Cablores, Edwin Candichoy (Edwin) and Dennis Cabangon who volunteered to purchase the liquor for the group. Thus, the rest proceeded to the house of Endy.

Upon arrival thereat, Cabangon returned and informed them that the members of the group known as "No Fear" were ganging up on Endy. When they rushed to help him, they saw Endy already sprawled on the ground but was still being mauled by the group. He and his companions were likewise stoned by members of another group who hid themselves in the shadows.

[Bulutano] was able to carry Endy to the latter's house and told him to rest. He then went back to the place of the melee in an attempt to pacify the brawl but before he can reach the place, stones were again thrown at him thus he shouted at the perpetrators and told them to stop. When he finally reached the site of the incident, he saw a man sprawled on the ground. He instructed his group to stand down. When everything was peaceful, he brought Endy to the Barangay Hall to have the incident blottered. After which, Endy was brought to the hospital by his mother. At the hospital, he revealed that it was [Serad] who struck the victim during the melee and that he was unable to pacify him at that time because the latter was very angry.

Also, [Bulutano] avers that he has no bad blood with the prosecution witnesses but the only reason which he sees as the possible explanation for them in testifying against him was because of their basketball rivalry.[6]

Bulutano was arraigned on October 30, 2006, in which he pleaded "not guilty" to the crime charged, while his co-accused Serad remained at large.[7] Pre-trial and trial thereafter ensued.

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

[7] *Id*. at 3.

Ruling of the RTC

After trial on the merits, in its Decision[8] dated July 11, 2013, the RTC convicted Bulutano of the crime of murder. The dispositive portion of the said Decision reads:

> **WHEREFORE**, in light of all the foregoing, the Court finds accused MARIO BULUTANO **GUILTY Beyond Reasonable Doubt** for the crime of MURDER defined and penalized under Article 248 of the Revised Penal Code and is hereby imposed with the penalty of ***Reclusion Perpetua***.
>
> In addition, Bulutano is ordered to pay the heirs of the late Wilbert Augusto y Era, the amount of ***Fifty Thousand Pesos*** (₱50,000.00) as *civil indemnity,* ***One Hundred Thousand Pesos*** (₱100,000.00) as *exemplary damages* and ***One Hundred Thousand Pesos*** (₱100,000.00) as *moral damages* and ***Twenty-five Thousand Pesos*** (₱25,000.00) as *temperate damages* considering that it was reasonable and understandable that the family incurred expenses for his hospitalization and burial only that the mother failed to present receipts to substantiate her claim.
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> x x x x x x x x x
>
> **SO ORDERED.**[9]

The RTC found the positive identification by the prosecution witnesses Allan Ramos (Ramos) and Gerald Manaog (Manaog) that Serad hit Wilbert on the head first, and that Bulutano also hit the said victim on the head subsequently as he was sprawled on the ground, sufficient to convict the Bulutano of the crime charged. The RTC did not believe Bulutano's allegation that the foregoing witnesses only testified because they harbored ill feelings against him for their supposed basketball rivalry. Thus, as the witnesses were not found to have been motivated by ill will, the RTC held that there was therefore no doubt that Bulutano perpetrated the crime in light of their positive identification.[10]

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[8] *Supra* note 3.

[9] CA *rollo,* p. 41.

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

The RTC also found that treachery attended the killing of Wilbert. The RTC reasoned that Bulutano continued to hit the victim when the latter was already on the ground, thus rendering him defenseless.[11] Hence, Bulutano was liable for murder instead of homicide.

Aggrieved, Bulutano appealed to the CA.

Ruling of the CA

In the assailed Decision[12] dated May 23, 2016, the CA affirmed the RTC's conviction of Bulutano, and held that the prosecution was able to sufficiently prove the elements of the crime charged and the element of treachery were present in the killing of Wilbert.

The CA held that the supposed inconsistencies in the prosecution witnesses' testimonies that Bulutano was harping on involved only trivial matters that were, by themselves, insufficient to affect the finding of guilt as to the commission of the crime.[13] The CA also upheld the findings of the RTC as to the credibility of the eyewitnesses, thereby establishing Bulutano's guilt beyond reasonable doubt. The CA likewise ruled that treachery attended the killing as the victim was already in a hapless state when Bulutano continued to strike him.[14]

The appellate court, however, modified the award of damages to be paid to the heirs of Wilbert to conform to recent jurisprudence.[15]

Hence, the instant appeal.

Issue

For resolution of this Court are the following issues submitted by accused-appellant Bulutano:

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[11] *Id*. at 39.

[12] *Supra* note 2.

[13] *Rollo,* p. 9.

[14] *Id*. at 11.

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

(1) Whether the CA erred in convicting Bulutano despite the prosecution's failure to prove his guilt beyond reasonable doubt;

(2) Whether the CA erred in appreciating the qualifying circumstance of treachery.

The Court's Ruling

The appeal is partially meritorious. The Court affirms the conviction of accused-appellant Bulutano but for the crime of homicide, instead of murder, as the qualifying circumstance of treachery was not present in the killing of Wilbert.

First Issue: Whether the CA erred in finding Bulutano guilty beyond reasonable doubt

In questioning his conviction, Bulutano stresses that there were inconsistencies in the testimonies of the prosecution witnesses – Ramos, Manaog, and Reynaldo Astrolavio (Astrolavio) – that supposedly tarnish their credibility. He avers that their testimonies were inconsistent in that they differ as to when he and Serad arrived to join the melee. Bulutano maintains that while he was at the scene of the crime, he did not hit the victim and that it was only Serad who did so.

The argument deserves scant consideration.

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.[16] Thus, when the case pivots on the issue of the credibility 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.[17] Here, after examining the records of this case, the Court finds no cogent reason to vacate the RTC's appreciation of the evidence, particularly on the credibility of the eyewitnesses, which was also affirmed *in toto* by the CA.

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[16] *People v. Gerola*, G.R. No. 217973, July 19, 2017, pp. 5-6.

[17] *People v. Aguilar*, 565 Phil. 233, 247 (2007).

In any event, the inconsistencies pointed out by Bulutano refer to trivial matters which would not cast reasonable doubt on the finding of his guilt. In this connection, the Court quotes with approval the following disposition of the CA:

> While there appears some inconsistencies in the relevant portions of the testimonies of the prosecution witnesses, which accused-appellant claims to have impaired their credibility, a simple review of the transcripts reveal that the alleged inconsistencies are trivial matters pertaining to details of immaterial nature that do not tend to diminish the probative value of the testimonies at issue.
>
> We agree with the observation made by the OSG that accused-appellant himself admitted that there was a fight between the two (2) warring groups at the same place and at the same time. He also confirmed his presence during the said fight and his apparent participation in the said affray. If there is really an inconsistency in the narration of the prosecution witnesses, the same only pertains to the specific time of arrival of accused-appellant, his co-accused [Serad], and their gang members to the place of the incident. Taking into consideration the commotion as well as the different vantage points of the prosecution witnesses, there is a probability of inconsistencies and variances in the declaration of the witnesses. At any rate, the prosecution witnesses were able to clearly see how accused [Serad] treacherously hit Wilbert Augusto as well as how accused-appellant hit Wilbert Augusto while the latter was haplessly lying on the ground. Thus, the allegation of inconsistency in this case refers only to minor details which, even if entertained, are insufficient to impair the integrity of the testimonies of the prosecution witnesses.[18]

Furthermore, the absence of evidence as to improper or ill motive on the part of the prosecution witnesses – it being anchored merely on the allegation that their testimonies were motivated by the supposed basketball rivalry between them and Bulutano – strongly tends to sustain the conclusion that no such improper motive existed.[19] Hence, their testimonies are worthy of full faith and credit.[20]

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[18] *Rollo,* p. 9.

[19] *People v. Tiengo*, 218 Phil. 279, 282 (1984).

[20] *Id*.

From the foregoing, the Court thus concludes that the RTC and the CA were correct in convicting Bulutano.

Second Issue: Existence of the Qualifying Circumstance of Treachery

In the assailed Decision, the CA affirmed the RTC's finding that the qualifying circumstance of treachery was present, thereby making Bulutano liable for murder instead of homicide. The CA held that the fact that Bulutano continued to attack the victim, even though the latter was already sprawled on the ground, is enough to hold that treachery attended the killing.[21]

On the other hand, Bulutano claims that there was no treachery as the prosecution failed to prove that he consciously adopted the mode of attack to facilitate the perpetration of the crime without risk to himself. He claims that the attack appears to be impulsively done, a spur of the moment act in the heat of anger or extreme annoyance.[22]

On this issue, the Court rules in favor of Bulutano.

It was error for both the RTC and the CA to conclude that the killing was attended by the qualifying circumstance of treachery simply because the victim was **suddenly** attacked by Serad, and he was already defenseless at the time that Bulutano continued attacking him. It does not always follow that because the attack is sudden and unexpected, it is tainted with treachery.[23]

As the Court held in *People v. Santos,*[24] "[t]reachery, just like any other element of the crime committed, must be proved by clear and convincing evidence — evidence sufficient to establish its existence beyond reasonable doubt. It is not to be presumed or taken for granted from a mere statement that 'the

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[21] *Rollo,* pp. 10-11.

[22] CA *rollo,* p. 89.

[23] *People v. Sabanal*, 254 Phil. 433, 436 (1989).

[24] 175 Phil. 113 (1978).

attack was sudden;' there must be a clear showing from the narration of facts why the attack or assault is said to be 'sudden.'"[25]

Stated differently, mere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the appellants does not positively tend to prove that they thereby **knowingly intended** to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer.[26] Specifically, it must clearly appear that the method of assault adopted by the aggressor was **deliberately chosen** with a view to accomplishing the act without risk to the aggressor.[27]

In the same vein, jurisprudence provides that there cannot be treachery if the meeting between the accused and the victim was casual and the attack was impulsively done.

In *People v. Calinawan*,[28] the accused therein was carrying a rifle while riding a bicycle. The eventual victim was walking in the same street when he saw the accused, and this prompted the victim to run. The accused then whistled at the victim for him to stop, but the latter continued to run. Thus, the accused got off his bicycle and fired at the victim as he was running away. In ruling that the killing was not attended by treachery, the Court held:

> In classifying the offense as murder, the Solicitor General argues that the attack was sudden and unexpected, and made while the deceased, Romualdo Nacario, was running away with his back towards the appellant, and that Romualdo did not have any opportunity of defending himself or of avoiding the attack, which was perpetrated without any risk to the appellant arising from any defense which the deceased might have offered.

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[25] *Id.* at 122.

[26] *People v. Delgado*, 77 Phil. 11, 15-16 (1946).

[27] *People v. Bacho*, 253 Phil. 451, 458 (1989).

[28] 83 Phil. 647 (1949).

We believe that the appellant must be held liable for the killing of Romualdo Nacario, but that the offense should be classified only as homicide. There is absolutely no indication in the record that the appellant was purposely in search for Romualdo, and the bare facts proven at the trial are not inconsistent with the inference that the meeting was casual. Much less can the proof warrant the theory that the appellant had a previous determination to kill Romualdo, and the bare facts proven at the trial are likewise not inconsistent with the conclusion that the appellant fired at his victim impulsively. And considering in this connection, that the shot was fired at a distance of fifty meters and while Romualdo was running, appellant's situation may fairly come under the doctrine mentioned in People vs. Cañete, 44 Phil., 478, 481, that the method of assault adopted by the aggressor as not "deliberately chosen with a special view to the accomplishment of the act without risk to the assailant from any defense that the party assailed may make," said case making special reference to an instance "where the slayer acted instantaneously upon the advantage which resulted from the accidental fall of the person slain."[29] (Emphasis and underscoring supplied)

In *People v. Magallanes,*[30] the accused was suddenly slapped and strangled by the victim for no apparent reason. The accused, however, saw a knife tucked in the victim's waist, so he grabbed the same and slashed at the victim so he could break free. The victim then tried to flee but the accused ran after him. When the victim tripped, the accused stabbed him numerous times thereby causing his death. The prosecution in the said case insisted that there was treachery because the victim was running away from the accused, so the latter, therefore, had the opportunity to stab the victim at the back without warning. In ruling against the prosecution, the Court held:

"There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." Thus, for treachery or *alevosia* to

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[29] *Id*. at 648-649.

[30] 341 Phil. 216 (1997).

be appreciated as a qualifying circumstance, the prosecution must establish the concurrence of two (2) conditions: (a) that at the time of the attack, the victim was not in a position to defend himself; and **(b) that the offender consciously adopted the particular means, method or form of attack employed by him. The latter condition is immediately negated by the fact that the meeting between the appellant and Tapales was by chance.** We have held that:

> ". . .**where the meeting between the accused and the victim was casual and the attack was done impulsively, there is no treachery even if the attack was sudden and unexpected** and while the victim was running away with his back towards the accused. As has been aptly observed the accused could not have made preparations for the attack, . . .; **and the means, method and form thereof could not therefore have been thought of by the accused, because the attack was impulsively done**.["]

Treachery cannot also be presumed from the mere suddenness of the attack or from the fact that the victim was stabbed with his back towards the appellant. In point is the following pronouncement we made in *People v. Escoto*:

> "We can not presume that treachery was present merely from the fact that the attack was sudden. The suddenness of an attack, does not itself, suffice to support a finding of alevosia, even if the purpose was to kill, so long as the decision was made all of a sudden and the victim's helpless position was accidental. In fact from the reaction of Robert in running away from the Escoto brothers the moment he saw them, we can reasonably conclude that he was not completely unaware that herein appellant and Willie posed a danger to him and this necessarily put him on guard, with the opportunity to prevent or repel a possible assault."[31] (Emphasis and underscoring supplied)

In the case at bar, the testimonies of the prosecution witnesses reveal that the melee was only a chance encounter between the warring groups. More importantly, the deceased Wilbert "was just passing by after making a phone call at a nearby site" when he was hit in the head by Serad with a piece of wood[32] and then

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[31] *Id*. at 226-227.

[32] *Rollo,* p. 4.

later on continually hit by Bulutano. The foregoing thus negates the existence of the second requisite for treachery to be appreciated, namely, that the offenders deliberately and consciously adopted the particular means, method or form of attack employed by him. The meeting between the parties – Bulutano, Serad, and the victim Wilbert – was casual, and the attack was done impulsively. Therefore, the killing could not have been attended by treachery.

With the removal of the qualifying circumstance of treachery, the crime committed by Bulutano is therefore homicide and not murder. The penalty for homicide under Article 249 of the Revised Penal Code is *reclusion temporal*. In the absence of any modifying circumstance, the penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, the appellant may be sentenced to an indeterminate penalty whose minimum shall be within the range of *prision mayor*, the penalty next lower in degree and whose maximum shall be within the range of *reclusion temporal* in its medium period.[33]

Thus, Bulutano shall suffer the indeterminate penalty of eight (8) years and one (1) day of *prision mayor*, as minimum, to fourteen (14) years, eight (8) months, and one (1) day of *reclusion temporal*, as maximum.[34]

Finally, in view of the Court's ruling in *People v. Jugueta,*[35] 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 **MARIO BULUTANO y ALVAREZ 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)

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[33] *People v. Duavis*, 678 Phil. 166, 179 (2011).

[34] *Id*.

[35] 783 Phil. 806 (2016).

months, and one (1) day of *reclusion temporal*, as maximum. He is further ordered to pay the heirs of Wilbert Augusto 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, S. A. J. (Chairperson), *Reyes, A. Jr.,* and *Reyes, J. Jr.,*[*] *JJ.,* concur.

Perlas-Bernabe, J., on wellness leave.

SECOND DIVISION

[G.R. Nos. 233443-44. November 28, 2018]

ALBERT G. AMBAGAN, JR., *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; *DELITO CONTINUADO* OR CONTINUOUS CRIME IS DEFINED AS A SINGLE CRIME CONSISTING OF A SERIES OF ACTS ARISING FROM A SINGLE CRIMINAL RESOLUTION OR INTENT NOT SUSCEPTIBLE OF DIVISION; DISTINGUISHED FROM COMPLEX CRIME DEFINED UNDER ARTICLE 48 OF THE REVISED PENAL CODE; CASE AT BAR.— In *Gamboa v. CA*, the Court defined *delito continuado,* or

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

continuous crime as- [A] single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division. For Cuello Calon, when the actor, there being unity of purpose and of right violated, commits diverse acts, *each of which*, although of a delictual character, merely *constitutes a partial execution* of a single particular delict, such concurrence or delictual acts is called a "delito continuado". In order that it may exist, there should be "plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated and unity of criminal intent and purpose, *which means* that two or more violations of the same penal provision *are united in one and the same intent leading to the perpetration* of the same criminal purpose or aim." The concept is distinguished from the so-called complex crimes, contemplated under Article 48 of the Revised Penal Code, which arise (a) when a single act constitutes two or more grave or less grave felonies (described as "*delito compuesto"* or compound crime); and (b) when an offense is a necessary means for committing another offense (described as *"delito complejo"* or complex proper). Tested against the attendant circumstances in this case, the Court is inclined to rule that what is involved in this case is a continuous crime, and as such, there should only be one Information to be filed against the petitioner.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; INFORMATION; MUST ALLEGE ULTIMATE FACTS CONSTITUTING THE ELEMENTS OF THE CRIME CHARGED, WITH THE END THAT THE ACCUSED IS INFORMED OF THE NATURE AND CAUSE OF THE ACCUSATION AGAINST HIM; MUST COMPLY WITH SECTIONS 6 AND 9, RULE 110 OF THE RULES OF COURT; CASE AT BAR.—** The Rules of Court requires that the Information allege ultimate facts constituting the elements of the crime charged, with the end that the accused is informed of the nature and cause of the accusation against him. An Information is deemed sufficient if it complies with Sections 6 and 9, Rule 110 of the Rules of Court. x x x The Court finds that the Informations sufficiently allege the elements for violation of Section 3(e) of R.A. No. 3019.

3. **CRIMINAL LAW; REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT); VIOLATION OF SECTION 3 (E); ELEMENTS.—** In this case, the petitioner

was charged with violation of Section 3(e) of R.A. No. 3019, the elements of which are the following: a) The accused must be a public officer discharging administrative, judicial or official functions; b) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and c) That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

4. ID.; ID.; ID.; ID.; BAD FAITH DOES NOT SIMPLY CONNOTE BAD JUDGMENT OR NEGLIGENCE; IT IMPUTES A DISHONEST PURPOSE OR SOME MORAL OBLIQUITY AND CONSCIOUS DOING OF A WRONG; CASE AT BAR.— [T]he Court finds no merit in the petitioner's submissions that the second and third elements of the offense, previously enumerated, are not present. To merit conviction under Section 3(e) of R.A. No. 3019, it is not enough that undue injury was caused, the act must be performed through manifest partiality, evident bad faith, or gross inexcusable negligence. Pertinent to the issue at hand, "bad faith" in this sense, does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. Petitioner's violation is manifested by his act of ordering that construction works be done on the property belonging to the Heirs of Simplicio and that of Calixto prior to any agreement with the said parties or expropriation proceedings. x x x Evident bad faith on the part of the petitioner is, on the other hand, manifested by his active participation in the Balite Falls Development Project and that despite meetings conducted wherein he was directly and personally informed by the owners of the subject properties of their disagreement to the utilization and/or inclusion of their properties, he nonetheless consciously proceeded with the project.

5. ID.; ID.; ID.; PENALTY IN CASE AT BAR.— With respect to the proper penalty, Section 9(a) of R.A. No. 3019 provides that the penalty for violation of Section 3(e) of the same law includes, *inter alia,* imprisonment for a period of six (6) years and one (1) month to fifteen (15) years, and perpetual disqualification from public office. Thus, the Sandiganbayan correctly sentenced petitioner to

suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office. Nonetheless, in light of the previous discussion, stating that only one offense has been committed, the decision of the Sandiganbayan should be modified in that this penalty should only be imposed once.

6. CIVIL LAW; DAMAGES; TEMPERATE DAMAGES; AWARDED WHEN IT HAS BEEN ESTABLISHED THAT PRIVATE COMPLAINANT SUFFERED A LOSS BUT THE AMOUNT THEREOF CANNOT BE PROVEN WITH CERTAINTY; CASE AT BAR.— In the same case of *Fuentes*, the Court held that temperate damages should be awarded when it has been established that the private complainant or respondent suffered a loss but the amount thereof cannot be proven with certainty. The determination of the amount of temperate damages is left to the sound discretion of the Court subject to the standard of reasonableness, in that temperate damages should be more than nominal but less than compensatory. In this controversy, while the subject property owners offered proof as to the area affected by the construction works and the Balite falls project, they however failed to adduce competent proof of valuation of their properties and the damages they suffered. In this regard, considering the attendant facts, particularly the property owners admission that the value of their properties increased, and that they together with their relatives and friends enjoy a lifetime privilege to enjoy the resort for free, the Court finds that an award of temperate damages in the amount of Php 400,000.00 to each of the property owners is just and reasonable under the circumstances.

APPEARANCES OF COUNSEL

Ramirez Lazaro Bello Rico-Sabado & Associates Law Office for petitioner.

Office of the Solicitor General for respondent.

D E C I S I O N

REYES, A. JR., *J.*:

Before this Court is a Petition for Review on *Certiorari*[1] filed by Albert G. Ambagan, Jr. (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure seeking to annul and set aside the Decision[2] dated April 5, 2017 and Resolution[3] dated August 8, 2017 of the Sandiganbayan in SB-11-CRM-0366 to 0367. The assailed rulings adjudged the petitioner guilty of violating Section 3(e) of Republic Act (R.A.) No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

The Antecedent Facts

On September 25, 1998, the *Sangguniang Bayan* (SB) of Amadeo, Cavite issued Resolution No. 57, Series of 1998, declaring Balite Falls a tourist spot, barangay park, and a reserved area. The resolution was issued to preserve Balite Falls as a potential source of potable water. Among those who signed the resolution is the petitioner, in his capacity as *Sangguniang Kabataan* (SK) Federation Chairman.[4]

On October 19, 1998, Resolution No. 402-S-98 was passed by the *Sangguniang Panlalawigan* (SP) of Cavite approving Resolution No. 57.[5]

Located near Balite falls is a lot owned by Simplicio S. Lumandas (Simplicio) as evidenced by Transfer Certificate of Title (TCT) No. T-158087 (40069). The land is also where his ancestral house is built. Upon Simplicio's death, the property

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[1] *Rollo*, pp. 9-50.

[2] Penned by Associate Justice Geraldine Faith A. Econg, with Associate Justices Alex L. Quiroz and Reynaldo P. Cruz concurring; *id*. at 55-77.

[3] *Id*. at 115-119.

[4] *Id*. at 67.

[5] *Id*.

passed on to his heirs, one of which is Revina C. Lumandas (Revina), the private complainant in the case before the Sandiganbayan.[6]

Sometime in October 2007, Councilor Marlon Ambion (Ambion) informed Revina that the municipal government planned to temporarily rent their ancestral house for office purposes. Revina agreed as the house was then vacant.[7]

During the same time, the petitioner, then Mayor of Amadeo Cavite, called for a meeting to discuss the project to be undertaken near Balite Falls. Calixto Lumandas (Calixto), cousin of Revina and owner of the adjacent property TCT No. T-158086 (40068), attended the gathering.[8]

On January 31, 2008, the SB of Amadeo issued Resolution No. 58 approving the operating guidelines relating to the establishment of the Balite Falls as an eco-tourism area. On even date, the SB also issued Resolution No. 59 authorizing the petitioner to enter into agreement with interested parties for the development of Balite Falls and the adjoining vicinity which covers Barangays Banaybanay, Halang and Tamakan. The resolution was signed by the SB members and approved by the petitioner as Municipal Mayor.[9]

Sometime in February 2008, the house on the subject lot owned by the heirs of Simplicio was demolished, while the property of Calixto was levelled. Thereafter, Revina and Calixto saw construction activities being done on their property.[10]

On March 2, 2008, a meeting was called by the petitioner and attended by the owners of the lots near the Balite Falls. Revina therein asked why their house was demolished without notice, to which the staff of the petitioner replied *"tao lamang*

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[6] *Id*.

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

[8] *Id*.

[9] *Id*. at 68.

[10] *Id*.

sya na nagkakamali." Calixto, who was also present handed the petitioner a letter demanding the cessation of construction activities.[11]

Revina's brother, witnessing that construction activities are being conducted on the property, also demanded the immediate cessation thereof, but his request was ignored. He together with other relatives attempted to mark the boundaries of the land, but was prevented by the petitioner, who together with armed men threatened to have them arrested.[12]

On March 6, 2008, Calixto met with the petitioner who proposed to lease the land for a period of 25 years, to which the former formally declined on March 24, 2008.[13]

On March 25, 2008, a meeting was called by the Barangay Chairman of Banaybanay in which the plans to expand and widen the road towards the Balite Falls were related to the affected property owners. The owners opposed as the project necessitate that they give up three (3) meters of their land.[14] On May 15, 2008, the SB of Amadeo passed Resolution No. 72, which ratified the levying of park maintenance fees on the residents of Amadeo.[15]

On July 1, 2008, two separate complaints were filed by Revina for and in behalf of the heirs of Simplicio, and Calixto, against the petitioner before the Deputy Ombudsman for Luzon for violation of Section 3(e) of R.A. No. 3019 and misconduct.[16]

On March 17, 2017, the Deputy Ombudsman for Luzon dismissed the case for misconduct.[17] However, the petitioner

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[11] *Id*. at 69.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 70.

[16] *Id.*

[17] *Id*.

was charged with violation of Section 3(e) of R.A. No. 3019, as amended, in two separate Informations, the accusatory portions of which read:

SB-11-CRM-0366

That on 28 February 2008 or sometime prior or subsequent thereto, in Barangay Halang, Amadeo, Cavite, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being the Municipal Mayor of Amadeo, Cavite, acting in relation to his office, through evident bad faith, manifest partiality or gross inexcusable negligence, did then and there, willfully, unlawfully, and criminally cause undue injury to the Heirs of Simplicio Lumandas by ordering construction works to be undertaken upon the latter's private land covered by Transfer Certificate of Title No. T-158087 (40069) thereby depriving them of the enjoyment and use of three thousand eight hundred and ninety-two square meters (3,892), more or less, of their land, which affected area is valued at approximately SEVEN HUNDRED SEVENTY-EIGHT THOUSAND FOUR HUNDRED PESOS (Php778,400.00) to the damage and prejudice of the Heirs of Simplicio Lumandas in the afore-stated amount.[18]

SB-11-CRM-0367

That on 28 February 2008 or sometime prior or subsequent thereto, in Barangay Halang, Amadeo, Cavite Philippines and within the jurisdiction of this Honorable Court, the above-named accused, a public officer, being the Municipal Mayor of Amadeo, Cavite, acting in relation to his office, through evident bad faith, manifest partiality or gross inexcusable negligence, did then and there, willfully, unlawfully and criminally cause undue injury to Calixto C. Lumandas by ordering construction works to be undertaken upon the latter's private land covered by Transfer Certificate of Title No. T-158086 (40068) thereby depriving him of the enjoyment and use of three thousand nine hundred eighty-nine square meters (3,989), more or less, of his land, which affected area is valued at approximately SEVEN HUNDRED NINETY-SEVEN THOUSAND EIGHT HUNDRED PESOS (Php797,800.00) to the damage and prejudice of Calixto C. Lumandas in the afore-stated amount.[19]

[18] *Id*. at 55-56.

[19] *Id*. at 56.

On April 5, 2017, the Special Fourth Division of the Sandiganbayan rendered the herein assailed Decision,[20] the dispositive portion of which reads:

> ACCORDINGLY, and in view of the foregoing, this Court finds [the petitioner]:
>
> a. GUILTY beyond reasonable doubt in Criminal Case No. SB-11-CRM-0366 and applying the Indeterminate Sentence Law (ISL), there being no aggravating and mitigating circumstance to be appreciated, he is hereby ordered to suffer the penalty of imprisonment for Six (6) years and One (1) Month as minimum to Ten (10) Years as maximum and perpetual disqualification from holding public office.
>
> b. GUILTY beyond reasonable doubt in Criminal Case No. SB-11-CRM-0367 and applying the Indeterminate Sentence Law (ISL), there being no aggravating and mitigating circumstance to be appreciated, he is hereby ordered to suffer the penalty of imprisonment for Six (6) years and One (1) month as minimum to Ten (10) years, as maximum and perpetual disqualification from holding public office.
>
> c. No Costs.
>
> SO ORDERED.[21]

Both parties filed their respective Motion for Reconsideration of the Decision dated April 5, 2017. On August 8, 2017, the Sandiganbayan issued a Resolution[22] denying both motions, *viz.*:

> WHEREFORE, the following:
>
> 1.) Motion for Reconsideration (of the DECISION dated 05 April 2017) dated 20 April 2017 received by mail on 8 May 2017 by [the petitioner]; and
>
> 2.) Motion for Reconsideration (of Decision dated April 5, 2017) dated 20 April 2017 and received by mail on 8 May 2017 filed by

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[20] *Id*. at 55-78.

[21] *Id*. at 76-77.

[22] *Id*. at 115-119.

private complainants, Heirs of Simplicio Lumandas and Rev. Fr. Calixto C. Lumandas;

are hereby **DENIED.**

SO ORDERED.[23]

Issues

Thus, this petition for review for *certiorari* whereby the petitioner submits, in sum, *first,* that he should be charged only for a single offense, which is in the nature of a continuous crime; and *second,* that he cannot be held liable for the crimes charged as a) the Informations failed to sufficiently allege the element of "*performance of the act in the discharge of official functions;"* and b) all the other elements of the offense have not been proven.

Ruling of the Court

The petition is ***partly*** **meritorious.**

Anent the issue, the petitioner claims that he cannot be held liable for two separate offenses as the acts referred to the Informations arise out of a single act constituting of a single continuing offense.

The petitioner submits that in determining the multiplicity of an offense, "[i]t is not really the number of properties and private parties that matters but x x x the singularity of intent and purpose in the commission of the complained act."[24]

Finally, the petitioner argues that his prosecution of a continuing offense under two separate Informations, calls for the dismissal of both cases on the ground of double jeopardy.[25]

In *Gamboa v. CA*,[26] the Court defined *delito continuado,* or continuous crime as-

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[23] *Id*. at 119.

[24] *Id*. at 24.

[25] *Id*. at 28-30.

[26] 160-A Phil. 962 (1975).

[A] single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division. For Cuello Calon, when the actor, there being unity of purpose and of right violated, commits diverse acts, *each of which*, although of a delictual character, merely *constitutes a partial execution* of a single particular delict, such concurrence or delictual acts is called a "delito continuado". In order that it may exist, there should be "plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated and unity of criminal intent and purpose, *which means* that two or more violations of the same penal provision *are united in one and the same intent leading to the perpetration* of the same criminal purpose or aim."[27]

The concept is distinguished from the so-called complex crimes, contemplated under Article 48 of the Revised Penal Code, which arise (a) when a single act constitutes two or more grave or less grave felonies (described as "*delito compuesto"* or compound crime); and (b) when an offense is a necessary means for committing another offense (described as *"delito complejo"* or complex proper).[28]

Tested against the attendant circumstances in this case, the Court is inclined to rule that what is involved in this case is a continuous crime, and as such, there should only be one Information to be filed against the petitioner.

In *Santiago v. Hon. Justice Garchitorena,*[29] the Court made an instructive disquisition on the concept of *delito continuado* or continuous crimes, *viz*.:

[I]t should be borne in mind that the concept of *delito continuado* has been a vexing problem in Criminal Law — difficult as it is to define and more difficult to apply.

According to Cuello Calon, for *delito continuado* to exist there should be a plurality of acts performed during a period of time; unity of penal provision violated; and unity of criminal intent or purpose,

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[27] *Id*. at 969.

[28] *Id*. at 970.

[29] 298-A Phil. 164 (1993).

which means that two or more violations of the same penal provisions are united in one and same instant or resolution leading to the perpetration of the same criminal purpose or aim (II Derecho Penal, p. 520; I Aquino, Revised Penal Code, 630, 1987 ed.).

According to Guevarra, in appearance, a *delito continuado* consists of several crimes but in reality there is only one crime in the mind of the perpetrator (Commentaries on the Revised Penal Code, 1957 ed., p. 102; Penal Science and Philippine Criminal Law, p. 152).

Padilla views such offense as consisting of a series of acts arising from one criminal intent or resolution (Criminal Law, 1988 ed. pp. 53-54).

Applying the concept of *delito continuado*, we treated as constituting only one offense the following cases:

(1) The theft of 13 cows belonging to two different owners committed by the accused at the same time and at the same period of time (People v. Tumlos, 67 Phil. 320 [1939]).

(2) The theft of six roosters belonging to two different owners from the same coop and at the same period of time (People v. Jaranillo, 55 SCRA 563 [1974]).

(3) The theft of two roosters in the same place and on the same occasion (People v. De Leon, 49 Phil. 437 [1926]).

(4) The illegal charging of fees for services rendered by a lawyer every time he collects veteran's benefits on behalf of a client, who agreed that the attorney's fees shall be paid out of said benefits (People v. Sabbun, 10 SCRA 156 [1964]). The collection of the legal fees was impelled by the same motive, that of collecting fees for services rendered, and all acts of collection were made under the same criminal impulse (People v. Lawas, 97 Phil. 975 [1955]).

On the other hand, we declined to apply the concept to the following cases:

(1) Two estafa cases, one of which was committed during the period from January 19 to December 1955 and the other from January 1956 to July 1956 (People v. Dichupa, 113 Phil. 306 [1961]). The said acts were committed on two different occasions.

(2) Several malversations committed in May, June and July, 1936, and falsifications to conceal said offenses committed in August and

October 1936. The malversations and falsifications "were not the result of only one purpose or of only one resolution to embezzle and falsify . . ." (People v. Cid, 66 Phil. 354 [1938]).

(3) Two estafa cases, one committed in December 1963 involving the failure of the collector to turn over the installments for a radio and the other in June 1964 involving the pocketing of the installments for a sewing machine (People v. Ledesma, 73 SCRA 77 [1976]).

(4) 75 estafa cases committed by the conversion by the agent of collections from customers of the employer made on different dates (Gamboa v. Court of Appeals, 68 SCRA 308 [1975]).

The concept of *delito continuado*, although an outcry of the Spanish Penal Code, has been applied to crimes penalized under special laws, x x x.

x x x x x x x x x

The original information also averred that the criminal act: (i) committed by petitioner was in violation of a law — Executive Order No. 324 dated April 13, 1988, (ii) caused an undue injury to one offended party, the Government, and (iii) was done on a single day, *i.e.*, on or about October 17, 1988.

The 32 Amended Informations reproduced verbatim the allegation of the original information, except that instead of the word "aliens" in the original information each amended information states the name of the individual whose stay was legalized.

x x x x x x x x x

The 32 Amended Informations aver that the offenses were committed on the same period of time, *i.e.*, on or about October 17, 1988. The strong probability even exists that the approval of the application or the legalization of the stay of the 32 aliens was done by a single stroke of the pen, as when the approval was embodied in the same document.[30] (Underscoring Ours)

From the foregoing, it is evident that the primary considerations in adjudging whether a series of criminal acts should be considered a continuous crime, are: the singularity in criminal intent and penal law violation, and the period of

[30] *Id.* at 174-178.

time the act was committed. Verily, when the criminal acts are performed on various dates, the presumption is that every act is performed on the motivation of separate criminal intents. Thus, the tendency is for the Court to treat each act as a separate and independent criminal violation. However, this is not a hard and fast rule but are merely guidelines. Ultimately, whether or not a continuous crime exists depends on the circumstances of each case.

The two (2) Informations charging the petitioner for violation of Section 3(e), R.A. No. 3019 are strikingly identical except with respect to the name of the property owner, TCT No., affected area, and its value. The place, time, and manner of the commission of the offense are the same. The petitioner in the performance of the alleged criminal act is impelled by a singular purpose– the realization of the Balite Falls development project. Consequently, the acts alleged in the two (2) Informations constitute only one offense which should have been consolidated in one Information.

This does not mean however that both cases must be dismissed as petitioner suggests. Considering that there is but one offense, there is no place for the issue of double jeopardy to arise in the first place. The only implication of this pronouncement would be that the accused should, if found guilty, be meted with penalty for a single offense.

Moving forward to the second issue, the petitioner claims that he cannot be held liable for the crime charged.

Foremost, he argues that the third element of the crime charged, *i.e.*, that the act was performed by the accused in the discharge of his official functions, has not been alleged in the Informations.

Next, the petitioner submits that the element of "undue injury" is not present. He theorizes that "undue injury" is not merely simple injury, but one that invites the punishment of imprisonment or deprivation of liberty for months and years,[31] none of which is present in this case. At any rate, petitioner

[31] *Rollo*, p. 36.

suggests that improvements were actually introduced that resulted in the increase in the value of the subject properties.[32]

Lastly, the petitioner also argues the absence of the elements of evident bad faith or manifest partiality and pecuniary benefit. He posits that the Balite Falls project is conceived only of good intentions. Consequently, he submits that he cannot be held administratively liable therefor.[33]

The Rules of Court requires that the Information allege ultimate facts constituting the elements of the crime charged, with the end that the accused is informed of the nature and cause of the accusation against him.[34]

An Information is deemed sufficient if it complies with Sections 6 and 9, Rule 110 of the Rules of Court, *viz.*:

Sec. 6. *Sufficiency of complaint or information*. – A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.

When an offense is committed by more than one person, all of them shall be included in the complaint or information.

x x x x x x x x x

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.

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[32] *Id*. at 38-39, 41.

[33] *Id*. at 45.

[34] *People v. Sandiganbayan, et al.*, 769 Phil. 378, 387 (2015).

In this case, the petitioner was charged with violation of Section 3(e) of R.A. No. 3019,[35] the elements of which are the following:

a) The accused must be a public officer discharging administrative, judicial or official functions;

b) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and

c) That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.[36]

The petitioner argues that the allegation in the Information that he was "acting in relation to his office" does not sufficiently define the offense charged. He claims that the phrase is too broad, and that what should have been indicated was that the act was "in the discharge of his official administrative or judicial functions."

The Court finds that the Informations sufficiently allege the elements for violation of Section 3(e) of R.A. No. 3019. While the words used vary, the implication remains the same, that the acts alleged therein were performed by the petitioner in pursuance of, and that the same necessarily related to his functions as Mayor.[37] In fact, it is undisputed that the petitioner, as then municipal mayor of Amadeo,

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

x x x x x x x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[36] *Consigna v. People, et al.*, 731 Phil. 108, 123-124 (2014).

[37] *Id*. at 114.

Cavite was then performing public functions at the time of the acts complained of. Consequently, it is of no moment that the exact nomenclature of the law has not been used in the Information, considering that the statements therein clearly indicate what offense has been committed, and enable the court to make proper judgment.[38] This is particularly true as the Informations did not simply allege that the offense was committed in relation to petitioner's office or that he took advantage of his position, but as well contain specific factual allegations that would indicate the close intimacy between the discharge of the offender's official duties and the commission of the offense charged.[39]

Similarly, the Court finds no merit in the petitioner's submissions that the second and third elements of the offense, previously enumerated, are not present. To merit conviction under Section 3(e) of R.A. No. 3019, it is not enough that undue injury was caused, the act must be performed through manifest partiality, evident bad faith, or gross inexcusable negligence.[40] Pertinent to the issue at hand, "bad faith" in this sense, does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud.[41]

Petitioner's violation is manifested by his act of ordering that construction works be done on the property belonging to the Heirs of Simplicio and that of Calixto prior to any agreement with the said parties[42] or expropriation proceedings.[43]

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[38] *Id*. at 119-120, citing *People v. Dimaano*, 506 Phil. 630, 649-650 (2005).

[39] *Guy v. People*, 601 Phil. 105, 113 (2009).

[40] *Rivera v. People*, 749 Phil. 124, 141-142 (2014).

[41] *Coloma, Jr. v. Sandiganbayan, et al.*, 744 Phil. 214, 229 (2014), citing *Fonacier v. Sandiganbayan*, 308 Phil. 660, 693-694 (1994).

[42] *Rollo*, p. 74.

[43] *Id*. at 70.

The petitioner does not dispute that no expropriation proceeding was initiated. In fact, it is the petitioner's submission that expropriation was never intended by the SB. This was corroborated by Municipal Councilor Joel V. Iyaya (Iyaya), submitting that the local government merely intended to enter into joint ventures with the owners of the subject properties. However, he later affirmed that the joint venture never materialized but the municipal government nonetheless proceeded with the project and is solely profiting therefrom.[44]

The position is erroneous. It has been established that there was "taking" of portions of the subject properties which therefore demands the institution of expropriation proceedings. Records establish that of the 24,000 square meters of the property, around 3,900 sq m form the pavilion, while an unknown portion of it was made into a parking lot.[45] The testimony of Geodetic Engineer Herminigildo L. Vidallon, confirmed that the construction works initiated by the petitioner was within the subject registered owners' property lines. In his sketch plans, submitted in evidence and identified by him during his testimony, 3,892 sq m were bulldozed and scraped, while 3,898 sq m of the subject properties were affected by the construction.[46] Clearly, this constitutes undue injury.

In the recent case of *Roberto P. Fuentes v. People of the Philippines*,[47] the Court speaking through Associate Justice Estela M. Perlas-Bernabe, reiterated prevailing case law in that in proving undue injury, "[p]roof of the extent of damage is not essential, it being sufficient that the injury suffered or the benefit received is perceived to be substantial enough and not merely negligible."[48]

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[44] *Id*. at 63, 74.

[45] *Id*. at 59.

[46] *Id*. at 61.

[47] G.R. No. 186421, April 17, 2017.

[48] *Id*., citing *Garcia and Brizuela v. Sandiganbayan and People*, 730 Phil. 521, 542 (2014) and *Reyes v. People of the Philippines*, 641 Phil. 91, 107 (2010).

Evident bad faith on the part of the petitioner is, on the other hand, manifested by his active participation in the Balite Falls Development Project and that despite meetings conducted wherein he was directly and personally informed by the owners of the subject properties of their disagreement to the utilization and/or inclusion of their properties, he nonetheless consciously proceeded with the project.

Petitioner's defense that the development of the Balite Falls is a project of the Department of Tourism and not of the Local Government does not absolve him for liability. Regardless of who authored the project, the fact remains that it is the petitioner who supervised and administered the construction on the subject properties, and continue to benefit therefrom as established by the testimonies of Municipal Councilors Donn Clarence L. Bayot and Iyaya,[49] that the facility is operated by the Municipal Government.

With respect to the proper penalty, Section 9(a)[50] of R.A. No. 3019 provides that the penalty for violation of Section 3(e) of the same law includes, *inter alia,* imprisonment for a period of six (6) years and one (1) month to fifteen (15) years, and perpetual disqualification from public office. Thus, the Sandiganbayan correctly sentenced petitioner to suffer the penalty of imprisonment for an indeterminate period of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification from public office.[51] Nonetheless, in light of the previous

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[49] *Rollo*, pp. 63-64.

[50] **Sec. 9**. *Penalties for violations*. — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

[51] Sec. 1 of Act No. 4103 reads:

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the

discussion, stating that only one offense has been committed, the decision of the Sandiganbayan should be modified in that this penalty should only be imposed once.

While it has been proven that undue injury on the part of the subject property owners have been proven, the Sandiganbayan refused to grant in their favor, damages, on account of their failure to provide adequate proof to support the same. In this regard, while it is true that it is only the petitioner who appealed therefrom, the nature of the pending action justifies a review of the same. It is fundamental principle that in criminal cases, an appeal throws the whole case wide open for review and the reviewing tribunal can correct errors or even reverse the trial court's decision on grounds other than those that the parties raise as errors.[52]

In the same case of *Fuentes*,[53] the Court held that temperate damages should be awarded when it has been established that the private complainant or respondent suffered a loss but the amount thereof cannot be proven with certainty. The determination of the amount of temperate damages is left to the sound discretion of the Court subject to the standard of reasonableness, in that temperate damages should be more than nominal but less than compensatory.

In this controversy, while the subject property owners offered proof as to the area affected by the construction works and the Balite falls project, they however failed to adduce competent

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accused to an indeterminate sentence the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (Underscoring Ours)

[52] *Guy v. People*, *supra* note 39.

[53] *Supra* note 47.

proof of valuation of their properties and the damages they suffered. In this regard, considering the attendant facts, particularly the property owners admission that the value of their properties increased,[54] and that they together with their relatives and friends enjoy a lifetime privilege to enjoy the resort for free,[55] the Court finds that an award of temperate damages in the amount of Php 400,000.00 to each of the property owners is just and reasonable under the circumstances.[56]

WHEREFORE, in view of the foregoing, judgment is hereby rendered finding petitioner Albert G. Ambagan, Jr. **GUILTY** beyond reasonable doubt of one (1) count of violation of Section 3(e) of Republic Act No. 3019.

As such, petitioner Albert G. Ambagan, Jr. is hereby sentenced to an indeterminate penalty of imprisonment for six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, and the accessory penalty of perpetual disqualification from holding public office.

In addition, petitioner Albert G. Ambagan, Jr. is hereby ordered to pay the Heirs of Simplicio Lumandas, and Calixto Lumandas, temperate damages in the amount of Php 400,000.00 each. The amount of damages shall earn interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid.

SO ORDERED.

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

Perlas-Bernabe, J., on wellness leave.

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[54] *Rollo*, p. 39.

[55] *Id*. at 41.

[56] See *Asilo, Jr. v. People*, 660 Phil. 329 (2011), where the Court, in the absence of valuation of the store erroneously demolished by officials of the Municipality of Nagcarlan, Laguna, granted temperate damages in the amount of Php 200,000.00.

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

THIRD DIVISION

[G.R. No. 210789. December 3, 2018]

ROBERTO C. MARTIRES, *petitioner, vs.* **HEIRS OF AVELINA SOMERA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DEPOSITIONS PENDING ACTION; THE DEPOSITION OF A WITNESS, WHETHER OR NOT A PARTY, MAY BE USED BY ANY PARTY FOR ANY PURPOSE IF THE COURT FINDS THAT THE WITNESS RESIDES AT A DISTANCE MORE THAN ONE HUNDRED KILOMETERS FROM THE PLACE OF TRIAL OR HEARING, OR IS OUT OF THE PHILIPPINES, UNLESS IT APPEARS THAT HIS ABSENCE WAS PROCURED BY THE PARTY OFFERING THE DEPOSITION.— Section 1, Rule 23 of the Rules of Court provides that the testimony of any person may be taken by deposition upon oral examination or written interrogatories at the instance of any party. Depositions serve as a device for narrowing and clarifying the basic issues between the parties, as well as for ascertaining the facts relative to those issues. The purpose is to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before trial. x x x Although petitioner questions the taking of depositions on the ground of lack of reasonable notice in writing, the Court, in order to put to rest any other issue arising from the depositions in this case, deems it proper to rule that the trial court did not commit any error in allowing Avelina to take her deposition and those of her witnesses and in subsequently admitting the same in evidence considering the allegations in the Motion that she and her witnesses were residing in the United States. This situation is one of the exceptions for its admissibility under Section 4(c)(2), Rule 23 of the Rules of Court, *i.e.*, that the witness resides at a distance of more than 100 kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition.

2. ID.; ID.; ID.; NOTICE REQUIREMENT; THE PURPOSE THEREOF IS MERELY TO INFORM THE OTHER PARTY ABOUT THE INTENDED PROCEEDINGS TO AVOID SITUATIONS WHEREIN THE ADVERSE PARTY IS KEPT IN THE DARK AS REGARDS THE DEPOSITION-TAKING.— Notice has been defined as "information or announcement." The word was derived from the Latin words, *notitia* or "knowledge," *notus* meaning "known" and *noscere* which means "to know." Hence, it is unequivocal that the purpose of a notice is merely to inform the other party about the intended proceedings. x x x [P]etitioner admits that in an Order dated July 5, 2007, the RTC granted the motion to conduct deposition. The requirement of giving notice intends to avoid situations wherein the adverse party is kept in the dark as regards the deposition-taking. Here, while it is true that Avelina's Motion indicated that the deposition-taking would be initially scheduled in July 2007, and the proceeding was actually conducted on September 27, 2007, it could not be said that petitioner was caught off guard by the belated conduct of the deposition. On September 24, 2007, Avelina's counsel manifested that the deposition would be held on September 27 to 28, 2007. Further, it was shown that on September 3, 2007, during the hearing of petitioner's motion with regard to the taking of deposition, petitioner, through counsel, was sufficiently informed that the deposition would be taken on September 27, 2007. Also, it is worthy to note that petitioner's counsel even declared before the court that petitioner was in the United States at that time and he intended to attend the deposition.

3. ID.; ID.; ID.; ID.; ALL ERRORS AND IRREGULARITIES IN THE NOTICE FOR TAKING A DEPOSITION ARE WAIVED UNLESS WRITTEN OBJECTION IS PROMPTLY SERVED UPON THE PARTY GIVING THE NOTICE.— Section 29(a), Rule 23 of the Rules of Court states that "all errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice."Contrary to petitioner's contention that the right to object came into being only when respondents sought to introduce the transcripts in evidence, petitioner should have objected to the perceived irregularity of the notice immediately upon receipt thereof. To be sure, there is no impediment to petitioner raising the issue of belated

receipt of notice when he received the same after the depositions were already taken. It must be emphasized that Section 29(a) refers to errors and irregularities in the notice without any reference to the depositions taken by virtue of such notice. Hence, possession of the transcripts of the depositions is not a condition precedent for challenging the validity of the notice for taking a deposition. Consequently, petitioner's objections to the notice are already deemed waived considering that more than three years have already elapsed from petitioner's receipt thereof.

4. ID.; EVIDENCE; ADMISSIBILITY; THE ADMISSIBILITY OF A DEPOSITION DOES NOT PRECLUDE THE DETERMINATION OF ITS PROBATIVE VALUE AT THE APPROPRIATE TIME.— Section 9, Rule 23 of the Rules of Court provides that "at the trial or hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party." Further, the admissibility of the deposition does not preclude the determination of its probative value at the appropriate time. The admissibility of evidence should not be equated with weight of evidence. Relevance and competence determine the admissibility of evidence, while weight of evidence presupposes that the evidence is already admitted and pertains to its tendency to convince and persuade.

5. ID.; CIVIL PROCEDURE; DEPOSITION DISCOVERY RULES; MUST BE ACCORDED A BROAD AND LIBERAL TREATMENT AND SHOULD NOT BE UNDULY RESTRICTED IF THE MATTERS INQUIRED INTO ARE RELEVANT AND NOT PRIVILEGED, AND THE INQUIRY IS MADE IN GOOD FAITH AND WITHIN THE BOUNDS OF LAW.— [D]eposition discovery rules are to be accorded a broad and liberal treatment and should not be unduly restricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of law. Otherwise, the advantage of a liberal discovery procedure in ascertaining the truth and expediting the disposal of litigation would be defeated. In addition, the rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that

is, to enhance fair trials and expedite justice. Substantive rights of the other party must prevail over technicalities. In this case, unfortunately, instead of proceeding to trial on the merits and ventilating his defenses therein, petitioner resorted to technicalities and raised unmeritorious arguments which only clog the dockets of the court and delay the dispensation of justice.

6. ID.; ID.; APPEAL; THE PROPER REMEDY FOR THE CORRECTION OF ANY ERROR AS TO THE ADMISSION OF DEPOSITIONS INTO EVIDENCE.— [A] petition for *certiorari* to question the admission in evidence of the depositions is not the proper remedy. The admission or rejection of certain interrogatories in the course of discovery procedure could be an error of law, but not an abuse of discretion, much less a grave one. The procedure for the taking of depositions whether oral or through written interrogatories is outlined in the rules leaving no discretion to the Court to adopt any other not substantially equivalent thereto. Consequently, if the judge deviates from what the rule prescribes, he commits a legal error, not an abuse of discretion. Thus, appeal, and not *certiorari*, is the proper remedy for the correction of any error as to the admission of depositions into evidence.

APPEARANCES OF COUNSEL

Gancayco Balasbas & Associates Law Offices for petitioner.
Altamira Cas & Collado Law Office for respondents.

D E C I S I O N

REYES, J. JR., *J.*:

Assailed in this petition for review on *certiorari* are the July 17, 2013 Decision[1] and the January 7, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 127022 which

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[1] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Vicente S.E. Veloso and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 26-32.

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

affirmed the October 19, 2011 and July 24, 2012 Orders[3] of the Regional Trial Court, Quezon City, Branch 76 (RTC)in Civil Case No. Q-06-57612.

The Antecedents

In a Complaint[4] dated March 16, 2006, Avelina S. Somera (Avelina) alleged that she was the rightful owner of a parcel of land located at 71 Narra Street, Project 3, Quezon City, which was unlawfully transferred in the name of petitioner Roberto C. Martires (petitioner). Thus, she instituted a complaint for *accion reivindicatoria* and *accion publiciana* against petitioner, Cecilia Gauna, and the Register of Deeds of Quezon City before the RTC.

On June 15, 2007, Avelina filed a Motion to Conduct Deposition Upon Oral Examination[5] praying that the RTC issue an order directing the Department of Foreign Affairs (DFA) to assist her in the taking of her deposition and those of her two witnesses, Fracel Solar and Bertha Coliflores, sometime in July 2007 at the Philippine Consular Office in New York City, United States of America.

In an Order[6] dated July 5, 2007, the trial court granted Avelina's Motion. Thereafter, on September 24, 2007, Avelina filed a Manifestation[7] before the RTC informing the said court that the deposition-taking would take place on September 27 and 28, 2007. Then, on September 27, 2007, Avelina and her two witnesses were deposed before the Vice-Consul of the Philippine Consulate in New York City. Petitioner, however, received the Manifestation on October 3, 2007. Thereafter, trial ensued.

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[3] Penned by Presiding Judge Alexander S. Balut; *id*. at 74-76.

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

[5] *Id*. at 47-49.

[6] *Id*. at 52.

[7] *Id*. at 53-54.

On February 3, 2011, Avelina filed a Motion for Marking Additional Documentary Evidence[8] as the transcripts of her depositions, as well as those of her witnesses, had finally arrived. Petitioner opposed the Motion on the ground that he was notified of the deposition-taking after the same had already taken place on September 27, 2007.

On June 6, 2011, the RTC granted Avelina's Motion.[9] Then, on August 15, 2011, the heirs of Avelina (respondents)[10] filed their Formal Offer of Documentary Evidence,[11] which included Avelina's depositions and those of her witnesses (marked as Exhibits "Q," "R," and "S"). Petitioner opposed the introduction in evidence of Exhibits "Q," "R," and "S" on the ground that he was never given reasonable notice of the deposition-taking.

The RTC Ruling

In an Order[12] dated October 19, 2011, the RTC admitted Exhibits "Q," "R," and "S" over petitioner's objections thereto. It ruled that petitioner was sufficiently informed that the deposition would take place on September 27, 2007 considering that Avelina's counsel made mention of the said date during the September 3, 2007 hearing. The trial court declared that there was substantial compliance with the rule on giving notice as petitioner was not completely unaware of the proceedings.

Petitioner moved for reconsideration, but the same was denied by the RTC in an Order[13] dated July 24, 2012. Aggrieved, petitioner filed a petition for *certiorari* before the CA.

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[8] *Id*. at 61-62.

[9] *Id*. at 64.

[10] Avelina Somera passed away on May 12, 2011; *id.* at 174.

[11] *Id*. at 65-73.

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

[13] *Id*. at 76.

The CA Ruling

In a Decision dated July 17, 2013, the CA held that petitioner was duly notified in writing of Avelina's intention to take her depositions and those of her witnesses when he received the September 24, 2007 Manifestation. It noted that petitioner received the Manifestation on October 3, 2007, after the deposition had already been taken,but he filed his opposition to the notice only on March 3, 2011, which is more than three years after he became aware of the defect. The appellate court emphasized Section 29, Rule 23 of the Rules of Court which states that "all errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice." It concluded that an unreasonable delay of more than three years on petitioner's part precludes him from questioning the notice. The *fallo* reads:

> WHEREFORE, premises considered, the instant petition is hereby DISMISSED for lack of merit. ACCORDINGLY, the challenged Orders dated 19 October 2011 and 24 July 2012 of RTC Branch 76, Quezon City are AFFIRMED.
>
> SO ORDERED.[14]

Petitioner moved for reconsideration, but the same was denied by the CA on January 7, 2014. Hence, this petition for review on *certiorari*, wherein petitioner raises the following issue:

> THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE ADMISSION OF COMPLAINANT'S DEPOSITIONS DESPITE THE FACT THAT THERE WAS NO REASONABLE PRIOR NOTICE IN WRITING OF THE ACTUAL DATE AND TIME OF THE TAKING OF SAID DEPOSITIONS AS REQUIRED UNDER SECTION 15, RULE 23 OF THE RULES OF COURT, WHICH IS [A] CONDITION *SINE QUA NON* FOR THEIR ADMISSIBILITY IN EVIDENCE UNDER THE RULES OF COURT.[15]

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[14] *Id*. at 32.

[15] *Id*. at 8.

Petitioner argues that reasonable notice in writing of the date and time of the taking of deposition to every other party to any pending action is a condition *sine qua non* for its admissibility as stated in Section 15, Rule 23 of the Rules of Court; that it was only on October 3, 2007 that petitioner received the September 24, 2007 Manifestation stating that the depositions of Avelina and those of her witnesses would be conducted on September 27 to 28, 2007; that due process requires a definite written notice of the date and time of the deposition; that the deposition conducted in New York City was not used for discovery purposes but to accommodate the convenience of the complainant and her witnesses; that the appropriate time to object to the transcripts of the depositions was in 2011 since it was only then that the transcripts were sought to be introduced in evidence; and that considering the absence of any proof then that depositions were in fact conducted and the lack of reasonable notice in writing, petitioner could not be expected to object to depositions which may or may not have been conducted in the first place.[16]

In their Comment,[17] respondents counter that petitioner's right to question the alleged improper notice has long prescribed considering that more than three years have elapsed since petitioner received the alleged irregular written notice of the taking of the depositions on October 3, 2007; that in their Manifestation with *Ex Parte* Motion to Set Case for Initial Presentation of Plaintiff's Evidence dated December 4, 2007, it was expressly manifested that the deposition had already taken place on September 27, 2007 as scheduled and petitioner never made any comment, opposition or objection to such manifestation; that during a number of hearings before the trial court, specifically the hearings after the presentation of their witness, their counsel has repeatedly manifested in open court and in the presence of petitioner's counsel, that the submission of their formal offer of documentary evidence was being deferred while awaiting the transmittal of the transcripts by the DFA;

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[16] *Id*. at 3-14.

[17] *Id.* at 85-92.

that on September 3, 2007, during the hearing of petitioner's Motion (Re: Deposition of Plaintiff Avelina S. Somera and witnesses Fracel Solar and Bertha Coliflores), their counsel already manifested that the taking of depositions would take place on September 27, 2007; that a reading of the transcripts of the September 3, 2007 hearing would show that petitioner's only concern was that the deponents be photographed and fingerprinted; that the date, time and place of the taking of the depositions were never put in issue; and that the deposition-taking in New York City was not utilized to accommodate the convenience of Avelina and her witnesses as petitioner himself was residing in New York City.

In his Reply,[18] petitioner contends that the verbal manifestation made by respondents during the September 3, 2007 hearing was insufficient compliance with Section 15, Rule 23 of the Rules of Court requiring the giving of a written notice of the deposition; that reasonable notice means the parties are given sufficient time to prepare and have the means to attend the deposition, thus, even assuming that the verbal notice given by respondents is valid, the same is still unreasonable under the circumstances; that during the pre-trial conference, respondents made no mention of any deposition; that they made no reservations at all to submit into evidence any deposition; and that it is unfair to conclude that petitioner incurred unreasonable delay and slept on his rights to question the depositions because it was respondents who did not comply with the mandatory provisions of the Rules of Court on reasonable notice in writing before any deposition-taking is conducted.

The Court's Ruling

The petition lacks merit.

I.

Section 1, Rule 23 of the Rules of Court provides that the testimony of any person may be taken by deposition upon oral examination or written interrogatories at the instance of any

[18] *Id*. at 118-128.

party. Depositions serve as a device for narrowing and clarifying the basic issues between the parties, as well as for ascertaining the facts relative to those issues. The purpose is to enable the parties, consistent with recognized privileges, to obtain the fullest possible knowledge of the issues and facts before trial.[19] Thus, in *Dasmariñas Garments, Inc. v. Judge Reyes*,[20] the Court ruled:

> Depositions are chiefly a mode of discovery. They are intended as a means to compel disclosure of facts resting in the knowledge of a party or other person which are relevant in some suit or proceeding in court. Depositions, and the other modes of discovery (interrogatories to parties; requests for admission by adverse party; production or inspection of documents or things; physical and mental examination of persons) are meant to enable a party to learn all the material and relevant facts, not only known to him and his witnesses but also those known to the adverse party and the latter's own witnesses. In fine, the object of discovery is to make it possible for all the parties to a case to learn all the material and relevant facts, from whoever may have knowledge thereof, to the end that their pleadings or motions may not suffer from inadequacy of factual foundation, and all the relevant facts may be clearly and completely laid before the Court, without omission or suppression.
>
> Depositions are principally made available by law to the parties as a means of informing themselves of all the relevant facts; they are not therefore generally meant to be a substitute for the actual testimony in open court of a party or witness. The deponent must as a rule be presented for oral examination in open court at the trial or hearing. This is a requirement of the rules of evidence. Section 1, Rule 132 of the Rules of Court provides:
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> > SECTION 1. *Examination to be done in open court*. — The examination of witnesses presented in a trial or hearing shall be done in open court, and under oath or affirmation. Unless the witness is incapacitated to speak, or the question calls for a different mode of answer, the answers of the witness shall be given orally.
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> Indeed, any deposition offered to prove the facts therein set out during a trial or hearing, in lieu of the actual oral testimony of the

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[19] *Republic v. Sandiganbayan,* 281 Phil. 234, 254 (1991).

[20] 296-A Phil. 653 (1993).

deponent in open court, may be opposed and excluded on the ground that it is hearsay: the party against whom it is offered has no opportunity to cross-examine the deponent at the time that his testimony is offered. It matters not that opportunity for cross-examination was afforded during the taking of the deposition; for normally, the opportunity for cross-examination must be accorded a party at the time that the testimonial evidence is actually presented against him during the trial or hearing.

However, depositions may be used without the deponent being actually called to the witness stand by the proponent, under certain conditions and for certain limited purposes. These exceptional situations are governed by Section 4, Rule 24 [now Rule 23]of the Rules of Court.x x x[21]

Although petitioner questions the taking of depositions on the ground of lack of reasonable notice in writing, the Court, in order to put to rest any other issue arising from the depositions in this case, deems it proper to rule that the trial court did not commit any error in allowing Avelina to take her deposition and those of her witnesses and in subsequently admitting the same in evidence considering the allegations in the Motion that she and her witnesses were residing in the United States. This situation is one of the exceptions for its admissibility under Section 4(c)(2), Rule 23 of the Rules of Court, *i.e.*, that the witness resides at a distance of more than 100 kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition.

II.

The Court also finds no merit in petitioner's contention that the deposition-taking is invalid on account of a defective notice.

Notice has been defined as "information or announcement." The word was derived from the Latin words, *notitia* or "knowledge,"*notus* meaning "known" and *noscere* which means "to know." Hence, it is unequivocal that the purpose of a notice

[21] *Id*. at 662-664.

is merely to inform the other party about the intended proceedings.[22]

First, petitioner admits that in an Order dated July 5, 2007, the RTC granted the motion to conduct deposition. The requirement of giving notice intends to avoid situations wherein the adverse party is kept in the dark as regards the deposition-taking. Here, while it is true that Avelina's Motion indicated that the deposition-taking would be initially scheduled in July 2007, and the proceeding was actually conducted on September 27, 2007, it could not be said that petitioner was caught off guard by the belated conduct of the deposition. On September 24, 2007, Avelina's counsel manifested that the deposition would be held on September 27 to 28, 2007.[23] Further, it was shown that on September 3, 2007, during the hearing of petitioner's motion with regard to the taking of deposition, petitioner, through counsel, was sufficiently informed that the deposition would be taken on September 27, 2007.[24] Also, it is worthy to note that petitioner's counsel even declared before the court that petitioner was in the United States at that time and he intended to attend the deposition.[25]

Second, Section 29(a), Rule 23 of the Rules of Court states that "all errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice."Contrary to petitioner's contention that the right to object came into being only when respondents sought to introduce the transcripts in evidence, petitioner should have objected to the perceived irregularity of the notice immediately upon receipt thereof. To be sure, there is no impediment to petitioner raising the issue of belated receipt of notice when he received the same after the depositions were already taken. It must be emphasized that Section 29(a)

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[22] *Cathay Pacific Airways v. Spouses Fuentebella,* 514 Phil. 291, 294-295 (2005).

[23] *Rollo,* p. 53.

[24] *Id*. at 99.

[25] *Id*. at 100.

refers to errors and irregularities in the notice without any reference to the depositions taken by virtue of such notice. Hence, possession of the transcripts of the depositions is not a condition precedent for challenging the validity of the notice for taking a deposition. Consequently, petitioner's objections to the notice are already deemed waived considering that more than three years have already elapsed from petitioner's receipt thereof.

In any case, petitioner is not without remedy. Section 9, Rule 23 of the Rules of Court provides that "at the trial or hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or by any other party." Further, the admissibility of the deposition does not preclude the determination of its probative value at the appropriate time. The admissibility of evidence should not be equated with weight of evidence. Relevance and competence determine the admissibility of evidence, while weight of evidence presupposes that the evidence is already admitted and pertains to its tendency to convince and persuade.[26]

Finally, it has been repeatedly held that deposition discovery rules are to be accorded a broad and liberal treatment[27] and should not be unduly restricted if the matters inquired into are otherwise relevant and not privileged, and the inquiry is made in good faith and within the bounds of law.[28] Otherwise, the advantage of a liberal discovery procedure in ascertaining the truth and expediting the disposal of litigation would be defeated.[29] In addition, the rules of procedure are mere tools intended to facilitate the attainment of justice, rather than frustrate it. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice.[30] Substantive rights

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[26] *Ayala Land, Inc. v. Judge Tagle,* 504 Phil. 94, 103-104 (2005).

[27] *Republic v. Sandiganbayan,* 281 Phil. 234, 255 (1991).

[28] *Hyatt Industrial Manufacturing Corp. v. Ley Construction and Development Corp.,* 519 Phil. 272, 286 (2006).

[29] *Id.*

[30] *Ginete v. Court of Appeals,* 357 Phil. 36, 51 (1998).

of the other party must prevail over technicalities.[31] In this case, unfortunately, instead of proceeding to trial on the merits and ventilating his defenses therein, petitioner resorted to technicalities and raised unmeritorious arguments which only clog the dockets of the court and delay the dispensation of justice. Moreover, a petition for *certiorari* to question the admission in evidence of the depositions is not the proper remedy. The admission or rejection of certain interrogatories in the course of discovery procedure could be an error of law, but not an abuse of discretion, much less a grave one. The procedure for the taking of depositions whether oral or through written interrogatories is outlined in the rules leaving no discretion to the Court to adopt any other not substantially equivalent thereto. Consequently, if the judge deviates from what the rule prescribes, he commits a legal error, not an abuse of discretion.[32] Thus, appeal, and not *certiorari*, is the proper remedy for the correction of any error as to the admission of depositions into evidence.As previously discussed, petitioner's objection to the notice deserves scant consideration for he was sufficiently informed that the deposition would be conducted on September 27, 2007. His objections against the depositions are nothing but dilatory tactics, designed to prolong the proceedings.

WHEREFORE, the petition is **DENIED**. The July 17, 2013 Decision and the January 7, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 127022 are **AFFIRMED.**

SO ORDERED.

Peralta (Chairperson), *Leonen, Gesmundo,* and *Hernando, JJ.,* concur.

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[31] *Philippine Amusement and Gaming Corp. v. Angara,* 511 Phil. 486, 499 (2005).

[32] *W. W. Dearing v. Fred Wilson & Co., Inc.,* 187 Phil. 488, 494 (1980).

THIRD DIVISION

[G.R. No. 214667. December 3, 2018]

LINGNAM RESTAURANT, *petitioner, vs.* **SKILLS & TALENT EMPLOYMENT POOL, INC., and JESSIE COLASTE**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION.— As a rule, the Court does not review questions of fact but only questions of law in a petition for review on *certiorari* under Rule 45 of the Rules of Court. However, the rule is not absolute as the Court may review the facts in labor cases where the findings of the Court of Appeals and of the labor tribunals are contradictory. In this case, the factual findings of the Labor Arbiter and the Court of Appeals differ from those of the NLRC. Hence, the Court reviewed the evidence on record and hereby affirms the decision of the Court of Appeals.

2. LABOR AND SOCIAL LEGISLATION; LABOR STANDARDS; LABOR-ONLY CONTRACTING; THE LABOR-ONLY CONTRACTOR PROVIDES ONLY MANPOWER AND THE PRINCIPAL SHALL BE DEEMED THE EMPLOYER OF THE WORKERS.— Article 106 of the Labor Code describes labor-only contracting x x x. The applicable implementing rules contained in Rule VIII-A, Book III of the Amended Rules To Implement The Labor Code define contracting or subcontracting and labor-only contracting x x x. As stated by the Court in *PCI Automation Center, Inc. v. NLRC*, the legitimate job contractor provides services, while the labor-only contractor provides only manpower. The legitimate job contractor undertakes to perform a specific job for the principal employer, while the labor-only contractor merely provides the personnel to work for the principal employer. x x x [T]he Court agrees with the Court of Appeals that respondent STEP was engaged in labor-only contracting. x x x [R]espondent STEP merely acted as a placement agency providing manpower to

petitioner Lingnam Restaurant. The service rendered by STEP in favor of Lingnam Restaurant was not the performance of a specific job, but the supply of personnel to work at Lingnam Restaurant. In this case, STEP provided petitioner with an assistant cook in the person of Jessie Colaste. x x x [T]he work performance of Colaste is under the strict supervision and control of the client (petitioner Lingnam Restaurant) as well as the end result thereof. As assistant cook of petitioner Lingnam Restaurant, respondent Colaste's work is directly related to the restaurant business of petitioner. He works in petitioner's restaurant and presumably under the supervision of its Chief Cook. This falls under the definition of labor-only contracting under Section 5 of Rule VIII-A, Book III of the Amended Rules To Implement The Labor Code, since the contractor, STEP, merely supplied Jessie Colaste as assistant cook to the principal, Lingnam Restaurant; the job of Colaste as assistant cook is directly related to the main business of Lingnam Restaurant, and STEP does not exercise the right to control the performance of the work of Colaste, the contractual employee. As respondent STEP is engaged in labor-only contracting, the principal, petitioner Lingnam Restaurant, shall be deemed the employer of respondent Jessie Colaste, in accordance with Section 7, Rule VIII-A, Book III of the Amended Rules To Implement The Labor Code.

3. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; THE LACK OF VALID CAUSE FOR DISMISSAL AND THE FAILURE TO COMPLY WITH THE TWIN-NOTICE REQUIREMENT RENDER A DISMISSAL ILLEGAL, AND THE ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO REINSTATEMENT WITHOUT LOSS OF SENIORITY RIGHTS AND TO HIS FULL BACKWAGES, INCLUSIVE OF ALLOWANCES AND BENEFITS.— Colaste started working with petitioner since 2006 and he should be considered a regular employee of petitioner. The reason for the termination of Jessie Colaste was his contract with petitioner Lingnam Restaurant through respondent STEP had expired. Lingnam Restaurant explained that Colaste's real employer is STEP. But since respondent STEP is engaged in labor-only contracting, petitioner Lingnam Restaurant is deemed the employer of Colaste. Thus, the reason for Colaste's termination

is not a just or authorized cause for his dismissal under Articles 282 to 284 of the Labor Code. Moreover, Colaste was not afforded procedural due process, since petitioner failed to comply with the written-notice requirement under Article 277(b) of the Labor Code. The lack of valid cause for dismissal and petitioner's failure to comply with the twin-notice requirement rendered the dismissal of respondent Colaste illegal. As respondent Colaste was illegally dismissed, the Court of Appeals correctly held that he is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS IN ADMINISTRATIVE PROCEEDINGS; THE ESSENCE OF DUE PROCESS IS AN OPPORTUNITY TO EXPLAIN ONE'S SIDE OR AN OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— The essence of due process is simply an opportunity to be heard or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. What the law prohibits is absolute absence of the opportunity to be heard; hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side. In this case, petitioner was not denied due process, since it filed with the Court of Appeals a Manifestation/ Notice and Comment to the petition for *certiorari,* which contained the same arguments as to the insufficiency in form and substance of the petition, among others.

APPEARANCES OF COUNSEL

Gary Rabo for petitioner.

Perfecto A. Sotoridona, Jr. for Skills & Talent Employment Pool, Inc.

Ernesto R. Arellano for respondent Jessie Colaste.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals dated December 20, 2013 in CA-G.R. SP No. 129856, reversing and setting aside the Decision of the National Labor Relations Commission (*NLRC*) dated January 31, 2013 and its Resolution dated March 27, 2013, and reinstating the Decision of the Labor Arbiter dated September 26, 2012, finding respondent Jessie Colaste illegally dismissed from employment.

The facts are as follows:

Respondent Skills & Talent Employment Pool, Inc. (*STEP*)is a domestic corporation engaged in manpower management and technical services, and one of its clients is petitioner Lingnam Restaurant, a business enterprise owned and operated by Liberty C. Nacion. In a contract[2] of employment, respondent Jessie Colaste is a project employee of respondent STEP assigned to work with petitioner Lingnam Restaurant as assistant cook.

On May 21, 2008, Jessie Colaste filed with the Labor Arbiter an Amended Complaint[3] for illegal dismissal against Lingnam Restaurant and STEP.

In his Position Paper,[4] Jessie Colaste alleged that on December 21, 2006, he started working at Lingnam Restaurant as an assistant cook/general utility with a salary of ₱350.00 a day. He worked six days a week, eight hours a day on two shifts.

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[1] Penned by Associate Justice Hakim S. Abdulwahid (Chairperson) of the Special Sixth Division of the Court of Appeals, with Associate Justices Manuel M. Barrios and Socorro B. Inting (Members) concurring; *rollo*, pp. 29-41.

[2] *Rollo,* pp. 87-98.

[3] CA *rollo*, p. 72.

[4] *Id.* at 74-80.

On March 5, 2008, at about 10:00 a.m., Colaste reported to the main office of STEP at Ortigas Center, Pasig City. He was informed by one Katherine R. Barrun that his contract with Lingnam Restaurant had expired. He was given a clearance form to be signed by his supervisor at Lingnam Restaurant. However, he reported for work as usual at Lingnam Restaurant from 2:00 p.m. to 10:00 p.m.

On March 6, 2008, he was on day-off. On March 7, 2008, he reported for work at Lingnam Restaurant at Greenhills, San Juan City, Metro Manila. However, the Chief Cook told him not to punch in his time card because he was already terminated from work. After a few minutes, the Chief Cook handed him the telephone, and Supervisor Philipp Prado of the main office of Lingnam Restaurant was on the line and told him, "*finish contract kana, hindi ka na pwede pumasok sa trabaho mo, tanggal ka na.*" Hence, Jessie Colaste filed this case for illegal dismissal against Lingnam Restaurant and STEP, and prayed for reinstatement, payment of backwages and other employment benefits, moral and exemplary damages and ten percent (10%) attorney's fees based on his total judgment award.

In its Position Paper[5] dated August 8, 2008, Lingnam Restaurant denied that it is the employer of complainant Jessie Colaste and alleged that STEP is Colaste's real employer. Hence, it is not liable for the claims and causes of action of Colaste, and that the complaint should be dismissed insofar as it is concerned.

STEP filed a Request for Clarification and Cautionary Entry of Appearance[6] dated July 25, 2008, stating that it had not been served with any summons and a copy of the complaint. It prayed that the entry of appearance of its counsel be duly noted and that STEP'S inclusion in the hearing and/or participation in the case be clarified.

In a Decision[7] dated September 15, 2008, Labor Arbiter Felipe P. Pati dismissed the complaint for lack of merit. He ruled that

[5] *Rollo*, pp. 82-86.

[6] CA *rollo*, p. 103.

[7] *Rollo*, pp. 123-129.

Jessie Colaste's real employer is STEP because it directly exercised all powers and responsibilities over Colaste. The Labor Arbiter also dismissed Colaste's money claims for lack of merit.

Jessie Colaste appealed from the Labor Arbiter's decision before the NLRC. In a Resolution[8] dated September 24, 2009, the NLRC remanded the case to the arbitration branch of origin for further proceedings as the Labor Arbiter failed to rule on the issue of illegal dismissal.

Jessie Colaste submitted a Memorandum,[9] narrating the same facts as in his Position Paper. He reiterated that he was paid ₱350.00 per day until his illegal dismissal. Hence, he contended that he was underpaid from August 28, 2007 to March 2008 because the minimum wage for the said dates up to June 13, 2008 was already ₱362.00 per day. Aside from underpayment of salary, he was also not paid his benefits such as premium pay for work performed during Sundays, holiday pay, premium pay for holiday and 13th month pay. He was likewise not paid his five days' salary for work performed from March 1, 2008 to March 5, 2008.

STEP filed a Cautionary Pleading,[10] manifesting the lack of service of summons upon it. Nevertheless, it alleged that it is an independent contractor engaged in the business of rendering management and technical services. One of its project employees is complainant Jessie Colaste who was assigned as kitchen helper at Lingnam Restaurant, one of STEP's clients. STEP averred that Colaste's employment was co-terminus and dependent upon its contract with Lingnam Restaurant, and STEP has the right to transfer Colaste to another assignment, project or client. In 2002, STEP and Lingnam Restaurant entered into an agreement wherein the former would provide the latter with manpower to perform activities related to the operation of its restaurant business. However, in 2007, Lingnam Restaurant reneged in

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[8] *Id*. at 130-134.

[9] CA *rollo*, pp. 113-116.

[10] *Id*. at 132-137.

paying the agreed contract salary of the manpower staff detailed at its business establishment or areas of operation. STEP was compelled to use its funds to pay the manpower staff until the time Lingnam Restaurant's total unpaid obligation amounted to ₱2,907,690.55 covering the period from March 2007 up to February 19, 2008. Hence, in February 2008, STEP ceased its manpower services to Lingnam Restaurant. Aside from assailing the lack of service of summons, STEP also argued that the complaint for illegal dismissal has no cause of action, since Jessie Colaste is still on floating status and has yet to be enlisted to its other business clients within a period of six months. STEP alleged that it did not terminate complainant's services. Hence, it prayed that the complaint be dismissed for lack of merit.

Meanwhile, Lingnam Restaurant filed anew its Position Paper,[11] stating that it is a franchisor of the business establishment Lingnam Restaurant. The franchisee who hired and retained complainant Jessie Colaste was Ms. Liberty Nacion at its franchise business establishment at Shaw Boulevard, Mandaluyong City. It was at the said business establishment that Jessie Colaste rendered services through STEP. Thus, it is not liable for any claims or causes of action of Jessie Colaste.

In a Decision[12] dated September 26, 2012, Labor Arbiter Pablo A. Gajardo, Jr. held that Lingnam Restaurant was guilty of illegal dismissal. The Labor Arbiter ruled that complainant Jessie Colaste's job as assistant cook is necessary and desirable to the restaurant business of Lingnam Restaurant; thus, he is considered as a regular employee of Lingnam Restaurant. Moreover, the Labor Arbiter found that Colaste was not paid his salary in accordance with applicable wage orders. The dispositive portion of the Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

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[11] *Id.* at 128-131.

[12] *Rollo*, pp. 64-77.

1. Declaring respondent Lingnam Restaurant guilty of illegal dismissal;
2. Ordering respondent Lingnam Restaurant to immediately reinstate complainant to his former position without loss of seniority rights, privileges and other benefits;
3. Directing respondent Lingnam Restaurant to pay complainant his full backwages in the amount of ₱624,020.81 (computed till promulgation only) from the time he was dismissed on March 5, 2008; salary differential in the sum of ₱10,042.76; unpaid salary for March 1-5, 2008, ₱1,810.00; 13th month pay for 2006, 2007 and 2008; ₱10,235.90 and 10% attorney's fees, ₱64,610.95;
4. Dismissing all other claims for lack of merit; and
5. Dismissing the instant complaint as against respondent Skills & Talent Employment Pool, Inc. for not being served with the Summons.

SO ORDERED.[13]

Lingnam Restaurant appealed from the Decision of the Labor Arbiter before the NLRC. In a Decision[14] dated January 31, 2013, the NLRC reversed and set aside the Decision of the Labor Arbiter. The *fallo* of the Decision reads:

WHEREFORE, the foregoing having been duly considered, the assailed decision is hereby SET ASIDE and a new one is hereby promulgated as follows:

1. Dismissing the complaint for illegal dismissal against Lingnam Restaurant;
2. Holding respondent Skills & Talent Employment Pool, Inc. liable for constructive dismissal of complainant due to their failure to assign complainant to other business clients after the lapse of six months;
3. Ordering respondent Skills & Talent Employment Pool, Inc. to immediately reinstate complainant to a position

[13] *Id*. at 75-77.

[14] *Id.* at 45-59.

> equal to his former position without loss of seniority rights, privileges and other benefits; pay him his full backwages commencing from March 5, 2008 up to finality; and to pay for the other monetary awards contained in the assailed decision plus adjusted attorney's fees.

SO ORDERED.[15]

The NLRC held that STEP is an independent contractor providing manpower services to Lingnam Restaurant. An employer-employee relationship existed between STEP and Jessie Colaste, who was assigned to one of STEP's clients, Lingnam Restaurant. As Colaste had been employed with STEP for more than a year and performing duties necessary and desirable to its trade and business, he is considered a regular employee. The failure of STEP to assign Colaste to its other business clients after the lapse of six months rendered him constructively dismissed.

STEP's motion for reconsideration was denied in a Resolution[16] dated April 22, 2013.

STEP filed with the Court of Appeals a petition for *certiorari*, alleging that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in (1) setting aside the Decision of Labor Arbiter Pablo Gajardo, Jr.; (2) ruling that there was constructive dismissal and in considering the said issue not raised in the appeal nor in the Complaint; (3) holding STEP liable for constructive dismissal for its alleged failure to assign complainant to other business clients after the lapse of six months; (4) ordering STEP to immediately reinstate complainant Colaste and to pay him full backwages plus other monetary awards; and (5) giving due course to the appeal of Lingnam Restaurant and in completely absolving the latter from any liability in the subject complaint of Jessie Colaste.[17]

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[15] *Id.* at 57.

[16] *Id.* at 62-63.

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

In a Decision[18] dated December 20, 2013, the Court of Appeals reversed and set aside the Decision and Resolution of the NLRC, and reinstated and affirmed the Decision of the Labor Arbiter holding that Jessie Colaste's employer is Lingnam Restaurant, which illegally dismissed Colaste; hence, Colaste is entitled to reinstatement, payment of full backwages and other monetary benefits.

The Court of Appeals stated that petitioner Lingnam Restaurant, through respondent STEP, employed respondent Jessie Colaste as an assistant cook and his appointment as such was co-terminus, arising from the nature of the agreement of STEP and Lingnam Restaurant. Under the employment contract between STEP and Colaste, the latter's performance shall be under the strict supervision, control and in accordance with the standards *specified by the client*. Hence, although the parties in the employment contract are only STEP and Colaste, the legal consequences of such contract must also be made to apply to Lingnam Restaurant. Under the circumstances, STEP merely acted as a placement agency providing manpower to Lingnam Restaurant. The so-called project was under the management and supervision of Lingnam Restaurant and it was the latter which exercised control over Colaste.

The Court of Appeals found that STEP is a labor-only contractor; hence, the workers it supplied to Lingnam Restaurant, including Jessie Colaste, should be considered employees of Lingnam Restaurant.

The appellate court stated that petitioner Lingnam Restaurant did not offer any explanation for Colaste's dismissal, but instead explained that Colaste's real employer is STEP. Petitioner failed to show any valid or authorized cause under the Labor Code which allowed it to terminate the services of Jessie Colaste. No notice of termination was given to Colaste and he was not afforded due process. Having failed to establish compliance with the requirements for termination of employment under

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

the Labor Code, the dismissal of Colaste was tainted with illegality. Consequently, Colaste is entitled to reinstatement without loss of seniority rights and other privileges and to payment of his full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time his compensation was withheld up to the time of his actual reinstatement.

The dispositive portion of the Decision of the Court of Appeals reads:

> WHEREFORE, the petition is GRANTED. The Decision and Resolution promulgated on January 31, 2013 and on March 27, 2013, respectively, of the NLRC are REVERSED and SET ASIDE. The Decision dated September 26, 2012 of the Labor Arbiter is REINSTATED and AFFIRMED.[19]

Lingnam Restaurant's motion for reconsideration was denied for lack of merit by the Court of Appeals in its Resolution[20] dated September 24, 2014.

Lingnam Restaurant filed this petition, raising the following issues:

1. THE COURT OF APPEALS ERRED IN ALLOWING HEREIN PETITIONER LINGNAM RESTAURANT TO BE JOINED AS RESPONDENT IN CA-G.R. SP NO. 129856, DESPITE THE FACT THAT THE PETITION FOR CERTIORARI FILED IN THE COURT OF APPEALS BY SKILLS & TALENT EMPLOYMENT POOL, INC. CONTAINED NO ALLEGATION OF CLAIM AND NO PRAYER FOR RELIEF AGAINST LINGNAM RESTAURANT.
2. THE COURT OF APPEALS ERRED IN NOT DECLARING THE PETITION FOR CERTIORARI IN CA-G.R. SP NO. 129856 FILED IN THE COURT OF APPEALS BY SKILLS & TALENT EMPLOYMENT POOL, INC. AS BEING INSUFFICENT IN FORM AND SUBSTANCE WITH

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[19] *Id*. at 40.

[20] *Id*. at 42.

RESPECT TO LINGNAM RESTAURANT, THEREBY PLACING LINGNAM RESTAURANT IN A POSITION WHERE IT CANNOT INTELLIGENTLY IDENTIFY AND DISCERN THE MATTERS WHICH OUGHT TO BE ADDRESSED OR COMMENTED TO IN THE PETITION FOR CERTIORARI, AND THEREFORE VIOLATING THE RIGHT TO DUE PROCESS OF LINGNAM RESTAURANT.

3. THE COURT OF APPEALS ERRED IN SETTING ASIDE THE PORTION OF THE NLRC DECISION DATED JANUARY 31, 2013 AND NLRC RESOLUTION DATED MARCH 27, 2013 WHICH DISMISSED THE CASE AGAINST LINGNAM RESTAURANT AND IN REVIEWING THE ALLEGED LIABILITY OF LINGNAM RESTAURANT TO JESSIE COLASTE, DESPITE THE FACT THAT THE DISMISSAL OF THE CASE AGAINST LINGNAM RESTAURANT HAS BECOME FINAL AND EXECUTORY.

4. THE COURT OF APPEALS VIOLATED THE RULE THAT A PARTY WHO DOES NOT APPEAL CANNOT OBTAIN AFFIRMATIVE RELIEFS, WHEN IT SET ASIDE THE NLRC DECISION DATED JANUARY 31, 2013 AND NLRC RESOLUTION DATED MARCH 27, 2013 IN FAVOR OF JESSIE COLASTE AND AGAINST LINGNAM RESTAURANT, DESPITE THE FACT THAT SAID JESSIE COLASTE DID NOT APPEAL THEREFROM AND HAD NEVER PARTICIPATED IN THE COURT OF APPEALS PROCEEDINGS.[21]

The main issue is whether or not the Court of Appeals erred in setting aside the decision of the NLRC and in reinstating the decision of Labor Arbiter Gajardo, Jr. or, stated otherwise, whether or not the Court of Appeals correctly ruled that respondent STEP is engaged in labor-only contracting; hence, petitioner Lingnam Restaurant is the employer of complainant-respondent Jessie Colaste and it is liable for Colaste's illegal dismissal.

As a rule, the Court does not review questions of fact but only questions of law in a petition for review on *certiorari*

[21] *Id*. at 15-16.

under Rule 45 of the Rules of Court. However, the rule is not absolute as the Court may review the facts in labor cases where the findings of the Court of Appeals and of the labor tribunals are contradictory.[22] In this case, the factual findings of the Labor Arbiter and the Court of Appeals differ from those of the NLRC. Hence, the Court reviewed the evidence on record and hereby affirms the decision of the Court of Appeals.

The ascertainment of the liability of petitioner Lingnam Restaurant and/or respondent STEP toward complainant-respondent Jessie Colaste requires the determination of the nature of the contracts between them, specifically whether respondent STEP is engaged in job-contracting or labor-only contracting.

Article 106 of the Labor Code describes labor-only contracting, thus:

> There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him.

The applicable implementing rules contained in Rule VIII-A,[23] Book III of the Amended Rules To Implement The Labor Code define contracting or subcontracting and labor-only contracting as follows:

> SECTION 4. *Definition of Basic Terms*. — The following terms as used in these Rules shall mean:
>
> (a) **"Contracting" or "subcontracting" refers to an arrangement whereby a principal agrees to put out or farm out**

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[22] *Alaska Milk Corp. v. Ponce*, G.R. Nos. 228412 & 228439, July 26, 2017.

[23] Per DOLE Order No. 18-02 dated February 21, 2002. (Emphases ours)

with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.

x x x x x x x x x

SECTION 5. *Prohibition against labor-only contracting*. — Labor-only contracting is hereby declared prohibited. For this purpose, **labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and <u>any</u> of the following elements are present**:

i) **The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; <u>or</u>**

ii) **The contractor does not exercise the right to control over the performance of the work of the contractual employee**.

The foregoing provisions shall be without prejudice to the application of Article 248 (c) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

x x x x x x x x x

SECTION 7. *Existence of an Employer-Employee Relationship*. — The contractor or subcontractor shall be considered the employer of the contractual employee for purposes of enforcing the provisions of the Labor Code and other social legislation. The principal, however,

shall be solidarily liable with the contractor in the event of any violation of any provision of the Labor Code, including the failure to pay wages.

The principal shall be deemed the employer of the contractual employee in any of the following cases, as declared by a competent authority:

(a) **where there is labor-only contracting**; or
(b) where the contracting arrangement falls within the prohibitions provided in Section 6 (Prohibitions) hereof.

As stated by the Court in *PCI Automation Center, Inc. v. NLRC*,[24] the legitimate job contractor provides services, while the labor-only contractor provides only manpower. The legitimate job contractor undertakes to perform a specific job for the principal employer, while the labor-only contractor merely provides the personnel to work for the principal employer.[25]

Guided by the provisions of law above, the Court agrees with the Court of Appeals that respondent STEP was engaged in labor-only contracting.

The Court notes that respondent STEP, in its Cautionary Pleading[26] filed before the Labor Arbiter, stated that it entered into an agreement with petitioner Lingnam Restaurant in 2002, wherein it agreed to provide Lingnam Restaurant with manpower to perform activities related to the operation of its restaurant business. Thus, as stated by the Court of Appeals, respondent STEP merely acted as a placement agency providing manpower to petitioner Lingnam Restaurant. The service rendered by STEP in favor of Lingnam Restaurant was not the performance of a specific job, but the supply of personnel to work at Lingnam Restaurant.In this case, STEP provided petitioner with an assistant cook in the person of Jessie Colaste.

In the Employment Contract[27] between Jessie Colaste and STEP from January 4, 2006 up to June 3, 2007, Colaste was

[24] 322 Phil. 536 (1996).

[25] *Id*. at 550.

[26] *Supra* note 9.

[27] *Rollo*, pp. 87-89.

assigned as kitchen helper at petitioner Lingnam Restaurant, while in the subsequent employment contracts[28] from November 5, 2007 up to January 5, 2008; and from January 5, 2008 up to March 5, 2008, he was assigned as assistant cook at petitioner Lingnam Restaurant. The three employment contracts state that Jessie Colaste's "*work result performance shall be under the Strict Supervision, Control and make sure that the end result is in accordance with the standard specified by client to STEP Inc.*" Hence, the Court agrees with the Court of Appeals that the work performance of Colaste is under the strict supervision and control of the client (petitioner Lingnam Restaurant) as well as the end result thereof. As assistant cook of petitioner Lingnam Restaurant, respondent Colaste's work is directly related to the restaurant business of petitioner. He works in petitioner's restaurant and presumably under the supervision of its Chief Cook. This falls under the definition of labor-only contracting under Section 5 of Rule VIII-A, Book III of the Amended Rules To Implement The Labor Code, since the contractor, STEP, merely supplied Jessie Colaste as assistant cook to the principal, Lingnam Restaurant; the job of Colaste as assistant cook is directly related to the main business of Lingnam Restaurant, and STEP does not exercise the right to control the performance of the work of Colaste, the contractual employee.

As respondent STEP is engaged in labor-only contracting, the principal, petitioner Lingnam Restaurant, shall be deemed the employer of respondent Jessie Colaste, in accordance with Section 7, Rule VIII-A, Book III of the Amended Rules To Implement The Labor Code. Colaste started working with petitioner since 2006 and he should be considered a regular employee of petitioner.

The reason for the termination of Jessie Colaste was his contract with petitioner Lingnam Restaurant through respondent STEP had expired. Lingnam Restaurant explained that Colaste's real employer is STEP.But since respondent STEP is engaged in labor-only contracting, petitioner Lingnam Restaurant is

[28] *Id*. at 90-95.

deemed the employer of Colaste. Thus, the reason for Colaste's termination is not a just or authorized cause for his dismissal under Articles 282 to 284 of the Labor Code. Moreover, Colaste was not afforded procedural due process, since petitioner failed to comply with the written-notice requirement under Article 277(b) of the Labor Code. The lack of valid cause for dismissal and petitioner's failure to comply with the twin-notice requirement rendered the dismissal of respondent Colaste illegal.

As respondent Colaste was illegally dismissed, the Court of Appeals correctly held that he is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and to his other benefits or their monetary equivalent computed from the time his compensation was withheld from him up to the time of his actual reinstatement.[29]

Further, petitioner contends that its right to due process was violated as it could not intelligently identify and discern the matters which it ought to address or oppose in the petition for *certiorari* filed by STEP with the Court of Appeals, because there were no claims and reliefs against it, and the petition was insufficient in form and substance. Petitioner also contends that the NLRC's decision already became final and executory insofar as it is concerned because complainant Jessie Colaste did not appeal from the decision of the NLRC.

The contention is unmeritorious. The essence of due process is simply an opportunity to be heard or as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[30] What the law prohibits is absolute absence of the opportunity to be heard; hence, a party cannot feign denial of due process where he had been afforded the opportunity to present his side.[31]

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[29] See *Jardin v. National Labor Relations Commission*, 383 Phil. 187, 199 (2000).

[30] *Audion Electric Co., Inc. v. National Labor Relations Commission*, 367 Phil. 620, 633 (1999).

[31] *Id.*

In this case, petitioner was not denied due process, since it filed with the Court of Appeals a Manifestation/Notice and Comment[32] to the petition for *certiorari,* which contained the same arguments as to the insufficiency in form and substance of the petition, among others. Respondent STEP commented that in a petition for *certiorari* under Rule 65 of the Rules of Court, it is not required to state any claim or cause of action, or relief against herein petitioner. What is required is the filing of a verified petition, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of the tribunal, board or officer alleged to have acted with grave abuse of discretion amounting to lack or excess of jurisdiction, and granting such incidental reliefs as law and justice may require.

As regards petitioner's allegation that its right to due process was violated because it "could not intelligently identify and discern the matters which it ought to address or oppose in the Petition for *Certiorari*" filed by STEP with the Court of Appeals, only petitioner can be held responsible for its misapprehension and it could not be attributed to the Court of Appeals, which did not find the petition insufficient in form and substance.

Lastly, the Decision of the NLRC did not become final and executory because respondent STEP timely filed a petition for *certiorari*, assailing the said Decision before the Court of Appeals. Hence, the assailed Decision was subject to review by the Court of Appeals, which was, thus, necessarily empowered to determine whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction in its decision. Given this power of judicial review of labor cases under Rule 65 of the Rules of Court, the Court of Appeals has the authority to affirm, modify or reverse the assailed Decision of the NLRC.

WHEREFORE, the Decision of the Court of Appeals dated December 20, 2013 and its Resolution dated September 24, 2014, in CA-G.R. SP No. 129856, reversing and setting aside the Decision of the NLRC dated January 31, 2013 and reinstating

[32] *Rollo*, pp. 159-165.

and affirming the Decision dated September 26, 2012 of Labor Arbiter Pablo A. Gajardo, Jr., is **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 225780. December 3, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAYSON TORIO *y* PARAGAS @ "BABALU,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY SINCE THE DRUG ITSELF FORMS AN INTEGRAL PART OF THE *CORPUS DELICTI* OF THE CRIME.— To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, it is necessary that the prosecution duly prove the identities of the buyer and the seller, the delivery of the drugs, and the payment in consideration thereof. On the other hand, in cases where an accused is charged with illegal possession of dangerous drugs under Section 11, Article II of RA 9165, the prosecution must establish the following elements: "(a) the accused was in possession of dangerous drugs; (b) such possession was not authorized by law[;] and (c) the accused was freely and consciously aware of being in possession of dangerous drugs." In both cases, it is essential that the identity of the dangerous

drug be established with moral certainty since the drug itself forms an integral part of the *corpus delicti* of the crime. Thus, to remove any doubt or uncertainty on the identity and integrity of the seized drug on account of the possibility of switching, "planting," or contamination of evidence, the prosecution must be able to show an unbroken chain of custody and account for each link in the chain from the moment the drugs are seized until its presentation in court as evidence of the crime.

2. ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; MARKING, PHYSICAL INVENTORY, AND TAKING OF PHOTOGRAPH; MUST BE CONDUCTED IMMEDIATELY AFTER THE SEIZURE AND CONFISCATION OF THE SEIZED ITEMS AND THE PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH MUST 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.— RA 9165 requires that the marking, physical inventory, and taking of photograph of the seized items be conducted immediately after seizure and confiscation of the same. The said law further requires that the physical inventory and taking of photograph of the seized items 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, any elected public official, a representative from the media **AND** the Department of Justice (DOJ); or (b) if **after** the amendment of RA 9165 by RA 10640, any elected public official and a representative from either the National Prosecution Service **OR** the media.

3. ID.; ID.; ID.; THREE-WITNESS RULE; THE PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS MUST BE WITNESSED BY ANY ELECTED PUBLIC OFFICIAL, A DEPARTMENT OF JUSTICE REPRESENTATIVE AND A MEDIA REPRESENTATIVE.— In this case, since the buy-bust operation against appellant was conducted in 2012, or prior to the enactment of RA 10640 in 2014, the physical inventory and taking of photograph of the seized items must be witnessed by the following persons: (a) any elected public official; (b) a

DOJ representative; and (c) a media representative. However, while SPO1 De los Santos marked the seized items in the presence of *Kagawad* Cuesta and *Kagawad* Disini, the prosecution failed to establish that the physical inventory and taking of photograph were made in the presence of the appellant or his representative, as well as representatives from the DOJ and media. In fact, the members of the buy-bust team deliberately did not invite members of the media to avoid leakage of the impending operation. Thus, it is clear that the arresting officers did not comply with the rule requiring the presence of representatives from both the DOJ and the media.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This resolves the appeal filed by Jayson Torio *y* Paragas, alias "*Babalu*" (appellant), assailing the September 29, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06473 which affirmed the October 22, 2013 Joint Judgment[2] of the Regional Trial Court (RTC) of Lingayen, Pangasinan, Branch 69, in Criminal Case Nos. L-9632 and L-9633 finding him guilty beyond reasonable doubt of illegal sale and possession of dangerous drugs as defined and penalized respectively under Sections 5 and 11, Article II of Republic Act (RA) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] CA *rollo*, pp. 111-122; penned by Associate Justice Pedro B. Corales and concurred in by Associate Justices Stephen C. Cruz and Rodil V. Zalameda.

[2] Records (Criminal Case No. L-9632), pp. 75-88, penned by Judge Caridad V. Galvez.

Appellant was charged with illegal possession and sale of dangerous drugs under two separate Informations which read:

Criminal Case No. L-9632
[Illegal Possession of Dangerous Drugs]

That on or about 4:00 o'clock in the afternoon of December 18, 2012, along Primicias St., Brgy. Poblacion, Lingayen, Pangasinan, and within the jurisdiction of this Honorable Court, [the above-named accused], did then and there wil[l]fully, unlawfully[,] and feloniously have in his possession, control[,] and custody one (1) heat-sealed plastic sachet containing methamphetamine hydrochloride, otherwise known as "shabu", without any necessary license or authority to possess the same.

Contrary to Section 11, Article II of R.A. No. 9165.[3]

Criminal Case No. L-9633
[Illegal Sale of Dangerous Drugs]

That on or about 4:00 o'clock in the afternoon of December 18, 2012, at Primicias St., Poblacion, Lingayen, Pangasinan and within the jurisdiction of this Honorable Court, the above-named accused, did then and there wil[l]fully, unlawfully[,] and feloniously sell methamphetamine hydrochloride (shabu), a dangerous drug, to a civilian asset who acted as a poseur-buyer, without any lawful authority.

Contrary to Section 5, Article II of R.A. No. 9165.[4]

Appellant was arraigned for illegal possession and sale of dangerous drugs on two separate dates. In both instances, appellant pleaded not guilty.[5]

Version of the Prosecution

The prosecution presented the testimonies of the Chief Intelligence Officer of Lingayen, Pangasinan, SPO1 Marday Delos Santos (SPO1 Delos Santos) and Forensic Chemist Police Senior Inspector Myrna Malojo-Todeño (PSI Malojo-Todeño). Their narrations were synthesized as follows:

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[3] *Id*. at 1.

[4] Records (Criminal Case No. L-9633), p. 1.

[5] Records (Criminal Case No. L-9632), p. 35 and Records (Criminal Case No. L-9633), p. 35.

On December 18, 2012, SPO1 Delos Santos received a text message from a civilian asset informing him of an upcoming transaction of drugs involving the appellant at Primicias St., *Barangay* Poblacion, Lingayen, Pangasinan. SPO1 Delos Santos informed his Chief of Police about the tip. A briefing was immediately conducted where a buy-bust team was formed composed of SPO1 De los Santos as the team leader, PO1 Jethiel Vidal (PO1 Vidal) as the arresting officer, the civilian asset as the poseur-buyer, and *Barangay Kagawads* Edward Cuesta (*Kagawad* Cuesta) and Michael Angelo Disini (*Kagawad* Disini) as witnesses. SPO1 De los Santos informed the Philippine Drug Enforcement Agency (PDEA) of the buy-bust operation. SPO1 De los Santos then gave the civilian asset a ₱500.00 bill with serial number AEO86542 and marked with his initials "MDS."

The buy-bust team proceeded to the target area. The civilian asset waited for the appellant while the rest of the team positioned themselves about five to six meters away. Appellant arrived riding his tricycle and stopped in front of the civilian asset. The drug transaction then took place. Appellant handed to the civilian asset a plastic sachet suspected to contain *shabu* while the latter handed the ₱500.00 marked money. After the exchange, the civilian asset raised his left hand, which was the pre-arranged signal for the buy-bust team that the sale of drugs had been consummated.

The buy-bust team quickly arrested appellant. SPO1 Delos Santos and PO1 Vidal introduced themselves as police officers and informed appellant of his constitutional rights. The civilian asset handed the plastic sachet to SPO1 Delos Santos. Appellant was then subjected to a body search where the marked money and another transparent sachet suspected to contain *shabu* were recovered. Immediately thereafter, SPO1 Delos Santos marked the sachet subject of the sale with the initials "MDS1" and the sachet recovered from appellant's possession with "MDS2." *Kagawad* Cuesta and *Kagawad* Disini were present during the arrest and confiscation. The members of the buy-bust team were

not able to invite members of the media since the operation was sudden and to avoid leakage of the impending operation.

After the marking of the sachets of suspected *shabu*, SPO1 Delos Santos prepared the confiscation receipt. Photographs were taken at the police station showing the appellant with the confiscated items and marked money. An inventory was also conducted. Afterwards, SPO1 Delos Santos brought appellant, together with the sachets recovered from him and the requests for examination, to the Provincial Crime Laboratory.

PSI Malojo-Todeño received the requests for examination and the sachets of *shabu* marked as MDS1 and MDS2. After examination, the sachet marked as MDS1 was found positive of containing 0.022 gram of methamphetamine hydrochloride or *shabu*, while the sachet marked as MDS2 likewise tested positive of containing 0.125 gram of *shabu*.[6]After the examination, PSI Malojo-Todeño placed both sachets inside a sealed white envelope and turned it over to the evidence custodian. She retrieved the envelope only after she was summoned by the court.

Version of the Defense

For his defense, appellant denied the accusation against him and claimed that he was framed-up. Appellant alleged that a person, who turned out to be the civilian asset, boarded his tricycle and told him to go to Primicias Street. On the way, appellant noticed a car following his tricycle. When they arrived at Primicias Street, five to six police officers got out of the car and proceeded to arrest him and brought him to the police station where he was interrogated. Later on, SPO1 Delos Santos and PO1 Vidal brought him back to Primicias Street where *Kagawad* Cuesta and *Kagawad* Disini were waiting. The police officers then took pictures of him inside the tricycle. SPO1 Delos Santos pulled out a sachet from his own pocket and asked appellant to point at it while being photographed. Thereafter, he was brought back to the police station.

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[6] Records (Criminal Case No. L-9632), p. 23.

Appellant further testified that he had a misunderstanding with SPO1 Delos Santos in the past when the latter suspected him of robbery. However, no case was filed against appellant then since there was no complainant.

Ruling of the Regional Trial Court

On October 22, 2013, the RTC of Lingayen, Pangasinan, Branch 69 rendered a Joint Judgment finding appellant guilty beyond reasonable doubt of illegal sale and possession of *shabu*. The RTC upheld the presumption of regularity in the performance of duties of the police officers over appellant's unsubstantiated claim of frame-up. Further, the RTC held that the failure to present the poseur-buyer was not fatal to the prosecution's case since SPO1 Delos Santos also witnessed the transaction.

The dispositive portion of the RTC's Joint Judgment reads:

> WHEREFORE, premises considered, the Court finds the accused Jayson Torio GUILTY beyond reasonable doubt in both cases and is hereby imposed with the following penalties, viz:
>
> (a) Life imprisonment and is likewise ordered to pay a fine in the amount of Php500,000.00 in Crim. Case No. L-9633 for Violation of Sec. 5[,] Article II of R.A. 9165 and;
>
> (b) Penalty of 14 years 8 months and one day to 17 years, 4 months of reclusion temporal and he is also directed to pay a fine in the amount of Php300,000.00 for Violation of Sec. 11[,] Article II of R.A. 9165 in Crim. Case No. L-9632.
>
> SO ORDERED.[7]

Aggrieved by the RTC's judgment, appellant appealed to the CA. In his Brief for the Accused-Appellant,[8] appellant assigned the following errors of the RTC:

I

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE

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[7] *Id.* at 88.

[8] CA *rollo*, pp. 30-41.

DOUBT FOR VIOLATION OF SECTIONS 5 AND 11, ARTICLE II OF REPUBLIC ACT NO. 9165.

II

THE COURT A QUO GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT NOTWITHSTANDING THE PROSECUTION'S FAILURE TO PROVE WITH CERTAINTY THE CORPUS DELICTI OF THE OFFENSES CHARGED.[9]

Ruling of the Court of Appeals

On September 29, 2015, the CA affirmed the RTC's judgment and held as follows:

> WHEREFORE, the instant appeal is DENIED. The October 22, 2013 Joint Judgment of the Regional Trial Court, Branch 69, Lingayen, Pangasinan in the consolidated Crim. Case Nos. L-9632 and L-9633 is hereby AFFIRMED.
>
> SO ORDERED.[10]

Dissatisfied with the CA's Decision, appellant filed a Notice of Appeal[11] dated October 22, 2015 manifesting his intention to appeal the CA Decision.

Hence, this appeal.

Issue

The issue in this case is whether appellant was guilty of illegal sale and possession of *shabu*. According to appellant, the RTC erred in convicting him of the offenses charged in view of the prosecution's failure to prove the identity of the civilian asset who acted as the poseur-buyer. Appellant also claims that the prosecution failed to establish an unbroken chain of custody of the seized drugs. Finally, appellant argues that the presumption of regularity in the performance of official duty cannot prevail over the presumption of his innocence.

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[9] *Id*. at 30.

[10] *Id*. at 122.

[11] *Id.* at 129-131.

Our Ruling

The Court finds the appeal meritorious and hereby acquits the appellant for failure of the prosecution to justify the arresting officers' non-compliance with the three-witness rule under Section 21[12] of RA 9165.

To secure a conviction for illegal sale of dangerous drugs under Section 5, Article II of RA 9165, it is necessary that the prosecution duly prove the identities of the buyer and the seller, the delivery of the drugs, and the payment in consideration thereof.[13] On the other hand, in cases where an accused is charged with illegal possession of dangerous drugs under Section 11, Article II of RA 9165, the prosecution must establish the following elements: "(a) the accused was in possession of dangerous drugs; (b) such possession was not authorized by law[;] and (c) the accused was freely and consciously aware of being in possession of dangerous drugs."[14] In both cases, it is essential that the identity of the dangerous drug be established with moral certainty since the drug itself forms an integral part of the *corpus delicti* of the crime.[15] Thus, to remove any doubt

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

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

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[13] *People v. Alberto*, 625 Phil. 545, 554 (2010).

[14] *Reyes v. Court of Appeals*, 686 Phil. 137, 148 (2012).

[15] *People v. Viterbo*, 739 Phil. 593, 601 (2014).

or uncertainty on the identity and integrity of the seized drug on account of the possibility of switching, "planting," or contamination of evidence, the prosecution must be able to show an unbroken chain of custody and account for each link in the chain from the moment the drugs are seized until its presentation in court as evidence of the crime.

RA 9165 requires that the marking, physical inventory, and taking of photograph of the seized items be conducted immediately after seizure and confiscation of the same. The said law further requires that the physical inventory and taking of photograph of the seized items 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,[16] any elected public official, a representative from the media **AND** the Department of Justice (DOJ);[17] or (b) if **after** the amendment of RA 9165 by RA 10640, any elected public official and a representative from either the National Prosecution Service **OR** the media.[18]

In *People v. Macapundag*,[19] the Court held that "the procedure 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." While this rule is not without exceptions, it is incumbent upon the prosecution to satisfactorily prove that (a) there is justifiable ground for non-compliance with the chain of custody rule; and (b) the integrity and evidentiary value of

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

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

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

[19] G.R. No. 225965, March 13, 2017, 820 SCRA 204, 215.

the seized items are properly preserved.[20] For the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses.[21] Moreover, non-compliance with the three-witness rule may be excused provided the prosecution proves that the arresting officers exerted genuine efforts to secure the presence of such witnesses, albeit they eventually failed to appear.

In this case, since the buy-bust operation against appellant was conducted in 2012, or prior to the enactment of RA 10640 in 2014, the physical inventory and taking of photograph of the seized items must be witnessed by the following persons: (a) any elected public official; (b) a DOJ representative; and (c) a media representative. However, while SPO1 De los Santos marked the seized items in the presence of *Kagawad* Cuesta and *Kagawad* Disini, the prosecution failed to establish that the physical inventory and taking of photograph were made in the presence of the appellant or his representative, as well as representatives from the DOJ and media. In fact, the members of the buy-bust team deliberately did not invite members of the media to avoid leakage of the impending operation.[22] Thus, it is clear that the arresting officers did not comply with the rule requiring the presence of representatives from both the DOJ and the media.

In view of the foregoing, the Court is constrained to acquit the appellant for failure of the prosecution to provide a justifiable reason for the non-compliance with the chain of custody rule thereby creating doubt as to the integrity and evidentiary value of the seized drugs.

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[20] Section 21 (a), Article II of the Implementing Rules and Regulations of RA 9165 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."**

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

[22] Records (Criminal Case No. L-9632), p. 78.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 29, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06473 is hereby **REVERSED** and **SET ASIDE**. Accordingly, appellant Jayson Torio *y* Paragas is **ACQUITTED** of the charges of violation of Sections 5 and 11, Article II of Republic Act No. 9165 for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered to be immediately released from detention, unless he is being lawfully held in custody for any other reason.

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

SO ORDERED.

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

Perlas-Bernabe,[**] *J.*, on official leave.

THIRD DIVISION

[G.R. No. 227033. December 3, 2018]

REYNALDO E. ORLINA, *petitioner, vs.* **CYNTHIA VENTURA, represented by her sons ELVIC JHON HERRERA and ERIC VON HERRERA,** *respondents.*

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[*] Per Special Order No. 2607 dated October 10, 2018.

[**] Designated Additional Member per October 8, 2018 raffle vice *J.* Jardeleza who recused due to prior action as Solicitor General.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF FINALITY OF JUDGMENT; A DECISION THAT HAS ACQUIRED FINALITY BECOMES IMMUTABLE AND UNALTERABLE, AND MAY NO LONGER BE MODIFIED IN ANY RESPECT; EXCEPTIONS.—** As a general rule, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, and the failure to perfect the appeal renders the judgment of the court final and executory. As such, it has been held that the availability of an appeal is fatal to a special civil action for *certiorari* for the same is not a substitute for a lost appeal. This is in line with the doctrine of finality of judgment or immutability of judgment under which a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down. But like any other rule, the doctrine of immutability of judgment has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) *void judgments*; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable.

2. **ID.; ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT A SUBSTITUTE FOR A LOST APPEAL; EXCEPTIONS.—** [W]hile it is doctrinally entrenched that *certiorari* is not a substitute for a lost appeal, the Court has allowed the resort to a petition for *certiorari* despite the existence of or prior availability of an appeal, such as: (1) where the appeal does not constitute a speedy and adequate remedy; (2) *where the orders were also issued either in excess of or without jurisdiction*; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) *where the order is a patent nullity*; and (6) where the decision in the *certiorari* case will avoid future litigations.

3. ID.; ID.; JUDGMENTS; A JUDGMENT OR DECISION RENDERED WITHOUT DUE PROCESS IS VOID *AB INITIO* AND MAY BE ATTACKED AT ANY TIME DIRECTLY OR COLLATERALLY BY MEANS OF A SEPARATE ACTION, OR BY RESISTING SUCH DECISION IN ANY ACTION OR PROCEEDING WHERE IT IS INVOKED.— [W]hile Orlina persistently argues that notices were sent to Ventura, the validity and due execution of the same remain doubtful. x x x [The] circumstances belie Orlina's claims of good faith. But even if We assume that he sent notices to the different addresses by mere honest mistake and in good faith, believing said addresses to be true, the fact remains that Ventura was, indeed, not properly notified of the instant proceedings. Verily, this fact alone is a denial of her right to due process which the Court deems necessary to correct. Time and again, the Court has held that where there is an apparent denial of the fundamental right to due process, a decision that is issued in disregard of that right is void for lack of jurisdiction, in view of the cardinal precept that in cases of a violation of basic constitutional rights, courts are ousted from their jurisdiction. This violation raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Thus, it is well settled that a judgment or decision rendered without due process is void *ab initio* and may be attacked at any time directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked for such judgment or decision is regarded as a "lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head."

4. ID.; ACTIONS; ACTIONS *IN REM*; JURISDICTION OVER THE PARTIES; NOT A PREREQUISITE TO CONFER JURISDICTION ON THE COURT, BUT IT IS REQUIRED TO SATISFY THE REQUIREMENTS OF DUE PROCESS.— [T]he action filed by Orlina is a petition seeking the cancellation of Ventura's title and the issuance of a new one under his name, brought under the auspices of Sections 75 and 108 of Presidential Decree (*P.D.*) No. 1529, otherwise known as the *Property Registration Decree*, which is evidently an action *in rem*. While jurisdiction over the parties in an action *in rem* is not a prerequisite to confer jurisdiction on the court, it is nonetheless required to satisfy the requirements of due

process. In view thereof, We find that the CA aptly held that the order of the RTC of general default, allowing Orlina to adduce evidence *ex-parte*, is void for violating Ventura's right to due process. Similarly, the May 14, 2012 Decision of said trial court, which granted Orlina's petition for approval of deed of sale and the transfer of the titles in his name, and all subsequent orders issued pursuant to the said judgment are also null and void. It has been held in the past that a void judgment is no judgment at all. It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Necessarily, it follows that the nullity of the RTC Decision carries with it the nullity of all acts done which implemented the same. This includes the issuance of the new TCT No. 004-201201324 in the name of Orlina.

APPEARANCES OF COUNSEL

Rogelio P. Licos, Jr. for petitioner.
Jose D. Reyes 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 October 26, 2015 and the Resolution[2] dated September 14, 2016 of the Court of Appeals (*CA)* in CA-G.R. SP No. 133837 which annulled and set aside the Decision[3] dated May 14, 2012 of the Regional Trial Court (*RTC*) of Quezon City, Branch 215, which in turn, approved the Final Bill of Sale issued by the City Treasurer of Quezon City in favor of

[1] Penned by Associate Justice Samuel H. Gaerlan, with Associate Justices Franchito N. Diamante and Ma. Luisa C. Quijano-Padilla, concurring; *rollo*, pp. 174-184.

[2] *Id.* at 193-194.

[3] Penned by Judge Ma. Luisa C. Quijano-Padilla; *id*. at 128-132.

petitioner Reynaldo E. Orlina, declared Transfer Certificate of Title (*TCT*) No. 272336 in the name of respondent Cynthia Ventura null and void, and ordered the issuance of a new title covering the subject property in the name of Orlina.

The antecedent facts are as follows:

The property involved in the present controversy is a 406 square meter parcel of land located in Baesa, Quezon City and covered by TCT No. 272336 in the name of Ventura, and likewise, covered by Tax Declaration No. E-004-01387. From 1998 to 2008, Ventura had been delinquent in the payment of its real property taxes amounting to ₱27,471.18, inclusive of penalty charges, failing to pay despite notice of such delinquency. As a result, the City Treasurer of Quezon City issued a warrant subjecting the property to levy. To satisfy the tax delinquency, the property was then advertised for sale at a public auction by posting a notice at the main entrance of the Quezon City Hall, as well as in a public and conspicuous place in the barangay where the property was located, and by publication in a newspaper of general circulation. On April 2, 2009, a public auction was conducted during which Orlina turned out to be the highest bidder with a bid price of ₱400,000.00. The corresponding Certificate of Sale was issued in his favor on even date. After the lapse of the one (1)-year period of redemption without Ventura redeeming the subject property, the City Treasurer of Quezon City issued a Final Bill of Sale to Orlina.[4]

Consequently, Orlina filed a petition for the approval of the final bill of sale, cancellation of the original and duplicate copy of TCT No. 272336, and issuance of a new certificate of title for the subject property in his favor. On September 28, 2011, the RTC issued an Order setting the case for hearing on December 7, 2011 and directed the service of notice of hearing, together with a copy of the petition and its annexes upon the following: the Register of Deeds of Quezon City, the Land Registration Authority of Quezon City, the Secretary of the Department of Environment and Natural Resources, the Office of the Solicitor

[4] *Id*. at 175.

General, and the City Prosecutor of Quezon City. The RTC also ordered the posting of a notice of hearing at the main entrance of the Quezon City Hall, the bulletin board of the RTC, and at the site of the subject property. During the initial hearing on December 7, 2011, Orlina marked several documents to establish compliance with the jurisdictional requirements. There being no opposition filed, the RTC issued an order of general default and granted Orlina's motion to present evidence *ex-parte*.[5]

On May 14, 2012, the RTC rendered a Decision the dispositive portion of which reads:

> WHEREFORE, premises considered, pursuant to Section 75 of P.D. No. 1529, the Final Bill of Sale issued by the City Treasurer of Quezon City in favor of petitioner Reynaldo Orlina is hereby APPROVED and CONFIRMED, PROVIDED, however, that the proceeds of the sale in excess of the delinquent tax, including the interest due thereon, and the expenses of the sale, in the total amount of ₱363,869,75, shall be remitted to Cynthia F. Ventura, the registered owner of the real property, or person having legal interest therein. Further, TCT No. 272336 of the Registry of Deeds of Quezon City issued in the name of Cynthia F. Ventura is hereby declared NULL AND VOID.
>
> Upon finality of this Decision, the Register of Deeds of Quezon City is ordered to cause the issuance of a new title covering the property subject of this petition in the name of REYNALDO ORLINA.
>
> Let copies of this Decision be furnished to the following:
>
> The Regist[er] of Deeds – Quezon City;
> The Administrator, LRA – Quezon City;
> The Secretary, DENR – Quezon City;
> The Office of the Solicitor General – Makati City; and
> The City Prosecutor – Quezon City.
>
> SO ORDERED.[6]

Pursuant to the Decision quoted above, TCT No. 004-2012010324 was issued in favor of Orlina, who subsequently

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[5] *Id*. at 176.

[6] *Id*. at 131-132.

filed an *ex-parte* motion for the issuance of a writ of possession, which was granted by the RTC in an Order dated February 27, 2013.

It was only at this point that Ventura filed an omnibus motion seeking a reconsideration of the RTC's Decision. She argued that the RTC did not acquire jurisdiction over her person, thus, depriving her of her right to due process. She also filed an urgent motion for reconsideration of the Order granting the issuance of the writ of possession, praying for the suspension of its implementation pending resolution of the omnibus motion. In denying both motions, however, the RTC held that the reliefs sought by Ventura are proper to be raised and taken up in a separate action and not in a case before it, which is already decided and has become final.[7]

On October 26, 2015, however, the CA annulled and set aside the Decision of the RTC and all subsequent proceedings taken in relation thereto. It held that there was no proof that Ventura was served with notices of the proceedings before the trial court. As a consequence of this violation of her constitutional right to due process, said court did not acquire jurisdiction over her person. Thus, the CA disposed of the case as follows:

> WHEREFORE, premises considered, the instant petition is GRANTED. Accordingly, the assailed Decision dated 14 May 2012 and all proceedings, resolutions, orders and other issuances are hereby ANNULLED and SET ASIDE.
>
> The Register of Deeds of Quezon City is hereby ORDERED to CANCEL TCT No. 004-2012010324 issued in the name of private respondent Reynaldo Orlina as a consequence of the execution of the disposition in LRC Case No. Q-32175(11) and to REINSTATE TCT No. 272336 in the name of petitioner Cynthia Ventura.
>
> SO ORDERED.[8]

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[7] *Id*. at 177.

[8] *Id*. at 183-184.

Upon the denial of Orlina's motion for reconsideration, he elevated the matter before the Court *via* the instant petition, assigning the following grounds:

I.

WHETHER OR NOT THE REMEDY OF CERTIORARI CAN BE AVAILED OF BY THE HEREIN [RESPONDENT] DESPITE LOSS OF REMEDY OF APPEAL.

II.

WHETHER OR NOT THE REGIONAL TRIAL COURT THAT APPROVED THE FINAL BILL OF SALE HAS JURISDICTION TO DETERMINE THE COMPLIANCE WITH THE TAX SALE PROCEEDING CONDUCTED BY THE CITY GOVERNMENT OF QUEZON CITY.

III.

WHETHER OR NOT THE [RESPONDENT] COMPLIED WITH [THE] REQUIREMENTS ON VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING.

IV.

WHETHER OR NOT THE PETITION IS A COLLATERAL ATTACK ON THE CERTIFICATE OF TITLE OF THE HEREIN [PETITIONER].

V.

WHETHER OR NOT THE REGIONAL TRIAL COURT ACQUIRED JURISDICTION OVER THE PERSON OF HEREIN [RESPONDENT].[9]

First, Orlina argues that the petition for *certiorari* filed by Ventura before the CA should not have been allowed, since it is not a substitute for her lost appeal. At the time she filed her Omnibus Motion for Reconsideration questioning the Decision of the RTC, the same had already become final. *Second*, he maintains that the RTC that approved the final bill of sale had jurisdiction to determine the validity of the tax delinquency

[9] *Id*. at 12.

auction sale proceeding conducted by the City Government of Quezon City. Any question Ventura may raise as regards the said sale must be raised in an entirely separate proceeding and not in the petition for approval of final bill of sale filed by Orlina. *Third*, Orlina assails the verification and certification of non-forum shopping filed by Ventura accompanying her petition before the CA on the ground that the same was signed by her sons and not by Ventura herself. According to him, there is no justifiable reason for Ventura's sons to substitute her. Neither was there any mention of an authority to sign said verification in her behalf in the Special Power of Attorney attached to the petition filed before the CA. *Fourth*, granting the existence of irregularities in the tax delinquency sale, the same must be determined in a separate case and not in the instant petition for approval of final bill of sale as the same is tantamount to a collateral attack on Orlina's title. This is because the subject property was already transferred in his name. It cannot simply be altered, modified, or cancelled, except in a direct proceeding in accordance with law. *Finally*, Orlina insists that the RTC duly acquired jurisdiction over her person. Contrary to the findings of the CA that Ventura was not served with any notice of the proceedings, he and the City Treasurer of Quezon City actually sent the warrant of levy and notices to Ventura using the address stated in the tax declaration and certificate of title of the subject property. In addition to this, the posting requirement was, likewise, complied with when the order of the trial court was posted at the site where the property is located. Thus, Ventura was sufficiently accorded due process and any accusation of malice on the part of Orlina is negated. Ventura only has herself to blame for her belated participation in the proceeding which has already attained finality.

We rule in favor of Ventura.

As a general rule, the perfection of an appeal in the manner and within the period permitted by law is not only mandatory but also jurisdictional, and the failure to perfect the appeal renders the judgment of the court final and executory.[10] As such, it has

[10] *PO2 Montoya v. Police Director Varilla, et al.,* 595 Phil. 507, 522 (2008).

been held that the availability of an appeal is fatal to a special civil action for *certiorari* for the same is not a substitute for a lost appeal.[11] This is in line with the doctrine of finality of judgment or immutability of judgment under which a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.[12]

But like any other rule, the doctrine of immutability of judgment has exceptions, namely: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) *void judgments*; and (4) whenever circumstances transpire after the finality of the decision rendering its execution unjust and inequitable. Similarly, while it is doctrinally entrenched that *certiorari* is not a substitute for a lost appeal, the Court has allowed the resort to a petition for *certiorari* despite the existence of or prior availability of an appeal, such as: (1) where the appeal does not constitute a speedy and adequate remedy; (2) *where the orders were also issued either in excess of or without jurisdiction*; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) *where the order is a patent nullity*; and (6) where the decision in the *certiorari* case will avoid future litigations.[13]

Thus, in many instances, the Court found it necessary to apply the exception rather than the general rule above. In *Montoya v. Varilla*,[14] for example, the Court therein held that since the proceedings dismissing Montoya from service were conducted

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[11] *Gomeco Metal Corporation v. Court of Appeals*, 793 Phil. 355, 387 (2016).

[12] *Id*. at 379.

[13] *Id*. at 387-388. (Emphases ours).

[14] *Supra* note 10, at 520.

without notice to him, the judgment of dismissal was rendered in violation of his right to due process. As such, even if his appeal thereof was filed beyond the period provided by law, Montoya was not barred from filing the same because the violation of his constitution right deprived the regional director of jurisdiction over his case thereby rendering the judgment null and void. Likewise, in *Salva v. Valle*, the Court excused the fact that the appeal filed by Valle was beyond the reglementary period and allowed the liberal application of the rules of procedure for perfecting appeals in exceptional circumstances to better serve the interest of justice. While it is desirable that the Rules of Court be faithfully and even meticulously observed, courts should not be so strict about procedural lapses that do not really impair the proper administration of justice. Thus, if the rules are intended to ensure the orderly conduct of litigation, it is because of the higher objective they seek, which is the protection of substantive rights of the parties.

In like manner, the Court, in *Philippine National Bank (PNB) v. Spouses Perez,*[15] did not hesitate in affirming the ruling of the CA which granted PNB's petition for *certiorari* even with the existence of the remedy of appeal and even if the challenged RTC decision had already become final and executory and was, in fact, already the subject of a writ of execution. There, PNB sought to foreclose the mortgaged properties of the Spouses Perez when they defaulted on their financial obligations. Refusing to admit their obligation, the spouses filed an action to release the mortgaged properties and to annul the sheriff's notice of extra-judicial sale, among others. When the trial court set the case for hearing, it failed to issue a proper notice of pre-trial to PNB. Consequently, PNB failed to attend the hearing. The trial court then allowed the Spouses Perez to present their evidence *ex-parte* and eventually rendered judgment in favor of the spouses enjoining PNB from foreclosing their properties. Nevertheless, the Court therein ruled that the trial court committed grave abuse of discretion when it allowed the spouses to present

[15] 667 Phil. 450 (2011).

evidence *ex-parte* without due notice to PNB. This lack of notice of pre-trial rendered all subsequent proceedings null and void. Hence, the CA was correct in not dismissing the petition for *certiorari* and ordering the titles issued in favor of the spouses to revert back to PNB.[16]

Similarly, in the instant case, the trial court failed to serve Ventura with a notice of hearing and a copy of the petition with its annexes. As aptly found by the CA, there was no proof that Ventura was personally served with said notice. Neither was there proof of substantial service or even service by publication in a newspaper of general circulation. The records of the present case reveal that only the following were notified: the Register of Deeds of Quezon City, the Land Registration Authority of Quezon City, the Secretary of the Department of Environment and Natural Resources, the Office of the Solicitor General, and the City Prosecutor of Quezon City.

On this matter, Orlina insists that he and the City Treasurer of Quezon City actually sent the warrant of levy and notices to Ventura using the address stated in the tax declaration and certificate of title of the subject property. In addition, the posting requirement was, likewise, complied with when the order of the trial court was posted at the site where the property is located. The Court, however, finds said contention unacceptable. *First*, the notices allegedly sent to Ventura were made in a separate and distinct proceeding, specifically, the tax sale. Nowhere in the records of the case, however, did Orlina show that Ventura was duly notified of the instant proceeding for the approval of the final bill of sale, cancellation of the original and duplicate copy of TCT No. 272336, and issuance of a new certificate of title for the subject property in Orlina's favor.

Second, while Orlina persistently argues that notices were sent to Ventura, the validity and due execution of the same remain doubtful. The Court is curious as to why, in attempting to prove proper notification, Orlina makes reference to different addresses. To illustrate, in his petition before the Court alone,

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[16] *Philippine National Bank v. Spouses Perez*, *supra* note 15, at 467.

he refers to three (3) different addresses where notices were allegedly sent. In page 13 thereof, he categorically states that "it cannot be denied and, in fact, admitted by the petitioner-appellee (Ventura) that its address is in *No. 201 Quirino Highway, Baesa, Quezon City*."[17] But in page 18, Orlina provides that "it is very clear in the Tax Declaration of Real Property that the address of the (sic) Cynthia Ventura is *201 Baesa, Caloocan City*."[18] In page 19, moreover, he again makes mention of yet another address in saying that "the certificate of posting of the court interpreter dated October 4, 2011 shows that the Order of the Honorable Court dated September 28, 2011 was posted at *No. 201 Baesa, Balintawak, Quezon City*." Furthermore, as Ventura points out, Orlina sent out notices and other court documents to different addresses. For one, he sent his Demand to Vacate to *201 Quirino Highway, Baesa, Quezon City*, which is actually the true address of Ventura and her heirs. But on other occasions, however, Orlina's *Ex-Parte* Motion for the Issuance of a Writ of Possession, as well as his Petition for the Approval of Bill of Sale, were both addressed to *201 EDSA, Baesa, Caloocan City*.

To the Court, these circumstances belie Orlina's claims of good faith. But even if We assume that he sent notices to the different addresses by mere honest mistake and in good faith, believing said addresses to be true, the fact remains that Ventura was, indeed, not properly notified of the instant proceedings. Verily, this fact alone is a denial of her right to due process which the Court deems necessary to correct. Time and again, the Court has held that where there is an apparent denial of the fundamental right to due process, a decision that is issued in disregard of that right is void for lack of jurisdiction,[19] in view of the cardinal precept that in cases of a violation of basic constitutional rights, courts are ousted from their jurisdiction. This violation raises a serious jurisdictional issue which cannot

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[17] *Rollo*, p. 13.

[18] *Id*. at 18.

[19] *Salva v. Valle*, 707 Phil. 402, 419 (2013).

be glossed over or disregarded at will. Thus, it is well settled that a judgment or decision rendered without due process is void *ab initio* and may be attacked at any time directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked[20] for such judgment or decision is regarded as a "lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever it exhibits its head."[21]

As the CA noted, the action filed by Orlina is a petition seeking the cancellation of Ventura's title and the issuance of a new one under his name, brought under the auspices of Sections 75[22] and 108[23] of Presidential Decree (*P.D.*) No. 1529, otherwise

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[20] *Id*.

[21] *Montoya v. Varilla*, *supra* note 10, at 522.

[22] Section 75. Application for new certificate upon expiration of redemption period. Upon the expiration of the time, if any, allowed by law for redemption after registered land has been sold on execution taken or sold for the enforcement of a lien of any description, except a mortgage lien, the purchaser at such sale or anyone claiming under him may petition the court for the entry of a new certificate of title to him.

Before the entry of a new certificate of title, the registered owner may pursue all legal and equitable remedies to impeach or annul such proceedings.

[23] 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 be Register of Deeds, except by order of the proper Court of First Instance. A registered owner of 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;

known as the *Property Registration Decree*, which is evidently an action *in rem*. While jurisdiction over the parties in an action *in rem* is not a prerequisite to confer jurisdiction on the court, it is nonetheless required to satisfy the requirements of due process.[24]

In view thereof, We find that the CA aptly held that the order of the RTC of general default, allowing Orlina to adduce evidence *ex-parte*, is void for violating Ventura's right to due process. Similarly, the May 14, 2012 Decision of said trial court, which granted Orlina's petition for approval of deed of sale and the transfer of the titles in his name, and all subsequent orders issued pursuant to the said judgment are also null and void. It has been held in the past that a void judgment is no judgment at all. It cannot be the source of any right nor the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. Necessarily, it follows that the nullity of the RTC Decision carries with it the nullity of all acts done which implemented the same. This includes the issuance of the new TCT No. 004-201201324 in the name of Orlina.[25]

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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 owner's 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 under 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.

[24] *Rollo*, pp. 181-182.

[25] *Philippine National Bank v. Spouses Perez*, *supra* note 15, at 471.

As for Orlina's belated attempt at refuting Ventura's allegation of denial of due process, We find that the fact that the verification and certification of non-forum shopping accompanying the petition before the CA was signed by her sons and not by Ventura herself should not affect the substantive findings of the present case. It must be noted that at the time when the subject RTC Decision was rendered in violation of her right to due process and when demands on her sons to vacate the premises, Ventura was already residing in the United States as stated in the Special Power of Attorney attached to the certification and petition filed before the CA. This constitutes justifiable reason for her sons to substitute her in the instant case. As We previously mentioned, rules of procedure are tools to facilitate and not hinder the administration of justice and, thus, for justifiable reasons, may adopt a liberal application thereof.

WHEREFORE, premises considered, the instant petition is **DENIED.** The assailed Decision dated October 26, 2015 and Resolution dated September 14, 2016 of the Court of Appeals in CA-G.R. SP No. 133837 are **AFFIRMED** with **MODIFICATION.** The Regional Trial Court of Quezon City, Branch 215, is **DIRECTED** to **CONDUCT** further proceedings with dispatch on the Petition for the Approval of the Final Bill of Sale, Cancellation of the Original and Duplicate Copy of TCT No. 272336, and Issuance of a New Certificate of Title.

SO ORDERED.

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

EN BANC

[A.C. No. 7088. December 4, 2018]

ATTY. HERMINIO HARRY L. ROQUE, JR., *complainant, vs.* **ATTY. RIZAL P. BALBIN,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYERS SHOULD TREAT THEIR OPPOSING COUNSELS AND OTHER LAWYERS WITH COURTESY, DIGNITY AND CIVILITY.— Lawyers are licensed officers of the courts who are empowered to appear, prosecute, and defend; and upon whom peculiar duties, responsibilities, and liabilities are devolved by law as a consequence. Membership in the Bar imposes upon them certain obligations. Mandated to maintain the dignity of the legal profession, they must conduct themselves honorably and fairly. x x x Case law instructs that "[l]awyers should treat their opposing counsels and other lawyers with courtesy, dignity[,] and civility. A great part of their comfort, as well as of their success at the bar, depends upon their relations with their professional brethren. Since they deal constantly with each other, they must treat one another with trust and respect. Any undue ill feeling between clients should not influence counsels in their conduct and demeanor toward each other. Mutual bickering, unjustified recriminations[,] and offensive behavior among lawyers not only detract from the dignity of the legal profession, but also constitute highly unprofessional conduct subject to disciplinary action."

2. ID.; ID.; THE ACTS OF REPEATEDLY INTIMIDATING, HARASSING, AND BLACKMAILING AN OPPOSING COUNSEL WITH PURPORTED ADMINISTRATIVE AND CRIMINAL CASES AND PREJUDICIAL MEDIA EXPOSURES ARE VIOLATIONS OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE LAWYER'S OATH; PENALTY IN CASE AT BAR.— In this case, respondent's underhanded tactics against complainant were in violation of Canon 8 of the CPR. x x x [I]nstead of availing of remedies to contest the ruling adverse to his client, respondent resorted to personal attacks against the opposing

litigant's counsel, herein complainant. Thus, it appears that respondent's acts of repeatedly intimidating, harassing, and blackmailing complainant with purported administrative and criminal cases and prejudicial media exposures were performed as a tool to return the inconvenience suffered by his client. His actions demonstrated a misuse of the legal processes available to him and his client, especially considering that the aim of every lawsuit should be to render justice to the parties according to law, not to harass them. More significantly, the foregoing showed respondent's lack of respect and despicable behavior towards a colleague in the legal profession, and constituted conduct unbecoming of a member thereof. x x x [R]espondent's x x x acts of threatening complainant with the filing of baseless administrative and criminal complaints in an effort to strong-arm the latter and his client into submission not only contravened the Lawyer's Oath, which exhorts that a lawyer shall "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same," but also violated Canon 19 and Rule 19.01 of the CPR. x x x Case law provides that in similar instances where lawyers made personal attacks against an opposing counsel in order to gain leverage in a case they were involved in, the Court has consistently imposed upon them the penalty of suspension from the practice of law. x x x [T]he Court finds it appropriate to increase the penalty to be meted out to respondent to suspension from the practice of law for a period of two (2) years.

3. **ID.; ID.; MUST NOT REGARD THE ORDERS OF THE COURT AS A MERE REQUEST, NOR SHOULD THEY BE COMPLIED WITH PARTIALLY, INADEQUATELY, OR SELECTIVELY, AND THE OBSTINATE REFUSAL OR FAILURE TO COMPLY THEREWITH NOT ONLY BETRAYS A RECALCITRANT FLAW IN THE LAWYER'S CHARACTER, BUT ALSO UNDERSCORES HIS DISRESPECT TO THE LAWFUL ORDERS OF THE COURT WHICH IS ONLY TOO DESERVING OF REPROOF.—** To aggravate further respondent's administrative liability, the Court notes that respondent initially moved for an extension of time to file comment but did not file the same, prompting the Court to repeatedly fine him and order his arrest. Such audacity on the part of respondent – which caused undue delay in the resolution of this administrative case – is a violation of Canon 11, Canon 12, Rule 12.03, and Rule 12.04 of the

> CPR x x x. Verily, respondent's acts of seeking for extension of time to file a comment, and thereafter, failing to file the same and ignoring the numerous directives not only indicated a high degree of irresponsibility, but also constituted utter disrespect to the judicial institution. The orders of the Court are not to be construed as a mere request, nor should they be complied with partially, inadequately, or selectively; and the obstinate refusal or failure to comply therewith not only betrays a recalcitrant flaw in the lawyer's character, but also underscores his disrespect to the lawful orders of the Court which is only too deserving of reproof. Undoubtedly, the Court's patience has been tested to the limit by what in hindsight amounts to a lawyer's impudence and disrespectful bent. At the minimum, members of the legal fraternity owe courts of justice respect, courtesy, and such other becoming conduct essential in the promotion of orderly, impartial, and speedy justice. What respondent has done was the exact opposite; hence, he must be disciplined accordingly.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a verified complaint/affidavit[1] dated March 1, 2006 filed before the Court by complainant Atty. Herminio Harry L. Roque, Jr. (complainant) against respondent Atty. Rizal P. Balbin (respondent) praying that the latter be subjected to disciplinary action for his alleged unprofessional conduct.

The Facts

Complainant alleged that he was the plaintiff's counsel in a case entitled *FELMAILEM, Inc. v. Felma Mailem*, docketed as Civil Case No. 2004-307 before the Metropolitan Trial Court of Parañaque City, Branch 77 (MeTC). Shortly after securing a favorable judgment for his client,[2] herein respondent—as

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

[2] See Decision dated November 9, 2005 penned by Judge Donato H. De Castro; *id*. at 22-25.

counsel for the defendant, and on appeal—started intimidating, harassing, blackmailing, and maliciously threatening complainant into withdrawing the case filed by his client. According to complainant, respondent would make various telephone calls and send text messages and e-mails not just to him, but also to his friends and other clients, threatening to file disbarment and/or criminal suits against him. Further, and in view of complainant's "high profile" stature, respondent also threatened to publicize such suits in order to besmirch and/or destroy complainant's name and reputation.[3]

Initially, respondent moved for an extension of time to file his comment,[4] which was granted by the Court.[5] However, respondent failed to file his comment despite multiple notices, prompting the Court to repeatedly fine him and even order his arrest.[6] To date, the orders for respondent's arrest[7] remain unserved and are still standing.[8] Eventually, the Court dispensed with respondent's comment and forwarded the records to the Integrated Bar of the Philippines (IBP) for its investigation, report, and recommendation.[9]

The IBP's Report and Recommendation

In a Report and Recommendation[10] dated August 3, 2016, the Investigating Commissioner found respondent administratively liable, and accordingly, recommended that he be suspended

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[3] See *id*. at 476-477.

[4] See Motion for Extension to File Comment dated June 13, 2006; *id*. at 36.

[5] See Notice of Resolution dated December 4, 2006; *id*. at 37.

[6] See Notices of Resolution dated March 19, 2008 (*id*. at 41-42), August 10, 2009 (*id*. at 46-47), April 13, 2011 (*id.* at 51-52), and January 23, 2013 (*id*. at 130-131).

[7] See Warrant of Arrest dated April 13, 2011 (*id*. at 53-54) and Alias Order of Arrest and Commitment dated January 23, 2013 (*id*. at 132-133).

[8] See Resolution dated April 17, 2013; *id*. at 152-153.

[9] *Id*. at 152.

[10] *Id*. at 474-482. Signed by Commissioner Rico A. Limpingco.

from the practice of law for a period of one (1) year, with a warning that a repetition of the same or similar infractions in the future shall merit more severe sanctions.[11]

The Investigating Commissioner found that instead of availing of the procedural remedies to assail the adverse MeTC ruling in order to further his client's cause, respondent resorted to crudely underhanded tactics directed at the opposing litigant's counsel, *i.e.*, herein complainant, by personally attacking the latter through various modes of harassment and intimidation. According to the Investigating Commissioner, such acts constitute a gross violation of Canon 8 of the Code of Professional Responsibility (CPR), and the fact that respondent failed to cow complainant into submission cannot mitigate his liability as the same reveals respondent's distastefully disturbing moral character.[12]

In a Resolution[13] dated May 27, 2017, the IBP Board of Governors adopted the Investigating Commissioner's report and recommendation *in toto*.

The Issue Before the Court

The essential issue in this case is whether or not respondent should be administratively sanctioned for the acts complained of.

The Court's Ruling

Lawyers are licensed officers of the courts who are empowered to appear, prosecute, and defend; and upon whom peculiar duties, responsibilities, and liabilities are devolved by law as a consequence. Membership in the Bar imposes upon them certain obligations. Mandated to maintain the dignity of the legal profession, they must conduct themselves honorably and fairly.[14] To this end, Canon 8 of the CPR commands, to wit:

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[11] *Id*. at 481-482.

[12] See *id*. at 480-481.

[13] See Notice of Resolution in Resolution No. XXII-2017-1106 signed by National Secretary Patricia-Ann T. Prodigalidad; *id*. at 472-473.

[14] *Reyes v. Chiong, Jr.*, 453 Phil. 99, 104 (2003), citing *Cui v. Cui*, 120 Phil. 725, 729 (1964).

CANON 8 – A lawyer shall conduct himself with courtesy, fairness and candor towards his professional colleagues, and shall avoid harassing tactics against opposing counsel.

Case law instructs that "[l]awyers should treat their opposing counsels and other lawyers with courtesy, dignity[,] and civility. A great part of their comfort, as well as of their success at the bar, depends upon their relations with their professional brethren. Since they deal constantly with each other, they must treat one another with trust and respect. Any undue ill feeling between clients should not influence counsels in their conduct and demeanor toward each other. Mutual bickering, unjustified recriminations[,] and offensive behavior among lawyers not only detract from the dignity of the legal profession, but also constitute highly unprofessional conduct subject to disciplinary action."[15]

In this case, respondent's underhanded tactics against complainant were in violation of Canon 8 of the CPR. As aptly pointed out by the Investigating Commissioner, instead of availing of remedies to contest the ruling adverse to his client, respondent resorted to personal attacks against the opposing litigant's counsel, herein complainant. Thus, it appears that respondent's acts of repeatedly intimidating, harassing, and blackmailing complainant with purported administrative and criminal cases and prejudicial media exposures were performed as a tool to return the inconvenience suffered by his client. His actions demonstrated a misuse of the legal processes available to him and his client, especially considering that the aim of every lawsuit should be to render justice to the parties according to law, not to harass them.[16] More significantly, the foregoing showed respondent's lack of respect and despicable behavior towards a colleague in the legal profession, and constituted conduct unbecoming of a member thereof.

Furthermore, respondent's aforesaid acts of threatening complainant with the filing of baseless administrative and criminal complaints in an effort to strong-arm the latter and

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[15] *Id*. at 106, citing *Narido v. Linsangan*, 157 Phil. 87, 91 (1974).

[16] See *id*., citing *Aguinaldo v. Aguinaldo*, 146 Phil. 726, 731 (1970).

his client into submission not only contravened the Lawyer's Oath, which exhorts that a lawyer shall "not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same," but also violated Canon 19 and Rule 19.01 of the CPR. In *Aguilar-Dyquiangco v. Arellano*,[17] the Court held:

> Canon 19 of the Code of Professional Responsibility states that "a lawyer shall represent his client with zeal within the bounds of the law," reminding legal practitioners that a lawyer's duty is not to his client but to the administration of justice; to that end, his client's success is wholly subordinate; and his conduct ought to and must always be scrupulously observant of law and ethics. In particular, Rule 19.01 commands that a "lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding." Under this Rule, **a lawyer should not file or threaten to file any unfounded or baseless criminal case or cases against the adversaries of his client designed to secure a leverage to compel the adversaries to yield or withdraw their own cases against the lawyer's client**.[18] (Emphasis and underscoring supplied)

To aggravate further respondent's administrative liability, the Court notes that respondent initially moved for an extension of time to file comment but did not file the same, prompting the Court to repeatedly fine him and order his arrest. Such audacity on the part of respondent – which caused undue delay in the resolution of this administrative case – is a violation of Canon 11, Canon 12, Rule 12.03, and Rule 12.04 of the CPR, which respectively read:

> CANON 11 – A lawyer shall observe and maintain the respect due to the courts and to judicial officers and should insist on similar conduct by others.
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> x x x x x x x x x

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[17] 789 Phil. 600 (2016).

[18] *Id*. at 616, citing *Pena v. Aparicio*, 552 Phil. 512, 523 (2007).

CANON 12 – A lawyer shall exert every effort and consider it his duty to assist in the speedy and efficient administration of justice.

x x x x x x x x x

Rule 12.03 – A lawyer shall not, after obtaining extensions of time to file pleadings, memoranda or briefs, let the period lapse without submitting the same or offering an explanation for his failure to do so.

Rule 12.04 – A lawyer shall not unduly delay a case, impede the execution of a judgment or misuse Court processes.

Verily, respondent's acts of seeking for extension of time to file a comment, and thereafter, failing to file the same and ignoring the numerous directives not only indicated a high degree of irresponsibility, but also constituted utter disrespect to the judicial institution. The orders of the Court are not to be construed as a mere request, nor should they be complied with partially, inadequately, or selectively; and the obstinate refusal or failure to comply therewith not only betrays a recalcitrant flaw in the lawyer's character, but also underscores his disrespect to the lawful orders of the Court which is only too deserving of reproof.[19] Undoubtedly, the Court's patience has been tested to the limit by what in hindsight amounts to a lawyer's impudence and disrespectful bent. At the minimum, members of the legal fraternity owe courts of justice respect, courtesy, and such other becoming conduct essential in the promotion of orderly, impartial, and speedy justice. What respondent has done was the exact opposite; hence, he must be disciplined accordingly.[20]

Having established respondent's administrative liability, the Court now determines the proper penalty to be imposed on him.

Case law provides that in similar instances where lawyers made personal attacks against an opposing counsel in order to gain leverage in a case they were involved in, the Court has consistently imposed upon them the penalty of suspension from

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[19] See *Vaflor-Fabroa v. Paguinto*, 629 Phil. 230, 236 (2010), citing *Sebastian v. Bajar*, 559 Phil. 211, 224 (2007).

[20] See *Spouses Lopez v. Limos*, 780 Phil. 113, 123 (2016).

the practice of law. In *Reyes v. Chiong, Jr.*,[21] the lawyer who filed a baseless civil suit against an opposing counsel just to obtain leverage against an *estafa* case being handled by such lawyer was suspended from the practice of law for a period of two (2) years. Similarly, in *Vaflor-Fabroa v. Paguinto*,[22] the erring lawyer was suspended for the same period for not only causing the filing of baseless complaints against the opposing counsel, but also in failing/refusing to file a comment in the administrative case against her despite obtaining an extension to file the same. In view of the foregoing, the Court finds it appropriate to increase the penalty to be meted out to respondent to suspension from the practice of law for a period of two (2) years.

WHEREFORE, respondent Atty. Rizal P. Balbin is found guilty of violating Canon 8, Canon 11, Canon 12, Rule 12.03, Rule 12.04, Canon 19, and Rule 19.01 of the Code of Professional Responsibility. Accordingly, he is hereby **SUSPENDED** from the practice of law for a period of two (2) years, effective immediately upon his receipt of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Further, he is **DIRECTED** to report to this Court the date of his receipt of this Decision to enable it to determine when his suspension from the practice of law shall take effect.

Let copies of this Decision be furnished to: (1) the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; (2) the Integrated Bar of the Philippines for its information and guidance; and (3) the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., and *Hernando, JJ.,* concur.

Carandang, J., on leave.

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[21] *Supra* note 14.

[22] *Supra* note 19.

EN BANC

[A.C. No. 12296. December 4, 2018]

PIA MARIE B. GO, *complainant, vs.* **ATTY. GRACE C. BURI,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; A LAWYER'S NEGLECT OF A LEGAL MATTER ENTRUSTED TO HIM BY HIS CLIENT CONSTITUTES INEXCUSABLE NEGLIGENCE FOR WHICH HE MUST BE HELD ADMINISTRATIVELY LIABLE.—** [N]eglect of a legal matter entrusted to respondent constitutes a flagrant violation of Rule 18.03, Canon 18 of the CPR x x x. Case law exhorts that once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable, as respondent in this case.

2. **ID.; ID.; LAWYERS ARE BOUND TO MAINTAIN NOT ONLY A HIGH STANDARD OF LEGAL PROFICIENCY, BUT ALSO OF MORALITY, HONESTY, INTEGRITY, AND FAIR DEALING.—** [R]espondent misrepresented to complainant that she filed the first petition for annulment in early 2013, withdrew the same after complainant told her to do so, and filed the second petition in 2015. However, no such case was filed. This act is a violation of Rule 1.01, Canon 1 and Canon 15 of the CPR x x x. As officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing. Clearly, respondent fell short of such standard when she committed the afore-described acts of misrepresentation and deception against complainant. Respondent's acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they also reveal basic moral flaws that make her unfit to practice law.

3. ID.; ID.; LAWYER-CLIENT RELATIONSHIP; THE HIGHLY FIDUCIARY NATURE OF THIS RELATIONSHIP IMPOSES UPON THE LAWYER THE DUTY TO ACCOUNT FOR THE MONEY OR PROPERTY COLLECTED OR RECEIVED FOR OR FROM HIS CLIENT.— [R]espondent also violated Rule 16.01 and Rule 16.03, Canon 16 of the CPR when she failed to return to complainant the total amount of ₱188,000.00 representing her legal fees despite numerous demands from the latter x x x. It bears stressing that the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. This act is a gross violation of general morality, as well as of professional ethics.

4. ID.; ID.; A LAWYER SHOULD BE HELD ADMINISTRATIVELY LIABLE FOR PROFESSIONAL MISCONDUCT FOR NEGLECTING HER CLIENT'S AFFAIRS, FAILING TO RETURN THE LATTER'S MONEY OR PROPERTY DESPITE DEMAND, AND COMMITTING ACTS OF MISREPRESENTATION AGAINST HER CLIENT; PENALTY IN CASE AT BAR.— [R]espondent's acts of neglecting her client's affairs, failing to return the latter's money and/or property despite demand, and at the same time, committing acts of misrepresentation against her client, constitute professional misconduct for which she must be held administratively liable. In this regard, jurisprudence provides that in instances where the lawyer commits similar acts against their respective clients, the Court imposed upon them the penalty of suspension from the practice of law for a period of two (2) years. x x x Hence, it is only proper that respondent be meted the same penalty, as recommended by the IBP Board of Governors.

5. ID.; ID.; DISCIPLINARY PROCEEDINGS; SHOULD ONLY REVOLVE AROUND THE DETERMINATION OF THE LAWYER'S ADMINISTRATIVE AND NOT HIS CIVIL

LIABILITY, BUT THIS RULE REMAINS APPLICABLE ONLY TO CLAIMED LIABILITIES WHICH ARE PURELY CIVIL IN NATURE.— [T]he Court sustains the IBP Board of Governor's recommendation ordering respondent to return the amount of ₱188,000.00 she received from complainant as legal fees. It is well to note that while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature – for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement. Hence, since respondent received the aforesaid amount as part of her legal fees, the Court finds the return thereof to be in order.

APPEARANCES OF COUNSEL

Edgardo M. Banaag for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a verified complaint[1] dated December 15, 2015 filed before the Integrated Bar of the Philippines - Commission on Bar Discipline (IBP-CBD) by complainant Pia Marie B. Go (complainant) against respondent Atty. Grace C. Buri (respondent) praying that the latter be subjected to disciplinary actions for her alleged unprofessional conduct.

The Facts

Complainant alleged that sometime in September 2012, she engaged the services of respondent to handle the annulment of her marriage with her husband. In connection therewith, she

[1] *Rollo*, pp. 2-8.

paid[2] respondent on January 17, 2013 the amount of ₱150,000.00 representing the latter's "package engagement fee" and professional services. Shortly thereafter, complainant was informed that a petition for annulment was already filed before the Regional Trial Court of Muntinlupa (RTC), albeit no copy of the petition was furnished to her despite her request. However, in February 2013, complainant asked respondent to "hold" her case as she had to deal with various personal problems, to which the latter responded by "withdrawing" the petition supposedly filed before the RTC.[3]

It was only in February 2015 that complainant decided to push through with the annulment, thus, she tried contacting respondent, but to no avail. After a few weeks and with the help of a lawyer friend, complainant was finally able to get in touch with respondent and tell her to push through with the annulment case. Thereafter, respondent asked complainant for another ₱38,000.00 purportedly for the re-filing of the case, which complainant reluctantly remitted to her. Later on, complainant repeatedly demanded respondent to furnish her copies of the original and the re-filed petition for annulment and to issue receipts for the money she remitted, but respondent failed or refused to do so. Becoming suspicious of respondent's actions, petitioner went to the Office of the Clerk of Court of the RTC and discovered that there was no petition for annulment filed by respondent on her behalf.[4] This prompted complainant to confront respondent, to which the latter responded by promising to file the petition. However, respondent continuously failed to file the same, resulting in complainant losing trust in her and subsequently demanding that she return complainant's money. Respondent promised to return only half of the money, which she still failed to do despite complainant's repeated

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[2] See undated Contract/Agreement; *id*. at 9.

[3] See *id*. at 2-3. See also *id*. at 67-68.

[4] See Certification dated December 1, 2015 signed by Clerk of Court V Atty. Charmaine C. Apolinario-Jimenez and verified by Raffle Officer Avelino Laverne F. Demetria; *id*. at 11.

demands. Hence, complainant was constrained to file the instant complaint.[5]

Eventually, the IBP-CBD required the parties to attend the Mandatory Conference and submit their respective mandatory conference briefs, to which only complainant complied. In view of the foregoing, the IBP-CBD deemed respondent's continued failure to appear before it and comply with its directives to be a waiver on her part to participate in the proceedings.[6]

The IBP's Report and Recommendation

In a Report and Recommendation[7] dated January 30, 2017, the Investigating Commissioner found respondent administratively liable, and accordingly, recommended that she be suspended from the practice of law for a period of one (1) year, and that complainant should claim and collect the amount she remitted to respondent through an independent action, civil or criminal, as the case may be.[8]

The Investigating Commissioner found that the totality of respondent's acts — namely, failing to file the contracted petition for annulment of marriage and to re-file the same after collecting money for the supposed re-filing fee, receiving the full payment of her professional fees for legal services not rendered, and committing a series of lies and misrepresentations in the handling of complainant's case — is anathema to Canon 18 of the Code of Professional Responsibility (CPR), for which she must be administratively sanctioned. In this regard, the Investigating Commissioner opined that the efforts made by the IBP-CBD in furnishing respondent copies of orders and notices via registered mail to her office and both her Metro Manila and provincial addresses, engender the belief that respondent knew of the filing of an administrative case against her but simply

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[5] See *id*. at 3-7. See also *id*. at 68-70.

[6] See *id*. at 72-73.

[7] *Id*. at 67-78. Penned by Commissioner Rogelio N. Wong.

[8] See *id*. at 78.

chose to ignore the same, as a ploy and scheme to evade sanctions in the future by invoking lack of notice and due process.[9]

In a Resolution[10] dated November 29, 2017, the IBP Board of Governors adopted the Investigating Commissioner's report and recommendation, with the following modifications: (*a*) increasing the recommended period of suspension to two (2) years; (*b*) ordering the return of the amount of ₱188,000.00 to complainant; and (*c*) imposing on respondent a fine of ₱5,000.00 for refusing to comply with the IBP-CBD's order to file an answer despite due notice.[11]

The Issue Before the Court

The essential issue in this case is whether or not respondent should be administratively sanctioned for the acts complained of.

The Court's Ruling

Records show that sometime in September 2012, complainant secured respondent's services in order to assist her in filing a petition for the annulment of her marriage, and in connection therewith, paid the latter a total of ₱188,000.00. However, and despite respondent's assurances that the case had already been filed before the RTC, complainant later on found out through the Certification[12] issued by the RTC that no annulment case was ever filed by respondent on her behalf. Such neglect of a legal matter entrusted to respondent constitutes a flagrant violation of Rule 18.03, Canon 18 of the CPR, which reads:

> CANON 18 — A lawyer shall serve his client with competence and diligence.
>
> Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

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[9] See *id*. at 73-78.

[10] See Notice of Resolution in CBD Case No. 16-4861 signed by Assistant National Secretary Doroteo B. Aguila; *id*. at 64-66.

[11] *Id*. at 65.

[12] *Id*. at 11.

Case law exhorts that once a lawyer takes up the cause of his client, he is duty-bound to serve the latter with competence, and to attend to such client's cause with diligence, care, and devotion whether he accepts it for a fee or for free. He owes fidelity to such cause and must always be mindful of the trust and confidence reposed upon him. Therefore, a lawyer's neglect of a legal matter entrusted to him by his client constitutes inexcusable negligence for which he must be held administratively liable,[13] as respondent in this case.

Moreover, records further show that respondent misrepresented to complainant that she filed the first petition for annulment in early 2013, withdrew the same after complainant told her to do so, and filed the second petition in 2015. However, no such case was filed. This act is a violation of Rule 1.01, Canon 1 and Canon 15 of the CPR, which read:

> CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.
>
> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his clients.

As officers of the court, lawyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity, and fair dealing. Clearly, respondent fell short of such standard when she committed the afore-described acts of misrepresentation and deception against complainant. Respondent's acts are not only unacceptable, disgraceful, and dishonorable to the legal profession; they also reveal basic moral flaws that make her unfit to practice law.[14]

Furthermore, respondent also violated Rule 16.01 and Rule 16.03, Canon 16 of the CPR when she failed to return to

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[13] *Dongga-as v. Cruz-Angeles*, 792 Phil. 611, 619 (2016), citing *Spouses Lopez v. Limos*, 780 Phil. 113, 120 (2016).

[14] See *id*. at 622; citation omitted.

complainant the total amount of ₱188,000.00 representing her legal fees despite numerous demands from the latter, *viz*.:

> CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.
>
> Rule 16.01 — A lawyer shall account for all money or property collected or received for or from the client.
>
> Rule 16.03 — A lawyer shall deliver the funds and property of his client when due or upon demand x x x.

It bears stressing that the relationship between a lawyer and his client is highly fiduciary and prescribes on a lawyer a great fidelity and good faith. The highly fiduciary nature of this relationship imposes upon the lawyer the duty to account for the money or property collected or received for or from his client. Thus, a lawyer's failure to return upon demand the funds held by him on behalf of his client, as in this case, gives rise to the presumption that he has appropriated the same for his own use in violation of the trust reposed in him by his client. This act is a gross violation of general morality, as well as of professional ethics.[15]

In sum, respondent's acts of neglecting her client's affairs, failing to return the latter's money and/or property despite demand, and at the same time, committing acts of misrepresentation against her client, constitute professional misconduct for which she must be held administratively liable. In this regard, jurisprudence provides that in instances where the lawyer commits similar acts against their respective clients, the Court imposed upon them the penalty of suspension from the practice of law for a period of two (2) years. In *Jinon v. Jiz*,[16] the Court suspended the erring lawyer for such period for his failure to return the amount his client gave him for his legal services which he never performed. Also, in *Agot v. Rivera*,[17]

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[15] *Id*. at 620; citation omitted.

[16] 705 Phil. 321 (2013).

[17] 740 Phil. 393 (2014).

the Court suspended the erring lawyer for the same period for his: (*a*) failure to handle the legal matter entrusted to him and to return the legal fees in connection therewith; and (*b*) misrepresentation that he was an immigration lawyer, when in truth, he was not. Hence, it is only proper that respondent be meted the same penalty, as recommended by the IBP Board of Governors.

Furthermore, the Court sustains the IBP Board of Governor's recommendation ordering respondent to return the amount of ₱188,000.00 she received from complainant as legal fees. It is well to note that while the Court has previously held that disciplinary proceedings should only revolve around the determination of the respondent-lawyer's administrative and not his civil liability, it must be clarified that this rule remains applicable only to claimed liabilities which are purely civil in nature — for instance, when the claim involves moneys received by the lawyer from his client in a transaction separate and distinct and not intrinsically linked to his professional engagement.[18] Hence, since respondent received the aforesaid amount as part of her legal fees, the Court finds the return thereof to be in order.

Finally, the Court likewise sustains the imposition of a fine in the amount of ₱5,000.00 for respondent's failure to comply with the IBP-CBD's order to file an answer despite due notice.[19]

WHEREFORE, respondent Atty. Grace C. Buri is found guilty of violating Rule 1.01 of Canon 1, Canon 15, Rules 16.01 and 16.03 of Canon 16, and Rule 18.03 of Canon 18 of the Code of Professional Responsibility. Accordingly, she is hereby **SUSPENDED** from the practice of law for a period of two (2)

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[18] *Dongga-as v. Cruz-Angeles*, *supra* note 13, at 624; citation omitted.

[19] In numerous cases, fines in various amounts have been imposed on erring lawyers who have failed to file their comments despite due notice. (See *Velasco v. Doroin*, 582 Phil. 1 [2008]; *Spouses Bautista v. Cefra*, 702 Phil. 203 [2013]; *Bunagan-Bansig v. Celera*, 724 Phil. 141 [2014]; *Enriquez v. Lavadia, Jr.*, A.C. No. 5686, June 16, 2015; and *United Coconut Planters Bank v. Noel*, A.C. No. 3951, June 19, 2018.)

years, effective immediately upon her receipt of this Decision. She is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely. She is likewise **ORDERED** to pay a fine in the amount of ₱5,000.00 for failure to comply with the directives of the Integrated Bar of the Philippines—ommission on Bar Discipline.

Further, respondent is **ORDERED** to return to complainant Pia Marie B. Go the legal fees she received from the latter in the aggregate amount of ₱188,000.00 within ninety (90) days from the finality of this Decision. Failure to comply with this directive will warrant the imposition of a more severe penalty.

Finally, she is **DIRECTED** to report to this Court the date of her receipt of this Decision to enable it to determine when her suspension from the practice of law shall take effect.

Let copies of this Decision be furnished to: (1) the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; (2) the Integrated Bar of the Philippines for its information and guidance; and (3) the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., and *Hernando, JJ.*, concur.

Carandang, J., on leave.

EN BANC

[A.M. No. 15-05-136-RTC. December 4, 2018]

IN RE: SPECIAL REPORT ON THE ARREST OF ROGELIO M. SALAZAR, JR., SHERIFF IV, REGIONAL TRIAL COURT – OFFICE OF THE CLERK OF COURT, BOAC, MARINDUQUE, FOR VIOLATION OF REPUBLIC ACT NO. 9165.

[A.M. No. P-16-3450. December 4, 2018]
(Formerly A.M. No. 15-12-379-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **ROGELIO M. SALAZAR, JR., SHERIFF IV, Regional Trial Court – Office of the Clerk of Court, Boac, Marinduque,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; AN ABSOLUTION FROM A CRIMINAL CHARGE IS NOT A BAR TO AN ADMINISTRATIVE PROSECUTION; CASE AT BAR.— Owing to the administrative nature of the instant case, several important considerations must be taken into serious account: ***first***, the finding of administrative guilt is independent of the results of the criminal charges against the Sheriff; ***second***, the Sheriff stands scrutiny and treated not as an accused in a criminal case, but as a respondent court officer; ***third***, the Supreme Court, in taking cognizance of this administrative case, acts not as a prosecutor, but as the administrative superior specifically tasked to discipline its Members and personnel; ***fourth***, the quantum of proof required for a finding of administrative guilt remains to be substantial evidence; and ***fifth***, the paramount interest sought to be protected in an administrative case is the preservation of the Constitutional mandate that a public office is a public trust. Well settled is the rule that an absolution from a criminal charge is not a bar to an administrative prosecution or vice-versa. Evidence to

support a conviction in a criminal case is not necessary, and the dismissal of the criminal case against the respondent is not a ground for the dismissal of the administrative case. It bears stressing that a criminal case is different from an administrative case and each must be disposed of according to the facts and the law applicable to each case. Thus, the dismissal of Criminal Case Nos. 62-15 and 63-15 does not automatically entail the dismissal of the instant administrative actions.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; AN ADMISSION PARTAKES OF A TESTIMONIAL EVIDENCE, AND NOT A PERSONAL PROPERTY THAT CAN BE THE SUBJECT OF A SEARCH AND SEIZURE, AND THE INADMISSIBLE EVIDENCE TERMED AS THE FRUIT OF THE POISONOUS TREE REFERS TO OBJECT, NOT TESTIMONIAL EVIDENCE.— The fact that the pieces of evidence obtained from the voided search were declared inadmissible for being fruits of the poisonous tree will not result to the outright dismissal of the administrative cases at bar. It is necessary to emphasize that to sustain a finding of administrative culpability, only substantial evidence is required, that is, more than a mere scintilla of relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. x x x Respondent's admission of drugs use during the inquest cannot be considered as a fruit of the poisonous tree and as such, may legally and validly be admitted as evidence in the instant administrative case. x x x The admission partakes of a testimonial evidence, and not a "personal property" that can be the subject of a search and seizure. Section 3, Rule 126 of the Rules of Court enumerates the personal property that may be seized for which a search warrant may be issued: (a) the subject of the offense; (b) stolen or embezzled and other proceeds, or fruits of the offense; or (c) used or intended to be used as the means of committing an offense. In *Retired SPO4 Bienvenido Laud v. People*, We explained that "personal property" as used under the Rules pertain to the thing's mobility. Referencing Article 416 of the Civil Code, We expounded that in general, all things which can be transported from place to place are deemed to be personal property. Testimonial evidence, therefore, cannot be treated

as a "fruit" of the quashed search warrant. *People v. Uy* was emphatic in saying that the "inadmissible evidence termed as the fruit of the poisonous tree" refers to "object, not testimonial, evidence" and even more constricting when it held that "it refers to an object seized in the course of an illegal search and seizure."

3. **ID.; EVIDENCE; ADMISSIONS; ADMISSION OF DRUG USE MAY PROPERLY BE CONSIDERED AS SUBSTANTIAL EVIDENCE IN THE ADMINISTRATIVE PROCEEDING IN CASE AT BAR.—** It should be stressed that the adjudged irregularity in the application and implementation of the search warrant does not have any clear causal relation between the evidence which was illegally obtained by virtue of such quashed warrant and respondent's admission before a separate and distinct proceeding and authority. Stating it in a different manner, the admission cannot be considered as a logical consequence of the latter. x x x [T]he admission is a distinct and separate piece of evidence that should not be tarnished by the illegal search conducted and hence, cannot be deemed as a fruit of poisonous tree." In the same vein, it would also be not logical nor legal to find nexus between the arrest which resulted from the illegal search and seizure and the admission during the preliminary investigation. The admission was made by respondent during the preliminary investigation stage which is a source independent from the illegal search, seizure, and arrest, and is presumed to have been regularly performed. While the search, seizure, arrest and preliminary investigation may be sequential, the admission made during the preliminary investigation was not a necessary, logical, and automatic consequence of the search, seizure and resulting arrest. We must consider that respondent may, or may not have made such admission despite the search and the arrest. x x x Verily, the admissibility of respondent's admission in the instant administrative case cannot be questioned. Said admission is a separate and distinct piece of evidence that should not be tarnished by the illegal search and thus, cannot be regarded as a fruit of the poisonous tree. Further, it must be stressed that there is no allegation, much less proof, that any of respondent's basic rights in giving such admission were violated. Lastly, respondent's admission of his drug use is relevant for purposes of the present administrative case and as such, it may properly be considered by this Court in this administrative proceeding as substantial evidence.

4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); MANDATORY RANDOM DRUG TESTING OF OFFICERS AND EMPLOYEES OF PUBLIC AND PRIVATE OFFICES; THE CHARACTER OF THE DRUG TEST BEING MADE AT RANDOM ACTUALLY DISPENSES WITH THE USUAL REQUIREMENT OF PROBABLE CAUSE, AND THE BASIS BEING ONLY A POSITIVE DRUG TEST, AN EMPLOYER IS ALLOWED BY LAW TO PURSUE AN ADMINISTRATIVE CASE AGAINST THE PUBLIC OR PRIVATE OFFICER OR EMPLOYEE AND THEREAFTER, TO SUSPEND OR TERMINATE HIM.— The procedure for laboratory examination or test is outlined in Section 38 of RA 9165. Section 38 provides that when there is reasonable ground to believe that an apprehended or arrested offender is under the influence of dangerous drugs, such offender shall be subjected to a screening laboratory examination or test. The positive results of a screening test shall be challenged within fifteen (15) days from the receipt of the results. The positive screening test result is not valid in a court of law unless confirmed. Following the prescribed procedure, the confirmatory urine test is therefore not the direct or indirect result of the illegal search; rather, it comes into play not only upon the apprehension or arrest of the offender, but also, (1) when the apprehending or arresting officer has reasonable ground to believe that the offender is under the influence of dangerous drugs; and (2) only after a screening laboratory test yields a positive result. The basis for the confirmatory drug test was, in fact, a reasonable belief of drug use and a positive screening test, both of which are neither a necessary nor automatic consequence of an illegal search. Parenthetically, Section 36, Article III of RA 9165 provides for the mandatory drug testing of: x x x (d) Officers and employees of public and private offices. x x x Further, in A.M. No. 06-1-01-SC dated January 17, 2006, the Court has adopted guidelines for a program to prevent drug use and eliminate the hazards of drug abuse in the Judiciary, specifically in the first and second level courts. x x x There is thus no reason to turn a blind eye, for purposes of this administrative proceeding, on the results of the confirmatory urine test when RA 9165 itself, as well as this Court's guidelines, sanction the conduct of a mandatory random drug testing of officers and employees of public and private offices. The

character of the drug test being made at random actually dispenses with the usual requirement of probable cause. x x x Thus, despite the absence of probable cause, and the basis being only a positive drug test result, an employer is allowed by law to pursue an administrative case against the public or private officer or employee and thereafter, to suspend or terminate x x x [him]. Notably, in the instant administrative matter, respondent never questioned the authenticity, validity, and regularity of Chemistry Report No. CRIMDT-005-15 of the Marinduque Provincial Crime Laboratory Office. No objection or question was raised as to the regularity of the conduct of the confirmatory test. The finding of respondent's positive use of methamphetamine hydrochloride or *shabu* remains unrebutted. Certainly, such compelling evidence cannot merely be ignored. The foregoing pieces of evidence thus constitute more than substantial evidence that respondent was found positive for illegal drugs use. The confirmatory drug test which yielded a positive result confirms respondent's admission of drug use and also, reflects respondent's propensity to lie as it negates his statement in his admission that he already stopped using illegal drugs.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; USE OF PROHIBITED DRUGS, A CASE OF; PENALTY.— There is no doubt that the use of prohibited drugs constitute grave misconduct. It is a flagrant violation of the law, in fact a crime in itself, thus considered as grave misconduct. In *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug ("Shabu") of Reynard B. Castor, Electrician II, Maintenance Division, Office of Administrative Services*, the Court ruled that under Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), grave misconduct is a *grave offense* punishable by dismissal even for the first offense. Also, under Civil Service Memorandum Circular No. 13, series of 2010, any official or employee found positive for use of dangerous drugs shall be subjected to disciplinary/administrative proceedings with a penalty of dismissal from the service at first offense pursuant to Section 46(19) of Book V of Executive Order (E.O.) 292 and Section 22(c) of its Omnibus Rules Implementing Book V of E.O. No.

292 and other pertinent civil service laws. Further, undeniably, respondent's conduct tarnished the very image and integrity of the Judiciary, constitutive of a conduct prejudicial to the best interest of the service. Conduct prejudicial to the best interest of the service is classified as a grave offense under Section 22(c) of the Omnibus Rules, with a corresponding penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense. x x x Finding respondent guilty of both grave misconduct and conduct prejudicial to the best interest of the service, We find the penalty of dismissal for grave misconduct, the most serious offense in this case, proper. x x x Besides, respondent's propensity to lie, x x x which bolsters a finding of moral turpitude, thus aggravating the offense, cannot go unnoticed.

6. ID.; ID.; ADMINISTRATIVE PROCEEDINGS; THE PARAMOUNT INTEREST SOUGHT TO BE PROTECTED IN AN ADMINISTRATIVE CASE IS THE PRESERVATION OF THE CONSTITUTIONAL MANDATE THAT A PUBLIC OFFICE IS PUBLIC TRUST.— Here is an officer of the court and an agent of law who is an admitted drug-user as evidenced by his admission during the preliminary investigation and the positive result of his confirmatory drug test, who will walk scot-free and whose claimed right to hold his public office will be sustained by this Court if We will heed to the dissent and dismiss these administrative cases merely because the related criminal cases were dismissed due to the quashal of the search warrant. We have, in the past, meted severe penalties against erring Court employees on the basis of mere affidavits or on mere allegations spelled in the pleadings filed. There is no reason for the Court to treat the instant administrative case differently, when the evidence is far more compelling. We always have to keep in mind the primordial consideration in resolving disciplinary actions. The paramount interest sought to be protected in an administrative case is the preservation of the Constitutional mandate that a public office is a public trust. It must be remembered that no person has a vested right to a public office, the same not being property within the contemplation of the constitutional guarantee. x x x This Court's mandate to preserve and maintain the public's faith in the Judiciary, as well as its honor, dignity, integrity, can only be achieved by imposing

strict and rigid standards of decency and propriety governing the conduct of Justices, judges, and court employees. Thus, it is only by weeding out the likes of respondent from the ranks that We would be able to achieve such objective.

***PER CURIAM, separate concurring opinion*:**

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; EXONERATION IN THE ADMINISTRATIVE CASE IS NOT A BAR TO A CRIMINAL PROSECUTION FOR THE SAME OR SIMILAR ACTS WHICH WERE THE SUBJECT OF THE ADMINISTRATIVE COMPLAINT OR VICE VERSA.—** It is well settled that "an administrative case is independent from the criminal action, although both arose from the same act or omission x x x. Given the differences in the quantum of evidence required, the procedure observed, the sanctions imposed, as well as in the objective of the two proceedings, the findings and conclusions in one should not necessarily be binding on the other. Thus, as a rule, exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or vice versa."

2. **ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; EXCLUSIONARY RULE; THE PURPOSE THEREOF IS TO DETER LAW ENFORCEMENT IN ENGAGING IN FISHING EXPEDITIONS, AND ULTIMATELY PROTECT THE RIGHT OF THE PEOPLE AGAINST UNREASONABLE SEARCHES AND SEIZURES.—** The exclusionary rule is found under Section 3 (2), Article III of the 1987 Constitution x x x. The "preceding section" referred to in Section 3 (2) pertains to the guarantee against unreasonable searches and seizures found under Section 2, Article III x x x. According to case law, the exclusionary rule is the "practical means of enforcing the constitutional injunction against unreasonable searches and seizures." x x x In simple terms, the purpose of the exclusionary rule is to deter law enforcement in engaging in fishing expeditions, and ultimately, protect the right of the people against unreasonable searches and seizures.

3. ID.; ID.; ID.; ID.; SHOULD APPLY IN ALL KINDS OF CASES, WHETHER CRIMINAL, CIVIL, OR ADMINISTRATIVE.— [O]ur evolving jurisprudence on the exclusionary rule **culminated in its express incorporation in Section 4 (2), Article IV of the 1973 Constitution**. Significantly, this ensured the firm application of the exclusionary rule in our jurisdiction. As one constitutionalist pointed out, "by making such evidence inadmissible, the Constitution has closed the door to any judicial temptation to erode the rule by distinguishing and splitting hairs." x x x [N]ot only has the exclusionary rule been codified in our Constitution, it is further couched in general and comprehensive language, which is hence, expressive of its overarching force. x x x [T]he exclusionary rule applies to any evidence obtained in violation of Section 2, Article III, *i.e.*, the guarantee against the right to unreasonable searches and seizures, and has the effect of rendering such evidence inadmissible for any purpose in any proceeding. The phrase "for **any** purpose in **any** proceeding" in Section 3 (2), Article III correspondingly reflects — as it is made to implement — the equally expansive "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of **whatever nature and for any purpose**" under Section 2 as above-said. Indeed, the phrase "for **any** purpose in **any** proceeding" in Section 3 (2), Article III means that the exclusionary rule should apply in all kinds of cases, whether criminal, civil, or administrative. It is a cardinal rule in statutory construction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. Likewise, if "the language of the subject constitutional provision is plain and unambiguous, there is no need to resort to extrinsic aids such as records of the Constitutional Commission." In fact, while there is yet no definitive ruling which traverses head-on the exclusionary rule's comprehensiveness, it deserves mentioning that this Court has already applied the same in *Anonymous Letter-Complaint against Morales*, an administrative case, and *Zulueta v. Court of Appeals*, a civil case.

4. ID.; ID.; ID.; ID.; EVIDENCE OBTAINED BY VIRTUE OF A VOID SEARCH WARRANT FALLS WITHIN THE AMBIT OF THE EXCLUSIONARY RULE AND IT ALSO APPLIES TO RENDER INADMISSIBLE THE DIRECT FRUIT OF THE UNLAWFUL SEARCH AND SEIZURE.—

[T]he primary evidence against respondent is the subject drugs seized from him. However, these drugs were obtained by virtue of a void search warrant and hence, fall within the ambit of the exclusionary rule, rendering them inadmissible in evidence. Likewise, the exclusionary rule applies to render inadmissible the results of the confirmatory drug test because it is the direct fruit of the unlawful search and seizure. x x x 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." Section 38 of RA 9165 states that "[a]ny 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**." In this case, respondent's apprehension was based on the drugs illegally seized from him. Without said evidence, there would be no reasonable basis for the apprehending officers to subject respondent to a confirmatory drug test. Thus, the results thereof should be deemed as fruits of the poisonous tree and perforce, should be excluded.

5. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; GRAVE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; ADMISSION OF DRUG USE CONSTITUTES SUBSTANTIAL EVIDENCE FOR ADMINISTRATIVE LIABILITY; CASE AT BAR.— [R]ecords disclose that respondent voluntarily admitted before the public prosecutor during the preliminary investigation that he was a drug user. x x x "[T]he admission was made by respondent during the preliminary investigation stage which is a source independent from the illegal search, seizure, and arrest, and is presumed to have been regularly performed. x x x [T]here is no clear causal relation between the evidence which were illegally obtained and the admission made by respondent. x x x [T]he admission is a distinct and separate piece of evidence that should not be tarnished by the illegal search conducted and hence, cannot be deemed as a fruit of the poisonous tree. Without a doubt, the admission of respondent constitutes substantial evidence to hold him administratively liable for grave

misconduct and conduct prejudicial to the best interest of the service. "Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is justified when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence is not overwhelming or even preponderant."

6. ID.; ID.; ID.; COURT PERSONNEL; THE CONDUCT OF A PERSON SERVING THE JUDICIARY MUST, AT ALL TIMES, BE CHARACTERIZED BY PROPRIETY AND DECORUM AND ABOVE ALL ELSE, BE ABOVE SUSPICION SO AS TO EARN AND KEEP THE RESPECT OF THE PUBLIC FOR THE JUDICIARY.— An admitted drug user has no place in the ranks of the Judiciary. As the Court held in *Office of the Court Administrator v. Reyes*, "all members and employees of the Judiciary are expected to **adhere strictly to the laws of the land, one of which is [RA 9165] which prohibits the use of dangerous drugs**. x x x [T]he conduct of a person serving the judiciary must, at all times, be characterized by propriety and decorum and above all else, be above suspicion so as to earn and keep the respect of the public for the judiciary. The Court would never countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary."

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURE; EXCLUSIONARY RULE; REFERS TO THE PROHIBITION ON UTILIZING ANY EVIDENCE OBTAINED THROUGH AN ILLEGAL SEARCH AND SEIZURE.— The Bill of Rights guarantees the right of people against unreasonable searches and seizure, and declares that any evidence obtained in violation of this right cannot be used for any purpose in any proceeding x x x. This prohibition on utilizing any evidence obtained through an illegal search and seizure is also known as the exclusionary rule, or the fruit of the poisonous tree doctrine, which originated

in *Stonehill v. Diokno*. *Stonehill* overturned the ruling in *Moncado v. People's Court*, which deemed as admissible into evidence the things seized through an illegal search and seizure, in line with the common law rule that a criminal should not be allowed to go scot-free "because the constable has blundered." *Stonehill* emphasized that the abandonment of the *Moncado* doctrine and adoption of the exclusionary rule was the only "practical means of enforcing the constitutional injunction against unreasonable searches and seizures." It pointed out that unreasonable searches and seizures occur when there is no competent evidence to back an application for the issuance of a search warrant and that they are resorted to by government agents as a form of fishing expedition x x x.

2. ID.; ID.; ID.; ID.; THE ADMISSION OF DRUG USE IN CASE AT BAR IS A DERIVATIVE EVIDENCE OBTAINED FROM AN ILLEGAL SEARCH WARRANT AND SHALL BE INADMISSIBLE FOR ANY PURPOSE IN ANY PROCEEDING.— After seven (7) sachets of shabu were allegedly seized from Salazar's beach house, a complaint for violations of Sections 11 and 15 of Republic Act No. 9165 was filed against him. It was during the preliminary investigation of this complaint, occasioned by the sachets of shabu which were eventually suppressed from evidence because of an illegal search warrant, that Salazar supposedly admitted his drug use to the Provincial Prosecutor. x x x Salazar's very presence during the preliminary investigation was brought about by the illegal search warrant. He would not have been subject of a preliminary investigation in the first place if there was no illegal search warrant. Clearly, his purported admission before the Provincial Prosecutor was an indirect result of the illegal search. Thus, under established jurisprudence and the categorical pronouncement of the Constitution, his admission, which was a derivative evidence obtained from an illegal search warrant, "shall be inadmissible for any purpose in any proceeding." Additionally, the Regional Trial Court May 4, 2017 Order, quashing the search warrant and suppressing the seized evidence, included all forms of evidence that resulted from the illegal search, such as testimonial evidence, since they were brought about by virtue of the quashed search warrant x x x.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; FAILURE TO

RESPECT THE RIGHTS OF THE ACCUSED DURING PRELIMINARY INVESTIGATION ALSO RENDERS INADMISSIBLE ANY RESULTING EVIDENCE OBTAINED FROM IT, EVEN SUPPOSEDLY VOLUNTARY CONFESSIONS.— An extrajudicial confession made before the provincial prosecutor enjoys the same safeguards available to an accused under Republic Act No. 7438, or An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof. The safeguard of having a written and signed confession before competent counsel still applies because this right springs from the exclusionary rule. x x x A careful review of the records of the case shows that Salazar was not assisted by counsel during his preliminary investigation before the Provincial Prosecutor. Neither was any written and signed confession on his use of dangerous drugs found or adverted to within the records. x x x [A] person's rights in a preliminary investigation are derived from statute and not the Constitution; hence, such rights are subject to the limitations of procedural law. Furthermore, a preliminary investigation is considered merely preparatory to a trial and not part of a trial; thus, while parties may submit affidavits, they have no right to examine witnesses. Nonetheless, this Court has established in *Sunga* and *People v. Bokingo* that the right to counsel and the requirement of a signed confession with the assistance of a counsel also obtain during preliminary investigation. Moreover, the failure to respect the rights of an accused during preliminary investigation also renders inadmissible any resulting evidence obtained from it, even supposedly voluntary confessions.

4. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF AN ACCUSED; AVAILABLE EVEN BEFORE AN ARREST IS MADE, AS THESE RIGHTS NOT ONLY ENCOMPASS PERSONS ARRESTED, DETAINED, OR UNDER CUSTODIAL INVESTIGATION, BUT ALSO EMBRACE INVITATIONS OR REQUESTS FOR APPEARANCE EXTENDED BY THE STATE AGENTS TO PERSONS SUSPECTED OF COMMITTING CRIMES.—** Any person arrested, detained, or under custodial investigation has the right to be assisted at all times by a competent counsel and the records show that

Salazar was not afforded that right. x x x The fundamental rights of an accused can be found in Article III, Section 14 of the Constitution and these rights follow the accused throughout every stage of the criminal proceedings x x x. Additionally, the rights afforded to an accused are available even before an arrest is made, as these rights not only encompass persons arrested, detained, or under custodial investigation, but also embrace invitations or requests for appearance extended by State agents to persons suspected of committing crimes.

CAGUIOA, *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURE; EXCLUSIONARY RULE; RENDERS INADMISSIBLE ANY EVIDENCE OBTAINED IN VIOLATION OF THE CONSTITUTION, FOR ANY PURPOSE, AND IN ANY PROCEEDING.— Salazar's guilt has **not** been proven by substantial evidence because the pieces of evidence against him, by virtue of the illegality of the search conducted, are covered by the exclusionary rule. x x x Known as the "exclusionary rule," this Constitutional mandate renders inadmissible *any* evidence obtained in violation of the Constitution, for *any* purpose, and in *any* proceeding. Thus, it is immaterial that what is involved here is merely an administrative case — the exclusionary rule still applies as long as it is shown that evidence was obtained in violation of the Constitution. This Constitutional precept also embodies the "fruit of the poisonous tree" doctrine, which had been elucidated by the Court in *People v. Alicando* x x x. [Applied] to the present case, the admission and the confirmatory urine test should be considered as fruits of the poisonous tree because both were obtained as a result of an illegal search. x x x The confirmatory urine test conducted on Salazar was brought about by virtue of Section 38 of Republic Act No. (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002 x x x. A plain reading of Section 38 of R.A. 9165 shows that what triggers the "confirmatory" urine test is the initial apprehension or arrest of the accused. Here, the confirmatory urine test conducted on Salazar was triggered by his arrest occasioned by the search, which was found to be illegal. The only logical conclusion is that if it were not for the illegal search, then the police officers could not have performed

the confirmatory urine test on Salazar. Consequently, contrary to the postulate of the *ponencia*, the urine test **is** a "fruit" of the illegal search. x x x Notwithstanding the pronouncement in *People v. Uy*, as cited by the *ponencia* — that the evidence covered by the exclusionary rule refers to object, not testimonial evidence, which was seized in the course of an illegal search and seizure — it is still my considered view that the admission of Salazar should be considered a fruit of the poisonous tree. The Constitutional provision is clear and unambiguous, leaving no room for interpretation. It provides that ***any*** evidence obtained in violation of its mandate shall be inadmissible for any purpose and in any proceeding. It makes no distinction whatsoever as to the kind of evidence that is to be excluded. More in point too is the ruling of the Court in the landmark case of *Alicando* x x x 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**." In particular, *Alicando* provides that "once the ***primary source*** (the 'tree') is shown to have been unlawfully obtained, ***any secondary or 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**." As applied in this case, the illegal drugs seized is the direct result of the illegal search, while the admission and the confirmatory urine test, are the indirect results of the same illegal search — which are equally inadmissible.

2. ID.; ID.; ID.; ID.; ANY ADMISSION OBTAINED IN VIOLATION THEREOF SHALL BE INADMISSIBLE IN EVIDENCE.— Section 12, Article III of the Constitution, provides for another exclusionary rule. x x x In this case, there is no showing by the *ponencia* that Salazar was apprised of his Constitutional rights when he made the admission. Also, the records do not disclose whether Salazar was assisted by counsel during his preliminary investigation before the Provincial Prosecutor. Nor was there any showing of a valid waiver of his constitutional rights. Consequently, Salazar's admission should be declared inadmissible for having been obtained in violation of the exclusionary rule under Section 12, Article III of the Constitution. Additionally, neither was any written and signed confession on Salazar's use of dangerous drugs found nor adverted to within the records, in violation of R.A. 7438, thereby rendering the same inadmissible under said law.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; REFERS TO THE QUANTUM OF PROOF IN ADMINISTRATIVE CASES.— [E]ven if it were to be conceded that the admission is not covered by the exclusionary rule under either Section 3(2) or Section 12 of Article III of the Constitution, **the admission made by Salazar is still not enough to hold him liable**. Based on the records, Salazar's admission was only briefly mentioned in the Provincial Prosecutor's Resolution finding probable cause against him x x x. In evaluating Salazar's admission, I am of the opinion that the same is not enough to hold him criminally or administratively liable. It is fundamental that the quantum of proof in administrative cases is substantial evidence, which is more than a mere scintilla of evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise. As applied in this case, Salazar's admission cannot even be considered as substantial evidence because he made a disclaimer that he has not used drugs since 2014 (the admission in question having been made in 2015). Hence, **even if Salazar's admission was admissible, it does not carry the probative value that would be enough to satisfy even the lowest quantum of proof required to hold him administratively liable**.

4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURE; EXCLUSIONARY RULE; FAILURE TO MAKE A TIMELY OBJECTION TO THE INTRODUCTION OF THE CONSTITUTIONALLY PROSCRIBED EVIDENCE IS INCONSEQUENTIAL TO THE APPLICABILITY OF THE EXCLUSIONARY RULE, SINCE THE LACK OF OBJECTION DOES NOT SATIFY THE HEAVY BURDEN OF PROOF THAT RESTED ON THE PROSECUTION.— Salazar's lack of objection is totally inconsequential to the applicability of the exclusionary rule. It is immaterial that the accused failed to make a timely objection to the introduction of the constitutionally proscribed evidence **since the lack of objection does not satisfy the heavy burden of proof that rested on the prosecution**. As held in *People v. Samontañez*, "[i]n the absence of a valid waiver, any confession obtained from the [accused] during the police custodial

investigation relative to the crime, including any other evidence secured by virtue of the said confession is inadmissible in evidence **even if the same was not objected to** during the trial by the counsel of the [accused]." Additionally, even if the admission or confession contains a grain of truth, but it was made without following the mandate of the Constitution, the same becomes inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given.

D E C I S I O N

***Per Curiam*:**

No less than the Constitution mandates that a public office is a public trust and 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.

The image of the court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat. The conduct of a person serving the Judiciary must, *at all times*, be characterized by propriety and decorum *and above all else, be above suspicion so as to earn and keep the respect of the public for the Judiciary.* The Court would never countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability *and diminish or even just tend to diminish the faith of the people in the Judiciary*.[1] (Emphasis ours)

No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than the Judiciary. The Court is mindful that any act of impropriety on the part of judicial officers and personnel, be they the highest or the lowest members of the work force, can greatly erode the people's confidence in our justice system. **Hence, it is the sacred duty of every worker in the Judiciary to maintain the good name and**

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[1] *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug ("Shabu") of Reynard B. Castor, Electrician II, Maintenance Division, Office of Administrative Services*, 719 Phil. 96, 101-102 (2017).

standing of the courts. Every employee of the court should be an exemplar of integrity, uprightness, and honesty. **The Court will not hesitate to impose the ultimate penalty on those who have fallen short of their accountabilities**.[2] (Emphasis ours)

Before this Court are two consolidated administrative matters against Rogelio M. Salazar, Jr. (respondent), Sheriff IV, Regional Trial Court (RTC), Office of the Clerk of Court, Boac, Marinduque, for grave misconduct and conduct prejudicial to the best interest of the service.

Factual Antecedents

These administrative matters stemmed from criminal cases filed against respondent for violation of Republic Act (RA) No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002". Specifically, Criminal Case No. 63-15 was filed for violation of Section 11 (Illegal Possession) in relation to Section 28 of RA 9165; while Criminal Case No. 62-15 was filed for violation of Section 15 (Prohibited Use) in relation to Section 28 of the same Act.[3] Also, I.S. No. XV-05-INV-15C-087 was filed against respondent for violation of Sections 5 (Illegal Sale) and 15 of the said Act but was, however, dismissed by the Provincial Prosecutor and now the subject of an automatic review before the Department of Justice (DOJ).[4]

The factual backdrop of the said cases are as follows:

On March 7, 2015, pursuant to Search Warrant No. 5043, the Philippine Drug Enforcement Agency (PDEA) and Philippine National Police (PNP) searched respondent's property, which resulted in the confiscation of seven plastic sachets, later on found to be containing a total of 9.4993 grams of methamphetamine hydrochloride, otherwise known as "*shabu*". Consequently, respondent was arrested and detained. The

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[2] *Security and Sheriff Division, Sandiganbayan v. Ronald Allan Gole R. Cruz*, A.M. No. SB-17-24-P, July 11, 2017.

[3] *Rollo* (A.M. No. 15-05-136-RTC), p. 67.

[4] *Id*. at 69.

confirmatory test conducted on respondent's urine sample likewise yielded positive of *shabu*. The Provincial Prosecutor also noted that respondent admitted the use of dangerous drugs.[5]

On April 21, 2015, Criminal Case Nos. 63-15 and 62-15 were filed. No bail was recommended for the respondent's release.[6] Meanwhile, as a result of an alleged buy-bust operation, I.S. No. XV-05-INV-15C-087 was also filed.[7]

Documents relative to Criminal Case No. 63-15 were then forwarded to the Office of Administrative Services (OAS), Office of the Court Administrator (OCA). Pursuant to the Court *En Banc* Resolution dated March 12, 1981, which authorized the OCA to initiate *motu proprio* the filing of administrative proceedings against judges and/or employees of the inferior courts who have been convicted and/or charged before the Sandiganbayan or the courts, the OCA charged respondent with grave misconduct and conduct prejudicial to the best interest of the service, which case was then docketed as A.M. No. 15-12-379-RTC.[8]

In a Report[9] dated November 6, 2015 in the said administrative matter, the OCA found respondent's acts to constitute grave misconduct and conduct prejudicial to the best interest of the service. Hence, it recommended that the case be re-docketed as a regular administrative matter; that respondent be ordered suspended from service pending the outcome of the criminal case or until further order from the Court; and, that respondent be ordered to comment on the administrative charge. The Court, in its April 11, 2016 Resolution,[10] adopted and approved the OCA's findings and recommendation. Pursuant to the said April

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

[6] *Id*. at 69.

[7] *Id*.

[8] *Rollo* (A.M. No. P-16-3450), p. 148.

[9] *Id*. at 1-2.

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

11, 2016 Resolution, the case was re-docketed as A.M. No. P-16-3450.

Meanwhile, P/Supt. Lorenzo Junio Holanday, Jr., Provincial Director, Marinduque Police Provincial Office, informed the Court, through a letter[11] dated March 25, 2015, of the Special Report on respondent's arrest and the criminal cases filed against the latter for violations of RA 9165. This brought about A.M. No. 15-05-136-RTC.

In a Report[12] dated January 28, 2016 in A.M. No. 15-05-136-RTC, the OCA likewise found respondent's acts to be constitutive of grave misconduct and conduct prejudicial to the best interest of the service.

In the main, respondent's separate Comments[13] in the instant administrative matters constitute denial of the charges against him in the criminal cases and allegations of evidence-planting and frame-up.

Upon recommendation of the OCA, the Court, in its April 11, 2016 Resolution,[14] suspended respondent from service pending the final outcome of the criminal case filed against him or until further order of this Court considering that the evidence of guilt is *prima facie* strong.

In a letter[15] dated August 11, 2016, respondent requested that the instant administrative cases be consolidated and that the cases be submitted for resolution based on the pleadings filed.

On April 7, 2017, the OCA issued a Memorandum[16] regarding A.M. No. 15-05-136-RTC, with the following recommendations:

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[11] *Rollo* (A.M. No. 15-05-136-RTC), pp. 2-3.

[12] *Id*. at 54-57.

[13] *Rollo* (A.M. No. 15-05-136-RTC), pp. 7-9 and *rollo* (A.M. No. P-16-3450), pp. 10-32.

[14] *Rollo* (A.M. No. P-16-3450), p. 8.

[15] *Rollo* (A.M. No. 15-05-136-RTC), pp. 61-63.

[16] *Id*. at 67-75.

1. **A.M. No. P-16-3450** xxx and **A.M. No. 15-05-136-RTC** be **CONSOLIDATED**;

2. Respondent Rogelio M. Salazar, Jr., Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Boac, Marinduque be found **GUILTY** in both A.M. No. P-16-3450 and A.M. No. 15-05-136-RTC of grave misconduct and conduct prejudicial to the best interest of the service pursuant to Sections 46(A)(3) and (B)(8), respectively, under Rule 10 of the Revised Rules for Administrative Cases in the Civil Service; and

3. Respondent Salazar, Jr. be meted out the penalty of **DISMISSAL** from the service with forfeiture of all benefits, except accrued leave credits, if any, and with prejudice to re-employment in any branch or instrumentality of the government, including government-owned or controlled corporations.

In its Memorandum, the OCA emphasized that only substantial evidence is needed in administrative proceedings; that administrative liability is separate and distinct from criminal liability; and that in administrative proceedings, the Court is not bound by technical rules of procedure and evidence. The OCA also noted that the instant administrative cases are not intended to preempt the DOJ's review of the dismissal of I.S. No. XV-05-INV-15C-087 nor to determine respondent's guilt in Criminal Case Nos. 62-15 and 63-15.[17]

The OCA found that the evidence on record, which include, the undisputed fact that respondent was found to be positive for *shabu* in the drug test following his arrest, and that the finding of probable cause in the criminal charges against him constitute more than substantial evidence to hold respondent administratively liable for grave misconduct and conduct prejudicial to the best interest of service. The OCA grounded its conclusion on Civil Service Memorandum Circular No. 13, series of 2010, which provides that any official or employee found positive for use of dangerous drugs shall be subjected to disciplinary/administrative proceedings with a penalty of dismissal from the service for the first offense pursuant to Section

[17] *Id*. at 69-71.

46(19) of Book V of Executive Order No. 292 and Section 22(c) of its Omnibus Rules.[18]

On even date, the OCA also issued a Memorandum[19] as regards A.M. No. P-16-3450, with the same findings and recommendation as in A.M. No. 15-05-136-RTC above-stated.

In a letter[20] dated August 25, 2017, respondent manifested to this Court that on May 4, 2017, Judge-Designate Dennis R. Pastrana (Judge Pastrana) of the RTC of Boac, Marinduque, granted his Motion to Quash Search Warrant with Motion to Suppress Evidence for lack of probable cause and non-conformity with established constitutional rules and statutory guidelines in the implementation of such search warrant.[21] In the said May 4, 2017 Order, Judge Pastrana found that the officers who applied for the search warrant committed deliberate falsehoods to obtain the same. Thus, Judge Pastrana ruled that due to the nullity of the search warrant, the search conducted on its authority is likewise null and void and with the inadmissibility of the drugs seized from respondent's home, there is no more evidence to support his conviction.

Respondent further manifested that his motion to dismiss the criminal cases against him was also granted by the RTC on August 18, 2017. In the said August 18, 2017 Order,[22] Judge Pastrana added that even the urine test conducted on the respondent, having been done as a result of an arrest occasioned by the search is also inadmissible like the seized drugs for being fruits of the poisonous tree.

Thus, in his August 25, 2017 letter,[23] respondent requested for the dismissal of the instant administrative cases against him

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[18] *Id*. at 73.

[19] *Rollo* (A.M. No. P-16-3450), pp. 148-154.

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

[21] *Id*. at 168-177.

[22] *Id*. at 178-179.

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

in view of the dismissal of the criminal cases, revocation of his suspension order, and payment of his back salaries and other benefits withheld during his suspension and detention.

The Issue

The pivotal issue for this Court's resolution is whether or not respondent should be held administratively liable despite dismissal of the related criminal cases against him.

This Court's Ruling

Respondent was charged with illegal sale, possession, and use of illegal drugs. Respondent, however, pounds on the fact that the criminal cases against him from which these administrative cases rooted, had already been dismissed by virtue of the quashal of the search warrant and the suppression of the evidence taken by virtue of the said warrant. It is the respondent's position that since the evidence obtained through such search warrant were declared illegal and inadmissible by the RTC, the same cannot likewise be used in the instant administrative cases. Hence, respondent argued that the administrative cases against him has no leg to stand on and must be dismissed.

We do not agree.

At the outset, We find it necessary to first place the instant case in its proper context.

This is an administrative case against a Sheriff of the court charged with the administrative offenses of grave misconduct and conduct prejudicial to the best interest of the service as an offshoot of a prior arrest and criminal charges for violations of RA 9165 or the Comprehensive Dangerous Drugs Act of 2002 against said officer.

Owing to the administrative nature of the instant case, several important considerations must be taken into serious account: ***first***, the finding of administrative guilt is independent of the results of the criminal charges against the Sheriff; ***second***, the Sheriff stands scrutiny and treated not as an accused in a criminal case, but as a respondent court officer; ***third***, the Supreme Court,

in taking cognizance of this administrative case, acts not as a prosecutor, but as the administrative superior specifically tasked to discipline its Members and personnel; ***fourth***, the quantum of proof required for a finding of administrative guilt remains to be substantial evidence; and ***fifth***, the paramount interest sought to be protected in an administrative case is the preservation of the Constitutional mandate that a public office is a public trust.

Well settled is the rule that an absolution from a criminal charge is not a bar to an administrative prosecution or vice-versa.[24] Evidence to support a conviction in a criminal case is not necessary, and the dismissal of the criminal case against the respondent is not a ground for the dismissal of the administrative case. It bears stressing that a criminal case is different from an administrative case and each must be disposed of according to the facts and the law applicable to each case.[25] Thus, the dismissal of Criminal Case Nos. 62-15 and 63-15 does not automatically entail the dismissal of the instant administrative actions.

The fact that the pieces of evidence obtained from the voided search were declared inadmissible for being fruits of the poisonous tree will not result to the outright dismissal of the administrative cases at bar.

It is necessary to emphasize that to sustain a finding of administrative culpability, only substantial evidence is required, that is, more than a mere scintilla of relevant evidence as a reasonable mind might accept as adequate to support a conclusion,[26] even if other minds equally reasonable might conceivably opine otherwise.[27] In the case of *Ombudsman Marcelo v. Bungubung and CA*,[28] this Court explained:

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[24] *Office of the Court Administrator v. Enriquez*, 291-A Phil. 1 (1993).

[25] *Office of the Court Administrator v. Lopez*, 654 Phil. 602, 607 (2011).

[26] *Hon. Ombudsman Marcelo v. Bungubung*, *et al.,* 575 Phil. 538, 557 (2008).

[27] *Dadulo v. Court of Appeals,* 549 Phil. 872, 877 (2007).

[28] *Hon. Ombudsman Marcelo v. Bungubung*, *et al*., *supra* note 26, *id*. at 557-558.

xxx The standard of substantial evidence is satisfied when there is **reasonable ground to believe that respondent is responsible for the misconduct complained of**, even if such evidence might not be overwhelming or even preponderant. While substantial evidence does not necessarily import preponderance of evidence as is required in an ordinary civil case, or evidence beyond reasonable doubt as is required in criminal cases, **it should be enough for a reasonable mind to support a conclusion**. xxx(citations omitted and emphasis ours)

The question now is, taking into consideration the inadmissibility in the criminal cases of the drugs obtained by virtue of the search warrant and the positive result of the confirmatory test conducted on the respondent upon arrest, is there substantial evidence to hold the respondent administratively liable in this case?

We answer in the affirmative.

Respondent's admission of drug use, albeit with an allegation that he had stopped doing it as a promise to his mother on her deathbed in December 2014,[29] coupled with the confirmatory test that yielded a positive result, are more than substantial evidence to support the conclusion that respondent is a drug-user, which would warrant this Court's exercise of its disciplinary power over court personnel.

First. Respondent's admission of drugs use during the inquest cannot be considered as a fruit of the poisonous tree and as such, may legally and validly be admitted as evidence in the instant administrative case.

It is noteworthy that nowhere in the trial court's order quashing the search warrant and dismissing the criminal cases did the trial court exclude the respondent's admission of drug use. This must necessarily be so for two reasons:

(1) The admission partakes of a testimonial evidence, and not a "personal property" that can be the subject of a search and seizure.

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[29] *Rollo* (A.M. No. 15-05-136-RTC), p. 49.

Section 3, Rule 126 of the Rules of Court enumerates the personal property that may be seized for which a search warrant may be issued: (a) the subject of the offense; (b) stolen or embezzled and other proceeds, or fruits of the offense; or (c) used or intended to be used as the means of committing an offense. In *Retired SPO4 Bienvenido Laud v. People*[30], We explained that "personal property" as used under the Rules pertain to the thing's mobility. Referencing Article 416 of the Civil Code, We expounded that in general, all things which can be transported from place to place are deemed to be personal property. Testimonial evidence, therefore, cannot be treated as a "fruit" of the quashed search warrant. *People v. Uy*[31] was emphatic in saying that the "inadmissible evidence termed as the fruit of the poisonous tree" refers to "object, not testimonial, evidence" and even more constricting when it held that "it refers to an object seized in the course of an illegal search and seizure."

> (2) The admission was already far removed from the illegal search warrant that it cannot be regarded as a fruit of the poisonous tree.

The lapse of time from the illegal search and the admission itself sufficiently "attenuate[s] the link."[32] It should be stressed that the adjudged irregularity in the application and implementation of the search warrant does not have any clear causal relation between the evidence which was illegally obtained by virtue of such quashed warrant and respondent's admission before a separate and distinct proceeding and authority. Stating it in a different manner, the admission cannot be considered as a logical consequence of the latter. As eloquently put by one Justice's opinion, "[t]he admission was a voluntary act of respondent; it was not as if he was put into such an inescapable situation wherein he would be forced to admit to his guilt, since nothing precluded him from contesting the admissibility – as he did, in fact, contest the admissibility – of the evidence illegally obtained from him. Thus, as respondent had valid claims and

[30] 747 Phil. 503, 524 (2014).

[31] 508 Phil. 637, 655 (2005).

[32] *Hudson v. Michigan,* 547 US 586, 592 (2006).

defenses, it would be a stretch to conclude that the admission made during the preliminary investigation was a direct result of the evidence illegally seized from him. That being said, the admission is a distinct and separate piece of evidence that should not be tarnished by the illegal search conducted and hence, cannot be deemed as a fruit of poisonous tree."

In the same vein, it would also be not logical nor legal to find nexus between the arrest which resulted from the illegal search and seizure and the admission during the preliminary investigation. The admission was made by respondent during the preliminary investigation stage which is a source independent from the illegal search, seizure, and arrest, and is presumed to have been regularly performed. While the search, seizure, arrest and preliminary investigation may be sequential, the admission made during the preliminary investigation was not a necessary, logical, and automatic consequence of the search, seizure and resulting arrest. We must consider that respondent may, or may not have made such admission despite the search and the arrest. Notably, respondent never questioned the voluntariness of such admission as well as the regularity of the preliminary investigation.

In *Wong Sun v. United States*,[33] the U.S. Supreme Court, under the "independent source exception" – admits evidence that was discovered through an independent source sufficiently distinguishable to be purged of the primary taint. If the evidence is not obtained directly from the violation, it is freed from the initial taint of the violation.[34]

In addition, the admission was made before the Prosecutor (and not before the erring police agents) who, concededly, had no participation in the illegal search and arrest. The Prosecutor, during the preliminary investigation, was regularly performing his duty, relying upon the validity of the search warrant and

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[33] 371 U.S. 471 (1963).

[34] *The Journal of Criminal Law & Criminology, Arizona v. Evans: Expanding Exclusionary Rule Exceptions and Contracting Fourth Amendment Protection by Heather A. Jackson.*

respondent's arrest. Hence, respondent's drug use was discovered by the Prosecutor independently and in good faith.

Verily, the admissibility of respondent's admission in the instant administrative case cannot be questioned. Said admission is a separate and distinct piece of evidence that should not be tarnished by the illegal search and thus, cannot be regarded as a fruit of the poisonous tree. Further, it must be stressed that there is no allegation, much less proof, that any of respondent's basic rights in giving such admission were violated. Lastly, respondent's admission of his drug use is relevant for purposes of the present administrative case and as such, it may properly be considered by this Court in this administrative proceeding as substantial evidence.

Second. The legal basis of the admissibility of the result of the confirmatory drug test cannot, likewise, be denied.

The procedure for laboratory examination or test is outlined in Section 38[35] of RA 9165. Section 38 provides that when there is reasonable ground to believe that an apprehended or arrested offender is under the influence of dangerous drugs, such offender shall be subjected to a screening laboratory examination or test. The positive results of a screening test

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[35] Section 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.

shall be challenged within fifteen (15) days from the receipt of the results. The positive screening test result is not valid in a court of law unless confirmed.

Following the prescribed procedure, the confirmatory urine test is therefore not the direct or indirect result of the illegal search; rather, it comes into play not only upon the apprehension or arrest of the offender, but also, (1) when the apprehending or arresting officer has reasonable ground to believe that the offender is under the influence of dangerous drugs; and (2) only after a screening laboratory test yields a positive result. The basis for the confirmatory drug test was, in fact, a reasonable belief of drug use and a positive screening test, both of which are neither a necessary nor automatic consequence of an illegal search.

Parenthetically, Section 36, Article III of RA 9165 provides for the mandatory drug testing of:

x x x x x x x x x

(d) Officers and employees of public and private offices. – Officers and employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company's work rules and regulations, which shall be borne by the employer, for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of Article 282 of the Labor Code and pertinent provisions of the Civil Service Law;

x x x x x x x x x

(f) All persons charged before the prosecutor's office with a criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day shall have to undergo a mandatory drug test; and

x x x x x x x x x

In addition to the above-stated penalties in this Section, those found to be positive for dangerous drugs use shall be subject to the provisions of Section 15[36] of this Act.

Further, in A.M. No. 06-1-01-SC dated January 17, 2006, the Court has adopted guidelines for a program to prevent drug use and eliminate the hazards of drug abuse in the Judiciary, specifically in the first and second level courts. Its objectives are as follows:

1. To detect the use of dangerous drugs among lower court employees, impose disciplinary sanctions, and provide administrative remedies in cases where an employee is found positive for dangerous drug use.

2. To discourage the use and abuse of dangerous drugs among first and second level court employees and enhance awareness of their adverse effects by information dissemination and periodic random drug testing.

3. To institute other measures that address the menace of drug abuse within the personnel of the Judiciary.

There is thus no reason to turn a blind eye, for purposes of this administrative proceeding, on the results of the confirmatory urine test when RA 9165 itself, as well as this Court's guidelines, sanction the conduct of a mandatory random drug testing of officers and employees of public and private offices.[37] The

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[36] Section 15. *Use of Dangerous Drugs*. – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): *Provided*, That this Section shall not be applicable where the person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case the provisions stated therein shall apply.

[37] Section 36. *Authorized Drug Testing*. — x x x

The following shall be subjected to undergo drug testing:

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character of the drug test being made at random actually dispenses with the usual requirement of probable cause. In the case of *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*,[38] We upheld the validity and constitutionality of the mandatory but random drug testing of officers and employees of both public and private offices. This is allowed "for purposes of reducing the risk in the workplace." This legitimate intrusion of privacy in the workplace is upheld because an employee's privacy interest is "circumscribed by the company's work policies, the collective bargaining agreement, if any, entered into by management and the bargaining unit, and the inherent right of the employer to maintain discipline and efficiency in the workplace."[39] Specifically, as regards public officers, this Court pronounced in *SJS* that:

> Like their counterparts in the private sector, government officials and employees also labor under reasonable supervision and restrictions imposed by the Civil Service law and other laws on public officers, all enacted to promote a high standard of ethics in the public service. And if RA 9165 passes the norm of reasonableness for private employees, the more reason that it should pass the test for civil servants, who, by constitutional command, are required to be accountable at all times to the people and to serve them with utmost responsibility and efficiency.[40]

Thus, despite the absence of probable cause, and the basis being only a positive drug test result, an employer is allowed by law to pursue an administrative case against the public or

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(d) Officers and employees of public and private offices. – Officers and employees of public and private offices, whether domestic or overseas, shall be subjected to undergo a random drug test as contained in the company's work rules and regulations, which shall be borne by the employer, for purposes of reducing the risk in the workplace. Any officer or employee found positive for use of dangerous drugs shall be dealt with administratively which shall be a ground for suspension or termination, subject to the provisions of Article 282 of the Labor Code and pertinent provisions of the Civil Service Law;

x x x x x x x x x

[38] 591 Phil. 393 (2008).

[39] *Social Justice Society (SJS) v. Dangerous Drugs Board, et al., supra* note 38 at 414.

[40] *Id*. at 417.

private officer or employee and thereafter, to suspend or terminate them.

Notably, in the instant administrative matter, respondent never questioned the authenticity, validity, and regularity of Chemistry Report No. CRIMDT-005-15[41] of the Marinduque Provincial Crime Laboratory Office. No objection or question was raised as to the regularity of the conduct of the confirmatory test. The finding of respondent's positive use of methamphetamine hydrochloride or *shabu* remains unrebutted. Certainly, such compelling evidence cannot merely be ignored.

The foregoing pieces of evidence thus constitute more than substantial evidence that respondent was found positive for illegal drugs use. The confirmatory drug test which yielded a positive result confirms respondent's admission of drug use and also, reflects respondent's propensity to lie as it negates his statement in his admission that he already stopped using illegal drugs.

With the admissibility, relevance, and probative value of the subject evidence being established, We now proceed to rule on respondent's infraction and the proper sanction therefor.

Misconduct has been defined as:

> xxx a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, unlawful behavior, willful in character, improper or wrong behavior. The misconduct is grave if it involves any of the additional elements of corruption, willful intent to violate the law, or to disregard established rules, which must be established by substantial evidence. As distinguished from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in a charge of grave misconduct.[42]

There is no doubt that the use of prohibited drugs constitute grave misconduct. It is a flagrant violation of the law, in fact

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[41] *Rollo* (A.M. No. 15-05-136-RTC), p. 51.

[42] *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug of Castor, supra* note 1, *id.* at 100-101.

a crime in itself, thus considered as grave misconduct. In *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug ("Shabu") of Reynard B. Castor, Electrician II, Maintenance Division, Office of Administrative Services*,[43] the Court ruled that under Section 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service (RRACCS), grave misconduct is a *grave offense* punishable by dismissal even for the first offense. Also, under Civil Service Memorandum Circular No. 13, series of 2010,[44] any official or employee found positive for use of dangerous drugs shall be subjected to disciplinary/administrative proceedings with a penalty of dismissal from the service at first offense pursuant to Section 46(19) of Book V of Executive Order (E.O.) 292 and Section 22(c) of its Omnibus Rules Implementing Book V of E.O. No. 292 and other pertinent civil service laws.[45]

Further, undeniably, respondent's conduct tarnished the very image and integrity of the Judiciary,[46] constitutive of a conduct prejudicial to the best interest of the service. Conduct prejudicial to the best interest of the service is classified as a grave offense under Section 22(c) of the Omnibus Rules, with a corresponding penalty of suspension for six (6) months and one (1) day to one (1) year for the first offense, and the penalty of dismissal for the second offense.

Section 50 of the RRACCS provides:

> Section 50. *Penalty for the Most Serious Offense*. – If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

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[43] *Id*. at 101.

[44] Guidelines for a Drug-Free Workplace in the Bureaucracy.

[45] *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug ("Shabu") of Reynard B. Castor, Electrician II, Maintenance Division, Office of Administrative Services*, *supra* note 1.

[46] *Id.* at 101.

Finding respondent guilty of both grave misconduct and conduct prejudicial to the best interest of the service, We find the penalty of dismissal for grave misconduct, the most serious offense in this case, proper, pursuant to the aforecited provision.[47] Besides, respondent's propensity to lie as above-mentioned, which bolsters a finding of moral turpitude, thus aggravating the offense, cannot go unnoticed.

In all, the absurd consequences of excluding the seized evidence in this administrative case, constrain Us to hold respondent Sheriff administratively liable. Here is an officer of the court and an agent of law who is an admitted drug-user as evidenced by his admission during the preliminary investigation and the positive result of his confirmatory drug test, who will walk scot-free and whose claimed right to hold his public office will be sustained by this Court if We will heed to the dissent and dismiss these administrative cases merely because the related criminal cases were dismissed due to the quashal of the search warrant. We have, in the past, meted severe penalties against erring Court employees on the basis of mere affidavits or on mere allegations spelled in the pleadings filed. There is no reason for the Court to treat the instant administrative case differently, when the evidence is far more compelling.

We always have to keep in mind the primordial consideration in resolving disciplinary actions. The paramount interest sought to be protected in an administrative case is the preservation of the Constitutional mandate that a public office is a public trust. It must be remembered that no person has a vested right to a public office, the same not being property within the contemplation of the constitutional guarantee. In the case of *Office of the Court Administrator v. Reyes, et al.*,[48] where We dismissed an RTC clerk mainly for yielding a positive result in a drug test, We ruled:

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[47] *Laspiñas, et al. v. Judge Banzon*, A.M. No. RTJ-17-2488, February 21, 2017.

[48] 635 Phil. 490 (2010).

This Court is a temple of justice. Its basic duty and responsibility is the dispensation of justice. As dispensers of justice, all members and employees of the Judiciary are expected to adhere strictly to the laws of the land, one of which is Republic Act No. 9165 which prohibits the use of dangerous drugs.

The Court has adhered to the policy of safeguarding the welfare, efficiency, and well-being not only of all the court personnel, but also that of the general public whom it serves. The Court will not allow its front-line representatives xxx to put at risk the integrity of the whole judiciary. xxx.[49]

This Court's mandate to preserve and maintain the public's faith in the Judiciary, as well as its honor, dignity, integrity, can only be achieved by imposing strict and rigid standards of decency and propriety governing the conduct of Justices, judges, and court employees. Thus, it is only by weeding out the likes of respondent from the ranks that We would be able to achieve such objective.

WHEREFORE, finding Rogelio M. Salazar, Jr., Sheriff IV, Regional Trial Court – Office of the Clerk of Court, Boac, Marinduque, liable for grave misconduct and conduct prejudicial to the best interest of the service due to his drug use, the Court orders his **DISMISSAL** from service with **FORFEITURE** of all benefits, except accrued leave credits, and with prejudice to reemployment in any branch or instrumentality of the government including government-owned or controlled corporations. This decision is immediately executory.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Jardeleza, Tijam, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., and *Hernando, JJ.,* concur.

Leonen and Caguioa, JJ., see dissenting opinions.

Carandang, J., on leave.

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[49] *Id*. at 498-499.

SEPARATE CONCURRING OPINION

PER CURIAM:

I.

I concur. Respondent Rogelio M. Salazar, Jr. (respondent) should be held administratively liable for grave misconduct and conduct prejudicial to the best interest of the service in view of his admitted drug use, and thus, ought to be dismissed from service. I do, however, find it fitting to expound on the parameters of the exclusionary rule under Section 3 (2), Article III of the 1987 Constitution in order to address respondent's averments in his August 25, 2017 letter[1] to this Court.

To recount, in said letter, respondent requested for the dismissal of the instant administrative cases due to the prior dismissal of Criminal Case Nos. 62-15 (for violation of Section 15 in relation to Section 28 of Republic Act No. [RA] 9165) and 63-15 (for violation of Section 11 in relation to Section 28 of RA 9165) after the Regional Trial Court (RTC) ruled that the drugs seized under the void search warrant, as well as the fruits thereof (*i.e.*, the results of the confirmatory drug test), were inadmissible in evidence by operation of the exclusionary rule.[2] Notably, the documents relative to the foregoing criminal cases were forwarded to the Office of Administrative Services, Office of the Court Administrator and hence, spurred these administrative cases against respondent.[3] Thus, as presented in the *ponencia*, "[i]t is respondent's position that since the evidence obtained through such search warrant were declared illegal and inadmissible by the RTC, the same cannot likewise be used in the instant administrative cases [which hence] have no leg to stand on and must be dismissed."[4]

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[1] *Rollo* (A.M. No. P-16-3450), pp. 163-164.

[2] *Ponencia*, pp. 5-6.

[3] *Id*. at 3.

[4] *Id*. at 6.

II.

It is well settled that "an administrative case is independent from the criminal action, although both arose from the same act or omission x x x. Given the differences in the quantum of evidence required, the procedure observed, the sanctions imposed, as well as in the objective of the two proceedings, the findings and conclusions in one should not necessarily be binding on the other. Thus, as a rule, exoneration in the administrative case is not a bar to a criminal prosecution for the same or similar acts which were the subject of the administrative complaint or vice versa."[5]

Nevertheless, the demarcations between administrative and criminal cases do not negate the general application of the exclusionary rule to both of these cases under the Constitution's present formulation.

The exclusionary rule is found under Section 3 (2), Article III of the 1987 Constitution, to wit:

> Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
>
> **(2) Any evidence obtained in violation of this or the preceding section shall be inadmissible <u>for any purpose in any proceeding</u>.** (Emphasis and underscoring supplied)

The "preceding section" referred to in Section 3 (2) pertains to the guarantee against unreasonable searches and seizures found under Section 2, Article III:

> Section 2. **The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures <u>of whatever nature and for any purpose</u>** shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to

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[5] *Jaca v. People of the Philippines,* 702 Phil. 210, 250 (2013).

be searched and the persons or things to be seized. (Emphasis and underscoring supplied)

According to case law, the exclusionary rule is the "practical means of enforcing the constitutional injunction against unreasonable searches and seizures."[6] In the language of Judge Learned Hand:

> As we understand it, the reason for the exclusion of evidence competent as such, which has been unlawfully acquired, is that exclusion is the only practical way of enforcing the constitutional privilege. In earlier times the action of trespass against the offending official may have been protection enough; but that is true no longer. Only in case the prosecution which itself controls the seizing officials, knows that it cannot profit by their wrong, will that wrong be repressed.[7]

In simple terms, the purpose of the exclusionary rule is to deter law enforcement in engaging in fishing expeditions,[8] and ultimately, protect the right of the people against unreasonable searches and seizures.

Our constitutional guarantee against unreasonable searches and seizures is an almost faithful reproduction of the Fourth Amendment to the United States of America (US) Constitution, *viz*.:

> ARTICLE [IV] (Amendment 4 - Search and Seizure) The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

However, it should be highlighted that under the Fourth Amendment, the phrase "of whatever nature and for any purpose" does not appear as a qualifier to the above-stated right.

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[6] *Stonehill v. Diokno*, 126 Phil. 738, 750 (1967).

[7] *Id*.

[8] *People v. Cogaed*, 740 Phil. 212 (2014).

Furthermore, the US Constitution does not contain a corresponding exclusionary rule. Tracing its origins from the cases of *Boyd v. United States* (*Boyd*)[9] and *Weeks v. United States*,[10] the exclusionary rule in the US has been regarded as a "prophylactic doctrine"[11] created by the Judiciary in relation to the Fourth and Fifth Amendments.[12] As there was no standard exclusionary rule codified in the US Constitution, it therefore appears that its application – particularly, in administrative disciplinary cases – remains nuanced by the attending circumstances.

To illustrate, in *Department of Transportation v. State Personnel Board*,[13] the Court of Appeal of the Second District of California refused to apply the exclusionary rule since the social consequences of applying the same did not outweigh the effect thereof on the integrity of the judicial process. Thus, the court did not favor its application to shield an erring government employee from administrative sanction.

On the other hand, in *Dyson v. State Personnel Board*,[14] the Court of Appeal of the Third Appellate District of California applied the exclusionary rule, holding that "because of the particular nature of the investigation of this case and the extent of agency involvement, x x x the exclusionary rule applies to remedy the agency invasion of its employee's constitutional rights."

Meanwhile, in *City of Omaha v. Savard-Henson*,[15] the Court of Appeals of Nebraska opined that the exclusionary rule should

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[9] 116 U.S. 616, 6 S. Ct. 524, 29 L. Ed. 746, 1886 U.S. LEXIS 1806, 3 A.F.T.R. (P-H) 2488.

[10] 232 U.S. 383, 34 S. Ct. 341, 58 L. Ed. 652, 1914 U.S. LEXIS 1368.

[11] See *Michigan v. Tucker*, 417 U.S. 433, 94 S. Ct. 2357, 41 L. Ed. 2d 182, 1974 U.S. LEXIS 71.

[12] *United States v. Herrera*, 2006 U.S. App. LEXIS 9830, 444 F.3d 1238.

[13] 178 Cal. App. 4th 568, 100 Cal. Rptr. 3d 516, 2009 Cal. App. LEXIS 1690, 158 Lab. Cas. (CCH) ₱60,883.

[14] 213 Cal. App. 3d 711, 262 Cal. Rptr. 112, 1989 Cal. App. LEXIS 886.

[15] 9 Neb. App. 561, 615 N.W.2d 497, 2000 Neb. App. LEXIS 243.

not be extended to administrative proceedings where its purpose of deterring police conduct would not be served. Nevertheless, if the balancing test finds that the social benefits of excluding unlawfully seized evidence outweighs the likely costs, it may apply.

In the Philippines, the exclusionary rule was similarly brought to light through jurisprudential pronouncements. The rule first appeared in *Kheytin v. Villareal* (*Kheytin*),[16] wherein *Boyd* was cited as basis. While the exclusionary rule had been utilized in cases succeeding *Kheytin*,[17] the Court halted its application in the case of *Moncado v. Peoples Court*.[18] *Moncado*'s abandonment of the exclusionary rule echoed in subsequent jurisprudence until the case of *Stonehill v. Diokno* (*Stonehill*),[19] wherein its application was reinstated. In *Stonehill*, the Court rationalized that:

> Indeed, the non-exclusionary rule is contrary, not only to the letter, but, also, to spirit of the constitutional injunction against unreasonable searches and seizures. To be sure, if the applicant for a search warrant has competent evidence to establish probable cause of the commission of a given crime by the party against whom the warrant is intended, then there is no reason why the applicant should not comply with the requirements of the fundamental law. Upon the other hand, if he has no such competent evidence, then it is not possible for the judge to find that there is probable cause, and, hence, no justification for the issuance of the warrant. The only possible explanation (not justification) for its issuance is the necessity of fishing evidence of the commission of a crime. But, then, this fishing expedition is indicative of the absence of evidence to establish a probable cause.
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> Moreover, the theory that the criminal prosecution of those who secure an illegal search warrant and/or make unreasonable searches or seizures would suffice to protect the constitutional guarantee under

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[16] 42 Phil. 886, 899 (1920).

[17] See *Alvarez v. Court of First Instance of Tayabas*, 64 Phil. 33, 47 (1937).

[18] See 80 Phil. 1, 3-4 (1948).

[19] *Supra* note 6.

consideration, overlooks the fact that violations thereof are, in general, committed by agents of the party in power, for, certainly, those belonging to the minority could not possibly abuse a power they do not have. Regardless of the handicap under which the minority usually — but, understandably — finds itself in prosecuting agents of the majority, one must not lose sight of the fact that the psychological and moral effect of the possibility of securing their conviction, is watered down by the pardoning power of the party for whose benefit the illegality had been committed. [20]

In contrast to the US experience, our evolving jurisprudence on the exclusionary rule **culminated in its express incorporation in Section 4 (2), Article IV of the 1973 Constitution**. Significantly, this ensured the firm application of the exclusionary rule in our jurisdiction.[21] As one constitutionalist pointed out, "by making such evidence inadmissible, the Constitution has closed the door to any judicial temptation to erode the rule by distinguishing and splitting hairs."[22] Therefore, the very act of expressly incorporating the exclusionary rule in our fundamental law begs a different treatment of the same from that in the US.

To bolster this point, not only has the exclusionary rule been codified in our Constitution, it is further couched in general and comprehensive language, which is hence, expressive of its overarching force. As previously stated, the exclusionary rule applies to any evidence obtained in violation of Section 2, Article III, *i.e*., the guarantee against the right to unreasonable searches and seizures, and has the effect of rendering such evidence inadmissible for any purpose in any proceeding. The phrase "for **any** purpose in **any** proceeding" in Section 3 (2), Article III correspondingly reflects – as it is made to implement – the equally expansive "right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of **whatever nature and for any purpose**" under Section 2 as above-said.

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[20] *Id.* at 753-754.

[21] See *People v. Marti*, 271 Phil. 51 (1991); Bernas, Joaquin, *The 1987 Constitution of the Republic of the Philippines: A Commentary*, p. 229.

[22] *Id*.

Indeed, the phrase "for **any** purpose in **any** proceeding" in Section 3 (2), Article III means that the exclusionary rule should apply in all kinds of cases, whether criminal, civil, or administrative. It is a cardinal rule in statutory construction that where the words of a statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation.[23] Likewise, if "the language of the subject constitutional provision is plain and unambiguous, there is no need to resort to extrinsic aids such as records of the Constitutional Commission."[24] In fact, while there is yet no definitive ruling which traverses head-on the exclusionary rule's comprehensiveness, it deserves mentioning that this Court has already applied the same in *Anonymous Letter-Complaint against Morales*,[25] an administrative case, and *Zulueta v. Court of Appeals*,[26] a civil case.

III.

As for the present matter, it is my humble view that the exclusionary rule finds application in both the criminal and the administrative cases against respondent. As mentioned, the primary evidence against respondent is the subject drugs seized from him. However, these drugs were obtained by virtue of a void search warrant and hence, fall within the ambit of the exclusionary rule, rendering them inadmissible in evidence.

Likewise, the exclusionary rule applies to render inadmissible the results of the confirmatory drug test because it is the direct fruit of the unlawful search and seizure. In *People v. Alicando*,[27] the Court explained that "once the *primary source* (the 'tree') is shown to have been unlawfully obtained, any *secondary or*

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[23] See *National Food Authority v. Masada Security Agency, Inc.*, 493 Phil. 241, 250-251 (2005); and *Philippine National Bank v. Garcia, Jr.*, 437 Phil. 289, 295 (2002).

[24] *Chavez v. Judicial and Bar Council*, 691 Phil. 173, 201 (2012).

[25] 592 Phil. 102 (2008).

[26] 324 Phil. 63 (1996).

[27] 321 Phil. 656 (1995).

derivative evidence (the 'fruit') derived from it is also inadmissible. x x x 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."[28]

Section 38 of RA 9165 states that "[a]ny 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**."[29]

In this case, respondent's apprehension was based on the drugs illegally seized from him. Without said evidence, there would be no reasonable basis for the apprehending officers to subject respondent to a confirmatory drug test. Thus, the results thereof should be deemed as fruits of the poisonous tree and perforce, should be excluded.

These notwithstanding, records disclose that respondent voluntarily admitted before the public prosecutor during the preliminary investigation that he was a drug user. As aptly pointed out by the *ponencia*, "[t]he admission was made by respondent during the preliminary investigation stage which is a source independent from the illegal search, seizure, and arrest, and is presumed to have been regularly performed. x x x Notably, respondent never questioned the voluntariness of such admission[,] as well as the regularity of the preliminary investigation."[30] As I see it, there is no clear causal relation between the evidence which were illegally obtained and the admission made by respondent. The latter is not a logical consequence of the former. As earlier stated, the admission

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[28] *Id*. at 690.

[29] Emphasis supplied.

[30] *Ponencia*, p. 9.

was a voluntary act of respondent; he was not put into such an inescapable situation wherein he would be forced to admit to his guilt, since nothing precluded him from contesting the admissibility – as he did, in fact, contest the admissibility – of the evidence illegally obtained from him. Thus, as respondent had valid claims and defenses, it would be a stretch to conclude that the admission made during the preliminary investigation was a direct result of the evidence illegally seized from him. That being said, the admission is a distinct and separate piece of evidence that should not be tarnished by the illegal search conducted and hence, cannot be deemed as a fruit of the poisonous tree.

Without a doubt, the admission of respondent constitutes substantial evidence to hold him administratively liable for grave misconduct and conduct prejudicial to the best interest of the service. "Substantial evidence is such amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. The standard of substantial evidence is justified when there is reasonable ground to believe that respondent is responsible for the misconduct complained of, even if such evidence is not overwhelming or even preponderant."[31]

An admitted drug user has no place in the ranks of the Judiciary. As the Court held in *Office of the Court Administrator v. Reyes*,[32] "all members and employees of the Judiciary are expected to **adhere strictly to the laws of the land, one of which is [RA 9165] which prohibits the use of dangerous drugs**. x x x [T]he conduct of a person serving the judiciary must, at all times, be characterized by propriety and decorum and above all else, be above suspicion so as to earn and keep the respect of the public for the judiciary. The Court would never countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary."[33]

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[31] *Menor v. Guillermo*, 595 Phil. 10, 15 (2008).

[32] 635 Phil. 490 (2010).

[33] *Id*. at 498-499.

ACCORDINGLY, respondent Rogelio M. Salazar, Jr., Sheriff IV, Regional Trial Court – Office of the Clerk of Court, Boac, Marinduque, is **GUILTY** of grave misconduct and conduct prejudicial to the best interest of the service, and thus **DISMISSED** from service, with forfeiture of all benefits, except accrued leave credits, and with prejudice to his reemployment in any branch or instrumentality of the government, including government-owned or controlled corporations.

DISSENTING OPINION

LEONEN, *J.*:

I disagree with the *ponencia*.

The right against unreasonable searches and seizures is absolute. If it is shown that the primary source, the "tree," was unlawfully obtained, any secondary evidence, the "fruit," derived from it is deemed inadmissible for any purpose in any proceeding.

On March 2, 2015, Anju O. Villanueva (Villanueva)[1] and Daphne Chloe G. Alcima (Alcima)[2] of the Philippine Drug Enforcement Agency applied for a search warrant to search the house of Sheriff Rogelio Salazar (Salazar) of the Office of the Clerk of Court, Regional Trial Court, Boac, Marinduque.[3]

On March 4, 2015, Villanueva testified before Executive Judge Fernando T. Sagun, Jr.(Executive Judge Sagun) of Branch 78, Regional Trial Court, Quezon City that the application for search warrant was lodged with the Regional Trial Court in Quezon City because Salazar was a court personnel of the Regional Trial Court in Boac, Marinduque.[4]

Villanueva further testified that Salazar had been under their surveillance since January 11, 2015 and that they had observed

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[1] *Rollo* (A.M. No. P-16-3450), pp. 48–49.

[2] *Id*. at 50–52.

[3] *Id*. at 56.

[4] *Id*. at 58.

him committing 10 violations of Republic Act No. 9165, with Villanueva personally witnessing two (2) of them.[5]

Villanueva then stated that on February 12, 2015 and February 19, 2015, he and Alcima conducted successful test-buys at Salazar's beach house at Brgy. Ihatub, Boac, Marinduque.[6]

That same day, Executive Judge Sagun granted the application and issued a search warrant,[7] authorizing the Philippine Drug Enforcement Agency agents to look for dangerous drugs in Salazar's beach house.

On March 6, 2015, Villanueva received reports that Salazar and a certain Raymond Mistal (Mistal) were selling shabu in Boac. Mistal and Salazar were part of the Philippine National Police Boac, Marinduque's listed target personalities. A buy-bust operation was then planned, with a confidential informant setting up the transaction with Mistal.[8]

The following day, at around 9:00 a.m., Mistal sold shabu to Alcima, the poseur-buyer, after which he was immediately arrested and frisked by PO1 Jayson Quindoza.[9]

While being led to the police car, Mistal supposedly told the agents that he had a scheduled transaction to purchase shabu from Salazar at 10:00 a.m. that same day at Salazar's beach house. Villanueva immediately planned a buy-bust operation against Salazar and directed PO1 Jervin Estoya (PO1 Estoya) to accompany Mistal.[10]

PO1 Estoya and Mistal met up with Salazar at his beach house. However, Salazar merely accepted the money from Mistal

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[5] *Id*. at 60–61.

[6] *Id*. at 61–62.

[7] *Id*. at 46–47.

[8] *Id*. at 139.

[9] *Id*.

[10] *Id.*

and instructed them to get the shabu from a certain Melvin Lubrin (Lubrin) at Lalay, Boac.[11]

PO1 Estoya and Mistal went to Lalay, Boac where they found Lubrin overseeing his "lugawan" stall. Lubrin handed a small plastic sachet to PO1 Estoya, who arrested him on the spot.[12]

After arresting Lubrin, the agents proceeded to Salazar's beach house, served the search warrant, closed off the area, and conducted their search. Their search yielded seven (7) plastic sachets of white crystalline substance, which succeeding tests revealed to be shabu.[13] Consequently, Salazar was arrested and detained. His urine sample tested positive for shabu.[14]

Following the buy-bust operation, Salazar and Lubrin were charged with violations of Sections 5 and 15 of Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002. The complaint against them was docketed as XV-05-INV-15C-087.[15]

On April 26, 2015, the Office of the Provincial Prosecutor dismissed the charges against Salazar and Lubrin. In dismissing the charges, Provincial Prosecutor Edwin Valdez (Provincial Prosecutor Valdez) pointed out the many inconsistencies and "inexplicable things"[16] in the statements of the arresting officers.[17]

The dispositive portion of the Provincial Prosecutor's Resolution read:

WHEREFORE, the following is ordered:

1. An information for violation of Section 5 and 15 of R.A. 9165 be filed against respondent Raymond Mistal @Raymond. No bail and Php100,000, respectively, is recommended.

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[11] *Id*.

[12] *Id.*

[13] *Id*. at 169.

[14] *Rollo* (A.M. No. 15-05-136-RTC), pp. 46–47.

[15] *Rollo* (A.M. No. P-16-3450), p. 138.

[16] *Id*. at 142.

[17] *Id*. at 142–143.

2. The same charges be dismissed against respondent Rogelio Salazar[,] Jr. or @Ogie and Melvin Lubrin or @Melvin. Consequently[,] they are ordered released, unless detained for some other lawful cause or causes.

3. Let the records of this case be elevated to the Department of Justice for its automatic review of the herein resolution as per Department Circular No. 46, Series of 2003.[18]

On the other hand, a complaint for violation of Sections 11 and 15 of Republic Act No. 9165, which was docketed as IV-05-INQ-15C-086, was also filed against Salazar, due to the seizure of seven (7) sachets of shabu in his beach house.[19]

On April 20, 2015, Provincial Prosecutor Valdez[20] found probable cause against Salazar and directed the filing of an information against him. The following day, Criminal Case Nos. 63-15[21] and 62-15[22] were filed against Salazar before the Regional Trial Court of Boac, Marinduque for violation of Sections11and 15, respectively, of Republic Act No. 9165.

Pertinent documents related to Criminal Case No. 63-15 were forwarded by the Office of the Administrative Services to the Office of the Court Administrator, which then docketed the case as A.M. No. 15-12-379-RTC.[23]

On November 6, 2015, the Office of the Court Administrator[24] opined that Salazar's actuations constituted grave misconduct and conduct prejudicial to the service. It recommended that the matter be re-docketed as a regular administrative matter, that Salazar be directed to comment on the Information dated

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[18] *Id.* at 143–144.

[19] *Rollo* (A.M. No. 15-05-136-RTC), p. 48.

[20] *Id*. at 48–50.

[21] *Id.* at 18 and 21.

[22] *Id.* at 19–20.

[23] *Rollo* (A.M. No. P-16-3450), p. 1.

[24] *Id*. at 1–2.

April 21, 2015, and that he be suspended from service pending the final outcome of the criminal case against him.[25]

On April 11, 2016,[26] this Court adopted the recommendations of the Office of the Court Administrator, re-docketed the case as A.M. No. P-16-3450, and suspended Salazar from service.

On July 14, 2016, Salazar submitted his Comment,[27] where he denied selling shabu[28] or that a bag with shabu was found in his beach house. He claimed that after the search warrant was served on him by the Philippine Drug Enforcement Agency agents, he was made to lie face down on the floor, with an agent stepping down on his head to prevent him from looking up.[29]

Salazar narrated that while he was lying on the ground, his children were herded to the back of the house and were prevented by an agent from using their phones or from entering the house. However, his children saw another agent enter the house on the pretext of getting drinking water and then deposit a black bag on top of a cabinet. This unknown agent then left the house, got inside a car and the perimeter of the beach house was cordoned off with yellow tape. The sachets of shabu were eventually discovered inside the black bag planted by the agent.[30]

Meanwhile, Police Senior Superintendent Lorenzo Junio Holanday, Jr., the Provincial Director of the Philippine National Police Marinduque Police Provincial Office, wrote[31] to then Chief Justice Maria Lourdes Sereno to inform her of the buy-bust operation against Salazar and the seizure of seven (7) sachets of shabu in his beach house. The Office of the Chief Justice

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[25] *Id.*

[26] *Id*. at 8–9.

[27] *Id.* at 10–32.

[28] *Id*. at 16–25.

[29] *Id*. at 11.

[30] *Id*. at 11–12.

[31] *Rollo* (A.M. No. 15-05-136-RTC), pp. 2–3.

directed[32] the Office of the Court Administrator to act on the matter and the ensuing inquiry was docketed as A.M. No. 15-05-136-RTC.

On January 28, 2016,[33] the Office of the Court Administrator, recommended Salazar's continued suspension from service and for the matter to be re-docketed as a regular administrative matter.[34]

On April 7, 2017, in A.M. No. 15-05-136-RTC,[35] the Office of the Court Administrator recommended that A.M. No. 15-05-136-RTC be consolidated with A.M. No. P-16-3450, that Salazar be found guilty in both administrative cases of grave misconduct and conduct prejudicial to the best interest of the service, that he be dismissed from service with all his benefits forfeited, except for his accrued leave credits, and that he be disqualified from re-employment in government service.[36]

The Office of the Court Administrator in A.M. No. 15-05-136-RTC found that the undisputed fact that Salazar's urine sample, which was taken immediately after his arrest, tested positive for shabu, constituted substantial evidence to hold him administratively liable for grave misconduct and conduct prejudicial to the best interest of the service.[37]

The Office of the Court Administrator had the same conclusions and recommendations for A.M. No. P-16-3450.[38]

On May 4, 2017, the Regional Trial Court, acting on Salazar's Motion to Quash Search Warrant with Motion to Suppress

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[32] *Id*. at 1.

[33] *Id*. at 54–57.

[34] *Id*. at 56–57.

[35] *Id*. at 67–75.

[36] *Id*. at 75.

[37] *Id*. at 72.

[38] *Rollo* (A.M. No. P-16-3450), pp. 148–154.

Evidence, quashed the search warrant and granted the motion to suppress evidence.[39]

The Regional Trial Court stated that it conducted an ocular inspection of Salazar's beach house, together with some court employees, agents of the Philippine Drug Enforcement Agency and Salazar's witnesses. In its inspection, it found the beach house to be no more than a small shanty without any partitions and with a gravel floor. This belied the floor plan presented during the application for search warrant where Alcima described the hut as having a terrace and a partition wall separating the kitchen and bedroom.[40]

The Regional Trial Court also pointed out that in their application for a search warrant, Villanueva and Alcima emphasized that they had conducted surveillance operations on Salazar and his house; yet, they repeatedly mistakenly referred to Salazar's perimeter fence as being made of bamboo, when it was really made of hollow blocks. Furthermore, the Regional Trial Court found inconsistencies in the statements of Villanueva and Alcima as to whether or not Villanueva was actually present during the test-buys.[41]It held:

> In the present case, after a careful and thorough review of the records, the inconsistencies on the testimonies of both police officers from their Sworn Affidavit and from their testimony that was given before Executive Judge Sagun provides a clear and convincing justification to cast reasonable doubt whether test-buy operations actually occurred. It can be concluded that when Agents Villanueva and Alcima applied for a search warrant with the Quezon City, Regional Trial Court, they [did] not have personal knowledge about Salazar. *Deliberate falsehoods were made by both Intelligence Officers just to impress [upon] the Quezon City Executive Judge that they had reason to believe that a crime ha[d] been committed.*

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[39] *Id*. at 168–177. The Order in the consolidated cases of *People of the Philippines v. Salazar* (Criminal Case No. 62-15) and *People of the Philippines v. Salazar* (Criminal Case No. 63-15) was penned by Judge Designate Dennis R. Pastrana.

[40] *Id*. at 173.

[41] *Id*. at 174–175.

. . . . . .

Applying the rule on the present case, the finding of probable cause is a nullity, because *the trial judge was intentionally misled by the witnesses.*

. . . . . .

Under *Section 2, Article III of the Constitution,* the existence of probable cause for the issuance of a warrant is central to the right, and its existence largely depends on the finding of the judge conducting the examination. In the light of the nullity of ***Search Warrant No. 5043 (15),*** the search conducted on its authority is likewise null and void. Based on the above provision, any evidence obtained in violation of a person's right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. With the inadmissibility of the drugs seized from Salazar's home, there is no more evidence to support his conviction. Thus, we see no reason to further discuss the other issues raised in this petition.

WHEREFORE, with the foregoing, *Search Warrant No. 5043 (15)* is hereby **QUASHED**. The *Motion to Quash Search Warrant with Motion to Suppress Evidence* is hereby **GRANTED** for lack of probable cause and non-conformity of the conducted searches with established constitutional rules and statutory guidelines.

SO ORDERED.[42] (Emphasis supplied)

Salazar moved for the dismissal[43] of the cases against him, and on August 18, 2017, the Regional Trial Court[44] granted the motion. The Regional Trial Court reiterated that all evidence obtained through the quashed search warrant, including the urine test conducted on Salazar, was considered illegal:

In the May 4, 2017 resolution of this Court, Search Warrant No. 5043 which was obtained and used by the police was Quashed and declared NULL AND VOID for lack of probable cause and non-conformity in the search with the established constitutional rules

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[42] *Id*. at 176–177. The Order was penned by Judge Designate Dennis R. Pastrana.

[43] *Id.* at 178.

[44] *Id*. at 178–179.

and statutory guidelines. It was also declared that in the light of the nullity of Search Warrant No. 5043(15), the search conducted on its authority is likewise null and void. Based on the above provision (Section 2, Article III of the Constitution), any evidence obtained in violation of a person's right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. All the evidence obtained as a result of such search is considered illegal, being the fruit of the poisonous tree. *Ergo, even the urine test conducted on accused Salazar, having been done as a result of such arrest, occasioned by the search, is also considered as a fruit of such search, hence illegal.*

WHEREFORE, in the light of the foregoing, there being no more prosecution evidence to support the charges against the accused with the Quashal of the Search Warrant used thereto, the Motion is hereby granted. Criminal Case No. 62-15 for Violation of Sec. 15 in relation to Sec. 28, Art. II of R.A. 9165 and Criminal Case No. 63-15 for violation of Section 11 in relation to Sec. 28, Art. II of R.A. 9165 against accused Rogelio Salazar, Jr. y Mondragon are hereby DISMISSED.

The Provincial Jail Warden or any of his authorized representative is hereby directed to release the accused from custody unless his further detention is warranted for some other lawful cause or causes.

SO ORDERED.[45] (Emphasis supplied)

Following the quashal of the search warrant and the dismissal of the criminal charges against him, Salazar prayed for, among others, the dismissal of the administrative cases against him, the revocation of his suspension order, and payment of his back salaries and other benefits withheld during his suspension and detention.[46]

Salazar's prayer should be granted.

I

The Bill of Rights guarantees the right of people against unreasonable searches and seizure, and declares that any evidence

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[45] *Id*. at 179.

[46] *Id*. at 163–164.

obtained in violation of this right cannot be used for any purpose in any proceeding:

> Article III
> Bill of Rights
>
> Section 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
>
> (2) Any evidence obtained in violation of this or the preceding section shall be inadmissible for any purpose in any proceeding.[47]

This prohibition on utilizing any evidence obtained through an illegal search and seizure is also known as the exclusionary rule, or the fruit of the poisonous tree doctrine, which originated in *Stonehill v. Diokno*.[48] *Stonehill* overturned the ruling in *Moncado v. People's Court*,[49] which deemed as admissible into evidence the things seized through an illegal search and seizure, in line with the common law rule that a criminal should not be allowed to go scot-free "because the constable has blundered."[50]

Stonehill emphasized that the abandonment of the *Moncado* doctrine and adoption of the exclusionary rule was the only "practical means of enforcing the constitutional injunction against unreasonable searches and seizures."[51] It pointed out that unreasonable searches and seizures occur when there is no competent evidence to back an application for the issuance of a search warrant and that they are resorted to by government agents as a form of fishing expedition:

> Indeed, the non-exclusionary rule is contrary, not only to the letter, but, also, to spirit of the constitutional injunction against unreasonable searches and seizures. To be sure, if the applicant for a search warrant

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[47] CONST., Art. III, Sec. 3.

[48] 126 Phil. 738 (1967) [Per *C.J.* Concepcion, *En Banc*].

[49] 80 Phil. 1 (1948) [Per *J.* Pablo, Second Division].

[50] *Stonehill v. Diokno,* 126 Phil. 738, 750 (1967) [Per *C.J.* Concepcion, *En Banc*], citing *People v. Defore*, 140 NE 585.

[51] *Id*.

has competent evidence to establish probable cause of the commission of a given crime by the party against whom the warrant is intended, then there is no reason why the applicant should not comply with the requirements of the fundamental law. Upon the other hand, if he has no such competent evidence, then it is not possible for the judge to find that there is probable cause, and, hence, no justification for the issuance of the warrant. The only possible explanation (not justification) for its issuance is the necessity of fishing evidence of the commission of a crime. But, then, this *fishing* expedition is indicative of the absence of evidence to establish a probable cause.

Moreover, the theory that the criminal prosecution of those who secure an illegal search warrant and/or make unreasonable searches or seizures would suffice to protect the constitutional guarantee under consideration, overlooks the fact that violations thereof are, in general, committed by agents of the party in power, for, certainly, those belonging to the minority could not possibly abuse a power they do not have. Regardless of the handicap under which the minority usually — but, understandably — finds itself in prosecuting agents of the majority, one must not lose sight of the fact that the psychological and moral effect of the possibility of securing their conviction, is watered down by the pardoning, power of the party for whose benefit the illegality had been committed.[52] (Emphasis in the original)

People v. Alicando[53] explained how the fruit of the poisonous tree doctrine was adopted in our jurisdiction:

We have not only constitutionalized the *Miranda warnings* in our jurisdiction. We have also adopted the libertarian exclusionary rule known as the *"fruit of the poisonous tree,"* a phrase minted by Mr. Justice Felix Frankfurter in the celebrated case of *Nardone v. United States*. According to this rule, once the *primary source* (the "tree") is shown to have been unlawfully obtained, any *secondary or 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

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[52] *Id*. at 753–754.

[53] 321 Phil. 656 (1995) [Per *J*. Puno, *En Banc*].

obtained by the State should not be used to gain other evidence because the originally illegally obtained evidence *taints* all evidence subsequently obtained. We applied this exclusionary rule in the recent case of *People vs. Salanga*, et al., a *ponencia* of Mr. Justice Regalado. Salanga was the appellant in the rape and killing of a 15-year old barrio lass. He was, however, illegally arrested. Soldiers took him into custody. They gave him a body search which yielded a lady's underwear. The underwear was later identified as that of the victim. We acquitted Salanga. Among other reasons, we ruled that the underwear allegedly taken from the appellant is inadmissible in evidence, being a so-called "*fruit of the poisonous tree.*"[54] (Emphasis in the original, citations omitted)

In the case at bar, the sachets of shabu seized from the beach house, a positive finding for shabu of Salazar's urine sample, and his admission of using shabu during the preliminary investigation before the Provincial Prosecutor are all by-products, or fruits, of the quashed search warrant.

The *ponencia* claims that Salazar's admission before the Provincial Prosecutor is testimonial evidence and not an object that can be the subject of a search and seizure. Furthermore, it contends that "[t]he admission was already far removed from the illegal search warrant that it cannot be regarded as a fruit of the poisonous tree."[55]

After seven (7) sachets of shabu were allegedly seized from Salazar's beach house, a complaint for violations of Sections 11 and 15 of Republic Act No. 9165 was filed against him. It was during the preliminary investigation of this complaint, occasioned by the sachets of shabu which were eventually suppressed from evidence because of an illegal search warrant, that Salazar supposedly admitted his drug use to the Provincial Prosecutor. The *ponencia* claims that the time difference between the illegal search and the preliminary investigation negates a causal relation between the illegal search warrant and the admission.

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[54] *Id*. at 690–691.

[55] *Ponencia,* p. 9.

Again, I disagree with the *ponencia*.

Salazar's very presence during the preliminary investigation was brought about by the illegal search warrant. He would not have been subject of a preliminary investigation in the first place if there was no illegal search warrant. Clearly, his purported admission before the Provincial Prosecutor was an indirect result of the illegal search. Thus, under established jurisprudence and the categorical pronouncement of the Constitution, his admission, which was a derivative evidence obtained from an illegal search warrant,"shall be inadmissible for any purpose in any proceeding."[56]

Additionally, the Regional Trial Court May 4, 2017 Order,[57] quashing the search warrant and suppressing the seized evidence, included all forms of evidence that resulted from the illegal search, such as testimonial evidence, since they were brought about by virtue of the quashed search warrant:

> In the light of the nullity of ***Search Warrant No. 5043 (15),*** the search conducted on its authority is likewise null and void. Based on the above provision, any evidence obtained in violation of a person's right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. With the inadmissibility of the drugs seized from Salazar's home, there is no more evidence to support his conviction.[58] (Emphasis in the original)

The inadmissibility of both seized and derivative evidence was reiterated by the Regional Trial Court in its August 18, 2017 Order[59] dismissing the criminal case against Salazar:

> *All the evidence obtained as a result of such search is considered illegal, being the fruit of the poisonous tree.*Ergo, even the urine test conducted on accused Salazar, having been done as a result of such arrest, occasioned by the search, is also considered as a fruit of such search, hence illegal.[60] (Emphasis supplied)

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[56] CONST., Art. III, Sec. 3(2).

[57] *Rollo* (A.M. No. P-16-3450), pp. 168–177.

[58] *Id*. at 177.

[59] *Id*.

[60] *Id*. at 179.

Furthermore, it is irrelevant that XV-05-INV-15C-087 is still pending automatic review before the Department of Justice. The evidence involved is also subject to the exclusionary rule since the evidence relative to Salazar's use of dangerous drugs, i.e., the positive finding of his urine sample and his admission to using dangerous drugs,was the same tainted evidence occasioned by the illegal and quashed search warrant. Thus, recognizing the illegality of his arrest on an imaginary buy-bust operation, the Provincial Prosecutor dismissed the charges for illegal sale and use of dangerous drugs against him:

> It seems that the scenario of continuing operation of complainants against respondents was a mere build up to the search conducted at the beach house of [Salazar], thereby projecting him as the person behind the rampant selling of dangerous drugs in Marinduque. *Doubtless, it was intended to convey the probability of the positive search of dangerous drugs in his beach house. There was no need for this unless nothing was really found inside the beach house of [Salazar].*
>
> Considering the improbability of the succeeding buy-bust operation against [Salazar] and [Lubrin], with all the safeguards of the law against "instant" or imaginary buy bust operation, the charges against these respondents for illegal sale of drugs are hereby dismissed.
>
> *Consequently, the charges of illegal use of drugs, the filing of which can be warranted only upon their lawful arrests on drug[-]related charges, are likewise dismissed.*[61] (Emphasis supplied)

In as much as *all forms of evidence* obtained by the agents using the illegal search warrant had been suppressed as evidence, including the derivative evidence derived from the suppressed evidence, there is no substantial evidence to support a finding of administrative liability against Salazar because, as the *ponencia* correctly stated, substantial evidence is "more than a mere scintilla of relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[62] In this case, there is not

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[61] *Id*. at 143.

[62] *Ponencia,* p. 7, citing *Ombudsman Marcelo v. Bungubung,* 575 Phil. 538 (2008) [Per *J.* Chico-Nazario, Third Division].

even a scintilla of evidence to support the conclusion that Salazar is guilty of the administrative charges of grave misconduct and conduct prejudicial to the best interest of the service against him.

II

An extrajudicial confession made before the provincial prosecutor enjoys the same safeguards available to an accused under Republic Act No. 7438, or An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining and Investigating Officers and Providing Penalties for Violations Thereof. The safeguard of having a written and signed confession before competent counsel still applies because this right springs from the exclusionary rule. This was emphasized by *People v. Sunga*:[63]

> The right to counsel applies in certain pretrial proceedings that can be deemed "critical stages" in the criminal process. *The preliminary investigation can be no different from the in-custody interrogations by the police,* for a suspect who takes part in a preliminary investigation will be subjected to no less than the State's processes, oftentimes intimidating and relentless, of pursuing those who might be liable for criminal prosecution. In the case at bar, Sunga was thrust into the preliminary investigation and while he did have a counsel, for the latter's lack of vigilance and commitment to Sunga's rights, he was virtually denied his right to counsel.
>
> The *right to counsel involves more than just the presence of a lawyer* in the courtroom or the mere propounding of standard questions and objections; rather it means an *efficient* and *decisive legal assistance* and not a simple perfunctory representation. As in *People v. Abano* where the confession by the therein accused in the preliminary investigation was excluded as inadmissible due to the absence of her counsel, this Court will not admit Sunga's. This makes it unnecessary to discuss and emphasize the conflict on material points of Sunga's and Locil's accounts of the incident.[64] (Emphasis supplied, citations omitted)

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[63] 447 Phil. 776 (2003) [Per *J.* Carpio Morales, *En Banc*].

[64] *Id*. at 807.

A careful review of the records of the case shows that Salazar was not assisted by counsel during his preliminary investigation before the Provincial Prosecutor. Neither was any written and signed confession on his use of dangerous drugs found or adverted to within the records. In fact,his confession was only briefly mentioned in the Provincial Prosecutor's April 20, 2015 Resolution finding probable cause against him:

> With respect to the dangerous drug found in his urine sample, he readily admitted using drugs but he was quick to add that he had stopped doing it as he had promised her (sic) mother on her deathbed in December 2014.
>
> . . . . . .
>
> On the charge of illegal use of dangerous drugs, probable cause exists with a positive result of the confirmatory test conducted on the urine sample of [Salazar]. He himself admitted that he had used dangerous drugs.*It is as simple as that.*[65] (Emphasis supplied)

However, it is not as simple as the Provincial Prosecutor would like to believe. Any person arrested, detained, or under custodial investigation has the right to be assisted at all times by a competent counsel[66] and the records show that Salazar was not afforded that right.

II

The fundamental rights of an accused can be found in Article III, Section 14 of the Constitution and these rights follow the accused throughout every stage of the criminal proceedings:

> Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process

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[65] *Rollo* (A.M. No. 15-05-136-RTC), pp. 49-50.

[66] Rep. Act No. 7438 (1992), Sec. 2(a).

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.

Additionally, the rights afforded to an accused are available even before an arrest is made, as these rights not only encompass persons arrested, detained, or under custodial investigation, but also embrace invitations or requests for appearance[67] extended by State agents to persons suspected of committing crimes.

People v. Deniega[68] emphasized that the modifiers "competent and independent," describing a counsel of an accused,were not present previous to the 1987 Constitution; thus, their inclusion in the present Constitution stresses the importance of a voluntary confession by an accused based on informed judgment during custodial investigation:

> [T]he primacy accorded to the voluntariness of the choice, under the uniquely stressful conditions of a custodial investigation, by according the accused, deprived of normal conditions guaranteeing individual autonomy, an informed judgment based on the choices given to him by a competent and independent lawyer.[69]

On the other hand, a person's rights in a preliminary investigation are derived from statute and not the Constitution; hence, such rights are subject to the limitations of procedural law.[70] Furthermore, a preliminary investigation is considered merely preparatory to a trial and not part of a trial; thus, while

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[67] *Lopez v. People*, G.R. No. 212186,June 29, 2016<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/june2016/212186.pdf> [Per *J.* Leonen, Second Division].

[68] 321 Phil. 1028 (1995) [Per *J.* Kapunan, First Division].

[69] *Id*. at 1041.

[70] *Dichaves v. Office of the Ombudsman*, G.R. Nos. 206310-11, December 7, 2016<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/december2016/206310-11.pdf> [Per *J.* Leonen, Second Division].

parties may submit affidavits, they have no right to examine witnesses.[71]

Nonetheless, this Court has established in *Sunga* and *People v. Bokingo*[72] that the right to counsel and the requirement of a signed confession with the assistance of a counsel also obtain during preliminary investigation.Moreover, the failure to respect the rights of an accused during preliminary investigation also renders inadmissible any resulting evidence obtained from it, even supposedly voluntary confessions.

In the case at bar, the quashal of the illegal search warrant, the suppression of the tainted evidence obtained using the quashed search warrant, and the failure to present Salazar's written confession signed in the presence of a counsel compel this Court to dismiss the administrative case against him for utter lack of evidence to support the charges brought against him.

ACCORDINGLY, I vote to **DISMISS** Administrative Matter Nos. 15-05-136-RTC and P-16-3450. I also vote to **REVOKE** the suspension order against Sheriff Rogelio M. Salazar, Jr. and to **ALLOW** him to report back to his position as Sheriff IV of Regional Trial Court, Office of the Clerk of Court,Boac, Marinduque, with the concomitant payment of his back salaries and other benefits which were withheld during his suspension.

DISSENTING OPINION

CAGUIOA, *J.*:

I dissent.

The *ponencia* finds Rogelio M. Salazar, Jr. (Salazar) liable for grave misconduct and conduct prejudicial to the best interest of the service due to his drug use, despite the dismissal of the

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[71] *De Lima v. Reyes*, G.R. No. 209330, January 11, 2016<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> [Per *J.* Leonen, Second Division].

[72] 671 Phil. 71 (2011) [Per *J.* Perez, Second Division].

related criminal cases that had been filed against him. Consequently, Salazar is ordered dismissed from service.

The *ponencia* points out that only substantial evidence is required to sustain a finding of administrative culpability, which it submits has been satisfied in this case. According to the *ponencia*, Salazar's admission of drug use, coupled with the confirmatory urine test that yielded a positive result, are more than substantial evidence to support the conclusion that Salazar is a drug-user, which would warrant the Court's exercise of its disciplinary power over court personnel.

As stated at the outset, I respectfully disagree.

I submit that Salazar's guilt has **not** been proven by substantial evidence because the pieces of evidence against him, by virtue of the illegality of the search conducted, are covered by the exclusionary rule.

The exclusionary rule

Article III of the 1987 Constitution provides:

> SEC. 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.
>
> SEC. 3. (1) The privacy of communication and correspondence shall be inviolable except upon lawful order of the court, or when public safety or order requires otherwise as prescribed by law.
>
> (2) **Any evidence obtained in violation of** this or **the preceding section** shall be **inadmissible for any purpose in any proceeding**. (Emphasis and underscoring supplied)

Known as the "exclusionary rule," this Constitutional mandate renders inadmissible *any* evidence obtained in violation of the Constitution, for *any* purpose, and in *any* proceeding. Thus, it is immaterial that what is involved here is merely an

administrative case—the exclusionary rule still applies as long as it is shown that evidence was obtained in violation of the Constitution.

This Constitutional precept also embodies the "fruit of the poisonous tree" doctrine, which had been elucidated by the Court in *People v. Alicando*,[1] to wit:

> We have not only constitutionalized the *Miranda warnings* in our jurisdiction. We have also adopted the **libertarian exclusionary rule known as the "*fruit of the poisonous tree*,"** a phrase minted by Mr. Justice Felix Frankfurter in the celebrated case of ***Nardone v. United States***. According to this rule, **once the *primary source* (the "tree") is shown to have been unlawfully obtained, any *secondary or 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. xxx[2] (Additional emphasis, italics and underscoring supplied)

Applying the foregoing to the present case, the admission and the confirmatory urine test should be considered as fruits of the poisonous tree because both were obtained as a result of an illegal search.

The confirmatory urine test is inadmissible.

The confirmatory urine test conducted on Salazar was brought about by virtue of Section 38 of Republic Act No. (R.A.) 9165 or the Comprehensive Dangerous Drugs Act of 2002, which provides:

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[1] 321 Phil. 656 (1995).

[2] *Id*. at 690.

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)

In ruling that the confirmatory urine test was not the direct or indirect result of the illegal search, the *ponencia* concludes that "[t]he basis for the confirmatory drug test was, in fact, a reasonable belief of drug use and a positive screening test, both of which are *neither a necessary nor automatic consequence of an illegal search*."[3] I disagree as this statement is **wholly** belied by the facts and the law.

A plain reading of Section 38 of R.A. 9165 shows that what triggers the "confirmatory" urine test is the initial apprehension or arrest of the accused. Here, the confirmatory urine test conducted on Salazar was triggered by his arrest occasioned by the search, which was found to be illegal. The only logical conclusion is that if it were not for the illegal search, then the police officers could not have performed the confirmatory urine test on Salazar. Consequently, contrary to the postulate of the *ponencia*, the urine test **is** a "fruit" of the illegal search.

The *ponencia* bolsters its point by citing Section 36, Article III of R.A. 9165 which provides the mandatory drug testing

[3] *Ponencia*, p. 11. Italics supplied.

of, among others, (i) officers and employees of public and private offices [Section 36(d)], and (ii) all persons charged before the prosecutor's office with a criminal offense having an imposable penalty of imprisonment of not less than six (6) years and one (1) day [Section 36(f)]. It also cites A.M. No. 06-1-01-SC where the Court adopted guidelines for a program to prevent drug use and eliminate the hazards of drug abuse in the Judiciary. In this regard, the *ponencia* makes the following pronouncements:

> There is **thus no reason to turn a blind eye, for purposes of this administrative proceeding, on the results of the confirmatory urine test when RA 9165 itself, as well as this Court's guidelines, sanction the conduct of a mandatory random drug testing of officers and employees of public and private offices. The character of the drug test being made *at random* actually dispenses with the usual requirement of probable cause.** In the case of *Social Justice Society (SJS) v. Dangerous Drugs Board, et al.*, We upheld the validity and constitutionality of the mandatory but random drug testing of officers and employees of both public and private offices. This is allowed "for purposes of reducing the risk in the workplace."
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> Thus, **despite the absence of probable cause, and the basis being only a positive drug test result, an employer is allowed by law to pursue an *administrative case*** against the public or private officer or employee and thereafter, to *suspend* or *terminate* them.[4] (Emphasis, italics and underscoring supplied)

Once more, I cannot subscribe to the *ponencia*'s postulations.

At the outset, the *ponencia*'s reference to Section 36(f) of R.A. 9165 (mandatory drug testing for persons charged before the prosecutor's office) is totally inapt and should not have been made, *albeit only in support of a proposition*, considering that the same had already been declared as unconstitutional in *Social Justice Society (SJS) v. Dangerous Drugs Board*.[5]

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

[5] 591 Phil. 393 (2008).

More importantly, the *ponencia*'s discussion on *random* drug testing is totally **misplaced** — *even merely as a supporting argument* — since what is involved here cannot be characterized as random.

While the *ponencia* states that "[t]he character of the drug test being made *at random* actually dispenses with the usual requirement of probable cause,"[6] the same cannot be said of the confirmatory urine test. Section 38 unequivocally provides that the confirmatory urine test can be performed only "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."[7] **Thus, by the *ponencia*'s own reasoning, there is still an element of probable cause.**

At this point, I quote with approval the following pronouncements of the Regional Trial Court in this case which, I submit, are more correct:

> In the May 4, 2017 resolution of this Court, Search Warrant No. 5043 which was obtained and used by the police was [q]uashed and declared NULL AND VOID for lack of probable cause and non-conformity in the search with the established constitutional rules and statutory guidelines. It was also declared that in the light of the nullity of Search Warrant No. 5043(15), the search conducted on its authority is likewise null and void. Based on [Section 3(2), Article III of the Constitution], any evidence obtained in violation of a person's right against unreasonable searches and seizures shall be inadmissible for any purpose in any proceeding. All the evidence obtained as a result of such search is considered illegal, being the fruit of the poisonous tree. Ergo, **even the urine test conducted on accused Salazar, having been done as a result of such arrest, occasioned by the search, is also considered as a fruit of such search, hence illegal**.[8] (Emphasis and underscoring supplied)

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[6] *Ponencia*, p. 12. Italics supplied.

[7] R.A. 9165, Sec. 38. Underscoring supplied.

[8] *Rollo* (A.M. No. P-16-3450), p. 179.

That the foregoing is a factual finding by the trial court that should, as a rule, be binding on the Court, needs no further belaboring. All things considered, the confirmatory urine test imposed on Salazar should be, as it was so held by the RTC, declared inadmissible for being covered by the exclusionary rule.

The admission is also inadmissible.

Likewise, Salazar's admission should be declared inadmissible.

The *ponencia* claims that the admission is not covered by the exclusionary rule because: (1) the admission partakes of a testimonial evidence, and not a "personal property" that can be the subject of a search and seizure; and (2) the admission was already far removed from the illegal search warrant that it cannot be regarded as a fruit of the poisonous tree.[9] Again, I respectfully disagree.

Notwithstanding the pronouncement in *People v. Uy*,[10] as cited by the *ponencia* — that the evidence covered by the exclusionary rule refers to object, not testimonial evidence, which was seized in the course of an illegal search and seizure — it is still my considered view that the admission of Salazar should be considered a fruit of the poisonous tree.

The Constitutional provision is clear and unambiguous, leaving no room for interpretation. It provides that ***any*** evidence obtained in violation of its mandate shall be inadmissible for any purpose and in any proceeding. It makes no distinction whatsoever as to the kind of evidence that is to be excluded. More in point too is the ruling of the Court in the landmark case of *Alicando* earlier mentioned, 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**."[11] In particular, *Alicando* provides that "once the

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[9] *Ponencia*, pp. 8-9.

[10] 508 Phil. 637, 655 (2005) [Third Division, Per *J*. Carpio Morales].

[11] *Supra* note 1, at 690. Additional emphasis, italics and underscoring supplied.

primary source (the 'tree') is shown to have been unlawfully obtained, ***any secondary or 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**."[12]

As applied in this case, the illegal drugs seized is the direct result of the illegal search, while the admission and the confirmatory urine test, are the indirect results of the same illegal search — which are equally inadmissible.

That is not all. Section 12, Article III of the Constitution, provides for another exclusionary rule. It states:

> SEC. 12. (1) **Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel** preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. **These rights cannot be waived except in writing and in the presence of counsel.**
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.
>
> (3) **Any confession or admission obtained in violation of this** or Section 17 hereof **shall be inadmissible in evidence against him**.
>
> (4) The law shall provide for penal and civil sanctions for violations of this section as well as compensation to and rehabilitation of victims of torture or similar practices, and their families. (Emphasis and underscoring supplied)

In this case, there is no showing by the *ponencia* that Salazar was apprised of his Constitutional rights when he made the admission. Also, the records do not disclose whether Salazar was assisted by counsel during his preliminary investigation before the Provincial Prosecutor. Nor was there any showing of a valid waiver of his constitutional rights. Consequently, Salazar's admission should be declared inadmissible for having

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[12] *Id*. Additional emphasis, italics and underscoring supplied.

been obtained in violation of the exclusionary rule under Section 12, Article III of the Constitution. Additionally, neither was any written and signed confession on Salazar's use of dangerous drugs found nor adverted to within the records, in violation of R.A. 7438,[13] thereby rendering the same inadmissible under said law.

Even if admissible, the admission cannot sustain Salazar's guilt.

Be that as it may, even if it were to be conceded that the admission is not covered by the exclusionary rule under either Section 3(2) or Section 12 of Article III of the Constitution, **the admission made by Salazar is still <u>not</u> enough to hold him liable**.

Based on the records, Salazar's admission was only briefly mentioned in the Provincial Prosecutor's Resolution finding probable cause against him, to wit:

> With respect to the dangerous drug found in his urine sample, **he readily admitted using drugs <u>but he was quick to add that he had stopped doing it</u> as he had promised her (sic) mother on her deathbed in December 2014**.
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> x x x x x x x x x
>
> On the charge of illegal use of dangerous drugs, probable cause exists with the positive result of the confirmatory test conducted on the urine sample of [Salazar]. **He himself admitted that he had used dangerous drugs. It is as simple as that.**[14] (Emphasis and underscoring supplied)

In evaluating Salazar's admission, I am of the opinion that the same is not enough to hold him criminally or administratively liable.

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[13] AN ACT DEFINING CERTAIN RIGHTS OF PERSON ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION AS WELL AS THE DUTIES OF THE ARRESTING, DETAINING, AND INVESTIGATING OFFICERS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF, April 27, 1992.

[14] *Rollo* (A.M. No. 15-05-136-RTC), pp. 49-50.

It is fundamental that the quantum of proof in administrative cases is substantial evidence, which is more than a mere scintilla of evidence, or such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise.[15] As applied in this case, Salazar's admission cannot even be considered as substantial evidence because he made a disclaimer that he has not used drugs since 2014 (the admission in question having been made in 2015).

Hence, **even if Salazar's admission was admissible, it does not carry the probative value that would be enough to satisfy even the lowest quantum of proof required to hold him administratively liable**.

Lack of objection is inconsequential.

The *ponencia* notes that Salazar never questioned the (1) voluntariness of his admission as well as the regularity of the preliminary investigation;[16] and (2) the authenticity, validity, and regularity of the chemistry report yielding a positive finding on his use of *shabu*.[17]

Notwithstanding these observations, Salazar's lack of objection is totally inconsequential to the applicability of the exclusionary rule. It is immaterial that the accused failed to make a timely objection to the introduction of the constitutionally proscribed evidence **since the lack of objection does not satisfy the heavy burden of proof that rested on the prosecution**.[18] As held in *People v. Samontañez*,[19] "[i]n the absence of a valid waiver, any confession obtained from the [accused] during the police custodial investigation relative to the crime, including

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[15] See *Diaz v. The Office of the Ombudsman*, G.R. No. 203217, July 2, 2018, p. 6.

[16] *Ponencia*, p. 9.

[17] *Id*. at 13.

[18] *People v. Alicando*, *supra* note 1, at 692. Emphasis and underscoring supplied.

[19] 400 Phil. 703 (2000).

any other evidence secured by virtue of the said confession is inadmissible in evidence **even if the same was not objected to** during the trial by the counsel of the [accused]."[20]

Additionally, even if the admission or confession contains a grain of truth, but it was made without following the mandate of the Constitution, the same becomes inadmissible in evidence regardless of the absence of coercion or even if it had been voluntarily given.[21]

A final note

While the Court is mandated to discipline its officers and employees, it is equally mandated to uphold their constitutional rights and to temper its ruling with mercy and compassion in view of the circumstances. The supreme penalty of dismissal from service with forfeiture of all benefits is too harsh, in view of the dismissal of the criminal cases against Salazar. He had been detained for a long time and also suspended from his work on criminal charges which were eventually dismissed. He had already suffered enough. While the need to discipline court employees is recognized, the same cannot be done while disregarding the constitutional rights of the accused.

Undeniably, the proliferation of dangerous drugs is a plague to society that must be eliminated. Nevertheless, this is not a license for law enforcers to disregard the rights of the individual. A violation of the law in order to enforce another cannot be countenanced — and this bears greater emphasis when the law violated is the fundamental law of the land. To do otherwise would be to sanction the erosion of the fundamental values enshrined in the Constitution.

The end can never, and should never be allowed to, justify the means — especially by this Court.

In view thereof, the administrative cases against Rogelio M. Salazar, Jr. should be dismissed for failure to prove his guilt by substantial evidence, as the pieces of evidence against him are covered by the exclusionary rule.

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[20] *Id*. at 726. Emphasis supplied.

[21] See *People v. Bariquit*, 395 Phil. 823, 852 (2000).

EN BANC

A.M. No. P-18-3882. December 4, 2018]
[Formerly OCA IPI No. 13-4207-P]

PUBLIC ASSISTANCE AND CORRUPTION PREVENTION OFFICE, by ATTY. JOCELYN Y. DACUMOS, *complainant, vs.* **SOCIAL WELFARE OFFICER II CAROLINA A. PAUMIG, Office of the Clerk of Court, Regional Trial Court, Tagbilaran City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISAPPROPRIATION OF PUBLIC FUNDS; FAILURE OF A PUBLIC OFFICER TO REMIT FUNDS UPON DEMAND BY AN AUTHORIZED OFFICER CONSTITUTES *PRIMA FACIE* EVIDENCE THAT THE PUBLIC OFFICER HAS PUT SUCH MISSING PUBLIC FUNDS OR PROPERTY TO PERSONAL USE.— While the OMB has no authority to discipline respondent, the latter being a court employee already at the time of the institution of the administrative complaint against her for an act done while she was still employed by the municipality, this Court's disciplinary power is plenary. x x x [O]verwhelming evidence supports the finding that respondent was responsible for the receipt of the loan payments and the failure to turn them over to the Municipal Treasurer. These are public funds that respondent failed to account and used for personal consumption. Jurisprudence states that the "[f]ailure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use." In this case, more than *prima facie* evidence is available in the records. The list of specific names of borrowers and the payment made by each received by the respondent, coupled with the written demands given by the Municipal Treasurer to the respondent to turn over the same which went unheeded, constitute substantial evidence to support the conclusion that respondent is guilty of misappropriating public funds. More importantly,

the Agreement/Promissory Note that respondent executed, admitting to the charge and promising to settle her accountability, is more than telling. Noteworthy is the fact that said document was subscribed and sworn to before Mayor Tocmo.

2. **ID.; ID.; ID.; SERIOUS DISHONESTY; COMMITTED WHEN THE RESPONDENT IS AN ACCOUNTABLE OFFICER AND THE DISHONEST ACT DIRECTLY INVOLVES PROPERTY, ACCOUNTABLE FORMS OR MONEY FOR WHICH SUCH OFFICER IS DIRECTLY ACCOUNTABLE AND THE RESPONDENT SHOWS AN INTENT TO COMMIT MATERIAL GAIN.—** Under CSC Resolution No. 06-0538, it is considered serious dishonesty when the "respondent is an accountable officer, [and] the dishonest act directly involves property, accountable forms or money for which such officer is directly accountable and the respondent shows an intent to commit material gain." Clearly, respondent's act constitutes serious dishonesty for her dishonest act deals with money for which she was accountable, and that the mere failure to account therefor showed an intent to commit material gain. In fact, respondent admitted to have used such public funds on her account for personal consumption.

3. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; DOCUMENTARY EVIDENCE; PAROL EVIDENCE RULE; FORBIDS ANY ADDITION TO OR CONTRADICTION OF THE TERMS OF A WRITTEN INSTRUMENT BY TESTIMONY.—** Respondent's explanation regarding her alleged true intent in executing the Agreement/Promissory Note, *i.e.*, merely to obtain clearance for her transfer to the RTC not to admit accountability, can only be given scant consideration. The terms of the said document are clear: respondent expressly acknowledged receipt of certain payments from SEA-K loan borrowers with an aggregate amount of ₱107,550.00, expressly admitted that she did not turn over the same to the Municipal Treasurer but instead used them for personal consumption, acknowledging fault, and that she voluntarily bound herself to pay said amount. We are thus constrained to give more weight to the documentary evidence over respondent's bare allegation. While technical rules of procedure and evidence are not strictly applied in administrative proceedings, such liberal interpretation in administrative cases does not allow unsupported claim to prevail over a written

document. "The parol evidence rule forbids any addition to or contradiction of the terms of a written instrument by testimony."

4. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; DISHONESTY; SETTLEMENT OF ACCOUNTABILITY CANNOT EXCULPATE LIABILITY WHEN THE ACT OF DISHONESTY IS ALREADY CONSUMMATED.— In another attempt to relieve herself from administrative liability, respondent argue[d] that she cannot be sanctioned anymore as she had already paid or given back to the municipality the misappropriated amount. Such payment was received and acknowledged by Mayor Tocmo and thus, the latter relieved her of any responsibility as regards the same. The fact of restitution is of no moment. Inasmuch as an affidavit of desistance or withdrawal of complaint will not divest this Court of its jurisdiction to investigate and discipline its employees, settlement of accountability cannot exculpate respondent from liability. This is because the act of dishonesty was already consummated. The only issue in an administrative case is whether the employees of the judiciary have breached the norms and standards of the courts.

5. ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; DISHONESTY; CLASSIFIED AS A GRAVE OFFENSE WITH THE CORRESPONDING PENALTY OF DISMISSAL FROM SERVICE BUT CERTAIN CIRCUMSTANCES TO MITIGATE CULPABILITY MAY BE CONSIDERED.— Anent the penalty to be imposed, Section 52, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil Service classifies dishonesty as a grave offense with the corresponding penalty of dismissal from service. However, while the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy. Section 53 of the said Rules allows certain circumstances and those analogous thereto to be considered as mitigating. In the present case, we consider the following circumstances to mitigate her culpability, to wit: (1) that respondent is a first time offender; (2) respondent acknowledged her fault; and (3) respondent already settled her accountability to the municipality, to mitigate her culpability.

> Thus, instead of dismissal from service with its corresponding accessory penalties, we find the penalty of suspension for three (3) months without pay to be just and reasonable. Due, however, to her retirement from service, respondent is sanctioned with a Fine equivalent to three (3) months of her last salary, which shall be deducted from her retirement benefits.

APPEARANCES OF COUNSEL

Arabejo & Mar Law Firm for respondent.

R E S O L U T I O N

TIJAM, *J.*:

For Our resolution is an administrative matter, charging Carolina Paumig (respondent), Social Welfare Officer II, Clerk of Court, Regional Trial Court (RTC), Tagbilaran City, of serious dishonesty.

Antecedent Facts

This case is rooted from an administrative complaint for serious dishonesty filed by the Public Assistance and Corruption Prevention Office (PACPO), Office of the Ombudsman (OMB) for Visayas, against respondent, who was then a Municipal Social Welfare Development Officer in the Municipality of Corella, Bohol.[1]

The said case arose from a Letter-Complaint[2] of a concerned citizen addressed to the Deputy OMB for Visayas regarding the missing funds from the Self-Employment Assistance sa Kaunlaran (SEA-K) Loan Program of the Department of Social Welfare and Development (DSWD) in the amount of ₱107,550.00.[3]

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[1] *Rollo*, p. 3.

[2] *Id*. at 27-28.

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

Acting upon the said letter-complaint, PACPO conducted a fact-finding investigation. It found that the Municipal Government of Corella, Bohol was the recipient of a funding from the Department of Budget and Management (DBM) under the SEA-K Loan Program of the DSWD. Loans under the program were released to groups or individuals, through checks issued by the Municipal Treasurer. Respondent, as the Municipal Social Welfare Officer, was in-charge with the duty of collecting payments of the loans and remitting the same to the Office of the Municipal Treasurer.[4]

Sometime in the year 2000, respondent was found to have failed to remit payments she had collected from the loan recipients, amounting to ₱107,550.00. In a document captioned as Agreement/Promissory Note executed by respondent, she admitted having received SEA-K loan payments from certain individuals in the total amount of ₱107,550.00 and failed to turn over the same to the Municipal Treasurer as she used them for personal consumption. She acknowledged her fault and voluntarily promised to pay the same in a regular monthly installments of ₱4,000.00 until fully satisfied. Several demands were made upon respondent by the Municipal Treasurer to make good her promise but the same went unheeded.[5]

Having clear finding that respondent is guilty of misappropriating public funds, PACPO recommended that respondent be charged criminally and administratively for malversation of public funds and dishonesty.[6]

Thus, respondent was formally charged before the OMB. Therein, respondent filed a Counter-Affidavit,[7] stating that she no longer has financial accountability since she has already settled the amount of ₱107,550.00. Respondent alleged that the said amount was received in full by Corella Municipal Mayor

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[4] *Id*. at 4.

[5] *Id*. at 5.

[6] *Id*. at 15-16.

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

Jose Nicanor Tocmo (Mayor Tocmo) as evidenced by a certified copy of an acknowledgment receipt[8] dated December 31, 2010. A Letter[9] dated January 3, 2011 signed by Mayor Tocmo, acknowledging his receipt of the said amount from respondent and recommending that she be relieved of her liability to the municipality and for the cases against her to be discontinued by virtue of such payment.

Respondent further claimed that the said amount merely represents the total amount of discrepancies in the balance of individual payments, which are not yet reconciled on account of scattered records, and not loan payments that she received and misappropriated. Respondent explained that she executed the Agreement/Promissory Note above-cited for clearance purposes only, for her to be allowed to transfer to the RTC. As it is, respondent is now a Social Welfare Officer II in the Office of the Clerk of Court, RTC, Tagbilaran City.[10]

In its Decision[11] dated February 19, 2013, the Office of the OMB-Visayas, found respondent guilty of serious dishonesty. The dispositive portion of the Decision reads:

> **WHEREFORE**, premises considered, the [respondent] is found guilty of **SERIOUS DISHONESTY** and is hereby meted the penalty of **Dismissal** from government service, with forfeiture of retirement benefits and perpetual disqualification to hold public office. The Civil Service Commission is ordered to cancel her civil service eligibility, if any, in accordance with Section 9, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292.
>
> The Honorable Municipal Mayor of the Municipality of Corella, Province of Bohol, is hereby directed to implement the aforesaid penalty of Dismissal upon [respondent] and to furnish this Office with the office order or memorandum evidencing said implementation indicating the subject OMB case number.

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[8] *Id*. at 71.

[9] *Id*. at 72.

[10] *Id*. at 70.

[11] *Id*. at 3-11.

x x x x x x x x x.[12]

In a Letter[13] dated July 29, 2013 addressed to Deputy Ombudsman for Visayas Pelagio S. Apostol (Deputy Ombudsman Apostol), Mayor Tocmo informed the former that he cannot implement and enforce the Decision considering that respondent is no longer connected with the local government unit of Corella, Bohol.

As respondent is now under the supervision of the Supreme Court, having transferred to the Office of the Clerk of Court, RTC, Deputy Ombudsman Apostol wrote a Letter[14] dated September 30, 2013 addressed to the Office of the Court Administrator (OCA), informing the OCA of the above-quoted Decision and asking them to implement the same.

Records of the case were then elevated to the Supreme Court and respondent was formally charged with serious dishonesty before the OCA.

In her Comment[15] dated February 28, 2014, respondent argued that being an employee of the court, it is the Supreme Court, not the OMB, which has disciplinary authority over her. Respondent further contends that the OMB Decision has not yet attained finality in view of her motion for reconsideration thereof. Hence, respondent insists that the OMB Decision cannot be implemented against her. In addition, respondent avers that the act complained of was committed while she was still an employee of the Municipality of Corella, Bohol and that she was already relieved of her liabilities when she transferred to the RTC.

In its Administrative Matter for Agenda[16] dated September 24, 2015, the OCA found the issue for resolution to be: whether

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[12] *Id*. at 11.

[13] *Id*. at 93.

[14] *Id*. at 2.

[15] *Id*. at 115-119.

[16] *Id*. at 143-150.

the Decision dated February 19, 2013 of the OMB can be enforced despite respondent's transfer to the judiciary.[17]

The OCA answered the said issue in the negative, pointing out that when respondent transferred to the judiciary on October 2, 2000, the OMB has no more jurisdiction to discipline her. The OCA cited Section 21 of Republic Act No. 6770[18] or The Ombudsman Act of 1989, *viz.*:

> Section 21. *Official Subject to Disciplinary Authority; Exceptions.* – The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.[19]

Said rule is justified by no less than Section 6, Article VIII of the 1987 Constitution, which states that the Supreme Court shall have the administrative supervision over all courts and the personnel thereof.[20]

Nevertheless, the OCA opined that respondent should still be held administratively liable by the Court despite the fact that the dishonest act was committed before her appointment to the judiciary.[21]

The OCA then found overwhelming evidence that respondent was indeed responsible for the malversation of public funds, especially because of her express and written admission that she received the subject amount, failed to turn over the same

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[17] *Id*. at 146.

[18] AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES.

[19] *Id*. at 147.

[20] *Id*.

[21] *Id.* at 148.

to the Municipal Treasurer, and used the same for personal consumption. Thus, despite allegation that respondent had already settled her accountability, the OCA still recommended that she be found guilty of dishonesty and thereby should be sanctioned with dismissal from service with forfeiture of all retirement benefits due her except accrued leave credits and with prejudice to re-employment in any branch, agency, or instrumentality of the government, including government-owned and controlled corporations.[22]

In this Court's Resolution[23] dated June 22, 2016, the Court required respondent to manifest her willingness to submit the case for decision on the basis of the pleadings filed within ten (10) days from notice.

Per January 31, 2018 Resolution[24] of this Court, however, respondent failed to comply with the said June 22, 2016 Resolution despite receipt of the same on August 5, 2016. Thus, the Court resolved to require respondent to show cause why she should not be held in contempt for such failure and to comply with the June 22, 2016 Resolution.

In a Manifestation/Compliance[25] dated June 5, 2018, respondent manifested her conformity to have the case submitted for decision on the basis of the pleadings filed. She apologized for her failure to comply at the first instance on account of honest inadvertence due to the difficulties in life that she was facing caused by the death of her husband and the criminal case against her relative to this administrative case. Respondent also manifested that because of such difficulties, she already retired from work and that in order to move on, she plea bargained said criminal case, hence, was merely made to pay a fine of ₱10,000.00. She asked for this Court's understanding for her failure to comply with the Court's directive and plead that a finding of contempt will be too much for her to handle.

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[22] *Id*. at 150.

[23] *Id*. at 152.

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

[25] *Id*. at 158-160.

Ruling of the Court

Indeed, while the OMB has no authority to discipline respondent, the latter being a court employee already at the time of the institution of the administrative complaint against her for an act done while she was still employed by the municipality, this Court's disciplinary power is plenary. As we have ruled in the case of *Office of the Court Administrator v. Ampong*,[26]

> [T]hat she committed the dishonest act before she joined the RTC does not take her case out of the administrative reach of the Supreme Court.
>
> The bottom line is administrative jurisdiction over a court employee belongs to the Supreme Court, regardless of whether the offense was committed before or after employment in the judiciary.[27] (Citation and emphasis omitted)

Hence, in the exercise of our disciplinary power, we now proceed to examine if there is substantial evidence to hold respondent administratively liable. The OCA correctly found that overwhelming evidence supports the finding that respondent was responsible for the receipt of the loan payments and the failure to turn them over to the Municipal Treasurer. These are public funds that respondent failed to account and used for personal consumption.

Jurisprudence states that the "[f]ailure of a public officer to remit funds upon demand by an authorized officer constitutes *prima facie* evidence that the public officer has put such missing funds or property to personal use."[28] In this case, more than *prima facie* evidence is available in the records. The list of specific names of borrowers and the payment made by each received by the respondent, coupled with the written demands given by the Municipal Treasurer to the respondent to turn over

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[26] 735 Phil. 14 (2014).

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

[28] *Vilar v. Angeles*, 543 Phil. 135, 143 (2007).

the same which went unheeded, constitute substantial evidence to support the conclusion that respondent is guilty of misappropriating public funds. More importantly, the Agreement/Promissory Note[29] that respondent executed, admitting to the charge and promising to settle her accountability, is more than telling. Noteworthy is the fact that said document was subscribed and sworn to before Mayor Tocmo.[30]

Under CSC Resolution No. 06-0538, it is considered serious dishonesty when the "respondent is an accountable officer, [and] the dishonest act directly involves property, accountable forms or money for which such officer is directly accountable and the respondent shows an intent to commit material gain."[31] Clearly, respondent's act constitutes serious dishonesty for her dishonest act deals with money for which she was accountable, and that the mere failure to account therefor showed an intent to commit material gain. In fact, respondent admitted to have used such public funds on her account for personal consumption.

Respondent's explanation regarding her alleged true intent in executing the Agreement/Promissory Note, *i.e.*, merely to obtain clearance for her transfer to the RTC not to admit accountability, can only be given scant consideration. The terms of the said document are clear: respondent expressly acknowledged receipt of certain payments from SEA-K loan borrowers with an aggregate amount of ₱107,550.00, expressly admitted that she did not turn over the same to the Municipal Treasurer but instead used them for personal consumption, acknowledging fault, and that she voluntarily bound herself to pay said amount. We are thus constrained to give more weight to the documentary evidence over respondent's bare allegation. While technical rules of procedure and evidence are not strictly applied in administrative proceedings, such liberal interpretation

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[29] *Rollo*, pp. 36-37.

[30] *Id*. at 36.

[31] *Angelica A. Fajardo v. Mario J. Corral*, G.R. No. 212641, July 5, 2017.

in administrative cases does not allow unsupported claim to prevail over a written document. "The parol evidence rule forbids any addition to or contradiction of the terms of a written instrument by testimony."[32]

In another attempt to relieve herself from administrative liability, respondent argues that she cannot be sanctioned anymore as she had already paid or given back to the municipality the misappropriated amount. Such payment was received and acknowledged by Mayor Tocmo and thus, the latter relieved her of any responsibility as regards the same. The fact of restitution is of no moment. Inasmuch as an affidavit of desistance or withdrawal of complaint will not divest this Court of its jurisdiction to investigate and discipline its employees, settlement of accountability cannot exculpate respondent from liability. This is because the act of dishonesty was already consummated. The only issue in an administrative case is whether the employees of the judiciary have breached the norms and standards of the courts.[33]

As we have emphasized in the case of *Judaya v. Balbona*:[34]

> [T]hose in the Judiciary serve as sentinels of justice, and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the people's confidence in it. The Institution demands the best possible individuals in the service and it had never and will never tolerate nor condone any conduct which would violate the norms of public accountability, and diminish, or even tend to diminish, the faith of the people in the justice system. As such, the Court will not hesitate to rid its ranks of undesirables who undermine its efforts towards an effective and efficient administration of justice, thus tainting its image in the eyes of the public."[35] (Citation omitted)

Anent the penalty to be imposed, Section 52, Rule IV of the Revised Uniform Rules on Administrative Cases in the Civil

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[32] *Norton Resources and Dev't. Corp. v. All Asia Bank Corp.*, 620 Phil. 381, 389 (2009).

[33] *Vilar v. Angeles*, *supra* at 144-145.

[34] A.M. No. P-06-2279, June 6, 2017, 826 SCRA 81.

[35] *Id*. at 90.

Service classifies dishonesty as a grave offense with the corresponding penalty of dismissal from service. However, while the Court is duty-bound to sternly wield a corrective hand to discipline its errant employees and to weed out those who are undesirable, it also has the discretion to temper the harshness of its judgment with mercy.[36] Section 53[37] of the said Rules allows certain circumstances and those analogous thereto to be considered as mitigating.[38]

In the present case, we consider the following circumstances to mitigate her culpability, to wit: (1) that respondent is a first time offender; (2) respondent acknowledged her fault; and (3) respondent already settled her accountability to the municipality, to mitigate her culpability.[39] Thus, instead of dismissal from service with its corresponding accessory penalties, we find the penalty of suspension for three (3) months without pay to be just and reasonable. Due, however, to her retirement

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[36] *Vilar v. Angeles*, *supra* note 28, at 146-147.

[37] Section 53. *Extenuating, Mitigating, Aggravating, or Alternative Circumstances*. – In the determination of the penalties imposed, mitigating, aggravating and alternative circumstances attendant to the commission of the offense shall be considered.

The following circumstances shall be appreciated:
a. Physical illness
b. Good faith
c. Taking undue advantage of official position
d. Taking undue advantage of subordinate
e. Undue disclosure of confidential information
f. Use of government property in the commission of the offense
g. Habituality
h. Offense is committed during office hours and within the premises of the office or building
i. Employment of fraudulent means to commit or conceal the offense
j. Length of service in the government
k. Education, or
l. Other analogous circumstances

[38] *Committee on Security and Safety, CA v. Dianco, et al.*, 760 Phil. 169, 202 (2015).

[39] See *Villar v. Angeles, supra* note 28 and Committee on Security and Safety, *CA v. Dianco, et al., supra* note 38.

from service, respondent is sanctioned with a Fine equivalent to three (3) months of her last salary, which shall be deducted from her retirement benefits.

WHEREFORE, premises considered, the Court finds respondent Carolina A. Paumig, Social Welfare Officer II, Office of the Clerk of Court, Regional Trial Court, Tagbilaran City, **GUILTY** of serious dishonesty. Accordingly, and considering respondent's retirement, a **Fine** in the amount corresponding to three (3) months of her last salary, which shall be **DEDUCTED** from her retirement benefits, is imposed upon her.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., and *Hernando, JJ.,* concur.

Carandang, J., on leave.

EN BANC

[G.R. No. 170867. December 4, 2018]

REPUBLIC OF THE PHILIPPINES, Represented by RAPHAEL P.M. LOTILLA, Secretary, Department of Energy (DOE), MARGARITO B. TEVES, Secretary, Department of Finance (DOF), and ROMULO L. NERI, Secretary, Department of Budget and Management (DBM), *petitioners, vs.* **PROVINCIAL GOVERNMENT of Pakawan, Represented by GOVERNOR ABRAHAM KAHLIL B. MITRA,** *respondent.*

[G.R. No. 185941. December 4, 2018]

BISHOP PEDRO DULAY ARIGO, CESAR N. SARINO, DR. JOSE ANTONIO N. SOCRATES, and PROF. H. HARRY L. ROQUE, JR., *petitioners, vs.* **HON. EXECUTIVE SECRETARY EDUARDO R. ERMITA, HON. ENERGY SECRETARY ANGELO T. REYES, HON. FINANCE SECRETARY MARGARITO B. TEVES, HON. BUDGET AND MANAGEMENT SECRETARY ROLANDO D. ANDAYA, JR., HON. PALAWAN GOVERNOR JOEL T. REYES, HON. REPRESENTATIVE ANTONIO C. ALVAREZ (1st DISTRICT), HON. REPRESENTATIVE ABRAHAM MITRA (2nd DISTRICT), and RAFAEL E. DEL PILAR, President and CEO, PNOC EXPLORATION CORPORATION,** *respondents.*

SYLLABUS

1. POLITICAL LAW; 1987 PHILIPPINE CONSTITUTION; CONSTITUTIONAL PROVISIONS AFFECTING LOCAL GOVERNMENTS.— Under Section 25, Article II of the 1987 Constitution, "(t)he State shall ensure the autonomy of local governments." In furtherance of this State policy, the 1987 Constitution conferred on LGUs the power to create its own sources of revenue and the right to share not only in the national taxes, but also in the proceeds of the utilization of national wealth in their respective areas. Thus, Sections 5, 6, and 7 of Article X of the 1987 Constitution provides: **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 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 governments. **Section 6.** Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them. **Section 7.** Local governments shall be entitled to an **equitable share in the**

proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

2. ID.; ID.; ID.; SECTION 7 OF ARTICLE X GIVING FISCAL AUTONOMY TO LOCAL GOVERNMENTS; PERTINENT PROVISIONS UNDER THE LOCAL GOVERNMENT CODE.— At the center of this controversy is Section 7, an innovation in the 1987 Constitution aimed at giving fiscal autonomy to local governments. x x x The Local Government Code gave flesh to Section 7, [under] **Section 18.** *Power to Generate and Apply Resources;* x x x **Section 289.** *Share in the Proceeds from the Development and Utilization of the National Wealth;* x x x **Section 290.** *Amount of Share of Local Government Units;* x x x [and] **Section 291.** *Share of the Local Governments from any Government Agency or Owned or Controlled Corporation.* x x x Underlying these and other fiscal prerogatives granted to the LGUs under the Local Government Code is an enhanced policy of local autonomy that entails not only a sharing of powers, but also of resources, between the National Government and the LGUs.

3. ID.; LOCAL GOVERNMENT CODE; SHARE IN THE PROCEEDS FROM THE DEVELOPMENT AND UTILIZATION OF THE NATIONAL WEALTH; TERRITORIAL JURISDICTION REFERS TO TERRITORIAL BOUNDARIES AS DEFINED IN THE LOCAL GOVERNMENT UNIT'S CHARTER.— The question principally raised here is whether the national wealth, in this case the Camago-Malampaya reservoir, is within the Province of Palawan's "area" for it to be entitled to 40% of the government's share under Service Contract No. 38. The issue, therefore, hinges on what comprises the province's "area" which the Local Government Code has equated as its "territorial jurisdiction." While the Republic asserts that the term pertains to the LGU's territorial boundaries, the Province of Palawan construes it as wherever the LGU exercises jurisdiction. x x x The Local Government Code does not define the term "territorial jurisdiction." Provisions therein, however, indicate that territorial jurisdiction refers to the LGU's territorial boundaries. x x x In the creation of municipalities, cities and barangays, the Local

Government Code uniformly requires that the territorial jurisdiction of these government units be "properly identified by metes and bounds," x x x The intention is to consider an LGU's territorial jurisdiction as pertaining to a physical location or area as identified by its boundaries. This is also clear from other provisions of the Local Government Code, particularly Sections 292 and 294, on the allocation of LGUs' shares from the utilization of national wealth, which speak of the *location* of the natural resources: x x x That "territorial jurisdiction" refers to the LGU's territorial boundaries is a construction reflective of the discussion of the framers of the 1987 Constitution. x x x It is also consistent with the language ultimately used by the Constitutional Commission when they referred to the national wealth as those found within (the LGU's) respective areas. By definition, "area" refers to a particular extent of space or surface or a *geographic* region. x x x In enacting charters of LGUs, Congress is called upon to properly identify their territorial jurisdiction by metes and bounds. *Mariano, Jr. v. COMELEC* stressed the need to demarcate the territorial boundaries of LGUs with certitude because they define the limits of the local governments' territorial jurisdiction. x x x In fine, an LGU cannot claim territorial jurisdiction over an area simply because its government has exercised a certain degree of authority over it. Territorial jurisdiction is defined, not by the local government, but by the law that creates it; it is delimited, not by the extent of the LGU's exercise of authority, but by physical boundaries as fixed in its charter.

4. ID.; ID.; LOCAL GOVERNMENT UNIT; THE LGU'S TERRITORIAL JURISDICTION REFERS ONLY TO ITS LAND AREA.— Since it refers to a demarcated area, the term "territorial jurisdiction" is evidently synonymous with the term "territory." In fact, "territorial jurisdiction" is defined as the limits or *territory* within which authority may be exercised. Under the Local Government Code, particularly the provisions on the creation of municipalities, cities and provinces, and LGUs in general, territorial jurisdiction is contextually synonymous with territory and the term "territory" is used to refer to the land area comprising the LGU, x x x That the LGUs' respective territories under the Local Government Code pertain to the land area is clear from the fact that: (a) the law generally requires the territory to be "contiguous"; (b) the minimum area of the

contiguous territory is measured in square kilometers; (c) such minimum area must be certified by the Lands Management Bureau; and (d) the territory should be identified by metes and bounds, with technical descriptions. The word "contiguous" signifies two solid masses being in actual contact. Square kilometers are units typically used to measure large areas of land. The Land Management Bureau, a government agency that absorbed the functions of the Bureau of Lands, recommends policies and programs for the efficient and effective administration, management and disposition of alienable and disposable lands of the public domain and other lands outside the responsibilities of other government agencies. Finally, "metes and bounds" are the boundaries or limits of a tract of land especially as described by reference and distances between points on the land, while "technical descriptions" are used to describe these boundaries and are commonly found in certificates of land title.

5. ID.; ID.; ID.; ID.; THE CONTINENTAL SHELF WHERE THE CAMAGO-MALAMPAYA RESERVOIR IS LOCATED, IS NOT INCLUDED IN THE TERRITORY OF PALAWAN.— The Republic has enumerated the laws defining the territory of Palawan. x x x As defined in the organic law, the Province of Palawan is comprised merely of islands. The continental shelf, where the Camago-Malampaya reservoir is located, was not included in the territory. x x x [Also,] under Palawan's charter, the Camago-Malampaya reservoir is not located within its territorial boundaries.

6. ID.; ID.; ID.; ID.; ID.; ERRONEOUS ACKNOWLEDGMENT OF PALAWAN'S SHARE IN THE CAMAGO-MALAMPAYA PROJECT WILL NOT PLACE THE REPUBLIC IN ESTOPPEL.— Fundamental is the rule that the State cannot be estopped by the omission, mistake or error of its officials or agents. Thus, neither the DoE's June 10, 1998 letter to the Province of Palawan nor President Ramos' A.O. No. 381, which acknowledged Palawan's share in the Camago-Malampaya project, will place the Republic in estoppel as they had been based on a mistaken assumption of the LGU's entitlement to said allocation. Erroneous application and enforcement of the law by public officers do not preclude subsequent corrective application of the statute. x x x By indicating that the LGUs comprise the territorial subdivisions

of the State, the Constitution did not *ipso facto* make every portion of the national territory a part of an LGU's territory. x x x There is merit in the Republic's assertion that Section 1, Article X of the 1987 Constitution was intended merely to institutionalize the LGUs. The Court is further inclined to agree with the Republic's argument that assuming Section 1 of Article X was meant to divide the entire Philippine territory among the LGUs, it cannot be deemed as self-executing and legislation will still be necessary to implement it. LGUs are constituted by law and it is through legislation that their respective territorial boundaries are delineated. Furthermore, in the creation, division, merger and abolition of LGUs and in the substantial alteration of their boundaries, Section 10 of Article X requires satisfying the criteria set by the Local Government Code. It further requires the approval by the majority of the votes cast in a plebiscite in the political units directly affected.

7. ID.; ID.; ID.; THE REMEDY OF THE PROVINCE OF PALAWAN IS LEGISLATION THAT ENTITLES IT TO SHARE IN THE PROCEEDS OF THE UTILIZATION OF THE CAMAGO-MALAMPAYA RESERVOIR.— Contrary to the Republic's submission, the LGU's share under Section 7, Article X of the 1987 Constitution cannot be denied on the basis of the archipelagic and regalian doctrines. x x x There is no debate that the natural resources in the Camago-Malampaya reservoir belong to the State. Palawan's claim is anchored not on ownership of the reservoir but on a revenue-sharing scheme, under Section 7, Article X of the 1987 Constitution and Section 290 of the Local Government Code, that allows LGUs to share in the proceeds of the utilization of national wealth provided they are found within their respective areas. To deny the LGU's share on the basis of the State's ownership of all natural resources is to render Section 7 of Article X nugatory for in such case, it will not be possible for any LGU to benefit from the utilization of national wealth. x x x The LGU's share cannot be granted [also] based on equity. x x x [T]he Court finds that the Province of Palawan's remedy is x x x legislation that clearly entitles it to share in the proceeds of the utilization of the Camago-Malampaya reservoir. x x x Defining those boundaries is a legislative, not a judicial function. x x x As conceded by Dean Pangalangan, "territorial jurisdiction is fixed by a law, by a charter and that defines the territory of Palawan very strictly,"

and it is "something that can be altered only in accordance with [the] proper procedure ending with a plebiscite." It is true that the Local Government Code envisioned a genuine and meaningful autonomy to enable local government units to attain their fullest development as self-reliant communities and make them effective partners in the attainment of national goals. This objective, however, must be enforced within the extent permitted by law.

LEONEN, *J.*, *separate concurring opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE CONSTITUTION DECLARES IT A POLICY OF THE STATE TO ENSURE THE AUTONOMY OF LOCAL GOVERNMENTS.— The entirety of Article X of the Constitution is devoted to local governments. Under this article, local autonomy means "a more responsive and accountable local government structure instituted through a system of decentralization." To this end, the Local Government Code reiterates the declared policy of the State to ensure local autonomy, x x x Under this concept of autonomy, administration over local affairs is delegated by the national government to the local government units to be more responsive and effective at the local level. Thus, Section 17 of the Local Government Code tasks local government units to provide basic services and facilities to their local constituents: x x x In addition to administrative autonomy, local governments are likewise granted fiscal autonomy, or "the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities." x x xThe Local Government Code mandates that local government units shall have "an equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions." This provision implements Article X, Section 7 of the Constitution.

2. ID.; LOCAL GOVERNMENT CODE; THE CREATION OF A LOCAL GOVERNMENT UNIT IS BASED ON VERIFIABLE INDICATORS OF VIABILITY AND PROJECTED CAPACITY TO PROVIDE SERVICES, ONE

OF WHICH IS LAND AREA THAT MUST BE CONTIGUOUS; THE REQUIREMENT OF CONTIGUITY DOES NOT APPLY IF THE TERRITORY IS COMPRISED OF ISLANDS.— The Constitution itself provides for the natural boundaries of the State's political units. Article X, Section 1 of the Constitution allocates them as either "territorial and political subdivisions" or "autonomous regions," x x x Territorial and political subdivisions are the provinces, cities, municipalities, and barangays. x x x Autonomous regions are covered by a different set of provisions in the Constitution. Thus, the territorial jurisdiction of an autonomous region is not defined in the same manner as that of a territorial and political subdivision. A local government unit can only be created by an act of Congress. Its creation is based on "verifiable indicators of viability and projected capacity to provide services," one of which is land area, x x x The Local Government Code requires that the land area be contiguous unless it comprises of two (2) or more islands. x x x The requirement of contiguity does not apply if the territory is comprised of islands. All that is required is that it is properly identified by its metes and bounds.

3. **ID.; ID.; LOCAL GOVERNMENT UNITS; TERRITORIAL JURISDICTION; THE EXTENT OF A LOCAL GOVERNMENT UNIT'S TERRITORIAL JURISDICTION CANNOT BE LIMITED ONLY TO ITS LAND MASS; REFERENCE MUST ALSO BE MADE TO OTHER STATUTES.—** The Province of Palawan, previously known as Paragua, was organized under Act No. 422. x x x The law that created the Province of Palawan had no technical description. Instead, it anchored the province's borders on the bodies of water surrounding it. Since, the province's metes and bounds are not technically described, reference must be made to other laws interpreting the province's borders. Palawan comprises 1,780 islands. To determine its metes and bounds would be to go beyond the contiguity of its land mass. x x x The ponencia, in confining territorial jurisdiction to only that of land mass, does a disservice to the entirety of Article X, Section 7, x x x Under this provision, local governments are entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, *in the manner provided by law*. This means that law may define what could be included within a local government's respective area. Thus,

the extent of a local government unit's territorial jurisdiction cannot be limited only to its land mass, as defined by the Local Government Code. Reference must also be made to other statutes.

APPEARANCES OF COUNSEL

Roque & Butuyan Law Offices for petitioner in G.R. No. 185941.

Teodoro Jose S. Matta, et al. for respondent in G.R. No. 170867.

The Solicitor General for public respondents.

D E C I S I O N

TIJAM, *J.*:

G.R. No. 170867 is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated December 16, 2005 of the Regional Trial Court (RTC) of Palawan, Branch 95 in Civil Case No. 3779 which declared the Province of Palawan entitled to forty percent (40%) of the government's earnings derived from the Camago-Malampaya natural gas project since October 16, 2001. The petition also seeks *ad cautelam* to nullify the RTC Amended Order[3] dated January 16, 2006 which directed the "freezing" of said 40% share under pain of contempt.

G.R. No. 185941 is a petition for review on *certiorari*[4] under Rule 45 of the Rules of Court assailing the Resolution[5] dated May 29, 2008 of the Court of Appeals (CA) in CA-G.R. SP

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[1] *Rollo* (G.R. No. 170867), pp. 9-81.

[2] Penned by Judge Bienvenido C. Blancaflor; *id*. at 83-112.

[3] *Id*. at 113-116.

[4] *Rollo* (G.R. No. 185941), pp. 13-58.

[5] Penned by Associate Justice Rebecca De Guia-Salvador, concurred in by Associate Justices Vicente S.E. Ve1oso and Apolinario D. Bruselas, Jr.; *id*. at 218-224.

No. 102247 which dismissed the *certiorari* petition questioning the constitutionality of Executive Order (E.O.) No. 683,[6] and the CA Resolution[7] dated December 16, 2008 which denied the motion for reconsideration.

The Antecedents

The Camago-Malampaya Natural Gas Project

On December 11, 1990, the Republic of the Philippines (Republic or National Government), through the Department of Energy (DoE), entered into Service Contract No. 38 with Shell Philippines Exploration B.V. and Occidental Philippines, Incorporated (collectively SPEX/OXY), as Contractor, for the exclusive conduct of petroleum operations in the area known as "Camago-Malampaya" located offshore northwest of Palawan. Exploration of the area led to the drilling of the Camago-Malampaya natural gas reservoir about 80 kilometers from the main island of Palawan and 30 kms from the platform.[8]

The nearest point of the Camago-Malampaya production area is at a distance of 93.264 kms or 50.3585 nautical miles to the Kalayaan Island Group (Kalayaan); 55.476 kms or 29.9546 nm to mainland Palawan (Nacpan Point, south of Patuyo Cove, Municipality of El Nido); and 48.843 kms or 26.9546 nm to the Province of Palawan (northwest of Tapiutan Island, Municipality of El Nido).[9]

The quantity of natural gas contained in the Camago-Malampaya was estimated to be sufficient to justify the pursuit of gas-to-power projects having an aggregate power-generating

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[6] AUTHORIZING THE USE OF FEES, REVENUES AND RECEIPTS FROM SERVICE CONTRACT NO. 38 FOR THE IMPLEMENTATION OF DEVELOPMENT PROJECTS FOR THE PEOPLE OF PALAWAN. Issued on December 1, 2007. *Rollo*, (G.R. No. 170867), pp. 392-J-392-L.

[7] *Rollo* (G.R. No. 185941), pp. 250-252.

[8] *Rollo* (G.R. No. 170867), pp. 14, 556, 891, 1464-1465; *rollo* (G.R. No. 185941), p. 17. TSN, November 24, 2009, p. 15.

[9] *Rollo* (G.R. No. 170867), p. 1465.

capacity of approximately 3,000 megawatts operating at baseload for 20 to 25 years.[10]

Service Contract No. 38, as clarified by the Memorandum of Clarification between the same parties dated December 11, 1990, provides for a production sharing scheme whereby the National Government was entitled to receive an amount equal to sixty percent (60%) of the net proceeds[11] from the sale of petroleum (including natural gas) produced from petroleum operations while SPEX/OXY, as service contractor, was entitled to receive an amount equal to forty percent (40%) of the net proceeds.[12]

The Contractor was subsequently composed of the consortium of SPEX, Shell Philippines LLC, Chevron Malampaya LLC and Philippine National Oil Company-Exploration Corporation (PNOC-EC).[13]

Administrative Order No. 381

On February 17, 1998, President Fidel V. Ramos issued Administrative Order (A.O.) No. 381[14] which, in part, stated

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[10] *Id*. at 1466.

[11] "Net proceeds" is defined under Section VII, paragraph 7.3 (c) of Service Contract No. 38 as the difference between the gross income and the sum of the Operating Expenses as defined in Section II, paragraph 2.19 of the contract. *Rollo* (G.R. No. 185941), pp. 165 and 182.

[12] Third Whereas Clause, Administrative Order No. 381; *rollo* (G.R. No. 170867), pp. 549 and 556.

[13] First Whereas Clause, Executive Order No. 683 issued on December 1, 2007; *id*. at 392-J.

[14] PROVIDING FOR THE FULFILLMENT BY THE NATIONAL POWER CORPORATION OF ITS OBLIGATIONS UNDER THE AGREEMENT FOR THE SALE AND PURCHASE OF NATURAL GAS DATED DECEMBER 30, 1997 WITH SHELL PHILIPPINE EXPLORATION B.V./OCCIDENTAL PHILIPPINES, INC. AND THE COMPLIANCE OF THE NATIONAL GOVERNMENT, THROUGH THE DEPARTMENT OF FINANCE AND THE DEPARTMENT OF ENERGY WITH ITS PERFORMANCE UNDERTAKING THEREFOR AND OTHER PURPOSES. Issued on February 17, 1998. *Id*. at 549-550-A.

that the Province of Palawan was expected to receive about US$2.1 Billion from the estimated US$8.1 Billion total government share from the Camago-Malampaya natural gas project for the 20-year contract period.[15]

On June 10, 1998, DoE Secretary Francisco L. Viray wrote Palawan Governor Salvador P. Socrates, requesting for the deferment of payment of 50% of Palawan's share in the project for the first seven years of operations, estimated at US$222.89 Million, which it would use to pay for the National Power Corporation's Take-or-Pay Quantity (TOPQ) obligations under the latter's Gas Sale and Purchase Agreements with SPEX/ OXY.[16]

On October 16, 2001, the Camago-Malampaya natural gas project was inaugurated.[17]

Palawan's Claim

The Provincial Government of Palawan asserted its claim over forty percent (40%) of the National Government's share in the proceeds of the project. It argued that since the reservoir is located within its territorial jurisdiction, it is entitled to said share under Section 290[18] of the Local Government Code. The National Government disputed the claim, arguing that since the gas fields were approximately 80 kms. from Palawan's coastline, they are outside the territorial jurisdiction of the province and is within the national territory of the Philippines.[19]

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[15] Fifteenth Whereas Clause, Administrative Order No. 381, paragraph 2; *id*. at 549-A and 892.

[16] *Id.* at 551-552, 892-893.

[17] *Id*. at 892.

[18] Sec. 290. *Amount of Share of Local Government Units*. — Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

[19] *Rollo* (G.R. No. 170867), pp. 14, 894-895.

Negotiations took place between the National Government and the Provincial Government of Palawan on the sharing of the proceeds from the project, with the former proposing to give Palawan 20% of said proceeds after tax. The negotiations, however, were unsuccessful. On March 14, 2003, in a letter to the Secretaries of the Department of Energy (DoE), the Department of Budget and Management (DBM) and the Department of Finance (DoF), Palawan Governor Mario Joel T. Reyes (Governor Reyes) reiterated his province's demand for the release of its 40% share. Attached to said letter was Resolution No. 5340-03[20] of the *Sangguniang Panlalawigan* of Palawan calling off further negotiations with the National Government and authorizing Governor Reyes to engage legal services to prosecute the province's claim.[21]

Civil Case No. 3779

On May 7, 2003, the Provincial Government of Palawan filed a petition[22] for declaratory relief before the RTC of Palawan and Puerto Princesa against DoE Secretary Vicente S. Perez, Jr., DoF Secretary Jose Isidro N. Camacho and DBM Secretary Emilia T. Boncodin (Department Secretaries), docketed as Civil Case No. 3779. It sought judicial determination of its rights under A.O. No. 381 (1998), Republic Act (R.A.) No. 7611[23] or the Strategic Environmental Plan (SEP) for Palawan Act, Section 290 of R.A. No. 7160[24] or the Local Government Code of 1991

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[20] *Id*. at 128-129.

[21] *Id*. at 15-16, 127-129, 895-896.

[22] *Id*. at 130-158.

[23] AN ACT ADOPTING THE STRATEGIC ENVIRONMENT PLAN FOR PALAWAN, CREATING THE ADMINISTRATIVE MACHINERY TO ITS IMPLEMENTATION, CONVERTING THE PALAWAN INTEGRATED AREA DEVELOPMENT PROJECT OFFICE TO ITS SUPPORT STAFF, PROVIDING FUNDS THEREFOR, AND FOR OTHER PURPOSES. Approved on June 19, 1992.

[24] AN ACT PROVIDING FOR A LOCAL GOVERNMENT CODE OF 1991.

(Local Government Code), and Provincial Ordinance No. 474[25] (series of 2000). It asked the RTC to declare that the Camago-Malampaya natural gas reservoir is part of the territorial jurisdiction of the Province of Palawan and that the Provincial Government of Palawan was entitled to receive 40% of the National Government's share in the proceeds of the Camago-Malampaya natural gas project.[26]

Commenting on the petition, the Republic maintained that Palawan was not entitled to the 40% share because the Camago-Malampaya reservoir is outside its territorial jurisdiction. It postulated that Palawan's territorial jurisdiction is limited to its land area and to the municipal waters within 15 km from its coastline. It denied being estopped by the acts of government officials who earlier acknowledged Palawan's share in the proceeds of the project.[27]

The Interim Agreement

On February 9, 2005, DoE Secretary Vincent S. Perez, Jr., DBM Secretary Mario L. Relampagos and DoF Secretary Juanita D. Amatong, with authority from President Gloria Macapagal-Arroyo, executed an Interim Agreement[28] with the Province of Palawan, represented by its Governor Reyes. The agreement provided for the equal sharing between the National Government and the Province of Palawan of 40% of (a) the funds already remitted to the National Government under Service Contract No. 38 and (b) the funds to be remitted to the National Government up the earlier of (i) the effective date of the final and executory judgment on the petition by a court of competent jurisdiction on Civil Case No. 3779, or (ii) June 30, 2010. The parties also agreed that the amount of ₱600 Million, which was previously released to the Province of Palawan under E.O. Nos.

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[25] An Ordinance Delineating the Territorial Jurisdiction of the Province of Palawan. *Rollo* (G.R. No. 170867), pp. 149 and 972.

[26] *Id*. at 16-17, 130-158.

[27] *Id*. at 89, 92.

[28] *Id*. at 555-561.

254 and 254-A, would be deducted from the initial release of the province's 50% share. Furthermore, the release of funds under the agreement would be without prejudice to the respective positions of the parties in any legal dispute regarding the territorial jurisdiction over the Camago-Malampaya area. Should Civil Case No. 3779 be decided with finality in favor of either party, the Interim Agreement treated the share which the prevailing party has received as financial assistance to the other.[29]

The Province of Palawan claims that the National Government failed to fulfill their commitments under the Interim Agreement and that it has not received its stipulated share since it was signed.[30]

The RTC Rulings in Civil Case No. 3779

On December 16, 2005, the RTC decided Civil Case No. 3779 in favor of the Province of Palawan, disposing as follows:

> WHEREFORE, premises considered, the Court declares that the province of Palawan is entitled to the 40% share of the national wealth pursuant to the provisions of Sec. 7, Article X of the 1987 Constitution and this right is in accord with the provisions of the Enabling Act, R.A. 7160 (The Local Government Code of 1991), computed based on revenues generated from the Camago-Malampaya Natural Gas Project since October 16, 2001.
>
> **IT IS SO ORDERED.**[31]

The RTC held that it was "unthinkable" to limit Palawan's territorial jurisdiction to its landmass and municipal waters considering that the Local Government Code empowered them to protect the environment, and R.A. No. 7611 adopted a comprehensive framework for the sustainable development of Palawan compatible with protecting and enhancing the natural resources and endangered environment of the province.[32]

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[29] *Id*. at 557-559, 896-897.

[30] *Id*. at 897.

[31] *Id*. at 112.

[32] *Id*. at 109.

Applying the principles of decentralization and devolution of powers to local government units (LGUs) as recognized in the 1987 Constitution, the RTC explained that the State's resources must be shared with the LGUs if they were expected to deliver basic services to their constituents and to discharge their functions as agents of the State in enforcing laws, preserving the integrity of the national territory and protecting the environment.[33]

The RTC rejected the Department Secretaries' reliance on the cases of *Tan v. COMELEC*[34] and *Laguna Lake Development Authority v. CA*[35] (*LLDA*) in arguing that territorial jurisdiction refers only to landmass. The RTC held that the cases were inapplicable as *Tan* was an election controversy involving the creation of a new province while *LLDA* merely highlighted the primacy of the said agency's Charter over the Local Government Code. The 1950 case of *Municipality of Paoay v. Manaois*,[36] where a municipality was declared as holding only a usufruct, not exclusive ownership, over the municipal waters, was also held to be inapplicable since it was rendered before the principle of local autonomy was instituted in the 1987 Constitution and the Local Government Code.[37]

The RTC further declared that the Regalian Doctrine could not be used by the Department Secretaries as a shield to defeat the Constitutional provision giving LGUs an equitable share in the proceeds of the utilization and development of national wealth within their respective areas. The doctrine, said the RTC, is subject to this Constitutional limitation and the 40% LGU share set by the Local Government Code.[38]

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

[34] 226 Phil. 624 (1986).

[35] 321 Phil. 395 (1995).

[36] 86 Phil. 629 (1950).

[37] *Rollo* (G.R. No. 170867), p. 111.

[38] *Id.*

Finally, the RTC noted that from 1992 to 1998, Palawan received a total of ₱116,343,197.76 from collections derived from the West Linapacan Oil Fields, and that former President Fidel V. Ramos issued A.O. No. 381 acknowledging Palawan's claim and share in the proceeds of the Camago-Malampaya project. The RTC, thus, held that by its previous actions and issuances, the National Government legally acknowledged Palawan's claim to the proceeds of the Camago-Malampaya project and it was "too late in the day for [it] to take a 180 degree turn."[39]

On December 29, 2005, the Provincial Government of Palawan filed a motion to require the Secretaries of the DoE, DoF and DBM to render a full accounting of actual payments made by SPEX to the Bureau of Treasury from October 1, 2001 to December 2005, and to freeze and/or place Palawan's 40% share in an escrow account.[40]

On January 4, 2006, the aforesaid Secretaries filed an urgent manifestation asserting that the motion was premature and should not be heard by the RTC because the Republic still had fifteen (15) days to appeal.[41] The Provincial Government of Palawan countered that pending finality of the December 16, 2005 Decision, there was a need to secure its 40% share over which it had a "vested and inchoate right."[42]

The RTC subsequently issued an Order which was erroneously dated December 16, 2006 and later amended to indicate the date as January 16, 2006.[43] The dispositive portion of the Amended Order[44] reads:

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[39] *Id*. at 112.

[40] *Id*. at 17, 113-114.

[41] *Id*. at 17-18.

[42] *Id*. at 113.

[43] *Id*. at 435.

[44] *Id*. at 113-116.

WHEREFORE, premises considered, the public respondents individually or collectively DIRECTED within ten (10) days from receipt of this Order pursuant to a "Freeze Order" hereby granted by this Court:

a. HON. Respondent SECRETARY OF THE DEPARTMENT OF ENERGY RAPHAEL P.M. LOTILLA

To render a FULL ACCOUNTING of the total gross collections derived by the National Government from the development and utilization of Camago-Malampaya national gas project for the period January 2002 to December 2005, including its conversion to peso denomination and showing the 40% LGU share and henceforth, submit MONTHLY an accounting of all succeeding collections until the finality of the decision;

b. HON. Respondent SECRETARY OF FINANCE MARGARITO TEVEZ-

To submit a full report of the actual payments made by Shell Spex from January 2002 to December 2005 deposited under Special Account 151 of the Bureau of Treasury, Department of Finance, including the dates when the payments were made, the Official Receipts covering the same and the present status, particularly the disputed 40% LGU share for Palawan and to make MONTHLY reports of actual payments received during the pendency of this case;

c. HON. Respondent SECRETARY DEPARTMENT OF BUDGET [sic] ROMULO NERI

Effective immediately, NOT TO ISSUE nor CHARGE allotment release orders, disbursements and cash allocation against the deposit/ account Special Fund 151 corresponding to the 40% LGU share for the period January 2002 to December 2005 pending the finality of the decision in this case.

d. ALL RESPONDENTS, collectively or individually, effective immediately, CEASE and DESIST from USING/DISBURSING the 40% share of the LGU-Palawan, for any other purpose, except in compliance with the decision of this Court dated December 16, 2005, under pain of CONTEMPT, until the finality of the decision;

e. Furthermore, the HON. Respondent Secretary of Finance Margarito Tevez [sic] and/or his subordinate officer Hon. Omar T.

Cruz Treasurer of the Philippines, to deposit in escrow in the LAND BANK OF THE PHILIPPINES the fund/deposit to the 40% disputed LOU share, identified as Special Account 151, and to "freeze" said account, under pain of CONTEMPT, until finality of the decision or except as directed by this Court pursuant to the Decision dated December 16, 2005.

IT IS SO ORDERED.[45]

The RTC held that the motion for full accounting and freezing of Palawan's claimed 40% share was actually part of the petition for review which sought to declare the duties of the National Government and the rights of the Provincial Government of Palawan, and that a resolution thereof would guide this Court as to the actual amount due the local government since it is not a trier of facts.[46] The RTC also noted that the National Government's track record in complying with the Constitutional provisions on local autonomy was not exactly immaculate as supposedly evidenced by the case of *Gov. Mandanas v. Hon. Romulo*[47] where, after sharing with the Province of Palawan collections from the West Linapacan oil fields from 1992 to 1998, the National Government "turned its back on its legal commitment to the former." The trial court stressed that the local government of Palawan was merely preempting any possible dissipation of funds that would render any judgment favorable to it an empty victory.[48]

On February 6, 2006, the Department Secretaries filed a motion for reconsideration[49] of the Amended Order dated January 16, 2006.[50]

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

[46] *Id*. at 114.

[47] 473 Phil. 806 (2004).

[48] *Rollo* (G.R. No. 170867), p. 115.

[49] *Id*. at 417-432.

[50] *Id*. at 18 and 437.

G.R. No. 170867

On February 16, 2006, the Republic, represented by DoE Secretary Raphael P.M. Lotilla, DoF Secretary Margarito B. Teves and DBM Secretary Romulo L. Neri, challenged the RTC's December 16, 2005 Decision before this Court through a petition for review[51] docketed as G.R. No. 170867. In the same petition, the Republic, in anticipation of the RTC's denial of its motion for reconsideration, also assailed the January 16, 2006 Amended Order *ad cautelam*, ascribing grave abuse of discretion to the RTC for granting affirmative relief in a special civil action for declaratory relief.[52]

On June 6, 2006, the RTC in its Order[53] lifted its January 16, 2006 Order, holding that:

> [A] becoming sense of modesty on the part of this Court, compels it to defer to the Supreme Court's First Division as the Movants have deviously appealed to the High Court the very issues raised in the Motion for Reconsideration now pending before this Court.[54]

The dispositive portion of the RTC's June 6, 2006 Order, thus, reads:

> WHEREFORE, premises considered, the Amended Order dated January 16, 2006 is hereby LIFTED and SET ASIDE to await final determination thereof in view of the Petition for Review on *Certiorari* filed by Movants in this case directly with the Supreme Court.
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> IT IS SO ORDERED.[55]

Consequently, the Republic manifested to the Court that its *ad cautelam* arguments relative to the Amended Order dated

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[51] *Id*. at 9-81.

[52] *Id*. at 18, 21, 437.

[53] *Id*. at 622-625.

[54] *Id*. at 625.

[55] *Id*.

January 16, 2006 need no longer be resolved unless the Provincial Government of Palawan raised the same in its comment.[56]

The Provisional Implementation Agreement

On July 25, 2007, the duly authorized representatives of the National Government and the Province of Palawan, with the conformity of the Representatives of the Congressional Districts of Palawan, agreed on a Provisional Implementation Agreement (PIA) that allowed 50% of the disputed 40% of the Net Government Share in the proceeds of Service Contract No. 38 to be utilized for the immediate and effective implementation of development projects for the people of Palawan.[57]

E.O. No. 683

On December 1, 2007, President Gloria Macapagal-Arroyo issued E.O. No. 683 which authorized the release of funds to the implementing agencies pursuant to the PIA, without prejudice to any ongoing discussion or the final judicial resolution of Palawan's claim of territorial jurisdiction over the Camago-Malampaya area. E.O. No. 683 provided:

SECTION 1. Subject to existing laws, and the usual government accounting and auditing rules and regulations, the Department of Budget and Management (DBM) is hereby authorized to release funds to the implementing agencies (lA) pursuant to the PIA, upon the endorsement and submission by the DOE and/or the PNOC Exploration Corporation of the following documents:

1.1. Directive by the Office of the President or written request of the Province of Palawan, the Palawan Congressional Districts or the Highly Urbanized City of Puerto Princes[a], for the funding of designated projects;

1.2. A certification that the designated projects fall under the investment program of the Province of Palawan, City of Puerto

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[56] *Id*. at 438.

[57] Sixth Whereas Clause, Executive Order No. 683 issued on December 1, 2007; *id.* at 392-J; <https://www.dbm.gov.ph/wp-content/uploads/Issuances/2008/Joint%20Circular/JC_No3/jc_no3.pdf>

Princesa, and/or the development projects identified in the development program of the National Government or its agencies; and

1.3. Bureau of Treasury certification on the availability of funds from the 50% of the 40% share being claimed by the Province of Palawan from the Net Government Share under SC 38;

Provided, that the DBM shall be subject to the actual collections deposited with the National Treasury, and shall be in accordance with the Annual Fiscal Program of the National Government.

SECTION 2. The IA to whom the DBM released the funds pursuant to Section 1 hereof shall be accountable for the implementation of the projects and the expenditures thereon, subject to applicable laws and existing budgeting, accounting and auditing rules and regulations. For recording purposes, the DBM may authorize the IAs to open and maintain a special account for the amounts released pursuant to this Executive Order (EO).

SECTION 3. The National government, with due regard to the pending judicial dispute, shall allow the Province of Palawan, the Congressional Districts of Palawan and the City of Puerto Princesa to securitize their respective shares in the 50% of the disputed 40% of the Net Government Share in the proceeds of SC 38 pursuant to the PIA. For the purpose, the DOE shall, in consultation with the Department of Finance, be responsible for preparing the Net Government Revenues for the period of to June 30, 2010.

SECTION 4. The amounts released pursuant to this EO shall be without prejudice to any on-going discussions or final judicial resolution of the legal dispute regarding the National Government's territorial jurisdiction over the areas covered by SC 38 in relation to the claim of the Province of Palawan under Sec. 290 of RA 7160.

CA-G.R. SP No. 102247

On February 7, 2008, a petition for *certiorari*[58] questioning the constitutionality of E.O. No. 683 was filed before the CA by Bishop Pedro Dulay Arigo, Cesar N. Sarino, Dr. Jose Antonio N. Socrates and Prof. H. Harry L. Roque, Jr. (Arigo, et al.), as citizens and taxpayers, against Executive Secretary Eduardo R. Ermita (Executive Secretary Ermita), DoE Secretary Angelo

[58] *Rollo* (G.R. No. 185941), pp. 62-96.

T. Reyes (DoE Secretary Reyes), DoF Secretary Margarito B. Teves, DBM Secretary Rolando D. Andaya, Jr., Palawan Governor Reyes, Representative Antonio C. Alvarez (Alvarez) of the First District of Palawan, Representative Abraham Mitra (Mitra) and Rafael E. Del Pilar, President and Chief Executive Officer, PNOC-EC. Docketed as CA-G.R. SP No. 102247, the petition also asked the CA to: (1) prohibit respondents therein from disbursing funds allocated under E.O. No. 683; (2) direct the National Government to release the 40% allocation of the Province of Palawan from the proceeds of the Camago-Malampaya project pursuant to the sharing formula under the Constitution and the Local Government Code; and (3) prohibit the parties to the PIA from implementing the same for being violative of the Constitution and the Local Government Code.[59]

In a Resolution dated March 18, 2008, the CA required Arigo, et al. to submit, within five (5) days from notice, copies of relevant pleadings and other material documents, namely: (1) the petition for review on *certiorari*, docketed as G.R. No. 170867, filed before this Court; (2) the RTC's Decision in Civil Case No. 3779; (3) the motion for reconsideration of said RTC Decision; (4) the Service Contract No. 38; and (5) the PIA, as required under Section 1, Rule 65, in relation to Section 3, Rule 46 of the Rules of Court.[60]

Arigo, et al. asked for additional ten (10) days to comply with the Resolution, which the CA granted. They later submitted the required documents except for the copies of the petition in G.R. No. 170867 and the PIA. They informed the CA that despite having made a formal request for said petition, they were unable to secure a copy because they were not parties to the case. The Third Division's Clerk of Court also informed them that the records of G.R. No. 170867 were unavailable as the case had already been submitted to the *ponente* for resolution. Though unable to obtain a copy of the PIA, they submitted a copy of Service Contract No. 38 which they supposedly secured from

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[59] *Id*. at 20 and 219.

[60] *Id*. at 20-21, 219.

"unofficial sources." Considering the difficulty they allegedly encountered in obtaining the documents, they asked the CA to direct DoE Secretary Reyes and Executive Secretary Ermita to submit a copy of the petition in G.R. No. 170867 and Service Contract No. 38, respectively. They also asked the CA to require any of the respondents -officials of the Province of Palawan to submit a copy of the PIA to which they were supposed to have been signatories.[61]

Ruling of the CA

In the CA's Resolution[62] dated May 29, 2008, Arigo et al.'s petition for *certiorari* was denied due course and dismissed. The CA held that the task of submitting relevant documents fell squarely on Arigo, et al. as petitioners invoking its jurisdiction. It added that Arigo, et al. should have submitted a certification from this Court's Third Division concerning the unavailability of the records of G.R. No. 170867 and that they could have simply secured a copy of the PIA from the Malacañang Records Office as the official repository of all documents related to the Executive's functions.

The CA also held that apart from its procedural defect, the petition was also prematurely filed considering that it was anchored on the same essential facts and circumstances and raised the same issues in G.R. No. 170867. The CA likewise noted that the interim undertaking between the parties to the PIA was contingent on the final adjudication of G.R. No. 170867. Taking judicial notice of on-going efforts of both legislative and executive departments to arrive at a common position in redefining the country's baseline in the light of the United Nations Convention on the Law of the Sea (UNCLOS), the appeals court further explained that ruling on the case may be tantamount to a collateral adjudication of the archipelagic baseline which involved a policy issue.[63]

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[61] *Id*. at 21, 219-220.

[62] *Id*. at 218-224.

[63] *Id*. at 220-223.

Arigo, et al. asked the CA to reconsider its May 29, 2008 Resolution and later submitted an original duplicate of the Resolution[64] dated June 23, 2008 of this Court's Third Division which denied their counsel's request for certified true copies of certain documents since it was not a counsel for any party.[65]

On December 16, 2008, the CA issued a Resolution[66] denying the motion for reconsideration.

G.R. No. 185941 (Arigo, et al. petition)

On February 23, 2009, Arigo, et al. filed a petition for review on *certiorari*[67] over the CA's May 29, 2008 and December 16, 2008 Resolutions, arguing that the case was ripe for decision and that the documents required by the CA were not necessary.[68] They assert anew their constitutional challenge to E.O. No. 638, claiming that it was in violation of the mandated equitable sharing of resources between the National Government and LGUs.[69]

Consolidation of Cases

On June 23, 2009, the Court in its Resolution[70] consolidated G.R. No. 185941 with G.R. No. 170867.

Oral Argument

On September 1, 2009[71] and November 24, 2009,[72] the cases were heard on oral argument. After the parties presented their respective arguments, the Court heard the opinions of Atty.

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[64] *Id*. at 249.

[65] *Id*. at 22.

[66] *Id*. at 250-252.

[67] *Id*. at 13-58.

[68] *Id*. at 25.

[69] *Id*. at 14.

[70] *Id*. at 327.

[71] *Rollo* (G.R. No. 170867), pp. 1210-1214.

[72] *Id*. at 1260-1261.

Henry Bensurto, Jr. (Atty. Bensurto) of the Department of Foreign Affairs and Dean Raul Pangalangan of the University of the Philippines as *amici curiae*.

Remittances under Service Contract No. 38

As of August 31, 2009, the amounts remitted to the DoE under Service Contract No. 38 are as follows:[73]

Year	Total Collection
2002	646,333,100.11
2003	1,475,334,680.12
2004	1,631,245,574.33
2005	2,393,400,010.73
2006	5,369,720,905.73
2007	8,228,450,883.72
2008	25,498, 646,553.39
January 1 to August 31, 2009	15,947,078,304.12
Total	**61,190,210,012.25**

Based on the aforesaid remittances, the Republic computed the share claimed by the Province of Palawan (as of August 31, 2009) as follows:[74]

Year	DoE Share[75]	Source of Assistance to the LGUs	
		Palawan's 40% Claim	Total Collection
2002	10,113,578.87	636,219,521.24	646,333,100.11
2003		1,475,334,680.12	1,475,334,680.12
2004		1,631,245,574.33	1,631,245,574.33
2005		2,393,400,010.73	2,393,400,010.73

[73] *Id*. at 1466-1467.

[74] *Id*. at 1467.

[75] From 2002 to 2007, there were no or minimal remittance because of the Take-or-Pay Quantity (TOPQ) obligation of the National Power Corporation as implemented through Administrative Order No. 381 issued on February 17, 1998. *Id*.

2006		5,369,720,905.73	5,369,720,905.73
2007		8,228,450,883.72	8,228,450,883.72
2008	15,057,426,163.39	10,441,220,390.00	25,498,646,553.39
January 1 to August 31, 2009	10,600,881,085.36	5,346,197,218.76	15,947,078,304.12
Total	25,668,420,827.62	**35,521,789,184.63**	61,190,210,012.25

The Parties' Submissions

Precised, the parties' respective arguments are as follows:

The Republic

1. An LGU's territorial jurisdiction refers only to its land area.[76]

1.1. Since Section 7 of the Local Government Code uses "population" and "land area" as indicators in the creation and conversion of LGUs, it follows that the territorial jurisdiction is the land where the people live and excludes seas or marine areas.[77]

1.2. In describing the territorial requirement for a province, Section 461(a)(i) of the Local Government Code speaks of "a contiguous territory, as certified by the Lands Management Bureau" while Section 461(b) of the same law provides that "the territory need not be contiguous if it comprises two (2) or more islands," indicating that "territory" is limited to the landmass.[78]

1.3. "Territory" as used in Section 461 of the Local Government Code and "land area" as used in Section 7 of the same law, must be attested to by the Lands Management Bureau which has jurisdiction only over land areas.[79]

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[76] *Id*. at 22.

[77] *Id*.

[78] *Id*. at 23.

[79] *Id*.

1.4. In Tan,[80] the Court interpreted "territory" to refer only to the mass of land above sea water and excludes the waters over which the political unit exercises control.[81] The RTC erred in holding that *Tan* is not applicable when it also involved the issue of whether the province should include the waters around it. *Tan* applies whether the purpose is the creation of a province or the determination of its territorial jurisdiction.[82]

2. The area referred to under Section 7, Article X of the 1987 Constitution, which grants LGUs a share in the proceeds of the utilization and development of national wealth within their respective areas, refers to the territorial boundaries of the LGU as defined in its charter and not to its exercise of jurisdiction.[83]

2.1. As examples of such national wealth, members of the 1986 Constitutional Commission referred to natural resources found inland or onshore, even when offshore explorations were being conducted years before the Commission was formed.[84]

2.2. The Local Government Code provides that the territorial jurisdiction of municipalities, cities and barangays should be identified by metes and bounds, thus confirming that "territorial jurisdiction" refers to the LGU's territorial boundaries.[85]

3. The Camago-Malampaya reservoir is outside the territorial boundaries of the Province of Palawan as defined in its Charter. Under said Charter, Palawan's territory is composed only of islands.[86]

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[80] *Supra* note 34.

[81] *Id*. at 24.

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

[83] *Id*. at 1473-1474.

[84] *Id*. at 1475-1476.

[85] *Id*. at 1481 and 1483.

[86] *Id*. at 1487-1488.

4. On municipal waters:

4.1. As argued in the petition: Assuming an LGU's territory includes the waters around its land area, the same should refer only to the municipal waters as defined under Section 131(r) of the Local Government Code and Section 4.58[87] of R.A. No. 8550,[88] otherwise known as the Philippine Fisheries Code of 1998.[89]

4.1.1. In defining "municipal waters," Section 131(r) of the Local Government Code only includes marine waters within fifteen (15) kms from the coastline. Section 4.58 of R.A. No. 8550 gives a similar definition of "municipal waters."[90]

4.1.2. Under Sections 6 and 7 of R.A. No. 8550, it is the Department of Agriculture, through the Bureau of Fisheries and Aquatic Resources, that has jurisdiction over Philippine waters beyond the 15-km limit of municipal waters, with respect to the issuance of license, charging of fees and access to fishery resources.[91]

4.1.3. Section 16 of R.A. No. 8550 provides that the jurisdiction of a municipal or city government extends

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[87] **Section 4.** ***Definition of Terms.*** — x x x

x x x x x x x x x x x x

58. Municipal waters — include not only streams, lakes, inland bodies of water and tidal waters within the municipality which are not included within the protected areas as defined under Republic Act No. 7586 (The NIPAS Law), public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two (2) lines drawn perpendicular to the general coastline from points where the boundary lines of the municipality touch the sea at low tide and a third line parallel with the general coastline including offshore islands and fifteen (15) kilometers from such coastline. Where two (2) municipalities are so situated on opposite shores that there is less than thirty (30) kilometers of marine waters between them, the third line shall be equally distant from opposite shore of the respective municipalities.

[88] AN ACT PROVIDING FOR THE DEVELOPMENT, MANAGEMENT AND CONSERVATION OF THE FISHERIES AND AQUATIC RESOURCES, INTEGRATING ALL LAWS PERTINENT THERETO, AND FOR OTHER PURPOSES. Approved on February 25, 1998.

[89] *Rollo* (G.R. No. 170867), p. 26.

[90] *Id*. at 26-28.

[91] *Id*. at 28-29, 1559, 1562-1563.

only to the municipal waters, while Section 65 of the same law provides that the enforcement of laws and the formulation of rules, except in municipal waters, are vested in the National Government.[92]

4.1.4. Thus, the LGUs' authority may be enforced only within the 15-km limit of the municipal waters. Beyond it, jurisdiction rests with the National Government through the Philippine Navy, Philippine Coast Guard, Philippine National Police-Maritime Command, and the Department of Agriculture in their respective areas of concern.[93]

4.1.5. It was held in *Municipality of Paoay*[94] that a municipality's right over municipal waters consists merely of usufruct. Contrary to the RIC's pronouncement, the decision in said case remains good law since nothing in the 1987 Constitution overthrew the principle that the State owns all natural resources whether found on land or under the sea.[95]

4.1.6. Even assuming that the LGU's territory extends to the municipal waters, the Camago-Malampaya natural gas reservoir is located approximately 80 kms from mainland Palawan, thus, way beyond the 15-km radius.[96]

4.2. As argued in the Memorandum: Under the Local Government Code, the 15-km municipal waters and beyond, including the continental margin, do not' form part of the territory of an LGU.[97]

4.2.1. In *Tan*, the Court excluded from the territory of the political unit the "waters over which [it] exercises control" or the municipal waters.[98]

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[92] *Id.* at 29-30, 1564.

[93] *Id*. at 30, 1564-1565.

[94] *Supra* note 36.

[95] *Rollo* (G.R. No. 170867), pp. 30-31, 1566.

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

[97] *Id*. at 1501-1502.

[98] *Id*. at 1503.

4.2.3. The Local Government Code and the Philippine Fisheries Code did not redefine and extend the territorial jurisdiction of LGUs to include the 15-km municipal waters. Instead, they merely granted "extraterritorial" jurisdiction over the municipal waters, which is limited only to the waters, excluding the seabed, subsoil and continental shelf; to fishery and aquatic resources, excluding other resources; and to revenue generation and regulation of said resources.[99]

4.2.4. Other than the 15-km municipal waters, the Local Government Code did not vest jurisdiction beyond the LGU's territorial boundaries.[100]

5. Under the Archipelagic and Regalian Doctrines enshrined in the 1987 Constitution, the maritime area between Kalayaan and mainland Palawan belongs to the national territory and does not pertain to any local government unit.[101]

5.1. The fact that a territorial sea belongs to the internal waters of a coastal State does not necessarily imply that it belongs to the province or local government closest to it. R.A. No. 3046, entitled An Act to Define the Baselines of the Territorial Sea of the Philippines, as amended by R.A. No. 5446, which defines the State's "internal waters," does not expressly state that the internal waters should also belong to the LGU.[102]

5.2. The Archipelagic Doctrine, as enunciated in the UNCLOS and affirmed in Article I of the 1987 Constitution, pertains to the sovereign state and does not place within the territory of LGUs the waters between and surrounding its islands. Nowhere in international or domestic law does it state that said doctrine applies in *pari materia* to LGUs.[103]

5.3. The application of the Archipelagic Doctrine to a political subdivision will encroach on territories that belong to the State. Section 3 of the Water Code provides that

[99] *Id*. at 1556-1557.

[100] *Id*. at 1557.

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

[102] *Id*. at 36.

[103] *Id*. at 1499-1501.

"all waters belong to the State" and Section 5 of the same law specifies that "seawater belongs to the State." So also, while the definition of Philippine waters under the Philippine Fisheries Code acknowledges that waters may exist in political subdivisions, nothing therein implies that such waters form part of the territory of the LGU. Furthermore, said definition treats the waters connecting the islands as a separate group from the waters existing in the political subdivisions, implying that waters between islands are not deemed found in LGUs.[104]

5.4. The Regalian Doctrine, as embodied in Section 2, Article XII of the 1987 Constitution, is all encompassing; thus, it behooves the claimant to present proof of title before his right is recognized. Without a specific and unmistakable grant by the State, the property remains to be that of the State and the LGU cannot claim an area to be part of its territorial jurisdiction. Inclusion of any land or water as part of Palawan's territory must be expressly provided by law and not merely inferred by vague and ambiguous construction. Statutes in derogation of authority should be construed in favor of the State and should not be permitted to divest it of any of its rights or prerogatives unless the legislature expressly intended otherwise.[105]

5.5. In a number of cases involving conflicting claims of the United States Federal Government and the coastal states over natural wealth found within the latter's adjoining maritime area, the Supreme Court of the United States of America (U.S.), applying the Federal Paramountcy Doctrine, consistently ruled on the fundamental right of the national government over the national wealth in maritime areas, to the exclusion of the coastal state. The reason behind the doctrine equally applies to the conflicting claims between the Philippine National Government and the Province of Palawan. In fact, there are more reasons to apply the doctrine in the Philippines since unlike the individual states of the America which preexisted the U.S.,

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

[105] *Id*. at 38-40, 1530, 1532-1533.

the LGUs are creations and agents of the Philippine National Government.[106]

6. The inclusion of the Kalayaan Group of Islands (Kalayaan) to the Province of Palawan under Presidential Decree (P.D.) No. 1596[107] did not *ipso facto* make the waters between Kalayaan and the main island of Palawan part of the territorial jurisdiction of Palawan.[108]

6.1. There is nothing in P.D. No. 1596, or the charter of Palawan, Act No. 1396, that states that the waters around Kalayaan are part of Palawan's territory. P.D. No. 1596 refers to Kalayaan as a cluster of islands and islets while Act No. 1396 identifies the islands included in the Province of Palawan. Thus, the areas referred to are limited to the landmass. Since the Camago-Malampaya reservoir is not an island, it cannot possibly be covered by either statute. More importantly, the reservoir is outside the geographical lines mentioned in said laws.[109]

6.2. Absent an express grant by Congress, the Province of Palawan cannot validly claim that the area between mainland Palawan and Kalayaan are automatically part of its territorial jurisdiction.[110]

7. Section 1, Article X of the 1987 Constitution provides that the territorial and political subdivisions of the Republic are the provinces, cities, municipalities and barangays. It, however, does not require that every portion of the Philippine territory be made part of the territory of an LGU. It was intended merely to institutionalize the LGUs. And even on the supposition that the Constitution intended to apportion the Philippine territory to the LGUs, legislation is still needed to implement said provision. However, no law has been enacted to divide the

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[106] *Id*. at 40-46.

[107] DECLARING CERTAIN AREA PART OF THE PHILIPPINE TERRITORY AND PROVIDING FOR THEIR GOVERNMENT AND ADMINISTRATION. Issued on June 11, 1978.

[108] *Rollo* (G.R. No. 170867), pp. 46 and 1498.

[109] *Id*. at 47-49 and 1492.

[110] *Id*. at 1499.

Philippine territory, including its continental margin and exclusive economic zones, to all LGUs.[111]

8. Palawan's territorial boundaries do not embrace the continental shelf where the Camago-Malampaya reservoir is located. Contrary to Dean Raul Pangalagan's view, the UNCLOS cannot be considered to have vested the LGUs with their own continental shelf based on the doctrine of transformation. The concept of continental shelf under the UNCLOS does not automatically apply to a province.[112]

> 8.1. A treaty is an agreement between states and governs the legal relations between nations. And even if the UNCLOS were to be deemed transformed as part of municipal law after its ratification by the Batasang Pambansa in 1984 under Resolution No. 121, it did not automatically amend the Local Government Code and the charters of the LGUs. No such intent is manifest either in the UNCLOS nor Resolution No. 121. Instead, the UNCLOS, as transformed into our municipal law, is to be applied *verba legis*.[113]
>
> 8.2. Under the express terms of the UNCLOS, the rights and duties over maritime zones and the continental shelf pertain to the State, and no provision therein suggests any reference to an LGU.[114]
>
> 8.3. In other sovereign states such as Canada and the U.S., the maritime zones were ruled to be outside the LGUs' territorial jurisdiction. The Federal Paramountcy Doctrine was upheld in four leading U.S. cases where the claims of various U.S. coastal states over the marginal and coastal waters and the continental shelf were rejected.[115]

9. The State is not estopped by the alleged mistakes of its officials or agents.[116]

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[111] *Id.* at 1504-1508.

[112] *Id*. at 1487-1488 and 1511.

[113] *Id*. at 1511-1513.

[114] *Id*. at 1518.

[115] *Id*. at 1519-1520.

[116] *Id*. at 49.

9.1. On June 10, 1988, the DoE requested the Province of Palawan for a seven-year deferment of payment to enable the National Government to pay a portion of NPC's TOPQ obligations. On February 17, 1998, President Ramos issued A.O. No. 381 which projected US$2.1 Billion as Palawan's share from the Camago-Malampaya project. Although they seem to acknowledge Palawan's share in the proceeds of the Camago-Malampaya project, they cannot contravene the laws that delineate Palawan's territorial jurisdiction. Furthermore, the President has no authority to expand the territorial jurisdiction of a province as this can only be done by Congress.[117]

9.2. In issuing A.O. No. 381, President Ramos made no misrepresentation as to give rise to estoppel. The statements in said A.O. were not calculated to mislead the Province of Palawan; they were not even directed to Palawan. No estoppel can be invoked if the complaining party has not been misled to his prejudice. There is no proof that the Province of Palawan sustained injury as a result of a misrepresentation.[118]

9.3. The doctrine of estoppel should be applied only in extraordinary circumstances and should not be given effect beyond what is necessary to accomplish justice between the parties.[119]

9.4. The doctrine of estoppel does not preclude the correction of an erroneous construction by the officer himself, by his successor in office, or by the court in an appropriate case. An erroneous construction creates no vested right and cannot be taken as precedent.[120]

9.5. Accordingly, the Province of Palawan cannot rely on the fact that in 1992, they shared in the proceeds derived from the West Linapacan oil fields located approximately 76 kms off the western coastline of Palawan.[121]

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

[118] *Id*. at 1576-1577 and 1579.

[119] *Id*. at 1580.

[120] *Id*. at 51 and 1580-1581.

[121] *Id*. at 52.

9.6. The public funds available for various projects in other provinces would be significantly reduced if Palawan is allowed to receive its claimed 40% share in the Camago-Malampaya project.[122]

10. Ordinance No. 474, series of 2000, enacted by the *Sangguniang Panlalawigan* of Palawan and delineating the territorial jurisdiction of the province to include the Camago-Malampaya area, is *ultra vires*.[123]

10.1. Ordinance No. 474 conflicts with the Charter of the Province of Palawan as it expanded the boundaries of the province and included the area between its constituent islands. It is also in conflict with the limits of LGUs' rights over marine areas under the Local Government Code, the Fisheries Code and other pertinent laws.[124]

10.2. An LGU cannot fix its territorial jurisdiction, or limit or expand the same through an ordinance. Pursuant to Section 10, Article X of the 1987 Constitution and Sections 6 and 10 of the Local Government Code, only Congress can create, divide or merge LGUs and alter their boundaries, subject to the plebiscite requirement. An ordinance cannot contravene the Constitution or any statute.[125]

10.3. As plotted by the National Mapping and Resource Information Authority (NAMRIA), the territorial boundaries of Palawan under Ordinance No. 474 appear to be inconsistent with the delineation of the Philippine territory under the Treaty of Paris.[126]

11. Section 3(1) of R.A. No. 7611 or SEP for Palawan Act contains a definition of "Palawan." The Camago-Malampaya reservoir is undoubtedly within the area described and plotted on the map. However, R.A. No. 7611 did not redefine Palawan's territory or amend its charter.[127]

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[124] *Id*. at 1552.

[125] *Id*. at 54-56, 1548-1551.

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

[127] *Id*. at 60 and 1533-1534.

11.1. With the words "(A)s used in this Act," Section 3 of R.A. No. 7611 limited the application of the definitions therein to said law which was enacted to promote sustainable development goals for the province through proper conservation, utilization and development of natural resources.[128]

11.2. Just like Palawan's Charter, Section 3(1) of R.A. No. 7611 limited the territory to the islands and islets within the area.[129]

11.3. The metes and bounds under Section 3(1) of R.A. No. 7611, when plotted on the map, excluded portions of mainland Palawan and several islands, municipalities or portions thereof.[130]

11.4. The basis of the description of Palawan is unclear and there is no record that the alteration in Palawan's boundaries complied with Section 10, Article X of the 1987 Constitution which requires that the alteration be in accordance with the criteria established in the local government code and approved by a majority of the votes cast in a plebiscite in the political unit(s) directly affected.[131]

11.5. Based on the Declaration of Policy in R.A. No. 7611, the object of the law is not to expand the territory of Palawan but to make the province an agent of the National Government in the protection of the environment. There is nothing in the title of the law or any of its provisions indicating that there was a legislative intent to expand or alter the boundaries of the province or to remove certain municipalities from its territory.[132]

11.6. If the description of Palawan under R.A. No. 7611 would be read as a new definition of its territory, it would be unconstitutional because the title .of the law does not indicate that boundaries would be expanded, in contravention of the Constitutional requirement that every bill must embrace only one subject to be expressed in its title.[133]

[128] *Id*. at 1535.

[129] *Id*. at 62 and 1535.

[130] *Id*. at 1535.

[131] *Id*. at 60-61 and 1535.

[132] *Id*. at 62 and 1535-1536.

[133] *Id*.

> 11.7. Even if the term "territorial jurisdiction" were to be understood as including the grant of limited extraterritorial jurisdiction, the Camago-Malampaya reservoir remains to be beyond Palawan's jurisdiction under R.A. No. 7611. The said law did not expand the province's police or administrative jurisdiction; it did not impose any additional function or jurisdiction on the Province of Palawan. If anything, the SEP limited the province's governmental authority since all LGUs in the area must align their projects and budgets with the SEP. Furthermore, tasked to implement the SEP was not the province but the Palawan Council for Sustainable Development (PCSD), a national agency created under the law, composed of both national and local officials. The participation of local officials did not turn PCSD into an arm of the Province of Palawan; their inclusion is to allow a holistic view of the environmental issues and opportunities for coordination.[134]

12. A.O. No. 381 was not issued to redefine Palawan's territory; its title precisely states that it was issued to provide for the fulfillment by the National Power Corporation of its obligations under the December 30, 1997 Agreement for Sale and Purchase of Natural Gas with SPEX/OXY and for the compliance of the National Government's performance undertaking. Palawan was mentioned but not in the context of redefining its territory. Only a statute can expand the territory or boundaries of an LGU.[135]

13. Sections 465 and 468 of the Local Government Code which respectively authorize the Provincial Governor to adopt measures to safeguard marine resources of the province and the *Sangguniang Panlalawigan* to impose penalties for destructive fishing, did not give the provinces government authority over marine resources beyond the municipal waters.[136]

14. Palawan's Claim that it exercises jurisdiction over the Camago-Malampaya area is bereft of credible proof. Absent a law which vests LGUs jurisdiction over areas outside their territorial boundaries, its acts over the Camago-Malampaya area

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[134] *Id*. at 1567-1570.

[135] *Id*. at 1536-1538.

[136] *Id*. at 1572-1574.

are *ultra vires* or at most an exercise of extraterritorial jurisdiction.[137]

15. The proposition of the *amici curiae* that the principle of equity justifies granting Palawan 40% of the government's share in the Camago-Malampaya project, may set a dangerous precedent. Furthermore, the principle of equity cannot be applied when there is a law applicable to the case. Applicable to the instant case are Section 7, Article X of the 1987 Constitution and Section 290 of the Local Government Code based on which the Province of Palawan is not entitled to share in the proceeds of the Camago-Malampaya project.[138]

> 15.1. The concerns of the *amici curiae* appear to rest on the possible damage to the environment surrounding Palawan. However, this eventuality is covered by the Contractor's obligations under the Environmental Compliance Certificate (ECC) which required SPEX to ensure minimal impact on the environment and to provide for an Environmental Guarantee Fund to cover expenses for environmental monitoring and to compensate for whatever damage that may be caused by the project.[139]

16. The PIA and E.O. No. 683 do not constitute evidence of the Republic's admission that Palawan is entitled to the proceeds of the Camago-Malampaya project. In civil cases, an offer of compromise is not admissible in evidence against the offeror. Furthermore, the whereas clauses of E.O. No. 683 clearly show that the President issued the E.O. based on a "broad perspective of the requirements to develop Palawan as a major tourism destination" and Section 25 of the Local Government Code which authorizes the President, on the LGU's request, to provide financial assistance to the LGU. The E.O. also expressly states that the amounts released shall be without prejudice to the final resolution of the legal dispute between the National Government and the Province of Palawan regarding the latter's claimed share under the Service Contract No. 38.[140]

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[137] *Id.* at 1473.

[138] *Id*. at 1582-1583.

[139] *Id*. at 1584.

[140] *Id*. at 1588-1590.

17. The National Government has no intention to deprive the Province of Palawan a share in the proceeds of the Camago-Malampaya project if were so entitled.[141]

18. The RTC committed grave abuse of discretion when it issued Amended Order dated January 16, 2006 because it granted affirmative relief in a special civil action for declaratory relief.[142]

> 18.1. While courts have the inherent power to issue interlocutory orders as may be necessary to carry its jurisdiction into effect, such authority should be exercised as necessary in light of the jurisdiction conferred in the main action. In this case, the main action is one for declaratory relief, which is a preventive and anticipatory remedy designed to declare the parties' rights or to express the court's opinion on a question of law, without ordering anything to be done.[143]

19. Arigo, et al. have no legal standing to question E.O. No. 683 either as citizens or as taxpayers since they have not shown any actual or threatened injury or that the case involves disbursement of public funds in contravention of law.[144]

20. G.R. No. 185941 is not ripe for judicial adjudication considering that there is still no final determination as to whether the Province of Palawan is entitled to share in the proceeds of the Camago-Malampaya project. Also, the interim undertaking of the parties under the PIA is contingent on the final adjudication of G.R. No. 170867. Furthermore, the validity and manner by which the funds were realigned under E.O. No. 683 could not be questioned since they are considered as financial assistance subject to the discretion of the President pursuant to the authority granted by Section 25(c) of the Local Government Code.[145]

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[141] *Id*. at 1590.

[142] *Id*. at 63-65.

[143] *Id*. at 66 and 72, citing *Westminster High School v. Bernardo*, 51 O.G. 6245.

[144] *Rollo* (G.R. No. 185941), pp. 299-300.

[145] *Id*. at 303-305.

Arigo, et al.

1. Their petition was not prematurely filed. While the interim undertaking between the National Government and the Province of Palawan under the PIA was contingent on the final adjudication of G.R. No. 170867, disbursements of public funds would ensue or were already taking place in violation of the provisions of the Constitution and the Local Government Code on the equitable sharing of national wealth between the National Government and the LGUs.[146]

2. Neither Governor Reyes nor Representatives Alvarez and Mitra had the authority to sign the PIA on behalf of the cities, municipalities and barangays of Palawan. In fact, the cities, municipalities and barangays have a bigger share that the Provincial Government in the allocation of the revenues from the Camago-Malampaya project. Under Section 292 of the Local Government Code, the city or municipality gets 45% and the barangay gets 35%, or a combined share of 80% as against the Province's share of only 20%. Governor Reyes and Representatives Alvarez and Mitra could not sign the PIA as if they were the sole recipients of the proceeds of the Camago-Malampaya project.[147]

3. The PIA reduces the share of Palawan's LGUs in two ways: *first*, by making "net proceeds" the basis for sharing instead of "gross collection" as provided by Section 290 of the Local Government Code; and *second*, by cutting down the LGUs' equitable share in such proceeds by half, with the Province solely claiming such allocation.[148]

4. The equitable share of LGUs in the utilization and development of national wealth is not subject to compromise.[149]

5. The PIA requires that any fund allocation is subject to the prior approval of the DoE and/or the PNOC-EC and to actual collections deposited with the National Treasury, in contravention of the Local Government Code, which requires that the proceeds

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[146] *Id*. at 26 and 589.

[147] *Id*. at 29 and 591.

[148] *Id*. at 29-30 and 592.

[149] *Id*. at 30 and 592.

of the utilization of natural resources should be directly released to each LGU without need of further action, and the Court's ruling in *Pimentel, Jr. v. Hon. Aguirre*[150] on the automatic release of the LGUs' shares in the National Internal Revenue.[151]

6. In providing that only those projects identified by the Office of the President, or the Province of Palawan, or the Palawan Congressional Districts, or the Highly Urbanized City of Puerto Princesa, may be funded, the PIA violates the intent of the Local Government Code to grant autonomy to LGUs.[152]

7. The PIA allows the securitization of the shares of the LGUs and the National Government in the utilization of the Camago-Malampaya Oil and Gas resources, but the National Government cannot securitize what it does not own legally and neither can the Province of Palawan securitize what it does not fully own.[153]

8. E.O. No. 683 is nothing more than a realignment of funds carried out in violation of the Constitutional provision giving LGUs an equitable share in the proceeds of the utilization of national wealth, for in usual budgeting procedures of Congress, such share should be included in the appropriation for "Allocation to LGUs" which is classified as a mandatory obligation of the National Government and automatically released to the LGUs.[154]

9. E.O. No. 683 is a usurpation of the power of the purse lodged in Congress under Section 29(1) and (3),[155] Article VI

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[150] 391 Phil. 84 (2000).

[151] *Rollo* (G.R. No. 185941), pp. 30-31, 592-593.

[152] *Id*. at 30 and 593.

[153] *Id.* at 31 and 593.

[154] *Id.* at 33 and 595.

[155] SECTION 29.

(1) No money shall be paid out of the Treasury except in pursuance of an appropriation made by law.

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(3) All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

of the 1987 Constitution. Since the proceeds from the Camago-Malampaya project is the production share of the government in a service contract, it cannot be disbursed without an appropriation law.[156]

10. E.O. No. 683 fails to consider its implications on the country's claim to an Extended Continental Shelf (ECS) under the UNCLOS III regime. The best way to claim an ECS is to consider the Camago--Malampaya area and the Kalayaan tb be part of Palawan's continental shelf. One basis for the Philippine claim to Kalayaan is that it constitutes a natural prolongation of Palawan's land territory.[157]

11. The Republic's invocation of U.S. case law to dispute the LGUs' entitlement under Section 7, Article X of the 1987 Constitution is inappropriate and odd for a unitary state like the Philippines. Said provision in the unitary Philippine state only means that the entitlement exists only because of a constitutional grant and not because the LGUs have sovereignty and jurisdiction in their respective areas distinct from the Republic's.[158]

12. The definition of "municipal waters" under applicable laws is irrelevant. The Camago-Malampaya reservoir is located in the continental shelf which, under Article 76 of the UNCLOS, pertains to the seabed and subsoil as the natural prolongation of the landmass.[159]

13. The constitutionality of E.O. No. 683 may be resolved without reference to the conflicting territorial claims in G.R. No. 170867. In making reference to said case, they merely meant to provide a historical backdrop to the issuance of E.O. No. 683. It is for this reason that they attached only a copy of E.O. No. 683 to their petition.[160]

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[156] *Rollo* (G.R. No. 185941), p. 601.

[157] *Id*. at 37-38, 42-43, 581, 586-587.

[158] *Id*. at 599-600.

[159] *Id*. at 602.

[160] *Id.* at 34 and 596.

14. R.A. No. 7611 and A.O. No. 381 both recognize that the Camago-Malampaya area falls with the continental shelf of Palawan. As regards the Republic's contention that R.A. No. 7611 is illegal for having redrawn the boundaries of the Province of Palawan without a plebiscite, the same ignores the fact that R.A. No. 7611 only incorporates the continental shelf regime found in Article II of the 1987 Constitution. A plebiscite was unnecessary because the 1987 Constitution was overwhelmingly ratified.[161]

15. The CA erred in dismissing CA-G.R. SP No. 102247 in deference to executive and legislative deliberations on the country's baselines as it is in violation of its constitutional duty to interpret the constitutional provisions defining the national territory. Furthermore, until revoked or amended, the country's existing law on baselines (R.A. No. 3046 as amended by R.A. No. 5446) remains good law.[162]

16. The CA erred in dismissing their action for *certiorari* for failure to submit a copy of the PIA considering that the terms of E.O. No. 683 embody all the provisions of the assailed PIA. It was also unnecessary to submit a copy of the petition in G.R. No. 170867 as it was only tangential to the resolution of the case. Furthermore, the alleged failure to submit said documents has been mooted by the June 23, 2008 Resolution of the Court's Third Division indicating that non-parties could not have access to the records of G.R. No. 170867. At any rate, the records of said case are now a matter of judicial notice to this Court.[163]

The Province of Palawan

1. Section 7 of the Local Government Code, on the creation and conversion of LGUs, does not expressly provide that an LGU's territorial jurisdiction refers only to its land area.[164]

1.1. Land area is included as one of the requisites for the creation or conversion of an LGU because evidently, no LGU can be created out of the maritime area alone.[165]

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[161] *Id*. at 603-604.

[162] *Id*. at 36-37, 597-598.

[163] *Id*. at 49-50 and 605.

[164] *Rollo* (G.R. No. 170867), p. 907.

[165] *Id*. at 908.

> 1.2. Another requisite — population - is determined as the total number of inhabitants within the territorial jurisdiction of the LGU. The law thus aptly uses the phrase "territorial jurisdiction" instead of territory or land area since there are communities that live in coastal areas or low-water areas that form part of the sea. If a local government's territorial jurisdiction is limited to its land area, then these communities will not belong to any LGU.[166]

2. Section 461 of the Local Government Code does not define the territorial jurisdiction of a province. It merely specifies the requisites for the creation of a province. In fact, said provision shows that territory and population are alternative requirements for the creation of a new province, with income being the indispensable requirement. It does not necessarily exclude the maritime area over which a province exercises control and authority, but merely provides that to determine whether an area is sufficient to constitute a province, only the landmass or land territory shall be included.[167]

3. In *Tan*, which involves the creation of a province under the old Local Government Code, the Court held that the word "territory" as used in said law "has reference only to the mass of land area and excludes the waters over which the political unit exercises control." This ruling affirms that an LGU exercises control over waters, making them part of the political unit's territorial jurisdiction. Furthermore, *Tan* only defines the word "territory" as used in Section 197 of the old Local Government Code. In convoluting the words "territory" and "territorial jurisdiction," the Republic misapplied the doctrine laid out in *Tan*.[168]

4. Section 7, Article X of the 1987 Constitution provides that the LGU is "entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law x x x." The provision does not state "within their respective land areas." The word "area" should accordingly be construed in its ordinary

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[166] *Id*. at 908-908-A.

[167] *Id*. at 909-910.

[168] *Id*. at 910-911.

meaning to mean a distinct part of the surface of something. It, therefore, encompasses land, maritime area and the space above them.[169]

5. The delineation of the territorial jurisdiction by metes and bounds is required only for landlocked LGUs.[170]

6. Limiting the LGU's territorial jurisdiction to its land area is inconsistent with the State's policy of local autonomy as enshrined in Section 25, Article II of the 1987 Constitution and amplified in Section 2 of the Local Government Code. Extending such jurisdiction to all areas where the Province of Palawan has control or authority will give it more resources to discharge its responsibilities, particularly in the enforcement of environmental laws in its vast marine area.[171]

7. Numerous provisions of the Local Government Code indicate that an LGU's territorial jurisdiction includes the maritime area. Section 138 speaks of public waters within the territorial jurisdiction of the province. Section 465(3)(v) authorizes the Provincial Governor to adopt adequate measures to safeguard and conserve the province's marine resources. Section 468(1)(vi) empowers the *Sangguniang Panlalawigan* to protect the environment and impose appropriate penalties for acts that endanger it, such as dynamite fishing. More importantly, Section 3, which provides for the operative principles of decentralization and local autonomy, states that the vesting of duties in the LGU shall be accompanied with provision for reasonably adequate resources to effectively carry them out. When the same provision speaks of ecological balance which the LGUs shall manage with the National Government, it encompasses the maritime area.[172]

7.1. The environmental impact that the Camago-Malampaya project may have on the people of Palawan requires that the Province of Palawan must equitably share in its proceeds so it can have adequate resources to ensure

[169] *Id*. at 912-914, 1380-1381.

[170] *Id*. at 1381-1382.

[171] *Id*. at 915-916 and 1382.

[172] *Id*. at 916-918, 1383-1385.

that the extraction of natural gas will not have a deleterious effect on its environment.[173]

8. The Provincial Government of Palawan exercises administrative, environmental and police jurisdiction over public waters within its territorial jurisdiction, including the Camago-Malampaya reservoir. Local police, under the supervision of local executives, maintain peace and order over the said area. Crimes committed therein are filed and tried in Palawan courts. The provincial government also enforces local and national environmental laws over this area. In fact, SPEX consistently recognized Palawan as the location of the project, having obtained the necessary endorsement from the *Sangguniang Panlalawigan* of Palawan before starting its operations, in accordance with Sections 26 and 27 of the Local Government Code. Furthermore, the plant, equipment and platform of SPEX, situated offshore, were declared for tax purposes with the Province of Palawan.[174]

9. Based on the Senate deliberations on the Local Government Code, it is a foregone conclusion that the Province of Palawan has equitable share in the proceeds of the Camago-Malampaya project.[175]

10. Under Section 5(a) of the Local Government Code, any question on a particular provision of law on the power of an LGU shall be liberally construed, and any doubt shall be resolved, in favor of the LGU.[176]

11. Neither the Local Government Code nor the Philippine Fisheries Code provides that beyond the land area, the LGU's territorial jurisdiction can extend only up to the 15-km stretch of municipal waters.[177]

11.1. The definition of "municipal waters" in Section 131(r) of the Local Government Code shall be used only for purposes of local government taxation inasmuch as it

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[173] *Id*. at 919.

[174] *Id*. at 919-920 and 1386.

[175] *Id*. at 921.

[176] *Id*. at 922 and 1389.

[177] *Id*. at 922-926 and 1389.

is found under Title I of Book II on Local Taxation and Fiscal Matters. Section 131(r) also indicates that the definition applies when the term "municipal waters" is used in Title I which refers to Local Government Taxation. If anything, the definition bolsters the argument that the LGU's territorial jurisdiction extends to the maritime area.[178]

11.2. The Philippine Fisheries Code did not limit or define the territorial jurisdiction of an LGU. The definition of "municipal waters" under both this law and the Local Government Code was intended merely to qualify the degree of governmental powers to be exercised by the coastal municipality or city over said waters.[179]

11.3. Palawan is composed of 1,786 islands and islets. Twelve (12) out of its twenty-three (23) municipalities are island municipalities. Between them are expansive maritime areas that exceed the 15-km municipal water-limit. It will, thus, be inevitable for the province to exercise governmental powers over these areas. If Palawan will be authorized to enforce laws only up to the municipal water-limit, it will be tantamount to a duplication of functions already being performed by the component municipalities. It will also render the province inutile in enforcing laws in maritime areas between these municipalities. It was not the intention of the lawmakers, in enacting the Local Government Code, to create a vacuum in the enforcement of laws in these areas or to disintegrate LGUs.[180]

12. Laws other than the Local Government Code recognize that the Province of Palawan has territorial jurisdiction over the maritime area beyond the municipal waters.[181]

12.1. R.A. No. 7611 defines Palawan as comprising islands and islets and the surrounding sea, which includes the entire coastline up to the open sea.[182]

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[178] *Id*. at 924-925, 1389-1390, 1392.

[179] *Id*. at 922-923.

[180] *Id.* at 926, 1393-1394.

[181] *Id*. at 927.

[182] *Id*. at 927 and 1394.

12.1.1. Based on the coordinates of Palawan provided in Section 3(1) of R.A. No. 7611, the Camago-Malampaya reservoir is within the territorial jurisdiction of the province.[183]

12.1.2. R.A. No. 7611 did not alter the territorial jurisdiction of Palawan, as provided in Section 37 of its charter, Act No. 2711. R.A. No. 7611 merely recognized the fact that the islands comprising Palawan are bounded by waters that form part of its territorial jurisdiction. Palawan's area as described in said law could be called the province's "environmental jurisdiction."[184]

12.1.3. Pursuant to R.A. No. 7611, the Palawan Council for Sustainable Development (PCSD) shall establish a graded system of protection and development control over the whole of Palawan, including mangroves, coral reefs, seagrass beds and the surrounding sea.[185]

12.1.4. R.A. No. 7611 encompasses the entire ecological system of Palawan, including the coastal and marine areas which it considers a main component of the Environmentally Critical Areas Network.[186]

12.1.5. Local government officials of Palawan have representations in PCSD, the agency tasked to enforce the integrated plan under R.A. No. 7611. Since the enforcement of environmental laws is a joint obligation of the national and local governments, with local communities being the real stakeholders, LGUs should benefit from the proceeds of the natural wealth found in their territorial jurisdictions.[187]

12.1.6. The Republic's attempt to remove the Camago-Malampaya area from the Province of Palawan is contrary

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[183] *Id*. at 972, 1397-1398.

[184] *Id*. at 973-974, 1397, 1400.

[185] *Id*. at 1397.

[186] *Id*. at 1399.

[187] *Id*. at 974.

to the declared state policy of adopting an integrated ecological system for Palawan under R.A. No. 7611.[188]

12.2. A.O. No. 381 explicitly declared that the Camago-Malampaya reservoir is located offshore northwest of Palawan and that the Province of Palawan was expected to receive about US$2.1 Billion from the total government share of US$8.1 Billion out of the proceeds from the Camago-Malampaya project.[189]

12.3. P.D. No. 1596 declared Kalayaan as a distinct and separate municipality of the Province of Palawan. In delineating Kalayaan's boundaries, P.D. No. 1596 included the seabed, subsoil, continental margin and airspace.[190]

12.3.1. P.D. No. 1596 states that the Republic's claim to Kalayaan is foremost based on the fact that said group of islands is part of the Philippine archipelago's continental margin which includes the continental shelf. The continental shelf is the submerged natural prolongation of the land territory and is an integral part of the landmass it is contiguous with. Oil and gas are found not in the waters off Palawan but in the continental shelf which is contiguous to and a prolongation of the landmass of Palawan.[191]

13. The Province of Palawan cannot be said to be holding a mere usufruct over the municipal waters based on the 1950 case of *Municipality of Paoay*. Said case is not applicable as it was decided when there was a concentration of powers and resources in the national government, unlike the decentralized system espoused in the Local Government Code.[192]

14. The federal paramountcy doctrine is a constitutional law doctrine followed in federal states, particularly in the U.S. and Canada. The application of this doctrine to the Philippine setting

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[188] *Id*. at 958 and 1400.

[189] *Id*. at 928.

[190] *Id*. at 928 and 1394.

[191] *Id*. at 950-951.

[192] *Id*. at 929-930.

is legally inconceivable because the Philippines has not adopted a federal form of government. Furthermore, most of the states in the U.S. were previously independent states who were obliged to surrender their sovereign functions over their maritime area or marginal belt to the federal government when they joined the federal union. Contrarily, the Philippines had a unitary system of government until it adopted the ideas of decentralization and local autonomy as fundamental state principles. Instead of different states surrendering their *imperium* and *dominium* over the maritime area to a federal government, the Philippine setting works in the opposite as the National Government, which is presumed to own all resources within the Philippine territory, is mandated to share the proceeds of the national wealth with the LGUs.[193]

15. The Republic is divided into political and territorial subdivisions. Thus, for a territory to be part of the Republic, it must belong to a political and territorial subdivision. These subdivisions are the provinces, cities, municipalities and barangays, and they are indispensable partners of the National Government in the proper and efficient exercise of governmental powers and functions. The Camago-Malampaya reservoir, which is part of the Philippines, must necessarily belong to a political and territorial subdivision. That subdivision is the Province of Palawan which has long been exercising governmental powers and functions over the area.[194]

15.1. Since the Camago-Malampaya reservoir is nearest to the Province of Palawan than any other LGU, it is imperative that the province becomes the National Government's co-protector and co- administrator in said maritime area.[195]

15.2. Under Section 25(b) of the Local Government Code, national agencies are to coordinate with LGUs in planning and implementing national projects, while under Section 3(i) of the same law, LGUs shall share with the

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[193] *Id*. at 937-938.

[194] *Id*. at 940-944 and 1373.

[195] *Id*. at 1377.

National Government the responsibility of maintaining ecological balance within their territorial jurisdiction. Thus, governmental powers are not solely exercised by the National Government but are shared with LGUs. However, they cannot be effective partners of the National Government without sufficient resources. For this reason, the 1987 Constitution grants them an equitable share in the proceeds of the utilization of national wealth.[196]

15.3. Numerous cases of illegal fishing, poaching and illegal entry have been committed within the waters surrounding Palawan, particularly westward of mainland Palawan and bound by the South China Sea, along the same area where the Camago-Malampaya project is located. These cases were prosecuted and tried before the courts of Palawan. In *Hon. Roldan, Jr. v. Judge Arca*,[197] an illegal fishing case, the jurisdiction of the Court of First Instance of Palawan was upheld given that the vessels seized were engaged in prohibited fishing within the territorial waters of Palawan, in obedience to the rule that the place where a criminal offense was committed not only determines the venue of the case but is also an essential element of jurisdiction.[198]

15.4. Sections 26 and 27 of the Local Government Code require mandatory consultation with the LGUs concerned and the approval of their respective Sanggunian before the National Government may commence any project that will have an environmental impact. The National Government and SPEX recognized Palawan's jurisdiction over the Camago-Malampaya area when it requested the indorsement of the *Sangguniang Panlalawigan* of Palawan before commencing the Camago-Malampaya project, and when SPEX obtained an ECC in compliance with the requirement of PCSD, an agency created by R.A. No. 7611.[199]

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[196] *Id.* at 1377-1379.

[197] 160 Phil. 343 (1975).

[198] *Rollo* (G.R. No. 170867), p. 941.

[199] *Id*. at 942-943.

15.5. In the implementation of tariff and customs laws, the Province of Palawan is being referred to by the Bureau of Customs as the place of origin of the barrels of condensate (crude oil) being exported to Singapore from the Camago-Malampaya area. Export Declarations for said condensate, as issued by the Department of Trade and Industry, also showed Palawan as the place of origin.[200]

15.6. In *Tano v. Socrates*,[201] the Court upheld the ordinances, passed by the *Sangguniang Panlalawigan* of Palawan and the *Sangguniang Panlungsod* of the City of Puerto Princesa, which banned the transport of live fish to protect their seawater and corals from the effects of destructive fishing, in recognition of the LGUs' power and duty to protect the right of the people to a balanced ecology. The destructive way of catching live fish had been conducted not just within the 15-k.m municipal waters of Palawan but also beyond said waters.[202]

16. Palawan's claim is not inconsistent with, but upholds, the archipelagic and regalian doctrines enshrined in the 1987 Constitution.[203]

16.1. The Province of Palawan agrees that all waters within the Philippine archipelago are owned by the Republic. The issue in this case, however, is not the ownership of the Camago-Malampaya reservoir. The Province of Palawan is not claiming dominion over said area. It merely contends that since the reservoir is located in an area over which it exercises control and shares in the National Government's management responsibility, it is only just and equitable that the Province of Palawan should share in the proceeds generated from its utilization. Furthermore, the law does not require that the LGUs should own the area where the national wealth is located before they can share in the proceeds of its use and development;

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[200] *Id*. at 943-944.

[201] 343 Phil. 670 (1997).

[202] *Rollo* (G.R. No. 170867), pp. 955-958.

[203] *Id*. at 939.

it merely requires that the national wealth be "found within their respective areas." It is, thus, error for the Republic to assert that the Camago-Malampaya area is not part of Palawan's territorial jurisdiction because it belongs to the State. Otherwise, no LGU will share in the proceeds derived from the utilization and development of national wealth because the State owns it under the regalian doctrine.[204]

17. International law has no application in this case. While the UNCLOS establishes various maritime regimes of archipelagos like the Philippines, nothing therein purports to govern internal matters such as the sharing of national wealth between its national government and political subdivisions.[205]

18. The State has long recognized the fact that the Camago-Malampaya area is part of Palawan.[206]

18.1. Palawan was allotted ₱38,110,586.00 as its share in the national wealth based on actual 1992 collections from petroleum operations in the West Linapacan oil fields, situated offshore, about the same distance from mainland Palawan as the Camago-Malampaya reservoir. Furthermore, from 1993 to 1998, DBM consistently released to Palawan its 40% share from the West Linapacan oil production. Because these are lawful executive acts, the Republic may not invoke the rule that it cannot be placed in estoppel by the mistakes of its agents.[207]

18.2. Jurisprudence holds that estoppels against the public, which are little favored, must be applied with circumspection and only in special cases where the interests of justice clearly require it. To deprive Palawan of its constitutional right to a just share in the national wealth will indisputably work injustice to its people and generations to come. As it is, developmental projects have been adversely stunted as a result of the National Government's

[204] *Id*. at 945-948.

[205] *Id*. at 1403-1404.

[206] *Id*. at 959.

[207] *Id*. at 962, 967-968.

withdrawal of its commitment to give Palawan its 40% share.[208]

18.3. It has been held that the contemporaneous construction of a statute by the executive officers of the government is entitled to great respect and unless shown to be clearly erroneous, should ordinarily control the construction of the statute by the courts.[209]

19. Ordinance No. 474 (series of 2000), which the *Sangguniang Panlalawigan* of Palawan enacted to delineate the territorial jurisdiction of the Province of Palawan, including therein the Camago-Malampaya area, is valid. Laws, including ordinances, enjoy the presumption of constitutionality. Moreover, there is no flaw in the Ordinance since it does not contravene Section 10, Article X of the Constitution or Sections 6 and 10 of the Local Government Code. It is likewise settled that a statute or ordinance cannot be impugned collaterally.[210]

20. Since the RTC has deferred its ruling on the propriety of the Amended Order dated January 16, 2006 to this Court, the Province of Palawan asks that said Order be sustained because:

20.1. Under Section 6, Rule 135 of the Rules of Court, when by law jurisdiction is conferred on a court, all auxiliary writs and processes necessary to carry it into effect may be employed by such court. The Amended Order merely sought to protect the subject of the litigation and to ensure that the RTC's decision may be carried into effect when it attains finality.[211]

20.2. The Amended Order encompasses issues that were raised and passed upon by the RTC, particularly, the issue of whether the Province of Palawan is entitled to receive 40% of the government's share in the proceeds of the Camago-Malampaya project.[212]

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[208] *Id*. at 968-969.

[209] *Id*. at 1402-1403.

[210] *Id*. at 969-971.

[211] *Id.* at 977-978.

[212] *Id*. at 978-979.

20.3. In a catena of decisions, the Court has allowed affirmative and even injunctive reliefs in cases for declaratory relief.[213]

21. The Provincial Governor's signing of the PIA was valid.[214]

21.1. Under Article 85(b)(1)(vi), Rule XV of the Implementing Rules and Regulations of the Local Government Code, the Provincial Governor is authorized to represent the province in all its business transactions and to sign all contracts on its behalf upon the authority of the *Sangguniang Panlalawigan* or pursuant to law or ordinance. The Provincial Governor of Palawan signed the PIA with the authority of the *Sangguniang Panlalawigan*, representing all of its component municipalities and its capital city of Puerto Princesa. Palawan's two congressmen also signed the PIA to warrant that they were the duly elected representatives of the province and to comply with the requirement under the General Appropriations Act that implementation of the projects must be in coordination with them.[215]

21.2. The Province of Palawan is the only LGU which has territorial jurisdiction over the Camago-Malampaya area under R.A. No. 7611.[216]

21.3. It may have been the Provincial Governor that signed the PIA, but the proposed projects thereunder would be implemented province-wide, to include all component municipalities and barangays as well as Puerto Princesa. This is more advantageous to the 23 municipalities of Palawan compared to Arigo, et al.'s stand that "the sharing should be one municipality (45%) and one barangay (35%) or a total of 80%, with the balance of 20% for the rest of Palawan's 22 municipalities including Puerto Princesa City."[217]

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[213] *Id*. at 981-985.

[214] *Id*. at 1410.

[215] *Id*. at 1410-1411.

[216] *Id.* at 1411.

[217] *Id*.

22. E.O. No. 683, which uses "net proceeds" of Camago--Malampaya project as the basis of sharing, does not violate Section 290 of the Local Government Code where the share of the LGU is based on gross collection.[218]

> 22.1. The allocation of funds under E.O. No. 683 is not, strictly speaking, the sharing of proceeds of national wealth development under Section 290 of the Local Government Code considering that Palawan's claimed 40% share is still under litigation.[219]
>
> 22.2. In any case, "gross collection" under Section 290 of the Local Government Code cannot refer to gross proceeds because under Service Contract No. 38 and A.O. No. 381, the production sharing scheme involves deduction of exploration, development and production costs from the gross proceeds of the gas sales. Since the net proceeds referred to in E.O. No. 683 is the same amount as the government's gross collection from the Camago-Malampaya project, the Local Government Code was not violated.[220]

23. The *Pimentel* ruling cannot be applied to the release of funds under E.O. No. 683. It does not refer to the LGU's claimed 40% share; it is in the form of financial assistance pursuant to Section 25(c) of the Local Government Code which authorizes the President to direct the appropriate national agency to provide financial and other forms of assistance to the LGU. The funds were appropriated in the General Appropriations Act of 2007 and 2008 for the DoE and not under the items for allocations from national wealth to LGUs.[221]

24. CA-G.R. SP No. 102247 was correctly dismissed by the CA. Failure to submit essential and necessary documents is a sufficient ground to dismiss a petition under Rule 46 of the

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[218] *Id*. at 1412.

[219] *Id*.

[220] *Id*. at 1412-1413.

[221] *Id*. at 1413-1414.

Rules of Court. Arigo, et al. prematurely filed its petition before the CA as it was anchored on the same basic issues to be resolved in G.R. No. 170867. Furthermore, Arigo, et al. had no legal standing either as real parties-in interest, as they failed to establish that they would be benefitted or injured by the judgment in the suit, or as taxpayers, as they failed to show that the E.O. No. 638 and PIA involved an illegal disbursement of public funds.[222]

Ruling of the Court

LGUs' share in national wealth

Under Section 25, Article II of the 1987 Constitution, "(t)he State shall ensure the autonomy of local governments." In furtherance of this State policy, the 1987 Constitution conferred on LGUs the power to create its own sources of revenue and the right to share not only in the national taxes, but also in the proceeds of the utilization of national wealth in their respective areas. Thus, Sections 5, 6, and 7 of Article X of the 1987 Constitution provides:

> **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 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 governments.
>
> **Section 6.** Local government units shall have a just share, as determined by law, in the national taxes which shall be automatically released to them.
>
> **Section 7.** Local governments shall be entitled to an **equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law**, including sharing the same with the inhabitants by way of direct benefits. (Emphasis ours)

At the center of this controversy is Section 7, an innovation in the 1987 Constitution aimed at giving fiscal autonomy to local governments. Deliberations of the 1986 Constitutional Commission reveal the rationale for this provision, thus:

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[222] *Id*. at 1409-1410.

MR. OPLE. x x x x x x x x x

Just to cite specific examples, in the case of timberland within the area of jurisdiction of the Province of Quirino or the Province of Aurora, we feel that the local governments ought to share in whatever revenues are generated from this particular natural resource which is also considered a national resource in a proportion to be determined by Congress. This may mean sharing not with the local government but with the local population. The geothermal plant in the Macban, Makiling-Banahaw area in Laguna, the Tiwi Geothermal Plant in Albay, there is a sense in which the people in these areas, hosting the physical facility based on the resources found under the ground in their area which are considered national wealth, should participate in terms of reasonable rebates on the cost of power that they pay. This is true of the Maria Cristina area in Central Mindanao, for example. May I point out that in the previous government, this has always been a very nettlesome subject of the Cabinet debates. **Are the people in the locality, where God chose to locate His bounty, not entitled to some reasonable modest sharing of this with the national government? Why should the national government claim all the revenues arising from them?** And the usual reply of the technocrats at that time is that there must be uniform treatment of all citizens regardless of where God's gifts are located, whether below the ground or above the ground. This, of course, has led to popular disenchantment. In Albay, for example, the government then promised a 20-percent rebate in power because of the contributions of the Tiwi Plant to the Luzon grid. Although this was ordered, I remember that the Ministry of Finance, together with the National Power Corporation, refused to implement it. **There is a bigger economic principle behind this, the principle of equity. If God chose to locate the great rivers and sources of hydroelectric power in Iligan, in Central Mindanao, for example, or in the Cordillera, why should the national government impose fuel adjustment taxes in order to cancel out the comparative advantage given to the people in these localities through these resources?** So, it is in that sense that under Section 8, the local populations, if not the local governments, should have a share of whatever national proceeds may be realized from this natural wealth of the nation located within their jurisdictions.

x x x x x x x x x

MR. NATIVIDAD. The history of local governments shows that the usual weaknesses of local governments are: 1) **fiscal inability to support itself**; 2) lack of sufficient authority to carry out its duties; and 3) lack of authority to appoint key officials.

Under this Article, are these traditional weaknesses of local governments addressed to [sic]?

MR. NOLLEDO. Yes. The first question is on fiscal inability to support itself. It will be noticed that we widened the taxing powers if local governments. I explained that exhaustively yesterday unless the Gentleman wants me to explain again.

MR. NATIVIDAD. No, that is all right with me.

MR. NOLLEDO. There is a right of retention of local taxes by local governments and according to the Natividad, Ople, Maambong, de los Reyes amendment, **local government units shall share in the proceeds of the exploitation of the national wealth within the area or region**, etc. x x x

x x x x x x x x x

MR. OPLE. x x x x x x x x x

In the hinterland regions of the Philippines, most municipalities receive an annual income of only about ₱200,000 so that after paying the salaries of local officials and employees, nothing is left to fund any local development project. This is a prescription for a self-perpetuating stagnation and backwardness, and numbing community frustrations, as well as a chronic disillusionment with the central government. The thrust towards local autonomy in this entire Article on Local Governments may suffer the fate of earlier heroic efforts of decentralization which, without innovative features for local income generation, remained a pious hope and a source of discontent. To prevent this, this amendment which Commissioner Davide and I jointly propose will open up **a whole new source of local financial self-reliance by establishing a constitutional principle of local governments**, and their populations, sharing in the proceeds of national wealth in their areas of jurisdiction. The sharing with the national government can be in the form of shares from revenues, fees and charges levied on the exploitation or development and utilization of natural resources such as mines, hydro-electric and geothermal facilities, timber, including rattan, fisheries, and processing industries based on indigenous raw materials.

But the sharing, Madam President, can also take the form of direct benefits to the population in terms of price advantages to the people where, say, cheaper electric power is sourced from a local hydroelectric or geothermal facility. For example, in the provinces reached by the power from the Maria Cristina hydro-electric facility in Mindanao, the direct benefits to the population cited in this section can take the

form of lower prices of electricity. The same benefit can be extended to the people of Albay, for example, where volcanic steam in Tiwi provides 55 megawatts of cheap power to the Luzon grid.

The existing policy of slapping uniform fuel adjustment taxes to equalize rates throughout the country in the name of price standardization will have to yield to **a more rational pricing policy that recognizes the entitlement of local communities to the enjoyment of their own comparative advantage based on resources that God has given them**. And so, Madam President, I ask that the Committee consider this proposed amendment.[223] (Emphasis ours)

The Local Government Code gave flesh to Section 7, providing that:

Section 18. *Power to Generate and Apply Resources*. - Local government units shall have the power and authority to establish an organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenues and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of any further action; **to have an equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions including sharing the same with the inhabitants by way of direct benefits**; to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their governmental or proprietary powers and functions and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals.

Section 289. *Share in the Proceeds from the Development and Utilization of the National Wealth*. - Local government units shall have an **equitable share in the proceeds derived from the utilization and development of the national wealth within their respective areas, including sharing the same with the inhabitants by way of direct benefits**.

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[223] Record of the 1986 Constitution Commission, Volume III, pp. 178, 216 and 482.

Section 290. *Amount of Share of Local Government Units*. - Local government units shall, in addition to the internal revenue allotment, have a share of **forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year** from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and **from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction**.

Section 291. *Share of the Local Governments from any Government Agency or Owned or Controlled Corporation*. - Local government units shall have a **share** based on the preceding fiscal year **from the proceeds derived by any government agency or government- owned or controlled corporation engaged in the utilization and development of the national wealth** based on the following formula whichever will produce a higher share for the local government unit:

(a) One percent (1%) of the gross sales or receipts of the preceding calendar year; or

(b) Forty percent (40%) of the mining taxes, royalties, forestry and fishery charges and such other taxes, fees or charges, including related surcharges, interests, or fines the government agency or government owned or controlled corporation would have paid if it were not otherwise exempt. (Emphasis ours)

Underlying these and other fiscal prerogatives granted to the LGUs under the Local Government Code is an enhanced policy of local autonomy that entails not only a sharing of powers, but also of resources, between the National Government and the LGUs. Thus, during the Senate deliberations on the proposed local government code, it was emphasized:

Senator Gonzales. The old concept of local autonomy, Mr. President, is, we grant more powers, more functions, more duties, more prerogatives, more responsibilities to local government units. But actually that is not autonomy. Because autonomy, without giving them the resources or the means in order that they can effectively carry out their enlarged duties and responsibilities, will be a sham autonomy. I understand that the Gentleman's concept of autonomy is really centered in not merely granting them more powers and more responsibilities, but also more means; meaning, funding, more powers to raise funds in order that they can put into effect whatever policies,

decisions and programs that the local government may approve. Is my understanding correct, Mr. President?

Senator Pimentel. The distinguished Gentleman is correct, Mr. President, Book II of the draft bill under consideration deals with fiscal matters.[224]

This push for both administrative and fiscal autonomy was reaffirmed during the deliberations of the Bicameral Conference Committee on the proposed Local Government Code and the eventual signing of the Bicameral Conference Committee Report. On these occasions, Senator Aquilino Q. Pimentel, Jr., as Committee Chairman for the Senate panel, declared:

CHAIRMAN PIMENTEL: Mr. Chairman, in response to your opening statement, let me say in behalf of the Senate panel that we believe the local government code is long overdue. It is time that we really empower our people in the countryside. And to do this, the local government code version of the Senate is based upon two premises. No. 1, we have to share power between the national government and local government. And No. 2, we have to share resources between the national government and local government. It is the only way by which we believe countryside development will become a reality in our nation. We can all speak out and spew rhetoric about countryside development, but unless and until local governments are empowered and given financial wherewithal to transform the countryside by the delivery of basic services, then we can never attain such a dream of ensuring that we share the development of this nation to the countryside where most of our people reside. x x x[225]

x x x x x x x x x

CHAIRMAN PIMENTEL. x x x

Yes, we'd like to announce that finally, after three years of deliberation and hundreds of meeting not only by the Technical Committee, but by the Bicameral Conference Committee itself, we have finally come up with the final version of the Local Government Code for 1991.

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[224] Record of the Senate, May 8, 1990, p. 16.

[225] Record of the Bicameral Conference Committee on Local Government, February 12, 1991, pp. 8-9.

x x x And if there's any one thing that the Local Government Code will do for our country, it is to provide the mechanism for the development of the countryside without additional cost to the government because here, what we are actually doing is merely to reallocate the funds of the national government giving a substantial portion of those funds to the Local Government Units so that they, in turn, can begin the process of development in their own respective territories.

And to my mind, this would be a signal achievement of the Senate and the House of Representatives. And that finally, we are placing in the hands of the local government officials their wherewithals [sic] and the tools necessary for the development of the people in the countryside and of our Local Government Units in particular.

x x x x x x x x x[226]

None of the parties in the instant cases dispute the LGU's entitlement to an equitable share in the proceeds of the utilization and development of national wealth within their respective areas. The question principally raised here is whether the national wealth, in this case the Camago-Malampaya reservoir, is within the Province of Palawan's "area" for it to be entitled to 40% of the government's share under Service Contract No. 38. The issue, therefore, hinges on what comprises the province's "area" which the Local Government Code has equated as its "territorial jurisdiction." While the Republic asserts that the term pertains to the LGU's territorial boundaries, the Province of Palawan construes it as wherever the LGU exercises jurisdiction.

Territorial jurisdiction refers to territorial boundaries as defined in the LGU's charter

The Local Government Code does not define the term "territorial jurisdiction." Provisions therein, however, indicate that territorial jurisdiction refers to the LGU's territorial boundaries.

Under the Local Government Code, a "province" is composed of a cluster of municipalities, or municipalities and component

[226] Record of the Bicameral Conference Committee on Local Government, September 4, 1991, pp. 12-13.

cities.[227] A "municipality," in turn, is described as a group of barangays,[228] while a "city" is referred to as consisting of more urbanized and developed barangays.[229]

In the creation of municipalities, cities and barangays, the Local Government Code uniformly requires that the territorial jurisdiction of these government units be "properly identified by metes and bounds," thus:

Section 386. *Requisites for Creation*. -

x x x x x x x x x

(b) **The territorial jurisdiction of the new barangay shall be properly identified by metes and bounds** or by more or less permanent natural boundaries. The territory need not be contiguous if it comprises two (2) or more islands.

x x x x x x x x x

Section 442. *Requisites for Creation*. -

x x x x x x x x x

b) **The territorial jurisdiction of a newly-created municipality shall be properly identified by metes and bounds.** The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

x x x x x x x x x

Section 450. *Requisites for Creation*.

x x x x x x x x x

(b) **The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds.** The requirement on land area shall not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

x x x x x x x x x (Emphasis ours)

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[227] Section 459.

[228] Section 440.

[229] Section 448.

The intention, therefore, is to consider an LGU's territorial jurisdiction as pertaining to a physical location or area as identified by its boundaries. This is also clear from other provisions of the Local Government Code, particularly Sections 292 and 294, on the allocation of LGUs' shares from the utilization of national wealth, which speak of the *location* of the natural resources:

Section 292. *Allocation of Shares*. - The share in the preceding Section shall be distributed in the following manner:

(a) Where the natural resources are **located** in the province:

(1) Province - Twenty percent (20%);
(2) Component City/Municipality - Forty-five percent (45%); and
(3) Barangay - Thirty-five percent (35%)

Provided, however, That where the natural resources are **located** in two (2) or more provinces, or in two (2) or more component cities or municipalities or in two (2) or more barangays, their respective shares shall be computed on the basis of:

(1) Population - Seventy percent (70%); and
(2) Land area - Thirty percent (30%)

(b) Where the natural resources are **located** in a highly urbanized or independent component city:

(1) City - Sixty-five percent (65%); and
(2) Barangay - Thirty-five percent (35%)

Provided, however, That where the natural resources are **located** in such two (2) or more cities, the allocation of shares shall be based on the formula on population and land area as specified in paragraph (a) of this Section.

Section 294. *Development and Livelihood Projects*. - The proceeds from the share of local government units pursuant to this chapter shall be appropriated by their respective *sanggunian* to finance local government and livelihood projects: Provided, however, That at least eighty percent (80%) of the proceeds derived from the development and utilization of hydrothermal, geothermal, and other sources of energy shall be applied solely to lower the cost of electricity in the local government unit **where such a source of energy is located**. (Emphasis ours)

That "territorial jurisdiction" refers to the LGU's territorial boundaries is a construction reflective of the discussion of the framers of the 1987 Constitution who referred to the local government as the "locality" that is "hosting" the national resources and a "place where God chose to locate His bounty."[230] It is also consistent with the language ultimately used by the Constitutional Commission when they referred to the national wealth as those found within (the LGU's) respective areas. By definition, "area" refers to a particular extent of space or surface or a *geographic* region.[231]

Such construction is in conformity with the pronouncement in *Sen. Alvarez v. Hon. Guingona, Jr.*[232] where the Court, in explaining the need for adequate resources for LGUs to undertake the responsibilities ensuing from decentralization, made the following disquisition in which "territorial jurisdiction" was equated with territorial boundaries:

> The practical side to development through a decentralized local government system certainly concerns the matter of financial resources. With its broadened powers and increased responsibilities, a local government unit must now operate on a much wider scale. More extensive operations, in turn, entail more expenses. Understandably, the vesting of duty, responsibility and accountability in every local government unit is accompanied with a provision for reasonably adequate resources to discharge its powers and effectively carry out its functions. Availment of such resources is effectuated through the vesting in every local government unit of (1) the right to create and broaden its own source of revenue; (2) the right to be allocated a just share in national taxes, such share being in the form of internal revenue allotments (IRAs); and (3) the right to be given its **equitable share in the proceeds of the utilization and development of the national wealth**, if any, within its **territorial boundaries**.[233] (Emphasis ours)

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[230] Record of the 1986 Constitution Commission, Volume III, pp. 178 and 194.

[231] <http://www.merriam-webster.com/dictionary/area> (last updated November 28, 2018).

[232] 322 Phil. 774 (1996).

[233] *Id*. at 783.

An LGU has been defined as a political subdivision of the State which is constituted by law and possessed of substantial control over its own affairs.[234] LGUs, therefore, are creations of law. In this regard, Sections 6 and 7 of the Local Government Code provide:

Section 6. *Authority to Create Local Government Units*. - A local government unit may be **created**, divided, merged, abolished, or its boundaries substantially altered either **by law enacted by Congress** in the case of a province, city, municipality, or any other political subdivision, or **by ordinance** passed by the *sangguniang panlalawigan* or *sangguniang panlungsod* concerned in the case of a barangay located within its territorial jurisdiction, subject to such limitations and requirements prescribed in this Code.

Section 7. *Creation and Conversion*. - As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income. - It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) Population. - It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) Land Area. - It must be contiguous, unless it comprises two or more islands or is separated by a local government unit independent of the others; **properly identified by metes and bounds with technical descriptions**; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR). (Emphasis ours)

In enacting charters of LGUs, Congress is called upon to properly identify their territorial jurisdiction by metes and bounds. *Mariano, Jr. v. COMELEC*[235] stressed the need to

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[234] *Id*.

[235] 321 Phil. 259, 265-266 (1995).

demarcate the territorial boundaries of LGUs with certitude because they define the limits of the local governments' territorial jurisdiction. Reiterating this *dictum*, the Court, in *Municipality of Pateros v. Court of Appeals, et al.*,[236] held:

> [W]e reiterate what we already said about the **importance and sanctity of the territorial jurisdiction of an LGU**:
>
> **The importance of drawing with precise strokes the territorial boundaries of a local unit of government cannot be overemphasized. The boundaries must be clear for they define the limits of the territorial jurisdiction of a local government unit. It can legitimately exercise powers of government only within the limits of its territorial jurisdiction. Beyond these limits, its acts are *ultra vires*.** Needless to state, any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare. This is the evil sought to be avoided by the Local Government Unit in requiring that **the land area of a local government unit must be spelled out in metes and bounds, with technical descriptions**.[237] (Emphasis ours)

Clearly, therefore, a local government's territorial jurisdiction cannot extend beyond the boundaries set by its organic law.

Area as delimited by law and not exercise of jurisdiction as basis of the LGU's equitable share

The Court cannot subscribe to the argument posited by the Province of Palawan that the national wealth, the proceeds from which the State is mandated to share with the LGUs, shall be wherever the local government exercises any degree of jurisdiction.

An LGU's territorial jurisdiction is not necessarily co-extensive with its exercise or assertion of powers. To hold otherwise may result in condoning acts that are clearly *ultra vires*. It may lead to, in the words of the Republic, LGUs "rush[ing] to exercise its powers and functions in areas rich in natural resources (even if outside its boundaries) with the

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[236] 607 Phil. 104 (2009).

[237] *Id*. at 121.

intention of seeking a share in the proceeds of its exploration"[238] — a situation that "would sow conflict not only among the local government units and the national government but worse, between and among local government units."[239]

There is likewise merit in the Republic's assertion that Palawan's interpretation of what constitutes an LGU's territorial jurisdiction may produce absurd consequences. Indeed, there are natural resources, such as forests and mountains, which can be found within the LGU's territorial boundaries, but are, strictly speaking, under national jurisdiction, specifically that of the Department of Environment and Natural Resources.[240] To equate territorial jurisdiction to areas where the LGU exercises jurisdiction means that these natural resources will have to be excluded from the sharing scheme although they are geographically within the LGU's territorial limits.[241] The consequential incongruity of this scenario finds no support either

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[238] *Rollo* (G.R. No. 170867), p. 1574.

[239] *Id.* at 1575.

[240] Under Section 17 of the Local Government Code, municipalities and provinces are authorized to exercise such powers as are "necessary, appropriate or incidental to efficient provisions of the basic services and facilities enumerated (therein)," including:

x x x x x x x x x

(2) For a Municipality:

x x x x x x x x x

(ii) **Pursuant to national policies and subject to supervision, control and review of the DENR**, implementation of community-based forestry projects which include integrated social forestry programs and similar projects; management and control of communal forests with an area not exceeding fifty (50) square kilometers; establishment of tree parks, greenbelts, and similar forest development projects;

x x x x x x x x x

(3) For a Province:

x x x x x x x x x

(iii) **Pursuant to national policies and subject to supervision, control and review of the DENR,** enforcement of forestry laws limited to community-based forestry projects, pollution control law, small-scale mining law, and other laws on the protection of the environment; and mini-hydroelectric projects for local purposes;

x x x x x x x x x (Emphasis ours)

[241] *Rollo* (G.R. No. 170867), p. 1485.

in the language or in the context of the equitable sharing provisions of the 1987 Constitution and the Local Government Code.

The Court finds it appropriate to also cite Section 150 of the Local Government Code which speaks of the *situs* of local business taxes under Section 143 of the same law. Section 150 provides:

Section 150. *Situs of the Tax*. -

x x x x x x x x x

(b) The following **sales allocation** shall apply to manufacturers, assemblers, contractors, producers, and exporters with factories, project offices, plants, and plantations in the pursuit of their business:

(1) Thirty percent (30%) of all sales recorded in the principal office shall be taxable by the city or municipality where the principal office is located; and

(2) **Seventy percent (70%) of all sales recorded in the principal office shall be taxable by the city or municipality where the factory, project office, plant, or plantation is located.**

(c) **In case of a plantation located at a place other than the place where the factory is located, said seventy percent (70%) mentioned in subparagraph (b) of subsection (2) above shall be divided as follows:**

(1) **Sixty percent (60%) to the city or municipality where the factory is located**; and

(2) **Forty percent (40%) to the city or municipality where the plantation is located.**

(d) In cases where a manufacturer, assembler, producer, exporter or contractor has two (2) or more factories, project offices, plants, or plantations located in different localities, the seventy percent (70%) sales allocation mentioned in subparagraph (b) of subsection (2) above shall be **prorated among the localities where the factories, project offices, plants, and plantations are located in proportion to their respective volumes of production** during the period for which the tax is due.

(e) **The foregoing sales allocation shall be applied irrespective of whether or not sales are made in the locality where the factory, project office, plant, or plantation is located.** (Emphasis ours)

The foregoing provision illustrates the untenability of the Province of Palawan's interpretation of "territorial jurisdiction" based on exercise of jurisdiction. To sustain the province's construction would mean that the *territorial* jurisdiction of the municipality or city where the factory, plant, project office or plantation is situated, extends to the LGU where the principal office is located because said municipality or city can exercise the authority to tax the sale transactions made or recorded in the principal office. This could not have been the intent of the framers of the Local Government Code.

The Provincial Government of Palawan argues that its territorial jurisdiction extends to the Camago-Malampaya reservoir considering that its local police maintains peace and order in the area; crimes committed within the waters surrounding the province have been prosecuted and tried in the courts of Palawan; and the provincial government enforces environmental laws over the same area.[242] The province also cites Section 468 of the Local Government Code, which authorizes the *Sanggunian Panlalawigan* to enact ordinances that protect the environment, as well as Sections 26 and 27 of the law, which require consultation with the LGUs concerned and the approval of their respective *sanggunian* before the National Government may commence any project that will have an environmental impact.[243] The province avers that the Contractor, in fact, obtained the necessary endorsement from the *Sangguniang Panlalawigan* of Palawan before starting its operations.[244]

The Court notes, however, that the province's claims of maintaining peace and order in the Camago-Malampaya area and of enforcing environmental laws therein have not been substantiated by credible proof. The province likewise failed to adduce evidence of the crimes supposedly committed in the same area or their prosecution in Palawan's courts.

The province cites illegal fishing, poaching and illegal entry as the cases tried before the courts of Palawan. As conceded

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[242] *Id*. at 478.

[243] *Id*. at 474.

[244] *Id*. at 478.

by the parties, however, the subject gas reservoir is situated, not in the marine waters, but in the continental shelf. The Province of Palawan has not established that it has, in fact, exercised jurisdiction over this submerged land area.

The LGU's authority to adopt and implement measures to protect the environment does not determine the extent of its territorial jurisdiction. The deliberations of the Bicameral Conference Committee on the proposed Local Government Code provides the proper context for the exercise of such authority:

> HON. DE PEDRO. The Senate version does not have any specific provision on this. The House's reads:
>
> > "The delegation to each local government unit of the responsibility in the management and maintenance of environmental balance within its territorial jurisdiction."
>
> CHAIRMAN PIMENTEL. Well, this is a matter of delegating to the local government units power to determine environmental concerns, which is good. However, we have some reservations precisely because **environment does not know of territorial boundaries**. That is our reservation there. **And we have to speak of the totality of the environment of the nation rather than the provincial or municipal in that respect.** x x x[245] (Emphasis ours)

Thus, the LGU's statutory obligation to maintain ecological balance is but part of the nation's collective effort to preserve its environment as a whole. The extent to which local legislation or enforcement protects the environment will not define the LGU's territory.

Sections 26 and 27 of the Local Government Code provide:

> **Section 26.** *Duty of National Government Agencies in the Maintenance of Ecological Balance*. - It shall be the duty of every national agency or government-owned or controlled corporation authorizing or involved in the planning and implementation of any project or program that may cause pollution, climatic change, depletion of non-renewable resources, loss of crop land, rangeland, or forest

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[245] Records of the Bicameral Conference Committee on Local Government, February 12, 1991, p. 39.

cover, and extinction of animal or plant species, to consult with the local government units, nongovernmental organizations, and other sectors concerned and explain the goals and objectives of the project or program, **its impact upon the people and the community in terms of environmental or ecological balance**, and the measures that will be undertaken to prevent or minimize the adverse effects thereof.

Section 27. *Prior Consultations Required*. - No project or program shall be implemented by government authorities unless the consultations mentioned in Sections 2 (c) and 26 hereof are complied with, and prior approval of the *sanggunian* concerned is obtained: Provided, That occupants in areas where such projects are to be implemented shall not be evicted unless appropriate relocation sites have been provided, in accordance with the provisions of the Constitution. (Emphasis ours)

It is clear from Sections 26 and 27 that the consideration for the required consultation and *sanggunian* approval is the environmental impact of the National Government's project on the local community. A project, however, may have an ecological impact on a locality without necessarily being situated therein. Thus, prior consultation made pursuant to the foregoing provisions does not perforce establish that the national wealth sought to be utilized is within the territory of the LGU consulted.

In fine, an LGU cannot claim territorial jurisdiction over an area simply because its government has exercised a certain degree of authority over it. Territorial jurisdiction is defined, not by the local government, but by the law that creates it; it is delimited, not by the extent of the LGU's exercise of authority, but by physical boundaries as fixed in its charter.

Unless clearly expanded by Congress, the LGU's territorial jurisdiction refers only to its land area.

Utilization of natural resources found within the land area as delimited by law is subject to the 40% LGU share.

Since it refers to a demarcated area, the term "territorial jurisdiction" is evidently synonymous with the term "*territory*." In fact, "territorial jurisdiction" is defined as the limits or *territory* within which authority may be exercised.[246]

Under the Local Government Code, particularly the provisions on the creation of municipalities, cities and provinces, and LGUs in general, territorial jurisdiction is contextually synonymous with territory and the term "territory" is used to refer to the land area comprising the LGU, thus:

Section 442. *Requisites for Creation*. -

(a) A municipality may be created if it has an average annual income, as certified by the provincial treasurer, of at least Two million five hundred thousand pesos (₱2,500,000.00) for the last two (2) consecutive years based on the 1991 constant prices; a population of at least twenty- five thousand (25,000) inhabitants as certified by the National Statistics Office; and **a contiguous territory of at least fifty (50) square kilometers as certified by the Lands Management Bureau:** Provided, That the creation thereof shall not reduce the land area, population or income of the original municipality or municipalities at the time of said creation to less than the minimum requirements prescribed herein.

(b) The **territorial jurisdiction** of a newly-created municipality shall be **properly identified by metes and bounds**. The requirement on **land area** shall not apply where the municipality proposed to be created is composed of one (1) or more islands. The **territory need not be contiguous** if it comprises two (2) or more islands.

(c) The average annual income shall include the income accruing to the general fund of the municipality concerned, exclusive of special funds, transfers and non-recurring income.

(d) Municipalities existing as of the date of the effectivity of this Code shall continue to exist and operate as such. Existing municipal districts organized pursuant to presidential issuances or executive orders and which have their respective set of elective municipal officials holding office at the time of the effectivity of this Code shall henceforth be considered as regular municipalities.

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[246] <https://www.merriam-webster.com/dictionary/jurisdiction#legalDictionary> (last updated November 27, 2018).

Section 450. *Requisites for Creation*.

(a) A municipality or a cluster of barangays may be converted into a component city if it has an average annual income, as certified by the Department of Finance, of at least Twenty million (₱20,000,000.00) for the last two (2) consecutive years based on 1991 constant prices, and if it has either of the following requisites:

(i) **a contiguous territory of at least one hundred (100) square kilometers, as certified by the Lands Management Bureau**; or

(ii) a population of not less than one hundred fifty thousand (150,000) inhabitants, as certified by the National Statistics Office:

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The **territorial jurisdiction** of a newly-created city shall be **properly identified by metes and bounds**. The requirement on **land area** shall not apply where the city proposed to be created is composed of one (1) or more islands. The **territory need not be contiguous** if it comprises two (2) or more islands.

(c) The average annual income shall include the income accruing to the general fund, exclusive of specific funds, transfers, and non-recurring income.

Section 461. *Requisites for Creation*.

(a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and either of the following requisites:

(i) **a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau**; or

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

Provided, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The **territory need not be contiguous** if it comprise two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers and non-recurring income.

Section 7. *Creation and Conversion*. - As a general rule, the creation of a local government unit or its conversion from one level to another level shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income. - It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) Population. - It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) **Land Area**. - It must be **contiguous**, unless it comprises two or more islands or is separated by a local government unit independent of the others; **properly identified by metes and bounds with technical descriptions**; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the **Lands Management Bureau (LMB)** of the Department of Environment and Natural Resources (DENR). (Emphasis ours)

That the LGUs' respective territories under the Local Government Code pertain to the land area is clear from the fact that: (a) the law generally requires the territory to be "contiguous"; (b) the minimum area of the contiguous territory is measured in square kilometers; (c) such minimum area must be certified by the Lands Management Bureau; and (d) the territory should be identified by metes and bounds, with technical descriptions.

The word "contiguous" signifies two solid masses being in actual contact. Square kilometers are units typically used to measure large areas of land. The Land Management Bureau, a

government agency that absorbed the functions of the Bureau of Lands, recommends policies and programs for the efficient and effective administration, management and disposition of alienable and disposable lands of the public domain and other lands outside the responsibilities of other government agencies.[247] Finally, "metes and bounds" are the boundaries or limits of a tract of land especially as described by reference and distances between points on the land,[248] while "technical descriptions" are used to describe these boundaries and are commonly found in certificates of land title.

The following pronouncement in *Tan v. Comelec*[249] is particularly instructive:

> It is of course claimed by the respondents in their Comment to the exhibits submitted by the petitioners (Exhs. C and D, Rollo, pp. 19 and 91), that the new province has a territory of 4,019.95 square kilometers, more or less. This assertion is made to negate the proofs submitted, disclosing that the land area of the new province cannot be more than 3,500 square kilometers because its land area would, at most, be only about 2,856 square kilometers, taking into account government statistics relative to the total area of the cities and municipalities constituting Negros del Norte. **Respondents insist that when Section 197 of the Local Government Code speaks of the territory of the province to be created and requires that such territory be at least 3,500 square kilometers, what is contemplated is not only the land area but also the land and water over which the said province has jurisdiction and control. It is even the submission of the respondents that in this regard the marginal sea within the three mile limit should be considered in determining the extent of the territory of the new province. Such an interpretation is strained, incorrect, and fallacious.**

The last sentence of the first paragraph of Section 197 is most revealing. As so stated therein the "*territory need not be* ***contiguous*** *if it comprises two or more islands*." The use of the word *territory* in this particular provision of the Local Government Code and in

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[247] Section 14, Executive Order No. 192 (1987).

[248] <https://www.merriam-webster.com/legal/metes%20and%20bounds>.

[249] *Supra* note 34.

the very last sentence thereof, clearly reflects that **"*territory*" as therein used, has reference only to the mass of land area and excludes the waters over which the political unit exercises control**.

Said sentence states that the "territory need not be contiguous." **Contiguous means (a) in physical contact; (b) touching along all or most of one side; (c) near, text, or adjacent. "Contiguous", when employed as an adjective, as in the above sentence, is only used when it describes physical contact, or a touching of sides of two solid masses of matter.** The meaning of particular terms in a statute may be ascertained by reference to words associated with or related to them in the statute. **Therefore, in the context of the sentence above, what need not be "contiguous" is the "territory" the physical mass of land area. There would arise no need for the legislators to use the word contiguous if they had intended that the term "territory" embrace not only land area but also territorial waters. It can be safely concluded that the word territory in the first paragraph of Section 197 is meant to be synonymous with "land area" only.** The words and phrases used in a statute should be given the meaning intended by the legislature. The sense in which the words are used furnished the rule of construction.

The distinction between "territory" and "land area" which respondents make is an artificial or strained construction of the disputed provision whereby the words of the statute are arrested from their plain and obvious meaning and made to bear an entirely different meaning to justify an absurd or unjust result. The plain meaning in the language in a statute is the safest guide to follow in construing the statute. A construction based on a forced or artificial meaning of its words and out of harmony of the statutory scheme is not to be favored.[250] (Emphasis ours and citations omitted)

Though made in reference to the previous Local Government Code or Batas Pambansa Blg. (BP) 337, the above-cited ruling remains relevant in determining an LGU's territorial jurisdiction under the 1991 Local Government Code. Section 197 of BP 337[251] cited the requisites for creating a province, among which was a "territory," with a specified minimum area, which did

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[250] *Id*. at 645-647.

[251] AN ACT ENACTING A LOCAL GOVERNMENT CODE. Approved on February 10, 1983.

not need to be "contiguous" if it comprised two or more islands. *Tan*, therefore, is clearly relevant since it explained the significance of the word "contiguous," which is similarly used in the Local Government Code, in the determination of the LGU's territory. More importantly, it appears that the framers of the Local Government Code drew inspiration from the *Tan* ruling such that in lieu of the word "territory," they specified that such requisite in the creation of the LGU shall refer to the land area. Thus, in his book on the Local Government Code, Senator Pimentel who, in former Chief Justice Reynato S. Puno's words, "shepherded the Code through the labyrinthine process of lawmaking," wrote:

> When a law was passed in the Batasan Pambansa creating the new province of Negros del Norte, the Supreme Court was asked to rule in *Tan v. Commission on Elections*, whether or not the new province complied properly with the "territory" requirement that it must have no less then [sic] 3,500 square kilometers.
>
> The respondents claimed that "the new province has a territory of 4,019.95 square kilometers" by including in that computation not only the land area, but also the "water over which said province had jurisdiction and control," and "the marginal sea within the three mile limit."
>
> The Supreme Court ruled that such an interpretation is strained, incorrect and fallacious. The Court added that the use of the word "territory" in the Local Government Code clearly reflected that "territory" as therein used had reference only to the mass of land area and excluded the waters over which the political unit exercises control.
>
> **Inspired by this Supreme Court ruling, the Code now uses the words "land area" in lieu of "territory" to emphasize that the area required of an LGU does not include the sea for purposes of compliance with the requirements of the Code for its creation.**[252] (Emphasis ours)

Tan, in fact, establishes that an LGU may have control over the waters but may not necessarily claim them as part of their

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[252] Aquilino Q. Pimentel, Jr., *The Local Government Code*, 2011 Edition, p. 44.

territory. This supports the Court's finding that the exercise of authority does not determine the LGU's territorial jurisdiction.

It is true that under Sections 442 and 450 of the Local Government Code, "(t)he requirement on land area shall not apply" if the municipality or city proposed to be created is composed of one or more islands. This does not mean, however, that the territory automatically extends to the waters surrounding the islands or to the open sea. Nowhere in said provisions is it even remotely suggested that marine waters, or for that matter the continental shelf, are consequently to be included as part of the territory. The provisions still speak of "islands" as constituting the LGU, and under Article 121 of the UNCLOS, an island is defined as "a naturally formed **area of land**, surrounded by water, which is above water at high tide." The inapplicability of the requirement on land area only means that where the proposed municipality or city is an island, or comprises two or more islands, it need not be identified by metes and bounds or satisfy the required minimum area. In that case, the island mass constitutes the area of the municipality or city and its limits are the island's natural boundaries.

Significantly, during the Senate deliberations on the proposed Local Government Code, then Senate President Jovito Salonga suggested an amendment that would extend the territorial jurisdiction of municipalities abutting bodies of water to at least two kms from the shoreline. The ensuing exchange is worth highlighting:

The President. Here is a proposed amendment: Line 17, to add the following: FOR MUNICIPALITIES ABUTTING BODIES OF WATER THEIR TERRITORIAL JURISDICTION SHALL EXTEND TO AT LEAST TWO KILOMETERS FROM THE SHORELINE; PROVIDED, THAT IN CASE THERE ARE TWO OR MORE MUNICIPALITIES ON EITHER SIDE OF SUCH A BODY OF WATER MAKING THE TWO-KILOMETER JURISDICTION INADVISABLE THE JURISDICTION OF THE AFFECTED MUNICIPALITIES SHALL BE DETERMINED BY DRAWING A LINE AT THE MIDDLE OF SUCH BODY OF WATER. This is only for municipalities abutting bodies of water.

Senator Pimentel. Mr. President, may we invite the attention of our Colleagues that in Book IV, page 273, we define what constitutes municipal waters. And, the measurement is not two kilometers but three nautical miles starting from the sea-line boundary marks at low tide. Therefore, there may be some complications here. We are not against the amendment per se. What we are trying to make of record is the fact that we have to consider also the provision of Section 464 which defines "MUNICIPAL WATERS". So, probably, we can increase the extension of the territorial jurisdiction to three nautical miles instead of two kilometers as mentioned in this proposed amendment.

In fact, Mr. President, it is also stated at the last sentence of Section 464:

> Where two municipalities are so situated on the opposite shores that there is less than six nautical miles of marine water between them, the third line shall be aligned equally distant from the opposite shores of the respective municipalities.

So, there is an attempt here to delineate, really, the jurisdiction of the municipalities which may have a common body of water, let us say, in between them.

The President. So, that is acceptable, provided that it is three nautical miles?

Senator Pimentel. Yes. Probably, Mr. President, what we can do is hold in abeyance this proposed amendment and take it up when we reach Section 464. I think, it will be more appropriate in that section, Mr. President.

The President. But, if it is a question of territorial jurisdiction, may not this be the proper place for it?

Senator Pimentel. All right, Mr. President, what we can do is, we will accept the proposed amendment, subject to the observations that we have placed on record.

The President. All right. Subject to the three-nautical-mile limit.

Senator Saguisag. Mr. President.

The President. Senator Saguisag is recognized.

Senator Saguisag. I just would like to find out, Mr. President, if we are codifying something that may represent the present state of

the law, or are we creating a new concept here? Ang ibig po bang sabihin nita ay mayroong magmamay-ari ng Pasig River? Kasi, I do not believe that we have ever talked about Manila owning a river or Manila owning Manila Bay. Is that what we are introducing here? And what are its implications? Taga-Maynila lamang ba ang maaaring gumamit niyan at sila lamang ang magpapasiya kung ano ang dapat gawin o puwedeng pumasok ang coast guard? What do we intend to achieve by now saying that..

The President. Inland waters lamang naman yata ang pinag-uusapang ito.

Senator Saguisag. Opo. Pero, I am not sure whether there is an owner of the Pasig River. I am not sure. Maybe, there is. Pero, my own recollection is that we have never talked of that idea before. I do not know what it means. Does it mean now that the municipality owning it can exclude the rest of the population from using it without going through licensing processes? Ano po ang gusto nating gawin dito?

Ang alam ko ho riyan, they cannot be owned in the sense that they are really owned by every Filipino. Iyon lamang po. Kasi, capitals po ang naririto sa page 273, baka bago ito. Pero, ano po ba and ibig sabihin nito?

In my study of property before, hindi ko narinig...So, maybe, we should really reserve this as suggested by the distinguished Chairman.

The President. All right. Why do we not defer this until we can determine which is the better place?

Senator Pimentel. Yes, Mr. President.

The President. All right. So let us defer consideration of this plus the major question that Senator Saguisag is posing, is this something new that we are laying down?

Senator Pimentel. No. Actually the definition of "municipal waters" came about, really, because of several complaints that our Committee has received from fisherpeople. They have complained that the municipality is not able to help them, because the definition of "municipal waters" has not been clearly spelled out. That is the reason why we attempted to introduce some definitions of "municipal waters" here, basically, in answer to the demands of the fisherfolk who believe that their rights are being intruded upon by other people coming

from other places. Probably, the definition of municipal waters will also delineate the criminal jurisdiction of, let us say, the municipal police in certain acts, like dynamite fishing in a particular locality. It can help, Mr. President.

The President. Sa palagay ba ninyo, iyong Marikina River that goes through several municipalities—we have the Municipality of Pasig, then the Municipality of Marikina, then the Municipality of San Mateo, and then the Municipality of Montalban—how will that be apportioned?

Senator Pimentel. If a river passes through several municipalities, the boundary will be an imaginary line drawn at the middle of this river, basically, Mr. President.

The President. Anyway, we will defer this until we reach Book IV.[253]

Based on the records of the Senate and the Bicameral Conference Committee on Local Government, however, the Salonga amendment was not considered anew in subsequent deliberations. Neither did the proposed amendment appear in the text of the Local Government Code as approved. By Senator Pimentel's account, the Code deferred to the Court's ruling in *Tan* which excluded the marginal sea from the LGU's territory. It can, thus, be concluded that under the Local Government Code, an LGU's territory does not extend to the municipal waters beyond the LGU's shoreline.

The parties all agree that the Camago-Malampaya reservoir is located in the continental shelf.[254] If the marginal sea is not included in the LGU's territory, with more reason should the continental shelf, located miles further, be deemed excluded therefrom.

To recapitulate, an LGU's territorial jurisdiction refers to its territorial boundaries or to its territory. The territory of LGUs, in turn, refers to their land area, unless expanded by law to include the maritime area. Accordingly, only the utilization of natural resources found within the land area as delimited by

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[253] Record of the Senate, September 10, 1990, pp. 959-960.

[254] TSN, November 24, 2009, p. 7.

law is subject to the LGU's equitable share under Sections 290 and 291 of the Local Government Code. This conclusion finds support in the deliberations of the 1986 Constitutional Commission which cited, as examples of national wealth the proceeds from which the LGU may share, the Tiwi Geothermal Plant in Albay, the geothermal plant in Macban, Makiling-Banahaw area in Laguna, the Maria Cristina area in Central Mindanao, the great rivers and sources of hydroelectric power in Iligan, in Central Mindanao, the geothermal resources in the area of Palimpiñon, Municipality of Valencia and mountainous areas, which are all situated inland.[255] In his 2011 treatise on the Local Government Code, former Senator Pimentel cited as examples of such national wealth, the geothermal fields of Tongonan, Leyte and Palinpinon, Negros Oriental which are both found inland.[256]

Section 6 of the Local Government Code empowers Congress to create, divide, merge and abolish LGUs, and to substantially alter their boundaries, subject to the plebiscite requirement under Section 10 of the law which reads:

> **Section 10.** *Plebiscite Requirement*. - No creation, division, merger, abolition or substantial alteration of boundaries of local government units shall take effect unless approved by a majority of the votes cast in a plebiscite called for the purpose in the political unit or units directly affected. Said plebiscite shall be conducted by the Commission on Elections (COMELEC) within one hundred twenty (120) days from the date of effectivity of the law or ordinance effecting such action, unless said law or ordinance fixes another date.

Accordingly, unless Congress, with the approval of the political units directly affected, clearly extends an LGU's territorial boundaries beyond its land area, to include marine waters, the seabed and the subsoil, it cannot rightfully share in the proceeds of the utilization of national wealth found therein.

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[255] Record of the 1986 Constitutional Commission, Volume III, pp. 178, 194 and 221.

[256] Aquilino Q. Pimentel, Jr., *The Local Government Code*, 2011 Edition, p. 434.

No law clearly granting the Province of Palawan territorial jurisdiction over the Camago-Malampaya reservoir

The Republic has enumerated the laws defining the territory of Palawan.[257] The following table has been culled from said enumeration:

Governing Law	Territorial Limits
Act No. 422[258]	The Province of Paragua shall consist of all that portion of the **Island** of Paragua north of the tenth parallel of north latitude and the small **islands** adjacent thereto, including Dumaran, and of the **islands** forming the Calamianes Group and the Cuyos group. (Section 2)
Act No. 567[259]	The Province of Paragua shall consist of all that portion of the **Island** of Paragua north of a line beginning in the middle of the channel at the mouth of the Ulugan River in the Ulugan Bay, thence following the main channel of the Ulugan River to the village of Bahile, thence along the main trail leading from Bahile to the Tapul River, thence following the course of the Tapul River to its mouth in the Honda Bay; except at the towns of Bahile and Tapul the west boundary line shall be the arc of a circle with one mile radius, the center of the circle being the center of the said towns of Bahile and Tapul. There shall be included in the Province

[257] *Rollo* (G.R. No. 170867), pp. 1595-1602.

[258] AN ACT PROVIDING FOR THE ORGANIZATION OF A PROVINCIAL GOVERNMENT IN THE PROVINCE OF PARAGUA, AND DEFINING THE LIMITS OF THAT PROVINCE. Approved on June 23, 1902.

[259] AN ACT AMENDING ACT NUMBERED FOUR AND TWENTY-TWO, PROVIDING FOR THE ORGANIZATION OF A PROVINCIAL GOVERNMENT IN THE PROVINCE OF PARAGUA AND DEFINING THE LIMITS OF THAT PROVINCE, BY FIXING NEW BOUNDARIES FOR THE PROVINCE OF PARAGUA. Approved on December 22, 1902.

	of Paragua the small **islands** adjacent thereto, including Dumaran and the **island** forming the Calamianes group and the Cuyos group. (Section 1)
Act No. 747[260]	The Province of Paragua shall consist of the entire **Island** of Paragua, the **Islands** of Dumaran and Balabac, the Calamianes **Islands**, the Cuyos **Islands**, the Cagayanes **Islands**, and all other **islands** adjacent thereto and not included within the limits of any province. (Section 1)
Act No. 1363[261]	Upon the recommendation of the Philippine Committee on Geographical Names the name of the Province and **Island** of Paragua is hereby changed to that of Palawan. (Section 1)
Act No. 1396[262]	The Province of Palawan shall include the entire **Island** of Palawan, the **Islands** of Dumaran and Balabac, the Calamianes **Islands**, the Cuyos **Islands**, the Cagayanes **Islands**, and all other **islands** adjacent to these **islands** and not included within the limits of any other province. (Section 26)

[260] AN ACT TO AMEND ACT NUMBERED FOUR HUNDRED AND TWENTY-TWO, AS AMENDED, BY DEFINING NEW LIMITS FOR THE PROVINCE OF PARAGUA AND FOR OTHER PURPOSES. Approved on May 14, 1903.

[261] AN ACT CHANGING THE NAME OF THE PROVINCE AND ISLAND OF PARAGUA TO THAT OF PALAWAN. Approved on June 28, 1905.

[262] AN ACT PROVIDING FOR THE ORGANIZATION OF PROVINCIAL GOVERNMENTS OF THE PHILIPPINE ISLANDS, OTHER THAN THE MORO PROVINCE, WHICH ARE NOT ORGANIZED UNDER THE PROVISIONS OF THE PROVINCIAL GOVERNMENT ACT NUMBERED EIGHTY-THREE, AND REPEALING ACTS NUMBERED FORTY-NINE, THREE HUNDRED AND THIRTY-SEVEN, FOUR HUNDRED AND TEN, FOUR HUNDRED AND TWENTY-TWO, FOUR HUNDRED AND FORTY-ONE, FIVE HUNDRED, FIVE HUNDRED AND SIXTY-SIX, AND FIVE HUNDRED AND SIXTY-SEVEN, AND SECTIONS ONE AND TWO OF ACT NUMBERED SEVEN HUNDRED AND FORTY-SEVEN. Approved on September 14, 1905.

Act No. 2657[263]	Article II (Situs and Major Subdivisions of Provinces Other than such as are Contained in Department of Mindanao and Sulu) Section 43. Situs of Provinces and Major Subdivisions. - The general location of the provinces other than such as are contained in the Department of Mindanao and Sulu, together with the subprovinces, municipalities, and townshlps respectively contained in them is as follows: x x x x The Province of Palawan consists of the **Island** of Palawan, the **islands** of Dumaran and Balabac, the Calamian **Islands**, the Cuyo **Islands**, the Cagayanes **Islands**, and all other **islands** adjacent to any of them, not included in some other province. It contains the townships of Cagayancillo, Coron, Cuyo, Puerto Princesa (the capital of the province), and Taytay.
Act No. 2711[264]	Chapter 2 (Political Grand Divisions and Subdivisions) Article I Grand Divisions Section 37. Grand divisions of (Philippines Islands) Philippines. — The (Philippine Islands) Philippines comprises the forty-two provinces named in the next succeeding paragraph hereof, the seven provinces of the Department of Mindanao and Sulu, and the territory of the City of Manila. x x x x x x x x x The Province of Palawan consists of the **Island** of Palawan, the **islands** of Dumaran and Balabac, the Calamian **Islands**, the Cuyo **Islands**, the Cagayanes **Islands**, and all other **islands** adjacent to any of them, not included in some other province, and comprises the following municipalities: Agutaya, Bacuit, Cagayancillo, Coron, Cuyo, Dumaran, Puerto Princesa (the capital of the province), and Taytay. The province also contains the following municipal districts: Aborlan, Balabac and Brooke's Point.

[263] AN ACT CONSISTING AN ADMINISTRATIVE CODE. Approved on December 31, 1916.

[264] AN ACT AMENDING THE ADMINISTRATIVE CODE. Approved on March 10, 1917.

As defined in its organic law, the Province of Palawan is comprised merely of islands. The continental shelf, where the Camago-Malampaya reservoir is located, was clearly not included in its territory.

An island, as herein before-mentioned, is defined under Article 121 of the UNCLOS as "a naturally formed **area of land**, surrounded by water, which is **above water** at high tide." The continental shelf, on the other hand, is defined in Article 76 of the same Convention as comprising "**the seabed and subsoil** of the submarine areas that extend beyond (the coastal State's) territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nm from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance." Where the continental shelf of the coastal state extends beyond 200 nm, Article 76 allows the State to claim an extended continental shelf up to 350 nm from the baselines.[265]

Under Palawan's charter, therefore, the Camago-Malampaya reservoir is not located within its territorial boundaries.

P.D. No. 1596, which constituted Kalayaan as a separate municipality of the Province of Palawan, cannot be the basis for holding that the Camago-Malampaya reservoir forms part of Palawan's territory. Section 1 of P.D. No. 1596 provides:

SECTION 1. The area within the following boundaries:

KALAYAAN ISLAND GROUP

From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East of Greenwich, thence due West along the parallel of 7°40' N to its intersection with the meridian of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the inter-section of the parallel of 12°00' N with the meridian oflongitude 114°30' E, thence, due East along the parallel of 12°00' N to its intersection with the meridian of 118°00' E, thence, due

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[265] *Rollo* (G.R. No. 170867), p. 1339.

South along the meridian of longitude 118°00' E to its intersection with the parallel of 10°00' N, thence Southwestwards to the point of beginning at 7°40' N, latitude and 116°00' E longitude; **including the sea-bed, sub-soil, continental margin** and air space shall belong and be subject to the sovereignty of the Philippines. **Such area is hereby constituted as a distinct and separate municipality of the Province of Palawan and shall be known as "Kalayaan."** (Emphasis ours)

None of the parties assert that the Camago-Malampaya reservoir is within the territory of Kalayaan as delimited in Section 1 of P.D. No. 1596 or as referred to in R.A. No. 9522,[266] commonly known as the "2009 baselines law." The Province of Palawan, however, invokes P.D. No. 1596 to argue that similar to Kalayaan, its territory extends to the seabed, the subsoil and the continental margin. The Court is not persuaded.

The delineation of territory in P.D. No. 1596 refers to Kalayaan alone. The inclusion of the seabed, subsoil and continental margin in Kalayaan's territory cannot, by simple analogy, be applied to the Province of Palawan. To hold otherwise is to expand the province's territory, as presently defined by law, without the requisite legislation and plebiscite.

The Court likewise finds no merit in the Province of Palawan's assertion that R.A. No. 7611 establishes that the Camago-Malampaya area is within the territorial jurisdiction of Palawan. It is true that R.A. No. 7611 contains a definition of "Palawan" that states:

Section 3. ***Definition of Terms.*** — As used in this Act, the following terms are defined as follows:

(1) **"Palawan"** refers to the Philippine province composed of islands and islets located 7°47' and 12°'22' north latitude and 117°'00' and 119°'51' east longitude, generally bounded by the South China Sea to the northwest and by the Sulu Sea to the east.

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[266] AN ACT TO AMEND CERTAIN PROVISIONS OF REPUBLIC ACT NO. 3046, AS AMENDED BY REPUBLIC ACT NO. 5446, TO DEFINE THE ARCHIPELAGIC BASELINE OF THE PHILIPPINES AND FOR OTHER PURPOSES. Approved on March 10, 2009.

x x x x x x x x x

Both the Republic and the Province of Palawan agree that the above geographic coordinates, when plotted, would show that the Camago-Malampaya reservoir is within the area described. However, no less than the map[267] submitted by the Province of Palawan showed that substantial portions of Palawan's territory were excluded from the area so defined.

The Republic cites, without controversion from the province, that portions of mainland Palawan and several islands, municipalities or portions thereof, namely, the Municipalities of Balabac, Cagayancillo, Busuanga, Coron, Agutaya, Magsaysay, Cuyo, Araceli, Linapacan and Dumaran were excluded.[268] Their exclusion constitutes a substantial alteration of Palawan's territory which, under Section 10 of the Local Government Code, cannot take effect without the approval of the majority of the votes cast for the purpose in a plebiscite in the political units directly affected.

There is also no showing that the criteria for the alteration, as established in Sections 7 and 461 of the Local Government Code, had been met. The definition, therefore, does not have the effect of redefining Palawan's territory. In fact, R.A. No. 7611 was enacted not for such purpose but to adopt a comprehensive framework for the sustainable development of Palawan compatible with protecting and enhancing the natural resources and endangered environment of the province.[269]

The definitions under Section 1 of R.A. No. 7611 are also qualified by the phrase "[A]s used in this Act." Thus, the definition of "Palawan" should be taken, not as a statement of territorial limits for purposes of Section 7, Article X of the 1987 Constitution, but in the context of R.A. No. 7611 which is aimed at environmental monitoring, research and education.[270]

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[267] *Rollo* (G.R. No. 170867), p. 1395.

[268] *Id*. at 1535.

[269] Section 4.

[270] Sections 13, 14 and 15.

It is true, as the Province of Palawan has pointed out, that R.A. No. 7611 includes the coastal or marine area as one of the three components of the Environmentally Critical Areas Network designated in said law, the other two being the terrestrial component and the tribal ancestral lands. R.A. No. 7611 refers to the coastal or marine area as the whole coastline up to the open sea, characterized by active fisheries and tourism activities. By all the parties' accounts, however, the Camago-Malampaya reservoir, is located not in such coastal or marine area but in the continental shelf. Thus, even on the supposition that R.A. No. 7611 redefined Palawan's territory, it clearly did not include the seabed and subsoil comprising the continental shelf. In fact, what it expressly declares as composing the Province of Palawan are the "islands and islets."

It is also clear that R.A. No. 7611 does not vest any additional jurisdiction on the Province of Palawan. The PCSD, formed under said law, is composed of both provincial officials and representatives from national government agencies. It was also established under the Office of the President. The tasks outlined by R.A. No. 7611, which largely involve policy formulation and coordination, are carried out not by the province, but by the council.

Thus, even if the Court were to apply the province's definition of "territorial jurisdiction" as co-extensive with its exercise of authority, R.A. No. 7611 cannot be considered as conferring territorial jurisdiction over the Camago-Malampaya reservoir to Palawan since the law did not grant additional power to the province.

It must be pointed out, too, that the Province of Palawan never alleged in which of its municipalities or component cities and barangays the Camago-Malampaya reservoir is located. Under Section 292 of the Local Government Code, the local government's share in the utilization of national wealth located in a province shall be allocated in the following ratio:

(1) Province - Twenty percent (20%)
(2) Component City/Municipality - Forty-five percent (45%); and
(3) Barangay - Thirty-five percent (35%)

The allocation of the LGU share to the component city/ municipality and the barangay cannot but indicate that the natural resource is necessarily found therein. This is only logical since a province is composed of component cities and municipalities, and municipalities are in turn composed of barangays. Senate deliberations on the proposed Local Government Code also reflect that at bottom, the natural resource is located in the municipality or component city:

Senator Rasul. Mr. President, may I continue. Also on the same page, same section, "*Share of Local Government in the Proceeds From the Exploration*", I propose that there should be a specific sharing in this section, because this section does not speak of the sharing; how much goes to the barangay, municipality, city, or province?

Senator Pimentel. Yes, in fact, we have Mr. President and I was about to read it into the record, so that, there will be a new paragraph after the word Resources on page 54, and it will read as follows:

THE SHARES OF THE LOCAL GOVERNMENT UNITS IN THE PROCEEDS FROM THE EXPLANATION [sic], DEVELOPMENT AND UTILIZATION OF NATURAL RESOURCES LOCATED WITHIN THEIR TERRITORIAL JURISDICTIONS SHALL BE AS FOLLOWS:

1. IN THE CASE OF MUNICIPALITIES AND COMPONENT CITIES: (A) THE BARANGAY UNIT WHERE THE NATURAL RESOURCES ARE SITUATED AN EXTRACTED, FORTY PERCENT.

The President. Is there any objection? [*Silence*] Hearing none, the amendment is approved.

Senator Pimentel. Then "(B)." "**THE MUNICIPALITY OR COMPONENT CITY WHERE THE BARANGAY WITH THE NATURAL RESOURCES ARE SITUATED**, THIRTY PERCENT.

The President. Is there any objection? [*Silence*] Hearing none, the amendment is approved.

Senator Pimentel. Then we have a paragraph 2 on the same aspect of sharing; "IN THE CASE OF HIGHLY URBANIZED CITIES, THE FOLLOWING RULES SHALL APPLY;

A) BARANGAY WHERE THE NATURAL RESOURCES ARE SITUARED AND EXTRACTED, SIXTY (60%) PERCENT;

B) FOR THE HIGHLY URBANIZED CITY WHERE THE BARANGAY WITH THE NATURAL RESOURCES ARE LOCATED, FORTY (40%) PERCENT".

So it is a 60:40 sharing.

The President. Before we use the word SITUATED, probably, we should make it uniform - SITUATED AND EXTRACTED.

Senator Pimentel. AND EXTRACTED. Yes, Mr. President.

The President. Is there any objection? [*Silence*] Hearing one [sic], the amendment is approved. Any more?[271] (Emphasis ours.)

During the oral argument, Dean Pangalangan, as *amicus curiae*, stressed that the Camago-Malampaya reservoir is not part of any barangay:

JUSTICE CARPIO: Following your argument counsel Malampaya would form part of one barangay in Palawan but yet it is outside of the Philippine territorial waters, how do you reconcile that?

DEAN PANGALANGAN: Oh, no, Your Honor, Malampaya will lie within our continental shelf and that is in fact the way by which we claim title over a resource lying out there in the seas on the seabed. It will not be considered in itself a barangay for instance.

JUSTICE CARPIO: So, it is not part of any barangay?

DEAN PANGALANGAN: Yes, Your Honor, it is not.[272]

The Province of Palawan's failure to specify the component city or municipality, or the barangay for that matter, in which the Camago-Malampaya reservoir is situated militates against its claim that the area forms part of its area or territory.

The Republic endeavored to enumerate the different LGUs composing the Province of Palawan and their respective territorial

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[271] Record of the Senate, November 17, 1990, pp. 1580-1581.

[272] TSN, November 24, 2009, pp. 235-236.

limits under applicable organic laws.[273] The following matrix has been culled from its enumeration:

LGU	Governing Law	Territorial Description/ Component Barangays
Cagayancillo Coron Cuyo Puerto Princesa[274] Taytay	Act No. 2657	Section 43. Situs of Provinces and Major Subdivisions. — The general location of the provinces other than such as are contained in the Department of Mindanao and Sulu, together with the subprovinces, municipalities, and townships respectively contained in them is as follows: x x x x x x x x x The Province of Palawan consists of the Island of Palawan, the islands of Dumaran and Balabac, the Calamian Islands, the Cuyo Islands, the Cagayanes Islands, and all other islands adjacent to any of them, not included in some other province. It contains the townships of **Cagayancillo, Coron**, Cuyo, **Puerto Princesa** (the capital of the province), and **Taytay**.
	Act No. 2711	Section 37. Grand divisions of (Philippines Islands) Philippines. - The (Philippine Islands) Philippines comprises the forty-two provinces named in the next succeeding paragraph hereof, the seven provinces of the Department of Mindanao and Sulu, and the territory of the City of Manila. x x x x x x x x x The Province of Palawan consists of the Island of Palawan, the islands of Dumaran and Balabac, the Calamian Islands, the Cuyo Islands, the Cagayanes Islands, and all other islands adjacent to any of them, not included in some other province, and comprises the following municipalities: Agutaya, Bacuit, **Cagayancillo, Coron, Cuyo**, Dumaran, Puerto Princesa (the capital of the province), and Taytay. x x x x x x x x x

[273] *Rollo* (G.R. No. 170867), pp. 1596-1602.

[274] Subsequent Act No. 2711, or the Administrative Code of 1917, also designated Puerto Princesa as the capital of the Province of Palawan. RA 5906

Roxas	R.A. No. 615[275]	Section 1. The barrios of Tinitian, Caramay, Rizal, Del Pilar, Malcampo Tumarbong, Taradungan, Ilian, and Capayas in the municipality of Puerto Princesa, Province of Palawan, are hereby separated from said municipality and constituted into a new municipality to be known as the **Municipality of Roxas**. The seat of the government of the new municipality shall be at the sitio of Barbacan in the barrio of Del Pilar, Puerto Princesa.
Agutaya Bacuit (now El Nido)[276] Dumaran Aborlan Balabac Brooke's Point	Act No. 2711	Section 37. Grand divisions (Philippines Islands) Philippines. — x x x The Province of Palawan consists of the Island of Palawan, the islands of Dumaran and Balabac, the Calamian Islands, the Cuyo Islands, the Cagayanes Islands, and all other islands adjacent to any of them, not included in some other province, and comprises the following municipalities: **Agutaya, Bacuit**, Cagayancillo, Coron, Cuyo, **Dumaran**, Puerto Princesa (the capital of the province), and Taytay. The province also contains the following municipal districts: **Aborlan, Balabac and Brooke's Point**.
	R.A No. 1111[277]	RA 1111 changed the name of the **Municipality of Dumaran** to Araceli. However, under RA

created the City of Puerto Princesa; Section 2 thereof states that the City shall comprise the present territorial jurisdiction of the Municipality of Puerto Princesa. "On March 26, 2007, President Gloria Macapagal-Arroyo issued Proclamation No. 1264 entitled "Conversion of the City of Puerto Princesa into a Highly Urbanized City," reclassifying Puerto Princesa City as a "highly urbanized city."

[275] AN ACT CREATING THE MUNICIPALITY OF ROXAS, PROVINCE OF PALAWAN. Approved on May 15, 1951.

[276] R.A. No. 1140, entitled AN ACT CHANGING THE NAME OF THE MUNICIPALITY OF BACUIT IN THE PROVINCE OF PALAWAN TO EL NIDO, approved on June 17, 1954, changed the name of Bacuit to El Nido.

[277] AN ACT CHANGING THE NAME OF THE MUNICIPALITY OF DUMARAN, PROVINCE OF PALAWAN, TO ARACELI. Approved on June 15, 1954.

	R.A. No. 3418[278]	3418, a distinct and independent municipality, to be known as the **Municipality of Dumaran**, was constituted from certain barrios of the municipalities of Araceli, Roxas and Taytay. Section 1 of RA 3418 provides "The barrios of Dumaran, San Juan, Bacao, Calasag and Bohol in the Municipality of Araceli; the barrios of Ilian, Capayas, and Leguit in the Municipality of Roxas; and the barrios of Danleg and Pangolasian in the Municipality of Taytay, all in the province of Palawan, are separated from the said municipalities, and are constituted into a distinct and independent municipality, to be known as the **Municipality of Dumaran**, with the seat of government at the site of the barrio of Dumaran."
Busuanga	R.A. No. 560[279]	Section 1. The barrios of Concepcion, Salvacion, Busuanga, New Busuanga, Buluang, Quezon, Calawit, and Cheey in the Municipality of Coron are separated from the said municipality and constituted into a new and regular municipality to be known as the **Municipality of Busuanga**, with the present site of the barrio of New Busuanga as the seat of the government.
	R.A No. 5943[280]	RA 5943 amended Section 1 of RA 560 to read as follows: "The barrios of Sagrada, Maglalambay, Bogtong, San Isidro, Pallitan, San Rafael, Concepcion, Salvacion, Busuanga, Buluang, Quezon, Calawit, and Cheey, in the Municipality of Coron, Province of Palawan, are separated from said municipality and constituted into a new **Municipality of Busuanga** with the present site of the barrio of Salvacion as the seat of the government."

[278] AN ACT CREATING THE MUNICIPALITY OF DUMARAN IN THE PROVINCE OF PALAWAN. Enacted on June 18, 1961.

[279] AN ACT TO CREATE THE MUNICIPALITY OF BUSUANGA IN THE PROVINCE OF PALAWAN. Approved on June 17, 1950.

[280] AN ACT AMENDING SECTION ONE OF REPUBLIC ACT NUMBERED FIVE HUNDRED SIXTY, ENTITLED "AN ACT CREATING THE MUNICIPALITY OF BUSUANGA IN THE PROVINCE OF PALAWAN." Approved on June 21, 1969.

Quezon	R.A. No. 617[281]	Section 1. The barrios of Berong and Alfonso XII in the Municipality of Aborlan and the barrios of Iraan, Candawaga and Canipaan in the Municipality of Brook's Point are separated from the said municipalities and constituted into a new and regular municipality to be known as the **Municipality of Quezon**, with the present site of the barrio of Alfonso XIII as the seat of the government.
Linapacan	R.A. No. 1020[282]	Section 1. The islands of Linapacan, Cabunlaoan, Niangalao, Decabayotot, Calibanbangan, Pical, and Barangonan are hereby separated from the Municipality of Coron, Province of Palawan, and constituted into a municipality to be known as the **Municipality of Linapacan** with the seat of government in the barrio of San Miguel in the island of Linapacan.
Araceli	Act No. 2711 R.A. No. 1111 R.A. No. 3418	Comprises the original territorial jurisdiction of the Municipality of Dumaran under Act No. 2711, excluding the barrios of Dumaran, San Juan, Bacao, Calasag and Bohol which were included in the newly created Municipality of Dumaran under RA 3418.
Batarasa	R.A. No. 3425[283]	Section 1. The barrios of Inogbong, Marangas, Bonobono, Malihod, Bulalakaw, Tarusan, Iwahig, Iganigang, Sarong, Akayan, Rio Tuba, Sumbiling, Sapa, Malitub, Puring, Buliluyan and Tahod in the Municipality of Brooke's Point, Province of Palawan, are separated from said municipality and constituted into a distinct and independent municipality, to be known as the **Municipality of Batarasa**, same province. The seat of government of the new municipality shall be in the present site of the barrio of Marangas.

[281] AN ACT TO CREATE THE MUNICIPALITY OF QUEZON IN THE PROVINCE OF PALAWAN. Approved on May 15, 1951.

[282] AN ACT TO CREATE THE MUNICIPALITY OF LINAPACAN IN THE PROVINCE OF PALAWAN. Approved on June 12, 1954.

[283] AN ACT CREATING THE MUNICIPALITY OF BATARASA IN THE PROVINCE OF PALAWAN. Enacted without Executive approval on June 18, 1961.

Magsaysay	R.A. No. 3426[284]	Section 1. The barrios of Los Angeles, Rizal, Lucbuan, Igabas, Imilod, Balaguen, Danawan, Cocoro, Patonga, Tagawayan Island, Siparay Island and Canipo in the Municipality of Cuyo, Province of Palawan, are separated from said municipality and constituted into a distinct and independent municipality, to be known as the **Municipality of Magsaysay**. The seat of government of the new municipality shall be the present site of the barrio of Danawan.
San Vicente	R.A. No. 5821[285]	Section 1. The barrios of Binga, New Canipo, Alimanguan and New Agutaya, now in the Municipality of Taytay and all barrios from Vicente to Caruray in the Municipality of Puerto Princesa, Province of Palawan, are separated from said municipalities, and constituted into a distinct and independent municipality, to be known as the **Municipality of San Vicente**, same province. The seat of government of the municipality shall be in the present site of the barrio of San Vicente.
Narra	R.A. No. 5642[286]	Section 1. The barrios of Malatgao, Tinagong-dagat, Taritien, Antipoloan, Teresa, Panacan, Narra, Caguisan, Batang-batang, Bato-bato, Barirao, Malinao, Sandoval, Dumagueña, El Vita, Calategas, Arumayuan, Tacras, Borirao and that part of barrio Abo-abo now belonging to the Municipality of Aborlan, Province of Palawan, are separated from said municipality and constituted into a distinct and independent municipality, to be known as the **Municipality of Narra**. The seat of the new municipality shall be in the present site of Barrio Narra.
Kalayaan	P.D. No. 1596	Section 1. The area within the following boundaries: KALAYAAN ISLAND GROUP

[284] AN ACT CREATING THE MUNICIPALITY OF MAGSAYSAY IN THE PROVINCE OF PALAWAN. Approved on June 18, 1961.

[285] AN ACT CREATING THE MUNICIPALITY OF SAN VICENTE IN THE PROVINCE OF PALAWAN. Approved on June 21, 1969.

[286] AN ACT CREATING THE MUNICIPALITY OF NARRA, PROVINCE OF PALAWAN. Approved June 21, 1969.

		From a point [on the Philippine Treaty Limits] at latitude 7°40' North and longitude 116°00' East of Greenwich, thence due West along the parallel of 7° 40' N to its intersection with the meridian of longitude 112°10' E, thence due north along the meridian of 112°10' E to its intersection with the parallel of 9°00' N, thence northeastward to the inter-section of the parallel of 12°00' N with the meridian of longitude 114° 30' thence, due East along the parallel of 12°00' N to its intersection with the meridian of 118°00' E, thence, due South along the meridian of longitude 118° 00' E to its intersection with the parallel of 10°00' N, thence Southwestwards to the point of beginning at 7°40' N, latitude and 116° 00' E longitude; **including the sea-bed, sub-soil, continental margin** and air space shall belong to and be subject to the sovereignty of the Philippines. **Such area is hereby constituted as a distinct and separate municipality of the Province of Palawan and shall be known as "Kalayaan."**
Marcos (now Riza1)[287]	BP Blg. 386[288]	Section 1. The barangays of Bunog, Iraan, Punta Baja, Capung Ulay, Ramsang, Candawag, Culasian, Panalingaan, Tahuin, Latud, and Canipaan are hereby separated from the Municipality of Quezon, Province of Palawan, and constituted into a distinct and independent municipality to be known as the Municipality of Marcos. The seat of government of the new municipality will be in Barangay Punta Baja. Section 2. The **Municipality of Marcos** shall be bounded as follows: "A **parcel of land** known as the proposed Municipality of Marcos, in the Province of Palawan, Luzon Island, bounded in the north

[287] AN ACT CHANGING THE NAME OF THE MUNICIPALITY OF MARCOS, PROVINCE OF PALAWAN, TO MUNICIPALITY OF DR. JOSE P. RIZAL. Enacted without executive approval on April 17, 1988.

[288] AN ACT CREATING THE MUNICIPALITY OF MARCOS IN THE PROVINCE OF PALAWAN. Approved on April 14, 1983.

		along lines 11 and 1 in the Plan by the municipal boundary of Quezon, on the south along lines 2 and 3 by Sulu Sea, on the east along lines 1 and 2 by the municipal boundary of Brooke's Point, on the west along lines 3 to 11 by the shoreline of the South China Sea. Beginning at the point marked 1 in the plan at latitude 8°59' 10" T north, longitude 117° 50' 32"; thence S 62-00W 80,750 meters to point 2; thence N 85-00W 5,800 meters to point 3; thence N 31-29E 20,670.35 meters to point 4; thence N 46-13E 8,298.46 meters to point 5; thence N 52-21E 6,137.67 meters to point 6; thence N 39-14E 9,594.37 meters to point 7; thence N 37-45E 11,017.16 meters to point 8; thence N 53-08E 10,364.93 meters to point 9; thence N 41-12E 14,556.17 meters to point 10; thence N 76-02E 6,509.60 meters to point 11; thence S 48-10E 14,442.69 meters to point 12, containing an area of nine hundred seventy-seven million, two hundred sixty-one thousand two hundred square meters (977,261,200 square meters) or ninety-seven thousand seven hundred twenty-six and twelve hundredth hectares (97,726.12 hectares)."
Culion	R.A. No. 7193[289] as amended by R.A. No. 9032[290]	Section 1. The Islands of Culion Leper Colony, Marily, Sand, Tampel, Lamud, Galoc, Lanka, Tambon, Dunaun, Alava, Chindonan and a small island without a name situated directly south of Chindonan Island in latitude 11°55'N, longitude 12°02'E, comprising the national reservation for lepers in the Province of Palawan as described under Executive Order No. 35, Series of 1912, are hereby constituted into a distinct and independent municipality to be known as the **Municipality of Culion**. The seat of government of the new municipality shall be in Barangay Balala.

[289] AN ACT CREATING THE MUNICIPALITY OF CULION IN THE PROVINCE OF PALAWAN. Approved on February 19, 1992.

[290] AN ACT EXPANDING THE AREA OF JURISDICTION OF THE MUNICIPALITY OF CULION, PROVINCE OF PALAWAN, AMENDING FOR THE PURPOSE REPUBLIC ACT NO. 7193. Approved on March 12, 2001.

		Section 1-A. The barangays of Balala, Baldat, Binudac, Culango, Galoc, Jardin, Malaking Patag, Osmeña and Tiza Libis, Luac, which have been existing and functioning as regular barangays before the creation of the municipality in 1992 are hereby declared as legally existent upon the creation of the Municipality of Culion. These barangays shall comprise the Municipality of Culion, subject to the provisions of the succeeding paragraphs. The territorial boundaries of these barangays are specified in Annex "A" of this Act. Subject to the provisions of Section 10, Republic Act No. 7160, Burabod and Halsey in the Municipality of Busuanga, Province of Palawan, are hereby separated from said municipality and are transferred as part of the political jurisdiction of the Municipality of Culion. A barangay for the indigenous cultural communities to be known as Barangay Carabao is hereby created to be composed of the following sitios, namely: Bacutao, Baracuan, Binabaan, Cabungalen, Corong, De Carabao (Lumber Camp), Igay, Layang-layang, Marily Pula and Pinanganduyan." Section 2. The **Municipality of Culion** shall be bounded and described as follows: The municipality shall be bounded on the north by the Municipality of Busuanga-Coron Island with Concepcion and Salvacion in the Calamian Island Group; on the south by the Municipality of Bacuit-Taytay and Linapacan area; on the east by the South China Sea; on the west by the Cuyo West Pass. The **land** contained in all the above named islands in Section One is shown on C.G. Map No. 4717 published in Washington D.C., September, 1908, and lies within the following limits, *i.e.* between the parallels of 11°36'N and 12°03'N, and the meridians of 119°47'E and 120°15'E.

<table>
<tr>
<td>Sofronio Española</td>
<td>R.A. No. 7679[291]</td>
<td>Section 1. Barangays Pulot Center, Pulot Shore (Pulot I), Pulot Interior (Pulot II,) Iraray, Punang, Labog, Panitian, Isumbo, and Abo-Abo in the Municipality of Brooke's Point, Province of Palawan, are hereby separated from the Municipality and constituted into a distinct and independent municipality of the province, to be known as the Municipality of Sofronio Española. The seat of government of the new municipality shall be in Barangay Pulot Center.

Section 2. The boundary of the Municipality of Sofronio Española is described as follows:

<table>
<tr><th>Corner</th><th>Latitude</th><th>Longitude</th><th>Location</th></tr>
<tr><td>1</td><td>8°53'50.23"</td><td>118°00'20.28"</td><td>on the southern side of Caramay Bay</td></tr>
<tr><td>2</td><td>8°59'58.01"</td><td>117°51'24.42"</td><td>on the slopes of Mantalingahan Range</td></tr>
<tr><td>3</td><td>9°01'01.84"</td><td>117°54'03.69"</td><td>on the slopes of Mantalingahan Range</td></tr>
<tr><td>4</td><td>9°02'52.18"</td><td>117°54'29.33"</td><td>on the slopes of Mantalingahan Range</td></tr>
<tr><td>5</td><td>9°04'18.78"</td><td>117°55'15.71"</td><td>on the slopes of Mount Corumi</td></tr>
<tr><td>6</td><td>9°05'34.18"</td><td>117°55'18.00"</td><td>on the slopes of Pulot Range</td></tr>
<tr><td>7</td><td>9°07'49.27"</td><td>117°56'48.09"</td><td>on the slopes of Pulot Range</td></tr>
<tr><td>8</td><td>9°09'50.88"</td><td>117°59'50.82"</td><td>on the slopes of Malanut Range</td></tr>
<tr><td>9</td><td>9°11'26.26"</td><td>118°03'49.28</td><td>on the slopes of Malanut Range</td></tr>
<tr><td>10</td><td>9°11'26.26"</td><td>118°03'49.28"</td><td>on the slopes of Malanut Range</td></tr>
<tr><td>11</td><td>9°08'58.93"</td><td>118°07'35.58"</td><td>southern side, mouth of Abo-Abo River</td></tr>
</table>
<table>
<tr><th>Line</th><th>Bearing</th><th>Distance</th></tr>
<tr><td>1-2</td><td>N. 55° 3'W</td><td>19,886.37 m.</td></tr>
<tr><td>2-3</td><td>N. 68° 03'E</td><td>5,244.48 m.</td></tr>
<tr><td>3-4</td><td>N. 13° 00'E</td><td>3,478.91 m.</td></tr>
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[291] AN ACT CREATING THE MUNICIPALITY OF SOFRONIO ESPAÑOLA IN THE PROVINCE OF PALAWAN. Lapsed into law on February 24, 1994 without the President's signature.

		4-5	N. 28° 02'E	3,013.93 m.
		5-6	N. 01° 44'E	2,317.35 m.
		6-7	N. 33° 33'E	4.979.17 m.
		7-8	N. 71° 16'E	5,892.79 m.
		8-9	N. 16° 10'E	4,168.24 m.
		9-10	N. 82° 50'E	6,170.26 m.
		10-11	S. 56° 50'E	8,261.31 m.
		11-1	SW, meandering mainland coastline.	
		The new municipality shall include the **islands** of Bintaugan, Inamukan, Arrecife, Bessie, Gardiner, and Tagalinog.		

Based on the foregoing, territorial descriptions, the municipalities of Palawan do not include the continental shelf where the Camago-Malampaya reservoir is concededly located. In fact, with the exception of Kalayaan, which includes the seabed, the subsoil and the continental margin as part of its demarcated area, the municipalities are either located within an island or are comprised of islands. That only Kalayaan (under P.D. No. 1596), among the municipalities of Palawan, had land submerged in water as part of its area or territory, was confirmed by the *amicus curiae*, Atty. Bensurto, during the oral argument as gleaned from the following exchange:

JUSTICE DE CASTRO: It is not a question of belonging to Palawan, it is a question of Palawan having a share because it is within the area of Palawan, that is the question before the Court now, it is not, the right to govern is not in question, that is not the issue because we are very clear. The Philippines is not a Federal Government x x x So, we are just defining the area of the Province of Palawan, if it is not included in the polygon, **what about in other islands of Palawan, is there any continental shelf in the other areas**, if there is none here in the polygon, within the polygon and which will extend up to the Camago-Malampaya, **is there any other continental shelf in the other islands comprising Palawan where there is such a continental shelf that will extend up to the Camago--Malampaya**.

ATTY. HENRY BENSURTO: x x x

[W]ith all due respect, Your Honor, I do not think Federalism or Unitary is relevant in the issue of maritime concepts or maritime jurisdiction the end would still be the same, Your Honor. Thank you.

JUSTICE DE CASTRO: You see that is my point, **we are just here trying to analyze domestic law and if, only P.D. 1596 refers to areas submerged in water**, that is (interrupted)

ATTY. HENRY BENSURTO: Everything, Your Honor.

JUSTICE DE CASTRO: **You find that only in 1596.**

ATTY. HENRY BENSURTO: **Yes, Your Honor.**[292] (Emphasis ours)

The parties, however, agreed that the Camago-Malampaya reservoir lies outside the geographic coordinates mentioned in P.D. No. 1596 which constituted Kalayaan as a distinct municipality of Palawan. Atty. Bensurto also confirmed during the oral argument that "the area of Malampaya is not within the polygon area described under P.D. [No.] 1596."[293] The succeeding exchange between Atty. Bensurto and Associate Justice Teresita Leonardo-De Castro (Justice De Castro) illumines:

JUSTICE DE CASTRO: Now, the question is — if in the other islands even assuming that there is a continental shelf which extends up to Camago there is now that legal question of whether that belongs to Palawan, whether Palawan, that is within the area of Palawan even if it is protruding from an island in Palawan because **there is no such law like P.D. 1596 pertaining to the other islands?**

ATTY. HENRY BENSURTO: **Yes, Your Honor.**

JUSTICE DE CASTRO: **So, if there is none and Camago is in the continental shelf protruding from any other island in Palawan and then we cannot apply 1596?**

ATTY. HENRY BENSURTO: **No, Your Honor.**

JUSTICE DE CASTRO: All right, so, there maybe some doubt as to whether or not Palawan should have a bigger share in that Camago-Malampaya?

ATTY. HENRY BENSURTO: Yes, Your Honor.

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[292] TSN, November 24, 2009, pp. 196-200.

[293] TSN, November 24, 2009, p. 166.

JUSTICE DE CASTRO: Okay, that is clear now. Thank you.[294] (Emphasis ours)

Estoppel does not lie against the Republic

Fundamental is the rule that the State cannot be estopped by the omission, mistake or error of its officials or agents.[295] Thus, neither the DoE's June 10, 1998 letter to the Province of Palawan nor President Ramos' A.O. No. 381, which acknowledged Palawan's share in the Camago-Malampaya project, will place the Republic in estoppel as they had been based on a mistaken assumption of the LGU's entitlement to said allocation.

Erroneous application and enforcement of the law by public officers do not preclude subsequent corrective application of the statute.[296] As the Court explained in *Adasa v. Abalos*:[297]

> True indeed is the principle that a contemporaneous interpretation or construction by the officers charged with the enforcement of the rules and regulations it promulgated is entitled to great weight by the court in the latter's construction of such rules and regulations. That does not, however, make such a construction necessarily controlling or binding. For equally settled is the rule that **courts may disregard contemporaneous construction** in instances where the law or rule construed possesses no ambiguity, **where the construction is clearly erroneous**, where strong reason to the contrary exists, and where the court has previously given the statute a different interpretation.
>
> **If through misapprehension of law or a rule an executive or administrative officer called upon to implement it has erroneously applied or executed it, the error may be corrected when the true construction is ascertained.** If a contemporaneous construction is

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[294] TSN, November 24, 2009, pp. 201-202.

[295] *Rep. of the Phils. v. Roxas, et al.*, 723 Phil. 279, 311 (2013) citing *Republic of the Phils. v. Hon. Mangotara, et al.*, 638 Phil. 353 (2010).

[296] *National Amnesty Commission v. COA*, 481 Phil. 279 (2004).

[297] 545 Phil. 168 (2007).

found to be erroneous, the same must be declared null and void. Such principle should be as it is applied in the case at bar.[298] (Emphasis ours)

Section 1, Article X of the 1987 Constitution did not apportion the entire Philippine territory among the LGUs

Dean Pangalangan shares the Province of Palawan's claim that based on Section 1, Article X of the 1987 Constitution, the entire Philippine territory is necessarily divided into political and territorial subdivisions, such that at any one time, a body of water or a piece of land should belong to some province or city.[299] The Court finds this position untenable.

Section 1, Article X of the 1987 Constitution states:

Section 1. **The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays.**There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided. (Emphasis ours)

By indicating that the LGUs comprise the territorial subdivisions of the State, the Constitution did not *ipso facto* make every portion of the national territory a part of an LGU's territory.

The above-quoted section is found under the General Provisions of Article X on Local Government. Explaining this provision, the eminent author and member of the 1986 Constitutional Commission, Fr. Joaquin G. Bernas, S.J. wrote:

The existence of "provinces" and "municipalities" was already acknowledged in the 1935 Constitution. Section 1, however, when first enacted in 1973, went a step further than mere acknowledgment of their existence and recognized them, together with cities and barrios, as "(t)he territorial and political subdivisions of the Philippines."

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[298] *Id*. at 186.

[299] TSN, November 24, 2009, p. 232.

Thus, the municipalities, and barrios (now barangays) have been fixed as the standard territorial and political subdivisions of the Philippines. To these the 1987 Constitution has added the "autonomous regions." But the Constitution allows only two regions: one for the Cordilleras and one for Muslim Mindanao. The creation of other autonomous regions whether by dividing the Cordilleras or Muslim Mindanao into two or by creating others outside these two regions, can be accomplished only by constitutional amendment.

x x x x x x x x x

Neither Section 1, however, nor any part of the Constitution prescribed the actual form and structure which individual local government units must take. These are left by Sections 3, 18 and 20 to legislation. **As constitutional precepts, therefore, they are very general.** x x x

x x x x x x x x x

The designation by the 1973 Constitution of provinces, cities, municipalities and barangays as the political and territorial subdivisions of the Philippines effected **a measure of institutional instability**. To this extent, it was a move in the direction of real local autonomy. The 1987 Constitution moved farther forward by authorizing the creation of autonomous regions. **These are the passive aspects of local autonomy.** The dynamic and more important aspect of local autonomy must be measured in terms of the scope of the powers given to the local units.[300] (Emphasis ours)

There is, thus, merit in the Republic's assertion that Section 1, Article X of the 1987 Constitution was intended merely to institutionalize the LGUs.

The Court is further inclined to agree with the Republic's argument that assuming Section 1 of Article X was meant to divide the entire Philippine territory among the LGUs, it cannot be deemed as self-executing and legislation will still be necessary to implement it. LGUs are constituted by law and it is through legislation that their respective territorial boundaries are

[300] The 1987 Constitution of the Republic of the Philippines, A Commentary, 1996 Edition, pp. 960-961.

delineated. Furthermore, in the creation, division, merger and abolition of LGUs and in the substantial alteration of their boundaries, Section 10 of Article X requires satisfying the criteria set by the Local Government Code. It further requires the approval by the majority of the votes cast in a plebiscite in the political units directly affected. Needless to say, apportionment of the national territory by the LGUs, based solely on the general terms of Section 1 of Article X, may only sow conflict and dissension among these political subdivisions.

As the Republic asserted, no law has been enacted dividing the Philippine territory, including its continental margin and exclusive economic zones, among the LGUs.

The UNCLOS did not confer on LGUs their own continental shelf

Dean Pangalangan posited that since the Constitution has incorporated into Philippine law the concepts of the UNCLOS, including the concept of the continental shelf, Palawan's "area" could be construed as including its own continental shelf.[301] The Province of Palawan and Arigo, et al. accordingly assert that Camago-Malampaya reservoir forms part of Palawan's continental shelf.[302]

The Court is unconvinced. The Republic was correct in arguing that the concept of continental shelf under the UNCLOS does not, by the doctrine of transformation, automatically apply to the LGUs. We quote with approval its disquisition on this issue:

> The Batasang Pambansa ratified the UNCLOS through Resolution No. 121 adopted on February 27, 1984. Through this process, the UNCLOS attained the force and effect of municipal law. But even if the UNCLOS were to be considered to have been transformed to be part of the municipal law, after its ratification by the Batasang Pambansa, the UNCLOS did not automatically amend the Local Government Code and the charters of the local government units. No such intent is manifest either in the UNCLOS or in Resolution

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[301] TSN, November 24, 2009, pp. 217-218 and 224.

[302] *Rollo* (G.R. No. 170867), pp. 37-38.

No. 121. Instead, the UNCLOS, transformed into our municipal laws, should be applied as it is worded. *Verba legis.*

x x x x x x x x x

It must be stressed that the provisions under the UNCLOS are specific in declaring the rights and duties of a state, not a local government unit. The UNCLOS confirms the sovereign rights of the States over the continental shelf and the maritime zones. The UNCLOS did not confer any rights to the States' local government units.

x x x x x x x x x

At the risk of being repetitive, it is respectfully emphasized that the foregoing indubitably established that under the express terms of the UNCLOS, the rights and duties over the maritime zones and continental shelf pertain to the State. No provision was set forth to even suggest any reference to a local government unit. Simply put, the UNCLOS did not obligate the States to grant to, much less automatically vest upon, their respective local government units territorial jurisdiction over the different maritime zones and the continental shelf. Hence, contrary to the submission of Dean Pangalangan, no such application can be made.[303]

Atty. Bensurto took a similar stand, declaring during the oral argument that:

ATTY. HENRY BENSURTO: x x x [T]here was an assertion earlier, Your Honor, that there was a reference in fact to the continental shelf, that there is an automatic application of the continental shelf with respect to the municipal territories. I submit, Your Honor that this should not be the case, why? Because **the United Nation Convention on the Law of the Sea which is the conventional law directly applicable in this case is an International Law. International Law by definition is a body of rules governing relations between sovereign States or other entities which are capable of having rights and obligations under International Law.** Therefore, it is the State that is the subject of International Law, the only exception to this is with respect to individuals with respect to the issue of Humanitarian and Human Rights Law. From there, it flows the principal [sic] therefore that International Law affects only sovereign States. With respect to the relationship between the State

[303] *Id.* at 1514 and 1518.

and its Local Government Units this is reserved to the sovereign right of the sovereign State. It is a dangerous proposition for us to make that there is an automatic application because to do that would mean a violation of the sovereign right of a State and the State always reserves the right to promulgate laws governing its domestic jurisdiction. **Therefore, the United Nations Convention of the Law of the Sea affects only the right of the Philippines *vis a vis* another sovereign State.** And so, when we talk of the different maritime jurisdictions enumerated, illustrated and explained under the United Nations Convention on the Law of the Sea **we are actually referring to inter state relations not intra state relations**. x x x[304] (Emphasis ours)

In fact, Arigo, et al. acknowledged during the oral argument that the UNCLOS applies to the coastal state and not to their provinces, and that Palawan, both under constitutional and international, has no distinct and separate continental shelf, thus:

ASSOCIATE JUSTICE VELASCO: **You admit that under UNCLOS it is only the coastal states that are recognized not the provinces of the coastal state.**

ATTY. BAGARES: **That is true, Your Honor, and we do not dispute that, Your Honor.**

ASSOCIATE JUSTICE VELASCO: That's correct. And you cited that in your petition ....

ATTY. BAGARES: Yes, Your Honor. That is true, Your Honor.

ASSOCIATE JUSTICE VELASCO: .... **that under Article 76, it is the continental shelf of the coastal state.**

ATTY. BAGARES: **Yes, Your Honor.**

ASSOCIATE JUSTICE VELASCO: **And in our case, the Republic of the Philippines, right?**

ATTY. BAGARES: **Yes, Your Honor.**

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[304] TSN, November 24, 2009, pp. 156-158.

ASSOCIATE JUSTICE VELASCO: Okay. You also made the submission that under Republic Act 7611 and Administrative Order 381, there is a provision there that serves as basis for, what you call again the continental shelf of Palawan. What provisions in 7611 and AO 381 are there that serves as basis, for you to say that there is such a continental shelf of Palawan?

ATTY. BAGARES: Your Honor, I apologize that perhaps I've been like Atty. Roque very academic in the language in which we make our presentations but our position, Your Honor, exactly just to make it clear, Your Honor, we're not saying that there's a separate continental shelf of the Province of Palawan outside the territorial bounds of the sovereign State of the Republic of the Philippines. We are only saying, Your Honor, that that continental shelf is reckoned, Your Honor, from the Province of Palawan. **We are not saying, Your Honor, that there is a distinct and separate continental shelf that Palawan may lay acclaim [sic] to, under the Constitutional Law and under International Law, Your Honor.**

ASSOCIATE JUSTICE VELASCO: Alright. **And that is only the continental shelf of the coastal State, which is the Philippines.**

ATTY. BAGARES. **Yes, Your Honor. I hope that is clear, Your Honor.**[305] (Emphasis ours)

The Federal Paramountcy doctrine as well as the Regalian and Archipelagic doctrines are inapplicable

Contrary to the Republic's submission, the LGU's share under Section 7, Article X of the 1987 Constitution cannot be denied on the basis of the archipelagic and regalian doctrines.

The archipelagic doctrine is embodied in Article I of the 1987 Constitution which provides:

The national territory comprises the Philippine archipelago, with all the islands and waters embraced therein, and all other territories over which the Philippines has sovereignty or jurisdiction, consisting of its terrestrial, fluvial, and aerial domains, including its territorial

[305] TSN, November 24, 2009, pp. 78-81.

sea, the seabed, the subsoil, the insular shelves, and other submarine areas. The waters around, between, and connecting the islands of the archipelago, regardless of their breadth and dimensions, form part of the internal waters of the Philippines.

The regalian doctrine, in turn, is found in Section 2, Article XII of the 1987 Constitution which states:

> Section 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. x x x

It is at once evident that the foregoing doctrines find no application in this case which involves neither a question of what comprises the Philippine territory or the ownership of all natural resources found therein.

There is no debate that the natural resources in the Camago-Malampaya reservoir belong to the State. Palawan's claim is anchored not on ownership of the reservoir but on a revenue-sharing scheme, under Section 7, Article X of the 1987 Constitution and Section 290 of the Local Government Code, that allows LGUs to share in the proceeds of the utilization of national wealth provided they are found within their respective areas. To deny the LGU's share on the basis of the State's ownership of all natural resources is to render Section 7 of Article X nugatory for in such case, it will not be possible for any LGU to benefit from the utilization of national wealth.

Accordingly, the Court cannot subscribe to Atty. Bensurto's opinion[306] that the Province of Palawan cannot claim the 40% LGU share from the proceeds of the Camago-Malampaya project because the National Government "remains to have full *dominium*" (or ownership rights) over the gas reservoir.

Atty. Bensurto's theory is ostensibly drawn from several U.S. cases, namely *U.S. v. California*,[307] *U.S. v. Louisiana*,[308] *U.S.*

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[306] *Rollo* (G.R. No. 170867), pp. 1355-1356.

[307] 332 U.S. 19 (1947).

[308] 339 U.S. 699 (1950).

v. Texas[309] and *U.S. v. Maine*,[310] which the Republic also cites in applying the federal paramountcy doctrine to the Province of Palawan's claim. To explain this doctrine, the Republic turns to the case of *Native Village of Eyak v. Trawler Diane Marie, Inc.*,[311] where the U.S. Court of Appeals for the Ninth Circuit, in part, stated:

> The "federal paramountcy doctrine" is derived, in essence, from four Supreme Court cases in which the federal government and various coastal states disputed **ownership** and **control** of the territorial sea and the adjacent portions of the OCS.
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> The first of these cases was **United States v. California**, 332 U.S. 19, 67 S.Ct. 1658, 91 L.Ed. 1889 (1947), in which the United States sued to enjoin the State of California from executing leases authorizing the taking of petroleum, gas, and other mineral deposits from the Pacific Ocean. x x x
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> x x x x x x x x x
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> [T]hus, the Court declared, "California is not the **owner** of the three-mile marginal belt along its coast." Instead, "the Federal Government rather than the state has **paramount rights** in and power over that belt, an incident to which is **full dominion** over the resources of the soil under that water area, including oil."
>
> Bolstered by the favorable outcome in California, the United States brought similar actions to confirm its title to the seabed adjacent to other coastal states. In **United States v. Louisiana**, 339 U.S. 699, 70 S.Ct. 914, 94 L.Ed. 1216 (1950), the United States brought suit against the State of Louisiana, which argued that it held title to the seabed under the waters extending twenty-seven miles into the Gulf of Mexico. x x x
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> x x x x x x x x x
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> The Court found that the only difference between the argument raised by Louisiana and the one raised by California was that Louisiana's claimed boundary extended twenty-four miles beyond

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[309] 339 U.S. 707 (1950).

[310] 420 U.S. 515 (1975).

[311] U.S. 9th Circuit, No. 97-35944, September 9, 1998.

California's three-mile claim. This difference did not weigh in Louisiana's favor, however:

> **If the three-mile belt is in the domain of the Nation rather than that of the separate States, it follows a fortiori that the ocean beyond that limit also is** the ocean seaward of the marginal belt is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly it is not less so far as the issues presented here are concerned, Louisiana's enlargement of her boundary emphasizes the strength of the claim of the United States to this part of the ocean and the resources of the soil under that area, including oil.

In the companion case to Louisiana, **United States v. Texas**, 339 U.S. 707, 70 S.Ct. 918, 94 L.Ed. 1221 (1950), the Supreme Court again reaffirmed its holding in California. The State of Texas had, by statute, extended its boundary first to a line twenty-four miles beyond the three-mile limit, and thereafter to the outer edge of the continental shelf. Texas raised a somewhat different argument than had either California or Louisiana, one more analogous to that asserted by the Villages here. Texas argued that, because it was a separate republic prior to its entry into the United States, it had both dominium (ownership or proprietary rights) and imperium (governmental powers of regulation and control) with respect to the lands, minerals, and other products underlying the marginal sea. Upon entering the Union, Texas transferred to the federal government its powers of sovereignty-its imperium-over the marginal sea, but retained its dominium.

The Supreme Court was not persuaded. While the Republic of Texas may have had complete sovereignty and **ownership** over the marginal sea and all things of value derived therefrom, the State of Texas did not. x x x "When Texas came into the Union, she ceased to be an independent nation. The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like." As an incident to the transfer of that sovereignty, **any "claim that Texas may have had to the marginal sea was relinquished to the United States." The Court recognized that "dominion and imperium are normally separable and separate"; however, in this instance, "property interests are so subordinated to the rights of sovereignty as to follow sovereignty."** x x x

x x x x x x x x x

In the last of the paramountcy cases, **United States v. Maine**, 420 U.S. 515, 95 S.Ct. 1155, 43 L.Ed.2d 363 (1975), the United States brought an action against the thirteen Atlantic Coastal States asserting that the federal government was entitled to exercise sovereign rights over the seabed and subsoil underlying the Atlantic Ocean to the exclusion of the coastal states for the purpose of exploring the area and exploiting its natural resources. x x x

At the urging of the coastal states, the Supreme Court reexamined the decisions in California, Louisiana, and Texas. To the states' dismay, the Court concluded that these cases remained grounded on sound constitutional principles. Whatever interest the states may have held in the sea prior to statehood, the Court held, as a matter of "purely legal principle the Constitution allotted to the federal government jurisdiction over foreign commerce, foreign affairs, and national defense and it necessarily follows, as a matter of constitutional law, that **as attributes of these external sovereign powers the federal government has paramount rights in the marginal sea.**" x x x. (Emphasis ours and citations omitted)

There are several reasons why the foregoing doctrine cannot be applied to this case. *First*, the U.S. does not appear to have an equitable sharing provision similar to Section 7, Article X of the 1987 Constitution. *Second*, the Philippines is not composed of states that were previously independent nations. *Third*, the resolution of these cases does not necessitate distinguishing between *dominium* and *imperium* since neither determines the LGU's entitlement to the equitable share under Section 7 of Article X. *Fourth*, the Court is not called upon to determine who between the Province of Palawan and the National Government has the paramount or dominant right to explore or exploit the natural resources in the marginal sea or beyond. *Fifth*, adjudication of these cases does not entail upholding the dominion of the National Government over a political subdivision since ownership of the natural resources is concededly vested in the State. *Sixth*, it is settled that dominion over national wealth belongs to the State under the regalian doctrine. Ownership of the subject reservoir, therefore, is a non-issue and what simply needs to be determined is whether said resource is located within the area or territorial jurisdiction of the Province of Palawan.

Justice De Castro's observation during the oral argument is thus *apropos*:

JUSTICE DE CASTRO: **It is not a question of belonging to Palawan, it is a question of Palawan having a share because it is within the area of Palawan**, that is the question before the Court now, it is not, the right to govern is not in question, that is not the issue because we are very clear. The Philippines is not a Federal Government so as distinguished from a Federal Government where the sovereign authority came from the member State and granted to the Federal Government, here we have the reverse it is the central government giving to the local government certain powers and defining the limits of these powers. So, in this case there is no question about the right to govern, the local government have [sic] have only such powers granted to it by the Local Government Code. **Now, the question is whether the Province of Palawan should have a share in the proceeds in the development of the Camago-Malampaya because it is within its area. So, we are just defining the area of the Province of Palawan** x x x.[312] (Emphasis ours)

LGU's share cannot be granted based on equity

Atty. Bensurto opined that under the existing law, the Province of Palawan is not entitled to the statutory 40% LGU share. He posited that it is only on equitable grounds that the Province of Palawan could participate in the proceeds of the utilization of the Camago-Malampaya reservoir. He concluded that from the perspective of the principle of equity, it may be appropriate for the Province of Palawan to be given some share in the operation of the Camago-Malampaya gas reservoir considering: (a) its proximity to the province which makes the latter environmentally vulnerable to any major accidents in the gas reservoir; and (b) the gas pipes that pass through the northern part of the province.[313]

The Court finds the submission untenable. Our courts are basically courts of law, not courts of equity.[314] Furthermore,

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[312] TSN, November 24, 2009, pp. 196-197.

[313] *Rollo* (G.R. No. 170867), pp. 1344, 1355-1356.

[314] *GF Equity, Inc. v. Valenzona*, 501 Phil. 153, 166 (2005).

for all its conceded merits, equity is available only in the absence of law and not as its replacement.[315] As explained in the old case of *Tupas v. Court of Appeals*:[316]

> Equity is described as justice outside legality, which simply means that it crumot supplant although it may, as often happens, supplement the law. We said in an earlier case, and we repeat it now, that all abstract arguments based only on equity should yield to positive rules, which pre-empt and prevail over such persuasions. Emotional appeals for justice, while they may wring the heart of the Court, cannot justify disregard of the mandate of the law as long as it remains in force. The applicable maxim, which goes back to the ancient days of the Roman jurists — and is now still reverently observed — is "*aequetas nunquam contravenit legis*."[317]

In this case, there are applicable laws found in Section 7, Article X of the 1987 Constitution and in Sections 289 and 290 of the Local Government Code. They limit the LGUs' share to the utilization of national wealth located within their respective areas or territorial jurisdiction. As herein before-discussed, however, existing laws do not include the Camago-Malampaya reservoir within the area or territorial jurisdiction of the Province of Palawan.

The pertinent positive rules being present here, they should preempt and prevail over all abstract arguments based only on equity.[318]

The supposed presence of gas pipes through the northern part of Palawan cannot justify granting the province the 40% LGU share because both the Constitution and the Local Government Code refer to the LGU where the natural resource is situated. The 1986 Constitutional Commission referred to this area as "the locality, where God chose to locate his bounty,"

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[315] *Tupas v. Court of Appeals*, 271 Phil. 628 (1991).

[316] *Id.*

[317] *Id*. at 632-633.

[318] *Development Bank of the Philippines v. Carpio*, G.R. No. 195450, February 1, 2017, 816 SCRA 473, 487.

while the Senate deliberations on the proposed Local Government Code cited it as the area where the natural resource is "extracted." To hold otherwise, on the basis of equity, will run afoul of the letter and spirit of both constitutional and statutory law. It is settled that equity cannot supplant, overrule or transgress existing law.

Furthermore, as the Republic noted, any possible environmental damage to the province is addressed by the contractor's undertakings, under the ECC, to ensure minimal impact on the environment and to set up an Environmental Guarantee Fund that would cover expenses for environmental monitoring, as well as a replenishable fund that would compensate for any damage the project may cause.[319] The ECC, in pertinent part, provides:

This Certificate is being issued subject to the following conditions:

1. This Certificate shall cover the construction of the shallow water platform (SWP) in the Service Contract 38 (SC38) offshore northwest Palawan, a pipeline from the Malampaya wells (well drilling site) to the SWP passing the offshore route from Mindoro to a land terminal at Shell Tabangao's refinery plant in Batangas;

2. The proponent shall consider the offshore route of the pipeline to minimize its environment socio-economic impacts particularly to the province of Mindoro;

3. Selection of the SWP site and the final offshore pipeline route should avoid environmentally sensitive areas such as coral reefs, sea grass, mangroves, fisheries, pearl farms, habitats of endangered wildlife, tourism areas and areas declared as protected by the national, provincial and local government agencies. It shall also be routed away from geologically high risk areas;

4. Proponent shall use the optimum amount of anti-corrosion anodes necessary in order to maintain pipeline integrity and minimize impacts on water quality;

5. The design of the pipeline shall conform to the international standards that can handle extreme conditions. The proponent shall

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[319] *Rollo* (G.R. No. 170867), p. 1584.

ensure extensive monitoring (internal and external inspections) to maintain the pipeline integrity;

x x x x x x x x x

26. The proponent shall set up an Environmental Guarantee Fund (EGF) to cover expenses for environmental monitoring and the establishment of a readily available and replenishable fund to compensate for whatever damage may be caused by the project, for the rehabilitation and/or restoration of affected-areas, the future abandonment/decommissioning of project facilities and other activities related to the prevention of possible negative impacts.

The amount and mechanics of the EGF shall be determined by the DENR and the proponent taking into consideration the concerns of the affected areas stakeholders and formalized through a MOA which shall be submitted within ninety (90) days prior to project implementation. The absence of the EGF shall cause the cancellation of this Certificate;

x x x x x x x x x

29. In cases where pipe laying activities will adversely affect existing fishing grounds, the proponent in coordination with the Bureau of Fisheries and Aquatic Resources (BFAR) shall identify alternative fishing grounds and negotiate with affected fisherfolks the reasonable compensation to be paid[.][320]

There is logic in the Republic's contention that the National Government cannot be compelled to compensate the province for damages it has not yet sustained.

The foregoing considered, the Court finds that the Province of Palawan's remedy is not judicial adjudication based on equity but legislation that clearly entitles it to share in the proceeds of the utilization of the Camago-Malampaya reservoir. *Mariano* instructs that the territorial boundaries must be clearly defined "with precise strokes." Defining those boundaries is a legislative, not a judicial function.[321] The Court cannot, on the basis of

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[320] *Id*. at 1584-1586.

[321] *Supra* note 235.

equity, engage in judicial legislation and alter the boundaries of the Province of Palawan to include the continental shelf where the subject natural resource lies. As conceded by Dean Pangalangan, "territorial jurisdiction is fixed by a law, by a charter and that defines the territory of Palawan very strictly," and it is "something that can be altered only in accordance with [the] proper procedure ending with a plebiscite."[322]

It is true that the Local Government Code envisioned a genuine and meaningful autonomy to enable local government units to attain their fullest development as self-reliant communities and make them effective partners in the attainment of national goals.[323] This objective, however, must be enforced within the extent permitted by law. As the Court held in *Hon. Lina, Jr. v. Hon. Paño*:[324]

> Nothing in the present constitutional provision enhancing local autonomy dictates a different conclusion.
>
> **The basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy.** Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. True, there are certain notable innovations in the Constitution, like the direct conferment on the local government units of the power to tax (citing Art. X, Sec. Constitution), which cannot now be withdrawn by mere statute. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.

Ours is still a unitary form of government, not a federal state. Being so, **any form of autonomy granted to local governments**

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[322] TSN, November 24, 2009, pp. 233 and 235.

[323] *Phil. Rural Electric Coop. Assoc., Inc. v. DILG Secretary*, 451 Phil. 683, 698 (2003) citing *MCIAA v. Marcos*, 330 Phil. 392, 417 (1996).

[324] 416 Phil. 438 (2001).

will necessarily be limited and confined within the extent allowed by the central authority. Besides, the principle of local autonomy under the 1987 Constitution simply means "decentralization." It does not make local governments sovereign within the state or an "*imperium in imperio*."[325] (Emphasis ours)

Constitutional challenge to E.O. No. 683

The challenge to the constitutionality of E.O. No. 683, brought by Arigo, et al., is premised on the alleged violation of Section 7, Article X of the 1987 Constitution and Sections 289 and 290 of the Local Government Code, which is the basic issue submitted for resolution by the Republic and the Province of Palawan in G.R. No. 170867. Considering its ruling in G.R. No. 170867, the Court resolves to deny the Arigo petition, without need of passing upon the procedural issues therein raised. The same ruling also renders it unnecessary to rule upon the propriety of the Amended Order dated January 16, 2006, which the Republic raised *ad cautelam* in G.R. No. 170867.

WHEREFORE, the Petition in G.R. No. 170867 is **GRANTED**. The Decision dated December 16, 2005 of the Regional Trial Court of the Province of Palawan, Branch 95 in Civil Case No. 3779 is **REVERSED** and **SET ASIDE**. The Court declares that under existing law, the Province of Palawan is not entitled to share in the proceeds of the Camago-Malampaya natural gas project. The Petition in G.R. No. 185941 is **DENIED**.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., and *Hernando, JJ.*, concur.

Leonen, J., see separate opinion.

Jardeleza, J., no part.

Carandang, J., on leave.

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[325] *Id.* at 448.

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur, but only in the result.

The Province of Palawan should be entitled to an equitable share in the utilization and development of resources within its territorial jurisdiction. Due to Palawan's unique position and archipelagic shape, its territorial jurisdiction should not only encompass land mass. It should also include its coastline, subsoil, and seabed.

However, the maps submitted to this Court failed to substantially prove that the Camago-Malampaya Natural Gas Project was within the area of responsibility of the Province of Palawan.

The factual antecedents of this case are undisputed. On December 11, 1990, the Republic, through the Department of Energy, entered into a service contract (Service Contract No. 38) with Shell Philippines Exploration B.V. (Shell) and Occidental Philippines, Inc. (Occidental) for the drilling of a natural gas reservoir in the Camago-Malampaya area, located about 80 kilometers from the main island of Palawan.[1]

Specifically, Camago-Malampaya is located:

From Kalayaan Island Group	93.264 kilometers or 50.3585 nautical miles
Mainland Palawan (Nacpan Point, south of Patuyo Cove, Municipality of El Nido)	55.476 kilometers or 29.9546 nautical miles
Tapiutan Island, Municipality of El Nido	48.843 kilometers or 26.[3731] nautical miles[2]

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[1] *Rollo* (G.R. No. 170867), p. 89.

[2] *Id*. at 1465. The *rollo* indicated that Camago-Malampaya is located 26.9546 nautical miles northwest of Tapiutan Island.

Service Contract No. 38 provides for a production sharing scheme, where the National Government would receive 60% of the net proceeds from the sale of petroleum while Shell and Occidental, as service contractors, would receive 40% of the net proceeds. Subsequently, Shell and Occidental were replaced by a consortium of Shell, Occidental, Shell Philippines LLC, Chevron Malampaya LLC, and Philippine National Oil Company Explorations Corporation (Shell Consortium).[3]

On February 17, 1998, then President Fidel V. Ramos (President Ramos) issued Administrative Order No. 381,[4] which provided that the National Government's share from the net proceeds of the Camago-Malampaya Natural Gas Project would "be reduced . . . by the share of the concerned local government units pursuant to the Local Government Code[.]"[5] It further provided that "the Province of Palawan [was] expected to receive about US$2.1 billion from the total Government share of US$8.1 billion"[6] throughout the 20-year contract period. For reference, Section 290 of the Local Government Code provides:

> Section 290. Amount of Share of Local Government Units. — Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

On June 10, 1998, then Secretary of Energy Francisco L. Viray (Viray) wrote to then Palawan Governor Salvador P. Socrates (Socrates), requesting that the payment of 50% of Palawan's share in the Camago-Malampaya Natural Gas Project

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[3] *Id*. at 1305. Exec. Order No. 683 (2007), whereas clause.

[4] *Id.* at 549-550-A.

[5] *Id.* at 550.

[6] *Id*. at 549-A.

be "spread over in the initial seven years of operations . . . to pay [for] the [National Power Corporation]'s . . . obligations" in its Gas Sales and Purchase Agreements with Shell Consortium.[7]

On July 30, 2001, then Secretary of Finance Jose Isidro N. Camacho wrote to then Secretary of Justice Hernando B. Perez, seeking legal opinion on whether the Province of Palawan had a share in the national wealth from the proceeds of the Camago-Malampaya Natural Gas Project. It was the position of the Department of Finance that a local government unit's territorial jurisdiction was only within its land area and excludes marine waters more than 15 kilometers from its coastline.[8]

On October 16, 2001, the Camago-Malampaya Natural Gas Project was formally inaugurated.[9]

Negotiations were held between the Province of Palawan, the Department of Energy, the Department of Finance, and the Department of Budget and Management to determine the Province of Palawan's share in the net proceeds of the Camago-Malampaya Natural Gas Project.[10] However, on February 11, 2003, the Sangguniang Panlalawigan of Palawan resolved to call off further negotiations since the National Government would not grant its expected share in the net proceeds amounting to approximately over US$2 billion.[11]

On March 14, 2003, then Palawan Governor Mario Joel T. Reyes wrote to the Department of Energy, and the Department of Budget and Management reiterating the Province's claim of its 40% share citing "long historical precedent and the statutory definition of Palawan under Republic Act No. 7611."[12]

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[7] *Id*. at 551-552.

[8] *Id*. at 554. It is unclear from the records whether a legal opinion was issued by the Department of Justice.

[9] *Ponencia*, p. 4.

[10] *Rollo* (G.R. No. 170867), pp. 127-128.

[11] *Id*. at 129.

[12] *Id*. at 127. Rep. Act No. 7611 (1992), Strategic Environmental Plan (SEP) for Palawan Act.

On May 7, 2003, the Province of Palawan filed a Petition for Declaratory Relief,[13] docketed as Civil Case No. 3779, before the Regional Trial Court to seek a judicial determination of its rights under Administrative Order No. 381, series of 1998; Republic Act No. 7611; Section 290 of the Local Government Code; and Palawan Provincial Ordinance No. 474, series of 2000. In particular, it sought a judicial declaration that the Camago-Malampaya reservoir was part of its territorial jurisdiction, and hence, it was entitled to an equitable share in its utilization and development.[14]

During the pendency of the case before the Regional Trial Court, or on February 9, 2005, then Secretary of Energy Vincent S. Perez, Jr. (Perez), then Secretary of Budget and Management Mario L. Relampagos (Relampagos), and then Secretary of Finance Juanita D. Amatong (Amatong) executed an Interim Agreement[15] with the Province of Palawan. This Interim Agreement provided for equal sharing of the 40% being claimed by the Province of Palawan, to be called the "Palawan Share," for its development and infrastructure projects, environment protection and conservation, electrification of 431 barangays, and establishment of facilities for the security enhancements of the exclusive economic zone.[16]

The Interim Agreement likewise stated that the release of funds would be without prejudice to the outcome of the legal dispute between the parties. Once Civil Case No. 3779 was decided with finality in favor of either party, the shares already received would be treated as financial assistance. To this end, the parties further agreed that the amount of ₱600,000,000.00 already released to the Province of Palawan would be deducted from the initial release of its 50% share in the 40% of the remitted funds.[17]

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[13] *Id.* at 130–159.

[14] *Id*. at 85–86.

[15] *Id.* at 555–561.

[16] *Id*. at 557.

[17] *Id*. at 557–558.

On December 16, 2005, the Regional Trial Court rendered a Decision[18] holding that the Province of Palawan was entitled to a 40% share of the revenues generated from the Camago-Malampaya Natural Gas Project from October 16, 2001, in view of Article X, Section 7 of the Constitution and the provisions of the Local Government Code.

Subsequently, the Province of Palawan filed a Motion to require the Secretary of Energy, the Secretary of Budget and Management, and the Secretary of Finance to render a full accounting of the actual payments made by the Shell Consortium to the Bureau of Treasury from October 1, 2001 to December 2005,[19] and to freeze and/or place Palawan's 40% share in an escrow account.[20]

In its January 16, 2006 Amended Order,[21] the Regional Trial Court issued a Freeze Order directing a full accounting of actual payments made by Shell Consortium and ordering the Secretary of Finance to deposit 40% of the Province of Palawan's share in escrow until the finality of its December 16, 2005 Decision.

On February 16, 2006,[22] the Republic filed a Petition for Review before this Court, docketed as G.R. No. 170867, assailing the Regional Trial Court's December 16, 2005 Decision and its January 16, 2006 Amended Order.[23]

On June 6, 2006, the Regional Trial Court lifted its January 16, 2006 Amended Order in view of the pending Petition before this Court. The Republic subsequently manifested that its arguments relating to the January 16, 2006 Amended Order no

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[18] *Id*. at 83-112. The Decision was penned by Judge Bienvenido C. Blancaflor of Branch 95, Regional Trial Court, Puerto Princesa City.

[19] *Id*. at 115.

[20] *Id*. at 114.

[21] *Id*. at 113-116. The original Order was erroneously dated December 16, 2006 instead of January 16, 2006. The Order was amended to conform to the correct date.

[22] *Id*. at 9.

[23] *Ponencia*, p. 2.

longer needed to be resolved unless the Province of Palawan raises them as issues before this Court.[24]

While the Petition was pending before this Court, or on July 25, 2007, the National Government and the Province of Palawan, in conformity with the representatives of the legislative districts of Palawan, executed a Provisional Implementation Agreement[25] which allowed for the release of 50% of the disputed 40% share of Palawan to be utilized for its development projects.

On December 1, 2007, then President Gloria Macapagal Arroyo (President Arroyo) issued Executive Order No. 683, authorizing the release of funds pursuant to the Provisional Implementation Agreement, or 50% of the disputed 40% share, without prejudice to this Court's final resolution of Palawan's claim in G.R. No. 170867.[26]

On February 7, 2008, Bishop Pedro Dulay Arigo (Bishop Arigo), Cesar N. Sarino (Sarino), Dr. Jose Antonio N. Socrates (Dr. Socrates), and H. Harry L. Roque, Jr. (Roque), as citizens and taxpayers, filed a Petition for Certiorari against the Executive Secretary, the Secretary of Energy, the Secretary of Finance, the Secretary of Budget and Management, the Palawan Governor, the Representative of the First District of Palawan, the Philippine National Oil Company Explorations Corporation President and Chief Executive Officer before the Court of Appeals. The Petition assailed Executive Order No. 683, series of 2007, and the Provisional Implementation Agreement for being contrary to the Constitution and the Local Government Code. It also sought the release of the Province of Palawan's full 40% share in the Camago-Malampaya Natural Gas Project.[27]

In its May 29, 2008 Resolution,[28] the Court of Appeals dismissed the Petition on procedural grounds, finding that Bishop

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[24] *Id.* at 8–9.

[25] *Rollo* (G.R. No. 185941), pp. 498–503.

[26] *Id*. at 489–491.

[27] *Ponencia*, p. 11.

[28] *Rollo* (G.R. No. 185941), pp. 218–224. The Resolution, docketed as

Arigo, Sarino, Dr. Socrates, and Roque failed to submit the required documents substantiating their allegations. It likewise noted that the Petition was prematurely filed since the implementation of the Provisional Implementation Agreement was contingent on the final adjudication of G.R. No. 170867. The Court of Appeals also took judicial notice of the "on-going efforts"[29] by the Executive and Legislative branches to arrive at a common position on the country's baselines under the United Nations Convention on the Law of the Sea. Thus, any judicial ruling may be tantamount to a "collateral adjudication"[30] of a policy issue.

Bishop Arigo, Sarino, Dr. Socrates, and Roque filed a Motion for Reconsideration, which was denied by the Court of Appeals in its December 16, 2008 Resolution. Hence, they filed a Petition for Review on Certiorari before this Court, docketed as G.R. No. 185941, insisting that Executive Order No. 683, series of 2007, and the Provisional Implementation Agreement were invalid for being unconstitutional and for violating the provisions of the Local Government Code.[31]

G.R. Nos. 170867 and 185941 were consolidated by this Court on June 23, 2009. Oral arguments were heard on September 1, 2009 and November 24, 2009.[32]

As of August 31, 2009, ₱61,190,210,012.25 has been remitted to the Department of Energy. The amount claimed by the

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CA-G.R. SP No. 102247, was penned by Associate Justice Rebecca De Guia-Salvador (Chair) and concurred in by Associate Justices Vicente S.E. Veloso and Apolinario D. Bruselas, Jr. of the Eleventh Division, Court of Appeals, Manila.

[29] *Id*. at 223.

[30] *Id.*

[31] *Ponencia*, pp. 12–13.

[32] *Id*. at 13. Dean Raul Pangalangan and Secretary General Henry Bensurto, Jr. were made *amici curiae* for the oral arguments. Only Secretary General Bensurto submitted an *amicus* brief.

Province of Palawan as its 40% share was ₱35,521,789,184.63 as of August 31, 2009.[33]

It is the position of the ponencia that the interpretation of the phrase "within their respective areas" in Article X, Section 7 of the Constitution[34] refers to only to areas where a local government unit exercises territorial jurisdiction. The ponencia further opines that the territorial jurisdiction of a local government unit is limited only to its land area and will not extend to its marine waters, seabed, and subsoil. Thus, the equitable share of a local government unit in the proceeds of the utilization and development of national wealth within its respective area refers only to national wealth that can be found within its land mass.

I disagree.

I

The Constitution declares it a policy of the State to ensure the autonomy of local governments.[35]

The entirety of Article X of the Constitution is devoted to local governments. Under this article, local autonomy means "a more responsive and accountable local government structure instituted through a system of decentralization."[36] To this end, the Local Government Code reiterates the declared policy of the State to ensure local autonomy, providing:

Section 2. Declaration of Policy. — (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable

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[33] *Id*. at 13–14.

[34] CONST., Art. X, Sec. 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

[35] CONST., Art. II, Sec. 25.

[36] CONST., Art. X, Sec. 3. See also *Ganzon v. Court of Appeals*, 277 Phil. 311 (1991) [Per *J.* Sarmiento, *En Banc*].

them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the national government to the local government units.

Under this concept of autonomy, administration over local affairs is delegated by the national government to the local government units to be more responsive and effective at the local level.[37] Thus, Section 17 of the Local Government Code tasks local government units to provide basic services and facilities to their local constituents:

Section 17. Basic Services and Facilities. — (a) Local government units shall endeavor to be self-reliant and shall continue exercising the powers and discharging the duties and functions currently vested upon them. They shall also discharge the functions and responsibilities of national agencies and offices devolved to them pursuant to this Code. Local government units shall likewise exercise such other powers and discharge such other functions and responsibilities as are necessary, appropriate, or incidental to efficient and effective provision of the basic services and facilities enumerated herein.

In addition to administrative autonomy, local governments are likewise granted fiscal autonomy, or "the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities."[38] Section 18 of the Local Government Code provides:

Section 18. Power to Generate and Apply Resources. — Local government units shall have the power and authority to establish an

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[37] *Pimentel v. Aguirre*, 391 Phil. 84 (2000) [Per *J.* Panganiban, *En Banc*].

[38] *Id*. at 103.

organization that shall be responsible for the efficient and effective implementation of their development plans, program objectives and priorities; to create their own sources of revenues and to levy taxes, fees, and charges which shall accrue exclusively for their use and disposition and which shall be retained by them; to have a just share in national taxes which shall be automatically and directly released to them without need of any further action; to have an equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions including sharing the same with the inhabitants by way of direct benefits; to acquire, develop, lease, encumber, alienate, or otherwise dispose of real or personal property held by them in their proprietary capacity and to apply their resources and assets for productive, developmental, or welfare purposes, in the exercise or furtherance of their governmental or proprietary powers and functions and thereby ensure their development into self-reliant communities and active participants in the attainment of national goals.

The Local Government Code mandates that local government units shall have "an equitable share in the proceeds from the utilization and development of the national wealth and resources within their respective territorial jurisdictions." This provision implements Article X, Section 7 of the Constitution, which reads:

ARTICLE X
Local Government
General Provisions

Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

Thus, Section 290 of the Local Government Code provides:

Section 290. Amount of Share of Local Government Units. — Local government units shall, in addition to the internal revenue allotment, have a share of forty percent (40%) of the gross collection derived by the national government from the preceding fiscal year from mining taxes, royalties, forestry and fishery charges, and such other taxes, fees, or charges, including related surcharges, interests, or fines, and

from its share in any co-production, joint venture or production sharing agreement in the utilization and development of the national wealth within their territorial jurisdiction.

The controversy in this case revolves around the proper interpretation of "within their respective areas" and "within their territorial jurisdiction."

II

The Constitution itself provides for the natural boundaries of the State's political units. Article X, Section 1 of the Constitution allocates them as either "territorial and political subdivisions" or "autonomous regions," thus:

ARTICLE X
Local Government

General Provisions

Section 1. The territorial and political subdivisions of the Republic of the Philippines are the provinces, cities, municipalities, and barangays. There shall be autonomous regions in Muslim Mindanao and the Cordilleras as hereinafter provided.

Territorial and political subdivisions are the provinces, cities, municipalities, and barangays. Article X, Section 2 of the Constitution further provides:

Section 2. The territorial and political subdivisions shall enjoy local autonomy.

Autonomous regions are covered by a different set of provisions in the Constitution.[39] Thus, the territorial jurisdiction of an autonomous region is not defined in the same manner as that of a territorial and political subdivision.

A local government unit can only be created by an act of Congress.[40] Its creation is based on "verifiable indicators of

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[39] CONST., Art. X, Secs. 15 to 21.

[40] LOCAL GOVT. CODE, Sec. 6.

viability and projected capacity to provide services,"[41] one of which is land area, thus:

> (c) Land Area. — It must be contiguous, unless it comprises two (2) or more islands or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; and sufficient to provide for such basic services and facilities to meet the requirements of its populace.
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> Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).[42]

The Local Government Code requires that the land area be contiguous unless it comprises of two (2) or more islands. The same provision is repeated throughout the Code, thus:

> Section 386. Requisites for Creation. — . . .
>
> (b) The territorial jurisdiction of the new Barangay shall be properly identified by metes and bounds or by more or less permanent natural boundaries. The territory need not be contiguous if it comprises two (2) or more islands.
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> . . . .
>
> Section 442. Requisites for Creation. — . . .
>
> (b) The territorial jurisdiction of a newly-created municipality shall be properly identified by metes and bounds. The requirement on land area shall not apply where the municipality proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.
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> . . . .
>
> Section 450. Requisites for Creation. — . . .
>
> (b) The territorial jurisdiction of a newly-created city shall be properly identified by metes and bounds. The requirement on land area shall

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[41] LOCAL GOVT. CODE, Sec. 7.

[42] LOCAL GOVT. CODE, Sec. 7(c).

not apply where the city proposed to be created is composed of one (1) or more islands. The territory need not be contiguous if it comprises two (2) or more islands.

. . . . . .

The requirement of contiguity does not apply if the territory is comprised of islands. All that is required is that it is properly identified by its metes and bounds.

The Province of Palawan, previously known as Paragua, was organized under Act No. 422.[43] Section 2 of the Act, as amended, provided:

Section 2. The Province of Paragua shall consist of all that portion of the Island of Paragua north of a line beginning in the middle of the channel at the mouth of the Ulugan River in the Ulugan Bay, thence following the main channel of the Ulugan River to the village of Bahile, thence along the main trail leading from Bahile to the Tapul River, thence following the course of the Tapul River to its mouth in the Honda Bay; except that the towns of Bahile and Tapul the west boundary line shall be the arc of a circle with one mile radius, the center of the circle being the center of the said towns of Bahile and Tapul. There shall be included in the Province of Paragua the small islands adjacent thereto, including Dumaran and the islands forming the Calamianes group and the Cuyos Group.[44]

The law that created the Province of Palawan had no technical description. Instead, it anchored the province's borders on the bodies of water surrounding it. Since, the province's metes and bounds are not technically described, reference must be made to other laws interpreting the province's borders.

Palawan comprises 1,780 islands. To determine its metes and bounds would be to go beyond the contiguity of its land mass.

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[43] Act No. 422 (1902), An Act Providing for the Organization of a Provincial Government in the Province of Paragua, and Defining the Limits of that Province.

[44] Act No. 567 (1902).

The ponencia places too much reliance on *Tan v. Commission on Elections*,[45] a case that was decided long before the passage of the present Local Government Code. In *Tan*, a petition was filed before this Court to halt the conduct of a plebiscite to pass a law creating the province of Negros. A question was raised on whether the marginal sea within the three (3)-mile limit should be considered in determining a province's extent. This Court, in finding the argument unmeritorious, held:

> As so stated therein the "territory need not be contiguous if it comprises two or more islands." The use of the word territory in this particular provision of the Local Government Code and in the very last sentence thereof, clearly, reflects that "territory" as therein used, has reference only to the mass of land area and excludes the waters over which the political unit exercises control.[46] (Emphasis omitted)

This Court's wording is peculiar. It speaks of territory as a mass of land area, not waters, over which the political unit exercises control. In the same breath, *Tan* also establishes that political units may have control over the waters in their territory.

It can be presumed that when *Tan* discussed the metes and bounds of a local government unit's territory, it only meant to refer to its physical land area. It did not include a discussion on what may encompass a local government unit's *territorial jurisdiction*.

In any case, the creation of a local government unit is not solely dependent on land mass. Article 9(2) of the Implementing Rules and Regulations of the Local Government Code provides:

> Article 9. Provinces. — (a) Requisites for creation — A province shall not be created unless the following requisites on income and either population or land area are present:
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> . . . . . .
>
> (2) Population or land area — Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified

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[45] 226 Phil. 624 (1986) [Per *J.* Alampay, *En Banc*].

[46] *Id*. at 646.

by NSO; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. *The land area requirement shall not apply where the proposed province is composed of one (1) or more islands.* The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds. (Emphasis supplied)

In *Navarro v. Ermita*,[47] a controversy arose on the creation of the Province of Dinagat Islands considering that its total land mass was only 802.12 square kilometers, or below the 2,000 square kilometers required by law. Petitioners in that case, who were the former Vice Governor and members of the Provincial Board of the Province of Surigao del Norte, questioned the constitutionality of Article 9(2), arguing that the exemption to land area requirement was not explicitly provided for in the Local Government Code.

The majority initially declared Article 9(2) unconstitutional for being an extraneous provision not intended by the Local Government Code.

On reconsideration, however, the majority reversed its prior decision and upheld the constitutionality of the assailed provision.[48] In particular, *Navarro* found:

. . . [W]hen the local government unit to be created consists of one (1) or more islands, it is exempt from the land area requirement as expressly provided in Section 442 and Section 450 of the LGC if the local government unit to be created is a municipality or a component city, respectively. This exemption is absent in the enumeration of the requisites for the creation of a province under Section 461 of the LGC, although it is expressly stated under Article 9 (2) of the LGC-IRR.

There appears neither rhyme nor reason why this exemption should apply to cities and municipalities, but not to provinces. In fact,

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[47] 626 Phil. 23 (2010) [Per *J.* Peralta, *En Banc*].

[48] *Navarro v. Ermita*, 663 Phil. 546 (2011) [Per *J.* Nachura, *En Banc*].

considering the physical configuration of the Philippine archipelago, there is a greater likelihood that islands or group of islands would form part of the land area of a newly-created province than in most cities or municipalities. It is, therefore, logical to infer that the genuine legislative policy decision was expressed in Section 442 (for municipalities) and Section 450 (for component cities) of the LGC, but was inadvertently omitted in Section 461 (for provinces). Thus, when the exemption was expressly provided in Article 9 (2) of the LGC-IRR, the inclusion was intended to correct the congressional oversight in Section 461 of the LGC — and to reflect the true legislative intent. It would, then, be in order for the Court to uphold the validity of Article 9 (2) of the LGC-IRR.

This interpretation finds merit when we consider the basic policy considerations underpinning the principle of local autonomy.

. . . . . .

Consistent with the declared policy to provide local government units genuine and meaningful local autonomy, contiguity and minimum land area requirements for prospective local government units should be liberally construed in order to achieve the desired results. The strict interpretation adopted by the February 10, 2010 Decision could prove to be counter-productive, if not outright absurd, awkward, and impractical. Picture an intended province that consists of several municipalities and component cities which, in themselves, also consist of islands. The component cities and municipalities which consist of islands are exempt from the minimum land area requirement, pursuant to Sections 450 and 442, respectively, of the LGC. Yet, the province would be made to comply with the minimum land area criterion of 2,000 square kilometers, even if it consists of several islands. This would mean that Congress has opted to assign a distinctive preference to create a province with contiguous land area over one composed of islands — and negate the greater imperative of development of self-reliant communities, rural progress, and the delivery of basic services to the constituency. This preferential option would prove more difficult and burdensome if the 2,000-square-kilometer territory of a province is scattered because the islands are separated by bodies of water, as compared to one with a contiguous land mass.

Moreover, such a very restrictive construction could trench on the equal protection clause, as it actually defeats the purpose of local autonomy and decentralization as enshrined in the Constitution. Hence,

the land area requirement should be read together with territorial contiguity.[49]

Neither can it be said that a local government unit's territorial jurisdiction can only be exercised over its municipal waters.

The Local Government Code provides:

> (r) "Municipal Waters" includes not only streams, lakes, and tidal waters within the municipality, not being the subject of private ownership and not comprised within the national parks, public forest, timber lands, forest reserves or fishery reserves, but also marine waters included between two lines drawn perpendicularly to the general coastline from points where the boundary lines of the municipality or city touch the sea at low tide and a third line parallel with the general coastline and fifteen (15) kilometers from it. Where two (2) municipalities are so situated on the opposite shores that there is less than fifteen (15) kilometers of marine waters between them, the third line shall be equally distant from opposite shores of their respective municipalities.[50]

Under this provision, Palawan can only exercise jurisdiction over waters that are within 15 kilometers from its general coastline.

This narrow interpretation, however, disregards other laws that have defined and specified portions of Palawan's territory and the extent of its territorial jurisdiction.

Presidential Decree No. 1596[51] established the Kalayaan Island Group, delineated as follows:

> Section 1. The area within the following boundaries:
>
> KALAYAAN ISLAND GROUP
>
> From a point [on the Philippine Treaty Limits] at latitude 7º40' North and longitude 116º00' East of Greenwich, thence due West along the parallel of 7º40' N to its intersection with

[49] *Id*. at 584, 586.

[50] LOCAL GOVT. CODE, Sec. 131(r).

[51] Pres. Decree No. 1596 (1978), Declaring Certain Area Part of the Philippine Territory and Providing for their Government and Administration.

> the meridian of longitude 112º10' E, thence due north along the meridian of 112º10' E to its intersection with the parallel of 9º00' N, thence northeastward to the intersection of parallel of 12º00' N with the meridian of longitude 114º30' E, thence, due East along the parallel of 12º00' N to its intersection with the meridian of 118º00' E, thence, due South along the meridian of longitude 118º00' E to its intersection with the parallel of 10º00' N, thence Southwestwards to the point of beginning at 7º40' N, latitude and 116º00' E longitude;

including the sea-bed, sub-soil, continental margin and air space shall belong and be subject to the sovereignty of the Philippines. Such area is hereby constituted as a distinct and separate municipality of the Province of Palawan and shall be known as "Kalayaan."[52]

The law categorically states that the area includes the seabed, subsoil, and the continental margin, and that the island shall be a municipality in the Province of Palawan.

Republic Act No. 7611, or the Strategic Environmental Plan for Palawan, includes in its Environmentally Critical Areas Network:

> Section 8. Main Components. — . . .
>
> (1) Terrestrial — The terrestrial component shall consist of the mountainous as well as ecologically important low hills and lowland areas of the whole province. It may be further subdivided into smaller management components.
>
> (2) *Coastal/marine area — This area includes the whole coastline up to the open sea*. This is characterized by active fisheries and tourism activities; and
>
> (3) Tribal Ancestral lands — These are the areas traditionally occupied by the cultural communities. (Emphasis supplied)

Under this law, local chief executives, together with representatives of national government, are tasked with the protection and preservation of environmentally critical areas in Palawan. This includes the exercise of jurisdiction beyond the province's land mass.

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[52] Pres. Decree No. 1596 (1978), Sec. 1.

Under Article 76(1) of the United Nations Convention on the Law of the Sea:

1. The continental shelf of a coastal State comprises the seabed and subsoil of the submarine areas that extend beyond its territorial sea throughout the natural prolongation of its land territory to the outer edge of the continental margin, or to a distance of 200 nautical miles from the baselines from which the breadth of the territorial sea is measured where the outer edge of the continental margin does not extend up to that distance.

In the recent arbitral case between the Republic and China, the Permanent Court of Arbitration, in ruling favorably for the Republic, made the following factual findings:

285. Cuarteron Reef is known as "Huayang Jiao" in China and "Calderon Reef" in the Philippines. It is a coral reef located at 08° 51' 412' N, 112° 50' 08' ' E and is the easternmost of four maritime features known collectively as the London Reefs that are located on the western edge of the Spratly Islands. Cuarteron Reef is 245.3 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 585.3 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to the island of Hainan. The general location of Cuarteron Reef, along with the other maritime features in the Spratly Islands, is depicted in Map 3 on page 125 below.

286. Fiery Cross Reef is known as "Yongshu Jiao" in China and "Kagitingan Reef" in the Philippines. It is a coral reef located at 09° 33' 00' ' N, 112° 53' 25' ' E, to the north of Cuarteron Reef and along the western edge of the Spratly Islands, adjacent to the main shipping routes through the South China Sea. Fiery Cross Reef is 254.2 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 547.7 nautical miles from the China's baseline point 39 (Dongzhou (2)) adjacent to the island of Hainan.

287. Johnson Reef, McKennan Reef, and Hughes Reef are all coral reefs that form part of the larger reef formation in the centre of the Spratly Islands known as Union Bank. Union Bank also includes the high-tide feature of Sin Cowe Island. Johnson Reef (also known as Johnson South Reef) is known

as "Chigua Jiao" in China and "Mabini Reef" in the Philippines. It is located at 9° 43' 00' ' N, 114° 16' 55' ' E and is 184.7 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 570.8 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Although the Philippines has referred to "McKennan Reef (including Hughes Reef)" in its Submissions, the Tribunal notes that McKennan Reef and Hughes Reef are distinct features, albeit adjacent to one another, and considers it preferable, for the sake of clarity, to address them separately. McKennan Reef is known as "Ximen Jiao" in China and, with Hughes Reef, is known collectively as "Chigua Reef" in the Philippines. It is located at 09° 54' 13' ' N, 114° 27' 53' ' E and is 181.3 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 566.8 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Hughes Reef is known as "Dongmen Jiao" in China and, with McKennan Reef, is known collectively as "Chigua Reef" in the Philippines. It is located at 09° 54' 48' ' N 114°29' 48' ' E and is 180.3 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 567.2 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.

288. The Gaven Reefs are known as "Nanxun Jiao" in China and "Burgos" in the Philippines. They constitute a pair of coral reefs that forms part of the larger reef formation known as Tizard Bank, located directly to the north of Union Bank. Tizard Bank also includes the high-tide features of Itu Aba Island, Namyit Island, and Sand Cay. Gaven Reef (North) is located at 10° 12' 27' ' N, 114° 13' 21' ' E and is 203.0 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 544.1 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Gaven Reef (South) is located at 10° 09' 42' ' N 114° 15' 09' ' E and is 200.5 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 547.4 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.

289. Subi Reef is known as "Zhubi Jiao" (nxy) in China and "Zamora Reef" in the Philippines. It is a coral reef located to the north of Tizard Bank and a short distance to the south-

west of the high-tide feature of Thitu Island and its surrounding Thitu Reefs. Subi Reef is located at 10° 55' 22' ' N, 114° 05' 04' ' E and lies on the north-western edge of the Spratly Islands. Subi Reef is 231.9 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 502.2 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.

290. Mischief Reef and Second Thomas Shoal are both coral reefs located in the centre of the Spratly Islands, to the east of Union Bank and to the south-east of Tizard Bank. Mischief Reef is known as "Meiji Jiao" in China and "Panganiban" in the Philippines. It is located at 09° 54' 17' ' N, 115° 31' 59' ' E and is 125.4 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 598.1 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan. Second Thomas Shoal is known as "Ren'ai Jiao" in China and "Ayungin Shoal" in the Philippines. It is located at 09° 54' 17' ' N, 115° 51' 49' ' E and is 104.0 nautical miles from the archipelagic baseline of the Philippine island of Palawan and 616.2 nautical miles from China's baseline point 39 (Dongzhou (2)) adjacent to Hainan.[53]

The Permanent Court of Arbitration used the Province of Palawan as its baseline point to determine the reefs' proximity to the Philippines. The Republic likewise made argument with regard to Reed Bank in asserting its sovereignty over the Kalayaan Island Group:

FIRST, the Republic of the Philippines has sovereignty and jurisdiction over the Kalayaan Island Group (KIG);

SECOND, even while the Republic of the Philippines has sovereignty and jurisdiction over the KIG, the Reed Bank where GSEC 101 is situated does not form part of the "adjacent waters," specifically the 12 M territorial waters of any relevant geological feature in the KIG either under customary international law or the United Nations Convention on the Law of the Sea (UNCLOS);

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[53] *In the Matter of the South Sea China Arbitration*, PCA Case No. 2013-19, July 12, 2016, <https://pca-cpa.org/wp-content/uploads/sites/175/2016/07/PH-CN-20160712-Award.pdf> 121–122.

THIRD, Reed Bank is not an island, a rock, or a low tide elevation. Rather, Reed Bank is a completely submerged bank that is part of the continental margin of Palawan. Accordingly, Reed Bank, which is about 85 M from the nearest coast of Palawan and about 595 M from the coast of Hainan, forms part of the 200 M continental shelf of the Philippine archipelago under UNCLOS[.][54]

The Republic has manifested before an international audience that it exercises sovereignty over territories without a definitive land mass on the ground that they form part and parcel of the Province of Palawan. Thus, it recognized that jurisdiction can be established even over areas which are not susceptible of land mass or defined by contiguity.

In any case, the grant of an equitable share in the utilization and development of resources within a local government unit's territorial jurisdiction has practical basis.

When resources are being utilized and developed in a certain area, there will be a need for the surrounding areas to be secured. The environmental impacts to the nearby community will have to be addressed. While *amicus curiae* Secretary General Bensurto eventually concluded that the Camago-Malampaya reservoir was not within Palawan's territorial jurisdiction, he nonetheless made the following observations:

1. The proximity of the Camago-Malampaya gas reservoir to the Province of Palawan makes the latter environmentally vulnerable to any major accidents in the gas reservoir;
2. The gas pipes of the Camago-Malampaya pass through the Northern part of the Palawan Province.[55]

The local government unit's equitable share is meant to address the possible effects that the project may have on the local population. It can also assist in strengthening the economic development of the local government unit and uplift the lives of its constituents.

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[54] *Id*. at 266.

[55] *Rollo* (G.R. No. 170867), p. 1356.

III

The ponencia submits that there was no estoppel on the part of the Executive Branch when it promulgated issuances recognizing the Province of Palawan's share in the Camago-Malampaya Project, as they were merely "based on a mistaken assumption."[56]

The doctrine of contemporaneous construction is settled. In *Tamayo v. Manila Hotel Company*:[57]

> It is a rule of statutory construction that "courts will and should respect the contemporaneous construction placed upon a statute by the executive officers, whose duty it is to enforce it and unless such interpretation is clearly erroneous will ordinarily be controlled thereby."[58]

Another variation of the doctrine states:

> . . . [An] order, constituting executive or contemporaneous construction of a statute by an administrative agency charged with the task of interpreting and applying the same, is entitled to full respect and should be accorded great weight by the courts, unless such construction is clearly shown to be in sharp conflict with the Constitution, the governing statute, or other laws.[59] (Citation omitted)

The National Government has repeatedly recognized that the Province of Palawan was entitled to an equitable share in the proceeds of its utilization and development.

Administrative Order No. 381, issued by then President Ramos, expressly recognized that the National Government would share in the net proceeds of the Camago-Malampaya Natural Gas Project.[60] In particular, it provided:

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[56] *Id.* at 75.

[57] 101 Phil. 810 (1957) [Per *J.* Reyes, A., *En Banc*].

[58] *Id.* at 815, citing *Molina v. Rafferty*, 37 Phil. 545 (1918) [Per *J.* Malcom, First Division.]; *In re Allen*, 2 Phil. 630 (1903) [Per *J.* McDonough, *En Banc*]; and *Everett v. Bautista*, 69 Phil. 137 (1939) [Per *J.* Diaz, *En Banc*].

[59] *Alvarez v. Guingona, Jr.*, 322 Phil. 774, 786 (1996) [Per *J.* Hermosisima, Jr., *En Banc*].

[60] *Rollo* (G.R. No. 170867), pp. 549-550-A.

WHEREAS, under SC 38, as clarified, a production sharing scheme has been provided whereby the Government is entitled to receive an amount equal to sixty percent (60%) of the net proceeds from the sale of Petroleum (including Natural Gas) produced from Petroleum Operations (all as defined in SC 38) while Shell/Oxy, as Service Contractor is entitled to receive an amount equal to forty percent (40%) of the net proceeds;

. . . . . .

WHEREAS, the Government has determined that it can derive the following economic and social benefits from the Natural Gas Project:

. . . . . .

2. based on the estimated production level and Natural Gas pricing formula between the Sellers and the Buyers of such Natural Gas, the estimated Government revenues for the 20-year contract period will be around US$8.1 billion; this includes estimated revenues to be generated from the available oil and condensate reserves of the Camago-Malampaya Reservoir; the province of Palawan is expected to receive about US$2.1 billion from the total Government share of US$8.1 billion;

. . . . . .

WHEREAS, the Government's share in Petroleum (including Natural Gas) produced under SC 38, as clarified, will be reduced (i) by the share of concerned local government units pursuant to the Local Government Code and (ii) by amounts of income taxes due from and paid on behalf of the Service Contractor (the resulting amounts hereinafter called the "Net Government Share")[.][61]

On June 10, 1998, then Secretary of Energy Viray wrote a letter to then Palawan Governor Socrates, requesting for a deferred payment of 50% of Palawan's share in the Camago-Malampaya Natural Gas Project,[62] which likewise shows an effort by the Executive Branch to fulfill its commitments to the Province of Palawan.

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[61] Adm. Order No. 381 (1998), whereas clauses.

[62] *Rollo* (G.R. No. 170867), pp. 551–552.

After the formal launch of the Camago-Malampaya Natural Gas Project, negotiations occurred between agents of the National Government and the Province of Palawan, to determine the Province of Palawan's share in the net proceeds, until it was called off by the Province of Palawan.[63] This is yet another instance of the Executive Branch's acceptance of the Province of Palawan's territorial jurisdiction over the area. Otherwise, there would have been no need to negotiate.

Even when the case before the Regional Trial Court was pending, then Secretary of Energy Perez, then Secretary of Budget and Management Relampagos, and then Secretary of Finance Amatong executed an Interim Agreement[64] with the Province of Palawan, providing for equal sharing of the 40% being claimed by the Province of Palawan, to be called the "Palawan Share," for its development and infrastructure projects, environment protection and conservation, electrification of 431 barangays, and establishment of facilities for the security enhancements of the exclusive economic zone.[65]

Representatives of the National Government, with authority from then President Arroyo, and the Province of Palawan, in conformity with the representatives of the legislative districts of Palawan, likewise executed a Provisional Implementation Agreement which allowed for the release of 50% of the disputed 40% share to be utilized for development projects in Palawan.

Then President Arroyo issued Executive Order No. 683 dated December 1, 2007, pertinent portions of which state:

WHEREAS, on 11 December, 1990, the Republic of the Philippines, represented by the Department of Energy (DOE), entered into Service Contract No. 38 (SC 38) and engaged the services of a consortium composed today of Shell B.V., Shell Philippines LLC, Chevron Malampaya LLC and PNOC-Exploration Corporation (EC), as Contractor for the exploration, development and production of

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[63] *Id*. at 127–128.

[64] *Id*. at 555–561.

[65] *Id*. at 557.

petroleum resources in an identified offshore area, known as the Camago-Malampaya Reservoir, to the West Philippines Sea;

. . . . . .

WHEREAS, President as Chief Executive has a broad perspective of the requirements to develop Palawan as a major tourism destination from the point of view of the National Government, which has identified the Central Philippines Superregion, of which Palawan is a part, for tourism infrastructure investments;

WHEREAS, there is a pending court dispute between the National Government and the Province of Palawan on the issue of whether Camago-Malampaya Reservoir is within the territorial boundaries of the Province of Palawan thus entitling the said province to 40% of the Net Government Share in the proceeds of SC 38 pursuant to Sec. 290 of Republic Act No. (RA) 7160, otherwise known as the "Local Government Code";

WHEREAS, Sec. 25 of RA 7160 provides that the President may, upon request of the local government unit (LGU) concerned, direct the appropriate national government agency to provide financial, technical or other forms of assistance to the LGU;

WHEREAS, the duly-authorized representatives of the National Government and the Province of Palawan, with the conformity of the Representatives of the Congressional District of Palawan, have agreed on a Provisional Implementation Agreement (PIA) that would allow 50% of the disputed 40% of the Net Government Share in the proceeds of SC 38 to be utilized for the immediate and effective implementation of development projects for the people of Palawan;

NOW, THEREFORE, I, GLORIA M. ARROYO, President of the Philippines, by virtue of the power vested in me by law, do hereby order:

SECTION 1. Subject to existing laws, and the usual government accounting and auditing rules and regulations, the Department of Budget and Management (DBM) is hereby authorized to release funds to the implementing agencies (IA) pursuant to the PIA, upon the endorsement and submission by the DOE and/or the PNOC Exploration Corporation of the following documents:

1.1. Directive by the Office of the President or written request of the Province of Palawan, the Palawan Congressional

Districts or the Highly Urbanized City of Puerto Princesa, for the funding of designated projects;

1.2. A certification that the designated projects fall under the investment program of the Province of Palawan, City of Puerto Princesa, and/or the development projects identified in the development program of the National Government or its agencies; and

1.3. Bureau of Treasury certification on the availability of funds from the 50% of the 40% share being claimed by the Province of Palawan from the Net Government Share under SC 38;

Provided, that the DBM shall be subject to the actual collections deposited with the National Treasury, and shall be in accordance with the Annual Fiscal Program of the National Government.

. . . . . .

SECTION 3. The National government, with due regard to the pending judicial dispute, shall allow the Province of Palawan, the Congressional Districts of Palawan and the City of Puerto Princesa to securitize their respective shares in the 50% of the disputed 40% of the Net Government Share in the proceeds of SC 38 pursuant to the PIA. For the purpose, the DOE shall, in consultation with the Department of Finance, be responsible for preparing the Net Government Revenues for the period of to June 30, 1010.

SECTION 4. The amounts released pursuant to this EO shall be without prejudice to any on-going discussions or final judicial resolution of the legal dispute regarding the National Government's territorial jurisdiction over the areas covered by SC 38 in relation to the claim of the Province of Palawan under Sec. 290 of RA 7160.

These enactments show the Executive Branch's contemporaneous construction of Section 290 of the Local Government Code in relation to Service Contract No. 38.

Contemporaneous construction is resorted to when there is an ambiguity in the law and its provisions cannot be discerned through plain meaning. The interpretation of those called upon to implement the law is given great respect.[66]

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[66] See *Lim Hoa Ting v. Central Bank of the Philippines*, 104 Phil. 573 (1958) [Per *J.* Montemayor, *En Banc*].

Given the ambiguity of the phrase "within their respective areas" under Article X, Section 7 of the Constitution, it was necessary to resort to the examination of prior and subsequent acts of those required to implement the law.

Considering that the Executive Branch has consistently recognized the Province of Palawan's entitlement to its equitable share in the net proceeds of the Camago-Malampaya Natural Gas Project, its interpretation must be given its due weight.

The ponencia, in confining territorial jurisdiction to only that of land mass, does a disservice to the entirety of Article X, Section 7, which reads:

ARTICLE X
Local Government
General Provisions

Section 7. Local governments shall be entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, in the manner provided by law, including sharing the same with the inhabitants by way of direct benefits.

Under this provision, local governments are entitled to an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas, *in the manner provided by law*. This means that law may define what could be included within a local government's respective area.

Thus, the extent of a local government unit's territorial jurisdiction cannot be limited only to its land mass, as defined by the Local Government Code. Reference must also be made to other statutes.

In this instance, Presidential Decree No. 1596 and Republic Act No. 7611 grants the Province of Palawan territorial jurisdiction over areas that are beyond its coastline. Presidential Decree No. 1596 even explicitly declares that the Province of Palawan may have territorial jurisdiction over the continental shelf of the Kalayaan Island Group. Thus, I cannot agree with the ponencia's recommendation that territorial jurisdiction is exercised solely over a local government's land mass.

Unfortunately, the Province of Palawan failed to provide sufficient evidence to show that the Camago-Malampaya Natural Gas Project was within its area of responsibility. The maps submitted to this Court were inadequate to prove that the Province of Palawan's claims. Thus, I am constrained to vote with the majority.

Accordingly, I vote to **GRANT** the Petition in G.R. No. 170867 and **DENY** the Petition in G.R. No. 189514.

EN BANC

[G.R. No. 223395. December 4, 2018]

RENATO V. PERALTA, *petitioner, vs.* **PHILIPPINE POSTAL CORPORATION (PHILPOST), represented by MA. JOSEFINA M. DELA CRUZ in her capacity as POSTMASTER GENERAL and CHIEF EXECUTIVE OFFICER, THE BOARD OF DIRECTORS OF PHILPOST, represented by its CHAIRMAN CESAR N. SARINO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; THE JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; LIMITATIONS.— It is doctrinal that the power of judicial review is subject to the following limitations, *viz*: (1) there must be an actual case or controversy calling for the exercise of judicial power; (2) the constitutionality of the questioned act must be raised by the proper party, *i.e.*, the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, 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 opportunity; and (4) the issue of constitutionality must be the very *lis mota* (the cause of the suit or action) of the case, *i.e.*, the decision on the constitutional or legal decision must be necessary to the determination of the case itself.

2. ID.; ID.; ID.; ID.; ID.; REQUISITES; ACTUAL CASE OR CONTROVERSY; EXPOUNDED; PRESENT.— Whether under the traditional or expanded setting, the Court's judicial review power, pursuant to Section 1, Article VIII of the Constitution, is confined to actual cases or controversies. We expounded on this requisite in *SPARK, et al. v. Quezon City, et al.*, thus: 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. In other words, there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act. Corollary to the requirement of an actual case of controversy is the requirement of ripeness. A question is ripe for adjudication when the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something has 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 himself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of. Applying these principles, this Court finds that there exists an actual justiciable controversy in this case.

3. ID.; ID.; ID.; ID.; ID.; THE FACT THAT THE REMEDY OF INJUNCTION MAY NO LONGER BE VIABLE AS THE ACT SOUGHT TO BE ENJOINED ALREADY TRANSPIRED, WILL NOT AUTOMATICALLY RENDER ACADEMIC THE QUESTION ON THE CONSTITUTIONALITY OF THE SAID ACT. — While this Court agrees that the issue on the remedy of injunction availed

of by the petitioner may no longer be viable to enjoin PhilPost's acts, considering that the act sought to be enjoined already transpired, this does not necessarily mean that the question on the constitutionality of the said acts would automatically be rendered academic. It is precisely PhilPost's issuance, printing and sale of the INC commemorative stamps that created a justiciable controversy since the said acts allegedly violated Sec. 29(2), Art. VI of the 1987 Constitution. Had the petitioner filed the injunction suit prior to the implementation of Proclamation No. 815, any resolution by this Court on the question of PhilPost's printing of the INC commemorative stamps would merely be an advisory opinion, veritably binding no one, for it falls beyond the realm of judicial review.

4. ID.; ID.; ID.; ID.; ID.; ID.; EXCEPTIONS TO THE MOOT-AND-ACADEMIC PRINCIPLE; PRESENT.— [E]ven if the case has indeed been rendered moot, this Court can still pass upon the main issue. As We have pronounced in the case of *Prof. David v. Pres. Macapagal-Arroyo*, [T]he moot-and-academic principle is not a magical formula that automatically dissuades courts from resolving cases, because they will decide cases, otherwise moot and academic, if they find that: (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character, and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; or (d) a case is capable of repetition yet evading review. x x x. Based on x x x precedents, the Court has the duty to formulate guiding and controlling constitutional precepts, doctrines or rules. It has the symbolic function of educating the bench and the bar, and in the present petition, the parties involved, on the application of the constitutional provisions allegedly violated *vis-a-vis* the printing and issuance of the INC commemorative stamps. There is no question that the issues being raised affect the public interest, involving as they do, the alleged misuse of public funds and the non-establishment clause which is one of the constitutional guarantees of freedom of religion. This petition calls for a clarification of constitutional principles. Perforce, there is a need to adjudicate the instant case.

5. ID.; ID.; ID.; ID.; ID.; LEGAL STANDING OF TAXPAYER, EXPLAINED.— In *Mamba, et al. v. Lara, et al.*, this Court explained the legal standing of a taxpayer in this wise: A taxpayer

is allowed to sue where there is a claim that public funds are illegally disbursed, or that the public money is being deflected to any improper purpose, or that there is wastage of public funds through the enforcement of an invalid or unconstitutional law. A person suing as a taxpayer, however, must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation. He must also prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation and that he will sustain a direct injury because of the enforcement of the questioned statute or contract. x x x. Here, petitioner made an allegation of PhilPost's misuse of public funds in the printing of 1,200,000 INC commemorative stamps. Petitioner pointed out that out of the 1,200,000 commemorative stamps printed, only 50,000 pieces were shouldered by the INC based on its MOA with PhilPost. Petitioner, thus, concluded that the production of the additional 1,150,000 stamps were made possible only with the use of public funds and property. On this basis, petitioner indeed, is invested with personality to institute the complaint for injunction with the RTC.

6. ID.; ID.; ID.; SEPARATION OF THE CHURCH AND THE STATE *VIS-À-VIS* FREEDOM OF RELIGION; "BENEVOLENT NEUTRALITY" APPROACH, DISCUSSED.— The Constitutional "wall" between the Church and the State, has been jurisprudentially recognized to stem from the country's unfortunate collective experience when the two institutions are commingled into one entity, exercising both power and influence, oftentimes to the detriment of the populace. However, as apparent from the Constitution, the "wall" between the Church and the State exists along with the recognition of freedom of religion. x x x. In *Estrada vs. Escritor*, this Court encapsulated its policy towards these kinds of disputes as "benevolent neutrality": x x x ***Benevolent neutrality*** **recognizes the religious nature of the Filipino people and the elevating influence of religion in society; at the same time, it acknowledges that government must pursue its secular goals.** x x x. *Although our constitutional history and interpretation mandate benevolent neutrality, benevolent neutrality does not mean that the Court ought to grant exemptions every time a free exercise claim comes before it.* ***But it does mean that the Court will not look with hostility or act indifferently towards religious beliefs and practices and that it will strive to***

accommodate them when it can within flexible constitutional limits; x x x. *We here lay down the doctrine that in Philippine jurisdiction,* ***we adopt the benevolent neutrality approach not only because of its merits*** x x x ***but more importantly, because our constitutional history and interpretation indubitably show that benevolent neutrality is the launching pad from which the Court should take off in interpreting religion clause cases****.* x x x. Verily, where the Court has been asked to determine whether there has been an undue enchroachment of this Constitutionally forged "wall", this Court has adopted a stance of "benevolent neutrality". Rightfully so, for this incorporates the Constitutional principle of separation of the Church and the State while recognizing the people's right to express their belief or non-belief of a Supreme Being.

7. ID.; ID.; ID.; SECTION 29 (2), ARTICLE VI OF THE 1987 CONSTITUTION; RESPONDENT-PHILIPPINE POSTAL CORPORATION'S (PHILPOST) PRINTING AND ISSUANCE OF THE IGLESIA NI CRISTO (INC) COMMEMORATIVE STAMPS DID NOT AMOUNT TO A VIOLATION OF THE NON-ESTABLISHMENT OF RELIGION CLAUSE.— There is no quibbling that as to the 50,000 stamps ordered, printed and issued to INC, the same did not violate the Constitutional prohibitions separating State matters from religion. x x x [T]he costs for the printing and issuance of the aforesaid 50,000 stamps were all paid for by INC. Any perceived use of government property, machines or otherwise, is *de minimis* and certainly do not amount to a sponsorship of a specific religion. Also, We see no violation of the Constitutional prohibition on establishment of religion, insofar as the remaining 1,150,000 pieces of stamps printed and distributed by PhilPost. First, there is no law mandating anyone to avail of the INC commemorative stamps, nor is there any law purporting to require anyone to adopt the INC's teachings. x x x. As to the use of the government's machinery in printing and distribution of the 1.2 million stamps, this Court does not find that the same amounted to sponsorship of INC as a religion considering that the same is no different from other stamps issued by PhilPost acknowledging persons and events of significance to the country, such as those printed celebrating National Artists, past Philippine Presidents, and events of organizations, religious or not. x x x. Likewise, our review

of the records does not disclose that PhilPost has exclusively or primarily used its resources to benefit INC, to the prejudice of other religions. Finally, other than this single transaction with INC, this Court did not find PhilPost to have been unneccesarily involved in INC's affairs. Based on the foregoing, this Court is not convinced that PhilPost has actually used its resources to endorse, nor encourage Filipinos to join INC or observe the latter's doctrines. On the contrary, this Court agrees with respondents that the printing of the INC commemorative stamp was endeavored merely as part of PhilPost's ordinary business.

8. ID.; ID.; ID.; SECTION 29 (2), ARTICLE VI OF THE 1987 CONSTITUTION; THE STATE IS PROHIBITED FROM USING ITS RESOURCES TO SOLELY BENEFIT ONE RELIGION; RESPONDENT-PHILPOST'S PRINTING AND ISSUANCE OF THE IGLESIA NI CRISTO (INC) COMMEMORATIVE STAMPS NOT VIOLATIVE OF THE PROHIBITION AGAINST ILLEGAL DISBURSEMENT OF PUBLIC FUNDS FOR THE SOLE ADVANTAGE OF A CHURCH.— [W]e do not find that there was illegal disbursement of funds under Section 29(2) of Article VI of the Constitution. The application of this prohibition towards government acts was already clarified by the Court in *Re: Letter of Tony Q. Valenciano, Holding Of Religious Rituals At The Hall Of Justice Building In Quezon City*: Section 29 (2), Article VI of the 1987 Constitution provides, "No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium." x x x. Thus, the words "pay" and "employ" should be understood to mean that **what is prohibited is the use of public money or property for the sole purpose of benefiting or supporting any church**. The prohibition contemplates a scenario where the appropriation is primarily intended for the furtherance of a particular church. It has also been held that the aforecited constitutional provision "**does not inhibit the use of public property for religious purposes when the religious character**

of such use is merely incidental to a temporary use which is available indiscriminately to the public in general." x x x. Indeed, what is prohibited is the State using its resources to solely benefit one religion. As stated above, the records do not show that the State has been using the resources and manpower of PhilPost for INC's sole advantage. On the contrary, the stamps printed and issued by PhilPost, as seen through its website, feature various entities and organizations, other than religious sects.

9. ID.; ID.; ID.; ID.; THE DESIGN OF THE INC COMMEMORATIVE STAMP, THE FACADE OF THE CHURCH AND THE IMAGE OF FELIX Y. MANALO, IS CONSTITUTIONALLY PERMISSIBLE, AS THE SAME IS MERELY AN ACKNOWLEDGMENT OF A HISTORICAL MILESTONE, BUT IT DOES NOT ENDORSE, ESTABLISH OR DISPARAGE OTHER RELIGIOUS GROUPS AND EVEN NON-BELIEVERS.— Adopting the stance of benevolent neutrality, this Court deems the design of the INC commemorative stamp constitutionally permissible. As correctly held by the CA, there is an intrinsic historical value in the fact that Felix Y. Manalo is a Filipino and that the INC is a Filipino institution. x x x. Indeed, the design depicted in the INC commemorative stamp is merely a recognition of the continuous existence of a group that is strictly Filipino. As compared to major religious groups established in the country, Felix Y. Manalo, and the INC, are not plain religious symbols, but also a representation of a group that is distinctly unique to the Philippines. To the mind of this Court, the use of the facade of the Church and the image of Felix Y. Manalo is nothing more than an acknowledgment of a historical milestone. It does not endorse, establish or disparage other religious groups and even non-believers, especially considering the fact that PhilPost also print stamps with symbols which can arguably be connected to religion.

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; THE 1987 CONSTITUTION; BILL OF RIGHTS; FREEDOM OF RELIGION; NON-ESTABLISHMENT CLAUSE; THE STATE HAS FUNDAMENTAL DUTIES TO RESPECT

THE FREE EXERCISE OF ANY RELIGIOUS FAITH, AND TO NOT ESTABLISH, ENDORSE, OR FAVOR ANY RELIGION.— The non-establishment clause is found in Article III, Section 5 of the Constitution, thus: Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights. Based on this provision, the State has two (2) fundamental duties: to respect the free exercise of any religious faith; and to not establish, endorse, or favor any religion.

2. ID.; ID.; ID.; LEGISLATIVE DEPARTMENT; THE APPROPRIATION OR EMPLOYMENT OF PUBLIC MONEY OR PROPERTY FOR THE USE, BENEFIT, OR SUPPORT OF ANY RELIGION IS PROHIBITED. — x x x [A]rticle VI, Section 29(2) of the Constitution prohibits the appropriation or employment of public money or property for the use, benefit, or support of any religion: Section 29. ... (2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium. The text of Article VI, Section 29(2) allows for no qualification.

3. ID.; ID.; ID.; DECLARATION OF PRINCIPLES AND STATE POLICIES; SEPARATION OF STATE AND CHURCH *VIS-À-VIS* FREEDOM OF RELIGION; THE GOVERNMENT'S ISSUANCE OF STAMPS IN FAVOR OF IGLESIA NI CRISTO FAVORS ITS DOMINANT RELIGIOUS TEACHINGS DISGUISED THROUGH ITS ANNIVERSARY; THE SPONSORSHIP OF ANY FAITH THROUGH A COMMEMORATIVE STAMP UNWITTINGLY FURTHERS PROSELYTIZATION.— It is true that this Court has recognized one instance when governmental action may be inextricably linked with an event that is religious in character. In the old case of *Aglipay v. Ruiz*, this Court allowed the "incidental endorsement" of a

religion so long as the challenged act has a secular purpose. x x x. Identifying the secular purpose in an image and projecting its dominance are not enough. This mode of analysis invites courts to use their subjectivities in deciding how to look at an image. In a country with a dominant religion, this spells disaster for those whose faiths are not in the majority. It will also further marginalize those whose spiritual beliefs are not theistic, e.g. Buddhists, or those who are agnostic or atheistic. Iglesia ni Cristo's ability to fund the printing of the centennial stamps attests to its cultural dominance. It also reveals that it has the resources to mark its own anniversary through means other than the use of government facilities. Therefore, the government's issuance of stamps in its favor has no other purpose other than to favor its dominant religious teachings disguised through its anniversary. Our reading of the non-establishment clause should not be as superficial. Dominant religions may command their faithful to vote as a block for certain political candidates. In doing so, they can slowly erode the separation of church and State, sacrificing genuine sovereignty among our people. Therefore, the sponsorship of any faith through a commemorative stamp unwittingly furthers proselytization.

4. **ID.; ID.; ID.; ID.; THE SEPARATION OF CHURCH AND STATE SHALL BE INVIOLABLE; SHOULD THERE BE ;A LINK BETWEEN GOVERNMENTAL ACTION AND RELIGION, THE BURDEN IS ON THE GOVERNMENT TO SHOW THAT THE LINK IS INEVITABLE AND UNAVOIDABLE.—** *Aglipay* and the proposed decision record the pliability of our State to major religious denominations. In the guise of looking for the dominant secular purpose or benevolent neutrality, current doctrine may only be favoring these religions. Furthermore, it is not clear as to who decides that a particular religion is officially part of government history. In lieu of subjectivity, we must return to the Constitution in Article II, Section 6: the separation of church and State shall be inviolable. Should there be a link between governmental action and religion, the burden is on the government to show that the link is inevitable and unavoidable. Our Bill of Rights protects those who do not count themselves as part of the dominant religious faiths. Their beliefs, though fervent, may not translate to huge resources allowing them to influence politics and the use of the State's resources. Yet, it is for them that the

assurance of separation of church and state has been made. Reifying faith in *Aglipay* does the exact opposite.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for respondents.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated July 24, 2015 and the Resolution[3] dated March 8, 2016 of the Court of Appeals (CA) in CA-G.R. CV No. 103151.

The Antecedents

On May 10, 2014, respondent Philippine Postal Corporation (PhilPost) issued a stamp commemorating Iglesia ni Cristo's (INC's) Centennial Celebration. The design of the stamp showed a photo of INC founder, the late Felix Y. Manalo (Manalo) with the designation on the left side containing the words "*Felix Y. Manalo, 1886-1963 First Executive Minister of Iglesia ni Cristo*", with the Central Temple of the religious group at the background. At the right side of Manalo's photo is the INC's centennial logo which contained a torch enclosed by a two concentric circles containing the words "*IGLESIA Nl CRISTO CENTENNIAL 1914-2014*".[4]

On June 16, 2014, petitioner Renato V. Peralta (petitioner) filed a complaint[5] for injunction with the Regional Trial Court

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[1] *Rollo*, pp. 3-14.

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with the concurrence of Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting. CA *rollo*, pp. 79-94.

[3] *Id*. at 135-140.

[4] *Rollo*, p. 7; CA *rollo*, p. 80.

[5] Records, pp. 1-10.

(RTC), Br. 33 of Manila, assailing the constitutionality of the printing, issuance and distribution of the INC commemorative centennial stamps, allegedly paid for by respondent PhilPost using public funds.

In his complaint, petitioner alleged that the printing and issuance of the INC commemorative stamp involved disbursement of public funds, and violated Section 29(2) of Article VI[6] of the 1987 Constitution. He argued that respondents' act of releasing the said stamps was unconstitutional because it was tantamount to sponsorship of a religious activity; it violated the separation of the Church and the State; and the non-establishment of religion clause. Thus, petitioner prayed that respondents be restrained from issuing and distributing the INC commemorative stamps.[7]

After service of summons to respondents PhilPost and its Board of Directors, and a hearing on the petitioner's application for Temporary Restraining Order (TRO), the RTC denied the same in its Order[8] dated June 23, 2014.

Respondents filed their Answer,[9] maintaining that no public funds were disbursed in the printing of the INC commemorative stamps. They alleged that there was a Memorandum of Agreement[10] (MOA) dated May 7, 2014 executed between PhilPost and INC, where it was provided that the costs of printing

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[6] **Section 29.** x x x

x x x x x x x x x

2. No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

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[7] Records, pp. 4-7.

[8] *Id*. at 53-60.

[9] *Id*. at 105-112.

[10] *Id*. at 88-90.

will be borne by INC. They claimed that the proceeds of the sale of the stamps will not redound to the sole benefit of INC.[11] The printing, according to them, is part of PhilPost's philatelic products, which will promote tourism in the country because it will attract people from all over the world.[12] They maintained that any sectarian benefit to the INC is merely incidental. As to petitioner's prayer for injunctive relief, respondents contended that petitioner failed to demonstrate irreparable injury, and that he cannot seek to restrain the printing and distribution of the stamps as these were already printed prior to the filing of the complaint.

On July 25, 2014, the RTC issued an Order,[13] denying petitioner's application for the issuance of a preliminary injunction and dismissing the action. It ruled that it was not a taxpayer's suit and that it did not violate Section 29 (2), Article VI of the 1987 Philippine Constitution.[14]

Petitioner appealed the RTC's decision with the CA, but the same was denied in its July 24, 2015 decision. The CA ruled that although the action is considered as a taxpayer's suit, the printing and issuance of the commemorative stamp did not violate the Constitution.[15]

Aggrieved, petitioner filed a motion for reconsideration[16] of the CA's decision, but the same was denied for lack of merit in the CA's March 8, 2016 Resolution.

Hence, the instant petition.

The Court's Ruling

Petitioner's arguments

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[11] *Id*. at 109.

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

[13] Penned by Presiding Judge Reynaldo G. Ros. CA *rollo*, pp. 30-31.

[14] As mentioned in the Petition of Renato V. Peralta. *Rollo*, p. 3.

[15] *Id*.

[16] CA *rollo*, pp. 101-112.

Petitioner reiterates his argument that the CA failed to judiciously analyze the design of the INC commemorative stamp as to conclude that the same is "*more historical than religious*". He argues that the INC stamp, which commemorates the 100th year founding of INC, particularly the INC Central Temple and centennial logo, is purely religious. He explains that in *Aglipay vs. Ruiz*,[17] the stamp deleted the grapevine with stalks of wheat in its design, and merely contained the Philippine map and the location of the City of Manila, with inscription, "*Seat XXXIII International Eucharistic Congress, February 3-7, 1937*". For petitioner, what was emphasized in the stamp subject of the case of *Aglipay vs. Ruiz*[18] was Manila, and not the Eucharistic Congress. Meanwhile, in this case, the INC stamp purportedly emphasized the INC as a religious institution.

Petitioner likewise cited the MOA between INC and respondent PhilPost to emphasize the religious purpose of printing the stamp.

PhilPost's comment

For respondents' part, they maintained the constitutionality of the stamps issued. *First*, they claimed that the printing, issuance and distribution of the assailed INC commemorative stamps can neither be restrained nor enjoined, because they have become *fait accompli*.[19]

Respondents also questioned petitioner's standing as a taxpayer. They point out that there is no illegal disbursement of public funds, as the cost of printing and issuance of the assailed commemorative stamps was exclusively borne by INC for its consumption, and no public funds were disbursed. The remaining pieces of stamps were used for sale by PhilPost to its postal clients. It emphasized that the sales proceeds were not intended to support the INC as a religious sect, but to promote the country as the chosen venue of an international commemorative event,

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[17] 64 Phil. 201, 209 (1937).

[18] *Id*.

[19] *Rollo*, p. 32.

given INC's presence in other countries. Respondents also pointed out that petitioner has not shown that he will suffer a direct injury on account of the printing and issuance of the INC commemorative stamps. Respondents also agreed with the findings of the CA that there is intrinsic historical value in the design of the INC stamp, considering that INC is a Filipino institution.[20]

Lastly, respondents contend that Section 29(2), Article VI of the 1987 Constitution does not apply, as it pertains to the Legislative Department. Respondents alleged that the facts in the cases of *Aglipay vs. Ruiz* and *Manosca vs. Court of Appeals*[21] are different from the case at bar. In *Aglipay*, the funds originated from the Insular Treasury — from funds not otherwise appropriated. Meanwhile, *Manosca* pertained to an expropriation case, hence, entailed appropriation of public funds. In this case, however, respondents emphasized that PhilPost is a government owned and controlled corporation (GOCC), which operates on its own capital. Thus, when INC sought the printing of the assailed stamps, from its own funds and for its primary use, the prohibition was not violated. It alleged that the printing of the INC stamps was done as a fund-raising activity, and not to endorse or benefit any religion.

Based from the aforesaid arguments of the parties, the issue of this case centers on the constitutionality of the respondents' act in issuing and selling postage stamps commemorating the INC's centennial celebration.

The petition lacks merit.

Procedural Aspect —

It is doctrinal[22] that the power of judicial review is subject to the following limitations, *viz*: (1) there must be an actual

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[20] *Id*. at 32-35.

[21] 322 Phil. 442 (1996).

[22] See *Lawyers Against Monopoly and Poverty (LAMP), et al. v. The Secretary of Budget and Management, et al.*, 686 Phil. 357, 369 (2012);

case or controversy calling for the exercise of judicial power; (2) the constitutionality of the questioned act must be raised by the proper party, *i.e.*, the person challenging the act must have the standing to question the validity of the subject act or issuance; otherwise stated, 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 opportunity; and (4) the issue of constitutionality must be the very *lis mota* (the cause of the suit or action) of the case, *i.e.*, the decision on the constitutional or legal decision must be necessary to the determination of the case itself.

Of these four, the first and second conditions will be the focus of Our discussion.

Actual case or controversy —

Whether under the traditional or expanded setting, the Court's judicial review power, pursuant to Section 1, Article VIII of the Constitution, is confined to actual cases or controversies. We expounded on this requisite in *SPARK, et al. v. Quezon City, et al.*,[23] thus:

> 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. In other words, there must be a contrariety of legal rights that can be interpreted and enforced on the basis of existing law and jurisprudence. According to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act.
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> Corollary to the requirement of an actual case of controversy is the requirement of ripeness. A question is ripe for adjudication when

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Advocates For Truth in Lending, Inc., et al. v. Bangko Sentral Monetary Board, et al., 701 Phil. 483, 494 (2013); and *Joya v. Philippine Commission on Good Government (PCGG)*, 296-A Phil. 595, 602 (1993).

[23] G.R. No. 225442, August 8, 2017.

the act being challenged has had a direct adverse effect on the individual challenging it. For a case to be considered ripe for adjudication, it is a prerequisite that something has 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 himself as a result of the challenged action. He must show that he has sustained or is immediately in danger of sustaining some direct injury as a result of the act complained of. [Citations omitted.]

Applying these principles, this Court finds that there exists an actual justiciable controversy in this case.

Here, it is evident that PhilPost — under the express orders of then President Benigno Aquino III (President Aquino III), through Proclamation No. 815 — printed, issued and sold the INC commemorative stamps. PhilPost's act gave rise to petitioner's injunction suit in which he made the following allegations: (1) the printing of the INC commemorative stamps violated Sec. 29(2), Art. VI of the 1987 Constitution; and (2) the purpose of the stamp as indicated in the MOA is "tantamount to sponsorship" of a religious activity, violative of the non-establishment clause. These assertions are no longer hypothetical in nature, but already amount to a legal claim susceptible for adjudication.

Respondents claim that the injunction suit filed by petitioner has become moot since the acts sought to be enjoined — printing, issuance and distribution of the INC commemorative stamps— —was *fait accompli*.[24] They anchored their claim on Our ruling in *Go v. Looyuko*,[25] which essentially states that when the events sought to be prevented by injunction have already happened, nothing more could be enjoined.

We clarify.

While this Court agrees that the issue on the remedy of injunction availed of by the petitioner may no longer be viable

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[24] *Meaning, an accomplished or consummated act.*

[25] 563 Phil. 36, 68 (2007).

to enjoin PhilPost's acts, considering that the act sought to be enjoined already transpired, this does not necessarily mean that the question on the constitutionality of the said acts would automatically be rendered academic.

It is precisely PhilPost's issuance, printing and sale of the INC commemorative stamps that created a justiciable controversy since the said acts allegedly violated Sec. 29(2), Art. VI of the 1987 Constitution. Had the petitioner filed the injunction suit prior to the implementation of Proclamation No. 815, any resolution by this Court on the question of PhilPost's printing of the INC commemorative stamps would merely be an advisory opinion, veritably binding no one, for it falls beyond the realm of judicial review.

Nonetheless, even if the case has indeed been rendered moot, this Court can still pass upon the main issue. As We have pronounced in the case of *Prof. David v. Pres. Macapagal-Arroyo*,[26]

> [T]he moot-and-academic principle is not a magical formula that automatically dissuades courts from resolving cases, because they will decide cases, otherwise moot and academic, if they find that: (a) there is a grave violation of the Constitution; (b) the situation is of exceptional character, and paramount public interest is involved; (c) the constitutional issue raised requires formulation of controlling principles to guide the bench, the bar, and the public; or (d) a case is capable of repetition yet evading review.[27]

This Court, in *Mattel, Inc. v. Francisco, et al.*,[28] enumerated several cases where the exceptions to the moot-and-academic principle were applied; thus:

> x x x in *Constantino v. Sandiganbayan (First Division)*,[29] Constantino, a public officer, and his co-accused, Lindong, a private citizen, filed separate appeals from their conviction by the

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[26] 522 Phil. 705 (2006).

[27] *Id*. at 754.

[28] 582 Phil. 494 (2008).

[29] 559 Phil. 622 (2007).

Sandiganbayan for violation of Section 3(e) of Republic Act No. 3019 or the Anti-Graft and Corrupt Practices Act. While Constantino died during the pendency of his appeal, the Court still ruled on the merits thereof, considering the exceptional character of the appeals of Constantino and Lindong in relation to each other; that is, the two petitions were so intertwined that the absolution of the deceased Constantino was determinative of the absolution of his co-accused Lindong.[30]

In *Public Interest Center, Inc. v. Elma*,[31] the petition sought to declare as null and void the concurrent appointments of Magdangal B. Elma as Chairman of the Presidential Commission on Good Government (PCGG) and as Chief Presidential Legal Counsel (CPLC) for being contrary to Section 13, Article VII and Section 7, par. 2, Article IX-B of the 1987 Constitution. While Elma ceased to hold the two offices during the pendency of the case, the Court still ruled on the merits thereof, considering that the question of whether the PCGG Chairman could concurrently hold the position of CPLC was one capable of repetition.[32]

In *David v. Arroyo*,[33] seven petitions for *certiorari* and prohibition were filed assailing the constitutionality of the declaration of a state of national emergency by President Gloria Macapagal-Arroyo. While the declaration of a state of national emergency was already lifted during the pendency of the suits, this Court still resolved the merits of the petitions, considering that the issues involved a grave violation of the Constitution and affected the public interest. The Court also affirmed its duty to formulate guiding and controlling constitutional precepts, doctrines or rules, and recognized that the contested actions were capable of repetition.[34]

In *Pimentel, Jr. v. Exec. Secretary Ermita*,[35] the petition questioned the constitutionality of President Gloria Macapagal-Arroyo's

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[30] *Mattel v. Francisco*, *supra* note 28, *id*. at 502.

[31] 523 Phil. 550 (2006).

[32] *Mattel v. Francisco*, *supra* note 28, *id*. at 502.

[33] 522 Phil. 705 (2006).

[34] *Mattel v. Francisco*, *supra* note 28, *id.* at 502-503.

[35] 509 Phil. 567 (2005).

appointment of acting secretaries without the consent of the Commission on Appointments while Congress was in session. While the President extended *ad interim* appointments to her appointees immediately after the recess of Congress, the Court still resolved the petition, noting that the question of the constitutionality of the President's appointment of department secretaries in acting capacities while Congress was in session was one capable of repetition.[36]

In *Atienza v. Villarosa*,[37] the petitioners, as Governor and Vice-Governor, sought for clarification of the scope of the powers of the Governor and Vice-Governor under the pertinent provisions of the Local Government Code of 1991. While the terms of office of the petitioners expired during the pendency of the petition, the Court still resolved the issues presented to formulate controlling principles to guide the bench, bar and the public.[38]

In *Gayo v. Verceles*,[39] the petition assailing the dismissal of the petition for *quo warranto* filed by Gayo to declare void the proclamation of Verceles as Mayor of the Municipality of Tubao, La Union during the May 14, 2001 elections, became moot upon the expiration on June 30, 2004 of the contested term of office of Verceles. Nonetheless, the Court resolved the petition since the question involving the one-year residency requirement for those running for public office was one capable of repetition.[40]

In *Albaña v. Commission on Elections*,[41] the petitioners therein assailed the annulment by the Commission on Elections of their proclamation as municipal officers in the May 14, 2001 elections. When a new set of municipal officers was elected and proclaimed after the May 10, 2004 elections, the petition was mooted but the Court resolved the issues raised in the petition in order to prevent a repetition thereof and to enhance free, orderly, and peaceful elections.[42]

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[36] *Mattel v. Francisco*, *supra* note 28 at 503.

[37] 497 Phil. 689 (2005).

[38] *Mattel v. Francisco*, *supra* note 28 at 503.

[39] 492 Phil. 592 (2005).

[40] *Mattel v. Francisco*, *supra* note 28 at 503.

[41] 478 Phil. 941 (2004).

[42] *Mattel v. Francisco*, *supra* note 28, *id*. at 504.

Additionally, in *Arvin R. Balag v. Senate of the Philippines*,[43] We likewise mentioned the following cases:

> x x x in *Republic v. Principalia Management and Personnel Consultants, Inc.*,[44] the controversy therein was whether the Regional Trial Court (RTC) had jurisdiction over an injunction complaint filed against the Philippine Overseas Employment Administration (POEA) regarding the cancellation of the respondent's license. The respondent then argued that the case was already moot and academic because it had continuously renewed its license with the POEA. The Court ruled that although the case was moot and academic, it could still pass upon the main issue for the guidance of both bar and bench, and because the said issue was capable of repetition.
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> x x x in *Regulus Development, Inc. v. Dela Cruz*,[45] the issue therein was moot and academic due to the redemption of the subject property by the respondent. However, the Court ruled that it may still entertain the jurisdictional issue of whether the RTC had equity jurisdiction in ordering the levy of the respondent's property since it posed a situation capable of repetition yet evading judicial review.

Based on these precedents, the Court has the duty to formulate guiding and controlling constitutional precepts, doctrines or rules. It has the symbolic function of educating the bench and the bar, and in the present petition, the parties involved, on the application of the constitutional provisions allegedly violated *vis-a-vis* the printing and issuance of the INC commemorative stamps. There is no question that the issues being raised affect the public interest, involving as they do, the alleged misuse of public funds and the non-establishment clause which is one of the constitutional guarantees of freedom of religion. This petition calls for a clarification of constitutional principles. Perforce, there is a need to adjudicate the instant case.

Legal Standing —

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[43] G.R. No. 234608, July 3, 2018.

[44] 768 Phil. 334 (2015).

[45] 779 Phil. 75 (2016).

In *Mamba, et al. v. Lara, et al.*,[46] this Court explained the legal standing of a taxpayer in this wise:

> A taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that the public money is being deflected to any improper purpose, or that there is wastage of public funds through the enforcement of an invalid or unconstitutional law. A person suing as a taxpayer, however, must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation. He must also prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation and that he will sustain a direct injury because of the enforcement of the questioned statute or contract. x x x. [Citations omitted.][47]

Here, petitioner made an allegation of PhilPost's misuse of public funds in the printing of 1,200,000 INC commemorative stamps. Petitioner pointed out that out of the 1,200,000 commemorative stamps printed, only 50,000 pieces were shouldered by the INC based on its MOA with PhilPost. Petitioner, thus, concluded that the production of the additional 1,150,000 stamps were made possible only with the use of public funds and property. On this basis, petitioner indeed, is invested with personality to institute the complaint for injunction with the RTC. As correctly observed by the CA:

> [Petitioner] Peralta contends that as the stamps covered by the MOA and paid for by the INC pertain only to 50,000 pieces, public funds and property were used by [respondent] Philpost in the printing and distribution of the remaining 1,150,000 stamps. For purposes of determining capacity to sue as a taxpayer, it is sufficient that [Petitioner] Peralta made allegations of such nature.[48]

Substantive Aspect —

The non-establishment of religion clause is not equivalent to indifference to religion

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[46] 623 Phil. 63 (2009).

[47] *Id*. at 76.

[48] CA *rollo*, p. 84.

At the outset, this Court notes that the petition has argued, in length, about how the appellate court apparently erred in failing to find the design of the stamp unconstitutional. Citing *Aglipay vs. Ruiz*, petitioner insists that the religious nature of the INC stamp makes the same unconstitutional, since it violates the prohibition against the State from establishing a religion.

It is at once apparent that petitioner has summarily equated religion to unconstitutionality. Certainly, examination of jurisprudence, both here and in the United States, as well as the context over which this stamp has been issued, inevitably leads this Court to agree with the CA, and uphold the issuance of the INC commemorative stamp.

True, fundamental to the resolution of this case is the policy of the State on the inviolability of the principle of separation of the church and the state. Justice Isagani Cruz explained the rationale of this principle in this wise:

> The rationale of the rule is summed up in the familiar saying, "Strong fences make good neighbors." The idea is to delineate the boundaries between the two institutions and, thus, avoid encroachments by one against the other because of a misunderstanding of the limits of their respective exclusive jurisdictions. The demarcation line calls on the entities to "render therefore unto Caesar the things that are Caesar's and unto God the things that are God's."[49]

The 1987 Constitution expressly provides for the following provisions, giving life to the policy of separation of the Church and the State; thus:

> ARTICLE II
> DECLARATION OF PRINCIPLES AND STATE POLICIES
> PRINCIPLES
>
> x x x x x x x x x
>
> Section 6. The separation of Church and State shall be inviolable.
>
> x x x x x x x x x

[49] Cruz, *Philippine Political Law* (2002), p. 68.

ARTICLE III
BILL OF RIGHTS

x x x x x x x x x

Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

x x x x x x x x x

ARTICLE VI

THE LEGISLATIVE DEPARTMENT

x x x x x x x x x

Section 29.
(1) x x x x x x x x x

(2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

x x x x x x x x x

The Constitutional "wall" between the Church and the State, has been jurisprudentially recognized to stem from the country's unfortunate collective experience when the two institutions are commingled into one entity, exercising both power and influence, oftentimes to the detriment of the populace.

However, as apparent from the Constitution, the "wall" between the Church and the State exists along with the recognition of freedom of religion. In fact, review of jurisprudence would reveal that this Court has carefully weighed this principles as to allow the broadest exercise of religious freedom without infringing the non-establishment clause.

In upholding the issuance of the Thirty-third International Eucharistic Congress commemorative stamp, this Court in *Aglipay v. Ruiz*[50] recognized how religion is integrated in the Filipino way of life:

> The more important question raised refers to the alleged violation of the Constitution by the respondent in issuing and selling postage stamps commemorative of the Thirty-third International Eucharistic Congress. It is alleged that this action of the respondent is violative of the provisions of section 13, subsection 3, Article VI, of the Constitution of the Philippines, which provides as follows:
>
> > "No public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, secretarian institution, or system of religion, or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces or to any penal institution, orphanage, or leprosarium."
>
> The prohibition herein expressed is a direct corollary of the principle of separation of church and state. Without the necessity of adverting to the historical background of this principle in our country, it is sufficient to say that our history, not to speak of the history of mankind, has taught us that the union of church and state is prejudicial to both, for ocassions might arise when the estate (sic) will use the church, and the church the state, as a weapon in the furtherance of their respective ends and aims. The Malolos Constitution recognized this principle of separation of church and state in the early stages of our constitutional development; it was inserted in the Treaty of Paris between the United States and Spain of December 10, 1898, reiterated in President McKinley's Instructions to the Philippine Commission, reaffirmed in the Philippine Bill of 1902 and in the Autonomy Act of August 29, 1916, and finally embodied in the Constitution of the Philippines as the supreme expression of the Filipino people. It is almost trite to say now that in this country we enjoy both religious and civil freedom. All the officers of the Government, from the highest to the lowest, in taking their oath to support and defend the Constitution, bind themselves to recognize and respect the constitutional guarantee

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[50] *Supra* note 17.

of religious freedom, with its inherent limitations and recognized implications. It should be stated that what is guaranteed by our Constitution is religious liberty, not mere religious toleration.

Religious freedom, however, as a constitutional mandate is not inhibition of profound reverence for religion and is not denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized. And, in so far as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. When the Filipino people, in the preamble of their Constitution, implored "the aid of *Divine Providence*, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty and democracy," they thereby manifested their intense religious nature and placed unfaltering reliance upon Him who guides the destinies of men and nations. **The elevating influence of religion in human society is recognized here as elsewhere. In fact, certain general concessions are indiscriminately accorded to religious sects and denominations.** Our Constitution and laws exempt from taxation properties devoted exclusively to religious purposes (sec. 14, subsec. 3, Art. VI, Constitution of the Philippines and sec. 1, subsec. 4, Ordinance appended thereto; Assessment Law, sec. 344, par. [c]. Adm. Code). Sectarian aid is not prohibited when a priest, preacher, minister or other religious teacher or dignitary as such is assigned to the armed forces or to any penal institution, orphanage or leprosarium (sec. 13, subsec. 3, Art. VI, Constitution of the Philippines). Optional religious instruction in the public schools is by constitutional mandate allowed (sec. 5, Art. XIII, Constitution of the Philippines, in relation to sec. 928, Adm. Code). Thursday and Friday of Holy Week, Thanksgiving Day, Christmas Day, and Sundays are made legal holidays (sec. 29, Adm. Code) because of the secular idea that their observance is conclusive to beneficial moral results. The law allows divorce but punishes polygamy and bigamy; and certain crimes against religious worship are considered crimes against the fundamental laws of the state (*see* arts. 132 and 133, Revised Penal Code).[51] (Emphasis ours)

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[51] *Id*. at 205-207.

In *Iglesia ni Cristo vs. Court of Appeals*,[52] this Court upheld the MTRCB's regulatory authority over religious programs but ultimately upheld the contents of the INC's television program which attacked other religions, *viz*:

> The law gives the Board the power to screen, review and examine all "television programs." By the clear terms of the law, the Board has the power to "approve, delete xxx and/or prohibit the xxx exhibition and/or television broadcast of xxx television programs xxx." The law also directs the Board to apply "contemporary Filipino cultural values as standard" to determine those which are objectionable for being "immoral, indecent, contrary to law and/or good customs, injurious to the prestige of the Republic of the Philippines and its people, or with a dangerous tendency to encourage the commission of violence or of a wrong or crime."
>
> Petitioner contends that the term "television program" should not include religious programs like its program "Ang Iglesia ni Cristo." A contrary interpretation, it is urged, will contravene Section 5, Article III of the Constitution which guarantees that "no law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed."
>
> We reject petitioner's submission which need not set us adrift in a constitutional voyage towards an uncharted sea. Freedom of religion has been accorded a preferred status by the framers of our fundamental laws, past and present We have affirmed this preferred status well aware that it is "designed to protect the broadest possible liberty of conscience, to allow each man to believe as his conscience directs, to profess his beliefs, and to live as he believes he ought to live, consistent with the liberty of others and with the common good." We have also laboriously defined in our jurisprudence the intersecting umbras and penumbras of the right to religious profession and worship. To quote the summation of Mr. Justice Isagani Cruz, our well-known constitutionalist:
>
> Religious Profession and Worship
>
> The right to religious profession and worship has a two-fold aspect, *viz*., freedom to believe and freedom to act on one's

[52] 328 Phil. 893 (1996).

beliefs. The first is absolute as long as the belief is confined within the realm of thought. The second is subject to regulation where the belief is translated into external acts that affect the public welfare.

(1) Freedom to Believe

The individual is free to believe (or disbelieve) as he pleases concerning the hereafter. He may indulge his own theories about life and death; worship any god he chooses, or none at all; embrace or reject any religion; acknowledge the divinity of God or of any being that appeals to his reverence; recognize or deny the immortality of his soul — in fact, cherish any religious conviction as he and he alone sees fit. However absurd his beliefs may be to others, even if they be hostile and heretical to the majority, he has full freedom to believe as he pleases. He may not be required to prove his beliefs. He may not be punished for his inability to do so. Religion, after all, is a matter of faith. Men may believe what they cannot prove. Every one has a right to his beliefs and he may not be called to account because he cannot prove what he believes.

(2) Freedom to Act on One's Beliefs

But where the individual externalizes his beliefs in acts or omissions that affect the public, his freedom to do so becomes subject to the authority of the State. As great as this liberty may be, religious freedom, like all the other rights guaranteed in the Constitution, can be enjoyed only with a proper regard for the rights of others. It is error to think that the mere invocation of religious freedom will stalemate the State and render it impotent in protecting the general welfare. The inherent police power can be exercised to prevent religious practices inimical to society. And this is true even if such practices are pursued out of sincere religious conviction and not merely for the purpose of evading the reasonable requirements or prohibitions of the law.

Justice Frankfurter put it succinctly: The constitutional provision on religious freedom terminated disabilities, it did not create new privileges. It gave religious liberty, not civil immunity. Its essence is freedom from conformity to religious dogma, not freedom from conformity to law because of religious dogma.[53]

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[53] *Id*. at 923-925.

In *Estrada vs. Escritor*,[54] this Court encapsulated its policy towards these kinds of disputes as "benevolent neutrality":

> By adopting the above constitutional provisions on religion, the Filipinos manifested their adherence to the *benevolent neutrality* approach in interpreting the religion clauses, an approach that looks further than the secular purposes of government action and examines the effect of these actions on religious exercise. ***Benevolent neutrality*** **recognizes the religious nature of the Filipino people and the elevating influence of religion in society; at the same time, it acknowledges that government must pursue its secular goals.** In pursuing these goals, however, government might adopt laws or actions of general applicability which inadvertently burden religious exercise. ***Benevolent neutrality*** **gives room for *accommodation* of these religious exercises as *required* by the Free Exercise Clause.** It allows these breaches in the wall of separation to uphold religious liberty, which after all is the integral purpose of the religion clauses. The case at bar involves this first type of *accommodation* where an exemption is sought from a law of general applicability that inadvertently burdens religious exercise.
>
> *Although our constitutional history and interpretation mandate benevolent neutrality, benevolent neutrality does not mean that the Court ought to grant exemptions every time a free exercise claim comes before it.* ***But it does mean that the Court will not look with hostility or act indifferently towards religious beliefs and practices and that it will strive to accommodate them when it can within flexible constitutional limits;*** *it does mean that the Court will not simply dismiss a claim under the Free Exercise Clause because the conduct in question offends a law or the orthodox view for this precisely is the protection afforded by the religion clauses of the Constitution, i.e., that in the absence of legislation granting exemption from a law of general applicability, the Court can carve out an exception when the religion clauses justify it.* While the Court cannot adopt a doctrinal formulation that can eliminate the difficult questions of judgment in determining the degree of burden on religious practice or importance of the state interest or the sufficiency of the means adopted by the state to pursue its interest, the Court can set a doctrine on the ideal towards which religious clause jurisprudence should be directed. *We here lay down the doctrine that in Philippine jurisdiction,*

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[54] 455 Phil. 411 (2003).

we adopt the benevolent neutrality approach not only because of its merits as discussed above, but more importantly, because our constitutional history and interpretation indubitably show that benevolent neutrality is the launching pad from which the Court should take off in interpreting religion clause cases*. The ideal towards which this approach is directed is the protection of religious liberty "not only for a minority, however small-not only for a majority, however large—but for each of us" to the greatest extent possible within flexible constitutional limits.*[55] (Emphasis ours)

Verily, where the Court has been asked to determine whether there has been an undue enchroachment of this Constitutionally forged "wall", this Court has adopted a stance of "benevolent neutrality". Rightfully so, for this incorporates the Constitutional principle of separation of the Church and the State while recognizing the people's right to express their belief or non-belief of a Supreme Being. This Court, applying the view of benevolent neutrality, declared that there was no violation of the non-establishment of religion clause in the recent case of *Re: Letter Of Tony Q. Valenciano*.[56]

Even in the U. S., whose jurisprudence are of persuasive weight in this jurisdiction, it can be gleaned that the religious nature of certain governmental acts does not automatically result in striking them as unconstitutional for violation of the non-establishment clause, particularly if the act involves constitutionally protected form of exercise of religious freedom.

The "Lemon test", which has been extensively applied by the U. S. Supreme Court in issues involving the determination of non-establishment of religion clause originated from the case of *Lemon vs. Kurtzman*.[57] In that case, the Court used a three-pronged test to adjudge whether the assailed governmental act violated the First Amendment, as follows:

1. The statute must have a secular legislative purpose;

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[55] *Id*. at 573-575.

[56] A.M. No. 10-4-19-SC, March 7, 2017, 819 SCRA 313.

[57] 403 U.S. 602 (1971).

2. Its principal or primary effect must be one that neither advances nor inhibits religion; and,
3. The statute must not foster "an excessive government entanglement with religion."

In that case, the Court ruled that the state laws of Rhode Island and Pennsylvania providing financial aid and resources to teachers of parochial private schools, who will teach non-secular subjects to public schools is unconstitutional. This was because the effect of the law was to require the individual states to have continuous monitoring and surveillance of teacher-beneficiaries, in order to ensure that they would not espouse Catholic teachings in their classes. Such scenario, according to the Supreme Court, constitutes as an excessive entanglement of government in matters of religion. In that case, however, the U. S. High Court admitted that drawing the line between allowable and prohibited State acts delving on religion is not a matter of drawing conclusions from well-defined formula, to wit:

> Our prior holdings do not call for total separation between church and state; total separation is not possible in an absolute sense. Some relationship between government and religious organizations is inevitable. *Zorach v. Clauson*, 343 U.S. 306,343 U.S. 312 (1952); *Sherbert v. Verner*, 374 U. S. 398, 374 U.S. 422 (1963) (HARLAN, J., dissenting). Fire inspections, building and zoning regulations, and state requirements under compulsory school attendance laws are examples of necessary and permissible contacts. Indeed, under the statutory exemption before us in *Walz*, the State had a continuing burden to ascertain that the exempt property was, in fact, being used for religious worship. **Judicial caveats against entanglement must recognize that the line of separation, far from being a "wall," is a blurred, indistinct, and variable barrier depending on all the circumstances of a particular relationship.**
>
> This is not to suggest, however, that we are to engage in a legalistic minuet in which precise rules and forms must govern. **A true minuet is a matter of pure form and style, the observance of which is itself the substantive end.** Here we examine the form of the relationship for the light that it casts on the substance. (Emphasis ours)

Meanwhile, in upholding the use of a creche or Nativity scene in its annual Christmas display by the City of Pawtucket, Rhode Island, the U. S. Supreme Court, in *Lynch vs. Donnelly*,[58] explained that the separation of the Church and the State should not be viewed to mean absolute detachment of each other. The Court stated that:

> This Court has explained that the purpose of the Establishment and Free Exercise Clauses of the First Amendment is "to prevent, as far as possible, the intrusion of either [the church or the state] into the precincts of the other."
>
> x x x x x x x x x
>
> In every Establishment Clause case, **we must reconcile the inescapable tension between the objective of preventing unnecessary intrusion of either the church or the state upon the other, and the reality that, as the Court has so often noted, total separation of the two is not possible**.
>
> The Court has sometimes described the Religion Clauses as erecting a "wall" between church and state, see, e.g., *Everson v. Board of Education*, 330 U.S. 1, 330 U.S. 18 (1947). The concept of a "wall" of separation is a useful figure of speech probably deriving from views of Thomas Jefferson. The metaphor has served as a reminder that the Establishment Clause forbids an established church or anything approaching it. But the metaphor itself is not a wholly accurate description of the practical aspects of the relationship that in fact exists between church and state.
>
> **No significant segment of our society, and no institution within it can exist in a vacuum or in total or absolute isolation from all the other parts, much less from government.** "It has never been thought either possible or desirable to enforce a regime of total separation. . . ." *Committee for Public Education & Religious Liberty v. Nyquist*, 413 U.S. 756, 413 U.S. 760 (1973). Nor does the Constitution require complete separation of church and state; it affirmatively mandates accommodation, not merely tolerance, of all religions, and forbids hostility toward any. See, e.g., *Zorach v. Clauson*, 343 U.S. 306, 343 U.S. 314, 343 U.S. 315 (1952); *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203, 333 U.S., 211 (1948).

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[58] 465 U.S. 668 (1984).

Anything less would require the "callous indifference" we have said was never intended by the Establishment Clause." xxx (Emphasis Ours)

The U. S. Supreme Court then went on to state how its history and tradition has allowed a healthy interaction between the State and religion, so long as the State does not commit acts that are solely motivated by religious considerations.

Another important lesson in *Lynch* was the Court's consideration of the context within which the government has issued a legislation or pursued an act. In that case, the Court found that the inclusion of the creche in the annual Christmas display was merely a recognition of the historical origins of the Christmas holiday.

Having in mind the above-stated rulings pertinent to the principle of non-establishment of religion clause, We proceed to scrutinize the INC commemorative stamp.

The printing of the INC commemorative stamp did not amount to a violation of the non-establishment of religion clause

There is no quibbling that as to the 50,000 stamps ordered, printed and issued to INC, the same did not violate the Constitutional prohibitions separating State matters from religion. Per paragraphs 5 and 6 of the MOA between PhilPost and INC provided that:

x x x x x x x x x

5. Upon signing of this Agreement, INC shall pay in cash or by manager's check an amount equivalent to fifty percent (50%) of the value of the stamps, first day covers and other philatelic products ordered to be purchased by INC, the fifty percent (50%) balance shall be paid upon approval of the final stamp design/s by the PPC Stamps Committee.

6. Unless the total cost of the stamps and other related products ordered by the INC is paid, PPC shall have the authority to hold the printing of the stamps and other philatelic products. Only upon payment of the full amount of the purchased stamps

that the same shall be printed, delivered to INC, circulated and/or sold to collectors and the mailing public.

x x x x x x x x x[59]

It is plain, that the costs for the printing and issuance of the aforesaid 50,000 stamps were all paid for by INC. Any perceived use of government property, machines or otherwise, is *de minimis* and certainly do not amount to a sponsorship of a specific religion.

Also, We see no violation of the Constitutional prohibition on establishment of religion, insofar as the remaining 1,150,000 pieces of stamps printed and distributed by PhilPost.

First, there is no law mandating anyone to avail of the INC commemorative stamps, nor is there any law purporting to require anyone to adopt the INC's teachings. Arguably, while then President Aquino issued Proclamation No. 815, s. 2014, authorizing the issuance of the INC commemorative stamp, the same did not contain any legal mandate endorsing or requiring people to conform to the INC's teachings.

The secular purpose behind the printing of the INC commemorative stamp is obvious from the MOA between INC and Philpost:

MEMORANDUM OF AGREEMENT

x x x x x x x x x

INC has requested PPC to issue, circulate and sell commemorative stamps and other philatelic products **to promote the Centennial of the Iglesia Ni Cristo**, and in honor of its First Executive Minister, Bro. Felix Y. Manalo; (Emphasis ours)

x x x x x x x x x[60]

The centennial celebration of the Iglesia ni Cristo, though arguably involves a religious institution, has a secular aspect.

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[59] Records, p. 89.

[60] *Id*. at 88.

In the old case of *Garces, et al. vs. Hon. Estenzo, etc., et al.*,[61] the Court made a similar pronouncement as to a controversy involving the purchase of a barangay council of a statue of San Vicente Ferrer:

> **The wooden image was purchased in connection with the celebration of the barrio fiesta honoring the patron saint, San Vicente Ferrer, and not for the purpose of favoring any religion nor interfering with religious matters or the religious beliefs of the barrio residents.** One of the highlights of the fiesta was the mass. Consequently, the image of the patron saint had to be placed in the church when the mass was celebrated.
>
> If there is nothing unconstitutional or illegal in holding a fiesta and having a patron saint for the barrio, then any activity intended to facilitate the worship of the patron saint (such as the acquisition and display of his image) cannot be branded as illegal.
>
> As noted in the first resolution, the barrio fiesta **is a socio-religious affair. Its celebration is an ingrained tradition in rural communities. The fiesta relieves the monotony and drudgery of the lives of the masses.**
>
> The barangay council designated a layman as the custodian of the wooden image in order to forestall any suspicion that it is favoring the Catholic church. A more practical reason for that arrangement would be that the image, if placed in a layman's custody, could easily be made available to any family desiring to borrow the image in connection with prayers and novenas.[62] (Emphasis ours)

The printing of the INC commemorative stamp is no different. It is simply an acknowledgment of INC's existence for a hundred years. It does not necessarily equate to the State sponsoring the INC.

As to the use of the government's machinery in printing and distribution of the 1.2 million stamps, this Court does not find that the same amounted to sponsorship of INC as a religion considering that the same is no different from other stamps issued by PhilPost acknowledging persons and events of

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[61] 192 Phil. 36 (1981).

[62] *Id*. at 43-44.

significance to the country, such as those printed celebrating National Artists, past Philippine Presidents, and events of organizations, religious or not. We note that PhilPost has also issued stamps for the Catholic Church such as those featuring Heritage Churches,[63] 15th International Eucharistic Congress,[64] and Pope Francis.[65] In the past, the Bureau of Posts also printed stamps celebrating 300 years of Islam in the 1980s. Likewise, our review of the records does not disclose that PhilPost has exclusively or primarily used its resources to benefit INC, to the prejudice of other religions. Finally, other than this single transaction with INC, this Court did not find PhilPost to have been unneccesarily involved in INC's affairs.

Based on the foregoing, this Court is not convinced that PhilPost has actually used its resources to endorse, nor encourage Filipinos to join INC or observe the latter's doctrines. On the contrary, this Court agrees with respondents that the printing of the INC commemorative stamp was endeavored merely as part of PhilPost's ordinary business.

In the same vein, We do not find that there was illegal disbursement of funds under Section 29(2) of Article VI of the Constitution. The application of this prohibition towards government acts was already clarified by the Court in *Re: Letter of Tony Q. Valenciano, Holding Of Religious Rituals At The Hall Of Justice Building In Quezon City*:[66]

> Section 29 (2), Article VI of the 1987 Constitution provides, "No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher,

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[63] See https://www.phlpost.gov.ph/stamp-releases.php?id=3839. Visited September 14, 2018.

[64] https://www.phlpost.gov.ph/stamp-releases.php?id=3739.Visited September 14, 2018.

[65] https://www.phlpost.gov.ph/stamp-releases.php?page=30.Visited September 14, 2018.

[66] *Supra* note 56.

or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium."

The word "apply" means "to use or employ for a particular purpose." "Appropriate" means "to prescribe a particular use for particular moneys or to designate or destine a fund or property for a distinct use, or for the payment of a particular demand."

Under the principle of *noscitur a sociis*, where a particular word or phrase is ambiguous in itself or is equally susceptible of various meanings, its correct construction may be made clear and specific by considering the company of words in which it is found with or with which it is associated. This is because a word or phrase in a statute is always used in association with other words or phrases, and its meaning may, thus, be modified or restricted by the latter. The particular words, clauses and phrases should not be studied as detached and isolated expressions, but the whole and every part of the statute must be considered in fixing the meaning of any of its parts and in order to produce a harmonious whole. A statute must be so construed as to harmonize and give effect to all its provisions whenever possible.

Thus, the words "pay" and "employ" should be understood to mean that **what is prohibited is the use of public money or property for the sole purpose of benefiting or supporting any church**. The prohibition contemplates a scenario where the appropriation is primarily intended for the furtherance of a particular church.

It has also been held that the aforecited constitutional provision "**does not inhibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general**." Hence, a public street may be used for a religious procession even as it is available for a civic parade, in the same way that a public plaza is not barred to a religious rally if it may also be used for a political assemblage.

In relation thereto, the phrase "directly or indirectly" refers to the manner of appropriation of public money or property, not as to whether a particular act involves a direct or a mere incidental benefit to any church. Otherwise, the framers of the Constitution would have placed it before "use, benefit or support" to describe the same. Even the exception to the same provision bolsters this interpretation. The

exception contemplates a situation wherein public funds are paid to a priest, preacher, minister, or other religious teacher, or dignitary because they rendered service in the armed forces, or to any penal institution, or government orphanage or leprosarium. That a priest belongs to a particular church and the latter may have benefited from the money he received is of no moment, for the purpose of the payment of public funds is merely to compensate the priest for services rendered and for which other persons, who will perform the same services will also be compensated in the same manner.

Ut magis valeat quam pereat. The Constitution is to be interpreted as a whole. As such, the foregoing interpretation finds support in the Establishment Clause, which is as clear as daylight in stating that what is proscribed is the passage of any law which tends to establish a religion, not merely to accommodate the free exercise thereof.[67]

Indeed, what is prohibited is the State using its resources to solely benefit one religion. As stated above, the records do not show that the State has been using the resources and manpower of PhilPost for INC's sole advantage. On the contrary, the stamps printed and issued by PhilPost, as seen through its website, feature various entities and organizations, other than religious sects.

The design of the INC commemorative stamp is merely an acknowledgment of the historical and cultural contribution of INC to the Philippine society

Adopting the stance of benevolent neutrality, this Court deems the design of the INC commemorative stamp constitutionally permissible. As correctly held by the CA, there is an intrinsic historical value in the fact that Felix Y. Manalo is a Filipino and that the INC is a Filipino institution. It explained, thus:

xxx Both matters, "culture" and "national development," are secular in character. Further, it cannot be denied that the part of the late Felix Y. Manalo's cultural and historical contribution is his founding of the INC. This circumstance, however, does not immediately put

[67] *Id*. at 356-358.

it in a religious light if it is only the historical fact of establishment which is being mentioned, *i.e.*, adding nothing more and without regard to its doctrine and teachings.

After arguing that the INC does not contribute to national development because it does not pay taxes, (petitioner) Peralta now wants this Court to enumerate INC's contributions to national development. This matter has already been determined by the President of the Philippines, Congress, and the National Historical Commission. It is not for this Court to question the wisdom of these executive and legislative issuances nor supplant the same. The task of this Court is to resolve whether the printing of the stamps is constitutional in light of these executive and legislative determinations.

To reiterate, in the same manner that public property is allowed to be used temporarily by different religions like roads or parks, the philatelic services and products offered by (respondent) PhilPost for valuable consideration, can be availed of not only by the INC but by other people or organizations as well. For the above-stated reasons, this Court maintains its finding that the printing and issuance of the INC Centennial stamps did not contravene Section 29 (2), Article VI of the 1987 Constitution. Besides, (petitioner's) cause of action, which is injunction, necessarily fails as there is nothing more to restrain or enjoin.[68]

Thus, this Court sees no religious overtones surrounding the commemorative stamps, as insisted upon by the petitioner.

In the case of *Aglipay*,[69] the issuance and sale of postage stamps commemorating the Thirty-third International Eucharistic Congress was assailed on the ground that it violated the constitutional prohibition against the appropriation of public money or property for the benefit of any church. In ruling that there was no such violation, the Court, through Justice Jose P. Laurel, held that:

xxx It is obvious that while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the

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[68] *Rollo*, pp. 17-18.

[69] *Supra* note 17, *id*. at 209-210.

Roman Catholic Church, was not the aim and purpose of the Government. We are of the opinion that the Government should not be embarrassed in its activities simply because of incidental results, more or less religious in character, if the purpose had in view is one which could legitimately be undertaken by appropriate legislation. **The main purpose should not be frustrated by its subordination to mere incidental results not contemplated.** (*Vide Bradfield vs. Roberts*, 175 U.S., 295; 20 Sup. Ct. Rep., 121; 44 Law. ed., 168.).[Emphasis Supplied.]

Indeed, the design depicted in the INC commemorative stamp is merely a recognition of the continuous existence of a group that is strictly Filipino. As compared to major religious groups established in the country, Felix Y. Manalo, and the INC, are not plain religious symbols, but also a representation of a group that is distinctly unique to the Philippines. To the mind of this Court, the use of the facade of the Church and the image of Felix Y. Manalo is nothing more than an acknowledgment of a historical milestone. It does not endorse, establish or disparage other religious groups and even non-believers, especially considering the fact that PhilPost also print stamps with symbols which can arguably be connected to religion. In the case of *Manosca vs. Court of Appeals*,[70] this Court has already recognized Manalo's contribution to the Filipino society:

Petitioners ask: But "(w)hat is the so-called unusual interest that the expropriation of (Felix Manalo's) birthplace become so vital as to be a public use appropriate for the exercise of the power of eminent domain" when only members of the *Iglesia ni Cristo* would benefit? This attempt to give some religious perspective to the case deserves little consideration, for what should be significant is the principal objective of, not the casual consequences that might follow from, the exercise of the power. The purpose in setting up the marker is **essentially to recognize the distinctive contribution of the late Felix Manalo to the culture of the Philippines, rather than to commemorate his founding and leadership of the *Iglesia ni Cristo***. The practical reality that greater benefit may be derived by members of the *Iglesia ni Cristo* than by most others could well be true but such a peculiar advantage still remains to be merely incidental and

[70] *Supra* note 21, *id*. at 453.

secondary in nature. Indeed, that only a few would actually benefit from the expropriation of property does not necessarily diminish the essence and character of public use. (Emphasis ours)

To debunk petitioner's claim that Section 29, Article VI of the 1987 Constitution[71] was violated, We agree with PhilPost's view that:

> xxx the printing and issuance of the assailed commemorative stamps were not inspired by any sectarian denomination. The stamps were neither for the benefit of INC, nor money derived from their sale inured to its benefit. xxx the stamps delivered to INC were not free of charge and whatever income derived from the sale to INC and of the excess to the postal clients were not given to INC, but went to the coffers of PhilPost.[72]

All told, therefore, the Court finds no reason or basis to grant the petition. In refusing to declare unconstitutional the INC's commemorative stamp, this Court is merely applying jurisprudentially sanctioned policy of benevolent neutrality. To end, it bears to emphasize that the Constitution establishes separation of the Church and the State, and not separation of religion and state.[73]

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[71] **Section 29.** 1. No money shall be paid out of the Treasury except in pursuance of an appropriation made by law. 2. No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium. 3. All money collected on any tax levied for a special purpose shall be treated as a special fund and paid out for such purpose only. If the purpose for which a special fund was created has been fulfilled or abandoned, the balance, if any, shall be transferred to the general funds of the Government.

[72] *Rollo*, p. 38.

[73] See *Protestants and Other Americans United For Separation Of Church And State vs. Lawrence F. O'BRIEN, Postmaster General of the United States*, 272 F. Supp. 712 (1967).

WHEREFORE, We **DENY** the petition. We **AFFIRM** the July 24, 2015 Decision, as well as the March 8, 2016 Resolution, of the Court of Appeals, in CA-G.R. CV No. 103151.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., and *Hernando, JJ.*, concur.

Leonen, J., dissents, see dissenting Opinion.

Carandang, J., on leave.

DISSENTING OPINION

LEONEN, *J.*:

I dissent.

Enshrined as a major principle is the inviolabilty of separation of church and State. Thus, in Article II, Section 6 of the Constitution:

ARTICLE II
DECLARATION OF PRINCIPLES AND STATE POLICIES

PRINCIPLES

. . . . . .

Section 6. The separation of Church and State shall be inviolable.

This inviolability is without qualification. The provision requires fealty to a strict reading. It should mean that the use of State resources to incidentally support a religion must be inevitable and unavoidable.

I

An image[1] of the assailed centennial stamp is reproduced below:

According to petitioner Peralta, the issuance of the Iglesia ni Cristo stamps is "purely religious"[2] mainly because their design "commemorates the 100th year founding of [Felix Y. Manalo] of [Iglesia Ni Cristo], his leadership as First Executive Minister and with the [Iglesia Ni Cristo] Central Temple and Central Logo[.]"[3] As such, their issuance and distribution are allegedly violative of the non-establishment clause and of Article VI, Section 29(2) of the Constitution prohibiting the employment of public money or property for the benefit of any religion.

The non-establishment clause is found in Article III, Section 5 of the Constitution, thus:

> Section 5. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof. The free exercise and enjoyment of religious profession and worship, without

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[1] <https://www.phlpost.gov.ph/images/stamps/phlpost_stamp_2014515_1813785396.jpg> Last accessed on December 3, 2018.

[2] *Rollo*, p. 7.

[3] *Id*.

discrimination or preference, shall forever be allowed. No religious test shall be required for the exercise of civil or political rights.

Based on this provision, the State has two (2) fundamental duties: to respect the free exercise of any religious faith; and to not establish, endorse, or favor any religion.[4] In my dissent in *Re: Letter of Tony Q. Valenciano*,[5] I stated:

> There is no duration, degree of convenience, or extent of following that justifies any express or implied endorsement of any religious message or practice. There is also no type of endorsement allowed by the provision. It is sufficient that the State, through its agents, favors expressly or impliedly a religious practice.[6]

The non-establishment clause recognizes the cultural power of the State. In my dissent in *Re: Letter of Tony Q. Valenciano*, I explained that:

> Congealed in this provision is the concept that the Constitution acknowledges the cultural power of the State. Government's resources, its reach, and ubiquity easily affect public consciousness. For example, actions of public officials are regular subjects of media in all its forms. The statements and actions of public officials easily pervade public deliberation. They also constitute frames for public debate on either personality or policy.
>
> The rituals and symbolisms of government not only educate the public but also etch civic and constitutional values into mainstream culture. The flag for instance, reminds us of our colorful history. Flag ceremonies instill passionate loyalty to the republic and the values for which it stands. Halls of Justice consist of buildings to remind the public that their cases are given equal importance. The

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[4] See *J.* Leonen, Dissenting Opinion in *Re: Letter of Tony Q. Valenciano*, A.M. No. 10-4-19-SC, March 7, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/10-4-19-SC_leonen.pdf> 10 [Per *J.* Mendoza, *En Banc*].

[5] A.M. No. 10-4-19-SC, March 7, 2017 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/march2017/10-4-19-SC.pdf> [Per *J.* Mendoza, *En Banc*].

[6] *Id*. at 15.

arrangement of bench and bar within our courtrooms exhibits the majesty of the law by allowing the judicial occupants to tower over the advocates to a cause. This arrangement instills the civic value that no one's cause will be above the law: that no matter one's creed or belief, all will be equal.

Any unnecessary endorsement, policy, or program that privileges, favors, endorses, or supports a religious practice or belief per se therefore would be constitutionally impermissible. It communicates a policy that contrary beliefs are not so privileged, not so favored, not so endorsed and unsupported by the Constitutional order. It implies that those whose creeds or whose faiths are different may not be as part of the political community as the other citizens who understand the rituals that are supported. It is to install discrimination against minority faiths or even against those who do not have any faith whatsoever.[7]

Relatedly, Article VI, Section 29(2) of the Constitution prohibits the appropriation or employment of public money or property for the use, benefit, or support of any religion:

Section 29.

. . . . . .

(2) No public money or property shall be appropriated, applied, paid, or employed, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion, or of any priest, preacher, minister, or other religious teacher, or dignitary as such, except when such priest, preacher, minister, or dignitary is assigned to the armed forces, or to any penal institution, or government orphanage or leprosarium.

The text of Article VI, Section 29(2) allows for no qualification. As I had previously remarked in my dissent in *Re: Letter of Tony Q. Valenciano*:

Section 29 (2), Article VI of the Constitution is straightforward and needs no statutory construction. The religious use of public property is proscribed in its totality. This proscription applies to *any* religion. This is especially so if the accommodation for the use

[7] *Id*. at 14.

of public property is principally, primarily, and exclusively only for a religious purpose.[8] (Emphasis in the original)

It is true that this Court has recognized one instance when governmental action may be inextricably linked with an event that is religious in character. In the old case of *Aglipay v. Ruiz*,[9] this Court allowed the "incidental endorsement" of a religion so long as the challenged act has a secular purpose.

Gregorio Aglipay, then Supreme Head of the Philippine Independent Church, sought to enjoin the issuance and sale of commemorative stamps of the 33rd International Eucharistic Congress of the Roman Catholic Church. He contended that the design and the very issuance of the stamps violated the separation of church and State as well as the constitutional prohibition on the appropriation of public money for the benefit of any religion. The design of the stamp assailed in *Aglipay* contained a map of the Philippines and the location of the City of Manila, with the inscription "Seat XXXIII International Eucharistic Congress, Feb. 3–7, 1937."[10]

This Court dismissed the Petition, allowing the sale and distribution of the stamps. In so ruling, the Court observed that the primary purpose for the issuance of the stamps was secular. The stamps were designed in such a way that Manila was emphasized as the seat of the 33rd International Eucharistic Congress. Thus, while the event was "religious in character,"[11] the distribution of the stamps was nevertheless allowed because the main purpose for their sale and issuance was "to advertise the Philippines and attract more tourists to this country."[12] Through Justice Laurel, this Court said:

In the present case, however, the issuance of the postage stamps in question by the Director of Posts and the Secretary of Public Works

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[8] *Id*. at 18.

[9] 64 Phil. 201 (1937) [Per *J*. Laurel, *En Banc*].

[10] *Id*. at 209.

[11] *Id*.

[12] *Id*.

and Communications was not inspired by any sectarian feeling to favor a particular church or religious denominations. The stamps were not issued and sold for the benefit of the Roman Catholic Church. Nor were money derived from the sale of the stamps given to that church. On the contrary, it appears from the letter of the Director of Posts of June 5, 1936, incorporated on page 2 of the petitioner's complaint, that the only purpose in issuing and selling the stamps was "to advertise the Philippines and attract more tourists to this country." The officials concerned merely took advantage of an event considered of international importance "to give publicity to the Philippines and its people" (Letter of the Undersecretary of Public Works and Communications [to] the President of the Philippines, June 9, 1936; p. 3, petitioner's complaint). It is significant to note that the stamps as actually designed and printed (Exhibit 2), instead of showing a Catholic Church chalice as originally planned, contains a map of the Philippines and the location of the City of Manila, and an inscription as follows: "Seat XXXIII International Eucharistic Congress, Feb. 3-7, 1937." What is emphasized is not the Eucharistic Congress itself but Manila, the capital of the Philippines, as the *seat* of that congress. It is obvious that while the issuance and sale of the stamps in question may be said to be inseparably linked with an event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Government. We are of the opinion that the Government should not be embarrassed in its activities simply because of incidental results, more or less religious in character, if the purpose had in view is one which could legitimately be undertaken by appropriate legislation. The main purpose should not be frustrated by its subordination to mere incidental results not contemplated.[13] (Citations omitted)

Identifying the secular purpose in an image and projecting its dominance are not enough. This mode of analysis invites courts to use their subjectivities in deciding how to look at an image. In a country with a dominant religion, this spells disaster for those whose faiths are not in the majority. It will also further marginalize those whose spiritual beliefs are not theistic, e.g. Buddhists, or those who are agnostic or atheistic.

Iglesia ni Cristo's ability to fund the printing of the centennial stamps attests to its cultural dominance. It also reveals that it

[13] *Id*. at 209-210.

has the resources to mark its own anniversary through means other than the use of government facilities. Therefore, the government's issuance of stamps in its favor has no other purpose other than to favor its dominant religious teachings disguised through its anniversary.

Our reading of the non-establishment clause should not be as superficial. Dominant religions may command their faithful to vote as a block for certain political candidates. In doing so, they can slowly erode the separation of church and State, sacrificing genuine sovereignty among our people. Therefore, the sponsorship of any faith through a commemorative stamp unwittingly furthers proselytization.

Aglipay and the proposed decision record the pliability of our State to major religious denominations. In the guise of looking for the dominant secular purpose or benevolent neutrality,[14] current doctrine may only be favoring these religions.

Furthermore, it is not clear as to who decides that a particular religion is officially part of government history. In lieu of subjectivity, we must return to the Constitution in Article II, Section 6: the separation of church and State shall be inviolable. Should there be a link between governmental action and religion, the burden is on the government to show that the link is inevitable and unavoidable.

Our Bill of Rights protects those who do not count themselves as part of the dominant religious faiths. Their beliefs, though fervent, may not translate to huge resources allowing them to influence politics and the use of the State's resources. Yet, it is for them that the assurance of separation of church and state has been made.

Reifying faith in *Aglipay* does the exact opposite. Unfortunately, I dissent on these findings.

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[14] See *Estrada v. Escritor*, 455 Phil. 411 (2003) [Per *J*. Puno, *En Banc*].

II

The Philippine Postal Corporation, in its Comment, maintains that "religion and politics are inextricably linked[.]"[15] As basis, it again cites *Aglipay*, decided during the effectivity of the 1935 Constitution, where the Filipino people in the preamble implored the aid of Divine Providence. The present Constitution, according to the preamble, was ordained and promulgated with the aid of Almighty God.[16]

In my view, the preamble should not be a basis to raise the possibility of faiths which are not theistic. The epilogue of my dissent in *Re: Letter of Tony Q. Valenciano* remains relevant here. The faiths which anchor our Constitution are diverse. It should not be the monopoly of any sect. The diversity mandated by our Constitution deepens our potentials as sovereigns. Therefore, to favor a belief system in a divine being, in any shape, form, or manner, is to undermine the very foundations of our legal order.

IN VIEW OF THE FOREGOING, I vote to **GRANT** the Petition for Review on Certiorari. The printing and issuance of the Iglesia ni Cristo commemorative stamps should be declared **UNCONSTITUTIONAL**.

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[15] *Rollo,* p. 29.

[16] The Preamble of the Constitution provides:

PREAMBLE

We, the sovereign Filipino people, imploring the aid of Almighty God, in order to build a just and humane society and establish a Government that shall embody our ideals and aspirations, promote the common good, conserve and develop our patrimony, and secure to ourselves and our posterity the blessings of independence and democracy under the rule of law and a regime of truth, justice, freedom, love, equality, and peace, do ordain and promulgate this Constitution.

EN BANC

[G.R. No. 224163. December 4, 2018]

MARIO M. GERONIMO, doing business under the name and style of KABUKIRAN GARDEN, *petitioner, vs.* **COMMISSION ON AUDIT, and the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, represented by SECRETARY ROGELIO L. SINGSON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 1445 (THE GOVERNMENT AUDITING CODE OF THE PHILIPPINES); GOVERNMENT CONTRACTS; DOCUMENTATION REQUIREMENTS; RECOVERY ON THE BASIS OF *QUANTUM MERUIT* IS ALLOWED DESPITE THE INVALIDITY OR ABSENCE OF A WRITTEN CONTRACT BETWEEN THE CONTRACTOR AND THE GOVERNMENT AGENCY.— Ordinarily, a written contract along with a written certification showing availability of funds for the project are among the conditions necessary for the execution of government contracts. It has been held, however, that the absence of these documents would not necessarily preclude the contractor from receiving payment for the services he or she has rendered for the government. This issue is actually not novel as it has been settled by the Court in numerous occasions. x x x Recovery on the basis of *quantum meruit* was also allowed despite the invalidity or absence of a written contract between the contractor and the government agency. x x x [I]t is clear that the COA is correct in ruling that the principle of *quantum meruit* is applicable in this case. The letters and memoranda presented by Geronimo unmistakably established DPWH's recognition of the completion of the projects and its liability therefor. These projects obviously redounded to the benefit of the public in the form of uplifting the image of the country — albeit superficially — to the foreign dignitaries who passed through these thoroughfares during the IPU Summit. It would be unjust and inequitable if there is no compensation

for the actual work performed and services rendered by Geronimo.

2. ID.; ID.; ADMINISTRATIVE AGENCIES; FINDINGS OF FACT OF ADMINISTRATIVE AGENCIES ARE GENERALLY ACCORDED GREAT RESPECT, IF NOT FINALITY, BY THE COURTS.— The Court concurs with the DPWH's submission that the findings by the COA must be treated with utmost respect. Indeed, by reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies are in a better position to pass judgment on the same, and their findings of fact are generally accorded great respect, if not finality, by the courts. Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant. Unfortunately for the DPWH, the COA's factual findings do not lean in its favor. x x x [A]lthough the COA denied Geronimo's claim for compensation, it nevertheless found that the DPWH acknowledged the existence of its obligation for the landscaping and beautification projects. The COA observed that the letters from the DPWH officials, as well as its allegation in its Answer, tend to establish that Geronimo is entitled to his claim. The Court observes that the DPWH neither appealed nor sought the reconsideration of the said factual findings x x x.

3. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF *QUANTUM MERUIT*; A PERSON MAY RECOVER A REASONABLE VALUE OF THE THING HE DELIVERED OR THE SERVICE HE RENDERED.— *Quantum meruit* literally means "as much as he deserves." Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered. The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. The principle of *quantum meruit* is predicated on equity. x x x [I]t must be stressed that Geronimo sufficiently established his right to be compensated on the basis of *quantum meruit*. Thus, to deny him of this compensation for the services he rendered despite the clear benefit which resulted to the government would be the height of injustice. It is in this context that the Court finds itself in awe with the conclusion reached by the COA in its

assailed decision. By denying Geronimo's petition for money claim — which it, itself, found to have been clearly established — the Commission allowed itself to be the vehicle of the very injustice which it sought to prevent.

4. ID.; ID.; ID.; ID.; AS A PRINCIPLE PREDICATED ON EQUITY, THE APPLICATION OF *QUANTUM MERUIT* SHOULD NOT BE RESTRICTED BY THE PROVISIONS ON THE DOCUMENTATION REQUIREMENTS UNDER THE GOVERNMENT AUDITING CODE OF THE PHILIPPINES; CASE AT BAR.— [T]here is basis for the COA to state that the documents submitted by Geronimo may have been insufficient for the purpose of determining the actual amount due him. x x x Nevertheless, the COA erred in denying Geronimo's petition for money claim. As a principle predicated on equity, the application of *quantum meruit* should not have been restricted by the provisions of Section 4(6) of P.D. No. 1445. Although the documents submitted by Geronimo were insufficient to ascertain what was reasonably due him, the most judicious action which the COA could have taken was to require him to submit additional supporting evidence and/or employ whatever auditing technique is necessary to determine the reasonable value of the services he rendered, and the market value of the materials used in the subject landscaping projects. Denial of the claim would certainly not be appropriate and just under the circumstances. Clearly, the COA gravely abused its discretion when it denied Geronimo's claim despite his obvious and recognized entitlement thereto.

APPEARANCES OF COUNSEL

Valera Burns Montero Tria & Partners for petitioner.
The Solicitor General for respondents.

D E C I S I O N

REYES, J. JR., *J.*:

This is a petition for *certiorari* under Section 1, Rule 64 of the Rules of Court which seeks to set aside the Decision No.

2014-311[1] dated November 10, 2014 and the Resolution[2] dated December 23, 2015 of the respondent Commission on Audit (COA), in COA CP Case No. 2010-186 which denied the petition for money claim filed by herein petitioner Mario M. Geronimo (Geronimo), doing business under the name and style of Kabukiran Garden.

The Facts

On June 28, 2010, Geronimo filed with the respondent COA a petition for collection of sum of money against the Republic of the Philippines and the Department of Public Works and Highways (DPWH).[3] Geronimo alleged that sometime in February 2005, he was invited to attend a meeting with the officials of the DPWH, including its then secretary, Florante Soriquez. The DPWH sought Geronimo's services for several landscaping projects which the DPWH seeks to be implemented in the areas of Ayala Boulevard, Padre Burgos Street, Roxas Boulevard, Osmeña Highway, and other median strips or center islands of main thoroughfares within Metro Manila, in connection with the 112th Inter-Parliamentary Union (IPU) Summit in Manila.

Due to the limited time left as the IPU Summit was about to commence, Geronimo was commissioned to implement the projects without the parties executing any written contract. On the said meeting, Geronimo was verbally requested to initiate and complete the projects at the earliest possible time. Geronimo was further assured that he will be paid in full upon completion of the projects.

Relying on the assurance and representations by the DPWH officials, Geronimo proceeded with the implementation and completion of the projects in accordance with the plans and specifications by the DPWH. The projects were completed sometime in July 2005. Geronimo alleged that he incurred a

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[1] Concurred in by COA Commissioners Heidi L. Mendoza and Jose A. Fabia; *rollo*, pp. 18-23.

[2] Notice of Resolution; *id*. at 25.

[3] *Id*. at 26-35.

total amount of ₱14,245,994.20 for the projects. Although no written contract had been executed between the parties, Geronimo asserted that he is entitled to receive payment for his services on the basis of *quantum meruit*.

Despite the completion of the project, and in spite of several demands, the DPWH failed to pay Geronimo compensation for his services. Thus, he was prompted to file his claim before the COA. Attached to Geronimo's petition are several memoranda and endorsements for payment signed by officials of the DPWH, as well as photographs of the completed projects to support his allegations.[4]

In its Answer,[5] the DPWH, through its then secretary Rogelio L. Singson, denied any liability for the projects. It also prayed for the dismissal of Geronimo's petition. The DPWH denied Geronimo's allegation that he was verbally commissioned to undertake the completion of several landscaping and beautification projects along major thoroughfares in Metro Manila for lack of knowledge or information sufficient to form a belief as to the truth thereof. Thus, it contended that Geronimo was not obliged to perform the landscaping projects as there was no valid perfected contract between him and the DPWH. It further argued that Geronimo was not entitled to receive payment on the basis of *quantum meruit* as there was no proof that the landscaping projects have been completed in accordance with the approved plans and specifications by the DPWH and that the public had benefited therefrom.

Ruling of the COA

In its assailed Decision No. 2014-311 dated November 10, 2014, the COA denied Geronimo's petition. The COA found, based on the records, that the DPWH acknowledged the existence of its obligation to Geronimo for the completed landscaping/ beautification projects. This was amply supported by the several memoranda/endorsement letters submitted by Geronimo. Thus,

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[4] *Id*. at 37-57; 68-76.

[5] *Id*. at 80-83.

the COA opined that the principle of *quantum meruit* was applicable.

However, despite its recognition that DPWH's liability in favor of Geronimo exists, and even after concluding for the applicability of the principle of *quantum meruit*, the COA still denied Geronimo's claim for want of supporting documents that would substantiate the projects accomplishment and the reasonableness of the cost thereof. It ruled that under Section 4(6) of Presidential Decree (P.D.) No. 1445, otherwise known as the "Government Auditing Code of the Philippines," claims against the government funds shall be supported with complete documentation.The dispositive portion of the assailed decision provides:

> WHEREFORE, premises considered, the instant petition for money claim is hereby DENIED.[6]

Geronimo moved for reconsideration, but the same was denied by the COA in its Resolution dated December 23, 2015.

Hence, this petition.

The Issue

WHETHER THE COMMISSION ON AUDIT ERRED WHEN IT DENIED GERONIMO'S MONEY CLAIM DESPITE ITS FINDING THAT DPWH'S LIABILITY IN FAVOR OF GERONIMO EXISTS.

Geronimo argues that the "complete documentation" requirement under Section 4(6) of P.D. No. 1445 should not be restricted to the actual documents submitted and/or required in the regular course of business, but should pertain to any document which may support the claim against the government. As such, the photographs showing that the projects have been completed and the letters wherein the DPWH acknowledged the existence of its obligation would suffice to entitle him to receive payment for his services. He points out that his claim is based on the principles of *quantum meruit* and unjust enrichment which are founded on equity. Thus, they should

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[6] *Id*. at 23.

not be limited by the rigid application of the provisions of laws such as Section 4(6) of P.D. No. 1445.

In its Comment[7] dated September 1, 2016, the DPWH, through the Office of the Solicitor General, maintains that the money claim was properly denied. It asserts that Geronimo failed to present any evidence which could form the basis for the determination of the existence of the projects or, in case they indeed exist, the compensation therefor based on *quantum meruit*.It notes that no proof was presented to show that the projects were completed in accordance with its plans and specifications, or that it duly accepted the same. As such, the principle of *quantum meruit* is not applicable.

The DPWH also insists that Geronimo is not entitled to any compensation because they did not execute any written contract. It submits that a review of this Court's decisions involving the application of the principle of *quantum meruit* on claims against the government would show that even if a government project failed to abide by the prescribed audit rules, there has to be, at the very least, a contract or an implied authorization or express acknowledgment from the government agency involved to show that the contractor had actually been tasked to complete the project in question. Finally, it argues that the findings of the COA are accorded not only respect but also finality as its decision was not tainted with unfairness and arbitrariness.

The Court's Ruling

The petition is meritorious.

Principle of quantum meruit applicable in this case.

At the onset, it must be emphasized that the Court concurs with the COA's findings with regard to the applicability of the principle of *quantum meruit* and the existence of DPWH's liability to Geronimo.

Ordinarily, a written contract along with a written certification showing availability of funds for the project are among the

[7] *Id*. at 106-125.

conditions necessary for the execution of government contracts. It has been held, however, that the absence of these documents would not necessarily preclude the contractor from receiving payment for the services he or she has rendered for the government.[8] This issue is actually not novel as it has been settled by the Court in numerous occasions.

In *Dr. Eslao v. The Commission on Audit*,[9] the Court ruled that the contractor should be duly compensated notwithstanding the questions which hounded the construction project involved due to the failure to undertake a public bidding. The Court explained that the denial of the contractor's claim would result in the government unjustly enriching itself. The Court further reasoned that justice and equity demand compensation on the basis of *quantum meruit*.

Recovery on the basis of *quantum meruit* was also allowed despite the invalidity or absence of a written contract between the contractor and the government agency. This has been settled in the same case of *Dr. Eslao*, citing the unpublished case of *Royal Trust Construction v. Commission on Audit*,[10] thus:

> In *Royal Trust Construction vs. COA,* a case involving the widening and deepening of the Betis River in Pampanga at the urgent request of the local officials and with the knowledge and consent of the Ministry of Public Works, **even without a written contract** and the covering appropriation, the project was undertaken to prevent the overflowing of the neighboring areas and to irrigate the adjacent farmlands. The contractor sought compensation for the completed portion in the sum of over ₱1 million. While the payment was favorably recommended by the Ministry of Public Works, it was denied by the respondent COA on the ground of violation of mandatory legal provisions as the existence of corresponding appropriations covering the contract cost. Under COA Res. No. 36-58 dated November 15, 1986 its existing policy is to allow recovery from covering contracts on the basis of

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[8] *RG Cabrera Corp., Inc. v. Department of Public Works and Highways,* 797 Phil. 563, 569-570 (2016).

[9] 273 Phil. 97, 107 (1991).

[10] G.R. No. 84202, November 23, 1988.

quantum meruit if there is delay in the accomplishment of the required certificate of availability of funds to support a contract.

In said case, the Solicitor General agreed with the respondent COA but in the present case he agrees with petitioner.

Thus, this Court held therein —

> The work done by it was impliedly authorized and later expressly acknowledged by the Ministry of Public Works, which has twice recommended favorable action on the petitioner's request for payment. Despite the admitted absence of a specific covering appropriation as required under COA Resolution No. 36-58, the petitioner may nevertheless be compensated for the services rendered by it, concededly for the public benefit, from the general fund alloted by law to the Betis River project. Substantial compliance with the said resolution, in view of the circumstances of this case, should suffice. The Court also feels that the remedy suggested by the respondent, to wit, the filing of a complaint in court for recovery of the compensation claimed, would entail additional expense, inconvenience and delay which in fairness should not be imposed on the petitioner.
>
> Accordingly, in the interest of substantial justice and equity, the respondent Commission on Audit is DIRECTED to determine on a *quantum meruit* basis the total compensation due to the petitioner for the services rendered by it in the channel improvement of the Betis River in Pampanga and to allow the payment thereof immediately upon completion of the said determination.[11] (Emphasis supplied)

The above disquisitions in *Dr. Eslao* and *Royal Trust* have been reiterated in the cases of *Melchor v. Commission on Audit*,[12] *EPG Construction Co. v. Hon. Vigilar*,[13] *Department of Health v. C.V. Canchela & Associates*, *Architects,*[14] *RG Cabrera Corporation, Inc. v. Department of Public Works and Highways*,[15] and other similar cases.

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[11] *Dr. Eslao v. Commission on Audit, supra* note 9, at 106-107.

[12] 277 Phil. 801 (1991).

[13] 407 Phil. 53 (2001).

[14] 511 Phil. 654 (2005).

[15] *Supra* note 8.

Liability of DPWH sufficiently established.

The DPWH however insists that the principle of *quantum meruit* as enunciated in *Dr. Eslao* and *Royal Trust* does not apply in this case as no document was presented to prove the existence of the alleged projects and that it did not acknowledge, whether express or implied, that the alleged projects have been implemented and completed by Geronimo.

This argument is specious at best.

The Court concurs with the DPWH's submission that the findings by the COA must be treated with utmost respect. Indeed, by reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies are in a better position to pass judgment on the same, and their findings of fact are generally accorded great respect, if not finality, by the courts.Such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant.[16]

Unfortunately for the DPWH, the COA's factual findings do not lean in its favor. To recall, although the COA denied Geronimo's claim for compensation, it nevertheless found that the DPWH acknowledged the existence of its obligation for the landscaping and beautification projects. The COA observed that the letters from the DPWH officials, as well as its allegation in its Answer, tend to establish that Geronimo is entitled to his claim. The Court observes that the DPWH neither appealed nor sought the reconsideration of the said factual findings, which state:

> Based on records, it is established that the DPWH acknowledged the existence of its obligation to herein petitioner for the completed landscaping/beautification project. The following letters/memoranda of Director Luis A. Mamitag, Jr., Bureau of Maintenance, dated July 15, 2005, October 6, 2005, May 22, 2009, June 9, [2009] and July

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[16] *Delos Reyes v. Municipality of Kalibo, Aklan,* G.R. No. 214587, February 26, 2018.

20, 2009; the[n] Acting Secretary Florante Soriquez dated November 3, 2005; and of Maria Catalina E. Cabral, Assistant Secretary for Planning, dated July 2, 2009 would support this fact. In the Answer of the DPWH to herein petition, it was stated that the claim was being evaluated and was referred to the Extraordinary Claims and Review Committee, DPWH, pursuant to Special Order No. 37, series of 2007, and it was suggested that the financial obligation of the DPWH to the petitioner be charged against the Engineering and Administrative Overhead or from any available funds of the DPWH. These circumstances further bolster the claim of the petitioner.[17]

Furthermore, a review of the aforementioned letters/ memoranda would certainly reveal that the DPWH indeed acknowledged the completion of the projects, or some of it at the very least, and that it is liable to compensate Geronimo therefor.For instance, in the Memorandum dated November 3, 2005, to the Regional Director of the National Capital Region, DPWH, then Undersecretary Florante Soriquez reiterated the suggestion to prioritize the completed landscaping projects in the allocation of the South Manila Engineering District.

Referred for appropriate action is the herein letter dated 26 October of Mr. MARIO M. GERONIMO, General Manager, Kabukiran Garden regarding their claims for payment of completed beautification projects within the area of South Manila Engineering District in connection with the IPU Summit.

Attention is invited to the last paragraph of the letter dated 15 July 2005 of OIC-Director Luis A. Mamitag, Bureau of Maintenance, suggesting among others that the **pending requirements of said completed projects be prioritized** in the MVUC allocation for the District concerned.[18] (Emphasis supplied)

A similar recognition of liability could be discerned four years later in the Memorandum dated May 22, 2009, by then Director IV Luis A. Mamitag, Jr. to the Director of the Planning Service of the DPWH.

This has reference to the Memorandum dated 22 April 2009 of Assistant Secretary Maria Catalina E. Cabral, this Department, relative

[17] *Rollo*, p. 21.

[18] *Id*. at 70.

to the letter dated 29 January 2009 of Mr. Mario M. Geronimo, General Manager, Kabukiran Garden x x x requesting payment of landscaping/ beautification projects done in selected areas of Metro Manila.

In this regard, please be informed that this Office has no appropriate funds available for the purpose. **It is suggested that the funding requirement for the settlement of the said financial obligations be charged against the Engineering and Administrative Overhead (EAO) or from any available funds of the Department**.[19] (Emphasis supplied)

From the foregoing, it is clear that the COA is correct in ruling that the principle of *quantum meruit* is applicable in this case. The letters and memoranda presented by Geronimo unmistakably established DPWH's recognition of the completion of the projects and its liability therefor.These projects obviously redounded to the benefit of the public in the form of uplifting the image of the country — albeit superficially— to the foreign dignitaries who passed through these thoroughfares during the IPU Summit.It would be unjust and inequitable if there is no compensation for the actual work performed and services rendered by Geronimo.

The COA erred when it denied the petition for money claim.

Quantum meruit literally means "as much as he deserves."[20] Under this principle, a person may recover a reasonable value of the thing he delivered or the service he rendered.[21] The principle also acts as a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it.[22] The principle of *quantum meruit* is predicated on equity.[23]

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[19] *Id*. at 71.

[20] *Aquino v. Casabar,* 752 Phil. 1, 12 (2015).

[21] *Melchor v. Commission on Audit*, *supra* note 12, at 815.

[22] *Catly v. Navarro*, 634 Phil. 229, 279 (2010).

[23] *International Hotel Corporation v. Joaquin, Jr.,*708 Phil. 361, 385 (2013).

At the risk of being repetitious, it must be stressed that Geronimo sufficiently established his right to be compensated on the basis of *quantum meruit*. Thus, to deny him of this compensation for the services he rendered despite the clear benefit which resulted to the government would be the height of injustice. It is in this context that the Court finds itself in awe with the conclusion reached by the COA in its assailed decision. By denying Geronimo's petition for money claim — which it, itself, found to have been clearly established — the Commission allowed itself to be the vehicle of the very injustice which it sought to prevent.

To be sure, there is basis for the COA to state that the documents submitted by Geronimo may have been insufficient for the purpose of determining the actual amount due him. Indeed, the letters and memoranda issued by the DPWH officials, and the photographs showing the completed projects, would be of little help to the Commission in ascertaining the reasonable sum which may be awarded to Geronimo. Similarly, the separate summaries of the alleged costs of the projects could not be considered in determining the just compensation for the services rendered by Geronimo. Without any reasonable computation and supporting document, such as receipts of the materials procured for the projects, to justify the figures contained therein, these summaries could only be considered as self-serving statements which the COA properly disregarded.

Nevertheless, the COA erred in denying Geronimo's petition for money claim.As a principle predicated on equity, the application of *quantum meruit* should not have been restricted by the provisions of Section 4(6) of P.D. No. 1445. Although the documents submitted by Geronimo were insufficient to ascertain what was reasonably due him, the most judicious action which the COA could have taken was to require him to submit additional supporting evidence and/or employ whatever auditing technique is necessary to determine the reasonable value of the services he rendered, and the market value of the materials used in the subject landscaping projects. Denial of the claim would certainly not be appropriate and just under the

circumstances. Clearly, the COA gravely abused its discretion when it denied Geronimo's claim despite his obvious and recognized entitlement thereto.

WHEREFORE, the petition is **GRANTED.** The assailed Decision No. 2014-311 dated November 10, 2014 and the Resolution dated December 23, 2015 of the Commission on Audit are **REVERSED** and **SET ASIDE.**

The Commission on Audit is hereby directed to determine and ascertain with dispatch, on a *quantum meruit* basis, the total compensation due to petitioner Mario M. Geronimo, for the landscaping/beautification projects in connection with the 112th Inter-Parliamentary Union Summit in Manila in 2005, and to allow payment thereof upon the completion of the said determination.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Tijam, Reyes, A. Jr., Gesmundo, and *Hernando, JJ.,* concur.

Carandang, J., on leave.

EN BANC

[G.R. Nos. 237938 and 237944-45. December 4, 2018]

BAYANI F. FERNANDO, *petitioner, vs.* **THE COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COMMISSION ON AUDIT (COA); JURISDICTION

THEREOF; THE DETERMINATION OF JURISDICTION OF THE COMMISSION ON AUDIT OVER A SPECIFIC ENTITY DOES NOT MERELY REQUIRE AN EXAMINATION OF THE NATURE OF THE ENTITY, BUT ALSO A DETERMINATION AS TO THE SOURCE OF ITS FUNDS OR THE NATURE OF THE ACCOUNT SOUGHT TO BE AUDITED BY THE COA.— Section 2, Article IX-D of the 1987 Constitution provides for the COA's audit jurisdiction: x x x. The COA was envisioned by our Constitutional framers to be a dynamic, effective, efficient and independent watchdog of the Government. It granted the COA the authority to determine whether government entities comply with laws and regulations in disbursing government funds, and to disallow illegal or irregular disbursements of government funds. In the case of *Funa v. Manila Economic and Cultural Office, et al.,* this Court enumerated and clarified the COA's jurisdiction over various governmental entities. In that case, this Court stated that the COA's audit jurisdiction extends to the following entities: 1. The government, or any of its subdivisions, agencies and instrumentalities; 2. GOCCs with original charters; 3. GOCCs without original charters; 4. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; and 5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity. x x x. [T]he COA's audit jurisdiction generally covers public entities. However, its authority to audit extends even to non-governmental entities insofar as the latter receives financial aid from the government. Thus, it is clear that the determination of COA's jurisdiction over a specific entity does not merely require an examination of the nature of the entity. Should the entity be found to be non-governmental, further determination must be had as to the source of its funds or the nature of the account sought to be audited by the COA.

2. ID.; ID.; ID.; THE EXECUTIVE COMMITTEE OF THE METRO MANILA FILM FESTIVAL (MMFF), AN OFFICE UNDER THE METRO MANILA DEVELOPMENT AUTHORITY (MMDA) AND CREATED PURSUANT TO PRESIDENTIAL

PROCLAMATION NO. 1459, IS SUBJECT TO THE JURISDICTION OF THE COMMISSION ON AUDIT.— There is nothing in the records which establishes that the Executive Committee of the MMFF is organized as a stock or non-stock corporation. It does not have capital which is to be divided into shares of stock, nor stockholders and voting shares, as to qualify as a stock corporation. We cannot also deem it a non-stock corporation. Though undoubtedly organized for cultural purposes, the Executive Commitee of the MMFF is ostensibly just a group of representatives of various stakeholders in the Philippine movie industry, it has no other members. Such finding notwithstanding, We find that the Executive Committee is subject to COA jurisdiction, considering its administrative relationship to the Metro Manila Development Authority, a government agency tasked to perform administrative, coordinating and policy-setting functions for the local government units in the Metropolitan Manila area.

3. ID.; ID.; ID.; ID.; THE EXECUTIVE COMMITTEE OF THE MMFF CANNOT BE TREATED SEPARATELY FROM THE LEGAL EXISTENCE AND NATURE OF THE MMDA, THE AGENCY IT IS TASKED TO GIVE ASSISTANCE TO.— [T]he Executive Committee, having been created to assist the MMDA in the conduct of the annual Manila Film Festival, cannot be treated separately from the legal existence and nature of the agency it is tasked to give assistance to. It is likewise apparent that the observance of the annual film festival, entails activities which impacts some, if not all local government units of the Metropolitan Manila. The "Parade of the Stars," for instance, which is normally conducted along Roxas Boulevard, affects the traffic situation in the cities it traverses. The traffic situation in Metro Manila is undoubtedly within the authority of the MMDA to manage. The link between MMDA and the Executive Committee is likewise evident from the establishment of a Secretariat within the MMDA, which will assist the committee in the discharge of its function. x x x. In addition, this Court notes that the multi-sectoral membership of the executive committee mirrors the network MMDA is authorized to establish under its Charter x x x. [T]his Court cannot accord merit to petitioner's arguments which seek to treat separately the Executive Committee from the MMDA. Certainly, that would amount to creating another entity without

basis in law and in fact. The records simply establish that the Executive Committee is an office under the MMDA, a public agency, subject to the audit jurisdiction of the COA.

4. ID.; ID.; ID.; ID.; THE FUNDS OF THE EXECUTIVE COMMITTEE OF THE MMFF ARE CONSIDERED PUBLIC FUNDS SUBJECT TO THE COA'S AUDIT JURISDICTION.— The Executive Committee has two sources of funds: 1. The donations from the local government units comprising the Metropolitan Manila covering the period of holding the MMFF from December 25 to January 3; and 2.The non-tax revenues that come in the form of donations from private entities. As a committee under MMDA, a public office, the Court finds that both sources of funds can properly be subject of COA's audit jurisdiction.

5. ID.; ID.; ID.; THE EXECUTIVE COMMITTEE'S FUNDS COMING FROM PRIVATE SOURCES, BECOME PUBLIC FUND UPON RECEIPT BY THE EXECUTIVE COMMITTEE, FOR USE IN THE PURPOSE FOR WHICH IT WAS CREATED; BEING PUBLIC IN CHARACTER, THE COA CAN VALIDLY CONDUCT AN AUDIT OVER SUCH FUNDS IN ACCORDANCE WITH ITS AUDITING RULES AND REGULATIONS.— As to the committee's funds coming from non-tax revenues, the fact that such funds come from purported private sources, do not convert the same to private funds. Such funds must be viewed with the public purpose for which it was solicited, which is the management of the MMFF. In *Confederation of Coconut Farmers Organizations of the Philippines, Inc. (CCFOP) v. His Excellency President Benigno Simeon C. Aquino III, et al.,* reiterating this Court's ruling in *Republic of the Philippines v. COCOFED*: **Even if the money is allocated for a special purpose and raised by special means, it is still public in character.** x x x. Furthermore, despite the private source of funds, ownership over the same was already transmitted to the government by way of donation. As donee, the government had become the owner of the funds, with full ownership rights and control over the use and disposition of the same, subject only to applicable laws and COA rules and regulations. Thus, upon donation to the government, the funds became public in character. x x x. Applying the principles enunciated in the aforesaid cases, and considering the purpose for which COA was created, this Court finds that any such

funds, though coming from private sources, become public upon receipt by the Executive Committee, for use in the purpose for which it was created. For all intents and purposes, the Executive Committee, an office under the MMDA and created pursuant to Presidential Proclamation No. 1459, as donee, has already become the owner of the funds and may dispose of the same as it deems fit; thus, such funds are considered public funds. Being public in character, the COA can therefore validly conduct an audit over such funds in accordance with its auditing rules and regulations.

APPEARANCES OF COUNSEL

Rivera Baterina Abrajano Santos & Associates Law for petitioner.

The Solicitor General for respondent.

D E C I S I O N

TIJAM, *J.*:

The audit jurisdiction of the Commission on Audit (COA) over the Executive Committee of the Metro Manila Film Festival (MMFF) is the subject matter of the instant controversy brought before Us in this Petition for *Certiorari*[1] under Rule 64, in relation to Rule 65 of the Rules of Court. In this petition, petitioner seeks the reversal of the Fraud Audit Office Notice of Finality of Decision (FAO NFD) Nos. 2017-008 to 2017-10 all dated November 27, 2017 and Notices of Disallowance (ND) Nos. 2010-05-032 to 2010-05-034, all dated May 24, 2010 of the COA.

The Antecedents

Petitioner Bayani Fernando was the Chairman of the Executive Committee of MMFF from 2002-2008.[2]

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[1] *Rollo*, pp. 3-28.

[2] *Id.* at 62-63.

On August 17, 2009, the COA issued an Office Order No. 2009-602 authorizing the Fraud Audit and Investigation Office to conduct a special audit on the disbursements of the Executive Committee of the MMFF for the Calendar Years 2002-2008.[3]

Through such investigation, the Fraud Audit and Investigation Office found that petitioner received the amount of ₱1,000,000.00 on May 20, 2003, and another ₱1,000,000.00 on May 30, 2003 from the Executive Commitee of the MMFF for the Special Projects/Activities of the Metro Manila Development Authority (MMDA) sourced from the advertising sponsorship of the MMFF for 2002 and 2003. Also, the COA found that on March 15, 2005, petitioner received the amount of ₱1,000,000.00 from the Executive Committee of the MMFF as payment/release of funds for petitioner's cultural projects, which payment was sourced from non-tax revenues of the said Executive Committee of the MMFF.[4]

Afterwards, the COA issued three Notices of Disallowance: ND No. 2010-05-032, ND No. 2010-05-033 and ND No. 2010-05-034 against petitioner covering the aforesaid amounts. In the NDs issued by COA, it made a common observation that:

> The amount of ₱1,000,000.00 paid to Mr. Bayani F. Fernando by the Metro Manila Film Festival Executive Committee is disallowed in audit for the reason that **the check was encashed and was not issued an Official Receipt** by the Collecting officer of the MMDA. This constitutes irregular transaction as defined under COA Circular No. 85-55A for its (sic) violated the provision of Section 77 of the Government Accouting and Auditing Manual (GAAM) Volume I which states that: "*Checks in payment for indebtedness to the government must be drawn by the payor himself and made payable to the agency or head or treasurer of agency. In the latter case, only the official title or designation of the official concerned shall be stated as the payee*."
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> x x x x x x x x x

[3] *Id.* at 63.

[4] *Id.*

Lastly, original copy of the aforementioned reference documents were not submitted as required by Section 168, Volume I, Government Accounting Rules and Regulations (GAAM).[5] (Emphasis ours)

On February 27, 2018, petitioner received FAO NFD Nos. 2017-008 to 2017-010 all dated November 27, 2017, ordering him to pay a total amount of ₱3,000,000.00 representing the amounts disallowed by COA.

Aggrieved, petitioner comes before this Court, submitting that the COA committed grave abuse of discretion in disallowing the aforesaid amounts. Specifically, he submits that:

I

THE RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN CONDUCTING AN AUDIT OF THE FUNDS OF THE EXECUTIVE COMMITTEE OF THE METRO MANILA FILM FESTIVAL DESPITE A CLEAR SHOWING THAT THE COMMISSION ON AUDIT HAS NO JURISDICTION, AUTHORITY AND POWER TO AUDIT THE FUNDS OF AN ORGANIZATION THAT IS NOT A PUBLIC OFFICE.

II

THE RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE NOTICE OF DISALLOWANCE AND NOTICE OF FINALITY OF DECISION TO PETITIONER FERNANDO DESPITE A CLEAR SHOWING THAT THE FUNDS OF THE EXECUTIVE COMMITTEE OF THE MMFF SUBJECT OF THIS CASE AND AUDITED BY THE HONORABLE COMMISSION ON AUDIT ARE NOT PUBLIC FUNDS, HAVING BEEN SOURCED FROM NON-TAX REVENUES.[6]

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

[6] *Id*. at 12.

The Issue

As mentioned above, the issue in the instant case is whether the Executive Committee of the MMFF is subject to the COA's audit jurisdiction.[7]

Petitioner contends that the COA has no jurisdiction over the Executive Committee of the MMFF, an organization composed of private individuals from the movie industry, and whose funds come from non-tax revenues and private donations. He claims that the Committee is neither a government-owned or controlled corporation, nor a government instrumentality or agency for it to be subject to COA's audit jurisdiction.[8]

Meanwhile, respondent COA, in its Comment, argues that petitioner is not entitled to a Writ of *Certiorari* considering his failure to exhaust administrative remedies. COA noted that petitioner did not appeal FAO NFD Nos. 2017-008 to 2017-010 before the COA Proper.[9]

COA further contends that the Executive Committee of the MMFF is a government instrumentality created under Proclamation No. 1459[10] dated July 9, 1975, performing a public purpose.[11] It also argues that the committee's funds are public in nature considering the public purpose it serves, which is to provide fund assistance to film-related organizations "in recognition of the value and importance of the local movie industry in the over-all developmental effort for the country, a fitting celebration to encourage quality film production both

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[7] *Id*. at 13-15.

[8] *Id*.

[9] *Id*. at 65-70.

[10] DECLARING THE PERIOD FROM SEPTEMBER 10 TO 21, 1975 AS METROPOLITAN FILM FESTIVAL AND CREATING AN EXECUTIVE COMMITTEE TO TAKE CHARGE OF ITS OBSERVANCE AND AUTHORIZING THE SAME TO CONDUCT FUND-RAISING CAMPAIGN FOR THE PURPOSE.

[11] *Id*. at 73-74.

in substance and in form, as well as provide incentives to the performing artists and the technicians in the industry."[12]

Petitioner, in his reply, argued that the case should not be remanded to COA because the government project has been contracted almost two decades ago, and to bring the case back to COA would greatly prejudice him.[13] He also argues that the questions in the case at bar are purely legal questions which are within the expertise of this Court.[14]

Our Ruling

The petition lacks merit.

The audit jurisdiction of the Commission on Audit

Section 2, Article IX-D of the 1987 Constitution provides for the COA's audit jurisdiction:

> SECTION 2. (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the **revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity.** However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall

[12] *Id*. at 78.

[13] *Id*. at 102.

[14] *Id*. at 100.

keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

The COA was envisioned by our Constitutional framers to be a dynamic, effective, efficient and independent watchdog of the Government.[15] It granted the COA the authority to determine whether government entities comply with laws and regulations in disbursing government funds, and to disallow illegal or irregular disbursements of government funds.[16]

In the case of *Funa v. Manila Economic and Cultural Office, et al*.,[17] this Court enumerated and clarified the COA's jurisdiction over various governmental entities. In that case, this Court stated that the COA's audit jurisdiction extends to the following entities:

1. The government, or any of its subdivisions, agencies and instrumentalities;
2. GOCCs with original charters;
3. GOCCs without original charters;
4. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; and
5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity.[18]

COA's authority to examine and audit the accounts of government and, to a certain extent, non-governmental entities, is consistent with Section (Sec.) 29(1) of Presidential Decree (P.D.) No. 1445 otherwise known as the Auditing Code of the Philippines, which grants the COA visitorial authority over the following non-governmental entities:

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[15] *Caltex Philippines, Inc. v. Commission on Audit*, 284-A Phil. 233, 257 (1992).

[16] *National Electrification Administration v. COA,* 427 Phil. 464, 483 (2002).

[17] 726 Phil. 63 (2014).

[18] *Id*. at 86.

1. Non-governmental entities "subsidized by the government";
2. Non-governmental entities "required to pay levy or government share";
3. Non-governmental entities that have "received counterpart funds from the government"; and
4. Non-governmental entities "partly funded by donations through the Government."[19]

COA's audit jurisdiction is also laid down in Section 11, Chapter 4, Subtitle B, Title I, Book V of the Administrative Code of 1987:

SECTION 11. *General Jurisdiction*.—(1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

x x x x x x x x x.

As can be gleaned from the foregoing, the COA's audit jurisdiction generally covers public entities. However, its authority to audit extends even to non-governmental entities insofar as the latter receives financial aid from the government. Thus, it is clear that the determination of COA's jurisdiction

[19] *Id*. at 87.

over a specific entity does not merely require an examination of the nature of the entity. Should the entity be found to be non-governmental, further determination must be had as to the source of its funds or the nature of the account sought to be audited by the COA.

In the analysis of an entity's nature, this Court, in prior cases, examined the statutory origin, the charter, purpose and the relations that a particular entity has with the State.

In *Phil. Society for the Prevention of Cruelty to Animals v. Commission on Audit*,[20] this Court clarified that totality of an entity's relations with the State must be considered. If the corporation is created by the State as the latter's own agency or instrumentality to help it in carrying out its governmental functions, then that corporation is considered public; otherwise, it is private.[21] This Court examined the charter of therein petitioner, Philippine Society for the Prevention of Cruelty to Animals, its employees' membership to social insurance system, and the presence of a government officials in its board, among others. In that case, this Court ruled that the mere public purpose of an entity's existence does not, *per se*, make it a public corporation:

> *Fourth*. The respondents contend that the petitioner is a "body politic" because its primary purpose is to secure the protection and welfare of animals which, in turn, redounds to the public good.
>
> This argument, is, at best, specious. The fact that a certain juridical entity is impressed with public interest does not, by that circumstance alone, make the entity a public corporation, inasmuch as a corporation may be private although its charter contains provisions of a public character, incorporated solely for the public good. This class of corporations may be considered quasi-public corporations, which are private corporations that render public service, supply public wants or pursue other eleemosynary objectives. While purposely organized for the gain or benefit of its members, they are required by law to discharge functions for the public benefit. Examples of

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[20] 560 Phil. 385 (2007).

[21] *Id*. at 408.

these corporations are utility, railroad, warehouse, telegraph, telephone, water supply corporations and transportation companies. It must be stressed that a quasi-public corporation is a species of private corporations, but the qualifying factor is the type of service the former renders to the public: if it performs a public service, then it becomes a quasi-public corporation.

Authorities are of the view that the purpose alone of the corporation cannot be taken as a safe guide, for the fact is that almost all corporations are nowadays created to promote the interest, good, or convenience of the public. A bank, for example, is a private corporation; yet, it is created for a public benefit. Private schools and universities are likewise private corporations; and yet, they are rendering public service. Private hospitals and wards are charged with heavy social responsibilities. More so with all common carriers. On the other hand, there may exist a public corporation even if it is endowed with gifts or donations from private individuals.[22]

Meanwhile, in *Engr. Feliciano v. Commission on Audit*,[23] this Court ruled that regardless of the nature of the corporation, the determining factor of COA's audit jurisdiction is government ownership or control of the corporation. In this case, the Court found that local water districts (LWDs), are owned and controlled by the government, as evidenced from the fact that **"there [was] no private party involved in their creation, ownership of the national or local government of their assets, the manner of appointment of their board of directors and their employees' being subject to civil service laws."**[24] The Court also noted as an indication of the government's control, the latter's power to appoint LWD directors, to provide for their compensation, as well as the Local Water Utilities Administration's power to require LWDs to merge or consolidate their facilities or operations.

In *Boy Scouts of the Philippines v. Commission on Audit*,[25] the Court, in arriving at the conclusion that BSP is subject to

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[22] *Id*. at 407-408.

[23] 464 Phil. 439, 462 (2004).

[24] *Id*. at 463.

[25] 666 Phil. 140 (2011).

the COA's audit jurisdiction, examined its charter, Commonwealth Act No. 111,[26] and the provisions of the same concerning BSP's governing body, its classification and relationship with the National Government, specifically as an attached agency of then Department of Education, Culture and Sports (DECS), as well as its sources of funds.

Taking into account the aforesaid cases, We now proceed to make a determination as to the statutory origin and the operations of the MMFF Executive Committee.

Nature of the Executive Committee of Manila Film Festival

The Executive Committee of the MMFF was created pursuant to Proclamation No. 1459:

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES
PROCLAMATION NO. 1459

DECLARING THE PERIOD FROM SEPTEMBER 10 TO 21, 1975 AS METROPOLITAN FILM FESTIVAL AND CREATING AN EXECUTIVE COMMITTEE TO TAKE CHARGE OF ITS OBSERVANCE AND AUTHORIZING THE SAME TO CONDUCT FUND-RAISING CAMPAIGN FOR THE PURPOSE.

WHEREAS, the cinema, being a mass art and an effective tool of communication that influences the thoughts and changes the attitudes of people, should serve as a vehicle for moral regeneration, social development and cultural reawakening in the New Society;

WHEREAS, the movies should depict seriously and artistically our history, traditions, cultures, aspirations and struggles as a nation through the lives of both men of reknown and the man in the street or on the farm;

WHEREAS, it is the commitment of the New Society to enrich Philippine culture, to reawaken the people to their historical heritage

[26] AN ACT TO CREATE A PUBLIC CORPORATION TO BE KNOWN AS THE BOY SCOUTS OF THE PHILIPPINES, AND TO DEFINE ITS POWERS AND PURPOSES. Approved on October 31, 1936.

and traditional values, and to clarify the Filipino image, through the revival and refurbishment of native arts, among which is the Filipino cinema which should rediscover itself by upholding its inherent artistic and social responsibility;

WHEREAS, this administration has always been guided by the principal of social justice and has pursued efforts to protect the workingman in all fields of human endeavor, thus making it imperative to support welfare groups like the MOWELFUND; and

WHEREAS, in recognition of the value and importance of the local movie industry in the over-all developmental effort for the country, a fitting celebration to encourage quality film production both in substance and in form, as well as provide incentives to the performing artists and the technicians in the industry, is most opportune;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the period from September 10 to 21, 1975, and henceforth, as "Metropolitan Film Festival." I urge all citizens of the Greater Manila Area as well as all its local officials and movie organizations to celebrate the festival appropriately to encourage Filipinos to appreciate Filipino cinema and make it form part of their cultural life.

In order to insure the successful celebration of this festival throughout the Greater Manila Area, an Executive Committee is hereby formed to take charge of the arrangement for its observance, composed of the following:

Dr. Guillermo C. de Vega Chairman, Board of Censors for Motion Pictures	Chairman
Mayor Joseph Estrada President Philippine Motion Pictures Producers Association	Co-Chairman
The Mayors of Metro Manila	Vice-Chairman
Atty. Lazaro R. Banag, Jr. President, Filipino Academy of Movie Arts and Sciences (FAMAS)	Member
Mr. Johnny Litton Manila Theatre Owners Association	Member

Atty. Espiridion Laxa Philippine Motion Pictures Producers Association	Member
Director Gregorio Cendaña National Media Production Center	Member
Director Florentino Dauz Department of Public Information	Member
Board Member Jose Bautista Board of Censors for Motion Picture	Member
Brig. Gen. Prospero Olivas Metro Manila Police Force	Member

The Executive Committee is authorized to engage in fund raising campaign among all sectors of society including the local governments concerned which may donate their amusement tax shares to the MOWELFUND during the period of the celebration to make it a success. Pursuant to the agreement among the participating film producers, the theme of the Festival will center on the Achievements under the New Society, and the best picture is thus to be conferred the "Dangal ng Bagong Lipunan" award.

All departments, bureaus and agencies of the government are hereby directed to give their full support and assistance to the said Committee to ensure the success of the Metropolitan Film Festival.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 9th day of July, in the year of Our Lord, nineteen hundred and seventy-five.

(SGD.) FERDINAND E. MARCOS
President
Republic of the Philippines

Similar Presidential proclamations[27] were also passed which changed the composition of the committee's members. The

[27] *Presidential Proclamation No. 1533, s. 1976*, changed the composition of the Executive Committee. The committee was to be composed of the occupants of the positions of the Chairman of the Board of Censors for Motion Pictures, to act as Chairman of the Executive Committe, while the

President has also issued Proclamation No. 1533-A, s. 1976, changing the schedule of the MMFF from September 10 to 21, to December 24 to January 2 of each year. On August 11, 1983, the President likewise passed Proclamation No. 2302, s. 1983 which renamed the festival from Metropolitan Film Festival to the Metro Manila Film Festival, and again rescheduled its holding to November 7-17 of each year.

On October 4, 1985, Metropolitan Manila Commission Executive Order No. 85-04 was issued authorizing the MOWELFUND itself to manage the MMFF and all amusement taxes accrued during the film festival are given solely to MOWELFUND.

In 1986, then Governor/OIC of Metro Manila Jose D. Lina, Jr. issued Metropolitan Manila Commission Executive Order (E.O) No. 86-09, which provides:

Executive Order No. 86-09

DECLARING THE HOLDING OF AN ANNUAL METRO MANILA FILM FESTIVAL ORGANIZING AN EXECUTIVE COMMITTEE TO ASSIST THE METRO MANILA COMMISSION TO MANAGE THE SAME AND AUTHORIZING THE ACCRUAL/ ALLOCATION OF AMUSEMENT TAXES AND OTHER PROCEEDS DERIVED FROM THE TEN (10) DAY FILM FESTIVAL.

WHEREAS, the Metro Manila Commission has annually granted authority for the holding of a Metro Manila Film Festival pursuant to the spirit and intents of Presidential Proclamation Nos. 1459, 1485, 1533, 1533-A and 1647;

WHEREAS, the Metro Manila Film Festival has been traditionally celebrated annually to promote and enhance the preservation, growth and development of the local film industry;

Director of the National Media Production Center and the Director of the Bureau of Broadcast as members of the committee. *Proclamation No. 1647, s. 1977* enumerated the following as members of the Executive Committee of the MMFF: Governor, Metropolitan Manila Commission, Representative of the FAMAS, Director, National Media Production Center, Director, Bureau of Broadcasts, Commanding Officer, Metro Manila Police Force and Such officers of organizations of local motion pictures producers, directors, actors, actresses and/or theater operators or owners, film groups and other persons as may be chosen by the Governor, Metropolitan Manila Commission.

WHEREAS, the film as a popular entertainment and educational medium is a potent force in the formation of the society's value system which can be utilized to effectively fight social ils such as prostitution, drug addiction, criminality and the like;

WHEREAS, the present national leadership is cognizant of the vital role of the film industry in the effort towards national reconstruction in all sectors of society;

WHEREAS, it is imperative that the film industry, which plays a significant role in providing a serious and artistic depiction of our people's history, traditions, culture, aspirations, and struggles, be given due recognition and that efforts be undertaken to promote the economic upliftment and professional development of its members;

NOW, THEREFORE, I, JOSE D. LINA, JR., Governor/Officer In Charge of Metro Manila, by virtue of the powers vested in me by law and after a series of consultations with the Metro Manila Mayors and the representatives of the movie industry do hereby order:

Section 1. That the Metro Manila Film Festival shall be held for the period December 24-January 3 every year.

Section 2. Executive Committee - An Executive Committee shall be organized to assist the Metro Manila Commission in the task of holding, managing and supervising the annual Metro Manila Film Festival to be composed of representatives of the donor cities and municipalities of Metro Manila, the movie industry and such other government agencies as may be chosen by the Governor, Metro Manila Commission.

Section 3. Donation of Amusement Taxes - All city and municipal mayors and treasurers are hereby directed to exempt all theaters from the computation and remittance of amusement taxes during the ten (10) day period, including taxes from films rated by the Film Rating Board as mentioned in Executive Order No. 84-06, all said taxes to accrue to the Metro Manila Film Festival Executive Committee as TRUSTEE pending identification of beneficiaries.

Section 4. Period of Payment - Amusement taxes referred to in Section 3 hereof shall be paid by the proprietor, lessee or theater operator concerned directly to the Executive Committe not later than twenty (20) days after the last day of the festival.

Section 5. Penalties - If the tax is not paid within the time fixed herein above, the proprietor, lessee or theater operator shall be subject to the surcharges, interests and penalties prescribed by Section 51 of the Metropolitan Manila Revenue Code. In case of willful neglect to file the return and pay the tax within the time required or in case a fraudulent return is filed or a false return is willfully made, the proprietor, lessee or theater operator shall be subject to a surcharge of fifty (50%) percent of the correct amount of the tax due in addition to the interest and penalties provided in Section 169 of the same Code.

Section 6. Secretariat - a Metro Manila Film Festival Secretariat shall be created in the Metro Manila Commission to assist the Executive Committee as the central coordinating body;

Section 7. Implementing Guidelines - The Metro Manila Commission shall issue the necessary guidelines, rules and regulations for the proper and effective implementation of the Executive Order.

Section 8. Accordingly, all previous authorities granted concerning the supervision, management and holding of the Metro Manila Film Festival which are inconsistent herewith are hereby superseded.

Section 9. Effectivity- This Executive Order shall take effect immediately.

Done in Quezon City, this 13th day of August. 1986.

(SGD.) JOSE D. LINA, JR.
Officer-in-Charge
Governor/General Manager

Considering the establishment and mechanism of the Executive Committee of the MMFF, it is at once apparent that it is not a government-owned and controlled corporation. The Introductory Provisions of the Administrative Code of 1987 define GOCCs:

SEC. 2. *General Terms Defined*. – x x x

(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) percent of its capital stock: Provided, That government-owned or controlled corporations may be further categorized by the Department of the Budget, the Civil Service Commission, and the Commission on Audit for purposes of the exercise and discharge of their respective powers, functions and responsibilities with respect to such corporations.(Emphasis ours)

In this case, there is nothing in the records which establishes that the Executive Committee of the MMFF is organized as a stock or non-stock corporation. It does not have capital which is to be divided into shares of stock, nor stockholders and voting shares, as to qualify as a stock corporation.

We cannot also deem it a non-stock corporation. Though undoubtedly organized for cultural purposes, the Executive Commitee of the MMFF is ostensibly just a group of representatives of various stakeholders m the Philippine movie industry, it has no other members.

Such finding notwithstanding, We find that the Executive Committee is subject to COA jurisdiction, considering its administrative relationship to the Metro Manila Development Authority, a government agency tasked to perform administrative, coordinating and policy-setting functions for the local government units in the Metropolitan Manila area.

The public nature of MMDA is apparent in its charter, Republic Act (R.A.) No. 7924,[28] particularly in the following provision:

Sec. 2. — Creation of the Metropolitan Manila Development Authority. – The affairs of Metropolitan Manila shall be administered by the Metropolitan Manila Authority, hereinafter referred to as the MMDA, to replace the Metro Manila Authority (MMA) organized under Executive Order No. 392, series of 1990.

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[28] AN ACT CREATING THE METROPOLITAN MANILA DEVELOPMENT AUTHORITY, DEFINING ITS POWERS AND FUNCTION, PROVIDING FUNDS THEREFOR AND OTHER PURPOSES. Approved on March 1, 1995.

The MMDA shall perform planning, monitoring and coordinative functions, and in the process exercise regulatory and supervisory authority over the delivery of metrowide services within Metro Manila without diminution of the autonomy of the local government units concerning purely local matters.

Sec. 3. Scope of MMDA Services. – **Metro-wide services under the jurisdiction of the MMDA are those services which have metro-wide impact and transcend local political boundaries or entail huge expenditures such that it would not be viable for said services to be provided by the individual local government units** (LGUs) comprising Metropolitan Manila. These services shall include:

(a) Development planning which includes the preparation of medium and long-term development plans, the development, evaluation and packaging of projects, investments programming; and coordination and monitoring of plan, program and project implementation.

(b) Transport and traffic management which include the formulation, coordination, and monitoring of policies, standards, programs and projects to rationalize the existing transport operations, infrastructure requirements, the use of thoroughfares, and promotions of sale and convenient movement of persons and goods; provision for the mass transport system and the institution of a system to regulate road users; administration and implementation of all traffic enforcement operations, traffic engineering services and traffic education programs, including the institution of a single ticketing system in Metropolitan Manila.

(c) Solid waste disposal and management which include formulation and implementation of policies, standards, programs and projects for proper and sanitary waste disposal. It shall likewise include the establishment and operation of sanitary land fill and related facilities and the implementation of other alternative programs intended to reduce, reuse and recycle solid waste.

(d) Flood control and sewerage management which include the formulation and implementation of policies, standards programs and projects for an integrated flood control, drainage and sewerage system.

(e) Urban renewal, zoning, and land use planning, and shelter services which include the formulation, adoption and implementation of policies, standards, rules and regulations, programs and projects to rationalize and optimize urban land use and provide direction to urban growth and expansion, the rehabilitation and development of slum and blighted areas, the development of shelter and housing facilities and the provision of necessary social services thereof.

(f) Health and Sanitation, urban protection and pollution control which include the formulation and implementation of policies, rules and regulations, standards, programs and projects for the promotion and safeguarding of the health and sanitation of the region and for the enhancement of ecological balance and the prevention, control and abatement of environmental pollution.

(g) Public safety which includes the formulation and implementation. of programs and policies and procedures to achieve public safety, especially preparedness for preventive or rescue operations during times of calamities and disasters such as conflagrations, earthquakes, flood and tidal waves, and coordination and mobilization of resources and the implementation of contingency plans for the rehabilitation and relief operations in coordination with national agencies concerned.

Sec. 4. Metro Manila Council. The governing board and policy making body of the MMDA shall be the Metro Manila Council, composed of the mayors of the eight (8) cities and nine (9) municipalities enumerated in Section 1 hereof, the president of the Metro Manila Vice Mayors League and the President of the Metro Manila Councilors League.

The heads of the Department of Transportation and Communications (DOTC), Department of Public Works and Highways (DPWH), Department of Tourism (DOT), Department of Budget and Management (DBM), Housing and Urban Development Coordinating Committee (HUDC), and Philippine National Police (PNP) or their duly authorized representatives, will attend meetings of the council as non-voting members.

The Council shall be headed by a Chairman, who shall be appointed by the President and who shall continue to hold office

at the discretion of the appointing authority. He shall be vested with the rank, rights, privileges, disqualifications, and prohibitions of a Cabinet member.

The Chairman shall be assisted by a General Manager, an Assistant General Manager for Finance and Administration, an Assistant General Manager for Planning and an Assistant General Manager for Operations, all of whom shall be appointed by the President with the consent and concurrence of the majority of the Council, subject to civil service laws and regulations. They shall enjoy security of tenure and may be removed for cause in accordance with law.

Sec. 5. Functions and powers of the Metro Manila Development Authority. The MMDA shall:

(a) Formulate, coordinate and regulate the implementation of medium and long-term plans and programs for the delivery of metro-wide services, land use and physical development within Metropolitan Manila, consistent with national development objectives and priorities;

(b) Prepare, coordinate and regulate the implementation of medium-term investment programs for metro-wide services which shall indicate sources and uses of funds for priority programs and projects, and which shall include the packaging of projects and presentation to funding institutions;

(c) Undertake and manage on its own metro-wide programs and projects for the delivery of specific services under its jurisdiction, subject to the approval of the Council. For this purpose, MMDA can create appropriate project management offices;

(d) Coordinate and monitor the implementation of such plans, programs and projects in Metro Manila; identify bottlenecks and adopt solutions to problems of implementation;

(e) The MMDA shall set the policies concerning traffic in Metro Manila, and shall coordinate and regulate the implementation of all programs and projects concerning traffic management, specifically pertaining to enforcement, engineering and education. Upon request, it shall be extended assistance and cooperation, including but not limited to, assignment of personnel, by all other government agencies and offices concerned;

> (f) Install and administer a single ticketing system, fix, impose and collect fines and penalties for all kinds of violations of traffic rules and regulations, whether moving or non-moving in nature, and confiscate and suspend or revoke drivers licenses in the enforcement of such traffic laws and regulations, the provisions of RA 4136 and PD 1605 to the contrary notwithstanding. For this purpose, the Authority shall impose all traffic laws and regulations in Metro Manila, through its traffic operation center, and may deputize members of the PNP, traffic enforcers of local government units, duly licensed security guards, or members of non-governmental organizations to whom may be delegated certain authority, subject to such conditions and requirements as the Authority may impose; and
>
> (g) Perform other related functions required to achieve the objectives of the MMDA, including the undertaking of delivery of basic services to the local government units, when deemed necessary subject to prior coordination with and consent of the local government unit concerned.(Emphasis ours)

This Court has likewise clarified the nature of the MMDA in past cases. In *Metropolitan Manila Development Authority v. Bel-Air Village Association, Inc.*,[29] this Court, discussed MMDA's nature as a coordinating agency of the local government units of Metropolitan Manila:

> Clearly, the scope of the MMDA's function is limited to the delivery of the seven (7) basic services. One of these is transport and traffic management which includes the formulation and monitoring of policies, standards and projects to rationalize the existing transport operations, infrastructure requirements, the use of thoroughfares and promotion of the safe movement of persons and goods. It also covers the mass transport system and the institution of a system of road regulation, the administration of all traffic enforcement operations, traffic engineering services and traffic education programs, including the institution of a single ticketing system in Metro Manila for traffic violations. Under the service, the MMDA is expressly authorized "to set the policies concerning traffic" and "coordinate and regulate the implementation of all traffic management programs." In addition, the MMDA may "install and administer a single ticketing system," fix, impose and collect fines and penalties for all traffic violations.

[29] 385 Phil. 586 (2000).

It will be noted that the powers of the MMDA are limited to the following acts: formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installation of a system and administration. There is no syllable in R.A. No. 7924 that grants the MMDA police power, let alone legislative power. Even the Metro Manila Council has not been delegated any legislative power. Unlike the legislative bodies of the local government units, there is no provision in R.A. No. 7924 that empowers the MMDA or its Council to "enact ordinances; approve resolutions, and appropriate funds for the general welfare" of the inhabitants of Metro Manila. **The MMDA is, as termed in the charter itself, "development authority." It is an agency created for the purpose of laying down policies and coordinating with the various national government agencies, people's organizations, non-governmental organizations and the private sector for the efficient and expeditious delivery of basic services in the vast metropolitan area.** All its functions are administrative in nature and these are actually summed up in the charter itself, *viz*:

> Sec. 2. Creation of the Metropolitan Manila Development Authority. — . . . .
>
> The MMDA shall perform planning, monitoring and coordinative functions, and in the process exercise regulatory and supervisory authority over the delivery of metro-wide services within Metro Manila, without diminution of the autonomy of the local government units concerning purely local matters.
>
> x x x x x x x x x

Under the 1987 Constitution, the local government units became primarily responsible for the governance of their respective political subdivisions. **The MMA's jurisdiction was limited to addressing common problems involving basic services that transcended local boundaries. It did not have legislative power.** Its power was merely to provide the local government units technical assistance in the preparation of local development plans. Any semblance of legislative power it had was confined to a "review [of] legislation proposed by the local legislative assemblies to ensure consistency among local governments and with the comprehensive development plan of Metro Manila," and to "advise the local governments accordingly."

When R.A. No. 7924 took effect, Metropolitan Manila became a "special development and administrative region" and the MMDA a "special development authority" whose functions were "without prejudice to the autonomy of the affected local government units."

x x x x x x x x x

It is thus beyond doubt that the MMDA is not a local government unit or a public corporation endowed with legislative power. It is not even a "special metropolitan political subdivision" as contemplated in Section 11, Article X of the Constitution. The creation of a "special metropolitan political subdivision" requires the approval by a majority of the votes cast in a plebiscite in the political units directly affected." R. A. No. 7924 was not submitted to the inhabitants of Metro Manila in a plebiscite. **The Chairman of the MMDA is not an official elected by the people, but appointed by the President with the rank and privileges of a cabinet member. In fact, part of his function is to perform such other duties as may be assigned to him by the President, whereas in local government units, the President merely exercises supervisory authority.** This emphasizes the administrative character of the MMDA. (Emphasis ours)

Going back to the factual circumstances of the instant case, the Executive Committee, having been created to assist the MMDA in the conduct of the annual Manila Film Festival, cannot be treated separately from the legal existence and nature of the agency it is tasked to give assistance to.

It is likewise apparent that the observance of the annual film festival, entails activities which impacts some, if not all local government units of the Metropolitan Manila. The "Parade of the Stars," for instance, which is normally conducted along Roxas Boulevard, affects the traffic situation in the cities it traverses.[30] The traffic situation in Metro Manila is undoubtedly within the authority of the MMDA to manage.

The link between MMDA and the Executive Committee is likewise evident from the establishment of a Secretariat within

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[30] < https://newsinfo.inquirer.net/854636/mmff-parade-of-stars-rerouted-from-roxas-blvd-to-city-hall-quiapo) > (Last visited October 29, 2018).

the MMDA, which will assist the committee in the discharge of its function. To recall, Section 6 of E.O. No. 86-09 states:

> Section 6. Secretariat- a Metro Manila Film Festival Secretariat shall be created in the Metro Manila Commission to assist the Executive Committee as the central coordinating body.

In addition, this Court notes that the multi-sectoral membership of the executive committee mirrors the network MMDA is authorized to establish under its Charter, *viz*:

> Sec. 9. Institutional Linkages of the MMDA.- The MMDA shall, in carrying out its functions, consult, coordinate and work closely with the LGUs, the National Economic and Development Authority (NEDA) and other national government agencies mentioned in Section 4 hereof, and accredited people's organization (POs), nongovernmental organizations (NGOs), and the private sector operating in Metro Manila. The MMDA chairman or his authorized representative from among the Council members, shall be ex-officio member of the boards of government corporations and committees of the departments and offices of government whose activities are relevant to the objectives and responsibilities of the MMDA which shall include but not limited to Metropolitan Waterwoks and Sewerage System (MWSS), DOTC, DPWH, HUDCC and Department of the Interior and Local Government (DILG).
>
> The MMDA shall have a master plan that shall serve as the framework for the local development plans of the component LGUs.
>
> The MMDA shall submit its development plans and investments programs to the NEDA for integration into the Medium-Term Philippine Development Plan (MTPDD) and public investment program.
>
> The implementation of the MMDA's plans, programs, and projects shall be undertaken by the LGUs, the concerned national governments agencies, the Pos, NGOs and the private sector and the MMDA itself where appropriate. For this purpose, the MMDA may enter into contracts, memoranda of agreement and other cooperative agreements with these bodies for the delivery of the required services within Metropolitan Manila.

The MMDA shall, in coordination with the NEDA and the Department of Finance, interface with the foreign, assistance agencies for purposes of obtaining financing support, grants and donations in support of its programs and projects.

Based from the aforesaid provisions, this Court cannot accord merit to petitioner's arguments which seek to treat separately the Executive Committee from the MMDA. Certainly, that would amount to creating another entity without basis in law and in fact. The records simply establish that the Executive Committee is an office under the MMDA, a public agency, subject to the audit jurisdiction of the COA.

The case of Funa v. Manila Economic and Cultural Office, et al. is not applicable to the case at bar

Reinforcing its claim that the Executive Committee is not one of the entities subject to the COA's audit jurisdiction, petitioner claims that the committee is similar to MECO, which this Court declared as a *sui generis* entity and where the COA's audit jurisdiction is limited.

In the *Funa* case, this Court concluded:

The MECO is not a GOCC or government instrumentality. It is a *sui generis* private entity especially entrusted by the government with the facilitation of unofficial relations with the people in Taiwan without jeopardizing the country's faithful commitment to the One China policy of the PROC. However, despite its non-governmental character, the MECO handles government funds in the form of the "verification fees" it collects on behalf of the DOLE and the "consular fees" it collects under Section 2(6) of EO No. 15, s. 2001. Hence, under existing laws, the accounts of the MECO pertaining to its collection of such "verification fees'' and "consular fees" should be audited by the COA.[31]

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[31] *Funa v. Manila Economic and Cultural Office, et al., supra* note 17, at 103.

This Court does not find merit in petitioner's contention.

MECO is markedly different from the Executive Committee of the MMFF. In *Funa*, this Court explained that MECO is a non-stock corporation organized under and governed by the provisions of the Corporation Code. In that case, this Court further found that none of MECO's incorporators, as well as current members, officers and directors are government appointees or public officers designated by reason of their office. Likewise, this Court did not declare MECO a government instrumentality because it is not created pursuant to a special law. This Court, however, recognized that MECO is not an ordinary private corporation, as it performs a delicate responsibility of "pursuing '*unofficial*' relations with the people of a foreign land whose government the Philippines is bound not to recognize."[32] Such functions, according to this Court, is similar to that performed by the consular offices of the Department of Foreign Affairs.

The conclusion reached by the Court in *Funa* cannot be applied in the case at bar. Compared to MECO, which is an incorporated body, the Executive Committee is merely an office under MMDA, created pursuant to a Presidential Proclamation passed in 1975, when the legislative power was exercised by the President. It cannot likewise be denied that some of the original members of the Executive Committee, as well as current ones, are public officials. The first set of members of the Executive Committee, as listed in Proclamation No. 1459 includes representatives from the Department of Public Information and the police force. At present, this Court takes judicial notice of the increase of committee's members coming from the public sector. Its current roster includes Senator Grace Poe-Llamanzares, Batangas Congresswoman Vilma Santos-Recto, Taguig City Mayor Laarni Cayetano representing the Metro Manila mayors, Police Director Oscar Albayalde, Chief of the Philippine National Police - National Capital Region; Rachel Arenas, Chairperson of the

[32] *Id*. at 98.

Movie, Television Review and Classification Board.[33] To the mind of this Court, the public nature of the Executive Committee of the MMFF is not altered despite the fact that some of its members come from the private sector. Just like the MMDA which has institutional links with other government agencies, NGOs and companies from the private sector, this Court deems the membership of representatives from private companies, such as those coming from the cinema owners, merely incidental to the operations and the activities held during the duration of the annual film festival.

The funds of the Executive Committee are considered public funds

The Executive Committee has two sources of funds:

1. The donations from the local government units comprising the Metropolitan Manila covering the period of holding the MMFF from December 25 to January 3; and

2. The non-tax revenues that come in the form of donations from private entities.[34]

As a committee under MMDA, a public office, this Court finds that both sources of funds can properly be subject of COA's audit jurisdiction.

That the Executive Committee of the MMFF administers funds from the government is apparent in the following portion of Proclamation No. 1459:

The Executive Committee is authorized to engage in fund raising campaign among all sectors of society including the local governments concerned which may donate their amusement tax

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[33] http://mmda.gov.ph/44-news/news-2017/2425-mmff-launches-41st-film-festival-announces-new-execom-members.html (Accessed on October 24, 2018).

[34] *Rollo*, p. 25.

shares to the MOWELFUND during the period of the celebration to make it a success. x x x. (Emphasis ours)

Verily, if non-governmental entities maybe audited by the COA as long as its funds are partly coming from the government, with more reason should this principle apply to the Executive Committee.

As to the committee's funds coming from non-tax revenues, the fact that such funds come from purported private sources, do not convert the same to private funds. Such funds must be viewed with the public purpose for which it was solicited, which is the management of the MMFF. In *Confederation of Coconut Farmers Organizations of the Philippines, Inc. (CCFOP) v. His Excellency President Benigno Simeon C. Aquino III, et al.*,[35] reiterating this Court's ruling in *Republic of the Philippines v. COCOFED*[36]:

Even if the money is allocated for a special purpose and raised by special means, it is still public in character. In the case before us, the funds were even **used to organize and finance State offices**. In *Cocofed v. PCGG*, the Court observed that certain agencies or enterprises "were organized and financed with revenues derived from coconut levies imposed under a succession of laws of the late dictatorship ... with deposed Ferdinand Marcos and his cronies as the suspected authors and chief beneficiaries of the resulting coconut industry monopoly. The Court continued: " .... It cannot be denied that the coconut industry is one of the major industries supporting the national economy. It is, therefore, the State's concern to make it a strong and secure source not only of the livelihood of a significant segment of the population, but also of export earnings the sustained growth of which is one of the imperatives of economic stability. (Emphasis ours)

In *The Veterans Federation of the Phils. represented by Esmeraldo R. Acordo v. Hon. Reyes*,[37] this Court also declared

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[35] G.R. No. 217965, August 8, 2017.

[36] 423 Phil. 735 (2001).

[37] 518 Phil. 668 (2006).

as public funds contributions from affiliate organizations of the VFP:

> x x x. In the case at bar, some of the funds were raised by even more special means, as the contributions from affiliate organizations of the VFP can hardly be regarded as enforced contributions as to be considered taxes. They are more in the nature of donations which have always been recognized as a source of public funding.[38]

Furthermore, despite the private source of funds, ownership over the same was already transmitted to the government by way of donation. As donee, the government had become the owner of the funds, with full ownership rights and control over the use and disposition of the same, subject only to applicable laws and COA rules and regulations. Thus, upon donation to the government, the funds became public in character.

This is in contrast to cases where there is no transfer of ownership over the funds from private parties to the government, such as in the case of cash deposits required in election protests filed before the trial courts, Commission on Elections, and electoral tribunals. In these cases, the government becomes a mere depositary of such fund, the use and disposition of which is subject to the conformity of the private party-depositor who remains to be the owner thereof.

Applying the principles enunciated in the aforesaid cases, and considering the purpose for which COA was created, this Court finds that any such funds, though coming from private sources, become public upon receipt by the Executive Committee, for use in the purpose for which it was created. For all intents and purposes, the Executive Committee, an office under the MMDA and created pursuant to Presidential Proclamation No. 1459, as donee, has already become the owner of the funds and may dispose of the same as it deems fit; thus, such funds are considered public funds. Being public in character, the COA can therefore validly conduct an audit over such funds in accordance with its auditing rules and regulations.

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[38] *Id*. at 697.

WHEREFORE, the premises considered, the instant Petition for *Certiorari* is **DISMISSED**.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Reyes, J. Jr., and *Hernando, JJ.*, concur.

Gesmundo, J., no part due to close relation to party.

Carandang, J., on leave.

SECOND DIVISION

[G.R. No. 195297. December 5, 2018]

COCA-COLA BOTTLERS PHILIPPINES, INC., *petitioner, vs.* **ILOILO COCA-COLA PLANT EMPLOYEES LABOR UNION (ICCPELU), as represented by WILFREDO L. AGUIRRE,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; LABOR RELATIONS; COLLECTIVE BARGAINING AGREEMENT (CBA); THE LITERAL MEANING OF THE STIPULATIONS OF THE CBA CONTROL IF THEY ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES; THUS, WHERE THE CBA IS CLEAR AND UNAMBIGUOUS, IT, BECOMES THE LAW BETWEEN THE PARTIES AND COMPLIANCE THEREWITH IS MANDATED BY THE EXPRESS POLICY OF THE LAW.— A CBA is the negotiated contract between a legitimate labor organization and the employer concerning

wages, hours of work, and all other terms and conditions of employment in a bargaining unit. It incorporates the agreement reached after negotiations between the employer and the bargaining agent with respect to terms and conditions of employment. It is axiomatic that the CBA comprises the law between the contracting parties, and compliance therewith is mandated by the express policy of the law. The literal meaning of the stipulations of the CBA, as with every other contract, control if they are clear and leave no doubt upon the intention of the contracting parties. Thus, where the CBA is clear and unambiguous, it, becomes the law between the parties and compliance therewith is mandated by the express policy of the law. Moreover, it is a familiar rule in interpretation of contracts that the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly. Consequently, in this case, recourse to the CBA between CCBPI and the respondent as regards the hours of work is essential.

2. ID.; ID.; ID.; ID.; ID.; THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES GIVES THE COMPANY MANAGEMENT THE PREROGATIVE TO PROVIDE ITS EMPLOYEES WITH SATURDAY WORK DEPENDING ON THE EXIGENCIES OF THE BUSINESS.— The CBA under Article 11, Section 1(c), clearly provides that CCBPI has the option to schedule work on Saturdays based on operational necessity. There is no ambiguity to the provision, and no other interpretation of the word "work" other than the work itself and not the working hours. If the parties had truly intended that the option would be to change only the working hours, then it would have so specified that whole term "working hours" be used, as was done in other provisions of the CBA. x x x. For the Court, the phrase "schedule work on Saturdays based on operational necessity," by itself, is union recognition that there are times when exigencies of the business will arise requiring a manning complement to suffer work for four additional hours per week. Necessarily, when no such exigencies exist, the additional hours of work need not be rendered. As such, the provisions' tenor and plain meaning give company management the right to compel its employees to suffer work on Saturdays. This necessarily includes the prerogative not to schedule work. Whether or not work will be

scheduled on a given Saturday is made to depend on operational necessity. The CBA therefore gives CCBPI the management prerogative to provide its employees with Saturday work depending on the exigencies of the business.

3. ID.; ID.; LABOR STANDARDS; WAGES; IT IS NOT THE GRANT OF SATURDAY WORK ITSELF WHICH CONSTITUTES A BENEFIT TO THE COMPANY'S EMPLOYEES, BUT THE PREMIUM WHICH THE COMPANY PAYS ITS EMPLOYEES BY REASON OF SATURDAY WORK; THUS THE WITHDRAWAL OF THE SATURDAY WORK ITSELF DOES NOT CONSTITUTE DIMINUTION OF BENEFITS.— Despite the mistaken notion of CCBPI that Saturday work is synonymous to overtime work, the Court still disagrees with the CA ruling that the previous practice of instituting Saturday work by CCBPI had ripened into a company practice covered by Article 100 of the Labor Code. To note, it is not Saturday work *per se* which constitutes a benefit to the company's employees. Rather, the benefit involved in this case is the premium which the company pays its employees above and beyond the minimum requirements set by law. The CBA between CCBPI and the respondent guarantees the employees that they will be paid their regular wage plus an additional 50% thereof for the first eight (8) hours of work performed on Saturdays. Therefore, the benefit, if ever there is one, is the premium pay given by reason of Saturday work, and not the grant of Saturday work itself. x x x In order for there to be proscribed diminution of benefits that prejudiced the affected employees, CCBPI should have unilaterally withdrawn the 50% premium pay without abolishing Saturday work. These are not the facts of the case at bar. CCBPI withdrew the Saturday work itself, pursuant, as already held, to its management prerogative. In fact, this management prerogative highlights the fact that the scheduling of the Saturday work was actually made subject to a condition, *i.e.*, the prerogative to provide the company's employees with Saturday work based on the existence of operational necessity.

4. ID.; ID.; ID.; WHEN THE GRANT OF A BENEFIT IS MADE SUBJECT TO A CONDITION AND SUCH CONDITION PREVAILS, THE RULE ON NON-DIMINUTION FINDS NO APPLICATION.— [E]ven assuming *arguendo* that the

Saturday work involved in this case falls within the definition of a "benefit" protected by law, the fact that it was made subject to a condition (*i.e.*, the existence of operational necessity) negates the application of Article 100 pursuant to the established doctrine that when the grant of a benefit is made subject to a condition and such condition prevails, the rule on non-diminution finds no application. Otherwise stated, if Saturday work and its corresponding premium pay were granted to CCBPI's employees without qualification, then the company's policy of permitting its employees to suffer work on Saturdays could have perhaps ripened into company practice protected by the non-diminution rule.

5. **ID.; ID.; ID.; ID.; WHERE THE EMPLOYEE IS WILLING AND ABLE TO WORK AND IS NOT ILLEGALLY PREVENTED FROM DOING SO, NO WAGE IS DUE TO HIM; TO HOLD OTHERWISE WOULD BE TO GRANT TO THE EMPLOYEE THAT WHICH HE DID NOT EARN AT THE PREJUDICE OF THE EMPLOYER.—** The age-old rule governing the relation between labor and capital, or management and employee, of a "fair day's wage for a fair day's labor" remains the basic factor in determining employees' wages. If there is no work performed by the employee, there can be no wage. In cases where the employee's failure to work was occasioned neither by his abandonment nor by termination, the burden of economic loss is not rightfully shifted to the employer; each party must bear his own loss. In other words, where the employee is willing and able to work and is not illegally prevented from doing so, no wage is due to him. To hold otherwise would be to grant to the employee that which he did not earn at the prejudice of the employer. In the case at bar, CCBPI's employees were not illegally prevented from working on Saturdays. The company was simply exercising its option not to schedule work pursuant to the CBA provision which gave it the prerogative to do so. It therefore follows that the principle of "no work, no pay" finds application in the instant case.

6. **ID.; THE LAW DOES NOT AUTHORIZE THE OPPRESSION OR SELF-DESTRUCTION OF THE EMPLOYER, AS THE MANAGEMENT ALSO HAS ITS OWN RIGHTS, WHICH ARE ENTITLED TO RESPECT AND ENFORCEMENT IN THE INTEREST OF SIMPLE FAIR PLAY.—** [T]he

> Court cannot emphasize enough that its primary role as the vanguard of constitutional guaranties charges it with the solemn duty of affording full protection to labor. It is, in fact, well-entrenched in the deluge of our jurisprudence on labor law and social legislation that the scales of justice usually tilt in favor of the workingman. Such favoritism, however, has not blinded the Court to the rule that justice is, in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine. The law does not authorize the oppression or self-destruction of the employer. Management also has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play. After all, social justice is, in the eloquent words of Associate Justice Jose P. Laurel, "the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated."

APPEARANCES OF COUNSEL

Viesca Dones & Malang Law Offices for petitioner.
Jagna-an Belloga Agot & Associates for respondent.

D E C I S I O N

REYES, A., JR., *J.*:

Challenged before this Court *via* this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court is the Decision[2] dated June 23, 2010 of the Court of Appeals (CA), and its Resolution[3] dated October 19, 2010 which reversed the Decision[4] dated September 7, 2006 of the National Conciliation

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[1] *Rollo*, pp. 20-61.

[2] Penned by Associate Justice Socorro B. Inting, with Associate Justices Edwin D. Sorongon and Eduardo B. Peralta, Jr. concurring; *id*. at 70-78.

[3] *Id*. at 80-81.

[4] Rendered by Atty. Mateo A. Valenzuela as Chairman, with Attys. Inocencio Ferrer, Jr. and Gloria Arriola as members; *id*. at 179-206.

and Mediation Board (NCMB), Regional Branch No. 6, Iloilo City, in Case No. PAC-613-RB6-02-01-06-2006.

The Antecedent Facts

Petitioner Coca-Cola Bottlers Philippines, Inc. (CCBPI) is a domestic corporation engaged in the business of manufacturing and selling of leading non-alcoholic products and other beverages.[5] It operates a manufacturing plant in Ungka, Pavia, Iloilo City, where the aggrieved former employees herein, as represented by respondent Iloilo Coca-Cola Plant Employees Labor Union (respondent), worked as regular route drivers and helpers.[6]

The conflict arose due to the CCBPI's policy involving Saturday work. In the said policy, several of CCBPI's employees were required to report for work on certain Saturdays to perform a host of activities, usually involving maintenance of the facilities. This prerogative was supposedly consistent with the pertinent provisions[7] in the Collective Bargaining Agreement (CBA)

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[5] *Id*. at 24.

[6] *Id*. at 25.

[7] *Id*. at 143-145.

ARTICLE 10
HOURS OF WORK

SECTION 1. Work Week. For daily paid workers the normal work week shall consist of five (5) consecutive days (Monday to Friday) of eight (8) hours each and one (1) day (Saturday) of four (4) hours. Provided, however, that any worker required to work on Saturday must complete the scheduled shift for the day and shall be entitled to the premium pay provided in Article IX hereof.

SECTION 2. Changes in Work Schedule. The present regular working hours shall be maintained for the duration of this Agreement. However, it is hereby agreed that the COMPANY may change the prevailing working hours, if in its judgment, it shall find such change or changes advisable or necessary either as a permanent or temporary measure, provided at least twelve (12) hours notice in advance is given of such change or changes, and provided, further, that they are in accordance with law.

ARTICLE 11
OVERTIME, NIGHT DIFFERENTIAL, SATURDAY, SUNDAY AND HOLIDAY PAY

between CCBPI and its employees, which stated that management had the sole option to schedule work on Saturdays on the basis of operational necessity.[8]

CCBPI later on informed the respondent that, starting July 2, 2005, Saturday work would no longer be scheduled, with CCBPI citing operational necessity as the reason for the decision.[9] Specifically, the discontinuance was done with the purpose of saving on operating expenses and compensating for the anticipated decreased revenues. As Saturday work involved maintenance-related activities, CCBPI would then only schedule the day's work as the need arose for these particular undertakings, particularly on some Saturdays from September to December 2005.[10]

On July 1, 2005, the parties met, with CCBPI's Manufacturing Manager setting forth the official proposal to stop the work schedule during Saturdays.[11] This proposal was opposed and rejected by the officers and members of the respondent who were present at the meeting. Despite this opposition, CCBPI pushed through with the non-scheduling of work on the following Saturday, July 2, 2005.

As a result of the foregoing, the respondent submitted to CCBPI its written grievance, stating therein that CCBPI's act of disallowing its employees to report during Saturday is a violation of the CBA provisions, specifically Section 1, Article 10 thereof.[12] Along with the submission of the written grievance,

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SECTION 1. Definitions

(a) An "Ordinary Day" is one that is neither a regular holiday, a special holiday, a Saturday nor the worker's scheduled rest day.

x x x x x x x x x

(b) Saturdays. Saturday is a premium day but shall not be considered as a rest day or equivalent to a Sunday. It is further agreed that management has the option to schedule work on Saturdays on the basis of operational necessity.

[8] *Id*. at 26.

[9] *Id*. at 87.

[10] *Id.*

[11] *Id.* at 182.

[12] *Id*.

the respondent also requested a meeting with CCBPI to discuss the issue. CCBPI response to the request, however, was to merely send a letter reiterating to the respondent that under the set of facts, management has the option to schedule work on Saturday on the basis of operational necessity.[13] Further letters on the part of the respondent were responded to in the same way by CCBPI.

Respondent thus brought its grievances to the office of the NCMB, and on June 9, 2006, the parties pursuant to the provisions of their CBA submitted the case for voluntary arbitration.[14] The panel comprised of three (3) voluntary arbitrators (the Panel of Arbitrators), was charged with resolving two issues: First, whether or not members of the respondent were entitled to receive their basic pay during Saturdays under the CBA even if they would not report for work, and second, whether or not CCBPI could be compelled by the respondent to provide work to its members during Saturdays under the CBA.[15]

After the presentation of evidence and the subsequent deliberations, the Panel of Arbitrators ruled in favor of CCBPI, the dispositive part of the decision reading:

> IN VIEW OF THE FOREGOING, the Panel of Arbitrators, rules on the first issue, that the Complainant's Union members are nary entitled to receive their Basic Pay during Saturdays under the CBA if they are not reporting for work, under Section I Article 10, and Sections 1(c) and 3(c) Article II of the CBA.
>
> On the second issue, the PANEL rules that [CCBPI] cannot be compelled by the Complainant Union to provide works to its members during Saturdays under the CBA, for lack of legal and factual basis.
>
> SO ORDERED.[16]

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[13] *Id*.

[14] *Id*. at 179.

[15] *Id*.

[16] *Id*. at 206.

Respondent's Motion for Reconsideration to the Panel of Arbitrators' ruling was denied for lack of merit on October 24, 2006.[17]

Unwilling to accept the findings of the Panel of Arbitrators, the respondent elevated its case to the CA *via* a Petition for Review under Rule 43 of the Rules of Court. After a review of the same, the CA subsequently rendered a Decision[18] dated June 23, 2010 granting the respondent's Petition for Review and reversing the decision of the Panel of Arbitrators. The dispositive portion of the CA decision reads, to wit:

> WHEREFORE, premises considered, the petition is GRANTED. The assailed Decision, dated 07 September 2006, and, Order, dated 24 October 2006, respectively, by the panel of voluntary arbitrators, namely: Atty. Mateo A. Valenzuela, Atty. Inocencio Ferrer, Jr., and Gloria Arriola, of the NCMB, Regional Branch No. 6, Iloilo City, are REVERSED and SET ASIDE. A NEW judgment is rendered ORDERING CCBPI to:
>
> 1. COMPLY with the CBA provisions respecting its normal work week, that is, from Monday to Friday for eight (8) hours a day and on Saturdays for four (4) hours;
>
> 2. ALLOW the concerned union members to render work for four (4) hours on Saturdays; and
>
> 3. PAY the corresponding wage for the Saturdays work which were not performed pursuant to its order to do so commencing on 02 July 2005, the date when it actually refused the concerned union members to report for work, until the finality of this decision. The rate for work rendered on a Saturday is composed of the whole daily rate (not the amount equivalent to one-half day rate) plus the corresponding premium.
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> No Costs.
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> SO ORDERED.[19]

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[17] *Id*. at 223-224.

[18] *Id*. at 70-78.

[19] *Id*. at 35.

CCBPI's Motion for Reconsideration was denied by the CA in a Resolution[20] dated October 19, 2010 received on January 28, 2011. On appeal to this Court, on February 11, 2011, CCBPI filed Motion for Extension and requested for an additional period of 30 days from February 12, 2011, or until March 14, 2014, within which to file its Petition for *Certiorari*, which was granted by this Court in a Resolution[21] dated February 21, 2011.

Hence, this Petition, to which the respondent filed a Comment[22] to on June 11, 2011, the latter pleading responded to by CCBPI *via* Reply[23] on September 6, 2011.

The Issues of the Case

A perusal of the parties' pleadings will show the following issues and points of contention:

First, whether or not the CA erred in ruling that under the CBA between the parties, scheduling Saturday work for CCBPI's employees is mandatory on the part of the Company.

Second, whether scheduling Saturday work has ripened into a company practice, the removal of which constituted a diminution of benefits, to which CCBPI is likewise liable to the affected employees for, including the corresponding wage for the Saturday work which was not performed pursuant to the policy of the Company to remove Saturday work based on operational necessity.

The Arguments of the Parties

It is the contention of CCBPI that the CA erred in reversing the decision of the Panel of Arbitrators and finding that the CBA gave the employees the right to compel CCBPI to give work on Saturdays, that the scheduling of work on a Saturday had ripened into a company practice, and that the subsequent withdrawal of Saturday work constituted a prohibited diminution

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[20] *Id*. at 80-81.

[21] *Id*. at 17.

[22] *Id*. at 316-327.

[23] *Id*. at 339-354.

of wages. CCBPI states that this ruling is contrary to fact and law and unduly prejudiced CCBPI as the company was ordered to allow the affected employees to render work for four hours on Saturdays. CCBPI was also ordered to pay the corresponding wage for the Saturday work which were not performed pursuant to its order to do so, the said amount corresponding to the date when the company actually refused the affected employees to report for work, until the finality of this decision.[24]

CCBPI argues that based on the provisions of its CBA, specifically Article 10, Section 1, in relation with, Article 11, Section 1(c) and Section 2(c), it is clear that work on a Saturday is optional on the part of management,[25] and constitutes a legitimate management prerogative that is entitled to respect and enforcement in the interest of simple fair play.[26] CCBPI likewise posits that the option to schedule work necessarily includes the prerogative not to schedule it. And, as the provisions in the CBA are unmistakable and unambiguous, the terms therein are to be understood literally just as they appear on the face of the contract.[27]

For CCBPI, permitting the workers to suffer work on a Saturday would render the phrase "required to work" in Article 10, Section 1 and Article II, Section 2(c) meaningless and superfluous, as while the scheduling of Saturday work would be optional on the part of management, the workers would still be required to render service even if no Saturday work was scheduled.[28]

Aside from the clear and unambiguous provisions of the CBA, CCBPI states that the evidence on record negates the finding

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[24] *Id*. at 78.

[25] *Id*. at 27.

[26] *Id*. at 46, citing *Sosito v. Aguinaldo Development Corporation*, 240 Phil. 373, 377 (1987).

[27] *Rollo*, p. 43, citing *Gaisano Cagayan, Inc. v. Insurance Company of North America*, 523 Phil. 677, 689 (2006).

[28] *Rollo*, *id*.

that Saturday work is mandatory.[29] The evidence shows that only some, and not all the same daily-paid employees reported for work on a Saturday, and the number of the daily-paid employees who reported for work on a Saturday always depended on the CCBPI's operational necessity.[30] The optional nature of the work on the Saturday is also highlighted by the fact that, subject to the fulfillment of certain conditions, the employees who were permitted to suffer work on such day are compensated with a premium pay.[31] This means that work on a Saturday is part of the normal work week, as there would be no reason why employees who reported for work on such date should be given additional compensation or premium pay.

CCBPI also disagrees with the CA that the scheduling of work on a Saturday had ripened into a company practice and that the withdrawal of Saturday work constitutes a prohibited diminution of wages.[32] CCBPI maintains that work on a Saturday does not amount to a benefit as a result of a long-established practice. CCBPI states that in several analogous cases involving overtime work, *Manila Jockey Club Employees Labor-Union-PTGWO v. Manila Jockey Club, Inc*.[33] and *San Miguel Corporation v. Layoc, Jr.*,[34] the Court has already ruled that the work given in excess of the regular work hours is not a "benefit" and the previous grant thereof cannot amount to a "company practice." CCBPI particularly cites the *Layoc* case which held that there is no violation of the rule on non-diminution of benefits as the nature of overtime work of the supervisory employees would show that these are not freely given by the employer, and that on the contrary, the

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[29] *Id*. at 44.

[30] *Id*. at 383.

[31] *Id*.

[32] *Id*. at 48.

[33] 546 Phil. 531 (2007).

[34] 562 Phil. 670 (2007).

payment of overtime pay is made as a means of compensation for services rendered in addition to the regular hours of work.[35]

CCBPI likewise cites several cases involving overtime work, there the Court ruled that the work given in excess of the regular work hours is not a "benefit" and the previous grant thereof cannot amount to a "company practice."[36] As a premium day, that Saturday would have the effect of being a holiday wherein the employees are entitled to receive their pay whether they reported for work or not.[37]

For CCBPI, the previous grant of Saturday work cannot amount to a benefit that cannot be withdrawn by the Company. Contrary to the nature of "benefits" under the law, CCBPI did not freely give payment for Saturday work, instead paying the employees the corresponding wage and premium pay as compensation for services rendered in addition to the regular work of eight (8) hours per day from Mondays to Fridays.[38]

On the other hand, the respondents argue that CCBPI failed to regard the express provision of the CBA which delineates CCBPI's normal work-week which consists of five (5) consecutive days (Monday to Friday) or eight (8) hours each and one (1) day (Saturday) of four (4) hours.[39] The highlighted provision reads as follows:

ARTICLE 10
HOURS OF WORK

SECTION 1. *Work Week*. For daily paid workers the normal work week shall consist of five (5) consecutive days (Monday to Friday) of eight (8) hours each and one (1) day (Saturday) of four (4) hours. Provided, however, that any worker required to work on

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[35] *Rollo*, p. 387.

[36] *Id*., citing *Manila Jockey Club Employees Labor Union-PTGWO v. Manila Jockey Club, Inc.*, *supra* note 33, at 638 and *San Miguel Corporation v. Layoc, Jr.*, *supra* note 34, at 679 (2007).

[37] *Rollo*, p. 184.

[38] *Id*. at 389.

[39] *Id*. at 323.

Saturday must complete the scheduled shift for the day and shall be entitled to the premium pay provided in Article IX hereof.

As such, the respondent advocates that the various stipulations of a contract shall be interpreted together, and that assuming there is any ambiguity in the CBA, this ambiguity should not prejudice respondents under the principle that any doubt in all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer.[40] According to the respondent, Article 11, Section 1(c) merely grants to CCBPI the option to schedule work on Saturdays on the basis of operational necessity, and by contrast nothing in the CBA allegedly allows or grants CCBPI the right or prerogative to unilaterally amend the duly established work week by eliminating Saturday work.[41]

Respondent also alleges that CCBPI was obliged to provide work on Saturday, not only due to the apparent mandate in the CBA, but also as the same ripened into an established company practice, as CCBPI's practice of providing Saturday work had been observed for several years.[42] Respondent thus contends that the unilateral abrogation of the same would squarely tantamount to diminution of benefits, especially as the CBA itself expressly provides that Saturday is part of CCBPI's normal work week, hence the same cannot be unilaterally eliminated by CCBPI,[43] and that the option granted by the CBA to CCBPI is merely to schedule Saturday work, not eliminate it entirely. Thus, to eliminate the Saturday work allegedly would amount to diminution of benefits because the affected employees are ultimately deprived of their supposed salaries or income for that day.[44]

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[40] *Id*.

[41] *Id*. at 335.

[42] *Id*.

[43] *Id*. at 326.

[44] *Id.*

In its Reply[45] to the counter-arguments posited by the respondent in its Comment, CCBPI alleges that if indeed Saturday work is mandatory under the CBA and all the workers are obliged to render work on a Saturday, then the phrase "required to work" under Article 10, Section 1 and Article 11, Section 2(c) would be meaningless and superfluous.[46] Also, CCBPI takes stock in the fact that the compensation for work on Saturday is not freely given. Under the scheme followed by the parties under the CBA, *i.e.*, if the daily-paid employees were permitted to suffer work on a Saturday, they are given additional compensation or premium pay amounting to 50% of their hourly rate for the first eight (8) hours, and 75% of their hourly rate for the work rendered in excess thereof under Article 11, Section 2(c) of the CBA.[47]

Ruling of the Court

The petition is impressed with merit.

As to whether or not the CBA between the parties mandates that CCBPI schedule Saturday work for its employees.

A CBA is the negotiated contract between a legitimate labor organization and the employer concerning wages, hours of work, and all other terms and conditions of employment in a bargaining unit.[48] It incorporates the agreement reached after negotiations between the employer and the bargaining agent with respect to terms and conditions of employment.[49]

It is axiomatic that the CBA comprises the law between the contracting parties, and compliance therewith is mandated by

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[45] *Id*. at 339-351.

[46] *Id*. at 341.

[47] *Id*. at 345.

[48] *Benson Industries Employees Union-ALU-TUCP, et al. v. Benson Industries, Inc.*, 740 Phil. 670, 679 (2014).

[49] *Pantranco North Express, Inc. v. NLRC*, 328 Phil. 470, 483-484 (1996).

the express policy of the law.[50] The literal meaning of the stipulations of the CBA, as with every other contract, control if they are clear and leave no doubt upon the intention of the contracting parties. Thus, where the CBA is clear and unambiguous, it becomes the law between the parties and compliance therewith is mandated by the express policy of the law.[51] Moreover, it is a familiar rule in interpretation of contracts that the various stipulations of a contract shall be interpreted together, attributing to the doubtful ones that sense which may result from all of them taken jointly.[52]

Consequently, in this case, recourse to the CBA between CCBPI and the respondent as regards the hours of work is essential. In Article 10 of the CBA, the company work week is elaborated while also defining how a Saturday is treated and in fact delineating the same from the other days of the work week:

ARTICLE 10
Hours of Work

SECTION 1. *Work Week*. For daily paid workers, the normal work week shall consist of five (5) consecutive days (Monday to Friday) of eight (8) hours and each and one (1) day (Saturday) of four (4) hours, provided, however, that any worker required to work on Saturday must complete the scheduled shift for the day and shall be entitled to the premium pay provided in Article IX hereof.

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(c) Saturdays. Saturday is a premium day but shall not be considered as a rest day or equivalent to a Sunday. It is further agreed that management has the option to schedule work on Saturdays on the basis of operational necessity.

Section 5 of Article 9 of the CBA, explicitly referred to in Article 10 states:

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[50] *Marcopper Mining Corporation v. NLRC*, 325 Phil. 618, 632 (1996).

[51] *Philippine Journalists, Inc. v. Journal Employees Union*, 710 Phil. 94, 103 (2013).

[52] CIVIL CODE OF THE PHILIPPINES, Article 1374.

SECTION 5. *Special Bonus*. When a regular employee goes out on his route on a Saturday, Sunday, or Legal Holiday, either because he is so required by District Sale Supervisor or because, after securing approval from the District Sales Supervisor, he voluntarily chooses to do so, he shall be entitled to a special bonus of ₱280.00.

In making its decision, the CA reasoned that had it really been the intention that Saturday work, by itself, is optional on CCBPI's part, then there would have been no need to state under the CBA that Saturday is part of the normal work week together with the Monday to Friday schedule, and that if Saturday work is indeed optional, then it would have expressly stipulated the same.[53] According to the CA's interpretation, the provision wherein CCBPI had the option to schedule work on Saturdays on the basis of operational necessity, simply meant that CCBPI could schedule the mandated four (4) hours work any time within the 24-hour period on that day, but not remove the hours entirely.[54]

For the CA, to interpret the phrase "option to schedule" as limited merely to scheduling the **time** of work on Saturdays and not the option to allow or disallow or to grant or not to grant the Saturday work itself, is more consistent with the idea candidly stated in the CBA regarding the work week which is comprised of five (5) consecutive days (Monday to Friday) of eight (8) hours each and one (1) day (Saturday) of four (4) hours. The foregoing interpretation, as held by the CA, is in harmony with the context and the established practice in which the CBA is negotiated,[55] and that, based on the foregoing, CCBPI should comply with the provisions respecting its normal work week, that is, from Monday to Friday of eight (8) hours a day and on Saturdays for four (4) hours. CCBPI thus should allow the concerned union members to render work for four (4) hours on Saturday.[56]

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[53] *Rollo*, p. 74.

[54] *Id*. at 75.

[55] *Id.*

[56] *Id*. at 77.

The Court disagrees with the interpretation of the CA. In the perusal of the same, the Court finds that a more logical and harmonious interpretation of the CBA provisions wherein Saturday work is optional and not mandatory keeps more with the agreement between the parties.

To note, the CBA under Article 11, Section 1(c), clearly provides that CCBPI has the option to schedule work on Saturdays based on operational necessity. There is no ambiguity to the provision, and no other interpretation of the word "work" other than the work itself and not the working hours. If the parties had truly intended that the option would be to change only the working hours, then it would have so specified that whole term "working hours" be used, as was done in other provisions of the CBA. By comparison, there is a provision in Article 10 that states:

SECTION 2. *Changes in Work Schedule*. The present regular working hours shall be maintained for the duration of this Agreement. However, it is hereby agreed that the COMPANY may change the prevailing working hours, if in its judgment, it shall find such change or changes advisable or necessary either as a permanent or temporary measure, provided at least twelve (12) hours' notice in advance is given of such change or changes, and provided, further, that they are in accordance with law.

Here, hours are specified as that which can be changed regarding the work schedule. The Court compares this to Article 11, where it is expressly stated that management has the option to schedule **work** on Saturdays on the basis of operational necessity. To emphasize, if it is only the hours that management may amend, then it would have been so stated, with that specific term used instead of just merely "work," a more general term.

Also, as correctly pointed out by CCBPI, if Saturday work is indeed mandatory under the CBA, the phrase "required to work on a Saturday" in Article 10, Section 1 would be superfluous. The same phrase is also found in Article 11, Section 2(c) which provides that "a worker paid on daily basis required to work on a Saturday shall be paid his basic hourly rate plus fifty (50%) percent thereof."

For the Court, the phrase "schedule work on Saturdays based on operational necessity," by itself, is union recognition that there are times when exigencies of the business will arise requiring a manning complement to suffer work for four additional hours per week. Necessarily, when no such exigencies exist, the additional hours of work need not be rendered.

As such, the provisions' tenor and plain meaning give company management the right to compel its employees to suffer work on Saturdays. This necessarily includes the prerogative not to schedule work. Whether or not work will be scheduled on a given Saturday is made to depend on operational necessity. The CBA therefore gives CCBPI the management prerogative to provide its employees with Saturday work depending on the exigencies of the business.

This reading of the CBA is made even more apparent by the fact that workers who are required to work on Saturdays are paid a premium for such work. Notably, in the section on Premium Pay, it is stated:

> (c) Saturdays. Even though Saturday is not his rest day – A worker paid on daily basis required to work on a Saturday shall be paid his basic hourly rate plus fifty (50%) percent thereof for each hour worked not in excess of eight hours; if he is required to work more than eight (8) hours, he shall be paid his basic hourly rate plus seventy-five (75%) thereof for each hour worked in excess of eight (8) hours.

If Saturday was part of the regular work week and not dependent on management's decision to schedule work, there would be no need to give additional compensation to employees who report to work on that day. The CA erred in taking into account that employees required to work on that day but who would fail to report, would be marked down as having gone on leave.[57] The Court agrees with CCBPI that such conclusion is *non sequitur* and that the markings merely indicated the fact that they did not report for work (even if required) and the reasons for their absence, whether legitimate or not.[58] This

[57] *Id*. at 390.

[58] *Id*.

understanding is bolstered by the fact that not all daily-paid workers were required to report for work, which and if indeed Saturday was to be considered a regular work day, all these employees should have been required to report for work.[59]

In sum, by not taking these provisions into account, the CA ignored the well-settled rule that the various stipulations of a contract must be interpreted together. The Court finds that relying on the interpretation of the CA would result in the patent absurdity that the company would have to look for work for the employees to do even if there is none, on the Saturday as stated. Even if one were to downplay the lack of logic with this assertion, as mentioned the CBA provisions are clear and unambiguous, leaving no need for a separate interpretation of the same.

As to whether scheduling Saturday work has ripened into a company practice, the removal of which constituted a diminution of benefits.

In the decision of the CA, it was held that the fact that CCBPI had been providing work to its employees every Saturday for several years, a circumstance that proved Saturday was part of the regular work week, made the grant of Saturday work ripen into company practice.

In asking the Court to reverse the ruling of the CA, CCBPI argues that work on a Saturday is akin to overtime work because employees who are required to perform such work are given additional compensation or premium in the CBA.[60] Citing *Layoc*,[61] CCBPI stresses that since overtime work does not fall within the definition of benefits, the same is not protected by Article 100 of the Labor Code which proscribes the diminution of benefits. To wit:

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[59] *Id*. at 391.

[60] *Id*. at 50.

[61] *Supra* note 34.

First, respondents assert that Article 100 of the Labor Code prohibits the elimination or diminution of benefits. However, contrary to the nature of benefits, petitioners did not freely give the payment for overtime work to respondents. Petitioners paid respondents overtime pay as **compensation** for services rendered in addition to the regular work hours. Respondents rendered overtime work only when their services were needed after their regular working hours and only upon the instructions of their superiors. Respondents even differ as to the amount of overtime pay received on account of the difference in the additional hours of services rendered.

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Aside from their allegations, respondents were not able to present anything to prove that petitioners were obliged to permit respondents to render overtime work and give them the corresponding overtime pay. Even if petitioners did not institute a "no time card policy," respondents could not demand overtime pay from petitioners if respondents did not render overtime work. The requirement of rendering additional service differentiates overtime pay from benefits such as thirteenth month pay or yearly merit increase. These benefits do not require any additional service from their beneficiaries. Thus, overtime pay does not fall within the definition of benefits under Article 100 of the Labor Code.[62]

The Court does not agree with the argument of CCBPI. CCBPI overlooks the fact that the term overtime work has an established and technical meaning under our labor laws, to wit:

Article 87. *Overtime work*. Work may be performed beyond eight (8) hours a day provided that the employee is paid for the overtime work, an additional compensation equivalent to his regular wage plus at least twenty-five percent (25%) thereof. Work performed beyond eight hours on a holiday or rest day shall be paid an additional compensation equivalent to the rate of the first eight hours on a holiday or rest day plus at least thirty percent (30%) thereof.

It can be deduced from the foregoing provision that overtime work is work exceeding eight hours within the worker's 24-hour workday.[63] What is involved in this case is work undertaken

[62] *Id*. at 685-686.

[63] Department of Labor Manual, Section 4323-01.

within the normal hours of work on Saturdays and not work performed beyond eight hours in one day. Under Article 83 of the Labor Code:

Article. 83. *Normal hours of work*. The normal hours of work of any employee shall not exceed eight (8) hours a day.

Despite the mistaken notion of CCBPI that Saturday work is synonymous to overtime work, the Court still disagrees with the CA ruling that the previous practice of instituting Saturday work by CCBPI had ripened into a company practice covered by Article 100 of the Labor Code.

To note, it is not Saturday work *per se* which constitutes a benefit to the company's employees. Rather, the benefit involved in this case is the premium which the company pays its employees above and beyond the minimum requirements set by law. The CBA between CCBPI and the respondent guarantees the employees that they will be paid their regular wage plus an additional 50% thereof for the first eight (8) hours of work performed on Saturdays. Therefore, the benefit, if ever there is one, is the premium pay given by reason of Saturday work, and not the grant of Saturday work itself.

In *Royal Plant Workers Union v. Coca-Cola Bottlers Philippines, Inc.-Cebu Plant,*[64] the Court had the occasion to rule that the term "benefits" mentioned in the non-diminution rule refers to monetary benefits or privileges given to the employee with monetary equivalents. Stated otherwise, the employee benefits contemplated by Article 100 are those which are capable of being measured in terms of money. Thus, it can be readily concluded from past jurisprudential pronouncements that these privileges constituted money in themselves or were convertible into monetary equivalents.[65]

In order for there to be proscribed diminution of benefits that prejudiced the affected employees, CCBPI should have

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[64] 709 Phil. 350 (2013).

[65] *Id*. at 357-358.

unilaterally withdrawn the 50% premium pay without abolishing Saturday work. These are not the facts of the case at bar. CCBPI withdrew the Saturday work itself, pursuant, as already held, to its management prerogative. In fact, this management prerogative highlights the fact that the scheduling of the Saturday work was actually made subject to a condition, *i.e.*, the prerogative to provide the company's employees with Saturday work based on the existence of operational necessity.

In *Eastern Telecommunications Philippines, Inc. v. Eastern Telecoms Employees Union*,[66] the company therein allegedly postponed the payment of the 14th, 15th, and 16th month bonuses contained in the CBA, and unilaterally made the payment subject to availability of funds. Because of its severe financial condition, the company refused to pay the subject bonuses. The Court, in holding that such act violated the proscription against diminution of benefits, observed that the CBA provided for the subject bonuses without qualification—their grant was not made to depend on the existence of profits. Since no conditions were specified in the CBA for the grant of the subject benefits, the company could not use its dire financial straits to justify the omission.

As compared to the factual milieu in the *Eastern Telecommunications* case, the CBA between CCBPI and the respondent has no analogous provision which grants that the 50% premium pay would have to be paid regardless of the occurrence of Saturday work. Thus, the non-payment of the same would not constitute a violation of the diminution of benefits rule.

Also, even assuming *arguendo* that the Saturday work involved in this case falls within the definition of a "benefit" protected by law, the fact that it was made subject to a condition (*i.e.*, the existence of operational necessity) negates the application of Article 100 pursuant to the established doctrine that when the grant of a benefit is made subject to a condition and such condition prevails, the rule on non-diminution finds no

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[66] 681 Phil. 519 (2012).

application. Otherwise stated, if Saturday work and its corresponding premium pay were granted to CCBPI's employees without qualification, then the company's policy of permitting its employees to suffer work on Saturdays could have perhaps ripened into company practice protected by the non-diminution rule.

Lastly, the Court agrees with the assertion of CCBPI that since the affected employees are daily-paid employees, they should be given their wages and corresponding premiums for Saturday work only if they are permitted to suffer work. Invoking the time-honored rule of "a fair day's work for a fair day's pay," the CCBPI argues that the CA's ruling that such unworked Saturdays should be compensated is contrary to law and the evidence on record.

The CA, for its part, ruled that the principle of "a fair day's work for a fair day's pay" was irrelevant to the instant case. According to the appellate court, since CCBPI's employees are daily-paid workers, they should be paid their whole daily rate plus the corresponding premium pay in the absence of a specific CBA provision that directed wages to be paid on a different rate on Saturdays. This was notwithstanding the fact that the duration of Saturday work lasted only for four hours or half the time spent on other workdays.

The CA erred in this pronouncement. The age-old rule governing the relation between labor and capital, or management and employee, of a "fair day's wage for a fair day's labor" remains the basic factor in determining employees' wages.[67] If there is no work performed by the employee, there can be no wage.[68] In cases where the employee's failure to work was occasioned neither by his abandonment nor by termination, the burden of economic loss is not rightfully shifted to the employer;

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[67] *Navarro v. P.V. Pajarillo Liner, Inc.*, 604 Phil. 383, 391 (2009).

[68] *Aklan Electric Cooperative Incorporated v. NLRC*, 380 Phil. 225, 244-245 (2000).

each party must bear his own loss.[69] In other words, where the employee is willing and able to work and is not illegally prevented from doing so, no wage is due to him. To hold otherwise would be to grant to the employee that which he did not earn at the prejudice of the employer.

In the case at bar, CCBPI's employees were not illegally prevented from working on Saturdays. The company was simply exercising its option not to schedule work pursuant to the CBA provision which gave it the prerogative to do so. It therefore follows that the principle of "no work, no pay" finds application in the instant case.

Having disposed of the issue on wages for unworked Saturdays in consonance with the well-settled rule of "no work, no pay," this Court deems it unnecessary to belabor on the CA ruling that the concerned employees should be paid their whole daily rate, and not the amount equivalent to one-half day's wage, plus corresponding premium.

On a final note, the Court cannot emphasize enough that its primary role as the vanguard of constitutional guaranties charges it with the solemn duty of affording full protection to labor.[70] It is, in fact, well-entrenched in the deluge of our jurisprudence on labor law and social legislation that the scales of justice usually tilt in favor of the workingman.[71] Such favoritism, however, has not blinded the Court to the rule that justice is, in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[72] The law does not authorize the oppression or self-destruction of the employer.[73] Management also has its own rights, which,

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[69] *Tri-C General Services v. Matuto, et al.*, 770 Phil. 251, 264 (2015), citing *MZR Industries, et al. v. Colambot*, 716 Phil. 617, 628 (2013).

[70] 1987 CONSTITUTION, Article XIII, Section 3.

[71] *Ilaw Buklod ng Manggagawa (IBM) Nestle Philippines, Inc. Chapter, et al. v. Nestle Phils., Inc.*, 770 Phil. 266, 278 (2015).

[72] *Mercury Drug Corporation v. NLRC*, 258 Phil. 384, 391 (1989).

[73] *Paredes v. Feed the Children Philippines, Inc.*, 769 Phil. 418, 442 (2015).

as such, are entitled to respect and enforcement in the interest of simple fair play.[74] After all, social justice is, in the eloquent words of Associate Justice Jose P. Laurel, "the humanization of laws and the equalization of social and economic forces by the State so that justice in its rational and objectively secular conception may at least be approximated."[75]

WHEREFORE, the Decision of the Court of Appeals dated June 23, 2010, and the Resolution dated October 19, 2010 are **REVERSED** and **SET ASIDE**. The Decision of the National Conciliation and Mediation Board, Regional Branch No. 6, Iloilo City dated September 7, 2006, in Case No. PAC-613-RB6-02-01-06-2006 is **AFFIRMED.**

SO ORDERED.

Carpio (Chairperson), *Perlas-Bernabe, Caguioa,* and *Carandang, JJ.,* concur.

THIRD DIVISION

[G.R. No. 196892. December 5, 2018]

NAREDICO, INC., *petitioner, vs.* **KROMINCO, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; JUDICIARY; JUDICIAL REVIEW; A CASE IS DEEMED MOOT AND ACADEMIC WHEN IT CEASES TO PRESENT A JUSTICIABLE CONTROVERSY DUE TO A SUPERVENING EVENT.— The power of judicial

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[74] *Phil. Long Distance Telephone Company v. Honrado*, 652 Phil. 331, 334 (2010).

[75] *Calalang v. Williams, et al.*, 70 Phil. 726, 734-735 (1940).

review is limited to actual cases and controversies. An actual case or controversy exists "when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding." A case is deemed moot and academic when it ceases to present a justiciable controversy due to a supervening event. The lack of an actual or justiciable issue means that there is nothing for the court to resolve and will be in effect only rendering an advisory opinion.

2. ID.; REPUBLIC ACT NO. 7942 (PHILIPPINE MINING ACT OF 1995); PANEL OF ARBITRATORS AND MINES ADJUDICATION BOARD; POWERS AND FUNCTIONS, CITED.— Chapter XIII of Republic Act No. 7942 enumerates the powers available to the Panel of Arbitrators and Mines Adjudication Board. Section 77, in turn, granted the Panel of Arbitrators exclusive and original jurisdiction on: (1) disputes involving rights to mining areas; (2) disputes on mineral agreements or permit; (3) disputes among surface owners, occupants, and claimholders/concessionaires; and (4) disputes pending before the Mines and Geosciences Bureau and Department of Environment and Natural Resources when the law was passed. The Mines Adjudication Board has appellate jurisdiction over decisions and orders of the Panel of Arbitrators, while also possessing specific powers and functions related to its quasi-judicial functions: x x x As the administrative body with jurisdiction over disputes relative to mining rights, the Mines Adjudication Board's findings should be treated with deference in recognition of its expertise and technical knowledge over such matters. Additionally, Rule 43, Section 10 of the Rules of Civil Procedure, acknowledging the primacy and deference accorded to decisions of quasi- judicial agencies, states that the factual findings of a quasi-judicial agency, when supported by substantial evidence, shall be binding on the Court of Appeals. Hence, this Court upholds the findings of the Mines Adjudication Board and reinstates its Decision.

3. ID.; NATIONAL ECONOMY AND PATRIMONY; UNDER THE 1987 CONSTITUTION, THE STATE IS EXPECTED TO TAKE ON A MORE HANDS-ON APPROACH OR A MORE DYNAMIC ROLE IN THE EXPLORATION, DEVELOPMENT AND UTILIZATION OF THE NATURAL RESOURCES OF THE COUNTRY; MODES OF CONTROL AND SUPERVISION AVAILABLE,

ENUMERATED.— There is no vested right to mining rights, save for patented mining claims that were granted under the Philippine Bill of 1902. x x x However, once the 1935 Constitution took effect, the alienation of mineral lands, among other natural resources of the State, was expressly prohibited: x x x Commonwealth Act No. 137 or the Mining Act, as amended, echoing the prohibition in the 1935 Constitution, granted only lease rights to mining claimants: x x x Both the 1943 and 1973 Constitutions maintained the proscription on State alienation of mineral land while allowing qualified applicants to lease mineral land. The 1943 Constitution stated: x x x While the 1987 Constitution retained the prohibition on the sale of mineral lands, there was a conspicuous absence of the State's previous authority in the 1943 and 1973 Constitutions to administer inalienable natural resources through "license, concession or lease:" x x x Under the 1987 Constitution, the State is expected to take on a more hands-on approach or "a more dynamic role in the exploration, development[,] and utilization of the natural resources of the country" as a consequence of its full control and supervision over natural resources. It exercises control and supervision through the following modes: 1. The State may *directly* undertake such activities; or 2. The State may enter into *co-production, joint venture or production-sharing agreements with Filipino citizens or qualified corporations*; 3. Congress may, by law, allow *small-scale utilization* of natural resources by Filipino citizens; 4. For the *large-scale exploration, development and utilization of minerals, petroleum and other mineral oils, the President may enter into agreements with foreign-owned corporations* involving technical or financial assistance. Instead of a first-in-time, first-in right approach toward applicants for mining claims and mining rights, the State decides what the most beneficial method is when it comes to exploring, developing, and utilizing minerals. It may choose to either directly undertake mining activities by itself or enter into co-production, joint venture, or production sharing agreements with qualified applicants.

APPEARANCES OF COUNSEL

Musico Law Office for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

LEONEN, *J.*:

In deference to its technical knowledge and expertise on matters falling within its jurisdiction, the findings of fact of the Mines Adjudication Board, when supported by substantial evidence, are binding on the Court of Appeals and on this Court.

This resolves the Petition for Review on Certiorari[1] filed by Naredico, Inc. (Naredico),assailing the Court of Appeals November 26, 2010 Decision[2] and May 10, 2011 Resolution[3]in CA-G.R. SP No. 99372, which reversed the May 25, 2007 Decision[4]of the Mines Adjudication Board in MAB Case No. 0118-00 and reinstated the October 4, 2001 Decision[5] of the Mines and Geosciences Bureau Panel of Arbitrators in Mines Special Case Nos. POA-XIII-36 and 37.

On February 27, 1977, Krominco, Inc. (Krominco), then called Malayan Wood Products, Inc., entered into an Operating Contract with the Government, through the Department of Environment and Natural Resources. They aimed to explore, develop, exploit, and use the chromite deposits over a 50,600.38-hectare area

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[1] *Rollo,* pp. 9–34.

[2] *Id*. at 35–52. The Decision was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Bienvenido L. Reyes and Priscilla J. Baltazar-Padilla of the Special Third Division, Court of Appeals, Manila.

[3] *Id*. at 53–59. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Bienvenido L. Reyes and Priscilla J. Baltazar-Padilla of the Former Special Third Division, Court of Appeals, Manila.

[4] *Id*. at 148–159. The Decision was penned by Chairman Angelo T. Reyes, member Armi Jane Roa-Borje and alternate member Teresita M. Repizo of the Mines Adjudication Board.

[5] *Id*. at 127–138. The Decision was penned by the Panel of Arbitrators Chairman, Atty. Paquito R. Rosal, and members Alilo C. Ensomo, Jr. and Atty. Jesus M. Mission of the Mines and Geosciences Bureau, Surigao City.

within Parcel III of the Surigao Mineral Reservation. The contract had a lifespan of 25 years, renewable for another 25 years.[6]

On April 27, 1978, Krominco and the Government entered into a second Operating Contract for a portion of Parcel II within the Surigao Mineral Reservation.[7]

On May 30, 1986, then Minister of Natural Resources Ernesto Maceda canceled both contracts due to violations of their terms and conditions.[8]

Krominco moved for reconsideration of the cancellation. However, while its motion was pending, it negotiated a new agreement to replace the canceled Operating Contracts.[9]

On December 8, 1988, Romarico G. Vitug (Vitug), Naredico's president, applied[10] for an Exploration Contract with the Mines and Geosciences Bureau. The application covered approximately 500 hectares of mineral reservation land in Barangay San Ramon, Municipality of Loreto, Dinagat Island, and the Province of Surigao Del Norte.

On February 21, 1989, Krominco and the Government signed a new Operating Contract[11]that had a lifespan of 16 years, renewable for another 25 years.[12] It covered an area of approximately 729 hectares within Parcel III of the Surigao Mineral Reservation.[13] The boundaries and locations of its final operating area were still "subject to actual survey and verification by deputized geodetic engineers acceptable to both parties[.]"[14]

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[6] *Id*. at 37.

[7] *Id*.

[8] *Id*.

[9] *Id*.

[10] *Id*. at 60.

[11] *Id*. at 62–79.

[12] *Id*. at 76.

[13] *Id*. at 64.

[14] *Id.* at 65.

Krominco also hired Certeza Surveying &Aerophoto Systems, Inc. (Certeza) to survey its mining claim.[15]

On August 13, 1990,[16] Vitug wrote the Mines and Geosciences Bureau to request for the revision of Naredico's earlier application. He asked for a conversion of the pending application for an Exploration Contract into a mineral production sharing agreement. He also asked that the area originally applied for be increased to 1,620 hectares.[17]

On September 19, 1990,[18] Mines and Geosciences Bureau Director Joel D. Muyco (Director Muyco) granted Certeza's request to survey Krominco's mining claim subject to the following conditions:

1. Be guided by the Manual for the Philippine Land Surveyor, laws, rules[,] and regulations governing mineral land surveys in the Philippines in the execution of the survey;

2. The terms and conditions of the Operating Contract entered into between KROMINCO, INC as represented by its President, Mr. Eric L. Lee and the Government as represented by the Secretary of the Department of Environment and Natural Resources, Fulgencio S. Factoran, Jr.[,] acknowledged by Notary Public Miguel C. Manalo on February 27, 1989[,] done in Quezon City[,] should be strictly complied with;

3. Representative of the government [through] the Regional Executive Director of the DENR Region X or his authorized representative shall witness the faithful execution of the survey who (*sic*) will submit his report as to his observations and comments/ recommendations thereof.

Please be guided accordingly.[19]

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[15] *Id*. at 80.

[16] *Id*. at 81.

[17] *Id*.

[18] *Id*. at 80.

[19] *Id*.

On August 28, 1991, Director Muyco approved Krominco's Amended Survey Plan for the final operating area or contract area of its Operating Contract.[20]

On January 28, 1992,[21]Director Muyco informed Vitug that the area sought to be covered by Naredico's proposed mineral production sharing agreement overlapped with a portion of Krominco's final operating area. He suggested including a colatilla, which read: "This contract area shall further exclude those covered by valid and subsisting mining rights. Provided, however, that in the event that such area is eventually abandoned or relinquished by the former grantee of mining rights or operator, the same shall be deemed part of the herein CONTRACT AREA."[22]

Vitug agreed[23] to the proposed colatilla. On February 21, 1992, the Government and Naredico executed a Mineral Production Sharing Agreement (Agreement)[24] that spans a period of 25 years and is renewable for another 25 years.[25] The colatilla was incorporated as Section IV[26] of the Agreement.

On May 15, 1992,[27] the Office of the President approved the Agreement.

On March 29, 1993, Naredico applied for an Order of Survey, which Director Muyco granted on April 7, 1993. Director Muycothen directed Engineer Felix M. Illana(Engineer Illana) to execute Naredico's boundary survey.[28]

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[20] *Id*. at 38–39.

[21] *Id*. at 84–85.

[22] *Id*. at 84–85.

[23] *Id*. at 39.

[24] *Id*. at 86–108.

[25] *Id.* at 91.

[26] *Id*.

[27] *Id*. at 109.

[28] *Id*. at 16.

On January 19, 1994, Engineer Illana submitted a Technical Report[29] comparing Naredico's Agreement with Krominco's Operating Contract and approved Amended Survey Plan. He concluded that there was no overlapping areas between the Agreement and Operating Contract.[30] However, he noted that Krominco's Amended Survey Plan pertained to an area different from what was described in its Operating Contract, with several portions going outside the Operating Contract and encroaching the contract area of Naredico's Agreement. He observed that the overlap was around 445.50 hectares.[31]

Naredico filed a Petition[32] before the Department of Environment and Natural Resources to cancel Krominco's Operating Contract and declare its Amended Survey Plan as null.[33]

In his January 31, 1995 Decision,[34] then Environment and Natural Resources Secretary Angel C. Alcala (Secretary Alcala) declared the Amended Survey Plan as null. He found no conflict in the contract areas of Naredico's Agreement and Krominco's Operating Contract,as the overlap only arose with the Amended Survey Plan.[35] Secretary Alcala found that Certeza, which was neither authorized nor deputized to conduct the survey, even delegated it to another surveyor[36] without any Government representative.[37] Moreover, he pointed out that Krominco failed to file an adverse claim to Naredico's application for a mineral production sharing agreement.[38]

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[29] *Id*. at 109-1–112.

[30] *Id*. at 110.

[31] *Id*. at 112.

[32] The Petition was docketed as DENR Case No. 7461.

[33] *Rollo*, p. 113.

[34] *Id*. at 113–126.

[35] *Id*. at 121.

[36] *Id*. at 121–122.

[37] *Id.* at 123.

[38] *Id*. at 122–123.

The dispositive portion of Secretary Alcala's Decision read:

> WHEREFORE, in view of the foregoing disquisitions, the amended survey of herein respondent KROMINCO, INC. (KROMINCO) is hereby declared NULL AND VOID and its contract area defined in Section 1.1 of its Operating Contract (OC) is hereby declared as its final contract area with the caveat that it confines its operations within the same.
>
> The Regional Executive Director (RED) concerned is hereby directed to conduct a field verification/ocular inspection of the area in contention to determine once and for all whether or not KROMINCO, Inc. (KROMINCO), the herein respondent, is operating inside the Mineral Production Sharing Agreement (MPSA) area of the herein petitioner NAREDICO, Inc. (NAREDICO) and to evaluate the amount of ores extracted from therein which shall thereby become the basis for reimbursement and/or payment by KROMINCO, Inc. (KROMINCO) to NAREDICO, Inc. (NAREDICO), if warranted.
>
> SO ORDERED.[39]

Naredico moved for the execution of Secretary Alcala's Order, which Krominco opposed.[40]

In his November 21, 1996 Order,[41] then Environment and Natural Resources Secretary Victor O. Ramos (Secretary Ramos) granted the Motion for Execution and directed the Regional Executive Director to conduct an ocular inspection over the disputed area. Secretary Ramos emphasized that jurisdiction over the controversy lay with the Department of Environment and Natural Resources, not with the Mines and Geosciences Bureau Panel of Arbitrators.[42]

The dispositive portion of his November 21, 1996 Order read:

> **WHEREFORE,** the motion for execution is hereby **GRANTED.** Accordingly, the Regional Executive Director (now the Regional Director), Mines and Geo-Sciences Bureau, DENR-CARAGA Region,

[39] *Id*. at 125–126.

[40] *Id*. at 509.

[41] *Id*. at 509–511.

[42] *Id.* at 510–511.

is hereby directed to execute the Decision, dated January 31, 1995, as directed in the second paragraph of the dispositive portion thereof.

SO ORDERED.[43] (Emphasis in the original)

On April 14, 1999, Krominco filed before the Mines and Geosciences Bureau Panel of Arbitrators a Petition against Naredico. It prayed that the overlap area be excluded from Naredico's Agreement, and that its exclusive rights over the overlap area be recognized.[44]

On April 16, 1999, Naredico filed its own Petition before the Panel of Arbitrators. It asserted its right over the overlap, which it claimed was erroneously included in Krominco's Operating Contract.[45]

In its October 4, 2001 Decision,[46] the Panel of Arbitrators ruled that Krominco had a better right than Naredico over the overlap area. It found that Naredico had known that its proposed contract area overlapped with Krominco's final operating area, and agreed to exclude it from its own final contract area.[47]

The dispositive portion of the Panel of Arbitrators' October 4, 2001 Decision read:

WHEREFORE, it is hereby declared that KROMINCO has the exclusive, valid[,] and subsisting rights over the area claimed by NAREDICO.

SO ORDERED.[48]

On November 19, 2001, Naredico appealed[49] the Panel of Arbitrators' Decision before the Mines Adjudication Board.

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[43] *Id*. at 511.

[44] *Id*. at 153.

[45] *Id*.

[46] *Id*. at 127–138.

[47] *Id.* at 132–134.

[48] *Id*. at 138.

[49] *Id*. at 41.

In its December 7, 2006 Order,the Mines Adjudication Board directed the Regional Director of the Mines and Geosciences Bureau to conduct a Joint Relocation Survey of the common boundaries between the mining claims of Naredico and Krominco.[50]

On February 2, 2007, Officer-in-Charge Regional Director Alilo C. Ensomo, Jr. submitted his Joint Relocation Survey Report,[51]writing that Krominco's "mill plant, administrative building, staff house, assay laboratory, refilling station, dynamite and [ammo] magazines, motorpool and mill waste dump sites"[52] lay outside of its contract area and within the contested area.

In its May 25, 2007 Decision,[53] the Mines Adjudication Board modified the Panel of Arbitrators' October 4, 2001 Decision. Recognizing the validity of the contracts entered into by the parties, it awarded the area occupied with Krominco's structures to Krominco, and the free area to Naredico.[54]The dispositive portion of its Decision read:

> WHEREFORE, in view of the foregoing, the appealed Decision of the Panel of Arbitrators is accordingly MODIFIED and it is hereby declared and ordered that:
>
> (1) Naredico has the exclusive right over the disputed area and is entitled to the possession thereof EXCEPT for the areas over which [Krominco's] mill plant, administrative building, staff house, assay laboratory, refilling station, dynamite and ammo magazines, motorpool and mill waste dump sites are situated which will be determined through a survey to be conducted by a surveyor authorized by the Regional Office of the DENR (Region XIII, Surigao City[)], the cost of which to be equally shared by Naredico and Krominco;

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[50] *Id*. at 140.

[51] *Id*. at 139–145. The Report was submitted by Engineer III Ernesto R. Alcantara, Engineer II Pio Zaldy M. Merano, and Cartographer II Ronnie R. Juarez of the Mines and Geosciences Bureau.

[52] *Id*. at 142.

[53] *Id.* at 148–159.

[54] *Id*. at 157.

(2) Krominco is ordered to immediately surrender to Naredico those areas over which the structures above are not situated and correspondingly Naredico is ordered to allow Krominco and the public to enter and use the road within said areas;

(3) The Contract Areas in both the Operating Agreement between Krominco and the government and the MPSA between Naredico and the government be accordingly amended.

SO ORDERED.[55]

Acting on Krominco's Appeal,the Court of Appeals in its November 26, 2010 Decision[56] reversed the Mines Adjudication Board May 25, 2007 Decision and reinstated the Panel of Arbitrators' October 4, 2001 Decision. It brushed aside Naredico's contention that the disputed area was not included in Section 1.1 or the Operating Area of Krominco's Operating Contract. It held that the provision only defined the initial geographical coordinates of Krominco's operating area, with the final operating area still "subject to actual survey and verification by deputized geodetic engineers[.]"[57]

It also ruled that the clear intention of the contracting parties, namely Krominco and the Government, was to include in its final operating area the actual area where Krominco's structures, equipment, and main ore body were located.[58]

The Court of Appeals likewise found that despite not having a representative, the Government accepted Krominco's final contract area, as shown in Director Muyco's letter to Vitug.[59] It further pointed out that Naredico agreed to Director Muyco's suggestion to exclude from its Agreement the areas covered by Krominco's subsisting mining rights.[60]

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[55] *Id*. at 158–159.

[56] *Id*. at 35–52.

[57] *Id*. at 44–45.

[58] *Id*. at 45.

[59] *Id*. at 46.

[60] *Id*. at 46–47.

Finally, the Court of Appeals upheld the "first-in-time, first-in-right" principle in mining claims.Thus, it proclaimed that Krominco had a superior right over Naredico since it registered its mining claims first.[61]

The dispositive portion of the Court of Appeals November 26, 2010 Decision read:

> **WHEREFORE,** premises considered, the assailed Decision of the Mines Adjudication Board in MAB Case No. 070-98 is hereby **REVERSED and SET ASIDE** for lack of legal basis and the Decision of the Panel of Arbitrators is hereby **REINSTATED.**
>
> **SO ORDERED.**[62] (Emphasis in the original)

Naredico moved for reconsideration,[63] but its motion was denied in the Court of Appeals May 10, 2011 Resolution.[64] The Court of Appeals emphasized that Krominco's final contract area was approved earlier than Naredico's application for a mineral production sharing agreement. More importantly, Naredico was aware that its proposed contract area overlapped with Krominco's final contract area, and expressly agreed to waive it from its application.[65]

Thus, Naredico filed before this Court a Petition for Review on Certiorari.[66] It claims that respondent Krominco failed to renew its Operating Contract, which expired on February 27, 2005, while its own Agreement would only expire in 2017. It further opines that since its Agreement allows it to occupy an area with a subsisting mining right that was abandoned or relinquished by the grantee, respondent's Petition for Review before the Court of Appeals had become moot.[67] It insists that

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[61] *Id*. at 49–51.

[62] *Id*. at 51–52.

[63] *Id*. at 53.

[64] *Id*. at 53–59.

[65] *Id*. at 54–55.

[66] *Id*. at 9–31.

[67] *Id*. at 22.

the May 25, 2007 Decision of the Mines Adjudication Board had long been final and executory.[68]

Petitioner asserts that the Court of Appeals erred in failing to take judicial notice of Secretary Alcala's factual findings in his January 31, 1995 Decision.[69] In the same vein, it faults the Court of Appeals for not adopting the findings of the Mines Adjudication Board and the results of the Joint Relocation Survey.[70]

Petitioner likewise posits that the first-in-time, first-in-right principle did not apply because the conflict was a boundary dispute, not a mining claim.[71]

On August 31, 2011,[72] this Court directed respondent to comment on the Petition.

In its Comment,[73] respondent stresses that petitioner never raised the issue of its Operating Contract's expiration before the Court of Appeals, and only did so for the first time before this Court.[74]

Nonetheless, respondent emphasizes that before its Operating Contract expired in February 2005, it was granted a four (4)-year extension by the Department of Environment and Natural Resources. Before this four (4)-year extension expired on February 27, 2009, it was granted a one (1)-year Special Mines Permit.Subsequently, it entered into a Mineral Production Sharing Agreement[75] with the Government for a 25-year period, from September 28, 2009 to September 28, 2034. Respondent's present

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[68] *Id*. at 22–23.

[69] *Id*. at 25–26.

[70] *Id*. at 27–29.

[71] *Id*. at 26–27.

[72] *Id*. at 314.

[73] *Id*. at 319–344.

[74] *Id*. at 325–326.

[75] *Id*. at 514–533.

Mineral Production Sharing Agreement temporarily excluded the overlap area pending resolution of the present dispute.[76]

Respondent opines that the Court of Appeals correctly applied the first-in-time, first-in-right principle since a dispute on overlapping contract areas involves a mining claim.[77]It states, "Even Naredico would admit that the right to explore, develop[,] and utilize a mineral area is rendered nugatory if the area to which such right adheres to is subject to multiple claims."[78]

Respondent likewise posits that the Court of Appeals was not bound by Secretary Alcala's factual findings that the Amended Survey Plan was void, since these were not supported by substantial evidence. It contends that the law at that time authorized the Mines and Geosciences Bureau, not the Environment and Natural Resources Secretary, to approve survey plans. In this case, the Mines and Geosciences Bureau approved its Amended Survey Plan.[79]

Respondent also points out that even if its Amended Survey Plan was indeed void, the overlap area would still not be conveyed to petitioner as part of petitioner's contract area under its Agreement, since the overlap area was not "abandoned or relinquished by the former grantee of mining rights or operator."[80]

Respondent highlights that petitioner, having always known of an overlap between their mining claims, agreed to exclude the areas with mining rights in its final contract area.[81]It declares that petitioner was estopped from claiming rights over the overlap area:

Here, Naredico may not renege on its own acts and representations to the prejudice of the Government and Krominco, both of whom

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[76] *Id*. at 326–327.

[77] *Id*. at 327.

[78] *Id*.

[79] *Id*. at 328–331.

[80] *Id*. at 331.

[81] *Id*. at 332.

relied on Naredico's representation. Since Naredico voluntarily acquiesced to the exclusion of those areas already covered by the valid and subsisting mining rights of Krominco, it is now therefore estopped from questioning such exclusion.[82]

Respondent further claims that the Joint Relocation Survey conducted by the Mines Adjudication Board was invalid as it was procedurally infirm and violated respondent's right to due process. Respondent points out that it was neither allowed to participate in the actual survey nor was it given a copy of the resulting Joint Relocation Survey Report.[83]

Finally, respondent claims that the Court of Appeals did not err in reversing the Mines Adjudication Board Decision, since the latter effectively created new contracts for petitioner and respondent without their consent.[84]

On April 16, 2012,[85] this Court directed petitioner to reply to the Comment.

In its Reply,[86] petitioner points out that respondent already admitted that its own Mineral Production Sharing Agreement did not include the overlap area.[87]

Petitioner claims that following the first-in-time, first-in-right principle, it has a superior right over the overlap area as it was the first to discover the mineral deposits within it. This overlap area was included in its application, while respondent's Operating Contract did not include the overlap area, which respondent only included in its Amended Survey Plan.[88]

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[82] *Id*.

[83] *Id*. at 333–334.

[84] *Id*. at 339–340.

[85] *Id*. at 428.

[86] *Id*. at 431–442.

[87] *Id*. at 434–435.

[88] *Id*. at 436–437.

On January 30, 2013,[89] this Court required the parties to submit their respective memoranda.

In its Memorandum,[90] petitioner asserts that while its Petition is not limited to questions of law, it falls under the recognized exceptions to petitions for review on certiorari.[91]

Petitioner reiterates that since respondent's Operating Contract was not renewed upon its expiration on February 27, 2005, its Petition before the Court of Appeals had become moot.[92] Petitioner likewise avers that the supposed extension and conversion of respondent's Operating Contract was invalid.[93]

Finally, petitioner repeats its claim that the Court of Appeals erred in applying the first-in-time, first-in-right principle since the controversy involved a boundary dispute, not a mining claim. Nonetheless, it maintains that as the first to discover and register the overlap area, it should benefit from the first-in-time, first-in-right principle, not respondent.[94]

In its Memorandum,[95] respondent reiterates that its mining rights over the final contract area subject of its Operating Contract subsists and that it continues to possess and operate the same area. This time, it uses its mining claim through the Mineral Production Sharing Agreement it entered into with the Government on September 28, 2009.[96]

The issues for this Court's resolution are:

First, whether or not respondent's Petition before the Court of Appeals had become moot; and

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[89] *Id*. at 452–453.

[90] *Id*. at 483–507.

[91] *Id*. at 494–495.

[92] *Id*. at 495–496.

[93] *Id*. at 497–498.

[94] *Id*. at 504–505.

[95] *Id*. at 458–482.

[96] *Id*. at 465–466.

Second, whether or not the Court of Appeals erred in reversing the findings of the Mines Adjudication Board.

I

The power of judicial review is limited to actual cases and controversies.[97] An actual case or controversy exists "when the case presents conflicting or opposite legal rights that may be resolved by the court in a judicial proceeding."[98]

A case is deemed moot and academic when it ceases to present a justiciable controversy due to a supervening event. The lack of an actual or justiciable issue means that there is nothing for the court to resolve and will be in effect only rendering an advisory opinion.[99]

Petitioner claims that respondent's supposed failure to renew its Operating Contract, which expired on February 27, 2005, erased the existing controversy and automatically gave it mining rights over the overlap area,under its Agreement.[100] It likewise asserts that the extension of respondent's Operating Contract was void since it was not provided for in the Term of Contract.[101]

Petitioner is mistaken.

Petitioner anchors its claim on an erroneous reading of the Term of Contract in respondent's Operating Contract, which states:

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[97] CONST., Art. VIII, Sec. 1.

The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

Judicial power includes the duty of the courts of justice to settle actual controversies involving rights which are legally demandable and enforceable, and to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government.

[98] *Republic v. Moldex Realty, Inc*., 780 Phil. 553, 560 (2016) [Per *J.* Leonen, Second Division].

[99] *Id*. citing *David v. Macapagal-Arroyo*, 522 Phil. 705, 753 (2006) [Per *J.* Sandoval-Gutierrez, *En Banc*].

[100] *Rollo,* pp. 497–498.

[101] *Id.*

VII

TERM OF CONTRACT

The term of this Operating Contract shall be *16 years from the date of effectivity hereof, renewable for another 25 years*, upon compliance by [Krominco] with the terms and conditions of this Operating Contract; provided, however, that if during the term of this Operating Contract, the operation is *suspended due to fortuitous events or causes beyond the control of [Krominco], the period of such suspension shall not be counted as part of the original or renewed terms therefore and such term shall be extended for the same period of suspension* ….

For purposes hereof, "fortuitous events" shall mean events beyond the control and affecting either [Krominco] or the GOVERNMENT which cannot be foreseen[,] or if foreseeable[,] cannot be either prevented or avoided by the exercise of due diligence, such as but not limited to revolution, rebellion or insurrection, state intervention, act of war (declared or undeclared), hostilities, riot or civil commotion, shipwreck, earthquake, typhoon, flood, fire or other natural physical disaster, strikes, work stoppage of labor, facilities, equipment or machinery, and a change in market conditions which would make it uneconomical for [Krominco] to mine, extract, process, utilize[,] or dispose of the minerals from the OPERATING AREA.[102] (Emphasis supplied)

Petitioner claims that the extension granted to respondent was void because the reason for it did not come from a suspension of operation due to a fortuitous event; rather, it was caused by the impending expiration of the Operating Contract's 16-year term.[103]

There is nothing in the Term of Contract that limits the term extension only to instances when operations are suspended due to a fortuitous event.Thus, the Department of Environment and Natural Resources did not err in granting respondent a four (4)-year extension.

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[102] *Id*. at 76–77.

[103] *Id*. at 497–498.

It is a cardinal rule in statutory construction that when the law is clear, "there is no room for construction or interpretation. There is only room for application."[104]

As the facts show, respondent's mining rights subsist; hence, a justiciable controversy still exists over the overlap area:

> Indeed, even before the expiration of the Contract in February 2005, Krominco sought to protect these investments and to continue its operations. It applied for and was granted a four (4)-year [e]xtension of its Contract through an Order issued by the [Environment and Natural Resources] Secretary dated December 23, 2004, effectively extending the validity of the Contract to February 27, 2009. Prior to the expiration of this extended term, Krominco was also granted a Special Mines Permit on February 27, 2009, valid up to February 27, 2010, which allowed it to continue its mining operations in the same area. Subsequently, Krominco was further granted [aMineral Production Sharing Agreement], with a period of validity of twenty-five (25) years (effective from September 28, 2009 to September 28, 2034), temporarily excluding therefrom the area subject of the present dispute. Krominco continues to be in exclusive possession and utilization of the same operating area to this day.[105]

II

In deference to its technical knowledge and expertise on matters falling within its jurisdiction, the findings of fact of the Mines Adjudication Board, when supported by substantial evidence, are binding on the Court of Appeals and on this Court.

In this case, petitioner submitted an application for an Exploration Contract on December 8, 1988.[106]About two (2) years later, on August 13, 1990,[107] petitioner requested for a revision of its earlier application, converting the Exploration

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[104] *Bolos v. Bolos,* 648 Phil. 630, 637 (2010) [Per *J*. Mendoza, Second Division], citing *Amores v. House of Representatives Electoral Tribunal,* 636 Phil. 600 (2010) [Per *J*. Carpio Morales, *En Banc*].

[105] *Rollo,* pp. 465-466.

[106] *Id*. at 60.

[107] *Id*. at 81.

Contract to a mineral production sharing agreement and for an increase of its proposed operating area.

On the other hand, respondent and the Government executed an Operating Contract[108] on February 21, 1989, which renegotiated or revived its 1977 Operation Contract.

In modifying the Panel of Arbitrators' Decision, the Mines Adjudication Board acknowledged that petitioner's and respondent's mining contracts were perfected,[109] and ruled that there was a need to harmonize[110] their stipulations.

It ordered a Joint Relocation Survey,which confirmed that while respondent's mine pit and ore body were within its contract area, some of its structures lay outside its contract area and within the contested area.[111]

Taking both contracts' validity into account, the Mines Adjudication Board modified the Panel of Arbitrators' Decision by identifying the actual areas occupied by respondent's structures and dividing the contested area between the parties:

> All considered, this Board recognizes the validity and existence of the two (2) contracts and faithful compliance to the contractual right and obligation of the parties. Hence, the Board rules that the contested area minus that portion occupied by Krominco be granted to Naredico as per the original intention of the parties. So the portion which covers the mill plant, administrative building, staff house, assay laboratory, refilling stations, dynamites and ammo magazines, motor pool and mill waste dumpsites, referred as the built-up areas, shall be awarded to Krominco in compliance to the contractual stipulations and the rest of the area applied for and included in the [Agreement] of Naredico, which is the free area, be awarded to Naredico, Inc.

Thus, we now rule that the structures which include Krominco's mill plant, administrative building, staff house, assay laboratory,

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[108] *Id*. at 62–79.

[109] *Id*. at 155.

[110] *Id*. at 156.

[111] *Id*. at 156–157.

refilling station, dynamite and ammo magazines, motor pool and mill waste dump sites that are within the contested area should properly belong to the contract area of Krominco with the precise/specific metes and bounds covered by each with allowable [setbacks] to be determined by the survey to be conducted by a surveyor authorized by the Regional Office of the [Department of Environment and Natural Resources] (Region XIII, Surigao City[)], the cost of which [is] to be equally shared by Naredico and Krominco; the rest of the area, even those portions in between those areas covered by the enumerated Krominco structures properly belong to the contract area of Naredico, all in accordance with respective contracts of both companies with the government: namely Section 1.1 of the Operating Contract dated February 2, 1989 between Krominco and the Government and Section 4.1 of the [Agreement] between Naredico and the Government. It is understood that Naredico shall nevertheless allow Krominco and the public to use all the roads and easements of right of way within its area as determined above.[112]

The Mines Adjudication Board May 25, 2007 Decision was primarily based on respondent's Operating Contract which stipulated that its final operating area, as surveyed, would only include the actual areas occupied by its structures:

I

CONTRACT AREA

1.1. DESCRIPTION: THE OPERATING AREA

The Contract Area, hereinafter referred to as the OPERATING AREA, shall consist of 729 hectares, more or less, within CAB I of Parcel III of the Surigao Mineral Reservation, as initially defined by the following coordinates:

… ... ...

It is understood that the final OPERATING AREA shall be subject to actual survey and verification by deputized geodetic engineers acceptable to both parties with respect to its boundaries and locations *so as to cover the actual areas where [Krominco's] mill, plant, equipment[,] and main ore body are situated* in accordance with Par. 7 above.[113] (Emphasis supplied)

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[112] *Id.* at 157–158.

[113] *Id.* at 64–65.

This Court sees no reason to disturb the findings of the Mines Adjudication Board.

Chapter XIII of Republic Act No. 7942 enumerates the powers available to the Panel of Arbitrators and Mines Adjudication Board. Section 77, in turn, granted the Panel of Arbitrators exclusive and original jurisdiction on: (1) disputes involving rights to mining areas; (2) disputes on mineral agreements or permit; (3) disputes among surface owners, occupants, and claimholders/concessionaires; and (4) disputes pending before the Mines and Geosciences Bureau and Department of Environment and Natural Resources when the law was passed.[114]

The Mines Adjudication Board has appellate jurisdiction over decisions and orders of the Panel of Arbitrators,[115] while also possessing specific powers and functions related to its quasi-judicial functions:

SECTION 79. *Mines Adjudication Board*. —The Mines Adjudication Board shall be composed of three (3) members. The Secretary shall be the chairman with the Director of the Mines and Geosciences Bureau and the Undersecretary for Operations of the Department as members thereof. The Board shall have the following powers and functions:

(a) To promulgate rules and regulations governing the hearing and disposition of cases before it, as well as those pertaining to its internal functions, and such rules and regulations as may be necessary to carry out its functions;

(b) To administer oaths, summon the parties to a controversy, issue *subpoenas* requiring the attendance and testimony of witnesses or the production of such books, papers, contracts, records, statement of accounts, agreements, and other documents as may be material to a just determination of the matter under investigation, and to testify in any investigation or hearing conducted in pursuance of this Act;

(c) To conduct hearings on all matters within its jurisdiction, proceed to hear and determine the disputes in the absence

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[114] Rep. Act No. 7942 (1995), Sec. 77.

[115] Rep. Act No. 7942 (1995), Sec. 78.

of any party thereto who has been summoned or served with notice to appear, conduct its proceedings or any part thereof in public or in private, adjourn its hearing at any time and place, refer technical matters or accounts to an expert and to accept his report as evidence after hearing of the parties upon due notice, direct parties to be joined in or excluded from the proceedings, correct, amend, or waive any error, defect or irregularity, whether in substance or in form, give all such directions as it may deem necessary or expedient in the determination of the dispute before it, and dismiss the mining dispute as part thereof, where it is trivial or where further proceedings by the Board are not necessary or desirable;

(1) To hold any person in contempt, directly or indirectly, and impose appropriate penalties therefor; and

(2) To enjoin any or all acts involving or arising from any case pending before it which, if not restrained forthwith, may cause grave or irreparable damage to any of the parties to the case or seriously affect social and economic stability.

In any proceeding before the Board, the rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that shall govern. The Board shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to technicalities of law or procedure, all in the interest of due process. In any proceeding before the Board, the parties may be represented by legal counsel. The findings of fact of the Board shall be conclusive and binding on the parties and its decision or order shall be final and executory.

A petition for review by *certiorari* and question of law may be filed by the aggrieved party with the Supreme Court within thirty (30) days from receipt of the order or decision of the Board. (Emphasis in the original)

In this case, after its Joint Relocation Survey, the Mines Adjudication Board found that respondent's final operating area went beyond the actual areas occupied by its structures, in clear contravention of the terms in its Operating Contract:

The purpose of the relocation survey is to establish and identify the final area of Krominco under the Operating Contract to include where the mill plant and equipment and main ore body are situated as well as to identify the area to be excluded from the [Agreement] of Naredico in compliance to the stipulation in the [Agreement] that the contract area shall further exclude those covered by valid and subsisting mining rights.

The Relocation Survey Report identified that the contested area is confined in one meridional block with the technical description as follows:

Corner No.	Longitude	Latitude
1	125º37'30"	10º21'30"
2	125º37'30"	10º22'00"
3	125º38'00"	10º22'00"
4	125º38'00"	10º21'30"

The report indicated that from the verification and ocular observation made by the team of the mining areas after the relocation of the common boundaries, the mine pit of Krominco, Inc. and its main ore body are within the company's contract area and outside of the contested area. The company's ore stockpile lies within the boundary limit, while all the other structures which include their mill plant, administrative building, staff house, assay laboratory, refilling stations, dynamites and ammo magazines, motor pool and mill waste dumpsite lie outside of the company's contract area and are within the contested area of the two companies.[116]

As the administrative body with jurisdiction over disputes relative to mining rights, the Mines Adjudication Board's findings should be treated with deference in recognition of its expertise and technical knowledge over such matters.[117]

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[116] *Rollo,* pp. 156–157.

[117] *JMM Promotions and Management v. Court of Appeals*, 439 Phil. 1, 10-11 (2002) [Per *J.* Corona, Third Division]; *Spouses Calvo v. Spouses Vergara*, 423 Phil. 939, 947 (2001) [Per *J.* Quisumbing, Second Division]; *Alvarez v. PICOP Resources, Inc.*, 538 Phil. 348, 397 (2006) [Per *J.* Chico-Nazario, First Division].

Additionally, Rule 43, Section 10[118] of the Rules of Civil Procedure, acknowledging the primacy and deference accorded to decisions of quasi-judicial agencies,states that the factual findings of a quasi-judicial agency, when supported by substantial evidence, shall be binding on the Court of Appeals.Hence, this Court upholds the findings of the Mines Adjudication Board and reinstates its Decision.

III

In reversing the Mines Adjudication Board Decision, the Court of Appeals referred to, among others, then Associate Justice, now Chief Justice,Lucas Bersamin's separate opinion in *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.,* which noted this jurisdiction's supposed adherence to the first-in-time, first-in-right principle in mining.[119]

The Court of Appeals is mistaken.

There is no vested right to mining rights, save for patented mining claims that were granted under the Philippine Bill of 1902.

When the Philippines was still under Spanish rule, the Royal Decree of May 14, 1867, or the Spanish Mining Law, was the prevailing law for the exploration and use of our mineral lands. When the Americans took control of the Philippines, they governed our country through a series of organic acts which effectively acted as our Constitution from 1900 to 1935. Among

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[118] SECTION 10. *Due course*. — If upon the filing of the comment or such other pleadings or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the basis of the petition or the records the Court of Appeals finds *prima facie* that the court or agency concerned has committed errors of fact or law that would warrant reversal or modification of the award, judgment, final order or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same. The findings of fact of the court or agency concerned, when supported by substantial evidence, shall be binding on the Court of Appeals.

[119] *Rollo,* pp. 49–50.

these was the Philippine Bill of 1902,through which the United States Congress assumed control over the Philippines.[120]

The Philippine Bill of 1902 declared all valuable mineral deposits in public lands to be open to "exploration, occupation[,] and purchase"[121] by Americans and Filipinos.It required the locator of a mineral claim to record[122] it in the mining recorder of the district it was found in within 30 days,with no less than US$100.00 worth of labor or improvements of the same value each year.[123]

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[120] *Atok Big-Wedge Mining Co. v. Intermediate Appellate Court,* 330 Phil. 244, 261–262 (1996) [Per *J.* Hermosisima, Jr., First Division].

[121] Philippine Bill (1902), Sec. 21:

SECTION 21. That all valuable mineral deposits in public lands in the Philippine Islands, both surveyed and unsurveyed, are hereby declared to be free and open to exploration, occupation, and purchase, and the land in which they are found to occupation and purchase, by citizens of the United States, or of said Islands: Provided, That when on any lands in said Islands entered and occupied as agricultural lands under the provisions of this Act, but not patented, mineral deposits have been found, the working of such mineral deposits is hereby forbidden until the person, association, or corporation who or which has entered and is occupying such lands shall have paid to the Government of said Islands such additional sum or sums as will make the total amount paid for the mineral claim or claims in which said deposits are located equal to the amount charged by the Government for the same as mineral claims.

[122] Philippine Bill (1902), Sec. 31:

SECTION 31. That every person locating a mineral claim shall record the same with the provincial secretary or such other officer as by the Government of the Philippine Islands may be described as mining recorder of the district within which the same is situated, within thirty days after the location thereof. Such record shall be made in a book to be kept for the purpose in the office of the said provincial secretary or such other officer as by said Government described as mining recorder, in which shall be inserted the name of the claim, the name of each locator, the locality of the mine, the direction of the location line, the length in feet, the date of location, and the date of the record. A claim which shall not have been recorded within the prescribed period shall be deemed to have been abandoned.

[123] Philippine Bill (1902), Sec. 36:

Yinlu Bicol Mining Corp. v. Trans-Asia Oil and Energy Development Corp.[124] explained:

Pursuant to the Philippine Bill of 1902, therefore, once a mining claim was made or a mining patent was issued over a parcel of land in accordance with the relative provisions of the Philippine Bill of 1902, such land was considered private property and no longer part of the public domain. The claimant or patent holder was the owner of both the surface of the land and of the minerals found underneath.[125]

However, once the 1935 Constitution took effect, the alienation of mineral lands, among other natural resources of the State, was expressly prohibited:

Article XIII

Conservation and Utilization of Natural Resources

SECTION 1. All agricultural timber, and *mineral lands* of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, *shall not be alienated,* and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a

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SECTION 36. That the United States Philippine Commission or its successors may make regulations, not in conflict with the provisions of this Act, governing the location, manner of recording, and amount of work necessary to hold possession of a mining claim, subject to the following requirements:

On each claim located after the passage of this Act, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year . . .

[124] 750 Phil. 148 (2015) [Per *J.* Bersamin, First Division].

[125] *Id*. at 167.

period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and limit of the grant.[126] (Emphasis supplied)

Commonwealth Act No. 137 or the Mining Act, as amended,[127]echoing the prohibition in the 1935 Constitution, granted only lease rights to mining claimants:

SECTION 5. *Mineral Deposits Open to Location and Lease*. Subject to any existing rights or reservations, all valuable mineral deposits in public land including timber or forest land as defined in Presidential Decree No. 389, otherwise known as the Forestry Reform Code or in private land not closed to mining location, and the land which they are found, shall be free and open to prospecting, occupation, location and lease.[128]

Both the 1943 and 1973 Constitutions maintained the proscription on State alienation of mineral land while allowing qualified applicants to lease mineral land.

The 1943 Constitution stated:

1943 Constitution

Article VIII

Conservation and Utilization of Natural Resources

SECTION 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all sources of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the government established under this Constitution. Natural

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[126] 1935 CONST., Art. 13, Sec. 1. Amended.

[127] Presidential Decree No. 463 (1974).

[128] Presidential Decree No. 463 (1974), Sec. 5.

resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant.

The 1973 Constitution, in turn, read:

1973 Constitution

Article XIV

The National Economy and Patrimony of the Nation

SECTION 8. All lands of the public domain, waters, minerals, coal, petroleum and other mineral oils, all forces of potential energy, fisheries, wildlife, and other natural resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, and no license, concession, or lease for the exploration, development, exploitation, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for not more than twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases, beneficial use may be the measure and the limit of the grant.

While the 1987 Constitution retained the prohibition on the sale of mineral lands, there was a conspicuous absence of the State's previous authority in the 1943 and 1973 Constitutions to administer inalienable natural resources through "license, concession or lease:"[129]

1987 Constitution

Article XII

National Economy and Patrimony

SECTION 2. All lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy,

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[129] CONSTITUTION, Art. XII, Sec. 2.

fisheries, forests or timber, wildlife, flora and fauna, and other natural resources are owned by the State. With the exception of agricultural lands, all other natural resources shall not be alienated. The exploration, development, and utilization of natural resources shall be under the full control and supervision of the State. The State may directly undertake such activities, or it may enter into co-production, joint venture, or production-sharing agreements with Filipino citizens, or corporations or associations at least sixty per centum of whose capital is owned by such citizens. Such agreements may be for a period not exceeding twenty-five years, renewable for not more than twenty-five years, and under such terms and conditions as may be provided by law. In cases of water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, beneficial use may be the measure and limit of the grant.

The State shall protect the nation's marine wealth in its archipelagic waters, territorial sea, and exclusive economic zone, and reserve its use and enjoyment exclusively to Filipino citizens.

The Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens, as well as cooperative fish farming, with priority to subsistence fishermen and fishworkers in rivers, lakes, bays, and lagoons.

The President may enter into agreements with foreign-owned corporations involving either technical or financial assistance for large-scale exploration, development, and utilization of minerals, petroleum, and other mineral oils according to the general terms and conditions provided by law, based on real contributions to the economic growth and general welfare of the country. In such agreements, the State shall promote the development and use of local scientific and technical resources.

The President shall notify the Congress of every contract entered into in accordance with this provision, within thirty days from its execution.

Under the 1987 Constitution, the State is expected to take on a more hands-on approach or "a more dynamic role in the exploration, development[,] and utilization of the natural resources of the country"[130] as a consequence of its full control

[130] *Miners Association of the Phils., Inc. v. Factoran, Jr.*, 310 Phil. 113, 130–131 (1995) [Per *J.* Romero, *En Banc*].

and supervision over natural resources. It exercises control and supervision through the following modes:

1. The State may *directly* undertake such activities; or
2. The State may enter into *co-production, joint venture or production-sharing agreements with Filipino citizens or qualified corporations*;
3. Congress may, by law, allow *small-scale utilization* of natural resources by Filipino citizens;
4. For the *large-scale exploration, development and utilization of minerals, petroleum and other mineral oils, the President may enter into agreements with foreign-owned corporations* involving technical or financial assistance.[131] (Emphasis in the original)

Instead of a first-in-time, first-in right approach toward applicants for mining claims and mining rights, the State decides what the most beneficial method is when it comes to exploring, developing, and utilizing minerals. It may choose to either directly undertake mining activities by itself or enter into co-production, joint venture, or production sharing agreements with qualified applicants.

The Court of Appeals erred in relying on a mere *obiter dictum* as its basis for proclaiming that this jurisdiction adheres to the first-in-time, first-in-right principle.

In *Apex Mining Co.*,[132] this Court did not rule on which between Apex and Balite had the better right or priority over the mining operations within the forest reserve in Monkayo, Davao Del Norte and Cateel, Davao Oriental. *Apex Mining Co.* stated that the issue had been overtaken by the issuance of Proclamation No. 297 on November 25, 2002, which declared 8,100 hectares in Monkayo, Compostela Valley, including the disputed area,

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[131] *J.* Puno, Separate Opinion in *Cruz v. Secretary of Environment and Natural Resources,* 400 Phil. 904, 1003 (2000) [*Per Curiam, En Banc*].

[132] 525 Phil. 436 (2006) [Per *J.* Chico-Nazario, First Division].

as a mineral reservation. *Apex Mining Co.*explained that the mining operations within the mineral reservation was a purely executive function over which courts will not interfere.[133]

In denying the motion for reconsideration for its earlier Decision, *Apex Mining Co.*reiterated its ruling that it cannot direct the Government to accept either Apex's or Balite's applications for exploration permits. The Executive Department has the prerogative to accept an exploration application or to develop the site on its own, and courts cannot meddle in a purely executive function.[134]

Nonetheless, Chief Justice Bersamin in his Separate Opinion suggested that in order to prevent further litigation should the Government decide later on to accept an exploration application, this Court should already determine which between Apex and Balite had the priority right to mine the Diwalwal Gold Rush Area.[135] He noted that under Philippine mining laws, the person who first locates and registers a mining claim,and later mines the area, has a valid and existing right:

> Which between Apex and Balite has priority?
>
> On the one hand, Apex rests its claim to priority on the precept of *first-in-time, first-in-right,* a principle that is explicitly recognized by Section 1 of Presidential Decree (P.D.) No. 99-A, which amended Commonwealth Act (C.A.) No. 137 (*Mining Act*), which provides:
>
> > Whenever there is a conflict between claim owners over a mining claim, whether mineral or non-mineral, the locator of the claim who first registered his claim with the proper mining registrar, notwithstanding any defect in form or technicality,shall

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[133] *Id*. at 471–472.

[134] *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.*, 620 Phil. 100, 154 (2009) [Per *J*. Chico-Nazario, *En Banc*].

[135] *J*. Lucas Bersamin, Dissenting Opinion in *Apex Mining Co., Inc. v. Southeast Mindanao Gold Mining Corp.,* 620 Phil. 100, 157 (2009) [Per *J.* Chico-Nazario, *En Banc*].

> have the exclusive right to possess, exploit, explore, develop and operate such mining claim.[136] (Emphasis in the original)

Despite his noble intention of addressing a potential issue to prevent the parties from going through the whole judicial process again, Chief Justice Bersamin's statement was a separate opinion;thus, it was not and should not be treated as a binding precedent.Further, his statement was *obiter dictum*. He simply expressed an opinion not directly related to the question raised before this Court.[137]

All told, respondent's right over the contested area failed to hold since the boundaries of its Amended Survey Plan went against the clear provisions of its Operating Contract that only the area it actually occupied will be included in its final operating area. Additionally, the exclusions in petitioner's Agreement only pertained to vested contractual rights, which in this case were the actual areas occupied by respondent's structures in the contested area.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **GRANTED.**The assailed Court of Appeals November 26, 2010 Decision and May 10, 2011 Resolution in CA-G.R. SP No. 99372 are **REVERSED and SET ASIDE**.The Mines Adjudication Board May 25, 2007 Decision is **REINSTATED**.

SO ORDERED.

Peralta (Chairperson), *Gesmundo, Reyes, J. Jr.,* and *Hernando, JJ.,* concur.

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[136] *Id*. at 171.

[137] *Delta Motors Corporation v. Court of Appeals*, 342 Phil. 173, 186 (1997) [Per *J*. Davide, Jr., Third Division].

SECOND DIVISION

[G.R. No. 202534. December 5, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SEMIRARA MINING CORPORATION,** *respondent.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; VALUE-ADDED TAX (VAT); THE VAT EXEMPTION OF COAL OPERATORS UNDER PRESIDENTIAL DECREE NO. 972, A SPECIAL LAW PROMULGATED TO PROMOTE AN ACCELERATED EXPLORATION, DEVELOPMENT, EXPLOITATION, PRODUCTION AND UTILIZATION OF COAL, HAS NOT BEEN REPEALED.—** As correctly ruled by the CTA, respondent SMC is exempt from payment of VAT under Section 16 of PD 972, and pursuant with the provisions of Section 109(K) of R.A. No. 9337, amending the NIRC. Section 16 of the PD 972 expressly provides for incentives to coal operators including exemption from payment of all taxes except income tax x x x. In fact, the foregoing tax exemption was incorporated in Section 5.2 of the COC between respondent SMC and the government x x x. As regards the claim of petitioner that respondent SMC's VAT exemption has already been repealed, this Court affirms the CTA decision that respondent SMC's VAT exemption remains intact. R.A. No. 9337's amendment of the NIRC did not remove the VAT exemption of respondent SMC. In fact, Section 109(K) of R.A. No. 9337 clearly recognized VAT exempt transactions pursuant to special laws x x x. Clearly, the VAT exemption of respondent SMC under PD No. 972, a special law promulgated to promote an accelerated exploration, development, exploitation, production and utilization of coal, was not repealed.

2. **REMEDIAL LAW; COURTS; COURT OF TAX APPEALS (CTA); THE SUPREME COURT WILL NOT LIGHTLY SET ASIDE THE CONCLUSIONS REACHED BY THE CTA WHICH, BY THE VERY NATURE OF ITS FUNCTION OF BEING DEDICATED EXCLUSIVELY TO RESOLUTION OF TAX PROBLEMS, HAS**

ACCORDINGLY DEVELOPED AN EXPERTISE ON THE SUBJECT, UNLESS THERE HAD BEEN AN ABUSE OR IMPROVIDENT EXERCISE OF AUTHORITY.— [T]he CTA consistently ruled for granting the tax refund claim of respondent SMC and rejecting petitioner CIR's x x x allegations. This Court wishes to note and reiterate the well settled rule that it will not lightly set aside the factual conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Castillo Laman Tan Pantaleon & San Jose for respondent.

D E C I S I O N

A. REYES, JR., *J.*:

Before this Court is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to annul and set aside the Decision[2] of the Court of Tax Appeals (CTA) *En Banc* dated March 22, 2012, which sustained the decision of the CTA Division, and Resolution[3] dated June 28, 2012 likewise issued by the CTA *En Banc* in CTA EB No. 752.

The Factual Antecedents

Petitioner is the Commissioner of Internal Revenue (CIR) who has the authority to determine and approve application

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[1] *Rollo*, pp. 12-42.

[2] Penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Ernesto D. Acosta, Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino and Cielito N. Mindaro-Grulla and Amelia R. Cotangco-Manalastas concurring; *id*. at 43-57.

[3] *Id*. at 58-60.

for refund or issuance of Tax Credit Certificate (TCC).[4] Respondent Semirara Mining Corporation (SMC) is a domestic corporation engaged in the exploration, extraction, and sale of ship coal, coke, and other coal products.[5]

Respondent SMC operates a coal mine in Semirara, Caluya, Antique and sells its production to the National Power Corporation (NPC), a government-owned and controlled corporation in accordance with the duly executed Coal Supply Agreement between NPC and respondent SMC.[6]

On July 11, 1977, the predecessors-in-interest of respondent SMC entered in a Coal Operating Contract (COC) with the Philippine Government through the Energy Development Board of the then Ministry of Energy pursuant to Presidential Decree (PD) No. 972.[7]

PD No. 972 provides various incentives to COC operators to accelerate the exploration, development, exploitation, production and utilization, of the country's coal resources, including various tax exemptions, to wit:[8]

"Section 16. Incentives to Operators. The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:

a) Exemption from all taxes except income tax;

x x x x x x x x x."

The foregoing provision was included in the terms and conditions of the said COC under section 5.2 therein, to wit:

"Section V. Rights and Obligations of the Parties

. . . . . .

[4] *Id*. at 62.

[5] *Id*. at 45.

[6] *Id*. at 62-63.

[7] *Id*. at 63.

[8] *Id.*

5.2 .The OPERATOR shall have the following rights:

a) **Exemption from all taxes (national and local) except income tax**… (Emphasis supplied)

Respondent SMC also claimed that Section 109 of Republic Act (R.A.) No. 8424 or the National Internal Revenue Code of 1997 (NIRC) exempted it from Value Added Tax (VAT) on its sales or importation of coal.[9]

However, after the NIRC was amended and R.A. No. 9337 became effective, the NPC started to withhold 5% final VAT on coal billings of respondent SMC.[10] In fact, on February 9, 2007, NPC remitted to the Bureau of Internal Revenue (BIR) the final VAT withheld from respondent SMC's sales of coal in the total amount of ₱15,292,054.93.[11]

In view of the foregoing, respondent SMC requested for a BIR pronouncement to confirm that its sales of coal to NPC was still tax exempt from VAT. In response, petitioner CIR issued BIR Ruling No. 0006-2007 confirming respondent SMC's VAT exemption.[12]

Subsequently, on May 21, 2007, respondent SMC filed with the Revenue District Office (RDO) No. 121 an Application for Tax Credits/Refunds for ₱15,292,054.93.[13] All the supporting documents representing the final VAT withheld on the coal billings of respondent SMC for the month of January 2007 were attached there.[14]

However, due to alleged inaction, on February 4, 2009, respondent SMC filed a Petition for Review with the Court of Tax Appeals (CTA) Division.[15]

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[9] *Id*. at 64.

[10] *Id.* at 65.

[11] *Id.* at 45.

[12] *Id*.

[13] *Id*.

[14] *Id*.

[15] *Id*. at 46.

The Ruling of the CTA Division

On January 4, 2011, the CTA Division granted respondent SMC's claim for refund, to wit:[16]

> **WHEREFORE**, the instant Petition for Review is **GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱15,292,054.91, representing the final withholding value-added tax (VAT) on its sales of coal for the month of January 2007, which the National Power Corporation (NPC) erroneously withheld and remitted to the Bureau of Internal Revenue (BIR) on February 9, 2007.
>
> **SO ORDERED.**

The CTA Division found that respondent SMC's sales of coal for the month of January 2007 is a tax exempt transaction pursuant to Section 109(K) of the NIRC of 1997, as amended, in relation to Section 16 of PD No. 972.[17]

Moreover, Semirara's administrative claim filed on May 21, 2007 and the Petition for Review filed on February 4, 2009 were within the two year prescriptive period.[18]

Petitioner CIR moved for reconsideration but was denied.[19] Aggrieved, petitioner CIR filed a Petition for Review before the CTA *En Banc.*

The Ruling of the CTA *En Banc*

On March 22, 2012, the CTA *En Banc* promulgated a Decision affirming the assailed CTA Division's decision and resolution, to wit:[20]

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

[17] *Id*. at 85.

[18] *Id*.

[19] *Id*. at 88-89.

[20] *Id*. at 56.

WHEREFORE, premises considered, the instant petition is hereby **DENIED**, and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

The CTA *En Banc* pointed out that the petition was a mere rehash of the issues raised in petitioner CIR's denied Motion for Reconsideration, without any new matter or arguments to consider.[21] This Court has consistently ruled that pursuant to Section 109 (k) of R.A. No. 9337, respondent SMC is VAT exempt under PD 972.[22] Consequently, the exhaustion of administrative remedies for the tax refund claim is an irrelevant argument.[23]

It also clarified that while petitioner CIR already admitted the VAT exemption of respondent SMC through BIR Ruling No. 0006-07, respondent SMC's claim is still valid even without said BIR Ruling.[24] Respondent SMC's claim is based on an express grant of exemption from a valid and existing law, not on estoppel on the part of the government.[25]

Furthermore, considering that cases filed with the CTA Division are litigated de novo, the documents submitted to the BIR, whether complete or not, has no evidentiary value.[26] Only the evidence formally offered before the CTA has value, and in this case, respondent SMC substantially justified its claim before the CTA.[27]

Finally, the CTA *En Banc* reminded the petitioner CIR that no one, not even the State should enrich oneself at the expense of another.[28] Thus, once a taxpayer is clearly entitled to a tax

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[21] *Id*. at 48.

[22] *Id*. at 50.

[23] *Id*. at 53-54.

[24] *Id*. at 53.

[25] *Id*.

[26] *Id*. at 53-54.

[27] *Id*. at 55.

[28] *Id*. at 56.

refund, the State should not invoke technicalities to keep the taxpayer's money.[29]

The Motion for Reconsideration filed by respondent was likewise denied in its Resolution dated June 28, 2012.[30]

Hence, petitioner CIR filed the instant petition.

The Issue

The core issue to be resolved is whether the CTA erred in ruling that SMC is entitled to a tax refund for the final VAT withheld and remitted to the BIR from its sales of coal for the month of January 2007.

The Court's Ruling

The petition is bereft of merit.

As correctly ruled by the CTA, respondent SMC is exempt from payment of VAT under Section 16 of PD 972, and pursuant with the provisions of Section 109(K) of R.A. No. 9337, amending the NIRC.

Section 16 of the PD 972 expressly provides for incentives to coal operators including exemption from payment of all taxes except income tax, to wit:

"Section 16. *Incentives to Operators.* The provisions of any law to the contrary notwithstanding, a contract executed under this Decree may provide that the operator shall have the following incentives:

(a) Exemption from all taxes except income tax;

x x x x x x x x x"

In fact, the foregoing tax exemption was incorporated in Section 5.2 of the COC between respondent SMC and the government, to wit:

"Section V. Rights and Obligations of the Parties

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[29] *Id*.

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

. . . . . .

5.2 .The OPERATOR shall have the following rights:
a) **Exemption from all taxes (national and local) except income tax**… " (Emphasis supplied)

As regards the claim of petitioner that respondent SMC's VAT exemption has already been repealed, this Court affirms the CTA decision that respondent SMC's VAT exemption remains intact. R.A. No. 9337's amendment of the NIRC did not remove the VAT exemption of respondent SMC. In fact, Section 109(K) of R.A. No. 9337 clearly recognized VAT exempt transactions pursuant to special laws, to wit:

"REPUBLIC ACT NO. 9337

AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES

x x x x x x x x x

SEC. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

"SEC. 109. *Exempt Transactions.* — (1) Subject to the provisions of Subsection (2) hereof, **the following transactions shall be exempt from the value-added tax:**

x x x x x x x x x

K) **Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws**, except those under Presidential Decree No. 529; (Emphasis and underscoring supplied)"

Clearly, the VAT exemption of respondent SMC under PD No. 972, a special law promulgated to promote an accelerated exploration, development, exploitation, production and utilization of coal, was not repealed.

The issues raised and decided in this case is far from novel. In fact, this Court has recently ruled in another case with very similar facts and issues. The case of *CIR v. Semirara Mining*

Corp.[31] is another tax refund case involving petitioner CIR for final VAT withheld for its sales of coal for the period covering July 1, 2006 to December 31, 2006. Faced with similar contentions from the CIR, this Court had the occasion to discuss in depth the reasons why PD No. 972 cannot be impliedly repealed by the repealing clause of R.A. No. 9337, a general law, to wit:[32]

> It is a fundamental rule in statutory construction that a special law cannot be repealed or modified by a subsequently enacted general law in the absence of any express provision in the latter law to that effect. A special law must be interpreted to constitute an exception to the general law in the absence of special circumstances warranting a contrary conclusion. The repealing clause of RA No. 9337, a general law, did not provide for the express repeal of PD No. 972, a special law. Section 24 of RA No. 9337 pertinently reads:
>
> > SEC. 24. *Repealing Clause.-The* following laws or provisions of laws are hereby repealed and the persons and/or transactions affected herein are made subject to the value-added tax subject to the provisions of Title IV of the National Internal Revenue Code of 1997, as amended:
> >
> > (A) Section 13 of R.A. No. 6395 on the exemption from value added tax of the National Power Corporation (NPC);
> >
> > (B) Section 6, fifth paragraph of R.A. No. 9136 on the zero VAT rate imposed on the sales of generated power by generation companies; and
> >
> > (C) All other laws, acts, decrees, executive orders, issuances and rules and regulations or parts thereof which are contrary to and inconsistent with any provisions of this Act are hereby repealed, amended or modified accordingly.
>
> Had Congress intended to withdraw or revoke the tax exemptions under PD No. 972, it would have explicitly mentioned Section 16 of PD No. 972, in the same way that it specifically mentioned Section 13 of RA No. 6395 and Section 6, paragraph 5 of RA No. 9136, as among the laws repealed by RA No. 9337.

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[31] 811 Phil. 113 (2017).

[32] *Id*. at 122-123.

The CTA also correctly ruled that RA No. 9337 could not have impliedly repealed PD No. 972. In *Mecano v. Commission on Audit,* the Court extensively discussed how repeals by implication operate, to wit:

There are two categories of repeal by implication. The first is where provisions in the two acts on the same subject matter are in an irreconcilable conflict. The later act to the extent of the conflict constitutes an implied repeal of the earlier one. The second is if the later act covers the whole subject of the earlier one and is clearly intended as a substitute, it will operate to repeal the earlier law.

Implied repeal by irreconcilable inconsistency takes place when the two statutes cover the same subject matter; they are so clearly inconsistent and incompatible with each other that they cannot be reconciled or harmonized; and both cannot be given effect, that is, that one law cannot [be] enforced without nullifying the other.

Comparing the two laws, it is apparent that neither kind of implied repeal exists in this case. RA No. 9337 does not cover the whole subject matter of PD No. 972 and could not have been intended to substitute the same. There is also no irreconcilable inconsistency or repugnancy between the two laws. While under RA No. 9337, the "sale or importation of coal and natural gas, in whatever form or state" was deleted from the list of VAT exempt transactions, Section 7 of the same law reads:

SEC. 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

"SEC. 109. *Exempt Transactions.-(l)* Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

x x x x

"(K) Transactions which are exempt under international agreements to which the Philippines is a signatory or under special laws, except those under Presidential Decree No. 529."

It is important to emphasize that the claim of respondent SMC is expressly granted by pertinent law, and not based on an estoppel on the part of the government. Moreover, while the government is not estopped by the erroneous actions of its agent, it is evident from the foregoing discussion that the previous

findings of the CIR in BIR Ruling No. 0006-2007 is consistent with the facts and law.

As to petitioner CIR's belated contention that respondent SMC's judicial claim is premature for failing to exhaust all administrative remedies, this Court agrees with the findings of the CTA *En Banc*. There is no reason to consider this judicial intervention premature. The instant case was still filed due to CIR's failure to act on respondent SMC's claim for two (2) years. Also, it is erroneous to raise such claim only after the CTA Division rendered its Decision in favor of respondent SMC.

Notably, the CTA consistently ruled for granting the tax refund claim of respondent SMC and rejecting petitioner CIR's foregoing allegations. This Court wishes to note and reiterate the well settled rule that it will not lightly set aside the factual conclusions reached by the CTA which, by the very nature of its function of being dedicated exclusively to the resolution of tax problems, has accordingly developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority.[33]

In this case, this Court finds no reversible error in the decision of the CTA.

WHEREFORE, premises considered, the instant petition for review is hereby **DENIED.** The Decision dated March 22, 2012 and the Resolution dated June 28, 2012 of the CTA *En Banc* in CTA EB No. 752 are hereby **AFFIRMED.**

SO ORDERED.

Carpio, S.A.J. (Chairperson), *Perlas-Bernabe, Caguioa,* and *Carandang,*[*] *JJ.,* concur.

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[33] *CIR v. Semirara Mining Corp.*, *supra* note 31, at 127-128.

[*] Designated Member per Spcial Order No. 2614, dated November 29, 2018.

SECOND DIVISION

[G.R. No. 203185. December 5, 2018]

SUPERIOR MAINTENANCE SERVICES, INC., and MR. GUSTAVO TAMBUNTING, *petitioners, vs.* **CARLOS BERMEO,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TEMPORARY OFF-DETAIL OR FLOATING STATUS IS DEFINED AS THAT PERIOD OF TIME WHEN SECURITY GUARDS ARE IN BETWEEN ASSIGNMENTS OR WHEN THEY ARE MADE TO WAIT AFTER BEING RELIEVED FROM A PREVIOUS POST UNTIL THEY ARE TRANSFERRED TO A NEW ONE.—** In *Salvaloza v. NLRC*, temporary off-detail or floating status was defined as that "period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one." The Court further explained: It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it for want of cause, such that the replaced security guard may even be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts.

2. **ID.; ID.; ID.; THE TEMPORARY LAY-OFF WHEREIN THE EMPLOYEES CEASE TO WORK SHOULD NOT EXCEED SIX MONTHS, AFTER WHICH, THE EMPLOYEES SHOULD EITHER BE RECALLED TO WORK OR PERMANENTLY RETRENCHED FOLLOWING THE REQUIREMENTS OF THE LAW; OTHERWISE, THE EMPLOYEES ARE CONSIDERED AS CONSTRUCTIVELY DISMISSED FROM WORK AND THE AGENCY CAN BE HELD LIABLE FOR SUCH**

DISMISSAL.— There is no specific provision in the Labor Code which governs the "floating status" or temporary "off-detail" of workers employed by agencies. Thus, this situation was considered by the Court in several cases as a form of temporary retrenchment or lay-off, applying by analogy the rules under Article 301 (then Article 286) of the Labor Code, *viz*: ART. 301. [286] When Employment not Deemed Terminated. The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty. This situation applies not only in security services but also in other industries, as in the present case, as long as services for a specific job are legitimately farmed out by a client to an independent contractor. In all cases however, the temporary lay-off wherein the employees cease to work should not exceed six months, in consonance with Article 301 of the Labor Code. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law. Otherwise, the employees are considered as constructively dismissed from work and the agency can be held liable for such dismissal.

3. ID.; ID.; ID.; THE TEMPORARY OFF-DETAIL OF EMPLOYEES IS NOT A RESULT OF SUSPENSION OF BUSINESS OPERATIONS BUT IS MERELY A CONSEQUENCE OF LACK OF AVAILABLE POSTS WITH THE AGENCY'S SUBSISTING CLIENTS.— [T]he pronouncement in *Veterans* was misconstrued by the CA when it ruled that there should be a bona fide suspension of the agency's business or operations. x x x [A]rticle 301 of the Labor Code was applied only by analogy to prevent the floating status of employees hired by agencies from becoming indefinite. This temporary off-detail of employees is not a result of suspension of business operations but is merely a consequence of lack of available posts with the agency's subsisting clients. In the present controversy, when Bermeo filed his complaint for constructive dismissal on September 5, 2008, it was only a week after his unsuccessful assignment in French Baker on August 28, 2008.

> Even if the reckoning date would be his last assignment at Trinoma Mall, which ended on March 30, 2008, it is still less than the six-month period allowed by Article 301 for employees to be placed on floating status. Thus, the filing of his complaint for constructive dismissal is premature. Besides, it is unrebutted that the petitioners contacted Bermeo for a new assignment even after the latter has filed a complaint for constructive dismissal. Clearly, the LA erred in concluding that the petitioners did not at any time offer any work assignment to Bermeo.

APPEARANCES OF COUNSEL

Bermejo Laurino-Bermejo and Luna Law Offices for petitioners.

D E C I S I O N

A. REYES, JR., *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 seeking to reverse and set aside the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 111875, which ordered Superior Maintenance Services, Inc., (Superior Maintenance) and Gustavo Tambunting (collectively, petitioners) to pay respondent Carlos Bermeo (Bermeo) separation pay for having been constructively dismissed from employment.

Antecedent Facts

Superior Maintenance is a manpower agency engaged in the business of supplying janitorial services to its clients. In 1991, it hired Bermeo as a janitor for its clients. Through the years, Bermeo was assigned to several establishments. He was last

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[1] *Rollo*, pp. 10-37.

[2] Penned by Associate Justice Stephen C. Cruz with Associate Justices Vicente S.E. Veloso and Myra V. Garcia-Fernandez concurring; *id*. at 49-57.

[3] *Id*. at 46-47.

stationed at Trinoma Mall until the end of contract on March 30, 2008.[4]

On August 28, 2008, Bermeo was deployed to French Baker at SM Marikina, one of Superior Maintenance's clients; however, French Baker asked for a replacement upon learning that Bermeo was already 54 years old.[5]

On September 5, 2008, Bermeo filed a Complaint[6] before the Labor Arbiter (LA) against the petitioners for constructive dismissal with claim for separation pay.

Ruling of the LA

In a Decision[7] dated February 6, 2009, the LA found that Bermeo was constructively dismissed because no work was offered to him even during the pendency of the proceedings before it, such that the period of his floating status had already expired.[8] The LA disposed of the case as follows:

> WHEREFORE, premises considered judgment is hereby rendered declaring that complainant was constructively dismissed. The respondent Superior Maintenance Security Services Inc. is ordered to pay complainant the amount of **ONE HUNDRED EIGHTY THREE THOUSAND THREE HUNDRED NINETY ONE PESOS and/or 98/100 ([₱]183,391.98)** representing separation pay and his unpaid 13th month pay.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[9]

Ruling of the NLRC

On appeal, the NLRC reversed the findings of the LA and ruled that Bermeo was not constructively dismissed from work.

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[4] *Id*. at 172-173.

[5] *Id*. at 173-174.

[6] NLRC *rollo*, pp. 1-2.

[7] *Rollo*, pp. 109-115.

[8] *Id*. at 112.

[9] *Id*. at 115.

The NLRC concluded that the complaint was prematurely filed, as Bermeo's floating status was short of the six months required for it to ripen to constructive dismissal.[10] This notwithstanding, the grant of 13th month pay was retained in the absence of proof that Bermeo received the same. The *fallo* of the Decision[11] dated August 13, 2009 reads:

> WHEREFORE, the decision appealed from is hereby MODIFIED by deleting the grant of separation pay. The grant of 13th month pay is AFFIRMED.
>
> SO ORDERED.[12]

The NLRC also denied Bermeo's motion for reconsideration through a Resolution[13] dated October 6, 2009.

Bermeo then elevated the case to the CA through a Rule 65 petition for *certiorari*.

Ruling of the CA

On March 30, 2012, the CA promulgated its Decision[14] granting the petition. The decretal portion of its judgment states:

> **WHEREFORE**, premises considered, the instant petition is **GRANTED**. The NLRC Decision dated August 13, 2009 and the Resolution dated October 06, 2009 are hereby **REVERSED** and **SET ASIDE**. The Labor Arbiter's Decision dated 06 February 2009 is hereby **REINSTATED**.
>
> **SO ORDERED**.[15]

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[10] CA *rollo*, p. 17.

[11] Penned by Commissioner Angelo Ang Palana with Presiding Commissioner Herminio V. Suelo and Commissioner Numeriano D. Villena concurring; *id*. at 14-19.

[12] *Id*. at 19.

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

[14] Penned by Associate Justice Stephen C. Cruz with Associate Justices Vicente S.E. Veloso and Myra V. Garcia-Fernandez concurring; *rollo*, pp. 49-57.

[15] *Id*. at 56.

In its Resolution[16] dated July 26, 2012, the CA denied Bermeo's motion for reconsideration.

Issue:

Whether Bermeo was constructively dismissed from work

Ruling of the Court

The petition is impressed with merit.

In *Salvaloza v. NLRC*,[17] temporary off-detail or floating status was defined as that "period of time when security guards are in between assignments or when they are made to wait after being relieved from a previous post until they are transferred to a new one."[18] The Court further explained:

> It takes place when the security agency's clients decide not to renew their contracts with the agency, resulting in a situation where the available posts under its existing contracts are less than the number of guards in its roster. It also happens in instances where contracts for security services stipulate that the client may request the agency for the replacement of the guards assigned to it for want of cause, such that the replaced security guard may even be placed on temporary "off-detail" if there are no available posts under the agency's existing contracts.[19]

There is no specific provision in the Labor Code which governs the "floating status" or temporary "off-detail" of workers employed by agencies. Thus, this situation was considered by the Court in several cases[20] as a form of temporary retrenchment

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[16] *Id*. at 46-47.

[17] *Salvaloza v. NLRC*, 650 Phil. 543 (2010).

[18] *Id*. at 557.

[19] *Id*.

[20] See *Philippine Industrial Security Agency Corporation v. Dapiton and the National Labor Relations Commission*, 377 Phil. 951, 961-962 (1999); *Pido v. National Labor Relations Commission*, 545 Phil. 507, 515-516 (2007); *Megaforce Security and Allied Services, Inc. v. Lactao and National Labor Relations Commission*, 581 Phil. 100, 105-106 (2008); *Leopard Security and Investigation Agency v. Quitoy, et al.,* 704 Phil. 449, 457-458 (2013).

or lay-off, applying by analogy the rules under Article 301 (then Article 286) of the Labor Code, [21] *viz*:

> ART. 301. [286] When Employment not Deemed Terminated. The bona fide suspension of the operation of a business or undertaking for a period not exceeding six (6) months, or the fulfillment by the employee of a military or civic duty shall not terminate employment. In all such cases, the employer shall reinstate the employee to his former position without loss of seniority rights if he indicates his desire to resume his work not later than one (1) month from the resumption of operations of his employer or from his relief from the military or civic duty.

This situation applies not only in security services but also in other industries, as in the present case, as long as services for a specific job are legitimately farmed out by a client to an independent contractor.

In all cases however, the temporary lay-off wherein the employees cease to work should not exceed six months, in consonance with Article 301 of the Labor Code. After six months, the employees should either be recalled to work or permanently retrenched following the requirements of the law. Otherwise, the employees are considered as constructively dismissed from work and the agency can be held liable for such dismissal.[22]

In the present case, the CA held that Article 301 applies only when there is a bona fide suspension of the employer's operation of business. Citing *Veterans Security Agency, Inc., et al. v. Gonzalvo, Jr.*, (Veterans),[23] the CA ruled that since there was no suspension in the petitioners' business operations, Article 301 does not apply to them and they cannot seek refuge in the six-month grace period given thereunder for them to give Bermeo a new assignment.[24]

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[21] *Exocet Security and Allied Services Corporation v. Serrano*, 744 Phil. 403, 412-413 (2014).

[22] *Id*. at 414.

[23] 514 Phil. 488, 500 (2005).

[24] *Rollo*, p. 54.

However, *Veterans* is hardly relevant to the present case. First, in *Veterans*, the complainant was a security guard last deployed for assignment in January 1999; he filed his complaint for illegal dismissal only on September 29, 1999, which was *eight months* after he was pulled out from such assignment. Also, the complainant was withdrawn from his post of three years, following his complaint against his employer for non-payment of SSS contributions. Since then, he was tossed to different stations until no assignment was given to him. His employer even concocted a story that he had to be assigned somewhere else because his spouse was a lady guard assigned to the same client, when in fact he was single. These circumstances indicate his employers' intention to constructively dismiss him from work. More importantly, while it was stated in *Veterans* that "Article 286 applies only when there is a *bona fide* suspension of the employer's operation of a business or undertaking for a period not exceeding six (6) months," it was further expounded that "in security agency parlance, being placed off detail or on floating status means waiting to be posted."[25]

Certainly, the pronouncement in *Veterans* was misconstrued by the CA when it ruled that there should be a bona fide suspension of the agency's business or operations. As stated earlier, Article 301 of the Labor Code was applied only by analogy to prevent the floating status of employees hired by agencies from becoming indefinite. This temporary off-detail of employees is not a result of suspension of business operations but is merely a consequence of lack of available posts with the agency's subsisting clients.

In the present controversy, when Bermeo filed his complaint for constructive dismissal on September 5, 2008, it was only a week after his unsuccessful assignment in French Baker on August 28, 2008. Even if the reckoning date would be his last assignment at Trinoma Mall, which ended on March 30, 2008, it is still less than the six-month period allowed by Article 301 for employees to be placed on floating status. Thus, the filing

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

of his complaint for constructive dismissal is premature. Besides, it is unrebutted that the petitioners contacted Bermeo for a new assignment even after the latter has filed a complaint for constructive dismissal.[26] Clearly, the LA erred in concluding that the petitioners did not at any time offer any work assignment to Bermeo.[27]

WHEREFORE, the instant Petition is **GRANTED**. The Decision dated March 30, 2012 and Resolution dated July 26, 2012 of the Court of Appeals in CA-G.R. SP No. 111875 are hereby **REVERSED** and **SET ASIDE**. The Decision dated August 13, 2009 and Resolution dated October 6, 2009 of the National Labor Relations Commission in NLRC LAC No. 03-000925-09 (NLRC NCR Case No. 09-12499-08), are hereby **REINSTATED**.

SO ORDERED.

Carpio, S.A.J. (Chairperson), *Perlas-Bernabe, Caguioa,* and *Carandang,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 203608. December 5, 2018]

REPUBLIC OF THE PHILIPPINES, represented by the DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS, *petitioner, vs.* **THE HEIRS OF SPOUSES FLAVIANO S. MAGLASANG and SALUD ADAZA MAGLASANG,** *respondents.*

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[26] *Id*. at 105-106.

[27] *Id*. at 112.

[*] Designated Member per Special Order No. 2628, dated November 29, 2018.

SYLLABUS

REMEDIAL LAW; EVIDENCE; JUDICIAL NOTICE; COURTS MAY NOT TAKE JUDICIAL NOTICE OF A RULING WHERE THERE ARE MANY ISSUES TO CONSIDER BEFORE THE RULING OF A PREVIOUS CASE MAY BE APPLIED; CASE AT BAR.— In matters of just compensation, it is prescribed in the last sentence of Section 3, Rule 67 of the Revised Rules of Court that whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of compensation to be paid for his property, x x x Here, it is clear that respondents merely exercised their right to present evidence in order to resolve the issue of proper rate to be used in computing the payment of just compensation. Clearly, the RTC did not take upon itself to consider the *Larrazabal* case as it was the respondents themselves who introduced the case as evidence. However, it should also be emphasized that while the court's taking of judicial notice may be allowed in some instances, the same does not hold true in this case where there are many issues that should have been considered by the RTC before it decided to apply the ruling in the *Larrazabal* case. *For one*, there had been no proper presentation of evidence to support the application of the *Larrazabal* case. x x x *Two*, the allegation that the lands subject of the *Larrazabal* case and the subject land are contiguous was not also proven, neither were the classifications of the lands mentioned. x x x Indeed, it is the value of the land at the time of the taking or the filing of the complaint, and not the value at the time of the rendition of judgment that should be the basis in computing the amount of just compensation. Hence, for this matter, it should be the value given by the Assessor's Office that should be used in determining the amount due to the respondents.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Capahi Law Office for respondents.

D E C I S I O N

A. REYES, JR., *J.*:

This petition for review filed by the Republic of the Philippines (petitioner), represented by the Department of Public Works and Highways (DPWH), under Rule 45 of the 1997 Rules of Civil Procedure seeks to annul and set aside the September 2, 2011 Decision[1] of the Court of Appeals (CA) – Cebu Station (CA-Cebu) in CA G.R. CV No. 01690 affirming the decision of the Regional Trial Court (RTC) of Ormoc City, to wit:

> **WHEREFORE**, in view of the foregoing premises, the 15 June 2006 Resolution issued by the Regional Trial Court of Ormoc City, Branch 12 in Civil Case No. 3789-0 is hereby AFFIRMED and the APPEAL is hereby DISMISSED.
>
> **SO ORDERED**.[2]

The case arose out of a Complaint[3] for expropriation filed by the petitioner before the RTC of Ormoc City seeking to expropriate a parcel of land belonging to Spouses Flaviano S. Maglasang and Salud Adaza Maglasang (respondent spouses) described as Lot No. 851 of the Cadastral Survey of Ormoc City and covered by Transfer Certificate of Title No. 5922 with an area of 68 square meters under the names of respondent spouses. Located along the right side of the Malbasag Riverbank in Ormoc, the subject land was intended as a right of way for the Flood Mitigation Project under JICA Grant Aid from Japan at Malbasag River. Significantly, per Ormoc City's Appraisal Committee Resolution No. 8-98 Series of 1998, the subject land was valued at the rate of ₱1,000.00 per square meter.

Despite receipt of notice of the suit, however, the respondents failed to file their Comment/Opposition to the Complaint for

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justices Pampio A. Abarintos and Gabriel T. Ingles; *rollo*, pp. 9-15.

[2] *Id.* at 15.

[3] *Id*. at 76-81.

Expropriation. Thus, they were deemed to have waived their rights to the expropriation proceeding and the petitioner was allowed to present evidence *ex parte.*

On June 2 and August 22, 2000, petitioner deposited checks in the aggregate amount of ₱68,000.00 representing 100% of the appraised value of the subject land. Said checks were deposited under the names of Spouses Flaviano S. Maglasang and Salud Adaza Maglasang.

During the *ex parte hearing*, the supervisor of the Flood Mitigation Project, Ormoc City District Engineer Jesus P. Sabando, testified for the petitioner. He stated that all the owners of pieces of properties affected by the road right of way acquisitions were notified. However, respondents refused the offer based on the City Assessor's Office's appraised value which herein petitioner made to them.

On December 1, 2000, petitioner moved for the issuance of a writ of possession over the subject land. This was granted by the RTC in an Order dated December 13, 2000. Said Order likewise ordered the petitioner to enter the subject land, and the Sheriff to place petitioner in possession of the same.

On December 4, 2000, respondents filed their motion for reconsideration of the RTC's Order allowing petitioner to present its evidence *ex parte.* Likewise prayed in their motion is that they be allowed to file their answer and present evidence to establish the fair market value of their property. Petitioner, on the other hand, filed its Formal Offer of Evidence on December 11, 2000.

On January 31, 2001, the RTC issued a writ of possession. Respondents then moved to quash the writ of possession, but their Motion was denied by the RTC. Thereafter, upon motion of the respondents, the trial court issued an Order dated June 28, 2004 allowing them to withdraw from the Land Bank of the Philippines the amount of ₱68,000.00 which the petitioner earlier deposited in the name of respondents' predecessors, Spouses Flaviano S. Maglasang and Salud Adaza Maglasang.

On July 7, 2004, the RTC granted the respondents' motion for reconsideration and directed them to file their opposition/ comment to the petitioner's formal offer of evidence and to present their evidence.

On December 15, 2004, the RTC denied the respondents' Motion to Quash the Writ of Possession and set the hearing on the complaint on February 4, 2005, which the petitioner was not able to attend. On said date, the RTC granted the respondents' motion to present evidence *ex parte.*

Petitioner then moved for the reconsideration of the order allowing respondents to present evidence *ex parte* and prayed that the complaint be set for trial on the merits.

After series of resetting, a hearing was again scheduled on April 27, 2005. At that time, the Office of the Solicitor General (OSG) already deputized Atty. Ismael C. Llorin of the DPWH Regional Office No. VIII, Baras, Palo, Leyte to assist the OSG in the trial of the case.

Meanwhile, upon respondents' counsel's oral manifestation that the instant case is similar to the case of *Republic v. Larrazabal, et al*. (Civil Case No. 3656-O) which the same trial court decided and which involved a parcel of land contiguous to the subject property, the RTC, in its Order dated April 27, 2005, allowed the respondents "to submit the necessary pleading in order to abbreviate and dispose the case with dispatch"[4]. Hence, respondents submitted on March 17, 2006 the Commissioners' Reports and the RTC Decision[5] in the *Larrazabal* case.

On June 15, 2006, the RTC issued a Resolution[6] disposing of the complaint, thus:

WHEREFORE, foregoing premises considered, at the price of Php17,000.00 per square meter, plaintiff should pay to the defendants

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[4] *Id*. at 11.

[5] *Id*. at 87-96.

[6] Rendered by Presiding Judge Francisco C. Gedorio, Jr.; *id*. at 84-86.

the sum of Php1,156,000.00. The preliminary deposit given by the plaintiff to the defendants should therefore be deducted from the total amount of just compensation due to the defendants.

SO ORDERED.[7]

Hence, petitioner appealed to the CA. As stated at the outset, the CA affirmed the findings of the RTC as it found that it was correct for the latter to take judicial notice of the proceedings in *Larrazabal* case. According to the CA, the rule that courts do not take judicial notice of the evidence presented in other proceedings, even if those have already been tried or are pending in the same court or before the same judge, is not absolute.

With its motion[8] for reconsideration having been denied by the CA in a Resolution[9] dated September 13, 2012, petitioner, through the OSG, is now before the Court assailing the decision and resolution of the CA and arguing that the latter gravely erred when it affirmed the decision of the RTC.

Simply put, the issue in this case is whether it was proper that the RTC took judicial notice of the *Larrazabal* case in order to resolve the issue of just compensation in this case.

The Court rules in the negative.

In matters of just compensation, it is prescribed in the last sentence of Section 3, Rule 67 of the Revised Rules of Court that whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of compensation to be paid for his property, thus:

Section 3. ***Defenses and objections***. - xxx xxx xxx

x x x x x x x x x

A defendant waives all defenses and objections not so alleged but the court, in the interest of justice, may permit amendments to the answer to be made not later than ten (10) days from the filing

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[7] *Id*. at 86.

[8] *Id*. at 143-164.

[9] *Id.* at 17-18.

thereof. However, as the trial of the issue of just compensation, whether or not a defendant has previously appeared or answered, he may present evidence as to the amount of the compensation to be paid for his property, and he may share in the distribution of the award. (underscoring ours.)

Here, it is clear that respondents merely exercised their right to present evidence in order to resolve the issue of proper rate to be used in computing the payment of just compensation. Clearly, the RTC did not take upon itself to consider the *Larrazabal* case as it was the respondents themselves who introduced the case as evidence.

However, it should also be emphasized that while the court's taking of judicial notice may be allowed in some instances, the same does not hold true in this case where there are many issues that should have been considered by the RTC before it decided to apply the ruling in the *Larrazabal* case.

For one, there had been no proper presentation of evidence to support the application of the *Larrazabal* case. While it was said that there had been resetting of hearings, no mention, however, was made if finally, the petitioner was able to attend any of such before the RTC finally arrived at a conclusion that the *Larrazabal* case can, indeed, be applied when it comes to the computation of just compensation. Indeed, there is a gray area in this matter as regards the issue of whether due process has been observed.

Two, the allegation that the lands subject of the *Larrazabal* case and the subject land are contiguous was not also proven, neither were the classifications of the lands mentioned. In the *Larrazabal* case, the lands involved already have significant improvements, whereas, in this case, there is no other document worthy of credit other than the report made by the appraisal committee of Ormoc City Assessor's Office which declared that based on the ocular inspection they made, the area is only worth "₱1,000.00 per square meter for commercial lots, ₱800.00 per square meter for residential lots and ₱500.00 per square meter for agricultural lots."[10]

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[10] *Id.* at 83.

Indeed, it is the value of the land at the time of the taking or the filing of the complaint, and not the value at the time of the rendition of judgment that should be the basis in computing the amount of just compensation.[11] Hence, for this matter, it should be the value given by the Assessor's Office that should be used in determining the amount due to the respondents.

WHEREFORE, premises considered, the petition is hereby **GRANTED** and the Decision dated September 2, 2011 of the Court of Appeals-Cebu City in CA-G.R. CV No. 01690 is **SET ASIDE**.

SO ORDERED.

Carpio, S.A.J. (Chairperson), *Perlas-Bernabe, Caguioa,* and *Carandang,*[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 207433. December 5, 2018]

DR. FE LASAM, *petitioner, vs.* **PHILIPPINE NATIONAL BANK and HON. PRESIDING JUDGE OF REGIONAL TRIAL COURT, BRANCH 66, SAN FERNANDO CITY, LA UNION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; COURTS; PRINCIPLE OF HIERARCHY OF COURTS; ALTHOUGH THE SUPREME COURT, THE COURT OF APPEALS AND THE REGIONAL TRIAL COURTS HAVE CONCURRENT JURISDICTION TO ISSUE WRITS OF *CERTIORARI*,

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[11] *Sec. of the DPWH, et al. v. Sps. Tecson*, 713 Phil. 55, 73 (2013).

[*] Designated Member per Special Order No. 2624, dated November 29, 2018.

PROHIBITION, *MANDAMUS, QUO WARRANTO, HABEAS CORPUS* AND INJUNCTION, SUCH CONCURRENCE DOES NOT GIVE THE PETITIONER UNRESTRICTED FREEDOM OF CHOICE OF COURT FORUM; A DIRECT INVOCATION OF THE SUPREME COURT'S ORIGINAL JURISDICTION TO ISSUE THE EXTRAORDINARY WRITS SHOULD BE ALLOWED ONLY WHEN THERE ARE SPECIAL AND IMPORTANT REASONS THEREFOR, CLEARLY AND SPECIFICALLY SET OUT IN THE PETITION; RATIONALE.— [L]asam filed this petition for *certiorari* under Rule 65 of the Rules of Court directly to this Court, assailing the orders of the RTC. On this consideration alone, the instant petition must be dismissed for failure to observe the principle of hierarchy of courts. The rationale for the principle of hierarchy of courts was discussed in *Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform*. In the said case, the Court, citing the *Heirs of Bertuldo Hinog v. Hon. Melicor*, explained that: Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus, quo warranto, habeas corpus* and injunction, **such concurrence does not give the petitioner unrestricted freedom of choice of court forum**. In *Heirs of Bertuldo Hinog v. Melicor*, citing *People v. Cuaresma*, this Court made the following pronouncements: **This Court's original jurisdiction to issue writs of *certiorari* is not exclusive.** It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. **There is after all a hierarchy of courts.** That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.** This is [an]

established policy. It is a policy necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket. The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts. There is nothing in the instant petition which would justify direct recourse to this Court. Thus, dismissal of the same is in order.

2. ID.; ID.; JUDGMENTS; RELIEF FROM JUDGMENTS, ORDERS, OR OTHER PROCEEDINGS; TIME FOR FILING PETITION; STRICT COMPLIANCE WITH THE APPLICABLE REGLEMENTARY PERIODS FOR ITS FILING MUST BE SATISFACTORILY SHOWN BECAUSE A PETITION FOR RELIEF FROM JUDGMENT IS A FINAL ACT OF LIBERALITY ON THE PART OF THE STATE, WHICH REMEDY CANNOT BE ALLOWED TO ERODE ANY FURTHER THE FUNDAMENTAL PRINCIPLE THAT A JUDGMENT, ORDER, OR PROCEEDING MUST, AT SOME DEFINITE TIME, ATTAIN FINALITY IN ORDER TO PUT AN END TO LITIGATION.— A petition for relief from judgment, order, or other proceedings is an equitable remedy which is allowed only in exceptional circumstances. The petition is the proper remedy of a party seeking to set aside a judgment rendered against him by a court whenever he was unjustly deprived of a hearing, was prevented from taking an appeal, or a judgment or final order entered because of fraud, accident, mistake or excusable negligence. However, as an equitable remedy, strict compliance with the applicable reglementary periods for its filing must be satisfactorily shown because a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order, or proceeding must, at some definite time, attain finality in order to put an end to litigation. As such, it is incumbent upon the petitioner to show that the petition was filed within its reglementary periods,

otherwise, the petition may be dismissed outright. In this regard, Section 3, Rule 38 of the Rules of Court provides that a petition for relief from judgment must be filed within: (1) 60 days from knowledge of the judgment, order or other proceeding to be set aside; and (2) six months from the entry of such judgment, order or other proceeding. These two periods must concur. Further, these periods could not be extended and could never be interrupted. Unfortunately for Lasam, she failed to comply with these two periods when she filed her petition for relief from a final order before the RTC.

3. ID.; ID.; ID.; ID.; ID.; THE 60-DAY PERIOD FOR FILING A PETITION FOR RELIEF SHOULD BE RECKONED FROM THE TIME THE AGGRIEVED PARTY HAS KNOWLEDGE OF THE JUDGMENT OR ORDER SOUGHT TO BE SET ASIDE; KNOWLEDGE OF THE FINALITY OF THE JUDGMENT OR ORDER IS IRRELEVANT.— Again, and as expressly provided under the Rules of Court, the 60-day period under Section 3, Rule 38 of the Rules of Court should be reckoned from the time the aggrieved party has knowledge of the judgment or order sought to be set aside. In other words, for purposes of the 60-day period under Rule 38, knowledge of the **finality** of the judgment or order is irrelevant. The records reveal that Lasam's knowledge of the February 23, 2010 Order could be traced to at least two periods: on February 23, 2010, when the Court issued the subject Order and on which Lasam was admittedly in attendance; and on July 23, 2010, the date Lasam signed the Verification and Certification for the Petition for *Certiorari* filed with the CA. It must be underlined that the very subject of the aforementioned petition for *certiorari* was the February 23, 2010 Order itself. On the other hand, while there was an attempt to argue the compliance with the 60-day period in the petition for relief, there was no effort to show that the six-month period—which is equally relevant for a petition for relief-was complied with. It may be that this was consciously adopted to conceal the fact that the petition for relief was also filed beyond the six—month reglementary period. As pointed out by the PNB, the RTC's February 23, 2010 Order was, in effect, entered on May 3, 2012, when this Court's February 22, 2012 Resolution in G.R. No. 199846 was entered in the Book of Entries of Judgments. Thus, the January 22, 2013 petition for relief was filed two months late.

4. ID.; ID.; ID.; ID.; ID.; OUTRIGHT DISMISSAL OF THE PETITION FOR RELIEF WARRANTED WHERE THE PETITION WAS FILED OUT OF TIME.— x x x [I]t is clear that Lasam failed to comply with the 60-day period provided under Section 3, Rule 38 of the Rules of Court when she filed her petition for relief on January 22, 2013, or almost three years from the time she acquired knowledge of the order sought to be set aside. Likewise, she failed to comply with the six-month period provided in the same Rule when she filed her petition for relief more than eight months from the date of entry of the order sought to be set aside. Since strict compliance with the relevant periods was not observed, the RTC correctly dismissed Lasam's petition. At the time the petition was filed, the reglementary periods under Rule 38 had already expired. Consequently, the RTC lost all jurisdiction to entertain the same. Thus, no grave abuse of discretion could be attributed to the trial court when it dismissed the petition outright.

APPEARANCES OF COUNSEL

Marcelo & Associates Law Firm for petitioner.
Pablo M. Olarte for PNB.

D E C I S I O N

REYES, J. JR., *J.*:

This is a petition for *certiorari* under Rule 65 of the Rules of Court which seeks to annul the March 18, 2013[1] and May 28, 2013[2] Orders of the Regional Trial Court of San Fernando City, La Union, Branch 66 (RTC) in Civil Case No. 6778, a petition for relief from a final order. The present petition for *certiorari* also seeks to set aside the February 23, 2010 Order[3] of the same court in Civil Case No. 6778 for annulment of mortgage.

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[1] Penned by Presiding Judge Victor O. Concepcion; *rollo*, pp. 83-85.

[2] *Id*. at 91.

[3] *Id*. at 52.

The Facts

On January 22, 2013, petitioner Dr. Fe Lasam (Lasam) filed a Petition for Relief from Judgment, Order, or Other Proceedings[4] before the RTC. In her petition, Lasam alleged, among others, the following: that on January 14, 2003, she filed a Complaint for Annulment of Mortgage[5] against Philippine National Bank (PNB), docketed as Civil Case No. 6778, before the same court; that on the February 23, 2010 hearing of the case for initial reception of evidence where she was present, her former counsel failed to appear; that as a consequence, the RTC issued an Order dismissing the civil case for failure to prosecute and for failure of her counsel to appear; that her former counsel filed an Urgent Manifestation and Motion[6] where she explained her failure to attend the hearing on February 23, 2010, but the RTC denied the same in its April 29, 2010 Order[7] as the motion was not seasonably filed; and that on May 24, 2010, her former counsel sought the reconsideration of the order,[8] but the RTC denied the same in its July 7, 2010 Order[9] for being in the nature of a second motion for reconsideration.

Lasam further alleged that her former counsel filed a Petition for *Certiorari*[10] before the Court of Appeals (CA), which was docketed as CA-G.R. SP No. 116446, but the same was dismissed.[11] On September 27, 2012, an Urgent Motion for the Issuance of Temporary Restraining Order and/or Preliminary Injunction[12] was also filed. However,in its November 21, 2012

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[4] *Id*. at 18-24.

[5] *Id*. at 25-33.

[6] *Id*. at 53.

[7] *Id*. at 54.

[8] *Id*. at 55-58.

[9] *Id.* at 59.

[10] *Id*. at 60-72.

[11] The CA Resolution dismissing the petition for *certiorari* in CA-G.R. SP No. 116446 was not attached to the present petition for *certiorari.*

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

Resolution,[13] the CA stated that it could no longer act on the urgent motion in view of this Court's issuance of a Resolution dated May 28, 2012, and an Entry of Judgment.[14] The Entry of Judgment stated that the Court's February 22, 2012 Resolution in G.R. No. 199846, denying the petition for review on *certiorari* assailing the Decision and Resolution in CA-G.R. SP No. 116446, had become final and executory and had been recorded in the Book of Entries of Judgments on May 3, 2012.

Lasam claimed that she only learned of the finality of the February 23, 2010 Order after she consulted a different lawyer. She also averred that she was seriously deprived of her right to present her case due to the gross negligence and ignorance of her former counsel who caused the dismissal of her complaint for annulment of mortgage due to her failure to appear on the February 23, 2010 hearing of the case; who failed to file the motion for reconsideration on time; and who availed of the wrong remedy by filing a second motion for reconsideration which eventually led to the finality of the February 23, 2010 Order. Thus, she was prompted to file the petition for relief from the February 23, 2010 Order of the RTC within 60 days from her knowledge of its finality.

Ruling of the RTC

In its assailed March 18, 2013 Order, the RTC dismissed outright Lasam's petition for relief. The trial court explained that under Section 3, Rule 38 of the Rules of Court,a petition for relief from a final judgment or order must be filed within: (a) 60 days after the petitioner learns of the judgment, final order, or other proceeding to be set aside; and (b) six months from entry of such judgment, order, or other proceeding. It emphasized that these two periods must concur and must be strictly observed since compliance with the reglementary periods is jurisdictional.[15]

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[13] *Id*. at 80.

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

[15] *Id*. at 84.

The trial court ruled that contrary to Lasam's belief, the 60-day period had commenced when she, through her former counsel, received a copy of the April 29, 2010 Order denying the reconsideration of the dismissal of the case on February 23, 2010, and not from the time of her belated knowledge of the finality after consulting with a different lawyer. Thus, the trial court opined that the petition for relief was filed way beyond the two periods set by the Rules of Court. The dispositive portion of the assailed Order provides:

> WHEREFORE, in view of the foregoing, the instant petition is hereby DISMISSED for lack of merit.
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> SO ORDERED.[16]

Lasam moved for reconsideration,[17] but the same was denied by the RTC in its May 28, 2013 Order.[18]

Hence, this petition.

The Issue

WHETHER THE RTC COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED OUTRIGHT LASAM'S PETITION FOR RELIEF FROM JUDGMENT, ORDER OR OTHER PROCEEDINGS AND DENIED HER MOTION FOR RECONSIDERATION[19]

Lasam argues that the RTC gravely abused its discretion when it dismissed outright her petition for relief considering that she has been seriously deprived of her right to present her case due to the gross negligence and ignorance of her former counsel. Although she recognizes the general rule that the negligence of the counsel binds the client, Lasam nevertheless claims that the gross negligence of her former counsel justifies the application of the exception to her case.

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[16] *Id.* at 85.

[17] *Id*. at 86-90.

[18] *Id*. at 91.

[19] *Id*. at 12.

In its Comment,[20] private respondent PNB counters that Lasam has not been unduly deprived of her right to present her case. It contends that Lasam has had sufficient legal representation contrary to her claim that her former counsel was guilty of gross negligence and ignorance. PNB points out that the records of the case, as well as Lasam's admissions, would reveal that her former counsel moved for the reconsideration of the RTC's February 23, 2010 Order. Her former counsel also filed a petition for *certiorari* in the CA;and, when the same was dismissed, moved for the reconsideration of the same, which was also denied. PNB further states that the CA's denial of the motion for reconsideration apparently became the subject of Lasam's petition for review on *certiorari*, docketed as G.R. No. 199846, before this Court. PNB maintains that the legal services and representations by Lasam's former counsel in the proceedings before the RTC, the CA, and this Court clearly manifest that no fraud, accident, mistake, or excusable negligence exists which could have justified a petition for relief.

PNB further disputes Lasam's claim that the petition for relief from the order of the RTC has been timely filed. It underscores that Lasam's petition in G.R. No. 199846, assailing the decision and resolution in CA-G.R. SP No. 116446, was denied in this Court's February 22, 2012 Resolution, which became final and executory as evidenced by the Entry of Judgment on May 3, 2012. Thus, the petition for relief filed on January 22, 2013, or more than six months after the entry of the final order on May 3, 2012, was clearly filed out of time. Therefore, the RTC did not commit any grave abuse of discretion when it denied Lasam's petition.

The Court's Ruling

The petition must be dismissed for utter lack of merit.

Direct recourse to this Court was improperly resorted.

[20] *Id*. at 98-105.

As already stated, Lasam filed this petition for *certiorari* under Rule 65 of the Rules of Court directly to this Court, assailing the orders of the RTC. On this consideration alone, the instant petition must be dismissed for failure to observe the principle of hierarchy of courts.

The rationale for the principle of hierarchy of courts was discussed in *Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform*.[21] In the said case, the Court, citing the *Heirs of Bertuldo Hinog v. Hon. Melicor,*[22] explained that:

> Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, **such concurrence does not give the petitioner unrestricted freedom of choice of court forum**. In *Heirs of Bertuldo Hinog v. Melicor*, citing *People v. Cuaresma*, this Court made the following pronouncements:
>
> > **This Court's original jurisdiction to issue writs of *certiorari* is not exclusive**. It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. **There is after all a hierarchy of courts**. That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition.** This is [an] established policy. It is a policy necessary

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[21] 635 Phil. 283 (2010).

[22] 495 Phil. 422 (2005).

> to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.
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> The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.[23] (Emphases in the original; citations omitted.)

There is nothing in the instant petition which would justify direct recourse to this Court. Thus, dismissal of the same is in order.

Furthermore, even if the Court gives due course to this petition, it would certainly still meet the same fate. The Court is convinced that the RTC, in issuing the assailed orders, did not commit any grave abuse of discretion.

Petition for relief from the order of the RTC was filed out of time.

A petition for relief from judgment, order, or other proceedings is an equitable remedy which is allowed only in exceptional circumstances.[24] The petition is the proper remedy of a party seeking to set aside a judgment rendered against him by a court whenever he was unjustly deprived of a hearing, was prevented from taking an appeal, or a judgment or final order entered because of fraud, accident, mistake or excusable negligence.[25]

However, as an equitable remedy, strict compliance with the applicable reglementary periods for its filing must be satisfactorily shown because a petition for relief from judgment

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[23] *Chamber of Real Estate and Builders Associations, Inc. v. Secretary of Agrarian Reform, supra* note 21, at 300-301.

[24] *Tuason v. Court of Appeals*, 326 Phil. 169, 178 (1996).

[25] *Ampo v. Court of Appeals*, 517 Phil. 750, 754 (2006); RULES OF COURT, Rule 38, Sections 1 and 2.

is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order, or proceeding must, at some definite time, attain finality in order to put an end to litigation.[26] As such, it is incumbent upon the petitioner to show that the petition was filed within its reglementaryperiods, otherwise, the petition may be dismissed outright.[27]

In this regard, Section 3, Rule 38 of the Rules of Court provides that a petition for relief from judgment must be filed within: (1) 60 days from knowledge of the judgment, order or other proceeding to be set aside; and (2) six months from the entry of such judgment, order or other proceeding. These two periods must concur. Further, these periods could not be extended and could never be interrupted.[28]

Unfortunately for Lasam, she failed to comply with these two periods when she filed her petition for relief from a final order before the RTC. It must be emphasized that the subject of Lasam's petition for relief is the RTC's February 23, 2010 Order. Accordingly, the reglementary periods provided in Section 3, Rule 38 of the Rules of Court must be reckoned from Lasam's knowledge of the said order, as well as on the date it was entered.

In her petition for relief, Lasam alleged that the petition was filed within 60 days from the time she learned of the finality of the RTC's February 23, 2010 Order.[29] The insufficiency of this allegation is very glaring.

Again, and as expressly provided under the Rules of Court, the 60-day period under Section 3, Rule 38 of the Rules of Court should be reckoned from the time the aggrieved party

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[26] *Thomasites Center for International Studies v. Rodriguez,* 779 Phil. 536, 545 (2016).

[27] *Philippine Rabbit Bus Lines, Inc. v. Judge Arciaga*, 232 Phil. 400, 405 (1987).

[28] *Quelnan v. VHF Philippines,* 507 Phil. 75, 83 (2005).

[29] *Rollo*, p. 21.

has knowledge of the judgment or order sought to be set aside.[30] In other words, for purposes of the 60-day period under Rule 38, knowledge of the **finality** of the judgment or order is irrelevant.

The records reveal that Lasam's knowledge of the February 23, 2010 Order could be traced to at least two periods: on February 23, 2010, when the Court issued the subject Order and on which Lasam was admittedly in attendance;[31] and on July 23, 2010, the date Lasam signed the Verification and Certification for the Petition for *Certiorari* filed with the CA.[32] It must be underlined that the very subject of the aforementioned petition for *certiorari* was the February 23, 2010 Order itself.

On the other hand, while there was an attempt to argue the compliance with the 60-day period in the petition for relief, there was no effort to show that the six-month period — which is equally relevant for a petition for relief — was complied with. It may be that this was consciously adopted to conceal the fact that the petition for relief was also filed beyond the six-month reglementary period. As pointed out by the PNB, the RTC's February 23, 2010 Order was, in effect, entered on May 3, 2012, when this Court's February 22, 2012 Resolution in G.R. No. 199846 was entered in the Book of Entries of Judgments. Thus, the January 22, 2013 petition for relief was filed two months late.

From the foregoing, it is clear that Lasam failed to comply with the 60-day period provided under Section 3, Rule 38 of the Rules of Court when she filed her petition for relief on January 22, 2013, or almost three years from the time she acquired knowledge of the order sought to be set aside. Likewise, she failed to comply with the six-month period provided in the same Rule when she filed her petition for relief more than eight months from the date of entry of the order sought to be set aside.

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[30] *Quelnan v. VHF Philippines, supra* note 28.

[31] *Rollo*, pp. 7, 21.

[32] *Id*. at 71.

Since strict compliance with the relevant periods was not observed, the RTC correctly dismissed Lasam's petition. At the time the petition was filed, the reglementary periods under Rule 38 had already expired. Consequently, the RTC lost all jurisdiction to entertain the same.[33] Thus, no grave abuse of discretion could be attributed to the trial court when it dismissed the petition outright.

Considering that Lasam's petition for relief was certainly filed out of time, it becomes unnecessary for this Court to determine whether the alleged negligence of her former counsel constitutes sufficient ground for a petition for relief.

WHEREFORE, the instant petition is **DISMISSED** for utter lack of merit.

SO ORDERED.

Peralta (Chairperson), *Leonen, Gesmundo,* and *Hernando, JJ.,* concur.

THIRD DIVISION

[G.R. No. 212416. December 5, 2018]

ROEL R. DEGAMO, *petitioner, vs.* **OFFICE OF THE OMBUDSMAN and MARIO L. RELAMPAGOS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; THE OMBUDSMAN ACT OF 1989 (REPUBLIC ACT NO. 6770); THE OFFICE OF THE OMBUDSMAN; THE SUPREME COURT DOES NOT

[33] *Pacific Importing and Exporting Co. v. Tinio,* 85 Phil. 239, 242 (1949).

INTERFERE WITH THE OMBUDSMAN'S DETERMINATION OF PROBABLE CAUSE; RATIONALE.— This Court has adopted a policy of non-interference with public respondent's determination of probable cause. In *Dichaves v. Office of the Ombudsman, et al*.: As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman. An independent constitutional body, the Office of the Ombudsman is beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service. Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is executive in nature. . . . The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.

2. ID.; ID.; ID.; ID.; THE COURT MAY REVIEW THE OMBUDSMAN'S EXERCISE OF ITS INVESTIGATIVE AND PROSECUTORIAL POWERS, BUT ONLY UPON A CLEAR SHOWING THAT IT ABUSED ITS DISCRETION IN AN ARBITRARY, CAPRICIOUS, WHIMSICAL, OR DESPOTIC MANNER.— [I]n a special civil action for certiorari, this Court cannot correct errors of fact or law not amounting to grave abuse of discretion. This Court may review public respondent's exercise of its investigative and prosecutorial powers, but only upon a clear showing that it abused its discretion in an "arbitrary, capricious, whimsical, or despotic manner," as held in *Joson v. Office of the Ombudsman*: [A]n allegation of grave abuse of discretion must be substantiated before this Court can exercise its power of judicial review. As held in *Tetangco v. Ombudsman*: It is well-settled that the Court will not ordinarily interfere with the Ombudsman's determination of whether or not probable cause exists except when it commits

grave abuse of discretion. Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law. Without proof of grave abuse of discretion, this Court shall not interfere with public respondent's determination of probable cause.

3. CRIMINAL LAW; REVISED PENAL CODE; USURPATION OF AUTHORITY; PUNISHES THE ACT OF KNOWINGLY AND FALSELY REPRESENTING ONESELF TO BE AN OFFICER, AGENT, OR REPRESENTATIVE OF ANY DEPARTMENT OR AGENCY OF THE GOVERNMENT; NOT COMMITTED.— In his Complaint, petitioner charged private respondent with violation of Article 177 of the Revised Penal Code, as amended x x x. This law provision penalizes the crimes of *usurpation of authority* and *usurpation of official functions*. As worded, *any person* who commits the punishable acts enumerated can be held liable. x x x. The crime of usurpation of authority punishes the act of *knowingly and falsely representing* oneself to be an officer, agent, or representative of any department or agency of the government. x x x. In his Complaint, petitioner alleged that private respondent "falsely and knowingly represented himself to have the authority of President Benigno Simeon C. Aquino III" when he wrote the June 19, 2012 letter-advice revoking the issuance of the Special Allotment Release Order. What petitioner posits is that by signing the letter, private respondent led the addressee to believe that he had the authority to do so when he did not, which constitutes usurpation of authority. He is incorrect. The punishable act in usurpation of authority is **false and knowing representation**, *i.e*. the *malicious misrepresentation* as an agent, officer, or representative of the government. Private respondent did not maliciously misrepresent himself as an agent, officer, or representative of the government. He is a public official himself, the Department's Undersecretary for Operations, whom public respondent had found to have signed the letter in his own name and under the words, "By Authority of the Secretary." Clearly, the facts presented by petitioner do not constitute the crime of usurpation of authority. Public respondent was not in grave abuse of discretion when it found that there was no sufficient

evidence to support an indictment for usurpation of authority against private respondent.

4. ID.; ID.; USURPATION OF OFFICIAL FUNCTIONS; ELEMENTS.— The crime of usurpation of official functions punishes any person who, under pretense of official position, performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so. Under Article 177 of the Revised Penal Code, as amended, the elements of the crime of usurpation of official functions are when a person: (1) performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof; (2) acts under pretense of official position; and (3) acts without being lawfully entitled to do so.

5. ID.; ID.; ID.; PRIVATE RESPONDENT, ACTING UNDER THE AUTHORITY OF THE EXECUTIVE SECRETARY, MAY EXERCISE THE POWER TO WITHDRAW THE SPECIAL ALLOTMENT RELEASE ORDER; UNDER THE DOCTRINE OF QUALIFIED POLITICAL AGENCY, DEPARTMENT SECRETARIES MAY ACT FOR AND ON BEHALF OF THE PRESIDENT ON MATTERS WHERE THE PRESIDENT IS REQUIRED TO EXERCISE AUTHORITY IN THEIR RESPECTIVE DEPARTMENTS.— The assailed act is the private respondent's withdrawal of the Special Allotment Release Order through the June 19, 2012 letter-advice. This constitutes the first element, that a person performs an act pertaining to a person in authority or public officer. x x x. x x x [P]etitioner insists that only the President can withdraw the Special Allotment Release Order from his provincial government. x x x. Private respondent argues that he acted under Abad's authority, under the August 18, 2011 Department Order No. 2011-11. A scrutiny of this document confirms that private respondent himself was designated to sign documents on Abad's behalf, which explicitly includes the Special Allotment Release Order, the Notice of Cash Allocation, and the letter-advice to agencies. While petitioner does not dispute the Department's authority in approving or disapproving Special Allotment Release Orders, he claims that this power does not include revoking, canceling, or suspending what has been approved by the President.

However, petitioner failed to refute private respondent's allegations that the act was upon the instructions of the President: x x x. It appears that private respondent was acting on behalf of Abad, upon the instructions of the President. Under the doctrine of qualified political agency, department secretaries may act for and on behalf of the President on matters where the President is required to exercise authority in their respective departments. Thus, this Court rules that private respondent, under Abad's authority, may exercise the power to withdraw the Special Allotment Release Order through the letter-advice sent to petitioner.

6. ID.; ID.; ID.; GOOD FAITH IS A DEFENSE IN CRIMINAL PROSECUTIONS FOR USURPATION OF OFFICIAL FUNCTIONS; TERM "GOOD FAITH," CONSTRUED.— [T]his Court finds that private respondent acted in good faith. In *Ruzol*: It bears stressing at this point that in *People v. Hilvano*, this Court enunciated that good faith is a defense in criminal prosecutions for usurpation of official functions. The term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts[,] which render transaction unconscientious." Good faith is actually a question of intention and although something internal, it can be ascertained by relying not on one's self-serving protestations of good faith but on evidence of his conduct and outward acts. The records fail to show that private respondent acted in bad faith in withdrawing the Special Allotment Release Order. On the contrary, it appears it was petitioner who acted in bad faith. Private respondent claims that despite the notice of withdrawal and the directive to return the public fund to the National Treasury pending compliance with the rules, petitioner brazenly procured various infrastructure projects. Petitioner was the only one among the local chief executives who disregarded the order from the Executive Department.

APPEARANCES OF COUNSEL

The Law Offices of Bejar Nuique Moncada & Besario for petitioner.

D E C I S I O N

LEONEN, *J.*:

For this Court's resolution is a Petition for Certiorari[1] assailing the Office of the Ombudsman's April 19, 2013 Resolution[2] and January 8, 2014 Order[3] in OMB-C-C-13-0010. This case originated from the December 26, 2012 Affidavit-Complaint[4] filed by Negros Oriental Governor Roel R. Degamo (Degamo) against Department of Budget and Management (Department) Undersecretary Mario L. Relampagos (Relampagos).

The National Disaster Risk Reduction and Management Council (Council) requested the release of ₱961,550,000.00 to the Negros Oriental province (provincial government) to finance the rehabilitation of various infrastructures[5] damaged by Typhoon *Sendong* and a 6.9-magnitude earthquake.[6] The Office of the President, through Executive Secretary Paquito Ochoa, Jr., approved the request, charging the amount against the Calamity Fund for Fiscal Year 2012, subject to availability.[7]

The Department, through its Regional Office No. VII, issued on June 5, 2012 Special Allotment Release Order No. ROVII-12-0009202,[8] which covered the approved amount. It also issued

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[1] *Rollo*, pp. 3-25.

[2] *Id*. at 26-36. The Resolution, docketed as OMB-C-C-13-0010, was penned by Graft Investigation and Prosecution Officer I Rachel Rueve M. T. Barroso-Jamiro and approved by Ombudsman Conchita Carpio Morales.

[3] *Id*. at 37-39. The Order, docketed as OMB-C-C-13-0010, was penned by Graft Investigation and Prosecution Officer I Rachel Rueve M. T. Barroso-Jamiro and approved by Ombudsman Conchita Carpio Morales.

[4] *Rollo*, pp. 40-42.

[5] *Id*. at 27, Office of the Ombudsman's Resolution.

[6] *Id*. at 6.

[7] *Id*. at 27.

[8] *Id*. at 47.

a Notice of Cash Allocation[9] worth ₱480,775,000.00, or 50% of the approved sum.[10]

In a June 18, 2012 letter[11] to Budget and Management Secretary Florencio Abad (Abad), Public Works and Highways Secretary Rogelio L. Singson requested the Department not to indicate the recipient local government unit in the Special Allotment Release Order yet, since the Department of Public Works and Highways needed to evaluate the local government units' capability to implement projects prior to the release of a fund. Thus, Abad ordered Relampagos to withdraw the previously issued Special Allotment Release Order and Notice of Cash Allocation.[12]

In a June 19, 2012 letter-advice,[13] Relampagos informed Degamo that the Department is withdrawing the Special Allotment Release Order because its release did not comply with the guidelines on large-scale fund releases for infrastructure projects. He said this withdrawal was effective until the Department of Public Works and Highways could determine that the local government units are able to implement the projects.[14]

On June 29, 2012, the Department's Regional Office VII Director advised[15] Degamo that the Special Allotment Release Order had been withdrawn,[16] and ordered the provincial government to return and deposit ₱480,775,000.00, the previously released amount, to the National Treasury.[17]

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[9] *Id*. at 48.

[10] *Id*. at 27.

[11] *Id*. at 72.

[12] *Id*. at 28.

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

[14] *Id*. at 28.

[15] *Id*. at 51-52.

[16] *Id*. at 28.

[17] *Id*. at 28-29.

On July 16, 2012, Degamo informed[18] Relampagos that the provincial government would not be returning the funds, and claimed that he was illegally withdrawing funds unbeknownst to higher authorities.[19]

On December 26, 2012, Degamo filed before the Office of the Ombudsman a Complaint for Usurpation of Authority or Official Functions against Relampagos. He alleged that when Relampagos wrote the June 19, 2012 letter-advice, Relampagos falsely posed himself to have been authorized by President Benigno Simeon C. Aquino III. Degamo added that Relampagos usurped the official functions of the Executive Secretary, who had the sole authority to write and speak for and on behalf of the President.[20]

In his Counter-Affidavit,[21] Relampagos maintained that he wrote the letter as the Department's Undersecretary for Operations.[22] He claimed that he acted upon Abad's instructions, and that the Office of the President was informed of the withdrawal.[23]

In its April 19, 2013 Resolution,[24] the Office of the Ombudsman dismissed the Complaint.[25] It found no probable cause to charge Relampagos with Usurpation of Authority or Official Functions[26] since he signed the letter in his own name and under the words, "By Authority of the Secretary."[27] There

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

[19] *Id*.

[20] *Id*. at 29-30.

[21] *Id*. at 378-386.

[22] *Id*. at 382.

[23] *Id*. at 384.

[24] *Id*. at 26-36.

[25] *Id*. at 36.

[26] *Id*. at 31.

[27] *Id*. at 32.

was also no positive, express, and explicit representation made.[28] Neither did Relampagos act under pretense of official position, nor without legal authority.[29]

The dispositive portion of the Office of the Ombudsman's April 19, 2013 Resolution read:

> **WHEREFORE**, the present complaint against **MARIO L. RELAMPAGOS** is hereby **DISMISSED** for lack of probable cause.
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> **SO RESOLVED.**[30] (Emphasis in the original)

In its January 8, 2014 Order,[31] the Office of the Ombudsman denied Degamo's Motion for Reconsideration.[32]

Hence, on May 7, 2014, Degamo filed this Petition for Certiorari,[33] arguing that public respondent, the Office of the Ombudsman, gravely abused its discretion when it held that there was no probable cause to indict private respondent Relampagos of the crime charged.[34]

Petitioner does not dispute the Department's authority in approving or disapproving Special Allotment Release Orders; however, it must be under the law.[35] According to him, the funding assistance was a calamity fund governed by Republic Act No. 10121, or the Philippine Disaster Risk Reduction and Management Act of 2010, and the special provisions of Republic Act No. 10155 or the General Appropriations Act of 2012 (2012 GAA),[36] as provided in the Department's Budget Circular No.

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[28] *Id*.

[29] *Id*. at 33.

[30] *Id*. at 36.

[31] *Id*. at 37-39.

[32] *Id*. at 100-113.

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

[34] *Id*. at 8.

[35] *Id.*

[36] *Id*. at 9.

2012-2.[37] Per these laws, releasing funds to the implementing agency requires the approval of the President with favorable recommendation of the Council.[38] Hence, there was no need for the Department of Public Works and Highways' prior determination before the Special Allotment Release Order could be released.[39]

In his Comment,[40] private respondent counters that he withdrew the Special Allotment Release Order as the Undersecretary for Operations,[41] under the August 18, 2011 Department Order No. 2011-11.[42] He claims that nowhere in his letter did he assume acting [on] behalf of the President or the Executive Secretary[43] as he signed it under his name, using the words, "By Authority of the Secretary."[44] He contends that he acted upon Abad's orders, whom the President instructed to comply with the 2012 GAA provision "allowing delegation of nationally[-]funded infrastructure projects [only] to [local government units] with the capability to implement the projects by themselves."[45] The President was duly informed of the reasons for the withdrawal, and has neither rejected nor reversed it.[46]

In its Comment,[47] public respondent argued that it did not commit grave abuse of discretion in dismissing the complaint against private respondent.[48] It invoked the same department

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[37] *Id*. at 9-10.

[38] *Id*. at 10-12.

[39] *Id*. at 13.

[40] *Id*. at 328-344.

[41] *Id*. at 335.

[42] *Id*. at 338.

[43] *Id*. at 335.

[44] *Id*. at 338.

[45] *Id*. at 338.

[46] *Id*.

[47] *Id.* at 494-509.

[48] *Id*. at 498.

order which authorized private respondent to sign for and on behalf of Abad.[49] Moreover, it argued that it "has the ultimate and unfettered discretion to determine whether a criminal case should be filed against an erring public official, except only upon a clear showing of grave abuse of discretion which petitioner utterly failed to establish."[50]

On February 24, 2015, petitioner filed his Consolidated Reply.[51] He avers that public respondent's findings are subject to this Court's power of judicial review.[52] He maintains that private respondent's cancellation of the Special Allotment Release Order and Notice of Cash Allocation is contrary to law[53] and the rulings in *Belgica v. Ochoa, Jr.* and *Araullo v. Aquino*.[54] The Department, he asserts, "relinquishes its jurisdiction, disposition[,] and control of public funds once a [Notice of Cash Allocation] is issued."[55] Thus, private respondent no longer had authority to cancel both documents pertaining to the calamity fund already deposited to the provincial government's account.[56] Additionally, private respondent allegedly usurped the "sole prerogative of the President to suspend or stop further expenditures under Section 38 of the Administrative Code of 1987."[57]

The sole issue for this Court's resolution is whether or not public respondent committed grave abuse of discretion in dismissing the Complaint for usurpation of authority or official

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[49] *Id*. at 499.

[50] *Id*. at 502.

[51] *Id*. at 519-543, *Consolidated Reply to Separate Comments of the Respondents on the Petition.*

[52] *Id*. at 520.

[53] *Id*. at 521.

[54] *Id*. at 522.

[55] *Id*. at 525.

[56] *Id*. at 526.

[57] *Id*. at 533.

functions, which petitioner filed against private respondent, for lack of probable cause.

The Petition is dismissed.

I

This Court has adopted a policy of non-interference with public respondent's determination of probable cause.[58] In *Dichaves v. Office of the Ombudsman, et al.*:[59]

> As a general rule, this Court does not interfere with the Office of the Ombudsman's exercise of its constitutional mandate. Both the Constitution and Republic Act No. 6770 (The Ombudsman Act of 1989) give the Ombudsman wide latitude to act on criminal complaints against public officials and government employees. The rule on non-interference is based on the respect for the investigatory and prosecutory powers granted by the Constitution to the Office of the Ombudsman.
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> An independent constitutional body, the Office of the Ombudsman is beholden to no one, acts as the champion of the people, and is the preserver of the integrity of the public service. Thus, it has the sole power to determine whether there is probable cause to warrant the filing of a criminal case against an accused. This function is executive in nature.
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> The Office of the Ombudsman is armed with the power to investigate. It is, therefore, in a better position to assess the strengths or weaknesses of the evidence on hand needed to make a finding of probable cause. As this Court is not a trier of facts, we defer to the sound judgment of the Ombudsman.[60] (Citations omitted)

Moreover, in a special civil action for certiorari, this Court cannot correct errors of fact or law not amounting to grave

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[58] *Joson v. Office of the Ombudsman*, G.R. Nos. 197433 and 197435, August 9, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/197433.pdf > [Per *J*. Leonen, Second Division).

[59] 802 Phil. 564 (2016) (Per *J*. Leonen, Second Division].

[60] *Id*. at 589-590.

abuse of discretion.[61] This Court may review public respondent's exercise of its investigative and prosecutorial powers, but only upon a clear showing that it abused its discretion in an "arbitrary, capricious, whimsical, or despotic manner,"[62] as held in *Joson v. Office of the Ombudsman*:

> [A]n allegation of grave abuse of discretion must be substantiated before this Court can exercise its power of judicial review. As held in *Tetangco v. Ombudsman*:
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> > It is well-settled that the Court will not ordinarily interfere with the Ombudsman's determination of whether or not probable cause exists except when it commits grave abuse of discretion. Grave abuse of discretion exists where a power is exercised in an arbitrary, capricious, whimsical or despotic manner by reason of passion or personal hostility so patent and gross as to amount to evasion of positive duty or virtual refusal to perform a duty enjoined by, or in contemplation of law.[63] (Citation omitted)

Without proof of grave abuse of discretion, this Court shall not interfere with public respondent's determination of probable cause.

II

Invoking the exception, petitioner alleges that public respondent acted with grave abuse of discretion in finding no probable cause to indict private respondent.[64] In his Complaint, petitioner charged private respondent with violation of Article 177 of the Revised Penal Code, as amended, which states:

> ARTICLE 177. *Usurpation of authority or official functions*. — Any person who shall knowingly and falsely represent himself to be

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[61] *Miranda v. Sandiganbayan*, 502 Phil. 423, 441 (2005) (Per *J*. Puno, *En Banc*].

[62] *Joson v. Office of the Ombudsman*, G.R. Nos. 197433 and 197435, August 9, 2017, < http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/august2017/197433.pdf > [Per *J*. Leonen, Second Division] citing *Tetangco v. Office of the Ombudsman*, 515 Phil. 230-236,234 (2006) [Per *J*. Quisumbing, Third Division].

[63] *Id*. at 23.

[64] *Rollo*, p. 520.

an officer, agent or representative of any department or agency of the Philippine Government or of any foreign government, or who, under pretense of official position, shall perform any act pertaining to any person in authority or public officer of the Philippine Government or of any foreign government, or any agency thereof, without being lawfully entitled to do so, shall suffer the penalty of *prision correccional* in its minimum and medium periods.[65]

This law provision penalizes the crimes of *usurpation of authority* and *usurpation of official functions*.[66]

As worded, *any person* who commits the punishable acts enumerated can be held liable. This was upheld in *People v. Hilvano*,[67] where the Court denied the appellant public official's attempt to restrict Article 177's application to private individuals only.[68] The same case held that good faith is a defense against a charge under it.[69]

II (A)

The crime of usurpation of authority punishes the act of *knowingly and falsely representing* oneself to be an officer, agent, or representative of any department or agency of the government.[70]

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[65] Republic Act No. 379 (1949), Sec. 1.

[66] *Gigantoni y Javier v. People*, 245 Phil. 133 (1988) [Per *C.J.* Yap, Second Division]. See also *People v. Lidres*, 108 Phil. 995 (1960) [Per *J.* Barrera, First Division] where the Court acquitted the appellant charged with usurpation of official functions on the ground that the facts alleged in the information failed to constitute an offense. The Court held that neither can the appellant be convicted of usurpation of *authority*, as distinguished from usurpation of *official functions*, penalized under the same article, since the information did not charge appellant with the former crime.

[67] 99 Phil. 655 (1956) [Per *J.* Bengzon, *En Banc*].

[68] *Id.* The Court, in holding that there is no reason to restrict the operation of Article 177 to private individuals, explained: "For one thing it applies to 'any person,' and where the law does not distinguish, we should not distinguish."

[69] *Ruzol v. Sandiganbayan*, 709 Phil. 708 (2013) [Per *J.* Velasco, Jr., Third Division].

[70] Republic Act No. 379 (1949), Sec. 1.

In *Gigantoni y Javier v. People*,[71] this Court acquitted the petitioner- accused, a former Philippine Constabulary-CIS agent convicted in the trial court, for usurpation of authority. This Court found that there was no proof that he was duly notified of his dismissal from the service.[72] It held that he cannot be said to have *knowingly and falsely* represented himself as a Philippine Constabulary-CIS agent without competent and credible proof that he knew of his dismissal when he committed the alleged offense. Thus, presumption of innocence prevailed.[73]

In his Complaint, petitioner alleged that private respondent "falsely and knowingly represented himself to have the authority of President Benigno Simeon C. Aquino III"[74] when he wrote the June 19, 2012 letter-advice revoking the issuance of the Special Allotment Release Order.

What petitioner posits is that by signing the letter, private respondent led the addressee to believe that he had the authority to do so when he did not, which constitutes usurpation of authority. He is incorrect. The punishable act in usurpation of authority is **false and knowing representation**, *i.e.* the *malicious misrepresentation* as an agent, officer, or representative of the government.

Private respondent did not maliciously misrepresent himself as an agent, officer, or representative of the government. He is a public official himself,[75] the Department's Undersecretary

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[71] 245 Phil. 133 (1988) [Per *C.J.* Yap, Second Division].

[72] *Gigantoni y Javier v. People*, 245 Phil. 133, 137 (1988) [Per *C.J.* Yap, Second Division].

[73] *Id*.

[74] *Rollo*, p. 29.

[75] Republic Act No. 6713 (1989), Sec. 3. Definition of terms. —

. . . . . .

"*Public Officials*" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

for Operations, whom public respondent had found to have signed the letter in his own name and under the words, "By Authority of the Secretary."[76]

Clearly, the facts presented by petitioner do not constitute the crime of usurpation of authority. Public respondent was not in grave abuse of discretion when it found that there was no sufficient evidence to support an indictment for usurpation of authority against private respondent.

II (B)

The crime of usurpation of official functions punishes any person who, under pretense of official position, performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof, without being lawfully entitled to do so.[77]

Under Article 177 of the Revised Penal Code, as amended,[78] the elements of the crime of usurpation of official functions are when a person: (1) performs any act pertaining to any person in authority or public officer of the Philippine Government or any foreign government, or any agency thereof; (2) acts under pretense of official position; and (3) acts without being lawfully entitled to do so.

The assailed act is the private respondent's withdrawal of the Special Allotment Release Order through the June 19, 2012 letter-advice. This constitutes the first element, that a person performs an act pertaining to a person in authority or public officer.

As discussed, the public respondent found that private respondent signed the letter in his own name as the Undersecretary for Operations, and under the words, "By Authority of the Secretary." Petitioner did not dispute this finding. However, he argues that respondent acted without legal authority

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[76] *Rollo*, p. 32.

[77] REV. PEN. CODE, Art. 177.

[78] Republic Act No. 379 (1949), Sec. 1.

and usurped the Executive Secretary's function, as the latter is the only one who can write and speak for and on behalf of the President.

At the onset, private respondent did not claim to write for and on behalf of the President in the letter. This Court fails to see how he usurped the Executive Secretary's function when there was no attempt to represent the President in the letter. In any case, petitioner insists that only the President can withdraw the Special Allotment Release Order from his provincial government.

In *Ruzol v. Sandiganbayan*,[79] this Court acquitted Leovegildo R. Ruzol (Ruzol), then Mayor of Nakar, Quezon, who issued 221 permits for the transportation of salvaged products. The Sandiganbayan convicted him of usurpation of official functions of the Department of Environment and Natural Resources. However, this Court found that the government agency did not have the sole authority to issue the questioned permits, and that local government units may likewise exercise such power under the general welfare clause. Moreover, the permit that Ruzol issued was not intended to replace the one required by the government agency. He was found to have acted in good faith and was acquitted.

Following *Ruzol*, an inquiry must be made on whether private respondent may exercise the power to withdraw the Special Allotment Release Order through a letter-advice, and whether he acted in good faith.

Private respondent argues that he acted under Abad's authority, under the August 18, 2011 Department Order No. 2011-11.[80] A scrutiny of this document confirms that private respondent himself was designated to sign documents on Abad's behalf, which explicitly includes the Special Allotment Release Order, the Notice of Cash Allocation, and the letter-advice to agencies.

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[79] 709 Phil. 708 (2013) [Per *J.* Velasco, Jr., Third Division].

[80] *Rollo*, p. 260.

While petitioner does not dispute the Department's authority in approving or disapproving Special Allotment Release Orders,[81] he claims that this power does not include revoking, canceling, or suspending what has been approved by the President.[82]

However, petitioner failed to refute private respondent's allegations that the act was upon the instructions of the President:

> 31. As a final point, it must be recalled that the President, during the update on the Calamity Fund releases, verbally called [the] attention of [Budget and Management] Secretary Abad to strictly enforce the GAA provision allowing delegation of nationally[-]funded infrastructure projects **ONLY** to [local government units] with the capability to implement the projects by themselves. Incidentally, [Department of Public Works and Highways] Secretary Singson in his letter dated June 18, 2012 requested the [Department] not to indicate the [local government unit] recipient of the Calamity Fund in the [Special Allotment Release Order] as it would need to **priorly** (*sic*) **determine** if the [local government unit] has the capability to implement the projects.
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> 32. The foregoing events prompted [Budget and Management] Secretary Abad to inquire on the compliance by the [local government unit] recipients of the Calamity Fund. Accordingly, Secretary Abad **made instructions** for [private respondent] to withdraw the [Special Allotment Release Order] and [Notice of Cash Allocation] issued to the [p]rovince as a precautionary measure[,] who did so in compliance with the reminder of no less than the President of the Philippines to strictly enforce the GAA provision allowing delegation of nationally[-]funded infrastructure projects **ONLY** to [local government units] with the capability to implement the projects by themselves.[83] (Emphasis in the original, citation omitted)

It appears that private respondent was acting on behalf of Abad, upon the instructions of the President. Under the doctrine of qualified political agency, department secretaries may act

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[81] *Id*. at 8.

[82] *Id*. at 16.

[83] *Id*. at 338.

for and on behalf of the President on matters where the President is required to exercise authority in their respective departments.[84]

Thus, this Court rules that private respondent, under Abad's authority, may exercise the power to withdraw the Special Allotment Release Order through the letter-advice sent to petitioner.

Finally, this Court finds that private respondent acted in good faith. In *Ruzol*:

> It bears stressing at this point that in *People v. Hilvano*, this Court enunciated that good faith is a defense in criminal prosecutions for usurpation of official functions. The term "good faith" is ordinarily used to describe that state of mind denoting "honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts[,] which render transaction unconscientious." Good faith is actually a question of intention and although something internal, it can be ascertained by relying not on one's self-serving protestations of good faith but on evidence of his conduct and outward acts.[85] (Citations omitted)

The records fail to show that private respondent acted in bad faith in withdrawing the Special Allotment Release Order. On the contrary, it appears it was petitioner who acted in bad faith. Private respondent claims that despite the notice of withdrawal and the directive to return the public fund to the National Treasury pending compliance with the rules, petitioner brazenly procured various infrastructure projects. Petitioner was the only one among the local chief executives who disregarded the order from the Executive Department.[86]

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[84] *Joson v. Torres*, 352 Phil. 888 (1998) [Per *J.* Puno, Second Division].

[85] *Ruzol v. Sandiganbayan*, 709 Phil. 708, 752-753 (2013) [Per *J.* Velasco, Jr., Third Division] citing *People v. Hilvano*, 99 Phil. 655, 657 (1956) [Per *J.* Bengzon, *En Banc*].

[86] *Rollo*, p. 336.

Thus, without proof that public respondent acted with grave abuse of discretion in finding no probable cause to indict private respondent, this Petition is dismissed.

WHEREFORE, the Petition for *Certiorari* is **DISMISSED** for lack of merit. The April 19, 2013 Resolution and January 8, 2014 Order of the Office of the Ombudsman in OMB-C-C-13-0010 are **AFFIRMED**.

SO ORDERED.

Peralta (Chairperson), *Gesmundo, Reyes, J. Jr.,* and *Hernando, JJ.*, concur.

FIRST DIVISION

[G.R. No. 212734. December 5, 2018]

MABUHAY HOLDINGS CORPORATION, *petitioner, vs.* **SEMBCORP LOGISTICS LIMITED,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; ARBITRATION; ARBITRATION LAWS; ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004 (ADR ACT) (REPUBLIC ACT NO. 9285) AND SPECIAL RULES OF COURT ON ALTERNATIVE DISPUTE RESOLUTION (SPECIAL ADR RULES); IN THE RECOGNITION OR ENFORCEMENT OF A FOREIGN ARBITRAL AWARD, THE COURTS SHALL TAKE INTO CONSIDERATION OUR ARBITRATION LAWS AND THE LAWS APPLIED BY THE ARBITRAL TRIBUNAL.—** [A]s a member of the United Nations Commission in International Trade Law (UNCITRAL), the Philippines also adopted the UNCITRAL Model Law (Model Law) as the governing law on international commercial arbitrations. Hence, when the Congress

enacted Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004 (ADR Act), it incorporated the Model Law in its entirety. Sections 19 and 42 of the ADR Act expressly provided for the applicability of the New York Convention and the Model Law in our jurisdiction x x x. Five years after the enactment of the ADR Act, the Department of Justice issued the ADR Act's Implementing Rules and Regulations (IRR), and the Supreme Court issued the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules). These two rules, in addition to the ADR Act incorporating the New York Convention and the Model Law, are our arbitration laws. In addition to our arbitration laws, our courts, in recognizing or enforcing a foreign arbitral award, shall also take into consideration the laws applied by the arbitral tribunal. These may comprise the substantive law of the contract and the procedural rules or the rules governing the conduct of arbitration proceedings. As agreed upon by the parties herein under the arbitral clause in their Agreement, the substantive law of the contract is the Philippine law and the procedural rules are the ICC Rules. During the filing of the request for Arbitration, the ICC Rules in effect was the ICC Rules of Arbitration 1998. Considering that the essence of arbitration is party autonomy, the Court shall refer to the said Rules for purposes of examining the procedural infirmities raised by the parties to the arbitration.

2. ID.; ID.; ID.; ALTERNATIVE DISPUTE RESOLUTION ACT OF 2004 (ADR ACT) (REPUBLIC ACT NO. 9285) AND SPECIAL RULES OF COURT ON ALTERNATIVE DISPUTE RESOLUTION (SPECIAL ADR RULES); THE REFUSAL OF THE REGIONAL TRIAL COURT TO ENFORCE THE FOREIGN ARBITRAL AWARD IN CASE AT BAR MAY BE APPEALED TO THE COURT OF APPEALS THROUGH A NOTICE OF APPEAL IN ACCORDANCE WITH SECTION 2 OF RULE 41 OF THE RULES OF COURT; THE SPECIAL ADR RULES SHALL RETROACTIVELY APPLY TO ALL PENDING CASES PROVIDED THAT NO VESTED RIGHTS ARE IMPAIRED OR PREJUDICED.— Mabuhay x x x contends that filing a petition for review and not a notice of appeal is the proper remedy to contest the RTC's refusal to enforce the Final Award. The Court notes, however, that the Special ADR Rules took effect in 2009. Sembcorp's notice of appeal was filed only in

2008. The ADR Act, which was already in effect at that time, did not specify the proper remedy of appeal from the RTC to the CA. It merely provides that "a decision of the regional trial court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the CA in accordance with the rules of procedure to be promulgated by the Supreme Court." The Special ADR Rules shall retroactively apply to all pending cases provided that no vested rights are impaired or prejudiced. In this case, Sembcorp filed a notice of appeal in accordance with Section 2 of Rule 41 as it is the only applicable rule existing at that time. Sembcorp had a vested right to due process in relying on the said rule. Consequently, the CA had jurisdiction to act on Sembcorp's appeal.

3. **ID.; ID.; ID.; ID.; THE SUPREME COURT'S REVIEW OF DECISION OF THE COURT OF APPEALS IS DISCRETIONARY AND LIMITED TO SPECIFIC GROUNDS PROVIDED UNDER THE SPECIAL ADR RULES.—** The Court's review of a CA Decision is discretionary and limited to specific grounds provided under the Special ADR Rules. Thus: **Rule 19.36.** *Review discretionary*. - A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted **only for serious and compelling reasons resulting in grave prejudice to the aggrieved party**. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, when the Court of Appeals: **a. Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules in arriving at its decision resulting in substantial prejudice to the aggrieved party;** b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision; c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction. x x x. Here, Mabuhay did not specifically raise any of the grounds under Rule 19.36 above in its petition before this Court. Nonetheless, considering the dearth of jurisprudence on enforcement of foreign arbitral awards

and the fact that the CA reversed the RTC decision, the Court exercises its discretion to review the CA decision solely for purposes of determining whether the CA applied the aforecited standard of judicial review.

4. ID.; ID.; ID.; ID.; A FOREIGN ARBITRAL AWARD IS PRESUMED MADE AND RELEASED IN DUE COURSE OF ARBITRATION AND IS SUBJECT TO ENFORCEMENT BY THE COURT.— Our jurisdiction adopts a policy in favor of arbitration. The ADR Act and the Special ADR Rules both declare as a policy that the State shall encourage and actively promote the use of alternative dispute resolution, such as arbitration, as an important means to achieve speedy and impartial justice and declog court dockets. This pro-arbitration policy is further evidenced by the rule on presumption in favor of enforcement of a foreign arbitral award under the Special ADR Rules, *viz:* **Rule 13.11.** *Court action*. - **It is presumed that a foreign arbitral award was made and released in due course of arbitration and is subject to enforcement by the court.** The court shall recognize and enforce a foreign arbitral award unless a ground to refuse recognition or enforcement of the foreign arbitral award under this rule is fully established. The decision of the court recognizing and enforcing a foreign arbitral award is immediately executory. In resolving the petition for recognition and enforcement of a foreign arbitral award in accordance with these Special ADR Rules, the court shall either [a] recognize and/or enforce or [b] refuse to recognize and enforce the arbitral award. **The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.**

5. ID.; ID.; ID.; ID.; GROUNDS FOR REFUSING ENFORCEMENT AND RECOGNITION OF A FOREIGN ARBITRAL AWARD; NOT ESTABLISHED.— Under Article V of the New York Convention, the grounds for refusing enforcement and recognition of a foreign arbitral award are: 1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that: x x x (c) **The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration,** x x x. (d) **The composition of the arbitral authority or the**

arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; x x x. 2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: x x x (b) **The recognition or enforcement of the award would be contrary to the public policy of that country.** x x x**.** In Our jurisdiction, We have incorporated the grounds enumerated under the New York Convention in our arbitration laws. Article 4.36, Rule 6 of the IRR and Rule 13.4 of the Special ADR Rules reiterated the exact same exclusive list of grounds. After a careful review of the case, We find that Mabuhay failed to establish any of the grounds for refusing enforcement and recognition of a foreign arbitral award.

6. **ID.; ID.; ID.; ID.; WHERE THE PARTIES HAVE AGREED TO SUBMIT THEIR DISPUTE TO INSTITUTIONAL ARBITRATION RULES, AND UNLESS THEY HAVE AGREED TO A DIFFERENT PROCEDURE, THEY SHALL BE DEEMED TO HAVE AGREED TO PROCEDURE UNDER SUCH ARBITRATION RULES FOR THE SELECTION AND APPOINTMENT OF ARBITRATORS.—** The Agreement provides, however, that the arbitrator with expertise in the matter at issue shall be appointed in accordance with the ICC Rules. The ICC, thus, is the appointing authority agreed upon by the parties. The "appointing authority" is the person or institution named in the arbitration agreement as the appointing authority; or the regular arbitration institution under whose rule the arbitration is agreed to be conducted. Where the parties have agreed to submit their dispute to institutional arbitration rules, and unless they have agreed to a different procedure, they shall be deemed to have agreed to procedure under such arbitration rules for the selection and appointment of arbitrators.

7. **ID.; ID.; ID.; ID.; A CHALLENGE TO THE APPOINTMENT OF AN ARBITRATOR MAY BE RAISED IN COURT ONLY WHEN THE APPOINTING AUTHORITY FAILS OR REFUSES TO ACT ON THE CHALLENGE WITHIN SUCH PERIOD AS MAY BE ALLOWED UNDER THE APPLICABLE RULE OR IN THE ABSENCE THEREOF, WITHIN THIRTY (30) DAYS FROM RECEIPT OF THE**

REQUEST, THAT THE AGGRIEVED PARTY MAY RENEW THE CHALLENGE IN COURT.— The pertinent rules in the ICC Arbitration Rules of 1998 provide: **Article 9 - Appointment and Confirmation of the Arbitrators** x x x 5. The sole arbitrator or the chairman of the Arbitral Tribunal **shall be of a nationality other than those of the parties.** x x x. In accordance with the aforecited rules, Dr. Chantara-Opakorn was appointed upon the proposal of the Thai National Committee. It bears stressing that the pro-arbitration policy of the State includes its policy to respect party autonomy. Thus, Rule 2.3 of the Special ADR Rules provides that "the parties are free to agree on the procedure to be followed in the conduct of arbitral proceedings." The procedure to be followed on the appointment of arbitrator are among the procedural rules that may be agreed upon by the parties. Moreover, under Rule 7.2 of the Special ADR Rules, a challenge to the appointment of an arbitrator may be raised in court only when the appointing authority fails or refuses to act on the challenge within such period as may be allowed under the applicable rule or in the absence thereof, within thirty (30) days from receipt of the request, that the aggrieved party may renew the challenge in court. This is clearly not the case for Mabuhay as it was able to challenge the appointment of Dr. Chantara-Opakorn in accordance with Article 11 of the ICC Rules, but the ICC Court rejected the same. As such, the Court shall not entertain any challenge to the appointment of arbitrator disguised as a ground for refusing enforcement of an award.

8. ID.; ID.; ID.; ID.; THE DISPUTE IS NOT AN INTRA-CORPORATE CONTROVERSY; HENCE, INCLUDED IN THE SCOPE OF DISPUTES SUBMITTED TO ARBITRATION; IN RESOLVING THE PETITION FOR RECOGNITION AND ENFORCEMENT OF A FOREIGN ARBITRAL AWARD, THE COURT SHALL NOT DISTURB THE ARBITRAL TRIBUNAL'S DETERMINATION OF FACTS AND/OR INTERPRETATION OF LAW.— Under Article V(1)(c) of the New York Convention, the court may refuse enforcement of a foreign arbitral award when the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration. Mabuhay argues that the dispute is an intra-corporate controversy which is expressly excluded from the scope of disputes submitted to arbitration under the

Agreement. In essence, Mabuhay attacks the jurisdiction of the arbitral tribunal to hear the dispute as it did not fall within the terms of submission to arbitration. x x x. To recall, the Agreement provides that "(a)ny dispute, controversy or claim arising out of or relating to this Agreement, or breach thereof, *other than intra-corporate controversies*, shall be finally settled by arbitration..." Among the issues settled in the Final Award is whether the dispute is an intra-corporate controversy. Dr. Chantara-Opakorn ruled in the negative. x x x. Again, the Special ADR Rules specifically provides that in resolving the petition for recognition and enforcement of a foreign arbitral award, the court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.

9. ID.; ID.; ID.; ID.; MERE ERRORS IN THE INTERPRETATION OF THE LAW OR FACTUAL FINDINGS WOULD NOT SUFFICE TO WARRANT REFUSAL OF ENFORCEMENT UNDER THE PUBLIC POLICY GROUND, THE ILLEGALITY OR IMMORALITY OF THE AWARD MUST REACH A CERTAIN THRESHOLD SUCH THAT, ENFORCEMENT OF THE SAME WOULD BE AGAINST OUR STATE'S FUNDAMENTAL TENETS OF JUSTICE AND MORALITY, OR WOULD BLATANTLY BE INJURIOUS TO THE PUBLIC, OR THE INTERESTS OF THE SOCIETY.— Under Article V(2)(b) of the New York Convention, a court may refuse to enforce an award if doing so would be contrary to the public policy of the State in which enforcement is sought. Neither the New York Convention nor the mirroring provisions on public policy in the Model Law and Our arbitration laws provide a definition of "public policy" or a standard for determining what is contrary to public policy. Due to divergent approaches in defining public policy in the realm of international arbitration, public policy has become one of the most controversial bases for refusing enforcement of foreign arbitral awards. Most arbitral jurisdictions adopt a narrow and restrictive approach in defining public policy pursuant to the pro-enforcement policy of the New York Convention. The public policy exception, thus, is "a safety valve to be used in those exceptional circumstances when it would be impossible for a legal system to recognize an award and enforce it without abandoning the very fundaments on which it is based." An

example of a narrow approach adopted by several jurisdictions is that the public policy defense may only be invoked "where enforcement [of the award] would violate the forum state's most basic notions of morality and justice." x x x. In light of the foregoing and pursuant to the State's policy in favor of arbitration and enforcement of arbitral awards, the Court adopts the majority and narrow approach in determining whether enforcement of an award is contrary to Our public policy. Mere errors in the interpretation of the law or factual findings would not suffice to warrant refusal of enforcement under the public policy ground. The illegality or immorality of the award must reach a certain threshold such that, enforcement of the same would be against Our State's fundamental tenets of justice and morality, or would blatantly be injurious to the public, or the interests of the society.

10. ID.; ID.; ID.; ID.; MERE INCOMPATIBILITY OF A FOREIGN ARBITRAL AWARD WITH DOMESTIC MANDATORY RULES ON INTEREST RATES DOES NOT AMOUNT TO A BREACH OF PUBLIC POLICY; IMPOSITION OF TWELVE PERCENT (12%) ANNUAL INTEREST, UPHELD.— Mabuhay argues that the twelve percent (12%) annual interest from the date of the Final Award is also contrary to the Philippine law and jurisprudence. To reiterate, the only ground for refusing enforcement of a foreign arbitral award is when enforcement of the same would be contrary to public policy. Mere incompatibility of a foreign arbitral award with domestic mandatory rules on interest rates does not amount to a breach of public policy. However, some jurisdictions refused to recognize and enforce awards, or the part of the award which was considered to be contrary to public policy, where they considered that the awarded interest was unreasonably high. In this case, the twelve percent (12%) interest rate imposed under the Final Award is not unreasonably high or unconscionable such that it violates our fundamental notions of justice.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

TIJAM, *J.*:

This is an appeal from the Decision[1] dated November 19, 2013 and the Resolution[2] dated June 3, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 92296, reversing and setting aside the Decision of the Regional Trial Court (RTC)[3] of Makati City, Branch 149, in SP Proc. No. M-6064.

Facts of the Case

Petitioner Mabuhay Holdings Corporation (Mabuhay) and Infrastructure Development & Holdings, Inc. (IDHI) are corporations duly organized and existing under the Philippine Laws.[4]

Respondent Sembcorp Logistics Limited (Sembcorp), formerly known as Sembawang Maritime Limited, is a company incorporated in the Republic of Singapore.[5]

On January 23, 1996, Mabuhay and IDHI incorporated Water Jet Shipping Corporation (WJSC) in the Philippines to engage in the venture of carrying passengers on a common carriage by inter-island fast ferry. On February 5, 1996, they also incorporated Water Jet Netherlands Antilles, N.Y. (WJNA) in Curasao, Netherlands.[6] Their respective shareholding percentage are as follows:[7]

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[1] Penned by Associate Justice Zenaida T. Galapate-Laguilles, with Associate Justices Mariflor P. Punzalan Castillo and Amy C. Lazaro-Javier, concurring. *Rollo*, pp. 68-84.

[2] *Id*. at 65-66.

[3] Penned by Presiding Judge Cesar O. Untalan. *Id*. at 85-92.

[4] *Id*. at 19.

[5] *Id.*

[6] *Id*. at 19-20.

[7] *Id*. at 213.

	WJSC	WJNA
Mabuhay	70%	70%
IDHI	30%	30%

On September 16, 1996, Mabuhay, IDHI, and Sembcorp entered into a Shareholders' Agreement[8] (Agreement) setting out the terms and conditions governing their relationship in connection with a planned business expansion of WJSC and WJNA. Sembcorp decided to invest in the said corporations. As a result of Sembcorp's acquisition of shares, Mabuhay and IDHI's shareholding percentage in the said corporations were reduced, as follows:[9]

	WJSC	WJNA
Mabuhay	45.5%	45.5%
IDHI	19.5%	19.5%
Sembcorp	35.0%	35.0%

Pursuant to Article 13 of the Agreement, Mabuhay and IDHI voluntarily agreed to jointly guarantee that Sembcorp would receive a minimum accounting return of US$929,875.50 (Guaranteed Return) at the end of the 24th month following the full disbursement of the Sembcorp's equity investment in WJNA and WJSC. They further agreed that the Guaranteed Return shall be paid three (3) months from the completion of the special audits of WJSC and WJNA as per Article 13.3 of the Agreement.[10]

The Agreement included an arbitration clause, *viz*:

Article XIX. APPLICABLE LAW; ARBITRATION

19.1 This Agreement and the validity and performance thereof shall be governed by the laws of the Republic of the Philippines.

19.2 Any dispute, controversy or claim arising out of or relating to this Agreement, or a breach thereof, other than intra-corporate

[8] *Id*. at 93-112.

[9] *Id*. at 20-21 and 69.

[10] *Id*. at 69.

controversies, shall be finally settled by arbitration in accordance with the rules of conciliation and arbitration of the International Chamber of Commerce by one arbitrator with expertise in the matter at issue appointed in accordance with said rules. The arbitration proceeding including the rendering of the award shall take place in Singapore and shall be conducted in the English Language. This arbitration shall survive termination of this Agreement. Judgment upon the award rendered may be entered in any court having jurisdiction or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be.[11]

On December 6, 1996, Sembcorp effected full payment of its equity investment. Special audits of WJNA and WJSC were then carried out and completed on January 8, 1999. Said audits revealed that WJSC and WJNA both incurred losses.[12]

On November 26, 1999, Sembcorp requested for the payment of its Guaranteed Return from Mabuhay and IDHI. Mabuhay admitted its liability but asserted that since the obligation is joint, it is only liable for fifty percent (50%) of the claim or US$464,937.75.[13]

On February 24, 2000, Sembcorp sent a Final Demand to Mabuhay to pay the Guaranteed Return. Mabuhay requested for three (3) months to raise the necessary funds but still failed to pay any amount after the lapse of the said period.[14]

On December 4, 2000, Sembcorp filed a Request for Arbitration before the International Court of Arbitration of the International Chamber of Commerce (ICC) in accordance with the Agreement and sought the following reliefs:

(1) payment of the sum of US$929,875.50;
(2) alternatively, damages;

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[11] *Id*. at 108.

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

[13] *Id*. at 70.

[14] *Id*.

(3) interest on the above sum at such rate as the Arbitral Tribunal deems fit and just;
(4) cost of the arbitration; and
(5) Such further and/or other relief as the Arbitral Tribunal deems fit and just.[15]

On April 20, 2004, a Final Award[16] was rendered by Dr. Anan Chantara-Opakom (Dr. Chantara-Opakorn), the Sole Arbitrator appointed by the ICC. The dispositive portion of the award reads:

> The Sole Arbitrator hereby decides that the Sole Arbitrator has jurisdiction over the parties' dispute and directs [Mabuhay] to make the following payments to [Sembcorp]:
>
> 1. Half of the Guaranteed Return or an amount of US$464,937.75 (Four Hundred Sixty Four Thousand Nine Hundred Thirty Seven and Point Seventy Five US Dollars);
>
> 2. Interest at the rate of 12% per annum on the said amount of US$464,937.75 calculated from the date of this Final Award until the said amount of US$464,937.75 is actually and completely paid by [Mabuhay] to [Sembcorp]; and
>
> 3. A reimbursement of half of the costs of arbitration fixed by the ICC Court at US$57,000 or the aggregate half of which amount to US$28,500 together with an interest at the rate of 12% per annum calculated from the date of this Final Award until the said amount is actually and completely paid by [Mabuhay] to [Sembcorp].[17]

Consequently, on April 14, 2005, Sembcorp filed a Petition for Recognition and Enforcement of a Foreign Arbitral Award[18] before the RTC of Makati City, Branch 149.[19]

Mabuhay filed an Opposition citing the following grounds for non-enforcement under Article V of the 1958 Convention

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[15] *Id*.

[16] *Id*. at 210-260.

[17] *Id*. at 260.

[18] *Id*. at 265-270.

[19] *Id*. at 71.

on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention): (1) the award deals with a conflict not falling within the terms of the submission to arbitration; (2) the composition of the arbitral authority was not in accordance with the agreement of the parties; and (3) recognition or enforcement of the award would be contrary to the public policy of the Philippines.[20]

Mabuhay argued that the dispute is an intra-corporate controversy, hence, excluded from the scope of the arbitration clause in the Agreement. It alleged that on March 13, 1997, Sembcorp became the controlling stockholder of IDHI by acquiring substantial shares of stocks through its nominee, Mr. Pablo N. Sare (Sare). Mabuhay thus claimed that it has already been released from the joint obligation with IDHI as Sembcorp assumed the risk of loss when it acquired absolute ownership over the aforesaid shares. Moreover, Mabuhay argued that the appointment of Dr. Chantara-Opakorn was not in accordance with the arbitral clause as he did not have the expertise in the matter at issue, which involved application of Philippine law. Finally, Mabuhay argued that the imposition of twelve percent (12%) interest from the date of the Final Award was contrary to the Philippine law and jurisprudence.[21]

Ruling of the RTC

In a Decision[22] dated May 23, 2008, the RTC dismissed the petition and ruled that the Final Award could not be enforced.

The RTC ruled that the "simple contractual payment obligation" of Mabuhay and IDHI to Sembcorp had been rescinded and modified by the merger or confusion of the person of IDHI into the person of Sembcorp. As a result, said obligation was converted into an intra-corporate matter.[23]

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[20] *Id*. at 71-72.

[21] *Id.* at 70-71, 291-297.

[22] *Id*. at 85-92.

[23] *Id*. at 89.

The RTC also ruled on the issue of the lack of expertise of the Sole Arbitrator. Thus, the dispositive portion of its Decision reads:

> **WHEREFORE**, premises considered, this court finds in favor of the defendant Mabuhay Holdings Corporation, hence it hereby DISMISSED the petition for the recognition and enforcement of the subject Arbitral Award for the simple reason that it was issued in violation of the agreement. Moreover, this court cannot recognize the Arbitral Award because it was not the work of an expert as required under the agreement. Finally, the payment obligation in interest of 12% per annum on the US Dollar Amounts ($464,937.75 and $28,500) as ordered by the Sole Arbitrator is contrary to law and existing jurisprudence, hence void. Thus, it cannot be enforced by this Court.
>
> Cost de oficio.
>
> **SO ORDERED.**[24]

Aggrieved, Sembcorp appealed to the CA via a Notice of Appeal under Rule 41 of the Rules of Court.[25]

Ruling of the CA

On November 19, 2013, the CA promulgated its Decision[26] reversing and setting aside the RTC Decision.

The CA noted that the Final Award already settled the factual issue on whether Sembcorp acquired the adverted shares of stock in IDHI. Thus, RTC's contrary findings constituted an attack on the merits of the Final Award. In sum, the CA held that the court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of the law. It recognized the Final Award and remanded the case to the RTC for proper execution.[27]

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[24] *Id*. at 91-92.

[25] *Id*. at 75.

[26] *Id.* at 68-84.

[27] *Id.* at 77-82.

Undaunted, Mabuhay moved for the reconsideration of the CA Decision but the same was denied in a Resolution[28] dated June 3, 2014.

Hence, this petition.

Issue

The core issue for resolution is whether the RTC correctly refused to enforce the Final Award. Stated differently, was Mabuhay able to establish a ground for refusing the enforcement of the Final Award under our applicable laws and jurisprudence on arbitration?

Our Ruling

We deny the petition.

I. Governing Laws

An assiduous analysis of the present case requires a prefatory determination of the rules and other legal authorities that would govern the subject arbitration proceedings and award.

The arbitration proceedings between the parties herein were conducted in Singapore and the resulting Final Award was also rendered therein. As such, the Final Award is a "foreign arbitral award" or an award made in a country other than the Philippines.[29]

The Philippines is among the first signatories of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and acceded to the same as early as 1967.[30] Singapore, on the other hand, became a Contracting State in 1986.[31] The New York Convention aims

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[28] *Id*. at 65-66.

[29] Rule 1.11 (d), A.M. No. 07-11-08-SC, entitled "Special Rules of Court on Alternative Dispute Resolution" (October 30, 2009).

[30] New York Convention was ratified by the Philippines under Senate Resolution No. 71 on July 6, 1967; See <http://www.newyorkconvention.org/countries> last accessed on November 30, 2018.

[31] <http://www.newyorkconvention.org/countries> last accessed on November 30, 2018.

to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. Thus, the New York Convention primarily governs the recognition and enforcement of foreign arbitral awards by our courts.[32]

In addition, as a member of the United Nations Commission in International Trade Law (UNCITRAL), the Philippines also adopted the UNCITRAL Model Law[33] (Model Law) as the governing law on international commercial arbitrations. Hence, when the Congress enacted Republic Act No. 9285 or the Alternative Dispute Resolution Act of 2004[34] (ADR Act), it incorporated the Model Law in its entirety.

Sections 19 and 42 of the ADR Act expressly provided for the applicability of the New York Convention and the Model Law in our jurisdiction, *viz*:

SEC. 19. ***Adoption of the Model Law on International Commercial Arbitration.***- International commercial arbitration shall be governed by the Model Law on International Commercial Arbitration (the "Model Law") adopted by the United Nations Commission on International Trade Law on June 21, 1985 (United Nations Document A/40/17) and recommended approved on December 11, 1985, copy of which is hereto attached as Appendix "A".

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SEC. 42. ***Application of the New York Convention.*** - The New York Convention shall govern the recognition and enforcement of arbitral awards covered by the said Convention.

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[32] *Transfield Philippines, Inc. v. Luzon Hydro Corporation*, 523 Phil. 374 (2006).

[33] Adopted by the UNCITRAL on June 21, 1985 (United Nations Document A/40/17) and recommended for enactment by the General Assembly in Resolution No. 40/72, approved on 11 December 1985. Subsequently amended on July 7, 2006.

[34] Republic Act No. 9285, An Act to Institutionalize the Use of an Alternative Dispute Resolution System in the Philippines and to Establish the Office for Alternative Dispute Resolution, and for Other Purposes, promulgated on April 2, 2004.

The recognition and enforcement of such arbitral awards shall be filled (sic) with regional trial court **in accordance with the rules of procedure to be promulgated by the Supreme Court**. Said procedural rules shall provide that the party relying on the award or applying for its enforcement shall file with the court the original or authenticated copy of the award and the arbitration agreement. If the award or agreement is not made in any of the official languages, the party shall supply a duly certified translation thereof into any of such languages.

The applicant shall establish that the country in which foreign arbitration award was made is a party to the New York Convention.

x x x x x x x x x (Emphasis ours)

Five years after the enactment of the ADR Act, the Department of Justice issued the ADR Act's Implementing Rules and Regulations (IRR)[35], and the Supreme Court issued the Special Rules of Court on Alternative Dispute Resolution[36] (Special ADR Rules). These two rules, in addition to the ADR Act incorporating the New York Convention and the Model Law, are our arbitration laws.

In addition to our arbitration laws, our courts, in recognizing or enforcing a foreign arbitral award, shall also take into consideration the laws applied by the arbitral tribunal. These may comprise the substantive law of the contract and the procedural rules or the rules governing the conduct of arbitration proceedings.

As agreed upon by the parties herein under the arbitral clause in their Agreement, the substantive law of the contract is the Philippine law and the procedural rules are the ICC Rules. During the filing of the request for Arbitration, the ICC Rules in effect was the ICC Rules of Arbitration 1998.[37] Considering that the

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[35] Department Circular No. 98 or the Implementing Rules and Regulations of the Alternative Dispute Resolution Act of 2004, December 4, 2009.

[36] Special ADR Rules, A.M. No. 07-11-08-SC, September 1, 2009.

[37] 1998 International Chamber of Commerce, Rules of Arbitration, available online at <http://www.iccwbo.org/uploadedFiles/Court/Arbitration/other/rules_arb_english.pdf> last visited on November 4, 2018.

essence of arbitration is party autonomy, the Court shall refer to the said Rules for purposes of examining the procedural infirmities raised by the parties to the arbitration.

II. Jurisdiction

Mabuhay argues that the CA seriously erred in not dismissing outright the appeal of Sembcorp as it had no jurisdiction to act on the appeal. Mabuhay's argument hinges on Rule 19.12 of the Special ADR Rules, as follows:

> **Rule 19.12.** *Appeal to the Court of Appeals*. - An appeal to the Court of Appeals **through a petition for review**under this Special Rule shall only be allowed from the following final orders of the Regional Trial Court:
>
> x x x x x x x x x
>
> k. Refusing recognition and/or enforcement of a foreign arbitral award; (Emphasis supplied)
>
> x x x x x x x x x

Mabuhay thus contends that filing a petition for review and not a notice of appeal is the proper remedy to contest the RTC's refusal to enforce the Final Award.

The Court notes, however, that the Special ADR Rules took effect in 2009. Sembcorp's notice of appeal was filed only in 2008. The ADR Act, which was already in effect at that time, did not specify the proper remedy of appeal from the RTC to the CA. It merely provides that "a decision of the regional trial court confirming, vacating, setting aside, modifying or correcting an arbitral award may be appealed to the CA in accordance with the rules of procedure to be promulgated by the Supreme Court."[38]

The Special ADR Rules shall retroactively apply to all pending cases provided that no vested rights are impaired or prejudiced.[39]

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[38] See Sec. 46 of RA 9285.

[39] Special ADR Rules, Rule 24.1 Transitory Provision. — Considering its procedural character, the Special ADR Rules shall be applicable to all pending

In this case, Sembcorp filed a notice of appeal in accordance with Section 2 of Rule 41[40] as it is the only applicable rule existing at that time. Sembcorp had a vested right to due process in relying on the said rule. Consequently, the CA had jurisdiction to act on Sembcorp's appeal.

We now discuss the Court's jurisdiction to entertain the instant petition. The Court's review of a CA Decision is discretionary and limited to specific grounds provided under the Special ADR Rules. Thus:

Rule 19.36. *Review discretionary*. - A review by the Supreme Court is not a matter of right, but of sound judicial discretion, which will be granted **only for serious and compelling reasons resulting in grave prejudice to the aggrieved party**. The following, while neither controlling nor fully measuring the court's discretion, indicate the serious and compelling, and necessarily, restrictive nature of the grounds that will warrant the exercise of the Supreme Court's discretionary powers, when the Court of Appeals:

a. Failed to apply the applicable standard or test for judicial review prescribed in these Special ADR Rules in arriving at its decision resulting in substantial prejudice to the aggrieved party;

b. Erred in upholding a final order or decision despite the lack of jurisdiction of the court that rendered such final order or decision;

c. Failed to apply any provision, principle, policy or rule contained in these Special ADR Rules resulting in substantial prejudice to the aggrieved party; and

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arbitration, mediation or other ADR forms covered by the ADR Act, unless the parties agree otherwise. The Special ADR Rules, however, may not prejudice or impair vested rights in accordance with law.

[40] **Rule 41** -Appeal From The Regional Trial Courts

Section 2. *Modes of appeal*. —

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. x x x

d. Committed an error so egregious and harmful to a party as to amount to an undeniable excess of jurisdiction.

The mere fact that the petitioner disagrees with the Court of Appeals' determination of questions of fact, of law or both questions of fact and law, shall not warrant the exercise of the Supreme Court's discretionary power. The error imputed to the Court of Appeals must be grounded upon any of the above prescribed grounds for review or be closely analogous thereto.

A mere general allegation that the Court of Appeals has committed serious and substantial error or that it has acted with grave abuse of discretion resulting in substantial prejudice to the petitioner without indicating with specificity the nature of such error or abuse of discretion and the serious prejudice suffered by the petitioner on account thereof, shall constitute sufficient ground for the Supreme Court to dismiss outright the petition. (Emphasis ours)

In relation to the applicable standard or test for judicial review by the CA in arriving at its decision, the Special ADR Rules further provide:

Rule 19.20. *Due course*. - If upon the filing of a comment or such other pleading or documents as may be required or allowed by the Court of Appeals or upon the expiration of the period for the filing thereof, and on the basis of the petition or the records, **the Court of Appeals finds prima facie that the Regional Trial Court has committed an error that would warrant reversal or modification** of the judgment, final order, or resolution sought to be reviewed, it may give due course to the petition; otherwise, it shall dismiss the same.

x x x x x x x x x

Rule 19.24. *Subject of appeal restricted in certain instance*. - If the decision of the Regional Trial Court refusing to recognize and/or enforce, vacating and/or setting aside an arbitral award is premised on a finding of fact, the **Court of Appeals may inquire only into such fact to determine the existence or non-existence of the specific ground under the arbitration laws of the Philippines relied upon by the Regional Trial Court to refuse to recognize and/or enforce**, vacate and/or set aside an award. Any such inquiry into a question of fact shall not be resorted to for the purpose of substituting the

court's judgment for that of the arbitral tribunal as regards the latter's ruling on the merits of the controversy. (Emphasis ours)

Here, Mabuhay did not specifically raise any of the grounds under Rule 19.36 above in its petition before this Court. Nonetheless, considering the dearth of jurisprudence on enforcement of foreign arbitral awards and the fact that the CA reversed the RTC decision, the Court exercises its discretion to review the CA decision solely for purposes of determining whether the CA applied the aforecited standard of judicial review.

III. Grounds for Refusing Enforcement or Recognition

We now delve into the core of the issue — whether there is a ground for the RTC to refuse recognition and enforcement of the Final Award in favor of Sembcorp.

Our jurisdiction adopts a policy in favor of arbitration.[41] The ADR Act and the Special ADR Rules both declare as a policy that the State shall encourage and actively promote the use of alternative dispute resolution, such as arbitration, as an important means to achieve speedy and impartial justice and declog court dockets.[42] This pro-arbitration policy is further evidenced by the rule on presumption in favor of enforcement of a foreign arbitral award under the Special ADR Rules, *viz*:

Rule 13.11. *Court action*. - **It is presumed that a foreign arbitral award was made and released in due course of arbitration and is subject to enforcement by the court.**

The court shall recognize and enforce a foreign arbitral award unless a ground to refuse recognition or enforcement of the foreign arbitral award under this rule is fully established.

The decision of the court recognizing and enforcing a foreign arbitral award is immediately executory.

In resolving the petition for recognition and enforcement of a foreign arbitral award in accordance with these Special ADR Rules, the court

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[41] *Lanuza, Jr. v. BF Corporation, et al.*, 744 Phil. 612 (2014).

[42] See Sec. 2 of RA 9285 and Rule 2.1 of the Special ADR Rules.

shall either [a] recognize and/or enforce or [b] refuse to recognize and enforce the arbitral award. **The court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.** (Emphasis ours)

Under Article V of the New York Convention, the grounds for refusing enforcement and recognition of a foreign arbitral award are:

1. Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

(a) The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(b) The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or

(c) **The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration**, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) **The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties**, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

2. Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

(a) The subject matter of the difference is not capable of settlement by arbitration under the law of that country; or

(b) **The recognition or enforcement of the award would be contrary to the public policy of that country.** (Emphasis ours)

The aforecited grounds are essentially the same grounds enumerated under Section 36[43] of the Model Law. The list is exclusive. Thus, Section 45 of the ADR Act provides:

SEC. 45. ***Rejection of a Foreign Arbitral Award.*** - A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with

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[43] Article 36. Grounds for refusing recognition or enforcement

(1) Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

(a) at the request of the party against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(i) a party to the arbitration agreement referred to in Article 7 was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

(ii) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(iv) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(v) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or (b) if the court finds that: (i) the subject-matter of the dispute is not capable of settlement by arbitration under the law of this State; or (ii) the recognition or enforcement of the award would be contrary to the public policy of this State.

the procedural rules to be promulgated by the Supreme Court **only on those grounds enumerated under Article V of the New York Convention. Any other ground raised shall be disregarded by the regional trial court.** (Emphasis ours)

In Our jurisdiction, We have incorporated the grounds enumerated under the New York Convention in our arbitration laws. Article 4.36, Rule 6[44] of the IRR and Rule 13.4[45] of the Special ADR Rules reiterated the exact same exclusive list of grounds.

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[44] **Article 4.36.** *Grounds for Refusing Recognition or Enforcement.*

A. CONVENTION AWARD.

Recognition or enforcement of an arbitral award, made in a state, which is a party to the New York Convention, may be refused, at the request of the party against whom it is provoked, only if the party furnishes to the Regional Trial Court proof that:

(a) The parties to the arbitration agreement are, under the law applicable to them, under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or; failing any indication thereon, under the law of the country where the award was made; or

(b) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(c) the award deals with dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced; or

(d) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) the award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

Recognition and enforcement of an arbitral award may also be refused if the Regional Trial Court where recognition and enforcement is sought finds that:

(a) the subject-matter of the dispute is not capable of settlement by arbitration under the law of the Philippines; or

After a careful review of the case, We find that Mabuhay failed to establish any of the grounds for refusing enforcement and recognition of a foreign arbitral award. We discuss the grounds raised by Mabuhay *in seriatim*:

(b) the recognition or enforcement of the award would be contrary to the public policy of the Philippines.

A party to a foreign arbitration proceeding may oppose an application for recognition and enforcement of the arbitral award in accordance with the Special ADR Rules only on the grounds enumerated under paragraphs (a) and (c) of Article 4.35 (*Recognition and Enforcement*). Any other ground raised shall be disregarded by the Regional Trial Court.

[45] **Rule 13.4.** *Governing law and grounds to refuse recognition and enforcement*. - x x x

A Philippine court shall not set aside a foreign arbitral award but may refuse it recognition and enforcement on any or all of the following grounds:

a. The party making the application to refuse recognition and enforcement of the award furnishes proof that:

(i). A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereof, under the law of the country where the award was made; or

(ii). The party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iii). The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside; or

(iv). The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where arbitration took place; or

(v). The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which that award was made; or

b. The court finds that:

(i). The subject-matter of the dispute is not capable of settlement or resolution by arbitration under Philippine law; or

A. The arbitral authority, composed of Dr. Chatara-Opakorn as the sole arbitrator, was constituted in accordance with the arbitration agreement.

The first ground raised by Mabuhay is Article V(l)(d) of the New York Convention, *i.e.*, that the composition of the arbitral authority was not in accordance with the agreement of the parties. Mabuhay and Sembcorp stipulated in their Agreement that the sole arbitrator must have "expertise in the matter at issue". Since they also agreed that the validity and the performance of the Agreement shall be governed by the Philippine law, Mabuhay argues that the phrase "expertise in the matter at issue" necessarily means expertise in the Philippine law. Dr. Chatara-Opakorn, a Thai national, does not possess any educational degree or training in Philippine law.

The Agreement provides, however, that the arbitrator with expertise in the matter at issue shall be appointed in accordance with the ICC Rules. The ICC, thus, is the appointing authority agreed upon by the parties. The "appointing authority" is the person or institution named in the arbitration agreement as the appointing authority; or the regular arbitration institution under whose rule the arbitration is agreed to be conducted.[46] Where the parties have agreed to submit their dispute to institutional arbitration rules, and unless they have agreed to a different procedure, they shall be deemed to have agreed to procedure under such arbitration rules for the selection and appointment of arbitrators.[47]

The pertinent rules in the ICC Arbitration Rules of 1998 provide:

(ii). The recognition or enforcement of the award would be contrary to public policy.

The court shall disregard any ground for opposing the recognition and enforcement of a foreign arbitral award other than those enumerated above. (Emphasis ours)

[46] See Rule 1.11(b) of the Special ADR Rules.

[47] *Id*.

Article 9 - Appointment and Confirmation of the Arbitrators

x x x x x x x x x

3. Where the Court is to appoint a sole arbitrator or the chairman of an Arbitral Tribunal, it shall make the appointment upon a proposal of a National Committee of the ICC that it considers to be appropriate. If the Court does not accept the proposal made, or if the National Committee fails to make the proposal requested within the time limit fixed by the Court, the Court may repeat its request or may request a proposal from another National Committee that it considers to be appropriate.

x x x x x x x x x

5. The sole arbitrator or the chairman of the Arbitral Tribunal **shall be of a nationality other than those of the parties**. However, in suitable circumstances and provided that neither of the parties objects within the time limit fixed by the Court, the sole arbitrator or the chairman of the Arbitral Tribunal may be chosen from a country of which any of the parties is a national. (Emphasis ours)

In accordance with the aforecited rules, Dr. Chantara-Opakorn was appointed upon the proposal of the Thai National Committee.

It bears stressing that the pro-arbitration policy of the State includes its policy to respect party autonomy. Thus, Rule 2.3 of the Special ADR Rules provides that "the parties are free to agree on the procedure to be followed in the conduct of arbitral proceedings." The procedure to be followed on the appointment of arbitrator are among the procedural rules that may be agreed upon by the parties.

Moreover, under Rule 7.2 of the Special ADR Rules, a challenge to the appointment of an arbitrator may be raised in court only when the appointing authority fails or refuses to act on the challenge within such period as may be allowed under the applicable rule or in the absence thereof, within thirty (30) days from receipt of the request, that the aggrieved party may renew the challenge in court. This is clearly not the case for Mabuhay as it was able to challenge the appointment of Dr. Chantara-Opakorn in accordance with Article 11 of the ICC

Rules, but the ICC Court rejected the same.[48] As such, the Court shall not entertain any challenge to the appointment of arbitrator disguised as a ground for refusing enforcement of an award.

At any rate, Mabuhay's contention that the sole arbitrator must have the expertise on Philippine law fails to persuade. If the intent of the parties is to exclude foreign arbitrators due to the substantive law of the contract, they could have specified the same considering that the ICC Rules provide for appointment of a sole arbitrator whose nationality is other than those of the parties.

B. The dispute is not an intra-corporate controversy, hence, included in the scope of disputes submitted to arbitration.

Under Article V(l)(c) of the New York Convention, the court may refuse enforcement of a foreign arbitral award when the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration. Mabuhay argues that the dispute is an intra-corporate controversy which is expressly excluded from the scope of disputes submitted to arbitration under the Agreement. In essence, Mabuhay attacks the jurisdiction of the arbitral tribunal to hear the dispute as it did not fall within the terms of submission to arbitration.

The CA correctly applied the *Kompetenz-Kompetenz* principle expressly recognized under Rule 2.2 of the Special ADR Rules, *viz*:

> The Special ADR Rules recognize the principle of competence-competence, which means that the arbitral tribunal may initially rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any condition precedent to the filing of a request for arbitration.

The Special ADR Rules expounded on the implementation of the said principle:

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[48] *Rollo*, p. 221.

Rule 2.4. *Policy implementing competence-competence principle*.- The arbitral tribunal shall be accorded the first opportunity or competence to rule on the issue of whether or not it has the competence or jurisdiction to decide a dispute submitted to it for decision, including any objection with respect to the existence or validity of the arbitration agreement. When a court is asked to rule upon issue/s affecting the competence or jurisdiction of an arbitral tribunal in a dispute brought before it, either before or after the arbitral tribunal is constituted, **the court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule upon such issues**. (Emphasis ours)

To recall, the Agreement provides that "(a)ny dispute, controversy or claim arising out of or relating to this Agreement, or breach thereof, *other than intra-corporate controversies*, shall be finally settled by arbitration..."

Among the issues settled in the Final Award is whether the dispute is an intra-corporate controversy. Dr. Chantara-Opakorn ruled in the negative. The pertinent portion of the Final Award is reproduced as follows:

x x x Indeed, during the cross-examination of Mr. Chay, he admitted that there was **no transfer of shares from IDHI to the Claimant** [p. 130 of Transcript of Proceedings]:

x x x x x x x x x

During the re-examination of Mr. Chay by the Respondent's counsel, he again admitted that the transfer of the shares from IDHI to the Claimant has not taken effect [p. 155 of Transcript of Proceedings]:

x x x x x x x x x

It is clear that the Claimant's claim is neither premised on allegations of mismanagement of WJNA and WJSC, nor on who manages or controls or who has the right to manage or control WJNA and WJSC, nor is it a claim to effect the transfer of the share, nor an action for registration of the shares transfer [sic] already transferred from IDHI to the Claimant in the books of WJNA and WJSC. The nature of the Claimant's claim is not intrinsically connected with the regulation of the corporation. The Claimant's claim in this arbitration is straightforward: that the Respondent agreed, under a contract, to make

payment of certain amount of money to the Claimant upon the occurrence of a specified event; that the said event occurred but the Respondent refused to pay such amount of money to the Claimant; that the Claimant filed the Request in order to enforce the payment. Accordingly, the Sole Arbitrator is of the opinion that **the dispute in this arbitration is not an intra-corporate controversy, and, hence, it is not excluded from arbitration** under Article 19.2 of the Shareholders' Agreement.[49] (Emphasis ours)

Again, the Special ADR Rules specifically provides that in resolving the petition for recognition and enforcement of a foreign arbitral award, the court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.[50]

Yet, the RTC, in its decision dismissing the petition of Sembcorp, declared that "it is undisputed that the shares of stocks of IDHI in WJNA and WJSC were actually owned by [Sembcorp] before the filing of the request for arbitration"[51] without providing any factual basis for such conclusion which directly contradicts the arbitral tribunal's findings.

Even granting that the court may rule on the issue of whether the dispute is an intra-corporate controversy, Mabuhay's argument is premised on the factual issue of whether Sembcorp indeed acquired the shares of IDHI. Mabuhay failed to establish such fact before the arbitral tribunal. The RTC, on the other hand, concluded that Sembcorp acquired the subject shares but failed to explain the basis for such conclusion. In the absence of sufficient evidence that Sembcorp acquired the shares of IDHI, the Court finds no cogent reason to disturb the arbitral tribunal's ruling in favor of the latter's jurisdiction over the dispute.

C. Enforcement of the award would not be contrary to public policy of the Philippines.

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[49] *Id*. at 230-231.

[50] See Rule 11.9 of the Special ADR Rules.

[51] *Rollo*, p. 88.

Under Article V(2)(b) of the New York Convention, a court may refuse to enforce an award if doing so would be contrary to the public policy of the State in which enforcement is sought. Neither the New York Convention nor the mirroring provisions on public policy in the Model Law and Our arbitration laws provide a definition of "public policy" or a standard for determining what is contrary to public policy. Due to divergent approaches in defining public policy in the realm of international arbitration, public policy has become one of the most controversial bases for refusing enforcement of foreign arbitral awards.[52]

Most arbitral jurisdictions adopt a narrow and restrictive approach in defining public policy pursuant to the pro-enforcement policy of the New York Convention. The public policy exception, thus, is "a safety valve to be used in those exceptional circumstances when it would be impossible for a legal system to recognize an award and enforce it without abandoning the very fundaments on which it is based."[53] An example of a narrow approach adopted by several jurisdictions[54] is that the public policy defense may only be invoked "where enforcement [of the award] would violate the forum state's most basic notions of morality and justice."[55] Thus, in Hong Kong, an award obtained by fraud was denied enforcement by the court on the ground that fraud is contrary to Hong Kong's "fundamental notions of morality and justice."[56] In Singapore,

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[52] *See* Gary Born, *International Commercial Arbitration* (2nd ed., 2001) 815.

[53] UNCITRAL Secretariat Guide on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (2016 ed) 240.

[54] *Id.*

[55] *Parsons & Whittemore Overseas v. Societe Generate de L 'Industrie du Papier (RAKTA), Court of Appeals, Second Circuit, United States of America*, 508 F.2d 969, 974 (1974).

[56] *Karaha Bodas Co. v. Perusahaan Pertambangan Minyak Dan Gas Bumi Negara*, [2009] 12 H.K.C.F.A.R. 84, 100 (C.F.A.); See also *Hebei Import & Export Corporation v. Polytek Engineering Company Limited* [1999] 1 HKLRD 665.

also a Model Law country, the public policy ground is entertained by courts only in instances where upholding the award is "clearly injurious to the public good or... wholly offensive to the ordinary reasonable and fully informed member of the public."[57]

In Our jurisdiction, the Court has yet to define public policy and what is deemed contrary to public policy in an arbitration case. However, in an old case, the Court, through Justice Laurel, elucidated on the term "public policy" for purposes of declaring a contract void:

> x x x At any rate, courts should not rashly extend the rule which holds that a contract is void as against public policy. **The term "public policy" is vague and uncertain in meaning, floating and changeable in connotation.** It may be said, however, that, in general, a contract which is neither prohibited by law nor condemned by judicial decision, nor contrary to public morals, contravenes no public policy. In the absence of express legislation or constitutional prohibition, a court, in order to declare a contract void as against public policy, must find that the contract as to the consideration or thing to be done, **has a tendency to injure the public, is against the public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liability or of private property**.[58] (Emphasis ours)

An older case, *Ferrazzini v. Gsell*[59], defined public policy for purposes of determining whether that part of the contract under consideration is against public policy:

> By "public policy," as defined by the courts in the United States and England, is intended **that principle of the law which holds that no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good**, which

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[57] *PT Asuransi Jasa Indonesia (Persero) v. Dexia Bank SA* [2007] I SLR(R) 597 citing *Deutsche Schachtbau-und Tiejbohrgesellschaft m.b.H. v. Shell International Petroleum Co. Ltd., Court of Appeals, England and Wales*, 24 March 1987, [1990] 1 A.C. 295.

[58] *Gabriel v. Monte De Piedad*, 71 Phil. 497, 500 (1941).

[59] 34 Phil. 697, 711-712 (1916).

may be termed the "policy of the law," or "public policy in relation to the administration of the law." Public policy is the principle under which freedom of contract or private dealing is restricted by law for the good of the public. In determining whether a contract is contrary to public policy the nature of the subject matter determines the source from which such question is to be solved. (Emphasis ours and citation omitted)

In light of the foregoing and pursuant to the State's policy in favor of arbitration and enforcement of arbitral awards, the Court adopts the majority and narrow approach in determining whether enforcement of an award is contrary to Our public policy. Mere errors in the interpretation of the law or factual findings would not suffice to warrant refusal of enforcement under the public policy ground. The illegality or immorality of the award must reach a certain threshold such that, enforcement of the same would be against Our State's fundamental tenets of justice and morality, or would blatantly be injurious to the public, or the interests of the society.

We now discuss the pertinent claims of Mabuhay in relation to public policy.

i. Violation of partnership law

Mabuhay contends that it entered into a joint venture, which is akin to a particular partnership, with Sembcorp. Applying the laws on partnership, the payment of the Guaranteed Return to Sembcorp is a violation of Article 1799[60] of the Civil Code, as it shields the latter from sharing in the losses of the partnership. Ergo, enforcement of the Final Award would be contrary to public policy as it upholds a void stipulation.

The restrictive approach to public policy necessarily implies that not all violations of the law may be deemed contrary to public policy. It is not uncommon for the courts in Contracting States of the New York Convention to enforce awards which does not conform to their domestic laws.[61]

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[60] Art. 1799. A stipulation which excludes one or more partners from any share in the profits or losses is void.

[61] See *Oberlandesgericht Dresden, Germany*, 11 Sch 06/98, 13 January

At any rate, Mabuhay's contention is bereft of merit. The joint venture between Mabuhay, IDHI, and Sembcorp was pursued under the Joint Venture Corporations, WJSC and WJNA. By choosing to adopt a corporate entity as the medium to pursue the joint venture enterprise, the parties to the joint venture are bound by corporate law principles under which the entity must operate.[62] Among these principles is the limited liability doctrine. The use of a joint venture corporation allows the co-venturers to take full advantage of the limited liability feature of the corporate vehicle which is not present in a formal partnership arrangement.[63] In fine, Mabuhay's application of Article 1799 is erroneous.

ii. Imposition of interest

Mabuhay argues that the twelve percent (12%) annual interest from the date of the Final Award is also contrary to the Philippine law and jurisprudence. To reiterate, the only ground for refusing enforcement of a foreign arbitral award is when enforcement of the same would be contrary to public policy.

Mere incompatibility of a foreign arbitral award with domestic mandatory rules on interest rates does not amount to a breach of public policy. However, some jurisdictions refused to recognize and enforce awards, or the part of the award which was considered to be contrary to public policy, where they considered that the awarded interest was unreasonably high.[64] In this case, the twelve percent (12%) interest rate imposed under the Final Award is not unreasonably high or unconscionable such that it violates our fundamental notions of justice.

1999; and *Robert E. Schreter v. Gasmac, Inc., Ontario Court, General Division, Canada*, 13 February 1992, [1992] O.J. No. 257.

[62] Cesar L. Villanueva, *Non-Corporate Media of Doing Business: Agency, Trusts, Partnerships & Joint Ventures* (2011) 795-796.

[63] *Id*. at 805.

[64] See UNCITRAL Secretariat Guide, Article V(2)(b) or p. 246.

IV. Attorney's Fees

Mabuhay avers that the dispositive portion of the CA Decision failed to include its finding that Mabuhay is not liable for attorney's fees and exemplary damages. The pertinent portion of the CA Decision is reproduced as follows:

> Turning now to Sembcorp's prayer for the award of attorney's fees and exemplary damages, We find the same bereft of legal and factual bases. Article 2208 of the Civil Code allows attorney's fees to be awarded if the claimant is compelled to litigate with third persons or to incur expenses to protect his interest by reason of an unjustified act or omission of the party from whom it is sought, there must be a showing that the losing party acted willfully or in bad faith and practically compelled the claimant to litigate and incur litigation expenses. Meanwhile, in order to obtain exemplary damages under Article 2232 of the Civil Code, the claimant must prove that the assailed actions of the defendant are not just wrongful, but also wanton, fraudulent, reckless, oppressive or malevolent.
>
> Indeed, Sembcorp was compelled to file the instant appeal. However, such fact alone is insufficient to justify an award of attorney's fees and exemplary damages when there is no sufficient showing of MHC's [Mabuhay] bad faith in refusing to abide by the provisions of the Final Award. To Us, MHC's [Mabuhay] persistent acts in rejecting Sembcorp's claim proceed from an erroneous conviction in the righteousness of its cause.[65]

We affirm the aforecited findings of the CA. However, We find no conflict between the *fallo* and the *ratio decidendi* of the CA Decision. The *fallo* of the CA Decision includes "[n]o pronouncement as to cost." The CA also reversed and set aside the RTC Decision in its entirety. As such, even the pronouncement of the RTC as to costs is set aside. Accordingly, We find no merit in Mabuhay's prayer for a statement in the dispositive portion expressly stating that it is not liable for attorney's fees and exemplary damages.

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[65] *Rollo*, pp. 82-83.

On a final note, We implore the lower courts to apply the ADR Act and the Special ADR Rules accordingly. Arbitration, as a mode of alternative dispute resolution, is undeniably one of the viable solutions to the longstanding problem of clogged court dockets. International arbitration, as the preferred mode of dispute resolution for foreign companies, would also attract foreign investors to do business in the country that would ultimately boost Our economy. In this light, We uphold the policies of the State favoring arbitration and enforcement of arbitral awards, and have due regard to the said policies in the interpretation of Our arbitration laws.

WHEREFORE, the Petition is hereby **DENIED**. The November 19, 2013 Decision and the June 3, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 92296 are **AFFIRMED**.

SO ORDERED.

Bersamin, C.J. (Chairperson), *del Castillo, Jardeleza*, and *Gesmundo, JJ.*, concur.

FIRST DIVISION

[G.R. No. 212735. December 5, 2018]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **NEGROS CONSOLIDATED FARMERS MULTI-PURPOSE COOPERATIVE,** *respondent.*

SYLLABUS

1. TAXATION; REPUBLIC ACT NO. 8424, AS AMENDED (THE TAX REFORM ACT OF 1997); VALUE ADDED TAX (VAT); EXEMPTION FROM THE PAYMENT OF VAT

ON SALES MADE BY THE AGRICULTURAL COOPERATIVES TO MEMBERS OR TO NON-MEMBERS NECESSARILY INCLUDES EXEMPTION FROM THE PAYMENT OF ADVANCE VAT UPON THE WITHDRAWAL OF THE REFINED SUGAR FROM THE SUGAR MILL; ELUCIDATED.— Exemption from the payment of VAT on sales made by the agricultural cooperatives to members or to non-members necessarily includes exemption from the payment of "advance VAT" upon the withdrawal of the refined sugar from the sugar mill. VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services. x x x There are, however, certain transactions exempt from VAT such as the sale of agricultural products in their original state, including those which underwent simple processes of preparation or preservation for the market, such as raw cane sugar. x x x While the sale of raw sugar, by express provision of law, is exempt from VAT, the sale of refined sugar, on the other hand, is not so exempted as refined sugar already underwent several refining processes and as such, is no longer considered to be in its original state. However, if the sale of the sugar, whether raw or refined, was made by an agricultural cooperative to its members or non-members, such transaction is still VAT-exempt. Section 7 of RA 9337 amending Section 109 (L) of RA 8424, the law applicable at the time material to the claimed tax refund, x x x Thus, by express provisions of the law under Section 109 (L) of RA 8424, as amended by RA 9337, and Article 61 of RA 6938 as amended by RA 9520, the *sale itself* by agricultural cooperatives duly registered with the CDA to their members as well as the sale of their produce, whether in its original state or processed form, to non-members are exempt from VAT.

2. ID.; ID.; RR NO. 13-2008 (CONSOLIDATING THE REGULATIONS ON THE ADVANCE PAYMENT OF VAT); BY WAY OF EXCEPTION, WITHDRAWAL OF REFINED SUGAR IS EXEMPTED FROM ADVANCE VAT UPON THE CONCURRENCE OF CERTAIN CONDITIONS WHICH ULTIMATELY RELATE TO A

TWO-PROLONGED CRITERIA: *FIRST*, THE CHARACTER SEEKING THE EXEMPTION; AND *SECOND*, THE KIND OF CUSTOMERS TO WHOM THE SALE IS MADE; EXPLAINED.— In the interim, or on September 19, 2008, the BIR issued RR No. 13-2008 consolidating the regulations on the *advance payment of VAT* or "*advance VAT*" on the sale of refined sugar. Generally, the advance VAT on the sale of the refined sugar is required to be paid in advance by the owner/seller before the refined sugar is *withdrawn* from the sugar refinery/mill. The "sugar owners" refer to those persons having legal title over the refined sugar and may include, among others, the cooperatives. By way of exception, withdrawal of refined sugar is exempted from advance VAT upon the concurrence of certain conditions which ultimately relate to a two-pronged criteria: *first*, the character of the cooperative seeking the exemption; and *second*, the kind of customers to whom the sale is made. As to the character of the cooperative, Section 4 of RR No. 13-2008 in part, provides: x x x Thus, for an agricultural cooperative to be exempted from the payment of advance VAT on refined sugar, it must be (*a*) a cooperative in good standing duly accredited and registered with the CDA; and (*b*) the producer of the sugar. Section 4 of RR No. 13-2008 defines when a cooperative is considered in good standing and when it is said to be the producer of the sugar as stated. x x x As to the kind of customers to whom the sale is made, Section 4 of RR No. 13-2008 differentiates the treatment between the sale of a refined sugar to members and non-members. x x x Nevertheless, RR No. 13-2008 makes it clear that the withdrawal of refined sugar by the agricultural cooperative for sale to its members is not subject to advance VAT, while sale to non-members of refined sugar is not subject to advance VAT only if the cooperative is the agricultural producer of the sugar cane. Thus, it appears that the requirement as to the character of the cooperative being the producer of the sugar is relevant only when the sale of the refined sugar is likewise made to non-members.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Ramos Tan Tabirao Law Firm for respondent.

D E C I S I O N

TIJAM, *J.*:

Assailed in this Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court are the Decision[2] dated March 5, 2014 and the Resolution[3] dated May 27, 2014 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 992, declaring respondent Negros Consolidated Farmers Multi-Purpose Cooperative (COFA) as exempt from the Value-added tax (VAT) and hence, entitled to refund of the VAT it paid in advance.

The Antecedents

COFA is a multi-purpose agricultural cooperative organized under Republic Act (RA) No. 6938.[4]

As its usual course, COFA's farmer-members deliver the sugarcane produce to be milled and processed in COFA's name with the sugar mill/refinery.[5] Before the refined sugar is released by the sugar mill, however, an Authorization Allowing the Release of Refined Sugar (AARRS) from the Bureau of Internal Revenue (BIR) is required from COFA. For several instances, upon COFA's application, the BIR issued the AARRS without requiring COFA to pay advance VAT pursuant to COFA's tax exemption under Section 61[6] of RA 6938 and Section 109(r)

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[1] *Rollo*, pp. 35-52.

[2] Penned by Associate Justice Esperanza R. Fabon-Victorino, and concurred in by Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy and Caesar A. Casanova; *id*. at 12-28.

[3] *Id*. at 30-32.

[4] AN ACT TO ORDAIN A COOPERATIVE CODE OF THE PHILIPPINES.

[5] *Rollo*, p. 120.

[6] Section 61. ***Tax Treatment of Cooperatives.*** — Duly registered cooperatives under this Code which do not transact any business with non-

(now under Section 109[L])[7] of RA No. 8424[8], as amended by RA No. 9337.[9] As such, COFA was issued Certificates of Tax Exemption dated May 24, 1999 and April 23, 2003 by the BIR.[10]

However, beginning February 3, 2009, the BIR, through the Regional Director of Region 12-Bacolod City, required as a condition for the issuance of the AARRS the payment of "advance VAT" on the premise that COFA, as an agricultural cooperative, does not fall under the term "producer." According to the BIR, a "producer" is one who tills the land it owns or leases, or who incurs cost for agricultural production of the sugarcane to be refined by the sugar refinery.[11]

As bases for the required payment of advance VAT, the Regional Director pointed to Sections 3 and 4 of Revenue

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members or the general public shall not be subject to any government taxes and fees imposed under the Internal Revenue Laws and other tax laws. Cooperatives not falling under this article shall be governed by the succeeding section.

[7] Sec. 109. *Exempt Transactions*. — Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

x x x x x x x x x

(L) Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members; their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;

[8] THE TAX REFORM ACT OF 1997.

[9] AN ACT AMENDING SECTIONS 27, 28, 34, 106, 107, 108, 109, 110, 111, 112, 113, 114, 116, 117, 119, 121, 148, 151, 236, 237 AND 288 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.

[10] Through Sixto S. Esquivias IV, then Deputy Commissioner for Legal and Enforcement Group and Milagros V. Regalado, Assistant Commissioner for Legal Service; *Rollo*, p. 131.

[11] *Id*. at 58.

Regulations (RR) No. 13-2008,[12] which, in part, respectively provide:

Sec. 3. ***Requirement to pay in Advance VAT Sale of Refined Sugar.*** - In general, the advance VAT on the sale of refined sugar provided for under Sec. 8 hereof, shall be paid in advance by the owner/seller before the refined sugar is withdrawn from any sugar refinery/mill. x x x

x x x x x x x x x

Sec. 4. ***Exemption from the Payment of the Advance VAT.*** - x x x

x x x x x x x x x

A cooperative is said to be the producer of the sugar if it is the tiller of the land it owns, or leases, incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.

x x x x x x x x x

COFA was thus, constrained to pay advance VAT under protest[13] and to seek the legal opinion of the BIR Legal Division, as to whether COFA is considered the producer of the sugar product of its members.

In a Ruling dated January 11, 2008, the BIR[14] stated that the sales of sugar produce by COFA to its members and non-members are exempt from VAT pursuant to Section 109(L) of RA 9337, as implemented by Revenue Regulations (RR) No. 4-2007. The Ruling, in part, provides:

Thus, COFA and its members[']' respective roles in the operation of the Cooperative cannot be treated as separate and distinct from each other. Notwithstanding that COFA is not the owner of the land and the actual tiller of the land, it is considered as the actual producer of the members' sugarcane production because it primarily provided

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[12] Dated September 19, 2008.

[13] *Rollo*, p. 59.

[14] Through Assistant Commissioner for Legal Services, James H. Roldan; *id*.

the various production inputs (fertilizers), capital, technology transfer and farm management. In short, COFA has direct participation in the sugarcane production of its farmers-member.[15]

Thus, pursuant to Section 229[16] of RA. 8424, as amended, COFA lodged with petitioner Commissioner of Internal Revenue (CIR) an administrative claim for refund in the amount of ₱11,172,570.00 for the advance VAT it paid on the 109,535 LKG bags of refined sugar computed at ₱102.00 VAT per bag for the period covering February 3, 2009 to July 22, 2009. Because of the CIR's inaction, COFA filed a petition for review[17] before the CTA Division pursuant to Rule 8, Section 3(a)[18] of the Revised Rules of the CTA, but this time seeking the refund of the amount of ₱7,290,960.00 representing 71,480 LKG bags of refined sugar at ₱102.00 VAT per bag for the period covering May 12, 2009 to July 22, 2009.[19]

In its Answer, the CIR raised as sole point COFA's alleged failure to comply with the requisites for recovery of tax erroneously or illegally collected as spelled under Section 229

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[15] *Id.* at 80.

[16] **SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected x x x, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax x x x.

[17] *Rollo*, pp. 83-89.

[18] x x x In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two year period prescribed by law from payment or collection of the taxes. x x x.

[19] *Rollo*, p. 132.

of RA 8424, specifically, the lack of a prior claim for refund or credit with the CIR.[20]

Trial on the merits thereafter ensued where only COFA presented evidence through its Tax Consultant, Jose V. Ramos. The CIR, on the other hand, waived the presentation of evidence. However, in its Memorandum,[21] the CIR additionally argued that COFA is not entitled to refund as it failed to present certain documents[22] required under Sections 3 and 4 of RR No. 13-2008.[23]

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[20] *Id*. at 96.

[21] *Id*. at 113-117.

[22] These documents are enumerated in the CIR's Memorandum as follows:

"(a) Documents required under Section 3 of RR No. 13-2008:

1. Certificate of Advance Payment of VAT (Annex-E);

2. Declaration for Advance Payment on refined sugar to the RD/RDO having jurisdiction over the place where the sugar mill is physically located (Annex B-1);

3. Listing/abstract of official Warehouse Receipt Quedan (Annex B-2) in soft and hard copy;

4. Proof of Payment of Advance VAT on sale of Refined Sugar; and

5. Sworn Statement to the effect that the cooperative-owner of the refined sugar is an agricultural producer as defined in RR No. 13-2008; and the refined sugar is the property of the cooperative at the time of removal and it will not charge advance VAT or any other tax to the future buyer.

"(b) Documents required under Section 4 of RR No. 13-2008 [and] Section 6 of RR No. 20-2001:

1. Certified true copy of the Certificate of Registration from Cooperative Development Authority (CDA);

2. Original copy of the Certificate of Goods [sic] Standing from CDA;

3. Articles of Cooperation and By-laws;

4. Certificate under oath by the president/General Manager whether that cooperative is transacting business with members only or with both members and non-members, whichever is applicable;

5. Certified true copy of the Certificate of confirmation of registration from the CDA (in the case of cooperative already existing and previously registered under P.D. 175, P.D. 775, and E.O. 898, before the creation of CDA;

6. Certification under oath by the Chairman/President/General Manager of the Cooperative (if previously registered as above stated) as certified by the CDA, as to the amount of accumulated reserves and undivided net savings, and that at least 25% of the net income is returned to the members in the form of interest and/or patronage refund;

On December 12, 2012, the CTA Division rendered its Decision[24] finding COFA to be exempt from VAT and thus, ordered the refund of the advance VAT it erroneously paid. The CIR Division reasoned that COFA's Certificates of Tax Exemption dated May 24, 1999 and April 23, 2003 and the BIR Ruling dated January 11, 2008, which had not been revoked or nullified, affirmed COFA's status as a tax-exempt agricultural cooperative. It further held that based on said uncontroverted[25] evidence, COFA is "considered as the actual producer of the members' sugarcane production because it primarily provided the various production inputs (fertilizers), capital, technology transfer and farm management."[26] The CIR Division likewise held that COFA substantiated its claim for refund in the amount of ₱7,290,960.00 representing advance VAT on the 71,480 LKG bags of refined sugar from May 12, 2009 to July 22, 2009, by submitting in evidence the Summary of VAT Payments Under Protest with the related BIR Certificates of Advance Payment of VAT and Revenue Official Receipts.[27]

In disposal, the CIR Division pronounced:

> WHEREFORE, the instant Petition for Review is hereby GRANTED. Accordingly, [CIR] is hereby ORDERED TO REFUND in favor of [COFA] the amount of SEVEN MILLION TWO HUNDRED NINETY THOUSAND NINE HUNDRED SIXTY PESOS (₱7,290,960.00), representing erroneously paid advance VAT for the period covering May 12, 2009 to July 22, 2009.
>
> SO ORDERED.[28]

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7. Certification under oath of the list of members and the share capital contribution of each member; and

8. Latest Financial Statements duly audited by an independent CPA.

[23] *Rollo*, pp. 114-115.

[24] *Id*. at 129-149.

[25] *Id*. at 144.

[26] *Id.* at 144.

[27] *Id*. at 147.

[28] *Id*. at 148.

The CIR's motion for reconsideration met similar denial in the CTA Division's Resolution[29] dated March 5, 2013, thus prompting a petition for review before the CTA *En Banc*.

The CIR maintained its argument that COFA failed to present evidence to prove that the refined sugar withdrawn from the sugar mills were actually produced by COFA through its registered members as required under RA 8424, as amended. The CIR argues that COFA's failure to present the *quedan* of the raw sugar issued by sugar mills in COFA's name is fatal to its claim for refund as it cannot be determined whether its registered members are the actual producers of the refined sugar before it was transferred in COFA's name and before COFA sells it to its members and non-members.[30]

Further, the CIR pointed to COFA's failure to present documentary evidence to prove that it is indeed the principal provider of the various production inputs (fertilizers), capital, technology transfers and farm management, as well as documentary evidence to show that COFA has sales transactions with its members and non-members. The CIR reiterated its argument that COFA failed to present the documents required for the administrative and judicial claim for refund in accordance with RR No. 13-2008.

COFA countered that the instant case involves advance VAT assessed on its withdrawal of sugar from the refinery/mill, and not on its sale of sugar to members or non-members. Thus, COFA argued that the payment in advance of VAT for the withdrawal of sugar from the refinery/mill was without basis.

In its presently assailed Decision, the CTA *En Banc* affirmed COFA's status as an agricultural cooperative entitled to VAT exemption. By evidence consisting of COFA's Certificate of Registration dated October 19, 2009 and Certificate of Good Standing dated May 19, 2010, as well as the CIR's admission in its Answer, pre-trial brief and stipulation of facts, it was

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[29] *Id*. at 165-169.

[30] *Id*. at 176.

established that COFA is an agricultural cooperative. According to the CTA *En Banc*, COFA, at the time of the subject transactions, was a cooperative in good standing as indicated in the Certification of Good Standing issued and renewed by the CDA on May 19, 2010.

As such, the CTA *En Banc* held that pursuant to Section 109(L) of RA 8424, as amended, transactions such as sales by agricultural cooperatives duly registered with the CDA to their members, as well as sales of their produce, whether in its original state or processed form, to non-members, are exempt from VAT. Citing Article 61 of RA 6938, as amended by RA 9520, the CTA *En Banc* held that cooperatives were exempt from VAT for sales or transactions with members. As well, the CTA *En Banc* held that COFA was exempt from VAT for transactions with non-members, provided that the goods subject of the transaction were produced by the members of the cooperative; that the processed goods were sold in the name and for the account of the cooperative; and, that at least 25% of the net income of the cooperatives was returned to the members in the form of interest and/or patronage refunds.

The CIR's motion for reconsideration was denied by the CTA *En Banc* in its Resolution dated May 27, 2014, thus, giving rise to the present petition.

The Issue

The issue to be resolved is whether or not COFA, at the time of the subject transactions, *i.e.*, from May 12, 2009 to July 22, 2009, is VAT-exempt and therefore entitled to a tax refund for the advance VAT it paid.

The Ruling of the Court

We deny the petition.

COFA is a VAT-exempt agricultural cooperative. Exemption from the payment of VAT on sales made by the agricultural cooperatives to members or to non-members necessarily includes exemption from the payment of "advance VAT" upon the withdrawal of the refined sugar from the sugar mill.

VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services.[31] Section 105 of RA 8424, as amended, provides:

> Section 105. *Persons Liable*. - Any person who, in the course of trade or business, sells, barters, exchanges, leases goods or properties, renders services, and any person who imports goods shall be subject to the value-added tax (VAT) imposed in Sections 106 to 108 of this Code.
>
> The value-added tax is an indirect tax and the amount of tax may be shifted or passed on to the buyer, transferee or lessee of the goods, properties or services. This rule shall likewise apply to existing contracts of sale or lease of goods, properties or services at the time of the effectivity of Republic Act No. 7716.
>
> The phrase "in the course of trade or business" means the regular conduct or pursuit of a commercial or an economic activity including transactions incidental thereto, by any person regardless of whether or not the person engaged therein is a non-stock, non-profit private organization (irrespective of the disposition of its net income and whether or not it sells exclusively to members or their guests), or government entity.
>
> The rule of regularity, to the contrary notwithstanding, services as defined in this Code rendered in the Philippines by nonresident foreign persons shall be considered as being course of trade or business.

There are, however, certain transactions exempt from VAT[32] such as the sale of agricultural products in their original state,

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[31] *Commissioner of Internal Revenue v. Court of Appeals*, 385 Phil. 875 (2000).

[32] Exempt transaction is defined as one involving goods or services which, by their nature, are specifically listed in and expressly exempted from the VAT, under the Tax Code, without regard to the tax status of the party in the transaction. (*Commissioner of Internal Revenue v. Philippine Health Care Providers, Inc.*, 550 Phil. 304, 311-312 [2007]).

including those which underwent simple processes of preparation or preservation for the market, such as raw cane sugar. Thus, Section 7 of RA 9337 amending Section 109 of RA 8424 provides:

> Section 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:
>
> "Section 109. Exempt Transactions. — (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:
>
> "A) Sale or importation of agricultural and marine food products in their original state, livestock and poultry of a kind generally used as, or yielding or producing foods for human consumption; and breeding stock and genetic materials therefor.
>
> "**Products classified under this paragraph shall be considered in their original state even if they have undergone the simple processes of preparation or preservation for the market**, such as freezing, drying, salting, broiling, roasting, smoking or stripping. Polished and/or husked rice, corn grits, **raw cane sugar** and molasses, ordinary salt, and copra **shall be considered in their original state**; (Emphasis ours)
>
> x x x x x x x x x"

While the sale of raw sugar, by express provision of law, is exempt from VAT, the sale of refined sugar, on the other hand, is not so exempted as refined sugar already underwent several refining processes and as such, is no longer considered to be in its original state. However, if the sale of the sugar, whether raw or refined, was made by an agricultural cooperative to its members or non-members, such transaction is still VAT-exempt. Section 7 of RA 9337 amending Section 109 (L) of RA 8424, the law applicable at the time material to the claimed tax refund, further reads:

> Section 7. Section 109 of the same Code, as amended, is hereby further amended to read as follows:

"SEC. 109. Exempt Transactions. - (1) Subject to the provisions of Subsection (2) hereof, the following transactions shall be exempt from the value-added tax:

x x x x x x
x x x

"(L) **Sales by agricultural cooperatives duly registered with the Cooperative Development Authority to their members as well as sale of their produce, whether in its original state or processed form, to non-members;** their importation of direct farm inputs, machineries and equipment, including spare parts thereof, to be used directly and exclusively in the production and/or processing of their produce;" (Emphasis ours)

Relatedly, Article 61 of RA 6938, as amended by RA 9520, provides:

ART. 61. *Tax and Other Exemptions*. Cooperatives transacting business with both members and non-members shall not be subjected to tax on their transaction with members. In relation to this, the transactions of members with the cooperative shall not be subject to any taxes and fees, including but not limited to final taxes on members' deposits and documentary tax. Notwithstanding the provisions of any law or regulation to the contrary, such cooperatives dealing with nonmembers shall enjoy the following tax exemptions:

(1) Cooperatives with accumulated reserves and undivided net savings of not more than Ten million pesos (₱10,000,000.00) shall be exempt from all national, city, provincial, municipal or barangay taxes of whatever name and nature. Such cooperatives shall be exempt from customs duties, advance sales or compensating taxes on their importation of machineries, equipment and spare parts used by them and which are not available locally as certified by the Department of Trade and Industry (DTI). All tax free importations shall not be sold nor the beneficial ownership thereof be transferred to any person until after five (5) years, otherwise, the cooperative and the transferee or assignee shall be solidarily liable to pay twice the amount of the imposed tax and/or duties.

(2) Cooperatives with accumulated reserves and divided net savings of more than Ten million pesos (₱10,000,000.00) shall fee (sic) the following taxes at the full-rate:

(a) Income Tax - x x x;

(b) Value-Added Tax - On transactions with non-members: *Provided, however*, That cooperatives duly registered with the Authority; are exempt from the payment of value-added tax; subject to Section 109, subsections L, M and N of Republic Act No. 9337, the National Internal Revenue Code, as amended: *Provided*, That the exempt transaction under Section 109 (L) shall include sales made by cooperatives duly registered with the Authority organized and operated by its member to undertake the production and processing of raw materials or of goods produced by its members into finished or process products for sale by the cooperative to its members and non-members: *Provided, further*, That any processed product or its derivative arising from the raw materials produced by its members, sold in then (sic) name and for the account of the cooperative: *Provided, finally*, That at least twenty-five *per centum* (25%) of the net income of the cooperatives is returned to the members in the form of interest and/or patronage refunds;

x x x x x x x x x

Thus, by express provisions of the law under Section 109 (L) of RA 8424, as amended by RA 9337, and Article 61 of RA 6938 as amended by RA 9520, the *sale itself* by agricultural cooperatives duly registered with the CDA to their members as well as the sale of their produce, whether in its original state or processed form, to non-members are exempt from VAT.

In the interim, or on September 19, 2008, the BIR issued RR No. 13-2008 consolidating the regulations on the *advance payment of VAT* or "*advance VAT*" on the sale of refined sugar.[33] Generally, the advance VAT on the sale of the refined sugar is required to be paid in advance by the owner/seller before the refined sugar is *withdrawn* from the sugar refinery/mill. The

[33] Section 2(a) of RR No. 13-2008 defines "refined sugar" as sugar whose sucrose content by weight, in the dry state corresponds to a polarimeter reading of 99.5° and above.

"sugar owners" refer to those persons having legal title over the refined sugar and may include, among others, the cooperatives.[34]

By way of exception, withdrawal of refined sugar is exempted from advance VAT upon the concurrence of certain conditions which ultimately relate to a two-pronged criteria: *first*, the character of the cooperative seeking the exemption; and *second*, the kind of customers to whom the sale is made.

As to the character of the cooperative, Section 4 of RR No. 13-2008 in part, provides:

> ***Sec. 4. Exemption from the Payment of the Advance VAT.*** - Notwithstanding the provisions of the foregoing Section, the following withdrawals shall be exempt from the payment of the advance VAT:
>
> (a) Withdrawal of Refined Sugar by Duly Accredited and Registered Agricultural Producer Cooperative of Good Standing. - In the event the refined sugar is owned and withdrawn from the Sugar Refinery/Mill by an agricultural cooperative of good standing duly accredited and registered with the Cooperative Development Authority (CDA), which cooperative is the agricultural producer of the sugar cane that was refined into refined sugar, the withdrawal is not subject to the payment of advance VAT. x x x

Thus, for an agricultural cooperative to be exempted from the payment of advance VAT on refined sugar, it must be (*a*) a cooperative in good standing duly accredited and registered with the CDA; and (*b*) the producer of the sugar. Section 4 of RR No. 13-2008 defines when a cooperative is considered in good standing and when it is said to be the producer of the sugar in this manner:

> A cooperative shall be considered in good standing if it is a holder of a "Certificate of Good Standing" issued by the CDA. x x x
>
> A cooperative is said to be the producer of the sugar if it is the tiller of the land it owns, or leases, incurs cost of agricultural production of the sugar and produces the sugar cane to be refined.

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[34] Section 2(d) of RR No. 13-2008.

As to the kind of customers to whom the sale is made, Section 4 of RR No. 13-2008 differentiates the treatment between the sale of a refined sugar to members and non-members as follows:

> Sale of sugar in its original form is always exempt from VAT regardless of who the seller is pursuant to Sec. 109 (A) of the Tax Code. On the other hand, sale of sugar, in its processed form, by a cooperative is exempt from VAT if the sale is made to members of the cooperative. Whereas, if the sale of sugar in its processed form is made by the cooperative to non-members, said sale is exempt from VAT only if the cooperative is an agricultural producer of the sugar cane that has been converted into refined sugar as herein defined and discussed.

Nevertheless, RR No. 13-2008 makes it clear that the withdrawal of refined sugar by the agricultural cooperative for sale to its members is not subject to advance VAT, while sale to non-members of refined sugar is not subject to advance VAT only if the cooperative is the agricultural producer of the sugar cane. Thus, it appears that the requirement as to the character of the cooperative being the producer of the sugar is relevant only when the sale of the refined sugar is likewise made to non-members.

The foregoing requisites for the application of the VAT-exemption for sales by agricultural cooperatives to apply were likewise identified by the Court in *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*,[35] thus:

> *First*, the seller must be an agricultural cooperative duly registered with the CDA. An agricultural cooperative is "duly registered" when it has been issued a certificate of registration by the CDA. This certificate is conclusive evidence of its registration.
>
> *Second*, the cooperative must sell either:
>
> 1) exclusively to its members; or
>
> 2) to both members and non-members, *its produce*, whether in its original state or processed form.

[35] 802 Phil. 636 (2016).

The second requisite differentiates cooperatives according to its customers. If the cooperative transacts only with members, all its sales are VAT-exempt, regardless of what it sells. On the other hand, if it transacts with both members and non-members, the product sold must be the cooperative's own produce in order to be VAT-exempt. x x x[36]

Having laid down the requisites when an agricultural cooperative is considered exempt from the payment of advance VAT for the withdrawal of the refined sugar from the sugar refinery/mill, the next task is to measure whether, indeed, COFA met the foregoing requirements.

We find no reason to disturb the CTA *En Banc's* finding that COFA is a cooperative in good standing as indicated in the Certification of Good Standing previously issued and subsequently renewed by the CDA. It was likewise established that COFA was duly accredited and registered with the CDA as evidenced by the issuance of the CDA Certificate of Registration. There is no showing that the CIR disputed the authenticity of said documents or that said certifications had previously been revoked. Consequently, such must be regarded as conclusive proof of COFA's good standing and due registration with the CDA.[37]

Similarly, COFA is considered the producer of the sugar as found by the CTA Division and affirmed by the CTA *En Banc*. That COFA is regarded as the producer of the sugar is affirmed no other than the BIR itself when it issued its Ruling[38] on the matter, the pertinent portions of which are herein quoted:

x x x x x x x x x

As a multi-purpose cooperative, COFA is an agricultural co-producer of the sugarcane produced by all its cooperative members. Being a juridical person, it is legally impossible for the cooperative

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[36] *Id*. at 647-648.

[37] See *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, *supra* note 35.

[38] BIR Ruling ECCEP-002-2008 dated January 11, 2008.

to do the actual tillage of the land but the cooperative and all its members altogether carry out the sugar farming activities during the agricultural crop year. The cooperative members have consistently provided the sugar farms/plantations and the tillage while COFA, in its capacity as co-producer, has provided the following services to its members as its co-producers x x x.

x x x x x x x x x

Moreover, being the exclusive marketing arm of the harvested sugarcane from the various farms of its members, the cooperative does not engage in the purchase of sugarcane produced by non-members. As such, the sugarcane produced by the cooperative members will be harvested, hauled, delivered and milled to the sugarmill in the name of COFA. The sugarmill issues the quedan of the raw sugar in the name of COFA pursuant to the membership agreement that the cooperative will be solely and exclusively tasked to market the sugar, molasses and other derivative products. Thereafter, COFA turns over to its members the net proceeds of the sale of the sugarcane produce. When COFA further decides to process the produced raw sugar of its members into refined sugar, the sugarmill issues refined sugar quedan in the name of COFA.

x x x x x x x x x

The farmer-members of COFA joined together to form the COFA with the objective of producing and selling of sugar as its products. The members thereof made their respective equitable contributions required to achieve their objectives. Consequently, the proceeds of the sale thereof are intended to be shared among them in accordance with cooperative principles.

x x x x x x x x x[39]

The above BIR ruling operates as an equitable estoppel precluding the CIR from unilaterally revoking its pronouncement and thereby depriving the cooperative of the tax exemption provided by law.[40]

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[39] *Rollo*, pp. 68-69.

[40] See *Commissioner of Internal Revenue v. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, *supra* note 35.

Having established that COFA is a cooperative in good standing and duly registered with the CDA and is the producer of the sugar, its sale then of refined sugar whether sold to members or non-members, following the express provisions of Section 109(L) of RA 8424, as amended, is exempt from VAT. As a logical and necessary consequence then of its established VAT exemption, COFA is likewise exempted from the payment of advance VAT required under RR No. 13-2008.

The CIR, however, breeds confusion when it argues that the VAT exemption given to cooperatives under the laws pertain only to the sale of the sugar but not to the withdrawal of the sugar from the refinery. The CIR is grossly mistaken. To recall, VAT is a transaction tax — it is imposed on sales, barters, exchanges of goods or property, and on the performance of services. The withdrawal from the sugar refinery by the cooperative is not the incident which gives rise to the imposition of VAT, but the subsequent sale of the sugar. If at all, the withdrawal of the refined sugar gives rise to the obligation to pay the VAT on the would-be sale. In other words, the advance VAT which is imposed upon the withdrawal of the refined sugar is the very same VAT which would be imposed on the sale of refined sugar following its withdrawal from the refinery, hence, the term "advance." It is therefore erroneous to treat the withdrawal of the refined sugar as a tax incident different from or in addition to the sale itself.

Finally, as regards the CIR's contention that COFA failed to submit complete documentary requirements fatal to its claim for tax refund, suffice it to say, that COFA was a previous recipient and holder of certificates of tax exemption issued by the BIR, and following the Court's pronouncement in *United Cadiz Sugar Farmers Association Multi-Purpose Cooperative*, the issuance of the certificate of tax exemption presupposes that the cooperative submitted to the BIR the complete documentary requirements. In the same manner, COFA's entitlement to tax exemption cannot be made dependent upon the submission of the monthly VAT declarations and quarterly VAT returns, as the CIR suggests. Here, it was established that

COFA satisfied the requirements under Section 109(L) of RA 8424, as amended, to enjoy the exemption from VAT on its sale of refined sugar; its exemption from the payment of advance VAT for the withdrawal it made from May 12, 2009 to July 22, 2009 follows, as a matter of course.

WHEREFORE, the petition is **DENIED**. The Decision dated March 5, 2014 and the Resolution dated May 27, 2014 of the Court of Tax Appeals *En Banc* in CTA EB Case No. 992, declaring respondent Negros Consolidated Farmers Multi-Purpose Cooperative exempt from Value-added tax (VAT) and hence, entitled to refund of the VAT it paid in advance in the amount of SEVEN MILLION TWO HUNDRED NINETY THOUSAND NINE HUNDRED SIXTY PESOS (₱7,290,960.00) for the withdrawal of the refined sugar it made from May 12, 2009 to July 22, 2009 are **AFFIRMED**.

SO ORDERED.

Bersamin, C.J. (Chairperson), *del Castillo, Gesmundo*, and *Carandang*,[*] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 221505. December 5, 2018]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **RANDOLPH S. TING and SALVACION I. GARCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; AN ORDER GRANTING A DEMURRER

[*] Designated Additonal Member per Raffle dated December 5, 2018 vice Associate Justice Francis H. Jardeleza.

TO EVIDENCE IS REVIEWABLE BY THE COURT OF APPEALS, BUT ONLY THROUGH *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT; RATIONALE.— Prefatorily, we point out that the remedy from an order of dismissal granting a demurrer to evidence is reviewable by the CA, but only through *certiorari* under Rule 65 of the Rules of Court. In turn, if the CA finds no grave abuse of discretion on the part of the trial court in granting the demurrer, such finding is reviewable by the Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court. In *People v. Court of Appeals, et al.*, we explained: We point out at the outset that in criminal cases, the grant of a demurrer is tantamount to an acquittal and the dismissal order may not be appealed because this would place the accused in double jeopardy. Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65 of the Rules of Court. x x x Thus, in *Asistio v. People, et al.*, the Court ruled that under Rule 45 of the Rules of Court, decisions, final orders or resolutions of the CA in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. This is in line with the established rule "that one of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion."

2. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT OF THE ACCUSED AGAINST DOUBLE JEOPARDY; WHEN DOUBLE JEOPARDY ATTACHES, REQUISITES.— The right of the accused against double jeopardy is protected by no less than the Bill of Rights (Section 21, Article III) contained in the 1987 Constitution which provides that "[n]o person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act." Time and again, the Court has held that double jeopardy attaches if the following elements are present: (1) a valid complaint or information; (2) a court of competent jurisdiction; (3) the defendant had pleaded to the charge; and (4) the defendant was acquitted or convicted,

or the case against him was dismissed or otherwise terminated without his express consent. Jurisprudence, however, allows for certain exceptions when the dismissal is considered final even if it was made on motion of the accused, to wit: (1) "[w]here the dismissal is based on a demurrer to evidence filed by the accused after the prosecution has rested, which has the effect of a judgment on the merits and operates as an acquittal[; and] (2) [w]here the dismissal is made, also on motion of the accused, because of the denial of his right to a speedy trial which is in effect a failure to prosecute."

3. **REMEDIAL LAW; EVIDENCE; DEMURRER TO EVIDENCE; IF THE COURT FINDS THAT THE EVIDENCE IS NOT SUFFICIENT AND GRANTS THE DEMURRER TO EVIDENCE, SUCH DISMISSAL OF THE CASE IS ONE ON THE MERITS, WHICH IS EQUIVALENT TO THE ACQUITTAL OF THE ACCUSED.—** A demurrer to evidence is filed after the prosecution has rested its case and the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the court finds that the evidence is not sufficient and grants the demurrer to evidence, such dismissal of the case is one on the merits, which is equivalent to the acquittal of the accused. Well-established is the rule that the Court cannot review an order granting the demurrer to evidence and acquitting the accused on the ground of insufficiency of evidence because to do so will place the accused in double Jeopardy.

4. **ID.; CRIMINAL PROCEDURE; RULE ON DOUBLE JEOPARDY; THE ONLY INSTANCE WHEN THE ACCUSED CAN BE BARRED FROM INVOKING HIS RIGHT AGAINST DOUBLE JEOPARDY IS WHEN IT CAN BE DEMONSTRATED THAT THE TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; CASE AT BAR.—** The rule on double jeopardy, however, is not without exceptions. It has been held in the past that the only instance when the accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of

discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make its case against the accused or where the trial was a sham. For instance, there is no double jeopardy (1) where the trial court prematurely terminated the presentation of the prosecution's evidence and forthwith dismissed the information for insufficiency of evidence; and (2) where the case was dismissed at a time when the case was not ready for trial and adjudication. x x x To reiterate, for an acquittal to be considered tainted with grave abuse of discretion, there must be a showing that the prosecution's right to due process was violated or that the trial conducted was a sham. Accordingly, notwithstanding the alleged errors in the interpretation of the applicable law or appreciation of evidence that the RTC and the CA may have committed in ordering respondents' acquittal, absent any showing that said courts acted with caprice or without regard to the rudiments of due process, their findings can no longer be reversed, disturbed and set aside without violating the rule against double jeopardy. Indeed, errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *autrefois acquit*. We are bound by the dictum that whatever error may have been committed effecting the dismissal of the case cannot now be corrected because of the timely plea of double jeopardy. "[I]t bears to stress that the fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Catabay-Lauigan Law Office for respondent Randolph Ting.

Reyes Francisco Tecson Sabado & Associates for respondent Salvacion Garcia.

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 June 16, 2015 and the Resolution[2] dated November 5, 2015 of the Court of Appeals (*CA*) in CA-G.R. SP No. 134943 which affirmed the Order[3] dated December 16, 2013 of the Regional Trial Court (*RTC*) of Tuguegarao City, Cagayan, Branch 5.

The antecedent facts are as follows:

In an Information dated May 30, 2011, respondents City Mayor Randolph S. Ting and City Treasurer Salvacion I. Garcia, both of Tuguegarao City in the year 2004, were charged with violation of Section 261 (w)(b) of Batas Pambansa Bilang 881, otherwise known as the Omnibus Election Code, for issuing a treasury warrant during the forty-five (45)-day election ban period as payment for two (2) parcels of land to be used as a public cemetery for the city. The accusatory portion of said Information reads:

> That on or about April 30, 2004 during the period of forty five (45) days preceding the May 10, 2004 National and Local Elections in the City of Tuguegarao, Province of Cagayan, Philippines and within the jurisdiction of this Honorable Court, accused did then and there, willfully and unlawfully issue Treasury Warrant Number 0001534514, undertaking future delivery of money chargeable against public funds in the amount of ₱8,486,027.00, as payment for the acquisition of two (2) parcel[s] of land (TCT No. T-36942 and TCT No. T-36943) owned by Anselmo Almazan, Angelo Almazan and Anselmo Almazan III.

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[1] Penned by Associate Justice Victoria Isabel A. Paredes, and concurred in by Associate Justices Isaias P. Dicdican and Elihu A. Ybañez; *rollo*, pp. 37-50.

[2] Penned by Associate Justice Victoria Isabel A. Paredes, and concurred in by Associate Justices Elihu A. Ybañez and Ma. Luisa Quijano Padilla; *id.* at 51-52.

[3] Penned by Judge Jezarene C. Aquino; *id*. at 79-82.

CONTRARY TO LAW.[4]

Upon arraignment, respondents entered a plea of not guilty to the offense charged. At the pre-trial, it was stipulated and admitted that Ting, as representative of the City Government of Tuguegarao, entered into a Contract of Sale with Dr. Anselmo D. Almazan, Angelo A. Almazan, and Anselmo A. Almazan III for the purchase of two (2) parcels of land, identified as Lot Nos. 5860 and 5861 located in Atulayan Sur, Tuguegarao City, with an aggregate area of 24,816 square meters and covered by Transfer Certificate of Title (*TCT*) No. T-36942 and TCT No. T-36943 of the Register of Deeds in Tuguegarao City. As payment, Garcia issued and released Treasury Warrant No. 0001534514 dated April 30, 2004 in the sum of ₱8,486,027.00. On May 5, 2004, the City Government of Tuguegarao caused the registration of the sale and the issuance of TCT No. T-144428 and TCT No. T-144429 in its name. Consequently, a complaint was filed against respondents for violation of Section 261 (v)[5]

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[4] *Id*. at 53.

[5] Section 261 (v) of the Omnibus Election Code provides as follows:

Sec. 261. Prohibited Acts. — The following shall be guilty of an election offense:

x x x x x x x x x

(v) Prohibition against release, disbursement or expenditure of public funds. — Any public official or employee including barangay officials and those of government-owned or controlled corporations and their subsidiaries, who, during forty-five days before a regular election and thirty days before a special election, releases, disburses or expends any public funds for:

(1) Any and all kinds of public works, except the following:

(a) Maintenance of existing and/or completed public works project: Provided, that not more than the average number of laborers or employees already employed therein during the sixth-month period immediately prior to the beginning of the forty-five day period before election day shall be permitted to work during such time: Provided, further, That no additional laborers shall be employed for maintenance work within the said period of forty-five days;

(b) Work undertaken by contract through public bidding held, or by negotiated contract awarded, before the forty-five day period before election: Provided, That work for the purpose of this section undertaken under the so-called "takay" or "paquiao" system shall not be considered as work by contract;

and (w)[6] of the Omnibus Election Code, but the same was eventually dismissed by the Commission on Elections (*COMELEC*) finding that since the issuance of the treasury warrant was not for public works, no liability could arise

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(c) Payment for the usual cost of preparation for working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction including the purchase of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central office and field storehouses before the beginning of such period: Provided, That the number of such laborers shall not be increased over the number hired when the project or projects were commenced; and

(d) Emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility.

No payment shall be made within five days before the date of election to laborers who have rendered services in projects or works except those falling under subparagraphs (a), (b), (c), and (d), of this paragraph.

This prohibition shall not apply to ongoing public works projects commenced before the campaign period or similar projects under foreign agreements. For purposes of this provision, it shall be the duty of the government officials or agencies concerned to report to the Commission the list of all such projects being undertaken by them.

(2) The Ministry of Social Services and Development and any other office in other ministries of the government performing functions similar to said ministry, except for salaries of personnel, and for such other routine and normal expenses, and for such other expenses as the Commission may authorize after due notice and hearing. Should a calamity or disaster occur, all releases normally or usually coursed through the said ministries and offices of other ministries shall be turned over to, and administered and disbursed by, the Philippine National Red Cross, subject to the supervision of the Commission on Audit or its representatives, and no candidate or his or her spouse or member of his family within the second civil degree of affinity or consanguinity shall participate, directly or indirectly, in the distribution of any relief or other goods to the victims of the calamity or disaster; and

(3) The Ministry of Human Settlements and any other office in any other ministry of the government performing functions similar to said ministry, except for salaries of personnel and for such other necessary administrative or other expenses as the Commission may authorize after due notice and hearing.

[6] Section 261 (w)(b) of the Omnibus Election Code provides as follows:

Sec. 261. Prohibited Acts. — The following shall be guilty of an election offense:

x x x x x x x x x

therefrom. In *Guzman v. Commission on Elections, et al.,*[7] however, the Court set aside the COMELEC's resolution and ordered the filing of the appropriate criminal information against respondents. It found that while said issuance may not be considered as public works under Section 261 (v) of the Omnibus Election Code, there was still probable cause to believe that Section 261 (w) of the Omnibus Election Code was violated since the provision does not require that the undertaking be for public works. Thus, the instant case.

After the pre-trial, the prosecution filed its Formal Offer of Evidence on October 23, 2013. But instead of presenting their evidence, respondents filed a Motion for Leave to File a Demurrer to Evidence and, subsequently, a Demurrer to Evidence.[8] In an Order[9] dated December 16, 2013, the RTC granted the same and acquitted the respondents. According to the RTC, while it is uncontested that the treasury warrant or the Landbank check in issue bears the date "April 30, 2004," which is well within the prohibited period, the date of the instrument is not necessarily the date of issue. The Negotiable Instruments Law provides that an instrument is issued by "the first delivery of the instrument, complete in form, to a person who takes it as a holder." But the prosecution failed to prove that the subject check was delivered to the vendors of the lots within the prohibited period. In fact, the dorsal side of the instrument bears "May 18, 2004" as the date of payment as annotated by the drawee bank, which is beyond the said period. The RTC added that just because the title was issued in favor of the City

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(w) Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. — During the period of forty-five days preceding a regular election and thirty days before a special election, any person who (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or (b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds.

[7] 614 Phil. 143 (2009).

[8] *Rollo*, p. 41.

[9] *Supra* note 3.

Government of Tuguegarao on May 5, 2004, it does not follow that payment was in fact made on the same day. The Law on Sales provides that payment of the purchase price is not a condition for the transfer of title, in the absence of stipulation to the contrary.

In a Decision dated June 16, 2015, the CA denied the Petition for *Certiorari* under Rule 65 of the Rules of Court filed by the Office of the Solicitor General (*OSG*), and affirmed the RTC's Order. Like the RTC, the CA cited the Negotiable Instruments Law and held that every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument to the payee for the purpose of giving effect thereto. Without initial delivery of the instrument from the drawer of the check to the payee, there can be no valid and binding contract and no liability on the instrument. Also, without delivery, the instrument cannot be deemed to have been issued. Thus, the date on the check, April 30, 2004, pertains to nothing more than the date of the making or drawing of the instrument. Moreover, the CA ruled that neither can the date of notarization of the deed of sale, May 5, 2004, be considered as the date of issuance. This is because notarization only serves to convert a private document to a public one, making it admissible in evidence without further proof of its authenticity. Furthermore, it was held that the issuance of a check is not payment until the check has been encashed. Thus, since the check herein was presented for payment and encashment on May 18, 2004, which is well after the prohibited period, respondents were correctly acquitted.[10]

Aggrieved by the CA's denial of its Motion for Reconsideration, the OSG filed the instant petition on January 7, 2016 invoking the following argument:

THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE 16 DECEMBER 2013 ORDER OF RESPONDENT JUDGE THAT GRANTED PRIVATE RESPONDENT TING'S DEMURRER TO EVIDENCE DESPITE SUFFICIENCY OF THE PROSECUTION'S EVIDENCE ON RECORD.[11]

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[10] *Supra* note 1, at 41-49.

[11] *Rollo*, p. 23.

In its petition, the OSG posits that it duly established beyond reasonable doubt that respondents violated Section 261 (w)(b) of the Omnibus Election Code. As such, the RTC had no clear legal and factual basis to grant City Mayor Ting's demurrer to evidence.

Prefatorily, we point out that the remedy from an order of dismissal granting a demurrer to evidence is reviewable by the CA, but only through *certiorari* under Rule 65 of the Rules of Court. In turn, if the CA finds no grave abuse of discretion on the part of the trial court in granting the demurrer, such finding is reviewable by the Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court. In *People v. Court of Appeals, et al.*,[12] we explained:

> We point out at the outset that in criminal cases, the grant of a demurrer is tantamount to an acquittal and the dismissal order may not be appealed because this would place the accused in double jeopardy. Although the dismissal order is not subject to appeal, it is still reviewable but only through *certiorari* under Rule 65 of the Rules of Court. The *People* thus correctly filed a special civil action for *certiorari* under Rule 65 before the CA to question the RTC's grant of demurrer. Nonetheless, we emphasize that the CA disposed of the merits of an original special civil action when it ruled that the RTC did not gravely abuse its discretion in granting Ang's demurrer to evidence because the pieces of evidence presented by the prosecution were insufficient to sustain a conviction. The CA ruling, therefore, may be questioned before this Court through a petition for review on *certiorari* under Rule 45. Where the issue or question involves or affects the wisdom or legal soundness of the decision (*e.g.*, whether the CA correctly ruled that the RTC judge did not commit grave abuse of discretion in granting the accused's demurrer), and not the jurisdiction of the court to render said decision, the same is beyond the province of a petition for *certiorari*.

Thus, in *Asistio v. People, et al.,*[13] the Court ruled that under Rule 45 of the Rules of Court, decisions, final orders or

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[12] G.R. Nos. 205182-83, August 5, 2013 (Minute Resolution, Second Division).

[13] 758 Phil. 485 (2015).

resolutions of the CA in any case, *i.e*., regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case.[14] This is in line with the established rule "that one of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion."[15]

On the substantive issues, we find that the RTC should not have granted the demurrer to evidence.

For clarity, Section 261 (w)(b) of the Omnibus Election Code is reproduced as follows:

ARTICLE XXII.

ELECTION OFFENSES

Sec. 261. Prohibited Acts. - The following shall be guilty of an election offense:

x x x x x x x x x

(w) Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. — ***During the period of forty-five days preceding a regular election and thirty days before a special election, any person who*** (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or (b) ***issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds.*** (Emphasis supplied.)

From the foregoing, it can be deduced that subparagraph (b) above is violated when: (1) any person *issues, uses or avails* of treasury warrants or any device *forty-five days* preceding a regular election or *thirty days* before a special election; (2) the

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[14] *Id.* at 496, citing *Artistica Ceramica, Inc., et al. v. Ciudad del Carmen Homeowner's Ass'n., Inc., et al.,* 635 Phil. 21, 30 (2010).

[15] *Id*. at 496-497.

warrant or device *undertakes the future delivery of money, goods or other things of value*; and (3) the undertaking is *chargeable against public funds*.

The attending circumstances in the instant case depict a violation of the provision cited above. *First*, the subject Treasury Warrant No. 0001534514 was dated April 30, 2004, which date falls within the election ban period beginning on March 26, 2004 and ending on the election day or May 10, 2004. As such, it is deemed *prima facie* to have been drawn, made, accepted, and indorsed on said date.[16] On the basis of said presumption, it follows that the treasury warrant was delivered to the Almazans, for delivery naturally precedes acceptance. Moreover, while this presumption is disputable, respondents merely filed their Demurrer to Evidence and presented no evidence to challenge the same.

Second, even assuming that the treasury warrant was issued on another date, said date could not have been later than May 5, 2004, which is the date when the deed of sale was notarized. According to the CA, the fact that the undated deed was notarized on said date is of no moment because notarization only serves to convert a private document to a public one, making it admissible in evidence without further proof of its authenticity. The Court, however, finds merit in the OSG's argument that the defense cannot rely on the lack of date on the deed of sale. In fact, when said document was notarized on May 5, 2004, the same was evidence that the deed was formally executed on or before, but not after, such date. This is pursuant to the Rules on Notarial Practice which provides that when a document is notarized, the notary public subscribes that a person appeared before him, presented a document, and affirmed the contents thereof, which in this case included the issuance of the treasury

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[16] Section 11 of the Negotiable Instruments Law provides:

Sec. 11. *Date, presumption as to*. - Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed *prima facie* to be the true date of the making, drawing, acceptance, or indorsement, as the case may be.

warrant as payment for the lots.[17] Thus, by virtue of the deed of sale notarized on May 5, 2004, the parties thereto, namely, the Almazans as sellers and the City Government of Tuguegarao, represented by City Mayor Ting, as buyer, appeared before the notary public and affirmed on said date the contents of the deed of sale stating that the sellers unconditionally sold, transferred, and conveyed the lots, for and in consideration of ₱8,654,914.08, to them.[18] Consequently, as the OSG maintains, this acknowledgement of payment in the deed of sale, coupled with the admission of respondents that the subject check was used as payment for the lots, is evidence of its receipt by the Almazans on a date no later than May 5, 2004 for, as Section 23, Rule 132 of the Revised Rules on Evidence provides, public documents, such as the notarized deed of sale herein, are evidence of the facts giving rise to their execution, as well as the date of their execution.[19]

Third, it must be noted that May 5, 2004 was also the date when the City Government of Tuguegarao caused the registration of the sale and the issuance of new TCTs in its name. But the RTC ruled that even if the title was already issued in favor of the City Government of Tuguegarao, it does not follow that payment was made on the same day because as the Law on Sales provides, payment of the purchase price is not a condition for the transfer of title, in the absence of stipulation to the contrary. Thus, the courts below found that since the dorsal side of the instrument bears the date "May 18, 2004" as the date of payment annotated by the drawee bank, which is beyond the prohibited period, respondents cannot be held liable. It must be emphasized, however, that actual payment of the purchase price is not an element of the offense charged herein. To repeat, the subject provision expressly states that a person shall be guilty of an election offense if he or she issues, uses, or avails of treasury warrants or other devices undertaking the *future*

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[17] Rules on Notarial Practice, Sections 2 and 6.

[18] *Rollo*, pp. 109-110.

[19] *Pedrano v. Heirs of Benedicto Pedrano*, 564 Phil. 369, 377 (2007).

delivery of money, goods, or other things of value chargeable against public funds. Clearly, the offense is committed even if the payment or the delivery of money was made after the prohibited period. Hence, that the check was encashed on May 18, 2004, or after the prohibited election ban period, does not render respondents innocent of the charges against them.

Nevertheless, the courts below proceeded to dismiss the complaint against respondents, relying on the provisions of the Negotiable Instruments Law as to the meaning of the word "issue." True, Section 191 of the Negotiable Instruments Law defines "issue" as the first delivery of an instrument, complete in form, to a person who takes it as a holder. In fact, the Court has held in the past that delivery is the final act essential to the negotiability of an instrument.[20] But, as the OSG points out, the issue in this case neither concerns the negotiability or commerciability of the treasury warrant nor the parties' rights thereon. Note that the subject provision of the Omnibus Election Code does not merely penalize a person who "issues" treasury warrants or devices, but a person who "issues, uses or avails" of treasury warrants or devices. As such, the term "issues" under the subject provision should not be construed in its restricted sense within the meaning of Negotiable Instruments Law, but rather in its general meaning to give, to send, or such other words importing delivery to the proper person. To the Court, this is more in keeping with the intent of the law for basic statutory construction provides that where a general word follows an enumeration of a particular specific word of the same class, the general word is to be construed to include things of the same class as those specifically mentioned.[21] Thus, for as long as the device is *issued, used, or availed of* within the prohibited period to undertake the future delivery of money chargeable against public funds, an election offense is committed.

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[20] *Dy v. People, et al.*, 591 Phil. 678, 689 (2008).

[21] *Liwag v. Happy Glen Loop Homeowners Association*, 690 Phil. 321, 333 (2012).

Notwithstanding the aforementioned circumstances, however, we resolve to deny the petition on the principle of double jeopardy.

It has not escaped the Court's attention that the December 16, 2013 Order of the RTC, on the ground of insufficiency of evidence, is a judgment of acquittal. The OSG is, thus, barred from appealing said order because to allow the same would violate the right of respondents against double jeopardy. The right of the accused against double jeopardy is protected by no less than the Bill of Rights (Section 21, Article III) contained in the 1987 Constitution which provides that "[n]o person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act."

Time and again, the Court has held that double jeopardy attaches if the following elements are present: (1) a valid complaint or information; (2) a court of competent jurisdiction; (3) the defendant had pleaded to the charge; and (4) the defendant was acquitted or convicted, or the case against him was dismissed or otherwise terminated without his express consent. Jurisprudence, however, allows for certain exceptions when the dismissal is considered final even if it was made on motion of the accused, to wit: (1) "[w]here the dismissal is based on a demurrer to evidence filed by the accused after the prosecution has rested, which has the effect of a judgment on the merits and operates as an acquittal[; and] (2) [w]here the dismissal is made, also on motion of the accused, because of the denial of his right to a speedy trial which is in effect a failure to prosecute."[22]

A demurrer to evidence is filed after the prosecution has rested its case and the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the accused beyond reasonable doubt. If the court finds that the evidence is not sufficient and

[22] *Bangayan, Jr. v. Bangayan*, 675 Phil. 656, 667 (2011).

grants the demurrer to evidence, such dismissal of the case is one on the merits, which is equivalent to the acquittal of the accused. Well-established is the rule that the Court cannot review an order granting the demurrer to evidence and acquitting the accused on the ground of insufficiency of evidence because to do so will place the accused in double jeopardy.[23]

The rule on double jeopardy, however, is not without exceptions. It has been held in the past that the only instance when the accused can be barred from invoking his right against double jeopardy is when it can be demonstrated that the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was not allowed the opportunity to make its case against the accused or where the trial was a sham. For instance, there is no double jeopardy (1) where the trial court prematurely terminated the presentation of the prosecution's evidence and forthwith dismissed the information for insufficiency of evidence; and (2) where the case was dismissed at a time when the case was not ready for trial and adjudication.[24]

In the instant case, the Court finds that the elements of double jeopardy are present herein. A valid information was filed against respondents for violation of Section 261 (w)(b) of the Omnibus Election Code resulting in the institution of a criminal case before the proper court of competent jurisdiction. Subsequently, respondents pleaded not guilty to the offense charged and were acquitted; the dismissal of the case against them being based on a demurrer to evidence filed after the prosecution rested its case.

It must be noted, moreover, that while an acquittal by virtue of a demurrer to evidence may be subject to review *via* a petition for *certiorari* under Rule 65 of the Rules of Court, not by a petition for review under Rule 45 like in this case, there is no showing that the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction or a denial of due process. "Grave abuse of discretion has been defined as that

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[23] *Id*. at 668.

[24] *Id*.

capricious or whimsical exercise of judgment which is tantamount to lack of jurisdiction. 'The abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.' The party questioning the acquittal of an accused should be able to clearly establish that the trial court blatantly abused its discretion such that it was deprived of its authority to dispense justice."[25]

A review of the records of the instant case reveals no abuse of discretion on the part of the trial court so grave as to result in the reversal of its judgment of acquittal. While the law provides certain exceptions to the application of the rule on double jeopardy as when a trial court prematurely terminates the prosecution's presentation of evidence, the Court finds these exceptions inapplicable to the case at hand. It must be noted that the RTC herein duly gave the prosecution ample opportunity to present its case by allowing the latter to submit the pieces of evidence necessary for conviction. It cannot, therefore, be gainsaid that the prosecution was deprived of due process of law. In fact, in its petition before the Court, the OSG made no mention of any objection as to the manner by which the RTC conducted the proceedings. Neither did it particularly allege a denial of its right to due process. Instead, the OSG merely argued that the RTC granted respondents' demurrer to evidence without any clear and factual basis, failing to make a careful consideration of its evidence and merely focusing on the highly technical provisions of the Negotiable Instruments Law. To the Court, however, this cannot result in a complete reversal of the judgment of acquittal. Even if we are to assume that the RTC had overlooked certain facts in arriving at its conclusions, this supposed misappreciation of evidence will, at most, be considered only as a mere error of judgment, and not of jurisdiction or a manifestation of grave abuse of discretion. It is, therefore, not correctible by a writ of *certiorari*.[26]

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[25] *Id*. at 668-669.

[26] *People v. Court of Appeals, et al.,* 691 Phil. 783 (2012).

To reiterate, for an acquittal to be considered tainted with grave abuse of discretion, there must be a showing that the prosecution's right to due process was violated or that the trial conducted was a sham. Accordingly, notwithstanding the alleged errors in the interpretation of the applicable law or appreciation of evidence that the RTC and the CA may have committed in ordering respondents' acquittal, absent any showing that said courts acted with caprice or without regard to the rudiments of due process, their findings can no longer be reversed, disturbed and set aside without violating the rule against double jeopardy. Indeed, errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *autrefois acquit*. We are bound by the dictum that whatever error may have been committed effecting the dismissal of the case cannot now be corrected because of the timely plea of double jeopardy. "[I]t bears to stress that the fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes."[27]

WHEREFORE, premises considered, the instant petition is **DENIED.** The assailed Decision dated June 16, 2015 and Resolution dated November 5, 2015 of the Court of Appeals in CA-G.R. SP No. 134943 are **AFFIRMED.**

SO ORDERED.

Del Castillo,[*] *Leonen, Reyes, J. Jr.,* and *Hernando JJ.,* concur.

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[27] *People v. Tan*, 639 Phil. 402, 417 (2010).

[*] Additional member in lieu of Justice Gesmundo per Raffle dated November 26, 2018.

SECOND DIVISION

[G.R. No. 225741. December 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BRANDON DELA CRUZ and JAMES FRANCIS BAUTISTA**, *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS; IN CASES INVOLVING DANGEROUS DRUGS, 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.—** In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY, THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME; REQUIREMENTS.—** 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 "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 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.; AS A GENERAL RULE, COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE IS STRICTLY ENJOINED AS THE SAME IS REGARDED NOT MERELY AS A PROCEDURAL TECHNICALITY BUT AS A MATTER OF SUBSTANTIVE LAW; EFFECT OF FAILURE TO STRICTLY COMPLY 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.; NON-COMPLIANCE WITH THE WITNESS REQUIREMENT MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORTS TO SECURE THE PRESENCE OF SUCH WITNESSES, HOWEVER, THEY EVENTUALLY FAILED TO APPEAR.— 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. Notably, the Court, in *People v. Miranda*, 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."

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated October 9, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06576, which affirmed the Decision[3] dated November 25, 2013 of the Regional Trial Court of Bambang, Nueva Vizcaya, Branch 37 (RTC) in Crim. Case No. 3156 finding accused-appellants Brandon Dela Cruz (Dela Cruz) and James Francis Bautista (Bautista; collectively, accused-appellants) 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. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[5] filed before the RTC charging accused-appellants of the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that at around

[1] See Notice of Appeal dated October 28, 2015; *rollo*, pp. 13-14.

[2] *Id*. at 2-12. Penned by Associate Justice Francsisco P. Acosta with Associate Justices Noel G. Tijam (now a member of the Court) and Eduardo B. Peralta, Jr., concurring.

[3] CA *rollo*, pp. 9-16. Penned by Judge Jose Godofredo M. Naui.

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

[5] Records, p. 1.

five (5) o'clock in the afternoon of August 1, 2012, members of the Bambang Police Station successfully implemented a buy-bust operation against accused-appellants, during which 0.029 gram of white crystalline substance was recovered from them. The police officers then took accused-appellants and the seized item to the police station where the marking, inventory, and photography were done in the presence of Municipal Councilor Gregorio B. Allas, Jr. (Allas) and Conrad Gaffuy (Gaffuy), an employee of the Department of Justice (DOJ). The seized item was then brought to the crime laboratory where, after examination, the contents thereof tested positive for methamphetamine hydrochloride or *shabu*, a dangerous drug.[6]

In defense, accused-appellants denied the accusation against them and instead averred that at the time of the alleged incident, Dela Cruz was drinking with his friends in a hut inside their compound while Bautista was repairing Dela Cruz's motorcycle when, suddenly, armed men in civilian clothes alighted from two (2) cars parked at their gate and pointed guns at them. They claimed that these men searched their house and arrested them, and when asked by Bautista's mother-in-law[7] about the charges against them, one of the armed men brought out a small plastic sachet from his belt bag and answered that accused-appellants were selling drugs.[8]

In a Decision[9] dated November 25, 2013, the RTC found accused-appellants guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced them to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.[10] The RTC held that the prosecution was able to establish all the elements of the crime charged, as accused-appellants sold a

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[6] See *rollo*, pp. 3-5. See also Chemistry Report No. D-32-2012 dated August 2, 2012; records, p. 25.

[7] Also referred to as Bautista's mother in the Appellant's Brief; see CA *rollo*, p. 53.

[8] *Rollo*, p. 5.

[9] CA *Rollo*, pp. 9-16.

[10] *Id*. at 16.

sachet containing 0.029 gram of *shabu* to IO1 Nelmar Benazir C. Bugalon, which was later on presented to the court for identification. Moreover, the RTC ruled that there was substantial compliance with the chain of custody rule as it was shown, *inter alia*, that the conduct of the marking and photography were done at the police station and witnessed by an elected official and a representative of the DOJ in the presence of the accused-appellants.[11] Aggrieved, accused-appellants appealed to the CA.[12]

In a Decision[13] dated October 9, 2015, the CA affirmed *in toto* the RTC ruling.[14] It held that the prosecution had established beyond reasonable doubt all the elements of the crime charged. The CA ruled that the absence of a media representative in the inventory, marking, and photography of the seized item did not affect the integrity of the *corpus delicti*, as a DOJ representative and an elected municipal councilor were present to witness the same.[15]

Hence, this appeal seeking that accused-appellants' conviction be overturned.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellants' conviction for the crime charged.

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

[11] See *id*. at 14-15.

[12] See Notice of Appeal dated December 9, 2013; *id*. at 17-18.

[13] *Rollo*, pp. 2-12.

[14] *Id*. at 11.

[15] See *id*. at 8-11.

[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,

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 "marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending

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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.

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 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, an 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]

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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[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).

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

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

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

substantive law."[26] 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."[27]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[28] 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.[29] The foregoing is based on the saving clause found in Section 21 (a),[30] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[31] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[32] and that

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[26] 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 18, at 1038.

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

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

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

[30] 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**."

[31] 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**."

[32] *People v. Almorfe*, *supra* note 29.

the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[33]

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.[34] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[35] 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.[36]

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

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

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

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

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

[37] *Supra* note 16.

the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[38]

After an examination of the records, the Court finds that the prosecution failed to comply with the above-described procedure since the inventory and photography of the seized item were not conducted in the presence of a media representative. As evinced by the Inventory of Seized Properties/Items,[39] only Allas (an elected public official) and Gaffuy (a representative from the DOJ) were present to witness these activities. Although the prosecution in its Pre-Trial Brief[40] averred that "[n]o media representatives were present despite efforts x x x to secure their presence,"[41] nothing else on record appears to substantiate the same. Indeed, this general averment, without more, cannot be accepted as a proper justification to excuse non-compliance with the law. As earlier discussed, prevailing jurisprudence requires the prosecution to account for the absence of any of the required witnesses 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. Clearly, these standards were not observed in this case.

Thus, in view of this unjustified deviation from the chain of custody rule, the Court is constrained to conclude that the integrity and evidentiary value of the item purportedly seized from accused-appellants were compromised, which consequently warrants their acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated October 9, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06576 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Brandon Dela Cruz and James

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[38] See *id*.

[39] Records, p. 10.

[40] Records, pp. 111-115.

[41] Records, p. 112.

Francis Bautista are **ACQUITTED** of the crime charged. The Director of the Bureau of Corrections is ordered to cause their immediate release, unless they are being lawfully held in custody for any other reason.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 225747. December 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JEFFERSON MEDINA *y* CRUZ**, *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS; IN CASES INVOLVING DANGEROUS DRUGS, 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.— In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY, THE PROSECUTION MUST BE ABLE TO ACCOUNT FOR EACH LINK OF THE CHAIN OF CUSTODY FROM THE MOMENT THE DRUGS ARE SEIZED UP TO THEIR PRESENTATION IN COURT AS EVIDENCE OF THE CRIME; REQUIREMENTS.— 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.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 l0640, "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.; AS A GENERAL RULE, COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE IS STRICTLY ENJOINED AS THE SAME IS REGARDED NOT MERELY AS A PROCEDURAL TECHNICALITY BUT AS A MATTER OF SUBSTANTIVE LAW; EFFECT OF FAILURE TO STRICTLY COMPLY 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.; NON-COMPLIANCE WITH THE WITNESS REQUIREMENT MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORTS TO SECURE THE PRESENCE OF SUCH WITNESSES, HOWEVER, THEY EVENTUALLY FAILED TO APPEAR.— Anent the witnesses 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.Notably, the Court, in *People v. Miranda*,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."

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 24, 2015 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06173, which affirmed the Decision[3] dated May 8, 2013 of the Regional Trial Court of Caloocan City, Branch 120 (RTC) in Crim. Case No. C-84099, finding accused-appellant Jefferson Medina *y* Cruz (Medina) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs, defined and penalized

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[1] See Notice of Appeal dated October 19, 2015; *rollo*, pp. 12-13.

[2] *Id*. at 2-11. Penned by Associate Justice Noel G. Tijam (now a member of this Court) with Associate Justices Francisco P. Acosta and Eduardo B. Peralta, Jr., concurring.

[3] CA *rollo*, pp. 17-23. Penned by Judge Aurelio R. Ralar, Jr.

under 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 Medina of violating Section 5, Article II of RA 9165. The prosecution alleged that on April 26, 2010, members of the District Anti-Illegal Drug – Special Operation Task Group, Northern Police District[6] successfully implemented a buy-bust operation against Medina, during which one (1) plastic sachet containing white crystalline substance was recovered from him. Police Officer 3 (PO3) Honorato Quintero, Jr. then marked the seized item at the place of arrest, and thereafter, brought it to the police station along with Medina. Thereat, PO3 Ariosto B. Rana (PO3 Rana) conducted the inventory[7] and photography of the seized item in the presence of Maeng Santos (Santos), a media representative, and thereafter, prepared the necessary paperworks for examination. Finally, the seized item was then brought to the crime laboratory where, upon examination,[8] the contents thereof tested positive for 0.05 gram of methylamphetamine hydrochloride or *shabu*, a dangerous drug.[9]

In defense, Medina denied the charges against him, claiming instead, that while he was at home at the time of the alleged incident, three (3) men in civilian clothes entered his house and looked for a certain Jeff Abdul. When Medina informed

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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] Records, p. 2.

[6] *Id.* at 4.

[7] See Inventory of Drug Seized/Items dated April 27, 2010; *id*. at 13.

[8] See Physical Science Report No. D-106-10 dated April 27, 2010; *id*. at 33.

[9] See *rollo*, pp. 3-5. See also CA *rollo*, pp. 18-20.

them that there was no such person residing in his house, they frisked him, took him outside, ordered him to lie face down, and put him in handcuffs. He was then brought to the police station where he was charged with Illegal Sale of *shabu*.[10]

In a Decision[11] dated May 8, 2013, the RTC found Medina guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[12] The RTC found that a consummated sale indeed occurred between the poseur buyer and Medina. In this relation, it brushed aside the defense's claim that Medina was not one of the target persons of the operation since the prosecution was able to clearly and convincingly establish all the elements of the crime charged. Finally, it gave credence to the testimonies of the prosecution witnesses who are presumed to have regularly performed their duties in the absence of proof to the contrary.[13] Aggrieved, Medina appealed[14] to the CA.

In a Decision[15] dated September 24, 2015, the CA affirmed the RTC ruling. It held that the prosecution had established beyond reasonable doubt all the elements of the crime charged, and that the integrity and evidentiary value of the seized item have been properly preserved.[16]

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

The Court's Ruling

The appeal is meritorious.

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[10] See *rollo*, p. 6. See also CA *rollo*, pp. 20-21.

[11] CA *rollo*, pp. 17-23.

[12] *Id*. at 23.

[13] See *id*. at 21-22.

[14] See Notice of Appeal dated May 22, 2013; *id*. at 15.

[15] *Rollo*, pp. 2-11.

[16] See *id*. at 7-11.

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 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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[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.

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 primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[26]

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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.

[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).

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 Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[32] It should, however, be emphasized

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[27] 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 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[.]**"

[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**."

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 witnesses 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]

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

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[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.

[38] *Supra* note 17.

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, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by an elected public official and a DOJ representative. This may be easily gleaned from the Inventory of Drug Seized/Items[40] which only proves the presence of a media representative, *i.e.*, Santos. Such finding is confirmed by the testimony of PO3 Rana, the police officer who made a request to call Medina's relatives, a media representative, and an elected public official to witness the aforesaid conduct, to wit:

[Fiscal Isabelito Sicat]: What did you do with the accused after he was turned over to you, Mr. Witness?
[PO3 Rana]: I apprised him of his constitutional rights and I prepared his booking sheet/arrest report, sir.

Q: After that what did you do next, Mr. Witness?
A: I requested to call his relatives and also a representative from the media and member of the barangay in order for us to comply with Section 21 or drug inventory, sir.

Q: What transpired after you called for a media representative as well as his relatives?
A: Only the representative from the media was present, sir.[41]

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, while PO3 Rana requested the presence of a media representative and an elected public official to witness the conduct of inventory and photography of the

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[39] See *id.*

[40] Records, p. 13.

[41] TSN, June 7, 2011, p. 12; *id*. at 229.

seized item, he admitted that only a media representative arrived, without any justification as to the absence of the two (2) other required witnesses, *i.e.*, an elected public official and a DOJ representative. In fact, it may even be implied from PO3 Rana's aforesaid statement that he did not even bother to secure the presence of a DOJ representative during the conduct of inventory and photography. 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 Medina was compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated September 24, 2015 of the Court of Appeals in CA-G.R. CR-HC No. 06173 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Jefferson Medina *y* Cruz 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, S.A.J. (Chairperson), *Caguioa, Reyes, A. Jr.,* and *Carandang, JJ.,* concur.

SECOND DIVISION

[G.R. No. 225862. December 5, 2018]

OLIVER V. VERGARA, *petitioner, vs.* **CDM SECURITY AGENCY, INC. and VILMA PABLO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; QUITCLAIM AND RELEASE; IN THE ABSENCE OF ANY ALLEGATION OR PROOF OF COERCION INTO EXECUTING THE QUITCLAIM, ITS VALIDITY AND BINDING EFFECT MUST BE UPHELD; CASE AT BAR.—** As the CA correctly determined, the Quitclaim and Release signed by Vergara is valid and binding upon him. It is well to mention he does not dispute the authenticity and due execution thereof. Further, the Quitclaim was subscribed and sworn before Executive LA Mariano L. Bactin. In the absence of any allegation or proof that Vergara was coerced into executing the quitclaim, its validity and binding effect must be upheld. In *Radio Mindanao Network Inc. v. Amurao III*, the Court reiterated the rule that: Where the party has voluntarily made the waiver, with a full understanding of its terms as well as its consequences, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking, and may not later be disowned simply because of a change of mind.

2. **ID.; ID.; ID.; ILLEGAL DISMISSAL; IN ILLEGAL DISMISSAL CASES, THE FACT OF DISMISSAL MUST BE ESTABLISHED BY POSITIVE AND OVERT ACTS OF AN EMPLOYER INDICATING THE INTENTION TO DISMISS; NOT ESTABLISHED IN CASE AT BAR.—** As to Vergara's claim of illegal dismissal, the Court affirms the findings of the CA that he was not dismissed from employment. "In illegal termination cases, jurisprudence had underscored that the fact of dismissal must be established by positive and overt acts of an employer indicating the intention to dismiss." In this case, Vergara was not at all able to substantiate his allegation of verbal dismissal. At most, he was subjected to a disciplinary action inappropriately, as it was imposed without a prior investigation. x x x However, in view of the Quitclaim and Release executed by Vergara, the respondents cannot be held liable for relieving him from his post. Besides, even in the absence of the quitclaim, there is no evidence to suggest that he was being suspended or dismissed from work. Per the Memorandum, recalling Vergara from his duty is a penalty in

itself; to presume that removing him from his place of assignment is tantamount to illegal suspension or termination would be indulging in speculation, as he may also be subjected to a reassignment only.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Alvaro M. Simbulan for respondents.

R E S O L U T I O N

A. REYES, JR., *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 March 31, 2016 and Resolution[2] dated July 7, 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 141223.

FACTS:

As the records bear out, Oliver Vergara (Vergara) was employed as a security guard by CDM Security Agency, Inc. (CDM), an entity engaged in the business of providing security services to its clients. Vergara was assigned at a branch of BPI Family Savings Bank in San Agustin, Pampanga. On March 7, 2013 at around 9:00 a.m. while Vergara was on duty, another CDM employee named Hipolito Fernandez (Fernandez) arrived and had an argument with him. In the course of the argument, Vergara allegedly pointed a shotgun to Fernandez.[3]

On March 8, 2013, CDM's Operations Officer caused the personal service of a Memorandum of Disciplinary Action

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[1] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Fernanda Lampas Peralta and Nina G. Antonio-Valenzuela concurring, *rollo*, pp. 37-46.

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

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

(Memorandum)[4] upon Vergara, relieving him of his post at the bank and advising him to report to CDM's office. Vergara allegedly refused to receive the Memorandum.[5]

On March 13, 2013, Vergara filed a Complaint[6] for illegal dismissal, non-remittance of Social Security System (SSS) contributions and loan payments, and money claims for labor standards benefits against CDM and its corporate officer Vilma Pablo (collectively, respondents). According to Vergara, when he went to CDM's office on March 8, 2013, he was asked to make a written explanation and to disclose therein the gun-pointing incident. Vergara submitted his explanation but refused to admit to aiming a shotgun at Fernandez, because no such incident occurred. He alleged that because of such refusal, CDM's operations manager verbally terminated him from work.[7]

In a preliminary conference held on April 11, 2013, the parties decided to settle their dispute amicably. As full settlement of his claims, Vergara received the amount of ₱11,000.00 from the respondents and he was furnished with copies of certificates of his SSS loan contributions and payments. Respondents also committed not to file any case against him regarding the incident with Fernandez. It was also agreed upon that Vergara's ATM card will be returned to him.[8] Vergara then signed a Quitclaim and Release with Motion to Dismiss[9] before the Labor Arbiter (LA).

On June 5, 2013, another conference was held by the LA to verify the parties' compliance with their agreement.[10] Vergara manifested that the respondents failed to comply with some of his terms such as, returning his ATM card and remitting his

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[4] *Id*. at 109.

[5] *Id*. at 99.

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

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

[8] *Id*. at 115.

[9] *Id*. at 114.

[10] *Id*. at 114.

loan payments to the Social Security System (SSS).[11] The parties were then directed to submit their respective position papers.

For their part, the respondents maintained that Vergara was merely relieved from his post at the bank but not terminated from CDM. He was even asked to report to their main office.[12] They also alleged that they remitted the contributions and loan payments to SSS as evidenced by the receipt numbers provided in their Certification.[13] Moreover, the respondents submitted an Affidavit[14] executed by Fernandez, stating that Vergara's ATM card was with him.

RULING OF THE LA

On September 8, 2014, the LA found that Vergara was illegally dismissed from employment. The dispositive portion of its Decision[15] reads:

> WHEREFORE, consistent with the foregoing, [Vergara's] dismissal is hereby declared ILLEGAL and respondents are ordered to reinstate [Vergara] to his former or equivalent position without loss of seniority rights[,] privileges and benefits attached to his position.
>
> Under paragraph 2, Section 19, Rule V of the 2011 NLRC Rules of Procedure, as amended, the reinstatement aspect of [this] Decision is immediately executory and the respondents are directed to submit a written report of compliance within ten (10) calendar days from receipt of the copy of this Decision.
>
> Further, both the respondents are jointly and severally liable to pay [the] complainant the following:
>
> 1. HIS BACKWAGES from March 8, 2013 up to the promulgation of this decision (September 8, 2014), in the

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[11] *Id*. at 93.

[12] *Id*. at 102-103.

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

[14] *Id*. at 125.

[15] Penned by Acting Executive Labor Arbiter Mariano L. Bactin; *id*. at 143-152.

amount of ONE HUNDRED SEVENTY FOUR THOUSAND TWO HUNDRED TWENTY PESOS ([₱]174,220.00);

2. 10% ATTORNEY'S FEES in the amount of SEVENTEEN THOUSAND FOUR HUNDRED TWENTY TWO PESOS ([₱]17,422.00); AND

3. All other monetary claims, as well as his claims for damages are hereby dismissed with prejudice for lack of merit.

SO ORDERED.[16]

RULING OF THE NLRC

On appeal, the NLRC reversed the LA, and dismissed the complaint for lack of merit. The decretal portion of its Decision[17] dated December 29, 2014 provides:

WHEREFORE, the instant appeal is hereby GRANTED. The decision of Acting Executive Labor Arbiter Mariano L. Bactin dated 08 September 2014 is hereby REVERSED and SET ASIDE and a new one entered dismissing the complaint for lack of merit.

SO ORDERED.[18]

Vergara's motion for reconsideration was denied by the NLRC through a Resolution[19] dated February 24, 2015.

RULING OF THE CA

On March 31, 2016, the CA rendered its Decision, the *fallo* of which states:

WHEREFORE, premises considered, the instant Petition for *Certiorari* is DENIED. The Decision dated 29 December 2014 and Resolution dated 24 February 2015 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 10-002552-14 [NLRC Case No. RAB III-03-19874-13] are AFFIRMED.

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

[17] Penned by Commissioner Romeo L. Go, with Presiding Commissioner Gerardo C. Nograles and Commissioner Perlita B. Velasco concurring; *id*. at 181-190.

[18] *Id*. at 189.

[19] *Id*. at 197-198.

SO ORDERED.[20]

The CA ruled that the NLRC rightly upheld the Quitclaim and Release executed by Vergara since: first, Vergara acknowledged that he fully understood the consequences and imports of signing the quitclaim; second, the settlement pay of eleven thousand pesos appears to be credible and reasonable; and third, there is no showing that Vergara was defrauded or forced into signing the quitclaim.[21]

The CA also noted that Vergara failed to prove that he was dismissed from work because there was no evidence of the same, other than his allegation of having been verbally terminated.[22]

The CA denied Vergara's motion for reconsideration through the Resolution[23] dated July 7, 2016.

ISSUES:

I. WHETHER THE [CA] GRAVELY ERRED IN AFFIRMING THAT VERGARA WAS NOT ILLEGALLY DISMISSED FROM EMPLOYMENT

II. WHETHER THE [CA] GRAVELY ERRED WHEN IT UPHELD THE VALIDITY OF THE QUITCLAIM/ WAIVER[24]

RULING OF THE COURT

The appeal lacks merit.

As the CA correctly determined, the Quitclaim and Release signed by Vergara is valid and binding upon him. It is well to mention he does not dispute the authenticity and due execution thereof. Further, the Quitclaim was subscribed and sworn before Executive LA Mariano L. Bactin. In the absence of any allegation or proof that Vergara was coerced into executing the quitclaim,

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[20] *Id*. at 46.

[21] *Id*. at 44.

[22] *Id*. at 45.

[23] *Id*. at 48.

[24] *Id*. at 21.

its validity and binding effect must be upheld. In *Radio Mindanao Network Inc., v. Amurao III*,[25] the Court reiterated the rule that:

> Where the party has voluntarily made the waiver, with a full understanding of its terms as well as its consequences, and the consideration for the quitclaim is credible and reasonable, the transaction must be recognized as a valid and binding undertaking, and may not later be disowned simply because of a change of mind.

The fact that Vergara's ATM card was not returned to him does not render the Quitclaim ineffective. Although returning Vergara's ATM card was mentioned in the parties' preliminary conference,[26] the respondents had explained that the issue regarding the ATM card is a separate matter between Vergara and Fernandez; they have no control over this subject.[27] There is no plausible reason why Vergara insists on recovering his ATM card from the respondents when it appears to be in the possession of Fernandez, to whom Vergara was allegedly indebted.[28]

As to Vergara's claim of illegal dismissal, the Court affirms the findings of the CA that he was not dismissed from employment. "In illegal termination cases, jurisprudence had underscored that the fact of dismissal must be established by positive and overt acts of an employer indicating the intention to dismiss."[29] In this case, Vergara was not at all able to substantiate his allegation of verbal dismissal. At most, he was subjected to a disciplinary action inappropriately, as it was imposed without a prior investigation.

Based on the Memorandum[30] dated March 8, 2013, Vergara was relieved of his post at BPI San Agustin branch and was

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[25] 746 Phil. 60, 68 (2014).

[26] *Id*. at 115.

[27] *Id*. at 167.

[28] *Id*. at 125.

[29] *Mehitabel, Inc. v. Jufhel L. Alcuizar*, G.R. Nos. 228701-02, December 13, 2017.

[30] *Rollo*, p. 109.

asked to report to CDM's office for: 1. Violation of Code of Ethics No. 12 (proper use of firearms); and 2. Grave threat to Fernandez (pointing 12 ga. shotgun). This Memorandum was served to him the very next day after the incident. Additionally, the written account of Lito Panoy, a fellow security guard who witnessed the altercation, was dated March 13, 2013—a week *after* Vergara was discharged from his place of assignment. Thus, it is clear that no investigation was conducted before the findings of violation came about.

However, in view of the Quitclaim and Release executed by Vergara, the respondents cannot be held liable for relieving him from his post. Besides, even in the absence of the quitclaim, there is no evidence to suggest that he was being suspended or dismissed from work. Per the Memorandum, recalling Vergara from his duty is a penalty in itself; to presume that removing him from his place of assignment is tantamount to illegal suspension or termination would be indulging in speculation, as he may also be subjected to a reassignment only.

WHEREFORE, the petition is **DENIED**. The Decision dated March 31, 2016 and Resolution dated July 7, 2016 of the Court of Appeals in CA-G.R. SP No. 141223 are **AFFIRMED.**

SO ORDERED.

Carpio, S.A.J. (Chairperson), Perlas-Bernabe, Caguioa, and *Carandang, JJ.,* concur.

FIRST DIVISION

[G.R. No. 226836. December 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BONG CHAN and ELMO CHAN,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS; PRESENT IN CASE AT BAR.—** Under Article 267 of the RPC, the elements of the crime of Kidnapping and Serious Illegal Detention are, as follows: "(1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the victim of his liberty; (3) the act of kidnapping or detention is illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted on the victim or threats to kill are made; or (d) the person kidnapped or detained is a minor, female or public officer." All the elements of the crime of Kidnapping and Serious Illegal Detention are present in this case. First, appellants are both private individuals. Second, the fact that they kidnapped the victim was clearly established by the testimony of the prosecution's eyewitness, Ernesto. Third, appellants' act of kidnapping was illegal. Lastly, the victim has been detained for more than three days. In fact, until now, the victim has not returned, nor his body been found. x x x Actual confinement, detention, and restraint of the victim is the primary element of the crime of kidnapping. Thus, in order to sustain a conviction, the prosecution must show "actual confinement or restriction of the victim, and that such deprivation was the intention of the malefactor."

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES DO NOT AFFECT THE CREDIBILITY AND VERACITY OF THE TESTIMONY OF THE PROSECUTION'S WITNESS; CASE AT BAR.—** Discrepancies or inconsistencies in the testimonies of the witnesses pertaining to minor details, not touching upon the central fact of the crime, do not impair the credibility of the witnesses; on the contrary, they even tend to strengthen the credibility of the witnesses since they discount the possibility of witnesses being rehearsed. In this case, discrepancies or inconsistencies in the testimony of Ernesto, *vis-a-vis* the testimony of Rachelle pertaining to minor details that have no bearing on the elements of the crime, do not affect

the veracity and credibility of Ernesto's positive testimony, who had no ill motive to testify against appellants. As the Court has consistently ruled, "the positive identification of the appellants, when categorical and consistent and without any [ill motive] on the part of the [eyewitness] testifying on the matter, prevails over alibi and denial."

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

DEL CASTILLO, *J.*:

Actual taking indicates an intention to deprive the victim of his liberty.[1]

This is an appeal filed by appellants Bong Chan (Bong) and Elmo Chan(Elmo) from the March 31, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06418, affirming the July 31, 2013 Decision[3] of the Regional Trial Court (RTC) of Alaminos City, Pangasinan, Branch 55, in Criminal Case No. 4755-A,finding appellants guilty beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention, as defined and penalized under Article 267 of the Revised Penal Code (RPC).

The Factual Antecedents

Appellants were charged under the following Information:

That on or about September 27, 2004 in the evening[,] in Barangay Tawin-tawin, Alaminos City, Pangasinan, Philippines and within the

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[1] *People v. Paingin*, 462 Phil. 519, 531 (2003).

[2] *Rollo*, pp. 2-10; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Noel G. Tijam (now Supreme Court Associate Justice) and Eduardo B. Peralta, Jr.

[3] CA *rollo*, pp. 49-65; penned by Presiding Judge Elpidio N. Abella.

jurisdiction of this Honorable Court, the above-named accused conspiring, confederating and helping each other and after threatening to kill the victim, did then and there willfully, unlawfully and feloniously club Reynard P. Camba with pieces of bamboo until he was rendered unconscious and thereafter, the same accused placed his body in a sack and carried him away depriving him of his liberty against his will and continued to detain and hide him illegally up to the present.

Contrary to [Article]267 of the Revised Penal Code.[4]

When arraigned, appellants pleaded not guilty to the crime charged.[5]

Version of the Prosecution

During the bail hearing, the prosecution presented as witness, the victim's second cousin, Tito Camba (Tito) who was present the night the victim had an altercation with the family of the appellants.[6]

During the trial, the prosecution presented as witnesses: (1) Ernesto Estepa (Ernesto), the victim's uncle;(2) Rachelle Camba (Rachelle) and Erica Jean Camba (Erica), daughters of the victim; and (3) Rey Camba (Rey), the brother of the victim.[7]

According to the version of the prosecution, the victim was the nephew of Ernesto'swife; that at around 9:00 p.m. of September 27, 2004, the victim went to Ernesto's house to visit his (victim's) son, who was living with Ernesto and his wife; that the victim stayed at Ernesto's house for about two hours; that the victim told Ernesto that, earlier that evening, the victim had a quarrel with Melrose Libadia (Melrose) and her husband, Ronnie, because Melrose refused to sell the victim liquor from her store and that Melrose's father, appellant Elmo, threatened to kill the victim; that upon hearing this, Ernesto told the victim

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[4] *Id*. at 8.

[5] *Rollo*, p. 3.

[6] TSN, May 16, 2005, pp. 4-26.

[7] CA *rollo*, p. 50.

that it would be better for the latter to stay the night; that the victim refused because his wife might look for him; that around 11:00 p.m., the victim left Ernesto's house; that Ernesto followed the victimonly until the latter was nearing the house of Helen Pamo; that the victim was about 10-20 meters ahead of Ernesto; that when the victim reached Melrose's house, Ernesto saw appellants come out of the yard; that upon seeing appellants, Ernesto hid; that Ernesto saw appellants hit the victim with bamboo sticks on the neck and kept hitting him even after he became unconscious and fell to the ground face down; that appellants went inside the yard; that they came back carrying a sack; that the appellants placed the victim, who was then unconscious, inside the sack and carried him inside their yard; that Ernesto did not see what happened thereafter; that he went home and had a restless night; that the following day, he drove his jeepney plying the route of Alaminos-Lingayen; that when he arrived at his house at around 5:30 p.m., he met Rey, the brother of the victim; and that Ernesto told Rey that appellants killed the victim and that Rey should not tell anyone about it because they might kill him also.[8]

Rachelle, Erica, and Rey testified for the sole purpose of proving damages.[9]

Version of the Defense

The defense, on the other hand, offered the testimony of appellant Bong and his sister, Melrose.[10]

Melrose testified that around 9:00 p.m. of September 27, 2004, she was inside their house when the victim and Tito wanted to buy liquor; that she told the victim that she had no more stock of wine; that, contrary to the claim of the prosecution, there was no heated argument; that she left them and returned inside their house to take care of her husband who was sick at that time; and that on the said night, her brother and her father

[8] *Id*. at 50-52.

[9] *Id*. at 53-54.

[10] *Id*. at 55-56.

were at the auditorium of Barangay Tawin-tawin, which is a kilometer away from their house, to watch over their sacks of *palay*.[11]

Appellant Bong, on the other hand, denied the accusations against them and claimed that, on the said evening, at around 10:00 p.m., he and his father were at the cemented pavement near the auditorium to watch over their *palay* that was scheduled for drying the following day; and that they stayed there until the morning of September 28, 2004.[12]

Ruling of the Regional Trial Court

On July 31, 2013, the RTC rendered a Decision finding appellants guilty beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention as defined and penalized under Article 267 of the RPC. The RTC gave no credence to the appellants' defenses of alibi and denial considering the positive testimony of Ernesto, who had no ill motive to testify falsely against the appellants.[13] Thus —

> WHEREFORE, in light of the foregoing considerations, the Court finds both accused Bong Chan and Elmo Chan guilty beyond reasonable doubt of the crime of kidnapping and serious illegal detention as defined and penalized under Article 267 of the Revised Penal Code and as charged in the afore-quoted Information and, accordingly, hereby sentences them to each suffer the penalty of imprisonment of *reclusion perpetua* or twenty (20) years and one (1) day to forty (40) years with the accessory penalties provided for by law; to pay the heirs of the late Reynald Camba the amount of ₱50,000.00 as indemnification and the amount of ₱30,000.00 as moral damages, both without subsidiary imprisonment in case of insolvency; and to pay the costs.
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> In the service of their sentence, the accused shall be credited with the full time during which they underwent preventive imprisonment provided that they voluntarily agreed in writing to abide by the same disciplinary rules imposed upon convicted prisoners otherwise they

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[11] *Id*. at 56.

[12] *Id*. at 55.

[13] *Id*. at 56-64.

shall be credited to only four fifths (4/5) thereof. (Article 29, Revised Penal Code, as amended).

SO ORDERED.[14]

Appellants appealed the case to the CA putting in issue the credibility of Ernesto. They contended that Ernesto's testimony that he was driving his jeepney in the morning of September 28, 2004to earn money contradicted withthe testimony of Rachelle that Ernesto was with them in the morning of September 28, 2004 looking for the victim.[15] They further argued that the prosecution failed to prove actual confinement, detention, or restraint of the victim.[16]

Ruling of the Court of Appeals

On March 31, 2016, the CA affirmed the Decision of the RTC. The CA agreed with the RTC that the prosecution was able to establish all the elements of the crime.[17] The CA pointed out that the element of restraint was clearly established by the testimony of Ernesto.[18] As to the alleged inconsistencies in the testimonies of Ernesto and Rachelle, the CA ruled that these pertained to events which transpired after the commission of the crime.[19]As such, theseinconsistencies on minor details did not in any way affect the veracity of Ernesto's testimony.[20]

Hence, appellants filed the instant appeal, raising the same arguments they had in the CA.

Our Ruling

The appeal lacks merit.

The prosecution was able to prove all the elements of the crime.

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

[15] *Id*. at 42-45.

[16] *Id*. at 45-46.

[17] *Rollo*, pp. 5-7.

[18] *Id*. at 6-7.

[19] *Id*. at 7-9.

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

Under Article 267 of the RPC, the elements of the crime of Kidnapping and Serious Illegal Detention are, as follows: "(1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the victim of his liberty; (3) the act of kidnapping or detention is illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted on the victim or threats to kill are made; or (d) the person kidnapped or detained is a minor, female or public officer."[21]

All the elements of the crime of Kidnapping and Serious Illegal Detention are present in this case. First, appellants are both private individuals. Second, the fact that they kidnapped the victim was clearly established by the testimony of the prosecution's eyewitness, Ernesto.Third, appellants' act of kidnapping was illegal. Lastly, the victim has been detained for more than three days. In fact, until now, the victim has not returned, nor his body been found.

Appellants, however, insist that the element of restraint was not clearly established as the prosecution allegedly failed to establish actual confinement, detention, or restraint of the victim.

The Court does not agree.

Actual confinement, detention, and restraint of the victim is the primary element of the crime of kidnapping.[22] Thus, in order to sustain a conviction, the prosecution must show "actual confinement or restriction of the victim, and that such deprivation was the intention of the malefactor."[23]

In this case, Ernesto testified that he saw appellants: (1) hit the victim on the neck and other body parts using bamboo sticks causing the victim to fall down on the ground unconscious; (2) retrieve a sack from their yard; (3) place the victim inside

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[21] *People v. Paingin*, *supra* note 1 at 530.

[22] *Id*. at 530.

[23] *Id*.

the sack; and (4) carry him to their yard. Clearly, the acts of appellants of hitting the victim until he was unconscious, of putting him inside the sack, and of carrying him to their yard showed their intention to immobilize the victim and deprive him of his liberty. Thus, contrary to the claim of appellants, the element of restraint was clearly established. As aptly pointed out by the CA, "[a]ctual restraint of the victim was evident from the moment appellants clubbed the victim on the neck and other parts of his body and thereafter placed him inside a sack. Not only was [the victim's]freedom of movement restricted, he was immobilized because the blows rendered him unconscious. Putting him inside the sack completely rendered the victim powerless to resist."[24]

Minor inconsistencies do not affect the credibility and veracity of the testimony of the prosecution's witness.

Appellants' attempt to discredit the credibility of the prosecution's eyewitness must likewise fail.

Discrepancies or inconsistencies in the testimonies of the witnesses pertaining to minor details, not touching upon the central fact of the crime, do not impair the credibility of the witnesses; on the contrary, they even tend to strengthen the credibility of the witnesses since they discount the possibility of witnesses being rehearsed.[25] In this case, discrepancies or inconsistencies in the testimony of Ernesto, vis-à-vis the testimony of Rachelle pertaining to minor details that have no bearing on the elements of the crime, do not affect the veracity and credibility of Ernesto's positive testimony, who had no ill motive to testify against appellants. As the Court has consistently ruled, "the positive identification of the appellants, when categorical and consistent and without any [ill motive] on the part of the [eyewitness] testifying on the matter, prevails over alibi and denial."[26]

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[24] *Rollo*, pp. 6-7.

[25] *People v. Licayan*,765 Phil. 156, 183 (2015).

[26] *People v. Berdin*, 462 Phil. 290, 304 (2003).

All told, the Court affirms the factual findings of the RTC, as affirmed by the CA.However, in order to conform to prevailing jurisprudence,[27] the Court finds it necessary to increase the awards of civil indemnity and moral damages to ₱75,000.00 each, and award exemplary damages in the amount of ₱75,000.00 to set an example for the public good.In addition, all damages awarded shall earn legal interest at the rate of 6% *per annum* from the date of finality of judgment until fully paid.

WHEREFORE, the appeal is **DISMISSED**. The March 31, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 06418, which affirmed the July 31, 2013 Decision of the Regional Trial Court of Alaminos City, Pangasinan, Branch 55, in Criminal Case No. 4755-A, finding appellants **GUILTY** beyond reasonable doubt of the crime of Kidnapping and Serious Illegal Detention, as defined and penalized under Article 267 of the Revised Penal Code, is **AFFIRMED** with **MODIFICATIONS** that the awards of civil indemnity and moral damages be increased to ₱75,000.00 each and that exemplary damages in the amount of ₱75,000.00 be awarded. In addition, the damages awarded shall earn interest at the rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo,[*] and *Reyes, J. Jr.,*[**] *JJ.,* concur.

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[27] *People v. Jugueta*, 783 Phil. 806, 848 (2016).

[*] Per Special Order No. 2607 dated October 10, 2018.

[**] Designated Additional Member per November 28, 2018 raffle vice *J.* Tijam who recused due to prior participation before the Court of Appeals.

SECOND DIVISION

[G.R. No. 227021. December 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CHRISTOPHER ILAGAN *y* BAÑA *alias* "WENG",** *accused-appellant.*

SYLLABUS

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

2. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; THE RULE IS IMPERATIVE, AS IT IS ESSENTIAL THAT THE PROHIBITED DRUG CONFISCATED AND RECOVERED FROM THE SUSPECT IS THE VERY SAME SUBSTANCE OFFERED IN COURT AS EXHIBIT AND THAT THE IDENTITY OF THE SAID DRUG IS ESTABLISHED WITH THE SAME UNWAVERING EXACTITUDE AS THAT REQUISITE 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 requisite to make a finding of guilt.

3. ID.; ID.; ID.; ID.; SECTION 21 OF R.A. 9165 LAID DOWN THE PROCEDURE THAT POLICE OPERATIVES MUST FOLLOW TO MAINTAIN THE INTEGRITY OF THE CONFISCATED DRUGS USED AS EVIDENCE; REQUIREMENTS, EXPLAINED.— x x x 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. 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." As stated, Section 21 of RA 9165 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. 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 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.

4. ID.; ID.; ID.; ID.; FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID; CONDITIONS REQUIRED.— 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.

5. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY; 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 WHEN THE LAPSES THEMSELVES ARE THE AFFIRMATIVE PROOFS OF IRREGULARITY; CASE AT BAR.— 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. 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. x x x The Court has ruled in *People v. Zheng Bai Hui* that it will not presume to set an *a priori* basis on 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 its 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 resulted in glaring gaps in the chain of custody thereby casting doubt on whether the dangerous drugs allegedly seized from accused-appellant Christopher were the same drugs brought to the crime laboratory and eventually offered in court as evidence.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Balderama & Dalawampu 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 January 26, 2016 of the Court

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[1] See Notice of Appeal dated February 10, 2016; *rollo,* pp. 19-21.

[2] *Rollo,* pp. 2-18. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Henri Jean Paul B. Inting concurring.

of Appeals, Seventeenth Division (CA) in CA-G.R. CR-HC No. 06786, which affirmed the Judgment[3] dated January 23, 2014 rendered by the Regional Trial Court of Batangas City, Branch 84(RTC) in Criminal Case No. 17648, which found herein accused-appellant Christopher Ilagan y Baña alias "Weng" (accused-appellant Christopher)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," as amended.

The Facts

The Information[5] filed against accused-appellant Christopher for violation of Section 5, Article II of RA 9165, pertinently reads:

> That on or about the 11th day of September, 2012, at about 5:20 o'clock in the afternoon, at Poblacion 3, Municipality of San Jose, Province of Batangas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law, did then and there willfully and unlawfully sell, deliver and give away three (3) heat-sealed transparent plastic sachets, each containing dried marijuana fruiting tops, having a total weight of 3.20 grams, a dangerous drug.
>
> Contrary to law.[6]

Version of the Prosecution

The version of the prosecution, as summarized by the RTC, is as follows:

> At around 5:00 o'clock in the afternoon of September 11, 2012, a civilian asset went to the San Jose Municipal Police Station and

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[3] CA *rollo,* pp. 49-58. Penned by Presiding Judge Dorcas P. Ferriols-Perez.

[4] 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).

[5] Records, pp. 1-2.

[6] *Id*.

reported to SPO1 Flores and PO2 Mitra that there is a certain "Weng", a helper of the Juennesse Flower Shop, who is engaged in the selling *marijuana.* SPO1 Flores and PO2 Mitra informed their Chief, PCI Eduard Padilla Mallo, who immediately instructed them to prepare for a buy-bust operation. SPO1 Flores prepared the coordination report for the PDEA although the same was sent and received by the PDEA Calamba only at 8:30 in the evening because the police station has no long distance line. They also prepared two (2) pieces of One Hundred Peso (₱100) bill with serial numbers AG790598 and CN548140. SPO1 Flores who was also the duty desk officer recorded in Entry No. 9261 of the police blotter (Exhibit "N") the buy-bust operation to be made and their departure.

Thereafter, SPO1 Flores, PO2 Mitra and the civilian asset proceeded to Poblacion 3, San Jose, Batangas on board a private vehicle, a Toyota Corolla. When their civilian asset pointed to the Juennesse Flower Shop, SPO1 Flores parked the car approximately four (4) meters away from it. PO2 Mitra and the civilian asset alighted while SPO1 Flores was left inside the vehicle. Since the front portion of the establishment is covered with glass, SPO1 Flores can easily see the inside portion of the flower shop. When PO2 Mitra and the civilian asset entered the flower shop, the only person inside was "Weng" who at that time was lying on a chair. The asset told the latter that his companion will buy *marijuana* and upon hearing the same, "Weng" immediately stood up. PO2 Mitra was just beside the asset while they were talking to "Weng". PO2 Mitra then gave the Two One Hundred Peso Bills amounting to Two Hundred Pesos (Php200) to the asset and at that moment, "Weng" brought out from his right pocket three (3) pieces of heat sealed sachet containing suspected *marijuana*. PO2 Mitra gave the money to the civilian asset who handed it to "Weng". After receiving the money, "Weng" gave to PO2 Mitra the suspected *marijuana.* As a pre-arranged signal, PO2 Mitra scratched his nape to inform SPO1 Flores that he already bought *marijuana*. When SPO1 Flores saw the pre-arranged signal, he immediately entered the shop and help (*sic*)PO2 Mitra in arresting the pusher. They informed the pusher, who identified himself as herein accused Christopher Ilagan y Baña, of his constitutional rights. When they frisked the accused, PO2 Mitra found the two (2) pieces of One Hundred Peso bills.

Afterwards, the policemen brought the Accused (*sic*) to the barangay hall of Brgy. 3, San Jose, Batangas. In the presence of the Brgy. Captain Modesto Kalalo and media representative Mr. Lito Rendora,

they conducted the inventory of the confiscated items. PO2 Mitra marked the three (3) sachets containing suspected *marijuana* with markings "ROM-1", "ROM-2" and "ROM-3" (Exhibits "I", "J", and "K") and the two (2) One Hundred Peso bills with markings "ROM-4" and "ROM-5" (Exhibits "G" and "G-1"). Photographs were taken during the inventory at the barangay hall (Exhibits "F" to "F-4"). Thereafter, they went back to the police station. PO2 Mitra was in custody of the confiscated items from the time of the arrest and while they were going back to the police station. Upon arrival, SPO1 Flores recorded in the police blotter the result of the buy-bust operation as Entry No. 9262 (Exhibit "N-1").

At around 8:00 o'clock in the evening of that day, SPO1 Flores and PO2 Mitra brought to the Batangas Provincial Crime Laboratory Office the three (3) sachets of *marijuana* (Exhibits "I", "J", and "K") with the request for laboratory examination (Exhibit "C"). The letter request and the specimen were received by PO1 Bereña as reflected in the stamp-marked portion of the letter request. Entries were then placed on the chain of custody form (Exhibit "M"). Thereafter the police officers went back to the police station and placed the accused on (*sic*) jail. They executed their sworn statements (Exhibit "A") in connection with (*sic*) arrest of the accused.[7]

Version of the Defense

On the other hand, the defense's version, as summarized by the RTC, is as follows:

At around 5:00 o'clock in the afternoon of September 11,2012, Christopher Ilagan working as a flower arranger, was inside the Jeunnesse Flower Shop, arranging flowers for delivery to Seven Eleven Store. While he was working, three (3) police officers, one in civilian clothes and two in uniform, entered the flower shop. The police held his hands and cuffed him. They forced him to board the mobile patrol and brought him to the police station. Police Officers Nelson Flores and Raffy Mitra forced him to sign a document (Receipt of Property Seized) (Exhibit "D). He refused to sign the document bearing his computer printed name because the *marijuana* stated therein was not taken from him. When he did not sign the paper, the police brought him to the house of the barangay captain and introduced him to the latter. They went to the barangay hall wherein pictures of him were taken.

[7] CA *rollo,* pp. 50-51.

Prior to his arrest, the accused worked in Jeunnesse flower shop for ten to eleven years already. He knew the three policemen because the old police station was just near the place. He did not ask why the police handcuffed him. He was then resisting, the reason why the police was forcing him to board the mobile patrol. At the time the police presented him to the barangay captain, he was not aware that he was already arrested by the police. He did not mention anything to the barangay captain while he was at the barangay hall and he does not remember anything that he has done wrong.

According to Brgy. Captain Modesto Kalalo, the police did not present any illegal drugs, such as *shabu* but he signed a document purported to be the Receipt of Property Seized (Exhibit "D"). Afterwards, the accused was brought back to the police station and put inside the jail (*sic*). When the police officers left the barangay hall, Brgy. Captain Modesto Kalalo called up the Chief of Police to inform him of the incident and to verify if the police really did bring the arrested person to the police station. He also recorded what happened that night in their barangay blotter (Exhibit "5").[8]

Ruling of the RTC

In the assailed Judgment[9] dated January 23, 2014, the RTC found Christopher guilty of the crime charged. The dispositive portion of the Judgment reads:

WHEREFORE, judgment is hereby rendered finding the accused, **CHRISTOPHER ILAGAN y BAÑA GUILTY** beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 (selling of dangerous drugs) and sentencing him to suffer the penalty of **LIFE IMPRISONMENT** and to pay a fine of **FIVE HUNDRED THOUSAND PESOS (PhP500,000.00)**.

x x x x x x x x x

SO ORDERED.[10]

The RTC ruled that the buy-bust operation is a legally effective and proven procedure sanctioned by law for apprehending drug

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[8] *Id*. at 52.

[9] *Id*. at 49-58.

[10] *Id*. at 58.

peddlers and distributors.[11] It also ruled that the prosecution was able to prove the elements of illegal sale of dangerous drugs.[12] Furthermore, the requirements of Section 21 of RA 9165 were duly complied with, thus, the prosecution was able to preserve the integrity and evidentiary value of the *marijuana* seized from the accused.[13]

Aggrieved, accused-appellant Christopher appealed to the CA.

Ruling of the CA

In the assailed Decision[14] dated January 26, 2016, the CA affirmed accused-appellant Christopher's conviction. The dispositive portion of the Decision reads:

> **WHEREFORE,** premises considered, the appeal is **DISMISSED**. The assailed Judgment dated January 23, 2014 of the Regional Trial Court (RTC) of Batangas City, Branch 84 in Criminal Case No. 17648 is **AFFIRMED**.
>
> **SO ORDERED**.[15]

The CA ruled that the prosecution was able to prove all the elements of illegal sale of *marijuana.*[16]It pointed out that accused-appellant Christopher was positively identified by PO2 Raffy Mitra (PO2 Mitra) and SPO1 Nelson V. Flores (SPO1 Flores).[17]It held that the discrepancies and minor inconsistencies in the testimonies of the witnesses referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair their credibility.[18] It likewise ruled that the integrity and identity of the seized *marijuana* were not compromised

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[11] *Id*. at 55.

[12] *Id*.

[13] *Id*. at 56.

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

[15] *Id*. at 16.

[16] *Id*. at 10.

[17] *Id*. at 10-12.

[18] *Id*. at 13.

because the buy-bust team was able to preserve the integrity and evidentiary value of the drugs seized.[19] It held that the failure of the police officers to mark the items seized from accused-appellant Christopher immediately upon their confiscation at the place of arrest does not automatically impair the integrity of the chain of custody and render the confiscated items inadmissible in evidence.[20] Lastly, it held that non-compliance with Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165 will not render an accused's arrest illegal or the items seized or confiscated from him inadmissible.[21]

Hence, the instant appeal.

Issue

Whether or not accused-appellant Christopher'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 Christopher as the prosecution utterly failed to prove that the buy-bust team complied with the mandatory requirements of Section 21 of RA 9165;thus resulting in its failure to prove his guilt beyond reasonable doubt.

Accused-appellant Christopher 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.[22]

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[19] See *id*. at 13-15.

[20] *Id*. at 14.

[21] *Id*. at 15.

[22] *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.[23] 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,[24] 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.[25] 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.[26]

In this connection, Section 21,[27] Article II of RA 9165, the applicable law at the time of the commission of the alleged

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

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

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

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

[27] 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:

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."[28]

As stated, Section 21 of RA 9165 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.

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

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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[.]

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

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.[29]

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 areproperly preserved.[30] The Court has repeatedly emphasized that the prosecution should explain the reasons behind the procedural lapses.[31]

In the present case, the buy-bust team committed several glaring 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

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[29] *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 10.

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

[31] *People v. Dela Victoria,* G.R. No. 233325, April 16, 2018, p. 6; *People v. Año,* G.R. No. 230070, March 14, 2018, p. 6; *People v. Crispo,* G.R. No. 230065, March 14, 2018, p. 8; *People v. Lumaya,* G.R. No. 231983, March 7, 2018, p. 8; *People v. Ramos,* G.R. No. 233744, February 28, 2018, p. 6; *People v. Magsano,* G.R. No. 231050, February 28, 2018, p. 7; *People v. Manansala,* G.R. No. 229092, February 21, 2018, p. 7; *People v. Miranda,* G.R. No. 229671, January 31, 2018, p. 7; *People v. Paz,* G.R. No. 229512, January 31, 2018, p. 9; *People v. Alvaro,* G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe,* 631 Phil. 51, 60 (2010).

and, consequently, reasonable doubt as to the guilt of accused-appellant Christopher.

The required witnesses were not present at the time of apprehension and seizure.

Here, none of the three required witnesses was present at the time of seizure and apprehension as they were only called to the police station for the conduct of the inventory. As PO2 Mitra, part of the apprehending team, himself testified:

Q: By the way, where were you when you placed those markings to these items?
A: At the barangay hall of Poblacion 3, ma'am.

Q: Who were present when you placed those markings?
A: Barangay Captain Modesto Kalalo, the media man Lito Rendora.

Q: Why did you not place the markings while you were still at the Jeunnesse Flower Shop?
A: Because we brought them to the barangay hall, so that it could be in the presence of the media.[32]

SPO1 Flores likewise testified that they did the marking in the barangay hall and it was only there that two of the required witnesses were present:

Q: **What happened when you arrived to the barangay hall?**
A: **When we arrived there, Barangay Captain Modesto Kalalo was already there and I remember that we waited for the arrival of Mr. Lito Rendora, the representative of the media, ma'am.**

Q: Why did you wait for the representative of the media?
A: Because he will be the one to sign in the inventory of the seized items, Ma'am.

Q: Do you have any DOJ representative?
A: I think, we don't have any DOJ representative at that time, Ma'am.

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[32] TSN, February 7, 2013, p.18.

Q: Why, Mr. witness?
A: We were not able to contact him at that time, Ma'am.

x x x x x x x x x

Q: Do you know why PO2 Mitra marked the items, the three (3) plastic sachets at the barangay hall and not at the place of the buy bust operation inside Jeunnesse Flower Shop?
A: He marked it there because we believe that the witnesses, the Brgy. Captain and the media representative should see the actual marking, Ma'am.[33]

Clearly, the buy-bust team failed to comply with the requirements of Section 21(1) of RA 9165.

First, no photographs of the seized drugs were taken at the place of seizure. Even if there were photographs taken at the barangay hall, this is still not what the law contemplates as the photographing should be done at the place of apprehension, unless a justifiable reason to do it in some other place has been established.

Second, neither was the inventory and marking of the alleged seized items done at the place of apprehension. There was no justifiable ground offered by the prosecution on why the marking of the seized drugs was done in the barangay hall and not at the place of apprehension of accused-appellant Christopher.

Lastly, there was no compliance with the three-witness rule. Based on the narrations of the buy-bust team, not one of the witnesses required under Section 21 was present at the time the plastic sachets were allegedly seized from accused-appellant Christopher. The media representative and barangay captain were only present during the conduct of the inventory in the barangay hall. 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 viable or acceptable explanation for the police officers' deviation from the law.

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[33] TSN, November 29, 2012, pp. 17-18.

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,*[34] 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*,[35] 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.
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> 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.
>
> 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.

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

[35] 736 Phil. 749 (2014).

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".[36] (Emphasis, italics and underscoring in the original)

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. 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 supplied; emphasis in the original)

In this case, none of the abovementioned reasons is present. SPO1 Flores explained that the police officers conducted the

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

[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.

inventory and photographing of the seized drugs in the barangay hall merely because they said that the witnesses were there.[39] 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."

In addition, 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 **(1) recognize any lapses on the part of the police officers and (2) be able to justify the same.**[40] 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.[41]

Here, none of the requirements for the saving clause to be triggered is present. *First,* the prosecution did not concede that

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[39] TSN, November 29, 2012, p.18.

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

[41] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

there were lapses in the conduct of the buy-bust operation. *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.

The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, accused-appellant Christopher must perforce be acquitted.

The presumption of innocence of the accused vis-à-vis the presumption ofregularity in performance of official duties.

The right of the accused to be presumed innocent until proven guilty is a constitutionally protected right.[42] 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.[43]

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.[44] The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused.[45] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[46]

In this case, the presumption of regularity cannot stand because of the buy-bust team's blatant disregard of the established

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[42] 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[43] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[44] *People v. Mendoza*, *supra* note 35, at 770.

[45] *Id*.

[46] *Id*.

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,[47] the conduct of buy-bust operations requires the following:

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x x x x x x

V. SPECIFIC RULES

x x x x x x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

1. Buy-Bust Operation — in the conduct of buy-bust operation, the following are the procedures to be observed:

a. Record time of jump-off in unit's logbook;

b. Alertness and security shall at all times be observed[;]

c. Actual and timely coordination with the nearest PNP territorial units must be made;

d. Area security and dragnet or pursuit operation must be provided[;]

e. Use of necessary and reasonable force only in case of suspect's resistance[;]

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;

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[47] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

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*[48] that it will not presume to set an *a priori* basis on 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 its own operations manual.[49]

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[48] 393 Phil. 68, 133 (2000).

[49] *People v. Supat*, G.R. No. 217027, June 6, 2018, pp. 18-19.

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 resulted in glaring gaps in the chain of custody thereby casting doubt on whether the dangerous drugs allegedly seized from accused-appellant Christopher were the same drugs brought to the crime laboratory and eventually offered in court as evidence.

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 Christopher.

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 IRR, 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.[50]

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated January 26, 2016 of the Court

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[50] *People v. Otico*, G.R. No. 231133, p. 23, citing *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

of Appeals, Seventeenth Division in CA-G.R. CR-HC No. 06786 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant **Christopher Ilagan y Baña alias "Weng"** 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 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, S.A.J. (Chairperson), Perlas-Bernabe, Reyes, A. Jr., and *Carandang, JJ.,* concur.

FIRST DIVISION

[G.R. No. 230687. December 5, 2018]

ERLINDA S. IGOT, *petitioner, vs.* **PIO VALENZONA, FRANCISCO VALENZONA NUÑEZ, KATHERINE[*] VALENZONA RAMIREZ, all represented by ARTURO VALENZONA through Powers of Attorney, and SPS. ARTURO and AIDA VALENZONA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPELLATE JURISDICTION; APPELLATE COURT'S REVIEW IS

[*] Katherie in other parts of the records.

LIMITED TO ERRORS ASSIGNED AND PROPERLY ARGUED IN THE APPEAL BRIEF OR MEMORANDUM AND ERRORS NECESSARILY RELATED TO ASSIGNED ERRORS; EXCEPTIONS LAID DOWN BY JURISPRUDENCE, ENUMERATED.— Sec. 8 of Rule 51 provides that "[n]o error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceeding therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors." Furthermore, jurisprudence has laid down exceptions to the general rule limiting the scope of the appellate court's review to the errors assigned and properly argued in the appeal brief or memorandum and the errors necessarily related to such assigned errors. As held in *Catholic Bishop of Balanga v. CA*: True, the appealing party is legally required to indicate in his brief an assignment of errors, and only those assigned shall be considered by the appellate court in deciding the case. However, equally settled in jurisprudence is the exception to this general rule. x x x We have applied this rule, as a matter of exception, in the following instances: (1) Grounds not assigned as errors but affecting jurisdiction over the subject matter; (2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law; (3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice; (4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored; (5) Matters not assigned as errors on appeal but closely related to an error assigned; and (6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.

2. **ID.; ID.; ACTIONS; TWO CONCEPTS OF *RES JUDICATA*; BAR BY PRIOR JUDGMENT AND CONCLUSIVENESS OF JUDGMENT, DISTINGUISHED.—** Preliminarily, to understand more the concept of *res judicata*, We find it apt to quote the discussion in *SSC v. Rizal Poultry and Livestock Ass'n, Inc.*, to wit: *Res judicata* embraces two concepts: (I) bar by prior judgment as enunciated in Rule 39, Section 47(b) of the

Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47(c). There is bar by prior judgment when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action. But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as conclusiveness of judgment.

3. ID.; ID.; ID.; *RES JUDICATA*; ELEMENTS.— The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a bar by prior judgment would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as conclusiveness of judgment applies. x x x Absolute identity of parties is not required but only substantial identity, and there is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case. A shared identity of interest is sufficient to invoke the coverage of the principle of *res judicata*. x x x As regards identity of causes of action, the test often used in determining whether causes of action are identical is to ascertain whether the same evidence which is necessary to sustain the second action would have been sufficient to authorize a recovery in the first, even if the forms or nature of the two actions be different. If the same facts or evidence would sustain both actions, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not.

APPEARANCES OF COUNSEL

Lloyd P. Surigao for petitioner.
Jasper M. Lucero for respondents.

D E C I S I O N

TIJAM, *J.*:

For resolution by the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated November 2, 2016 and Resolution[2] dated February 16, 2017 of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 08483 which reversed the Decision[3] dated January 29, 2014 of the Regional Trial Court (RTC) of Palompon, Leyte in Civil Case No. R-PAL-13-0017-AC and reinstated the Decision[4] dated October 22, 2012 of the Municipal Trial Court (MTC). The MTC in the said Decision ordered the cancellation of Tax Declaration No. 02-31007-00107 in the name of Erlinda S. Igot (petitioner) and declared the Valenzonas (respondents) as the owners *pro-indiviso* of four-fifths (4/5) of Cadastral Lot No. 286, located at Taft Street, Ipil II, Poblacion, Palompon, Leyte, and petitioner as owner *pro-indiviso* of one-fifth (1/5) of the same.

The Factual Antecedents

On October 7, 2008, respondents filed a Complaint for Recovery of Possession, Ownership, Quieting of Title, Nullity of Tax Declarations and Resurvey Plan, and for Damages against petitioner and Elena Santome (Elena). Respondents alleged that their predecessors-in-interest, spouses Julian and Sotera

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[1] Penned by Associate Justice Germano Francisco D. Legaspi, with Executive Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap, concurring. *Rollo*, pp. 42-58.

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

[3] Penned by Executive Judge Mario O. Quinit. *Id*. at 97-112.

[4] Penned by Judge Delia P. Noel-Bertulfo. *Id*. at 83-95.

Valenzona (Spouses Valenzona) owned a parcel of land known as Cadastral Lot No. 286 (subject property),[5] with the following boundaries:

North : Cannelino Delgado — 289; 287
East : Leon Ginco — 325; 326
South : Anastacio London – 285
West : Taft St.[6]

Spouses Valenzona's children were: (1) Esperanza Valenzona (deceased), represented by Francisco Valenzona, (2) Purificacion Valenzona Ramirez (deceased), represented by Katherine Valenzona Ramirez, (3) Pio Valenzona, (4) Agapito Valenzona (deceased), and (5) Rodulfo Valenzona (deceased), represented by Arturo Valenzona (collectively referred to as respondents).[7]

Respondents alleged that the possession of the Spouses Valenzona of the subject property has been for more than 50 years.

In 1998, Elena, petitioner's mother, filed a complaint for recovery of ownership and possession with damages against Agapito Valenzona (Agapito) before the MTC of Palompon, Leyte, docketed as Civil Case No. 418. The other heirs of Julian were not impleaded. In the said case, Elena claimed ownership of the subject property alleging that her father, Gorgonio Santome (Gorgonio) acquired the subject property from Julian in 1929. The said case was decided in favor of Elena and was declared the lawful owner of the subject property.[8]

The MTC held that since the transfer of the property to Gorgonio in 1929 was never questioned by Julian, the same is presumed to be legal. Thus, the transfer of the tax declaration from Gorgonio's name to Julian in 1974 was illegal and invalid for having no documentary evidence to support the same.[9]

[5] *Id*. at 43-44.

[6] *Id*. at 44.

[7] *Id*.

[8] *Id*. at 45-46.

[9] *Id*. at 128-129.

Furthermore, Agapito cannot invoke good faith as Julian's successor-in-interest since he was the one who principally authored the transfer, and that the possession only became adverse for purposes of prescription only in 1974 when Agapito caused the transfer of the tax declaration to Julian's name,[10] to wit:

> Julian Valenzona was considered to have claimed the property in the concept of an owner, adverse, and notorious as against Elena Santome in 1974 when he caused, through his son, Agapito, the tax declaration of the property to be transferred in his name. The period of prescription should start from this year and should reach thirty years for the defendant to acquire the property as their possession of the property was not in good faith or supported by a just title.
>
> The case was filed in October, 1998. The defendant has been in possession of the property for no more than twenty-four years in the concept of an owner as against Elena Santome or six years short of the period prescribed by law on acquisitive prescription.
>
> Defendant Agapito cannot invoke good faith as successor-in-interest of Julian as it was he who principally caused the transfer of the tax declaration of the property to the name of his father without any document considered legal to convey real property.
>
> x x x x x x x x x[11]

The dispositive portion of the Decision in Civil Case No. 418 dated February 29, 2000 reads:

> WHEREFORE, all the foregoing premises considered, JUDGMENT is hereby rendered in the following manner:
>
> 1. DECLARING the plaintiff to be the legal owner of the real property in question;
> 2. ORDERING the defendant to vacate the land in question and to turn over the possession thereof to the plaintiff;
> 3. ORDERING the defendant to pay to the plaintiff the sum of ₱10,000.00 as moral damages, ₱10,000.00 as attorney's fees, and to pay the costs of the proceedings.

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[10] *Id*. at 130.

[11] *Id*.

SO ORDERED.[12]

The ruling of the MTC in Civil Case No. 418 was affirmed by the RTC and became final when Agapito failed to file an appeal therefrom.[13]

On the basis of such decision, respondents alleged that in 2004, Elena was able to cause the issuance of a tax declaration over the subject property, the execution of a resurvey plan which included Rodulfo's house and portions belonging to the respondents, and the demolition of Julian's ancestral house where Agapito lived. Due to these acts, respondents brought the matter to the barangay for possible conciliation. The proceedings before the barangay having failed, respondents filed a case before the MTC. The latter prayed that they be declared the rightful owners of the subject property and that the tax declarations and resurvey plan in Elena's name be nullified. They also prayed for moral and exemplary damages, litigation expenses, attorney's fees, and rentals for the unlawful occupation of some portions of the subject property.[14]

On the other hand, petitioner and Elena claimed that they are the real owners of the subject property, having inherited the same from Gorgonio. They asserted that in 1929, Gorgonio bought the subject property together with the house erected thereon from Julian as evidenced by a Transferor's Affidavit and a tax declaration in Gorgonio's name. Gorgonio occupied the subject property and paid real property taxes thereon through his caretaker, Julian.[15]

Petitioner and Elena also contended that the decision of the MTC in Civil Case No. 418 already declared Elena as the owner of the subject property and that the said decision already became final on June 20, 2001. To them, this decision already laid to

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[12] *Id*. at 131-132.

[13] *Id*. at 133-138.

[14] *Id*. at 45.

[15] *Id*. at 45-46.

rest the issue of ownership over the subject property. In the meantime, Elena sold the subject property to petitioner and the latter's husband on October 15, 2009.[16]

They also averred that the respondent Arturo, with his wife Aida, went to petitioner and Elena to ask for sufficient time to move and transfer to another house. When the latter refused, Arturo and Aida filed a complaint before the barangay. Petitioner and Elena alleged that during one of the proceedings before the barangay, the spouses Arturo and Aida admitted Elena and petitioner's ownership of the subject property and expressed willingness to vacate the same in exchange for ₱100,000.00 as reimbursement for the value of their house.[17]

Elena died on June 21, 2010.[18]

The Ruling of the MTC

In ruling in favor of the respondents, the MTC held that the complaint filed by the respondents was not barred by *res judicata* as the respondents were not parties in Civil Case No. 418.[19] On the merits of the case, the court held that Julian and his heirs have been in possession of the subject property for more than thirty (30) years in the concept of owners, and as such, they have acquired ownership of the same though prescription.[20]

The court also ruled that the other children of Julian (Rodulfo, Pio, Purificacion, and Esperanza) should have been impleaded in Civil Case No. 418 since their interest in the subject property was inextricably intertwined with that of Agapito. However, since the decision in Civil Case No. 418 had already attained finality, it will only bind the share of Agapito, which represents one-fifth (1/5) of the subject property. Since Agapito was the only child of Julian who was impleaded in the said case, the

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[16] *Id*. at 46.

[17] *Id*.

[18] *Id*. at 89.

[19] *Id*. at. 91-92.

[20] *Id*. at 94.

said decision cannot bind the other heirs of Julian who were not made parties thereto. Petitioner and Elena cannot acquire the entire subject property as they did not possess the same peacefully, publicly, openly, and notoriously in the concept of owners.[21]

The dispositive portion of the Decision dated October 22, 2012 reads:

> WHEREFORE, all the foregoing premises considered, JUDGMENT is hereby rendered in the following manner:
>
> 1. ANNULING Tax Declaration No. 02-31007-00107 in the name of Erlinda Santome-Igot; and
> 2. DECLARING the plaintiffs as the owners *pro-indiviso* of four-fifths (4/5) of the land in question and the defendant Erlinda Santome-Igot as owner pro-indiviso of one-fifth (1/5) of the land in question.
>
> No award of damages and costs.
>
> **SO ORDERED.**[22]

Petitioner's Motion for Reconsideration (MR) was denied in an Order[23] dated March 22, 2013.

The Ruling of the RTC

The RTC granted petitioner's appeal and reversed the MTC. In granting petitioner's appeal, the RTC found that Julian already sold the subject property to Gorgonio in 1929 as evidenced by an Affidavit of Transfer of Real Property executed by Julian himself. This transaction became the basis for the cancellation of the tax declaration in Julian's name and the issuance of a new tax declaration in Gorgonio's name. Since Julian no longer had ownership of the subject property during his lifetime, and he did not question the validity of the transfer to Gorgonio, his heirs cannot inherit the same from him through succession.[24]

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[21] *Id*.

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

[23] *Id*. at 96.

[24] *Id*. at 102.

On the basis of the foregoing, the RTC declared the petitioner and Elena as the lawful owners of the entire subject property and ordered the respondents to vacate the subject property and to pay reasonable rent reckoned from February 2003.[25] The dispositive portion of the Decision dated January 29, 2014 reads:

> WHEREFORE, premises considered, this Court finds merit on the appeal and the same is hereby GRANTED. Accordingly, the questioned Decision is hereby REVERSED and SET ASIDE and a new one is rendered as follows:
>
> 1. Declaring herein defendants-appellants Elena Santome, Erlinda Santome-Igot and their successors-in-interest as the LAWFUL OWNERS of the ENTIRE residential lot under Cadastral Lot No. 286 located at Taft Street, Ipil II, Poblacion, Palompon, Leyte which is the subject of this case;
> 2. Ordering herein plaintiffs-appellants spouses Arturo and Aida Valenzona to vacate the land in question;
> 3. Ordering herein plaintiffs-appellants spouses Arturo and Aida Valenzona to remove their house and other improvements thereon;
> 4. Ordering herein plaintiffs-appellants spouses Arturo and Aida Valenzona to pay herein defendants-appellants Elena Santome and Erlinda Santome-Igot rent at ₱800 per month from February 2003 until they vacate the premises;
> 5. Ordering herein plaintiffs-appellees to pay herein defendants-appellants attorney's fees in the amount of ₱20,000; and
> 6. Ordering herein plaintiffs-appellees to pay herein defendant-appellants the cost of the litigation.
>
> SO ORDERED.[26]

Respondents' Motion for Reconsideration was denied by the RTC in its Order dated May 12, 2014.[27] Aggrieved, they elevated the case to the CA on appeal.

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[25] *Id*. at 111.

[26] *Id*. at 112.

[27] *Id*. at 48.

The Ruling of the CA

The CA granted respondents' appeal and reversed the RTC Decision and reinstated the MTC Decision. The dispositive portion of the Decision dated November 2, 2016 reads:

> WHEREFORE, the instant appeal is GRANTED. The Decision dated January 29, 2014 of Branch 17 of the Regional Trial Court of Palompon, Leyte in Appealed Civil Case No. R-PAL-13-0017-AC is REVERSED and SET ASIDE. The 22 October 2012 Decision of the Municipal Trial Court of Palompon, Leyte in Civil Case No. 474 is REINSTATED.
>
> SO ORDERED.[28]

Petitioner's MR was denied by the CA in a Resolution[29] dated February 16, 2017.

Hence, the present Petition for Review on *Certiorari* before this Court, raising the following issues and assignment of errors:

ISSUES

I
WHETHER OR NOT THE FRAUDULENT TRANSFER OF THE SUBJECT PROPERTY IN 1974, FROM GORGONIO SANTOME TO JULIAN VALENZONA, MADE BY JULIAN'S SON, AGAPITO VALENZONA, WOULD BENEFIT THE OTHER HEIRS OF JULIAN;

II
WHETHER OR NOT RESPONDENT'S POSSESSION OF THE SUBJECT PROPERTY WAS IN CONCEPT OF AN OWNER;

III
WHETHER OR NOT RESPONDENTS ARE REAL PARTIES-IN-INTEREST;

IV
WHETHER OR NOT ACQUISITIVE PRESCRIPTION OPERATES IN FAVOR OF RESPONDENTS;

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

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

V
WHETHER OR NOT PETITIONER'S ACTION TO RECOVER THE SUBJECT PROPERTY IS BARRED BY PRESCRIPTION; AND

VI
WHETHER OR NOT PETITIONER IS GUILTY OF LACHES.

Assignment of Errors

I
THE HONORABLE COURT OF APPEALS, WITH ALL DUE RESPECT, GRAVELY ERRED IN CONCLUDING THAT IT WAS JULIAN VALENZONA WHO WAS RESPONSIBLE FOR THE FRAUDULENT TRANSFER IN 1974, WHEN AT THAT TIME, JULIAN WAS ALREADY DEAD. IT WAS HIS SON, AGAPITO, WHO DID THE FRAUDULENT TRANSFER.

II
THE HONORABLE COURT GRAVELY ERRED IN CONCLUDING THAT HEREIN RESPONDENT'S OCCUPATION AND POSSESSION OF THE SUBJECT PROPERTY WAS OPEN, ADVERSE, AND CONTINUOUS; AND THAT IT WAS IN THE CONCEPT OF AN OWNER;

III
THE HONORABLE COURT, WITH ALL DUE RESPECT, ERRED IN DECLARING THAT HEREIN RESPONDENTS ARE REAL-PARTIES-IN-INTEREST IN CIVIL CASE NO. 418; AND THAT NOT BEING IMPLEADED THEREIN, THE DECISION, THOUGH FINAL AND EXECUTORY, DOES NOT BIND THEM;

IV
IN RULING THAT ACQUISITIVE PRESCRIPTION OPERATES IN FAVOR OF THE RESPONDENTS;

V
IN DECLARING THAT HEREIN PETITIONER'S ACTION TO RECOVER THE SUBJECT PROPERTY IS BARRED BY PRESCRIPTION; THAT THEY ARE LIKEWISE GUILTY OF LACHES.[30]

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[30] *Id*. at 19-20.

The Ruling of the Court

The Court grants the petition.

There is no longer any question that in a previous case (Civil Case No. 418), Elena was declared to be the owner of the property subject of the present case, and such decision has attained finality. This Court deems it necessary to discuss the implication of the said decision to the case at bar.

It is true that only the MTC tackled the issue of *res judicata* and ruled that it did not apply since there was no identity of parties between Civil Case No. 418 and the present case. When petitioner filed her appeal from the judgment of the MTC, she did not assign the fact that the MTC ruled that *res judicata* does not apply as an error.[31] Neither did respondents raise the same before the CA.[32] Despite this, We find that the CA had ample authority to rule on the issue despite not being raised by petitioner.

Sec. 8 of Rule 51 provides that "[n]o error which does not affect the jurisdiction over the subject matter or the validity of the judgment appealed from or the proceeding therein will be considered unless stated in the assignment of errors, or closely related to or dependent on an assigned error and properly argued in the brief, save as the court may pass upon plain errors and clerical errors." Furthermore, jurisprudence has laid down exceptions to the general rule limiting the scope of the appellate court's review to the errors assigned and properly argued in the appeal brief or memorandum and the errors necessarily related to such assigned errors. As held in *Catholic Bishop of Balanga v. CA*:[33]

> True, the appealing party is legally required to indicate in his brief an assignment of errors, and only those assigned shall be considered by the appellate court in deciding the case. However, equally settled in jurisprudence is the exception to this general rule.

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

[32] *Id*. at 49.

[33] 332 Phil. 206 (1996).

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Guided by the foregoing precepts, we have ruled in a number of cases that the appellate court is accorded a broad discretionary power to waive the lack of proper assignment of errors and to consider errors not assigned. It is clothed with ample authority to review rulings even if they are not assigned as errors in the appeal. Inasmuch as the Court of Appeals may consider grounds other than those touched upon in the decision of the trial court and uphold the same on the basis of such other grounds, the Court of Appeals may, with no less authority, reverse the decision of the trial court on the basis of grounds other than those raised as errors on appeal. We have applied this rule, as a matter of exception, in the following instances:

(1) Grounds not assigned as errors but affecting jurisdiction over the subject matter;

(2) Matters not assigned as errors on appeal but are evidently plain or clerical errors within contemplation of law;

(3) Matters not assigned as errors on appeal but consideration of which is necessary in arriving at a just decision and complete resolution of the case or to serve the interest of justice or to avoid dispensing piecemeal justice;

(4) Matters not specifically assigned as errors on appeal but raised in the trial court and are matters of record having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored;

(5) Matters not assigned as errors on appeal but closely related to an error assigned; and

(6) Matters not assigned as errors on appeal but upon which the determination of a question properly assigned, is dependent.[34] (Citations omitted)

We find that the CA could have properly discussed whether *res judicata* applies in the present case even though it was not explicitly raised in the respondents' assignment of errors. The same falls under the exception, as it is a matter not specifically assigned but raised in the trial court and is a matter of record,

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[34] *Id.* at 216-217.

having some bearing on the issue submitted which the parties failed to raise or which the lower court ignored. This is bolstered by the fact that the CA, in its recital of the factual antecedents of this case, took note of petitioner's contention that the decision in Civil Case No. 418 already put to rest the issue of ownership over the subject property.[35] On the other hand, We also find that the issue of whether Civil Case No. 418 constitutes *res judicata* to the case at bar is a matter which is closely related to one of the assigned errors within the contemplation of Sec. 8, Rule 51 insofar as the present petition before this Court is concerned.

Civil Case No. 418 as res judicata

Preliminarily, to understand more the concept of *res judicata*, We find it apt to quote the discussion in *SSC v. Rizal Poultry and Livestock Ass'n, Inc.*,[36] to wit:

> *Res judicata* embraces two concepts: (I) bar by prior judgment as enunciated in Rule 39, Section 47(b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Section 47(c).
>
> There is bar by prior judgment when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action. In this instance, the judgment in the first case constitutes an absolute bar to the second action.
>
> But where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein. This is the concept of *res judicata* known as conclusiveness of judgment. Stated differently, any right, fact or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which judgment is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies, whether or not the

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[35] *Rollo*, p. 46.

[36] 665 Phil. 198 (2011).

claim, demand, purpose, or subject matter of the two actions is the same.

Thus, if a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit. Identity of cause of action is not required but merely identity of issue.

The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action. Should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a bar by prior judgment would apply. If as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as conclusiveness of judgment applies.[37] (Citations omitted)

It is not disputed that the decision in Civil Case No. 418 had already attained finality. Neither is the jurisdiction of the MTC of Palompon, Leyte over Civil Case No. 418 disputed, as it involved a complaint for recovery of ownership and possession of real property the assessed value of which does not exceed ₱20,000.00.[38] It is also not disputed that both the present case

[37] *Id*. at 206-206.

[38] The assessed value of the subject property in Civil Case No. 418 was ₱4,220, based on the Tax Declaration No. 6413 in the name of Gorgonio Santome. Sec. 33(3) of B.P. Blg. 129 provides:

Section 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases.* — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:, x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of x x x real property, or any interest therein where the assessed value of the property or interest therein does not exceed Twenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs. x x x.

and Civil Case No. 418 involved the same subject matter, which is the subject property.

Identity of Parties

Admittedly, the respondents in the present case were not impleaded as parties in Civil Case No. 418. However, We find that Elena was correct in not impleading the other heirs of Julian considering that it was only Agapito who claims the subject property adversely against Gorgonio, and as far as she was concerned, her father Gorgonio owned the subject property and not Julian. In fact, in the decision in Civil Case No. 418, the MTC noted that Agapito claimed to be the owner of the subject property by way of inheritance from Julian.[39] Nevertheless, this does not preclude a finding that there is identity of parties in the present case and in Civil Case No. 418.

Absolute identity of parties is not required but only substantial identity,[40] and there is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case, even if the latter was not impleaded in the first case.[41] A shared identity of interest is sufficient to invoke the coverage of the principle of *res judicata*.[42] In Civil Case No. 418, Agapito claimed ownership of the subject property as an heir of Julian. In the present case, the respondents claim ownership over the subject property by virtue of acquisitive prescription as successors-in-interest of Julian. As held by the CA, both Agapito and the respondents have the same claim of ownership as heirs of Julian.[43]

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[39] *Rollo*, p. 126.

[40] *SSC v. Rizal Poultry and Liveslock Ass'n., Inc., supra*, at 207, citing *Development Bank of the Philippines v. Court of Appeals*, 409 Phil. 717, 731 (2001).

[41] *Id*. citing *Santos v. Heirs of Dominga Lustre*, 583 Phil. 118, 127 (2008).

[42] *Carlet v. Court of Appeals*, 341 Phil. 99, 109 (1997), citing *Javier v. Veridiano II*, 307 Phil. 583 (1994).

[43] *Rollo*, p. 51.

Identity of Causes of Action

As regards identity of causes of action, the test often used in determining whether causes of action are identical is to ascertain whether the same evidence which is necessary to sustain the second action would have been sufficient to authorize a recovery in the first, even if the forms or nature of the two actions be different. If the same facts or evidence would sustain both actions, the two actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not.[44]

The Court finds that there is identity of causes of action in Civil Case No. 418 and in the present case. In Civil Case No. 418, Elena sought the recovery of ownership and possession of the subject property from Agapito. In the present case, the respondents filed the present action against Elena and the petitioner after the latter entered the subject property by virtue of the decision in Civil Case No. 418 on the basis of their claim of ownership of the subject property by acquisitive prescription. In both cases, Elena and petitioner claimed ownership through Gorgonio whom they claimed as having acquired the subject property from Julian. On the other hand, both Agapito and the respondents are claiming ownership of the same as heirs of Julian.

It is noteworthy to mention that the present case bears a close resemblance to the case of *Sendon v. Ruiz*.[45] In that case, Isaac Sendon (Sendon) filed Civil Case No. 1800 against Narciso Onas (Onas) for recovery of ownership and possession of land, with the said case eventually being decided in favor of Onas. Prior thereto, Onas was already adjudged owner of said lot in an earlier decision on August 22, 1949 rendered by the former Court of First Instance of Capiz in Civil Case No. 1800, the petitioners in *Sendon*, who were Isaac's siblings, nephew, and niece, refused to vacate the land, and then filed a complaint

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[44] *Carlet v. Court of Appeals, supra*, at 110, citing *Nabus v. CA*, 271 Phil. 768, 782 (1991).

[45] 415 Phil. 376 (2001).

for quieting of title against the Provincial Sheriff of Aklan and Onas' successors-in-interest.

The RTC dismissed Civil Case No. 3670 on the ground of *res judicata*, a ruling which was affirmed by the CA. When the said case reached this Court, We sustained the lower courts and ruled that all the requisites of *res judicata* were present so as to bar the action of the petitioners in *Sendon* upon finding that the parcel of land litigated in Civil Cases No. 1800, K-111 and the action filed by the petitioners were the same, and that there was substantial identity of parties in the three cases, to wit:

> We also concur with the lower courts view that there is identity of parties in Civil Case No. 1800 / Civil Case No. K-111 and in the present case, Civil Case No. 3670. For purposes of *res judicata*, we have held that only substantial identity of parties is required and not absolute identity. There is substantial identity of parties when there is community of interest between a party in the first case and a party in the second case even if the latter was not impleaded in the first case. In other words, privity or a shared identity of interest is sufficient to invoke application of the principle of *res judicata*.
>
> In the present case, petitioners are suing for the title of the same lot and in the same capacity as did their brother Isaac Sendon in Civil Case No. 1800. Although strictly speaking, the petitioners here were not made parties to the prior case, Civil Case No. 1800, their alleged ownership of Lot No. 1113 is also predicated upon their perceived right as heirs of Segundina Nape married to Catalino Sendon. Their claim to ownership of Lot No. 1113 had been laid to rest in Civil Case No. K-111. Since the rights asserted by petitioners in this case are founded upon the same interests which Isaac Sendon and their predecessor had failed to vindicate in the previous cases, Civil Case No. 1800 and Civil Case No. K-111, the present petitioners are legally bound by the prior judgments. They should not be allowed in Civil Case No. 3670 to re-litigate the very same issues already passed upon and decided in the aforecited cases.[46] (Citations omitted)

In sum, the present action should have been dismissed by the MTC on the basis of *res judicata*. It should not have ruled that *res judicata* did not apply for the expedient reason that the

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[46] *Id.* at 384-385.

respondents were not impleaded as parties in Civil Case No. 418, when case law does not even require absolute identity of parties but only substantial identity. On the other hand, the CA regrettably was silent on this point despite the fact that it had ample authority to consider whether *res judicata* applied even though it was not raised on appeal, considering that the decision in Civil Case No. 418 played a significant role in the rendition of its ruling.

Moreover, We find it highly erroneous to declare the petitioner as the *pro-indiviso* owner of one-fifth (1/5) of the subject property — by virtue of the decision in Civil Case No. 418 — and the respondents as owners of four-fifths (4/5) thereof. This presupposes that Julian owned the subject property which he can validly transmit to his heirs by succession, or at the very least, his possession thereof was in the concept of an owner, both of which are not the case at hand. Furthermore, to sustain this position adopted by the MTC and the CA in the present case would be in derogation of the immutability of final judgments. As stated in *Manning International Corporation v. NLRC, et al.*:[47]

> Now, nothing is more settled in the law than that when a final judgment becomes executory, it thereby becomes immutable and unalterable. The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the Court rendering it or by the highest Court of the land. The only recognized exceptions are the correction of clerical errors or the making of so-called *nunc pro tunc* entries which cause no prejudice to any party, and, of course, where the judgment is void. x x x[48] (Citations omitted)

This Court finds that none of the aforementioned exceptions apply to Civil Case No. 418.

Considering that the instant case is already barred by *res judicata*, We find it no longer necessary to dwell on other issues raised by the parties in this case.

[47] 272-A Phil. 114 (1991).

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

In view of all the foregoing discussion, a reversal of the challenged rulings of the CA is in order, and the Court hereby reinstates the Decision of the RTC. We find the award of attorney's fees by the RTC to be sufficiently justified considering that despite the favorable decision obtained by Elena in Civil Case No. 418, she and petitioner were still compelled to litigate and engage the services of counsel when they merely exercised their rights as adjudged owners of the subject property, to wit:

> To recall, it was herein defendant-appellee Erlinda who first lodged a complaint at the barangay against spouses Agapito [sic] and Aida. In her complaint, Erlinda wanted the spouses to vacate the premises on the strength of the favorable judgment her mother obtained in Civil Case No. 418. While the complaint was still pending consideration, the spouses filed a complaint against Erlinda in the very same forum involving the very same subject land. As the matter was not settled, herein plaintiffs-appellees filed a case against herein defendants-appellants in the RTC but the same was dismissed for lack of jurisdiction. The case was filed in the MTC of Palompon docketed as Civil Case No. 474 whose decision is now under review.
>
> The act of herein plaintiffs-appellees in filing cases against herein defendants-appellants despite the favorable decision in Civil Case No. 418 constrained the latter to litigate in order to protect their interest. In so doing, herein defendants-appellants engaged the services of a lawyer to whom they paid ₱20,000 and incurred litigation expenses in the amount of ₱10,000.[49]

We also affirm the award of reasonable rent of ₱800 per month reckoned from February 2003, the date of Elena's last demand to vacate. In addition, said amounts shall earn legal interest of six percent (6%) *per annum* from finality of this Decision until full payment thereof, in accordance with the Court's pronouncement in *Nacar v. Gallery Frames, et al.*[50]

WHEREFORE, the petition is **GRANTED**. The Decision dated November 2, 2016 and Resolution dated February 16, 2017 of the Court of Appeals in CA-G.R. CEB-SP No. 08483

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[49] *Rollo*, p. 111.

[50] 716 Phil. 267 (2013).

are hereby **REVERSED** and **SET ASIDE**. The Decision dated January 29, 2014 of the Regional Trial Court (RTC) of Palompon, Leyte in Civil Case No. R-PAL-13-0017-AC is hereby **REINSTATED** with the **MODIFICATION** that the total of the monetary awards made thereof shall earn legal interest of six percent (6%) *per annum* from finality of this Decision until full payment thereof.

SO ORDERED.

Bersamin, C.J. (Chairperson), del Castillo, Jardeleza, and *Gesmundo, JJ.*, concur.

SPECIAL FIRST DIVISION

[G.R. Nos. 232197-98. December 5, 2018]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **HONORABLE SANDIGANBAYAN [FOURTH DIVISION], ALEJANDRO E. GAMOS, and ROSALYN G. GILE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO A SPEEDY DISPOSITION OF CASES; VIOLATED WHEN THE PROSECUTION COMMITTED UNDUE DELAY IN THE CONDUCT OF THE PRELIMINARY INVESTIGATION.— A second hard look at the sequence of events reveals that the Sandiganbayan did not err in finding undue delay in the OMB's conduct of the preliminary investigation. Indeed, while there may be no gap in the sequence of events and developments in the preliminary investigation that may be considered as delays in the conduct thereof, a wholistic view of the entire preliminary investigation would disclose certain shortcomings on the part of the OMB, resulting undue delays in the proceedings, which,

as correctly found by the Sandiganbayan, were not satisfactorily explained by the prosecution. Clearly, the filing of a motion for reconsideration should not have stalled the OMB's duty to promptly file the Informations in court upon its finding of probable cause. In fact, Section 7(a) above-cited provides that a leave of court is necessary before a motion for reconsideration is given due course where an information has been already filed in court, implying that an information may be filed in court immediately after an approved order of resolution. Thus, we find no justifiable reason for the OMB to delay the filing of the Informations before the Sandiganbayan after it has already determined the existence of probable cause. Indeed, these unexplained and unreasonable institutional delays cannot impinge on the citizens' fundamental rights. No less than our Constitution guarantees all persons the right to speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; DOUBLE JEOPARDY; ELEMENTS; ESTABLISHED IN CASE AT BAR.— As we have explained in our assailed Decision, "double jeopardy attaches only when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) he/she is convicted or acquitted, or the case is dismissed without his/her consent." The first and second elements are undisputed. As to the third element, again, in our assailed Decision, the Court was misled by the petitioner's assertion in its petition that respondents were not yet arraigned due to their refusal to appear therein. It appears, however, in this motion that respondents have already been arraigned, satisfying thus the third element. What is crucial, however, is the fourth element since the criminal cases were clearly dismissed at the instance of the respondents and the *general rule* is that the dismissal of a criminal case resulting in acquittal, made with the express consent of the accused or upon his own motion, will not place the accused in double jeopardy. This rule, however, admits of two exceptions, namely: insufficiency of evidence and denial of the right to speedy trial or disposition of case. Thus, indeed respondents were the ones who filed the motion to dismiss the criminal cases before the Sandiganbayan, the dismissal thereof was due to the violation of their right to speedy disposition, which would thus put them in double jeopardy should the charges against them be revived.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Office of the Special Prosecutor for Sandiganbayan.
Barroga Salindong Fontanilla & Associates for private respondents.

D E C I S I O N

TIJAM, *J.*:

This resolves respondents Alejandro E. Gamos and Rosalyn G. Gile's Motion for Reconsideration[1] dated July 18, 2018 of our Decision[2] dated April 16, 2018, wherein we reversed and set aside the Resolutions dated February 1, 2017[3] and April 26, 2017[4] of the Sandiganbayan in SB-15-CRM-0090 and SB-15-CRM-0091.

In the said motion, respondents pray that the above-cited Decision be reconsidered, insisting that their right to speedy disposition was violated due to the undue delay in the preliminary investigation before the Office of the Ombudsman (OMB). The motion also clarified that, contrary to petitioner's assertion in its petition[5] that respondents were not yet arraigned due to their refusal to appear therein, they have already been arraigned, as evidenced by a Certificate of Arraignment[6] dated January 27, 2016 attached in the instant motion. Hence, respondents argue that their right against double jeopardy was also violated with the reinstatement of the criminal cases against them.

Such paramount considerations merit a second look at the facts of the case and the various arguments propounded by the parties.

[1] *Rollo*, pp. 382-395.

[2] *Id*. at 369-381.

[3] *Id*. at 49-53.

[4] *Id*. at 55-59.

[5] *Id*. at 13.

[6] *Id*. at 397.

The factual backdrop of the case, as synthesized by this Court in its April 16, 2018 Decision, are as follows:

Two separate complaints were filed against former Sta. Magdalena, Sorsogon Mayor Alejandro E. Gamos (Gamos), Municipal Accountant Rosalyn E. Gile (Gile), and Municipal Treasurer Virginia E. Laco (Laco) for violation of Section 3(e) of Republic Act No. 3019 (First Complaint) and of Article 217 of the Revised Penal Code (Second Complaint), arising from alleged illegal cash advances made in the years 2004 to 2007.

The First Complaint was filed on February 18, 2008 before the Deputy Ombudsman (OMB) for Luzon by Jocelyn B. Gallanosa (Gallanosa) and Joselito G. Robillos (Robillos), then Sangguniang Bayan Members, alleging that Gamos, in conspiracy with Gile and Laco, made illegal cash advances in the total amount of ₱6,380,725.84 in 2004 and 2006 as per Commission on Audit (COA) Audit Observation Memorandum (AOM) No. 2007-01 to 2007-06 dated September 18, 2007.

On March 31, 2008 Gamos, Gile, and Laco were directed to submit their counter-affidavits in response to the said complaint. On April 28, 2008, Gamos, Gile, and Laco filed a motion for extension of time to file the required counter-affidavit. On May 12, 2008, Gamos, Gile, and Laco filed the said counter-affidavits, wherein they prayed for the dismissal of the cases against them for being malicious, baseless, and premature. On June 26, 2008, Gallanosa and Robillos filed their Reply thereto. Gamos and Gile then filed a Joint Rejoinder-Affidavit dated July 14, 2008. On August 20, 2009, Gallanosa filed a Manifestation and Urgent Motion for Preventive Suspension.

On December 3, 2009, Gallanosa, becoming then elected-mayor, filed a Second Complaint against Gamos, Gile, and Laco, alleging that Gamos, in conspiracy with Gile and Laco, made illegal cash advances in the total amount of ₱2,226,500 made in January to May 2007 per COA's Report on the Special Audit/Investigation on Selected Transactions of the Municipality of Sta. Magdalena, Sorsogon.

On February 23, 2010, Gamos, Gile, and Laco were directed to file their counter-affidavits to the Second Complaint. On March 26, 2010, Gamos, Gile, and Laco filed a motion for extension of time to file counter- affidavits. On April 23, 2010, they filed a second motion for extension to file the counter-affidavits. Gamos, Gile and Laco asked for the dismissal of the Second Complaint in a Joint Counter-Affidavit (with Motion to Dismiss) dated May 7, 2010. On June 1, 2010, Gallanosa filed a Reply thereto.

On September 1, 2010, Gamos filed a Comment/Opposition to the earlier motion praying for his preventive suspension.

On October 7, 2010, Gamos, Gile, and Laco filed an Ex-Parte Manifestation and Motion to Admit Letter to COA Chairman dated June 21, 2010, requesting for the review of the audit reports on which the complaints were based.

Thus, in a Consolidated Resolution dated October 19, 2010, the OMB investigating officer found that it is premature to determine criminal and administrative liabilities considering that the COA audit reports, upon which the complaints were based, were not yet final. Thus, the dismissal of the complaints was recommended without prejudice to the outcome of the review requested by Gamos, Gile, and Laco to the COA and to the refiling of the complainants if circumstances warrant.

In view of the resignation of then Deputy OMB for Luzon, Mark E. Jalandoni, on April 7, 2011 and the resignation of then OMB Ma. Merceditas N. Gutierrez on May 6, 2011, the said October 19, 2010 Consolidated Resolution was approved on May 17, 2011 by the then Acting OMB Orlando C. Casimiro.

Gallanosa and Robillos moved for the reconsideration of the said October 19, 2010 Consolidated Resolution in a Motion for Reconsideration dated June 26, 2011, which was received by the OMB-Luzon on July 7, 2011. On October 11, 2011, Gamos, Gile, and Laco were required to file a comment to the motion for reconsideration. On November 17, 2011, Gamos, Gile, and Laco filed a motion for extension of time to file comment. Their Comment-Opposition (to the Motion for Reconsideration) was filed on December 5, 2011.

On January 9, 2012, OMB-Luzon received Gallanosa and Robillos' Verified Position Paper, wherein COA Chairman's Letter dated September 8, 2010 effectively denying the request for the review of the audit reports, was attached, among others. On March 9, 2012, the OMB received the Supplemental to the Position Paper.

Thus, on June 13, 2013, Gallanosa and Robillos' June 26, 2011 motion for reconsideration was finally resolved, granting the same, finding probable cause to indict Gamos, Gile, and Laco for malversation of public funds.

On February 13, 2014, the OMB-Luzon received Gamos' Motion for Reconsideration followed by a Supplement to the Motion for Reconsideration received on April 3, 2014.

In an Order dated June 20, 2014, Gamos' motion for reconsideration was denied. The said Order was approved by the OMB on February 20, 2015.

Thus, on March 30, 2015, two Informations for malversation of public funds were filed against Gamos, Gile, and Laco before the Sandiganbayan.

For several times, however, Gamos failed to appear before the said court for his arraignment despite notice. Thus, Sandiganbayan issued a Resolution dated May 19, 2016, directing Gamos to show cause why he should not be cited in contempt.

On November 22, 2016, Gamos and Giles filed a Motion to Dismiss on the ground of capricious and vexatious delay in the OMB's conduct of preliminary investigation to the damage and prejudice of the accused. On December 7, 2016, the petitioner filed a Comment/Opposition [to the Motion to Dismiss].[7]

In its February 1, 2017 Resolution,[8] the Sandiganbayan dismissed the cases, finding undue delay in the preliminary investigation before the OMB to the prejudice of respondents' right to a speedy disposition of their cases. The Sandiganbayan found that seven years have passed since the filing of the First Complaint in 2008 until the filing of the Informations before it. According to the said court, while the accused may have contributed to the delay for filing several motions for extension to file their pleadings, it took the OMB two years to act upon the complaints. The graft court did not accept petitioner's justification of the interval between the October 19, 2010 Consolidated Resolution[9] to its approval, *i.e.*, the resignations of the Deputy OMB for Luzon and the OMB. According to the graft court, it took another two years before the OMB investigating officer resolved to grant the motion for reconsideration of Jocelyn B. Gallanosa (Gallanosa) and Joselito G. Robillos (Robillos), a delay which has not been satisfactorily explained by the prosecution.[10]

[7] *Id*. at 369-372.

[8] *Id*. at 49-53.

[9] *Id*. at 229-240.

[10] *Id*. at 372-373.

In our assailed Decision, we found no undue delay in the conduct of preliminary investigation, mainly due to the fact that several exchanges of pleadings were filed by both parties from the filing of the First Complaint, as well as after the filing of the Second Complaint. Hence, this Court was of the impression that if there was any delay in the sequence of events, it was due to the constant development to the preliminary investigation caused by the constant filing of motions and responsive pleadings from both parties.[11]

Finding that the graft court's dismissal of the criminal cases was void, we ruled that there was no acquittal or dismissal to speak of, hence, respondents' right against double jeopardy will not be violated in the reinstatement of said criminal cases. Further, we considered the petitioner's misleading assertion that respondents were not yet arraigned and were even directed to show cause why they should not be cited in contempt for their refusal to appear in the arraignment, as well as the fact that the dismissal of the cases was at their instance, thus ruling out the attachment of double jeopardy.[12]

The issues for our resolution in the instant motion are: (1) whether or not there was undue delay in the conduct of preliminary investigation, violating respondents' right to a speedy disposition of cases; and (2) whether or not respondents' right against double jeopardy was violated.

Ruling of the Court

The Court grants the motion for reconsideration.

A second hard look at the sequence of events reveals that the Sandiganbayan did not err in finding undue delay in the OMB's conduct of the preliminary investigation. Indeed, while there may be no gap in the sequence of events and developments in the preliminary investigation that may be considered as delays in the conduct thereof, a wholistic view of the entire preliminary investigation would disclose certain shortcomings on the part

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[11] *Id*. at 374-376.

[12] *Id*. at 378-379.

of the OMB, resulting undue delays in the proceedings, which, as correctly found by the Sandiganbayan, were not satisfactorily explained by the prosecution.

First. While there were constant resolutions from the OMB directing the parties to file certain responsive pleadings, it took the investigating officer two (2) years and eight (8) months from the filing of the First Complaint on February 18, 2008 to the issuance of the Consolidated Resolution dated October 19, 2010, only to issue a resolution stating that it found out that it was premature for the OMB to determine criminal and administrative liabilities considering that the Commission on Audit (COA) was, at that time, still reviewing its findings.

Second. It took seven (7) months before the Acting OMB approved the said October 19, 2010 Consolidated Resolution and the only reason given by the prosecution was the resignation of the then Deputy OMB for Luzon on April 7, 2011 and then OMB Gutierrez on May 6, 2011. If an acting officer may act upon such important matters, we find the resignation of the said officers irrelevant and unreasonable to justify the delay in the proceedings to the prejudice of respondents' paramount right to a speedy disposition of case.

Third. If prudence and efficiency were exercised by the investigating officer in conducting the preliminary investigation, taking into consideration the Constitutional right of the respondents to a speedy disposition of cases, it would not have dismissed the cases in its October 19, 2010 Consolidated Resolution, due to pendency of the review before COA considering that as of September 8, 2010, respondents' request for review of the audit reports was already denied by the COA. Clearly, such erroneous dismissal unduly prolonged the preliminary investigation.

This bolsters Sandiganbayan's finding that it took the OMB two (2) years before it actually acted upon the complaints.

In fact, it was only after the OMB came to know of the COA's denial of respondents' request when it started to embark on the investigation and determination of probable cause. In addition,

despite receipt of the notice of COA's denial of respondents' request to review audit reports on January 9, 2012, it took the OMB another one (1) year and five (5) months before it finally resolved Gallanosa and Robillos' July 7, 2011 motion for reconsideration of the October 19, 2010 Consolidated Resolution, and finally determine probable cause to indict respondents of the criminal charges in its June 13, 2013 Order.

Fourth. The Order finding probable cause was issued on June 3, 2013. However, it took the OMB another one (1) year and eight (8) months to approve said Order (February 20, 2015) and another month to formally file the Informations therefor before the Sandiganbayan (March 30, 2015). The belated filing of respondents' motion for reconsideration of the said Order cannot justify the OMB's failure to timely file the Informations upon the finding of probable cause.

Section 7(a), Rule II of Administrative Order No. 7 or the Rules of Procedure of the OMB (Rules) provides:

> Sec. 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 filled **within five (5) days** from notice thereof with the Office of the 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**[.] (Emphasis ours)

Respondents received the said June 13, 2013 Order on January 20, 2014, while their motion for reconsideration was filed on February 13, 2014.[13] Clearly, this was beyond the 5-day period given for the filing thereof and, hence, should not have been considered by the OMB in the filing of the Informations before the graft court.

More importantly, Section 7(b), Rule II of the said Rules clearly states that:

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[13] *Id*. at 310-315.

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 and italics ours)

Clearly, the filing of a motion for reconsideration should not have stalled the OMB's duty to promptly file the Informations in court upon its finding of probable cause.

In fact, Section 7(a) above-cited provides that a leave of court is necessary before a motion for reconsideration is given due course where an information has been already filed in court, implying that an information may be filed in court immediately after an approved order of resolution.

Thus, we find no justifiable reason for the OMB to delay the filing of the Informations before the Sandiganbayan after it has already determined the existence of probable cause.

Indeed, these unexplained and unreasonable institutional delays cannot impinge on the citizens' fundamental rights. No less than our Constitution guarantees all persons the right to speedy disposition of their cases before all judicial, quasi-judicial, or administrative bodies.[14]

Having established that the Sandiganbayan correctly ruled for the dismissal of the criminal cases against respondents due to undue delay in the conduct of preliminary investigation, we find that the concept of double jeopardy becomes relevant.

Our Constitution also protects all persons from a second or later prosecution for the same offense. Article III, Section 21 thereof provides:

Sec. 21. No person shall be twice put in jeopardy of punishment for the same offense. If an act is punished by a law and an ordinance, conviction or acquittal under either shall constitute a bar to another prosecution for the same act.

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[14] CONSTITUTION, Article III, Section 16.

In consonance to the said Constitutional provision, Section 7, Rule 117 of the Rules of Court provides:

> SEC. 7. *Former conviction or acquittal; double jeopardy*. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

As we have explained in our assailed Decision, "double jeopardy attaches only when the following elements concur: (1) the accused is charged under a complaint or information sufficient in form and substance to sustain their conviction; (2) the court has jurisdiction; (3) the accused has been arraigned and has pleaded; and (4) he/she is convicted or acquitted, or the case is dismissed without his/her consent."[15]

The first and second elements are undisputed. As to the third element, again, in our assailed Decision, the Court was misled by the petitioner's assertion in its petition that respondents were not yet arraigned due to their refusal to appear therein. It appears, however, in this motion that respondents have already been arraigned, satisfying thus the third element. What is crucial, however, is the fourth element since the criminal cases were clearly dismissed at the instance of the respondents and the *general rule* is that the dismissal of a criminal case resulting in acquittal, made with the express consent of the accused or upon his own motion, will not place the accused in double jeopardy.[16] This rule, however, admits of two exceptions, namely: insufficiency of evidence and denial of the right to speedy trial or disposition of case.[17] Thus, indeed respondents were the ones

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[15] *Rollo*, p. 379, citing *David v. Marquez*, G.R. No. 209859, June 5, 2017.

[16] See *Condrada v. People*, 446 Phil. 635, 641 (2003).

[17] *Tan v. People*, 604 Phil. 68, 87 (2009).

who filed the motion to dismiss the criminal cases before the Sandiganbayan, the dismissal thereof was due to the violation of their right to speedy disposition, which would thus put them in double jeopardy should the charges against them be revived.

WHEREFORE, the instant Motion for Reconsideration is **GRANTED**. Our Decision dated April 16, 2018 is hereby **SET ASIDE**. Accordingly, the Resolutions dated February 1, 2017 and April 26, 2017 of the Sandiganbayan in SB-15-CRM-0090 and SB-15-CRM-0091 are **AFFIRMED**.

SO ORDERED.

Peralta,[*] *del Castillo (Chairperson), Jardeleza*, and *Carandang*,[**] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 233135. December 5, 2018]

B.E. SAN DIEGO, INC., *petitioner, vs.* **MANUEL A.S. BERNARDO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; AS A RULE, NEGLIGENCE OF COUNSEL BINDS THE CLIENT, EVEN MISTAKES IN THE APPLICATION OF PROCEDURAL RULES, EXCEPT WHEN THE NEGLIGENCE IS SO GROSS THAT THE DUE PROCESS RIGHTS OF THE CLIENT WERE VIOLATED; CASE AT BAR.— The general rule is that the

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[*] Designated additional Member per Raffle dated September 19, 2018 in lieu of Chief Justice Maria Lourdes P.A. Sereno.

[**] Pursuant to the third paragraph, Section 8, Rule 2 of the Internal Rules of the Supreme Court *vice* Chief Justice Teresita J. Leonardo-De Castro.

negligence of counsel binds the client, even mistakes in the application of procedural rules, an exception to this doctrine is when the negligence of counsel is so gross that the due process rights of the client were violated. In this case, the manner with which the Law Office of Ramirez Lazaro & Associates Law handled the case of petitioner, as a collaborating counsel shows gross negligence and utter incompetence, when it failed to attach a Notice of Hearing when it filed the motion for reconsideration before the RTC on October 4, 2010, and antedated the filing thereof to make it appear that it was filed on time. As a result thereof, the RTC in an Order dated December 10, 2010, denied the motion for reconsideration and considered the same as a mere scrap of paper. Worst, the August 13, 2010 Decision of the RTC lapsed into finality. Thus, petitioner lost its right to appeal the Decision and petitioner's petition for relief was denied. Clearly, the rights of petitioner were deprived due to its collaborating counsel's palpable negligence and thereof is not bound by it.

2. **REMEDIAL LAW; RULES OF PROCEDURE; IF A STRINGENT APPLICATION OF THE PROCEDURAL RULES WOULD HINDER RATHER THAN SERVE THE DEMANDS OF SUBSTANTIAL JUSTICE, THE FORMER MUST YIELD TO THE LATTER; CASE AT BAR.—** While the Court applauds the RTC's and CA's zealousness in upholding procedural rules, it cannot simply allow petitioner to be deprived of its property due to the gross negligence of its collaborating counsel. It is settled in Our jurisprudence that procedural rules were conceived to aid the attainment of justice. If a stringent application of the procedural rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter. x x x "[T]he rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires." Simply put, procedural rules may be relaxed in order to prevent injustice to a litigant.

APPEARANCES OF COUNSEL

Salomon & Gonong Law Offices for petitioner.
Edgardo V. Cruz for respondent.

D E C I S I O N

TIJAM, *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by B.E. San Diego Inc. (petitioner), seeks to reverse and set aside the Decision[2] dated April 3, 2017 and the Resolution[3] dated July 17, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 142759, which affirmed the Decision[4] dated October 20, 2014 and the Order[5] dated July 30, 2015 of the Regional Trial Court (RTC) of Valenzuela City, Branch 75, in Civil Case No. 19-V-12, that denied petitioner's petition for relief and motion for reconsideration, respectively.

Antecedents Fact

Sometime in December 1992, petitioner sold an 8,773-square meter parcel of land (subject property) located in Arkong Bato, Valenzuela City, on installment to Manuel A.S. Bernardo (respondent) for a total purchase price of Nine Million Six Hundred Fifty Thousand Three Hundred Pesos (₱9,650,300.00).[6]

Pursuant to their agreement, respondent paid an initial amount of Three Million Pesos (₱3,000,000.00) to petitioner, and the remaining balance of Six Million Six Hundred Fifty Thousand Three Hundred Pesos (₱6,650,300.00) to be paid in 36 monthly installments of One Hundred Eighty-Four Thousand Seven Hundred Thirty Pesos and Fifty-Six Centavos (₱184,730.56).[7]

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[1] *Rollo*, pp. 9-27.

[2] Penned by Associate Justice Manuel M. Barrios, concurred in by Associate Justices Ramon M. Bato, Jr. and Renato C. Francisco; *id*. at 30-37.

[3] *Id*. at 61-62.

[4] Rendered by Presiding Judge Lilia Mercedes Encarnacion A. Gepty; *id*. at 132-138.

[5] *Id*. at 145-146.

[6] *Id*. at 31.

[7] *Id*.

Respondent paid an aggregate amount of Two Million Fifty-Four Thousand Five Hundred Pesos (₱2,054,500.00) but failed to pay the remainder of the purchase price balance as they become due. Hence, on March 29, 1996, petitioner advised respondent of its intent to cancel their agreement of sale and demanded respondent to vacate the subject property.[8]

Petitioner's demand remained unheeded, it then filed an action for Cancellation of Contract and Restitution of the Premises before the RTC docketed as Civil Case No. 5088-V-96.[9]

The RTC in a Decision[10] dated August 13, 2010, dismissed the complaint and ratiocinated that petitioner failed to provide respondent a grace period of sixty (60) days to pay the installments due as governed by sales on installment of the Maceda Law.

The said RTC Decision was received by petitioner's counsel on record on September 30, 2010.

On October 4, 2010, petitioner, through a new collaborating counsel - Ramirez Lazaro & Associates Law Office filed a Motion for Reconsideration[11] of the RTC Decision dated August 13, 2010 without a Notice of Hearing. On October 15, 2010 or eleven (11) days thereafter, petitioner's new collaborating counsel sent via registered mail a Notice of Hearing,[12] which stated that the date of hearing was set on October 29, 2010 at 8:30a.m.

On December 10, 2010 Order[13] of the RTC, denied the motion for reconsideration filed by petitioner's new collaborating counsel and considered the same as a mere scrap of paper. The RTC found that there was antedating in the Notice of Hearing filed

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[8] *Id*.

[9] *Id*.

[10] *Id*. at 64-73.

[11] *Id*. at 74-88.

[12] *Id*. at 89-90.

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

to make it appear that the same was filed within the fifteen (15) day reglementary period, and that there was dishonesty and scheme employed on the part of the petitioner's new collaborating counsel in the separate filing of the Notice of Hearing.[14]

Consequently, petitioner filed a Notice of Appeal[15] but the RTC in an Order[16] dated February 11, 2011 denied the same for having been filed beyond the reglementary period.

Meanwhile, the RTC Decision[17] dated August 13, 2010 lapsed into finality.

Accordingly, on September 6, 2011, petitioner filed a Petition for Relief[18] from the Order dated February 11, 2011 before the RTC, docketed as Civil Case No. 19-V-12 and asseverated that the gross and palpable negligence of its new collaborating counsel should not bind and prejudice the petitioner.

Trial on the merits ensued and thereafter, on October 20, 2014, the RTC in Civil Case No. 19-V-12 issued a Decision[19] denying the Petition for Relief, to wit:

> IN VIEW OF THE FOREGOING, the instant petition for relief from judgment is hereby DENIED for lack of merit.
>
> SO ORDERED.[20]

Petitioner's motion for reconsideration[21] was denied for lack of merit by the RTC in an Order[22] dated July 30, 2015.

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[14] *Id*. at 93.

[15] *Id*. at 95.

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

[17] *Id*. at 64-73.

[18] *Id*. at 110-127.

[19] *Id*. at 132-138.

[20] *Id*. at 138.

[21] *Id*. at 139-144.

[22] *Id*. at 145-146.

Then, petitioner duly filed a petition for *certiorari* before the CA.[23]

On April 3, 2017, the CA rendered a Decision[24] which affirmed the RTC's denial of petitioner's petition for relief, the dispositive portion of the Decision provides:

> **WHEREFORE**, premises considered, the Petition for *Certiorari* is **DENIED**. The assailed Decision dated 20 October 2015 and Order dated 30 July 2015 of the [RTC], Branch 75, Valenzuela City, are **SUSTAINED**.
>
> **SO ORDERED.**[25]

Petitioner's motion for reconsideration[26] was likewise denied in a CA Resolution[27] dated July 17, 2017.

Hence, the instant petition.

Ruling of the Court

The petition is meritorious.

The general rule is that the negligence of counsel binds the client, even mistakes in the application of procedural rules, an exception to this doctrine is when the negligence of counsel is so gross that the due process rights of the client were violated.[28]

In this case, the manner with which the Law Office of Ramirez Lazaro & Associates Law handled the case of petitioner, as a collaborating counsel shows gross negligence and utter incompetence, when it failed to attach a Notice of Hearing when it filed the motion for reconsideration before the RTC on October 4, 2010, and antedated the filing thereof to make it appear that

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[23] *Id*. at 147-164.

[24] *Id*. at 30-37.

[25] *Id*. at 36-37.

[26] *Id*. at 38-44.

[27] *Id*. at 61-62.

[28] *Ong Lay Hin v. Court of Appeals, et al*., 752 Phil. 15, 25 (2015).

it was filed on time. As a result thereof, the RTC in an Order dated December 10, 2010, denied the motion for reconsideration and considered the same as a mere scrap of paper. Worst, the August 13, 2010 Decision of the RTC lapsed into finality. Thus, petitioner lost its right to appeal the Decision and petitioner's petition for relief was denied. Clearly, the rights of petitioner were deprived due to its collaborating counsel's palpable negligence and thereof is not bound by it.

Also, contrary to findings of the RTC and the CA, petitioner exercised due diligence in monitoring the case it filed. Petitioner even inquired with the Law Office of Ramirez Lazaro & Associates Law and informed it that the motion for reconsideration was duly filed. As far as petitioner is concerned and in respect of its interest, its duty to be vigilant to the status of the case was complied with by being updated on the progress of the case.

While the Court applauds the RTC's and CA's zealousness in upholding procedural rules, it cannot simply allow petitioner to be deprived of its property due to the gross negligence of its collaborating counsel.

It is settled in Our jurisprudence that procedural rules were conceived to aid the attainment of justice. If a stringent application of the procedural rules would hinder rather than serve the demands of substantial justice, the former must yield to the latter.

We allowed liberal application of technical rules of procedure, pertaining to the requisites of a proper notice of hearing, upon consideration of the importance of the subject matter of the controversy, as illustrated in the cases of *City of Dumaguete v. Philippine Ports Authority*,[29] to wit:

> The liberal construction of the rules on notice of hearing is exemplified in *Goldloop Properties, Inc. v. CA*:
>
> > Admittedly, the filing of respondent-spouses' motion for reconsideration did not stop the running of the period of appeal

[29] 671 Phil. 610 (2011).

because of the absence of a notice of hearing required in Secs. 3, 4 and 5, Rule 15, of the Rules of Court. As we have repeatedly held, a motion that does not contain a notice of hearing is a mere scrap of paper; it presents no question which merits the attention of the court. Being a mere scrap of paper, the trial court had no alternative but to disregard it. Such being the case, it was as if no motion for reconsideration was filed and, therefore, the reglementary period within which respondent-spouses should have filed an appeal expired on 23 November 1989.

But, where a rigid application of that rule will result in a manifest failure or miscarriage of justice, then the rule may be relaxed, especially if a party successfully shows that the alleged defect in the questioned final and executory judgment is not apparent on its face or from the recitals contained therein. **Technicalities may thus be disregarded in order to resolve the case. After all, no party can even claim a vested right in technicalities. Litigations should, as much as possible, be decided on the merits and not on technicalities.**

Hence, this Court should not easily allow a party to lose title and ownership over a party worth ₱4,000,000.00 for a measly ₱650,000.00 without affording him ample opportunity to prove his claim that the transaction entered into was not in fact an absolute sale but one of mortgage. Such grave injustice must not be permitted to prevail on the anvil of technicalities.

Likewise, in *Samoso v. CA*, the Court ruled:

But time and again, the Court has stressed that the rules of procedure are not to be applied in a very strict and technical sense. The rules of procedure are used only to help secure not override substantial justice (*National Waterworks & Sewerage System vs. Municipality of Libmanan*, 97 SCRA 138 [1980]; *Gregorio v. Court of Appeals*, 72 SCRA 120 [1976]). **The right to appeal should not be lightly disregarded by a stringent application of rules of procedure especially where the appeal is on its face meritorious and the interests of substantial justice would be served by permitting the appeal** (*Siguenza v. Court of Appeals*, 137 SCRA 570 [1985]; *Pacific Asia Overseas Shipping Corporation v. National Labor Relations Commission, et al*., G.R. No. 76595, May 6, 1998).[30] (Emphasis in the original)

[30] *Id*. at 627-628, citing *Basco v. Court of Appeals*, 392 Phil. 251, 266-267 (2000).

"[T]he rule, which states that the mistakes of counsel bind the client, may not be strictly followed where observance of it would result in the outright deprivation of the client's liberty or property, or where the interest of justice so requires."[31] Simply put, procedural rules may be relaxed in order to prevent injustice to a litigant.

In sum, the Court deems it appropriate to relax the technical rules of procedure in order to afford petitioner the fullest opportunity to establish the merits of its appeal, rather than to deprive it of such right and make it lose his property.

WHEREFORE, the petition is **GRANTED**. The Decision dated April 3, 2017 and the Resolution dated July 17, 2017 of the Court of Appeals in CA-G.R. SP No. 142759 are hereby **REVERSED and SET ASIDE**. The instant case is **REMANDED** to the Regional Trial Court of Valenzuela City, Branch 75, for proper resolution of the case on its merits.

SO ORDERED.

Bersamin, C.J. (Chairperson), del Castillo, Jardeleza, and *Gesmundo, JJ*., concur.

SECOND DIVISION

[G.R. No. 233747. December 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NILA MALANA *y* SAMBOLLEDO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF

[31] *Curammeng v. People*, 799 Phil. 575, 582-583 (2016).

2002); PROCEDURE THAT MUST BE FOLLOWED TO PRESERVE THE INTEGRITY OF THE CONFISCATED DRUGS USED AS EVIDENCE.— 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. 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 Department of Justice (DOJ), all of whom shall be required to sign the copies of the inventory and be given a copy thereof.

2. **ID.; ID.; ID.; PRESENCE OF THE REQUIRED WITNESSES AT THE TIME OF APPREHENSION AND INVENTORY IS MANDATORY TO PROTECT AGAINST THE POSSIBILITY OF PLANTING, CONTAMINATION, OR LOSS OF THE SEIZED DRUGS.—** It bears emphasis that the presence of the required witnesses at the time of the 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.

3. ID.; ID.; ID.; FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE PROCEDURE DOES NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS VOID AND INVALID; THE PROSECUTION MUST PROVE THAT THERE IS A JUSTIFIABLE GROUND FOR NON-COMPLIANCE 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 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.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT OVERCOME THE STRONGER PRESUMPTION OF INNOCENCE; CASE AT BAR.— [I]t was error for both the RTC and the CA to convict accused-appellant Malana by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. **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. x x x **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.
Public Attorney's Office for accused-appellant.

D E C I S I O N

CAGUIOA, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Nila Malana y Sambolledo (accused-appellant Malana) assailing the Decision[2] dated March 24, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 07988, which affirmed the Decision[3] dated August 28, 2015 of the Regional Trial Court of Aparri, Cagayan, Branch 10(RTC) in Criminal Case No. II-10837, finding accused-appellant Malana 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," as amended.

The Facts

An Information[5] was filed against accused-appellant Malana in this case, the accusatory portion of which reads as follows:

That on or about **October 19, 2011**, in the municipality of Camalaniugan, province of Cagayan, and within the jurisdiction of this Honorable Court, the said accused, without any legal authority thereof, did then and there willfully, unlawfully and feloniously sell,

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[1] See Notice of Appeal dated April 21, 2017; *rollo,* pp. 17-19.

[2] *Rollo,* pp. 2-16. Penned by Associate Justice Renato C. Francisco, with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios concurring.

[3] CA *rollo,* pp. 80-91. Penned by Judge Pablo M. Agustin.

[4] 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).

[5] Records, p. 1.

deliver, dispense, give away **one (1) [piece] of heat sealed transparent plastic sachet containing crystalline substance** which gave **POSITIVE** results to the tests for **methamphetamine hydrochloride, a dangerous drug, locally known as SHABU, weighing an aggregate of 0.02 gram** to a poseur buyer of the elements of the **Philippine National Police force** stationed in Camalaniugan, Cagayan, said accused knowing fully well and aware that it is prohibited for any person to sell, deliver, dispense, give away to another or transport any dangerous drugs regardless of the quantity or purity thereof, unless authorized by law.

CONTRARY TO LAW.[6]

Upon arraignment, accused-appellant Malana pleaded not guilty to the charge. Thereafter, pre-trial and trial on the case ensued.[7] The prosecution's version, as summarized by the CA, is as follows:

The prosecution presented three witnesses, namely: SPO1 Kenneth Urian (SPO1 Urian), P/S Insp. Glen Ly Tuazon (P/S Insp. Tuazon) and SPO2 Jessie Alonzo (SPO2 Alonzo).

SPO1 Urian testified that on 18 October 2011, he was on duty at Camalaniugan Police Station. At approximately 1 in the afternoon, an informer reported that a female individual, later identified to be Malana, was engaged in rampant selling of *shabu* at Brgy. Dugo, Camalaniugan, Cagayan. He then relayed the information to Chief of Police P/C Insp. George Cablarda (P/C Insp. Cablarda), who immediately conducted a briefing. This briefing was attended by him, SPO2 Alonzo and P/C Insp. Cablarda to discuss the conduct of an entrapment operation against Malana. The informer, Rex Cortez (Cortez), was designated as the civilian poseur buyer.

Cortez ordered shabu worth ₱2,500.00 from Malana to be delivered at Brgy. Dugo, Camalaniugan, Cagayan at 2:30 in the afternoon on the same date. He ordered *shabu* by sending a text message to Malana. Unfortunately, Malana failed to appear. Hence, P/C Insp. Cablarda directed the team to execute another entrapment operation the following day, at the same place and time.

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[6] *Id.*

[7] *Rollo,* p. 3.

On 19 October 2011, Cortez ordered ₱500.00 worth of *shabu* from Malana to be delivered at around 3 in the afternoon. Cortez informed the team that he will meet Malana at a waiting shed in Brgy. Dugo, Camalaniugan, Cagayan.

At around 4:14 in the afternoon, a multicab from Aparri stopped near the designated waiting shed where Malana alighted. SPO1 Urian observed that Cortez and Malana had a brief conversation. Malana then handed something to Cortez, who in turn, handed something to Malana. From where he was standing, SPO1 Urian could neither identify the things being exchanged by the two individuals because they were covering each other nor did he overhear their conversation. During the entrapment operation, he positioned himself within the perimeter fence of Mr. and Mrs. Manuel Arce, which was about 10 to 12 meters away from the waiting shed, the place of transaction. Meanwhile, the other members of the team stood approximately 4 to 6 meters [a]way from the waiting shed. When Cortez gave the pre-arranged signal, which was the removal of his hat, members of the team ran towards the waiting shed. SPO2 Alonzo immediately frisked Malana and recovered the ₱500.00 marked money. P/C Insp. Cablarda took possession of the plastic sachet containing a white crystalline substance handed by Malana to Cortez.

For documentation, they sought the assistance of Brgy. Captain Philip Arce, and *kagawads* Wilma Gonzaga and Perlita Arellano, who witnessed the inventory as evidenced by the Confiscation Receipt and photographs on record. SPO1 Urian marked the seized plastic sachet with "KDU," his initials. After, they proceeded to the Camalaniugan Police Station and prepared the Request for Laboratory Examination.[8]

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

On 19 October 2011, she was at her house at San Antonio, Aparri, Cagayan. At noon, Cortez called her demanding that she pay her outstanding debt in the amount of ₱1,500.00. She begged that she be allowed to give half of the amount. Cortez related that his wife was angry and if she could not pay the debt in its entirety, explain herself to his wife.

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

Cortez called and instructed her to meet them near Vicky's Grocery at Dugo, Camalaniugan. She proceeded to the designated place with her four year old son. At about 2 in the afternoon, she arrived and sent a text message to Cortez. She requested Cortez to hurry as she would be returning home to Aparri, Cagayan after their conversation. Cortez neither replied to her text message nor arrive at the agreed upon meeting place. While anticipating the arrival of Spouses Cortez, she observed three (3) men running towards her at the waiting shed where she stood. She was surprised when one of them remarked, "*BAGIM DAYTOY! BAGIM DAYTOY"* meaning "Is this yours?" while exhibiting a small plastic sachet. She replied "Why are you asking me if that is mine, you are the one holding it?" Then, one of the men approached her, frisked her and stated that she had a ₱500.00 bill in her pocket. She denied this as she only had ₱20.00 for her return fare to Aparri. The men then instructed her to reveal the names of the people whom she knew were engaged in the sale of illegal drugs so that she could be set free. When she failed to provide any names, she was brought to the Camalaniugan Police Station with her son. Soonafter their arrival at the police station, she rode another police vehicle and returned to the waiting shed. There, the police officers talked to a person whom they let sign a piece of paper. She and her son were brought to the Aparri Police Station where she asked the police to contact her brother Nanding to fetch her son. Then she was returned to the Camalaniugan Police Station where she was detained for two nights.

On 21 October 2011, she was brought to the Office of the Provincial Prosecutor in Aparri, Cagayan to undergo inquest proceedings for allegedly selling illegal drugs. She denied all the accusations against her.[9]

Ruling of the RTC

After trial on the merits, in its Decision[10] dated August 28, 2015,the RTC convicted accused-appellant Malana of the crime charged. The dispositive portion of the said Decision reads:

WHEREFORE, judgment is hereby rendered finding accused NILA MALANA y SAMBOLLEDO **GUILTY** beyond reasonable doubt as charged for violation of Section 5 of Article II of R.A.

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[9] *Id*. at 7-8.

[10] CA *rollo,* pp. 80-91.

9165, (selling of dangerous drug) and she is hereby sentenced to suffer the penalty of Life Imprisonment and to pay a fine of Five Hundred Thousand (Php500,000.00) pesos.

The subject matter of this case is hereby forfeited in favor of the government and to be disposed of as provided by law.

SO DECIDED.[11]

The RTC ruled that the evidence on record sufficiently established the presence of the elements of illegal sale of dangerous drugs. The RTC gave credence to the testimonies of the apprehending officers to establish that what was conducted against accused-appellant Malana was a valid buy-bust operation. It reasoned that "[c]redence was properly accorded to the testimonies of the prosecution witnesses, who are law enforcers. When police officers have no motive to testify falsely against the accused, courts are inclined to uphold this presumption."[12] The RTC further stated that the "integrity of the evidence is presumed to be preserved, unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with."[13]

The RTC also said that accused-appellant Malana's defenses of denial and frame-up were weak defenses, and could not prevail over the positive testimonies of the prosecution witnesses.

Aggrieved, accused-appellant Malana appealed to the CA.

Ruling of the CA

In the questioned Decision[14] dated March 24, 2017,the CA affirmed the RTC's conviction of accused-appellant Malana, holding that the prosecution was able to prove the elements of the crimes charged.The CA declared that the elements of illegal sale of dangerous drugs were properly established as "RA 9165

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[11] *Id*. at 91.

[12] *Id*. at 89-90.

[13] *Id*. at 90. Citation omitted.

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

and its implementing rules do not require strict compliance with the rule on chain of custody."[15] The CA explained:

> x x x While representatives of the media and the Department of Justice were absent, in their place, there were two *kagawads* and Brgy. Captain Philip Arce not to mention, Malana herself to witness the same. As to the absence of other details aside from the initials of SPO1 Urian, neither RA 9165 nor its implementing rules require such matters to be affixed on the seized item. Even assuming *arguendo* that these are required under the Philippine National Police Manual on Illegal Drugs Operation and Investigation, We find that for purposes of maintaining the integrity and evidentiary value of the seized specimen, what takes precedence is compliance with the mandate of RA 9165 which in this case, was substantially complied with.[16]

Hence, the instant appeal.

Issue

For resolution of the Court is the issue of whetherthe RTC and the CA erred in convicting accused-appellant Malana of the crime charged.

The Court's Ruling

The appeal is meritorious. The Court acquits accused-appellant Malana for failure of the prosecution to prove her guilt beyond reasonable doubt.

Accused-appellant Malana 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 is required to 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.[17]

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[15] *Id*. at 12.

[16] *Id*. at 13.

[17] *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.[18] 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,[19] 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.[20] 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.[21]

In this connection, Section 21,[22] Article II of RA 9165, the applicable law at the time of the commission of the alleged

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

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

[20] *People v. Guzon*, *supra* note 18, at 451, citing *People v. Dumaplin,*700 Phil. 737, 747 (2012).

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

[22] 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:

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."[23]

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 Implementing Rules and Regulations (IRR) of RA 9165 allow the inventory and photographing to be done as soon as

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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[.]

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

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.[24]

In the present case, none of the three required witnesses was present at the time of seizure and apprehension, and only one of them was present during the conduct of the inventory. As SPO1 Kenneth Urian (SPO1Urian), part of the apprehending team, testified:

Q: You also said during your direct that you called for the Barangay Council, at what time did this Barangay Council arrived, Mr. witness?
A: Just after the female person was arrested, ma'am.

Q: And after the arrest, Mr. witness, what did you do with the female person?
A: After the documentation ma'am, we immediately brought the female person at the police station.

Q: And during this documentation that you are talking about, who were present at that that *(sic)* time?
A: The Barangay Council, ma'am.

Q: Do you know the person of this Barangay Council, that you are talking about, Mr. witness?
A: Yes, ma'am.

Q: What are the names, Mr. witness?
A: Philip Arce and Barangay Kagawad Wilma Gonzaga and Perlita Arellano, ma'am.

Q: May we know again, what was their participation with respect to the documentation, Mr. witness?
A: Witness the inventory and documentation of the recovered items, ma'am.[25]

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[24] *People v. Callejo*, G.R. No. 227427, June 6, 2018, p. 10.

[25] TSN, October 23, 2012, pp. 16-18.

The foregoing testimony was corroborated by the testimony of SPO2 Jessie Alonzo who was also part of the apprehending team.[26] None of the prosecution witnesses offered any explanation as to why two of the three required witnesses — a representative from the DOJ and a media representative — were not present in the buy-bust operation conducted against accused-appellant Malana. The prosecution did not also address the issue in its 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 accused-appellant Malana's conviction.

It bears emphasis that the presence of the required witnesses at the time of the inventory is mandatory, and that the law imposes the said requirement because their presence serves an essential purpose. In *People v. Tomawis,*[27] 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*,[28] 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

[26] TSN, August 6, 2013, p. 9.

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

[28] 736 Phil. 749 (2014).

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.

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."[29] (Emphasis, italics and underscoring in the original)

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 SPO1 Urian himself testified, they received the tip from their confidential informant at around 1:00 p.m. on October 18, 2011.[30] They then planned to immediately conduct the buy-bust operation more or less an hour later, but accused-appellant Malana supposedly failed to deliver the *shabu*.[31] Thus, they planned to conduct another buy-bust operation the next day, in which operation accused-appellant Malana was successfully apprehended.[32]

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[29] *People v. Tomawis*, *supra* note 27, at 11-12.

[30] TSN, September 17, 2012, p. 4.

[31] See *id*. at 6.

[32] See *id*. at 7-11.

The officers, therefore, had one whole day to secure the attendance of all the required witnesses. They could thus 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. In fact, the required witness present — the elected official — was only "called in" after accused-appellant Malana had already been apprehended. Worse, the police officers and the prosecution — during the trial —failed to show or offer any explanation for their deviation from the law.

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 has **repeatedly** emphasized that the prosecution should explain the reasons behind the procedural lapses.[34]

Verily, courts cannot, as the CA did in this case, make a blanket justification that "[g]iven the nature of [the] operation, it is understandable that [the required witnesses'] immediate presence could not be immediately secured at the place of seizure or the nearest police station."[35] As the Court held in *People v.*

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

[34] *People v. Dela Victoria,* G.R. No. 233325, April 16, 2018, p. 6; *People v. Año,* G.R. No. 230070, March 14, 2018, p. 6; *People v. Crispo,* G.R. No. 230065, March 14, 2018, p. 8; *People v. Lumaya,* G.R. No. 231983, March 7, 2018, p. 8; *People v. Ramos,* G.R. No. 233744, February 28, 2018, p. 6; *People v. Magsano,* G.R. No. 231050, February 28, 2018, p. 7; *People v. Manansala,* G.R. No. 229092, February 21, 2018, p. 7; *People v. Miranda,* G.R. No. 229671, January 31, 2018, p. 7; *People v. Paz,* G.R. No. 229512, January 31, 2018, p. 9; *People v. Alvaro,* G.R. No. 225596, January 10, 2018, p. 7; *People v. Almorfe,* 631 Phil. 51, 60 (2010).

[35] *Rollo,* pp. 12-13.

De Guzman,[36]" [t]he justifiable ground for non-compliance must be proven as a fact. The court cannot presume what these grounds are or that they even exist."[37]

Moreover, courts cannot rule, as the RTC and the CA did in this case, that the presence of the three elected officials in the inventory (as opposed to the media person and the DOJ official) constitutes substantial compliance with the requirements of RA 9165. Section 21, RA 9165 was unequivocal in its requirement: that the inventory must be done "**in the presence of** the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **a representative from the media and the [DOJ], and any elected public official** who shall be required to sign the copies of the inventory and be given a copy thereof."

The law is plain and clear. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.[38]

It bears stressing that the prosecution has the burden of (1) proving 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*:[39]

> 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**

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[36] 630 Phil. 637 (2010).

[37] *Id*. at 649.

[38] *Relox v. People,* G.R. No. 195694, June 11, 2014 (Unsigned Resolution).

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

> **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**.[40] (Underscoring supplied; emphasis in the original)

In this connection, it was error for both the RTC and the CA to convict accused-appellant Malana by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers. **The presumption of regularity in the performance of duty cannot overcome the stronger presumption of innocence in favor of the accused**.[41] Otherwise, a mere rule of evidence will defeat the constitutionally enshrined right to be presumed innocent.[42] As the Court, in *People v. Catalan*,[43] reminded the lower courts:

> Both lower courts favored the members of the buy-bust team with the presumption of regularity in the performance of their duty, mainly because the accused did not show that they had ill motive behind his entrapment.
>
> We hold that both lower courts committed gross error in relying on the presumption of regularity.
>
> Presuming that the members of the buy-bust team regularly performed their duty was patently bereft of any factual and legal basis. **We remind the lower courts that the presumption of regularity in the performance of duty could not prevail over the stronger presumption of innocence favoring the accused. Otherwise, the constitutional guarantee of the accused being presumed innocent would be held subordinate to a mere rule of evidence allocating the burden of evidence.** Where, like here, the

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[40] *Id.* at 13, citing *People v. Sipin*, G.R. No. 224290, June 11, 2018, p. 17.

[41] *People v. Mendoza*, *supra* note 28, at 770.

[42] *Id*.

[43] 699 Phil. 603 (2012).

proof adduced against the accused has not even overcome the presumption of innocence, the presumption of regularity in the performance of duty could not be a factor to adjudge the accused guilty of the crime charged.

Moreover, the regularity of the performance of their duty could not be properly presumed in favor of the policemen because the records were replete with indicia of their serious lapses. As a rule, a presumed fact like the regularity of performance by a police officer must be inferred only from an established basic fact, not plucked out from thin air. To say it differently, it is the established basic fact that *triggers* the presumed fact of regular performance. Where there is any hint of irregularity committed by the police officers in arresting the accused and thereafter, several of which we have earlier noted, there can be no presumption of regularity of performance in their favor.[44] (Emphasis supplied; italics in the original)

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,[45] the conduct of buy-bust operations requires the following:

ANTI-DRUG OPERATIONAL PROCEDURES

x x x x x x x x x

V. SPECIFIC RULES

x x x x x x x x x

B. Conduct of Operation: (As far as practicable, all operations must be officer led)

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[44] *Id*. at 621.

[45] PNPM-D-O-3-1-99 [NG], the precursor anti-illegal drug operations manual prior to the 2010 and 2014 AIDSOTF Manual.

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*[46] that it will not presume to set an *a priori* basis on 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.[47]

At this juncture, it is well to pointout that while the RTC and the CA were correct in stating that denial is an inherently weak defense, it grievously erred in using the same principle to convict accused-appellant Malana. Both courts overlooked the long-standing legal tenet that the starting point of every criminal prosecution is that the accused has the constitutional right to be presumed innocent.[48] And this presumption of innocence is overturned only when the prosecution has discharged its burden of proof in criminal cases and has proven the guilt of the accused beyond reasonable doubt,[49] with each and every element of the crime charged in the information proven to warrant

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[46] 393 Phil. 68, 133 (2000).

[47] *People v. Supat*, G.R. No. 217027, June 6, 2018, pp. 18-19.

[48] 1987 CONSTITUTION, Art. III, Sec. 14(2). "In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved x x x."

[49] The Rules of Court provides that proof beyond reasonable doubt does not mean such a degree of proof as excluding possibility of error, produces absolute certainty. Only moral certainty is required, or that degree of proof which produces conviction in an unprejudiced mind. [RULES OF COURT, Rule 133, Sec. 2.]

a finding of guilt for that crime or for any other crime necessarily included therein.[50]Differently stated, there must exist no reasonable doubt as to the existence of each and every element of the crime to sustain a conviction.

It is worth emphasizing that ***this burden of proof never shifts***. Indeed, the accused need not present a single piece of evidence in his defense if the State has not discharged its onus. The accused can simply rely on his right to be presumed innocent.

In this connection, the prosecution therefore, in cases involving dangerous drugs,**always** has the burden of proving compliance with the procedure outlined in Section 21. As the Court stressed in *People v. Andaya*:[51]

> x x x We should remind ourselves that we cannot presume that the accused committed the crimes they have been charged with. **The State must fully establish that for us.** If the imputation of ill motive to the lawmen is the only means of impeaching them, then that would be the end of our dutiful vigilance to protect our citizenry from false arrests and wrongful incriminations. We are aware that there have been in the past many cases of false arrests and wrongful incriminations, and that should heighten our resolve to strengthen the ramparts of judicial scrutiny.
>
> **Nor should we shirk from our responsibility of protecting the liberties of our citizenry just because the lawmen are shielded by the presumption of the regularity of their performance of duty. The presumed regularity is nothing but a purely evidentiary tool intended to avoid the impossible and time-consuming task of establishing every detail of the performance by officials and functionaries of the Government. Conversion by no means defeat the much stronger and much firmer presumption of innocence in favor of every person whose life, property and liberty comes under the risk of forfeiture on the strength of a false accusation of committing some crime.**[52] (Emphasis and underscoring supplied)

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[50] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

[51] 745 Phil. 237 (2014).

[52] *Id*. at 250-251.

To stress, the accused can rely on his right to be presumed innocent. It is thus immaterial, in this case or in any other cases involving dangerous drugs, that the accused put forth a weak defense.

The Court emphasizes that while it is laudable that police officers exert earnest efforts in catching drug pushers, they must always be advised to do so within the bounds of the law.[53]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 sachet of *shabu*, the evils of switching, "planting" or contamination of the evidence again reared their ugly heads as to negate the integrity and credibility of the seizure and confiscation of the sachet of *shabu* that was evidence herein of the *corpus delicti*. Thus, this 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.[54]

Concededly, 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 (1) recognize any lapse on the part of the police officers and (2) be able to justify the same.[55] **In this case, the prosecution neither recognized, much less tried to justify, its deviation from the procedure contained in Section 21, RA 9165.**

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

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

[54] *People v. Mendoza, supra* note 28, at 764.

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

of the *corpus delicti* had been compromised.[56] As the Court explained in *People v. Reyes*:[57]

> 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[58]

In *People v. Umipang*,[59] 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 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.

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[56] See *People v. Sumili*, 753 Phil. 342, 350 (2015).

[57] 797 Phil. 671 (2016).

[58] *Id*. at 690.

[59] 686 Phil. 1024 (2012).

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.**[60] (Emphasis and underscoring 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 of the *corpus delicti* has thus been compromised. In light of this, accused-appellant Malana must perforce be acquitted.

WHEREFORE, in view of the foregoing, the appeal is hereby **GRANTED**. The Decision dated March 24, 2017 of the Court of Appeals in CA-G.R. CR HC No. 07988 is hereby **REVERSED** and **SET ASIDE.** Accordingly, accused-appellant **Nila Malana y Sambolledo** is **ACQUITTED** of the crime charged on the ground of reasonable doubt, and is **ORDERED IMMEDIATELY RELEASED** from detention unless she 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 Correctional Institution for Women, Mandaluyong 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 she has taken.

SO ORDERED.

Carpio, S.A.J. (Chairperson), Perlas-Bernabe, Reyes, A. Jr., and *Carandang, JJ.,* concur.

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

SECOND DIVISION

[G.R. No. 234151. December 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CESAR DELA CRUZ *y* LIBONAO *ALIAS* SESI of Zone 3, Macanaya, Aparri, Cagayan,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); PROCEDURE THAT MUST BE FOLLOWED TO PRESERVE THE INTEGRITY OF THE CONFISCATED DRUGS AND/OR PARAPHERNALIA USED AS EVIDENCE.— 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. Thus, in order to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime. In this regard, Section 21, Article II of RA 9165, the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers 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 of the same and the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.

2. ID.; ID.; ID.; COMPLIANCE WITH THE PROCEDURE MAY BE EXCUSED AS LONG AS THERE IS A JUSTIFIABLE GROUND, PROVEN AS A FACT, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible; and, 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. It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses. Without any justifiable explanation, which must be proven as a fact, 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.

3. ID.; ID.; ID.; PRESENCE OF THE REQUIRED WITNESSES AT THE TIME OF APPREHENSION AND INVENTORY IS MANDATORY TO PROTECT AGAINST THE POSSIBILITY OF PLANTING, CONTAMINATION, OR LOSS OF THE SEIZED DRUG.— 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 vs. 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 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 was evidence of the *corpus*

delicti, and thus adversely affected the trustworthiness of the incrimination of the accused.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT STAND WHEN THERE ARE LAPSES IN THE PROCEDURES UNDERTAKEN BY THE BUY-BUST TEAM BECAUSE THE LAPSES THEMSELVES ARE AFFIRMATIVE PROOFS OF IRREGULARITY; CASE AT BAR.— 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.
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 September 6, 2016 of the Court of Appeals, Sixth Division (CA) in CA-G.R. CR-HC. No. 06459, which affirmed the Decision[3] dated September 2,

[1] See Notice of Appeal dated October 4, 2016, *rollo*, pp.15-16.

[2] *Rollo*, pp. 2-14. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion, concurring.

[3] CA *rollo*, pp. 13-19. Penned by Judge Oscar T. Zaldivar.

2013 rendered by the Regional Trial Court, Branch 07, Aparri, Cagayan(RTC) in Criminal Case No. II-10512, which found herein accused-appellant Cesar Dela Cruz y Libonao (Dela Cruz) 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.

The Facts

The Information[4] filed against Dela Cruz for the violation of Section 5, Article II of RA 9165, pertinently reads:

That on or about June 6, 2010[,] in the Municipality of Aparri, Province of Cagayan and within the jurisdiction of this Honorable Court, the said accused, CESAR DELA CRUZ Y LIBONAO ALIAS SESI, without authority, did, then and there willfully[,]unlawfully and feloniously sell, deliver, dispense, give away to another and distribute one (1) piece of heat sealed transparent plastic sachet containing crystalline substance scientifically known as methamphetamine hydrochloride, a dangerous drug locally known as SHABU weighing approximately 0.02 [gram] to a PDEA poseur buyer who acted as a poseur buyerof the aforesaid dangerous drugs as in fact the said accused was actually caught by PDEA Officers while in the act of selling the above-mentioned dangerous drugs for and in consideration of the amount of PHP1,000.00 in two (2) 500 pesos bill denomination bearing VY236844 and EL 752687 previously marked bills which resulted to the apprehension of the accused and the confiscation from his possession the above-mentioned dangerous drug and the pre[-]marked buy[-]bust money by elements of the PDEA agents as the accused do not have the necessary license, permit and/or authority to sell dangerous drugs.

CONTRARY TO LAW.[5]

When arraigned, Dela Cruz pleaded not guilty to the offense charged.[6]

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[4] Records, pp. 1-2.

[5] *Id*. at 1.

[6] *Rollo*, p. 3.

Version of the Prosecution

The version of the prosecution, as summarized by the RTC, is as follows:

On June 6, 2010, at about 3:00 o'clock in the afternoon, the Philippine Drug [Enforcement] Agency (PDEA) Office received a phone call from a confidential informant through SO2 Romarico Pagulayan, disclosing that a certain Cesar Dela Cruz alias Sesi is engaged in illegal drug activities at Macanaya, Aparri, Cagayan. SO2 Pagulayan immediately informed the Office-in-Charge, PCI Primitivo C. Bayongan and the latter instructed SO2 Pagulayan to lead a team for a possible buy bust operation. A team was formed and a briefing was conducted. IO2 Vivien A. Molina was designated as the poseur buyer while IO1 Robert Baldoviso was assigned as the immediate back-up. IO2 Molina was given two pieces of five hundred peso bills bearing serial numbers VY236844 and EL 752687 as buy bust money. It was also agreed that the pre[-]arranged signal was for IO2 Molina to ignite her lighter once the transaction was consummated.

At about 4:00 o'clock in the afternoon of the same day, they left the PDEA office, Tuguegarao City and arrived at Aparri, Cagayan around 6 PM of the same day. The team immediately met the confidential informant at a safe place and had a final briefing. During the final briefing, SO2 Pagulayan instructed the confidential informant to tell alias Sesi that he was still waiting for his companion coming from Gonzaga, Cagayan who needed shabu. Cesar Dela Cruz communicated to the confidential informant that they will just meet at his residence once his companion arrived.

At 8:30 in the evening, SO2 Pagulayan instructed IO2 Molina and the confidential informant to proceed to the residence of the accused at Zone 3, Macanaya, Cagayan while the immediate back[-]up and the rest of the team secretly followed the two. Upon reaching Zone 3 of Brgy. Macanaya, Aparri, Cagayan, from a distance of more or less two meters, IO2 Molina and the confidential agent saw a man standing along the highway. The confidential agent recognized the said man as Cesar Dela Cruz. The two approached the accused. The poseur[-]buyer, confidential informant and the accused talked briefly. The accused asked IO2 Molina how much shabu she was buying and the latter replied that she needed [shabu] worth one thousand (₱1,000.00) pesos only. Upon hearing the amount, accused proceeded to an alley at his residence and got something. When the accused returned, he handed IO2 Molina a small heat sealed transparent plastic sachet while the latter in return handed to the accused two pieces of

five hundred (₱500.00) peso bills. Upon confirming that the plastic sachet contained shabu, IO2 Molina ignited her lighter prompting her immediate back[-]up and the rest of the team to rush to the place. IO2 Molina introduced herself as [a]PDEA agent and ordered the accused not to move.[T]he accused ran towards his residence and attempted to draw his fan knife, but IO1 Baldoviso was able to disarm him. Baldoviso frisked the accused and recovered from him the buy bust money.

SO2 Romarico Pagulayan apprised the accused of his constitutional rights. The PDEA agents brought the accused including the seized items to the Aparri Police Station for marking and inventory of the confiscated items. The inventory was witnessed by two Barangay officials namely, Barangay Kagawad Anthony Pipo and Barangay Captain Eder Peneyra.

On the same day of June 6, 2010, SO2 Romarico Pagulayan, prepared a memorandum for the laboratory examination of the seized items and the accused. IO2 Molina personally submitted the seized plastic sachet to the PNP Regional Crime Laboratory Office 2, Camp Adduru, Tuguegarao City at 1:00 o'clock in the morning of June 7, 2010.

The contents of one (1) piece heat sealed plastic sachet with marking EXH "A" VAM-06-06-10 was subjected to laboratory examination by Forensic Chemical Officer P/Insp. Glenn Ly Tuazon. The following findings, as recorded in Chemistry Report No. D-21-2010 dated June 7, 2010 discloses:

SPECIMEN SUBMITTED:

A- One (1) heat-sealed transparent plastic sachet with markings EXH "A" VAM-06-06-10 & signature containing 0.02 gram of white crystalline substance.xxx

PURPOSE OF [THE] LABORATORY EXAMINATION:

To determine the presence of dangerous drug/s. x x x

FINDINGS:

Qualitative examination conducted on the above stated specimen gave **POSITIVE** result to the tests for the presence of Methamphetamine hydrochloride, a dangerous drug. x x x

CONCLUSION:

Specimen A contains Methamphetamine hydrochloride, a dangerous drug. x x x

On the other hand, the laboratory examination conducted on the urine specimen taken from the accused gave positive result to the tests for the presence of Methamphetamine, a dangerous drug.[7]

Version of the Defense

On the other hand, the defense's version, as summarized by the RTC, is as follows:

The defense presented the accused and his son to the witness stand to deny the allegations in the Information and the testimonies of the prosecution witnesses.

The son of the accused, CJ Dela Cruz testified that on June 6, 2010, he and his father went to fetch his mother from the place where she attended a birthday party. When his mother didn't go with them, they went back to their house and had dinner. While having supper, five PDEA agents entered their house, pointed a gun to his father and arrested the latter. They pulled his father leading him outside the house and brought him to the Aparri Police Station.

Accused on the other hand corroborated the testimony of his son and testified further that he was tortured by the PDEA agents for him to disclose the names of personalities involved in the shabu trade at Aparri, Cagayan.[8]

Ruling of the RTC

In the assailed Decision dated September 2, 2013, the RTC ruled that the prosecution's evidence sufficiently established the guilt of the accused beyond reasonable doubt.[9] The prosecution was able to prove the existence of the two elements required for a successful prosecution for the crime of illegal sale of drugs.[10] It likewise held that the defense interposed by

[7] CA *rollo*, pp. 14-16.

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

[9] *Id*. at 17.

[10] *Id*. at 17-18.

the accused deserves scant consideration as it is self-serving and is not corroborated by other strong evidence.[11] Furthermore, it upheld the presumption of regularity in the performance of official duty by law enforcement agents.[12] Lastly, it held that the accused miserably failed to present any evidence in support of his claim of frame-up and torture.[13] The dispositive portion of the RTC Decision reads:

> **WHEREFORE**, Premises Considered,the Court finds accused Cesar Dela Cruz y Libonao a.k.a. "Sesi" of Zone 3, Macanaya, Aparri, Cagayan **GUILTY** beyond reasonable doubt of the crime of selling *shabu* penalized under Section 5, Article II of R.A. 9165 and hereby imposes upon him the penalty of **LIFE IMPRISONMENT** and fine of Five Hundred Thousand (₱500,000.00) Pesos with all the accessory penalties under the law.
>
> The plastic sachet containing *shabu* or methamphetamine hydrochloride (EXH "A" VAM-06-06-10) is hereby ordered confiscated and turned over to the Philippine Drug Enforcement Agency for proper disposition.
>
> Costs de Oficio.
>
> **SO ORDERED.**[14]

Aggrieved, Dela Cruz appealed to the CA.

Ruling of the CA

In the assailed Decision dated September 6, 2016, the CA affirmed Dela Cruz's conviction. The dispositive portion of the Decision reads:

> We **DISMISS** the appeal, and **AFFIRM** the Decision dated 2 September 2013 of the Regional Trial Court, Branch 07, Aparri, Cagayan in Criminal Case No. II-10512.
>
> **IT IS SO ORDERED**.[15]

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

[12] *Id*. at 18.

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

[14] *Id*. at 19.

[15] *Rollo*, p. 13.

The CA likewise held that the prosecution was able to prove all the elements of illegal sale of drugs.[16] As to the contention of Dela Cruz that the buy-bust team failed to comply with the requirements of Section 21 of RA 9165, the CA ruled that his argument is devoid of merit.[17] It noted that non-compliance with Section 21 does not invalidate the seizure and custody of the seized drugs.[18] Mere lapses in procedure do not invalidate a seizure as long as the apprehending officers are able to successfully preserve the integrity and evidentiary value of the confiscated items.[19] Lastly, it ruled that Dela Cruz's defense of frame-up has no leg to stand on as he failed to overcome the presumption of regularity in the performance of duty on the part of the police.[20]

Hence, the instant appeal.

Issue

Whether or not Dela Cruz's guilt for violation of Section 5 of RA 9165 was proven beyond reasonable doubt.

The Court's Ruling

The appeal is meritorious. The accused is accordingly acquitted.

In cases involving dangerous drugs, the confiscated drug constitutes the very *corpus delicti* of the offense[21] and the fact of its existence is vital to sustain a judgment of conviction.[22] It is essential, therefore, that the identity and integrity of the seized drugs be established with moral certainty.[23] Thus, in order

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

[17] *Id*. at 9.

[18] *Id*. at 11.

[19] *Id*.

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

[21] *People v. Sagana*, G.R. No. 208471, August 2, 2017, 834 SCRA 225, 240.

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

[23] *People v. Alvaro*, G.R. No. 225596, January 10, 2018, p. 9.

to obviate any unnecessary doubt on its identity, the prosecution has to show an unbroken chain of custody over the same and account for each link in the chain of custody from the moment the drug is seized up to its presentation in court as evidence of the crime.[24]

In this regard, Section 21, Article II of RA 9165,[25] the applicable law at the time of the commission of the alleged crime, outlines the procedure which the police officers 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 of the same and the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination.[26]

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[24] *People v. Manansala*, G.R. No. 229092, February 21, 2018, p. 5.

[25] 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[.]

[26] See RA 9165, Art. II, Sec. 21 (1) and (2).

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.[27] **In this connection, this also means that the three required witnesses should already be physically present at the time of the conduct of the inventory of the seized items which, again, 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.

The Court, however, has clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible;[28] and, 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.[29] It has been repeatedly emphasized by the Court that the prosecution has the positive duty to explain the reasons behind the procedural lapses.[30] Without any justifiable explanation, which must be proven as a fact,[31] the evidence of the *corpus delicti* is unreliable, and

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

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

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

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

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

the acquittal of the accused should follow on the ground that his guilt has not been shown beyond reasonable doubt.[32]

The buy-bust team failed to comply with the mandatory requirements under Section 21.

In the present case, the buy-bust team failed to strictly comply with the mandatory requirements under Section 21, par. 1 of RA 9165.

First, the arresting officers failed to mark and photograph the seized illegal drug at the place of arrest. Moreover, none of the three required witnesses was present at the time of seizure and apprehension. The Barangay Officials were only "called-in" at the police station. As IO2 Vivien A. Molina (IO2 Molina), the poseur-buyer, herself testified:

Q: At the Aparri Police Station, what happened there?

A: When we were already at the Aparri Police Station including the suspect sir, we conducted the markings on the evidences and inventory the confiscated evidences, we photograph the evidences sir and also the witness[es] are there, sir.

Q: The witness, who are the witness[es] that you are referring to?

A: The Brgy. Chairman and one kagawad, sir.

Q: Who called these Barangay Officials?

A: I was not the one sir, it's the member of [the] team.

Q: So from your account, you conducted a physical inventory and photograph the drugs and other evidences?

A: Yes, sir.

Q: Was a member of the media present at the time of the inventory and photograph taking?

A: Nobody sir because it was late in the night already, sir.[33] (Emphasis supplied)

[32] *People v. Gonzales*, 708 Phil. 121, 123 (2013).

[33] TSN, August 31, 2010, pp. 21-22.

Second, even more revealing is the fact that Barangay Kagawad Anthony Pipo (Kagawad Pipo), whose signature was affixed on the inventory, did not witness the actual preparation of the inventory and photographing of the seized items, *viz.*:

COURT: So, you affixed your signature to this inventory?

A: Yes, your honor.

Q: Were you present when the inventory was prepared?

A: That was already prepared, your Honor.

Q: That's why the question of the court is, were you present when this was actually prepared?

A: No, your Honor.

Q: You were not present. So[,] when you arrived this one was already prepared?

A: Yes, your Honor.[34] (Emphasis supplied)

As to the Barangay Captain who allegedly signed the inventory, he failed to take the witness stand.

Thus, these anomalies in the custodial chain create serious doubt as to the integrity and evidentiary value of the seized illegal drug.

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*,[35] 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 vs. Mendoza*,[36] without the ***insulating***

[34] TSN, October 19, 2011, pp. 23-24.

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

[36] 736 Phil. 749 (2014).

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 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.

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."[37]

Lastly, the buy-bust team failed to offer any explanation for their failure to strictly comply with the requirements of Section 21.

When IO2 Molina was asked by the Court why there was no media representative present at the time of the conduct of the

[37] *People v. Tomawis*, *supra* note 35, at 11-12.

inventory and photographing of the seized items, she merely answered that it was late in the night already. This explanation is not sufficient to justify the police operatives' non-compliance with Section 21. Moreover, the barangay officials were merely "called-in" to the police station after the arrest. Time and again, the Court has held that 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.

It bears stressing that the prosecution has the burden of (1) proving 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*:[38]

> 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.**[39]

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

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

The saving clause does not apply to this case.

As earlier stated, following the IRR of RA 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.**[40] If these elements are present, the seizure and custody of the confiscated drug shall not be rendered void and invalid regardless of the non-compliance with the mandatory requirements of Section 21. It has also been emphasized that the State bears the burden of proving the justifiable cause.[41] 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 justify or explain the same.[42]

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.[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**

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[40] RA 9165, as amended by RA 10640, Sec. 21(1).

[41] *People v. Beran*, 724 Phil. 788, 822 (2014).

[42] *People v. Reyes*,797 Phil. 671, 690 (2016).

[43] *People v. Sumili*, 753 Phil. 342, 352 (2015).

[44] *Supra* note 42.

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 the present case, the prosecution neither recognized, much less tried to justify or explain, the police officers' deviation from the procedure contained in Section 21. As testified by IO2 Molina herself, they were only able to secure the presence of one of the required witnesses. On the other hand, her explanation as to the absence of the other witnesses is but a flimsy excuse. The dubious character of their so-called compliance with the procedure laid out in Section 21 is bolstered even more by the fact that Kagawad Pipo himself admitted that he was not actually present during the preparation of the inventory and he was merely asked by the policemen to sign the accomplished inventory report.

The integrity and evidentiary value of the *corpus delicti* have thus been compromised. In light of this, Dela Cruz 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.[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]

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[45] *Id*. at 690.

[46] 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."

[47] *People v. Belocura*, 693 Phil. 476, 503-504 (2012).

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-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 illegal drug. In other words, the prosecution was not able to overcome the presumption of innocence of Dela Cruz.

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 IRR, which is fundamental in preserving the integrity and evidentiary value

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[48] *People v. Mendoza*, *supra* note 36, at 769-770.

[49] *Id*.

[50] *People v. Catalan*, 699 Phil. 603, 621 (2012).

[51] 393 Phil. 68, 133 (2000).

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 September 6, 2016 of the Court of Appeals, Sixth Division in CA-G.R. CR-HC. No. 06459 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant **Cesar Dela Cruz y Libonao** 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 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 (Chairperson), Perlas-Bernabe, Reyes, A. Jr., and *Carandang, JJ.,* concur.

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[52] *People v. Jugo*, G.R. No. 231792, January 29, 2018, p. 10.

SECOND DIVISION

[G.R. No. 235572. December 5, 2018]

EDWIN H. BARROGA,[*] *petitioner, vs.* **QUEZON COLLEGES OF THE NORTH and/or MA. CRISTINA A. ALONZO and IRMA SEGUNDA A. BELTRAN**, *respondents.*

SYLLABUS

1. REMEDIAL LAW; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; IN LABOR CASES, GRAVE ABUSE OF DISCRETION MAY BE ASCRIBED TO THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE; CASE AT BAR.—"Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law." "In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition." Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC as the evidence of record show that petitioner retired from the service.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETIREMENT DISTINGUISHED FROM TERMINATION OF EMPLOYMENT.— While retirement from service is similar

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[*] "Edwin A. Barroga" in some parts of the *rollo.*

to termination of employment insofar as they are common modes of ending employment, they are mutually exclusive, with varying juridical bases and resulting benefits. Retirement from service is contractual, while termination of employment is statutory.Verily, the main feature of retirement is that it is the result of a bilateral act of both the employer and the employee based on their *voluntary* agreement that upon reaching a certain age, the employee agrees to sever his employment.Since the core premise of retirement is that it is a voluntary agreement, it necessarily follows that if the intent to retire is not clearly established or if the retirement is involuntary, it is to be treated as a discharge.

3. ID.; ID.; ID.; VOLUNTARY RETIREMENT DISTINGUISHED FROM INVOLUNTARY RETIREMENT; CASE AT BAR.— The line between "voluntary" and "involuntary" retirement is thin but it is one which case law had already drawn. On the one hand, voluntary retirement cuts the employment ties leaving no residual employer liability; on the other, involuntary retirement amounts to a discharge, rendering the employer liable for termination without cause. The employee's intent is decisive. In determining such intent, the relevant parameters to consider are the fairness of the process governing the retirement decision, the payment of stipulated benefits, and the absence of badges of intimidation or coercion. x x x [A]n examination his SENA Form readily shows that petitioner's claim against respondents was just for "non-payment of retirement benefits," which they ultimately agreed to settle. Clearly, this agreement to settle cements petitioner's intent and decision to opt for voluntary retirement which, as mentioned, is separate and distinct from the concept of dismissal as a mode of terminating employment. Unfortunately, and as found by the tribunals *a quo* and the CA, respondents failed to comply with its undertaking under the Settlement of Agreement as petitioner's retirement benefits remain unpaid. From these circumstances, the Court is therefore inclined to hold that petitioner retired from service, but nonetheless, pursued the filing of the instant illegal dismissal case in order to recover the proper benefits due to him. In fact, it is telling that he never asked to be reinstated as he only sought the payment of his retirement benefits.

4. CIVIL LAW; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF IS PROPER IN LABOR CASES WHERE THE CONCERNED EMPLOYEE IS ENTITLED TO THE WAGES/BENEFITS PRAYED FOR.— [C]ase law instructs that in labor cases where the concerned employee is entitled to the wages/benefits prayed for, said employee is also entitled to attorney's fees amounting to ten percent (10%) of the total monetary award due him. Hence, the CA erred in deleting the award of attorney's fees. Thus, the reinstatement of such award is in order.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Emerson F. Llantero 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 petitioner Edwin H. Barroga(petitioner) assailing the Decision[2] dated July 18, 2017 and the Resolution[3] dated October 20, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 145828, which modified the Decision[4] dated January 15, 2016 and the Resolution[5] dated March 16, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 01-000096-16, and

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[1] *Rollo*, pp. 12-28.

[2] *Id*. at 33-46. Penned by Associate Justice Marlene B. Gonzales-Sison with Associate Justices Ramon A. Cruz and Zenaida T. Galapate-Laguilles, concurring.

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

[4] *Id*. at 102-109. Penned by Commissioner Cecilio Alejandro C. Villanueva with Presiding Commissioner Alex A. Lopez and Commissioner Pablo C. Espiritu, Jr., concurring.

[5] *Id*. at 110-113.

accordingly, ruled *inter alia*, that petitioner was not illegally dismissed by respondents Quezon Colleges of the North (QCN) and/or Ma. Cristina A. Alonzo (Alonzo) and Irma Segunda A. Beltran[6] (Beltran; collectively, respondents), but merely retired from service.

The Facts

Petitioner alleged that he was a full-time science and chemistry teacher at QCN's High School Department continuously from June 1985 to March 2014. However, at the beginning of school year 2014-2015, respondents told him thathe could not be given any teaching load allegedly because there were not enough enrollees. Petitioner found the timing thereof suspicious as he was already due for optional retirement for continuously serving respondents for almost thirty (30) years.[7] Initially, petitioner filed a case via Single-Entry Approach (SENA)before the Department of Labor and Employment Regional Office in Aparri, Cagayan (SENA Case),[8] where he and QCN,[9] agreed on a settlement whereby the latter undertook to pay him his money claims on or before December 2014.[10] However, QCN failed to honor the settlement agreement, prompting petitioner to file a complaint,[11]docketed as NLRC RAB No. II Case No. 06-00195-2015, for *inter alia* illegal dismissal against respondents.[12]

Respondents moved for and were granted extensions of time to file their position paper, but still failed to file the same. Hence,

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[6] Respondents Cristina A. Alonzo and Irma Segunda A. Beltran were impleaded as corporate officers and representatives of QCN. See *id*. at 13.

[7] See *id*. at 34.

[8] See SENA Form dated July 28, 2014; *id*. at 114.

[9] Through Alonzo and Ramona Augustha Carniyan, who were the School President and the Assistant School Principal, respectively. See *id*.

[10] See Settlement of Agreement dated August 27, 2014; *id*. at 128.

[11] Dated June 24, 2015. *Id*. at 115-116.

[12] See *id*. at 103-104.

the Labor Arbiter (LA) was constrained to rule on the basis of petitioner's position paper.[13]

The LA Ruling

In a Decision[14] dated November 5, 2015, the LA ruled in petitioner's favor, and accordingly, ordered respondents to pay him the total amount of ₱357,873.29, representing petitioner's retirement pay, backwages, proportionate 13th month pay, service incentive leave pay, and attorney's fees.[15] The LA found that respondents' failure to submit their position paper despite numerous extensions is tantamount to their admission of petitioner's allegations, *i.e.*, that he was illegally dismissed, and thus, must be recompensed therefor.[16]

Seven (7) days later, or on November 12, 2015, respondents belatedly filed their position paper,[17] averring that: (*a*) they hired petitioner as a teacher in June 1985; (*b*) he resigned on September 1, 2006, as evidenced by a resignation letter of even date (2006 Resignation Letter);[18] and (*c*) per the letter[19] dated September 9, 2015 of the Private Education Retirement Annuity Association (PERAA), petitioner was already paid his retirement benefits in the total amount of ₱71,546.44 (PERAA Letter).[20] However, in view of the LA's ruling, respondents appealed[21]

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[13] See *id.* at 104. See also Complainant's Position Paper dated August 19, 2015; *id*. at 117-120.

[14] *Id*. at 85-87. Penned by Labor Arbiter Officer-in-Charge Ma. Lourdes R. Baricaua.

[15] *Id*. at 87-88.

[16] *Id*. at 86.

[17] See Position Paper for the Plaintiff with Motion to Admit Position Paper dated November 9, 2015 filed by Alonzo, representing Quezon Colleges; *id*. at 121-125.

[18] *Id*. at 97.

[19] *Id*. at 127.

[20] *Id*. at 104.

[21] See Appeal Memorandum dated November 23, 2015; *id*. at 70-82.

to the NLRC, principally reiterating their contentions in their position paper.

The NLRC Ruling

In a Decision[22] dated January 15, 2016, the NLRC affirmed the LA ruling. It held that respondents failed to prove their averment that petitioner had already retired prior to the filing of the illegal dismissal case, observing that there was no proof or record showing that respondents accepted petitioner's 2006 Resignation Letter, and that petitioner had undergone clearance proceedings after his purported resignation in 2006, or that he was no longer part of the school's payroll from such time.[23] Relatedly, the NLRC also pointed out that while respondents claimed that petitioner resigned way back in 2006, they nevertheless presented another letter[24]dated June 9, 2014 allegedly prepared by petitioner signifying his intention to retire (2014 Retirement Letter). In this regard, the NLRC opined that if petitioner really resigned in 2006, then there would be no reason for him to write respondents a retirement letter eight (8) years after his alleged resignation.[25] Further, the NLRC pointed out that the PERAA Letter did not prove that petitioner had been paid his retirement benefits, as the plain wording of the letter shows that what was paid to him was merely the repurchase benefit of his shares in the PERAA.[26] In sum, the NLRC concluded that since petitioner was already entitled to optional retirement, respondents' act of not assigning him any teaching load is a malicious scheme to dismiss him from service and to avoid payment of his retirement benefits.[27]

Respondents filed a motion for reconsideration,[28] contending therein for the first time that petitioner was not illegally dismissed

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[22] *Id*. at 102-109.

[23] See *id*. at 106.

[24] *Id*. at 101.

[25] See *id*. at 106.

[26] See *id*.

[27] See *id*. at 107.

[28] Not attached to the *rollo*.

as he retired on June 9, 2014 as evidenced by the 2014 Retirement Letter.[29] In a Resolution[30] dated March 16, 2016, the NLRC denied respondents' motion, holding, among others, that respondents can no longer change the theory of their defense after the case was already decided by a tribunal.[31]Aggrieved, respondents filed a petition for *certiorari*[32] before the CA.

The CA Ruling

In a Decision[33] dated July 18, 2017, the CA modified the NLRC ruling holding that petitioner was not illegally dismissed, but is nevertheless entitled to retirement pay, proportionate 13th month pay for 2014, and service incentive leave pay from 1985 until retirement, plus legal interest of six percent (6%) per annum from finality of the CA Decision until fully paid.[34] It held that petitioner failed to prove his allegation that respondents dismissed him from employment when he was not given any teaching load for school year 2014-2015. In this regard, the CA opined that he was not given any teaching load for the said school year because he had tendered his retirement, as evidenced by the 2014 Retirement Letter, the existence of which was not disputed by petitioner, as well as the SENA Form reflecting that petitioner was only claiming for non-payment of retirement benefits.[35] Nonetheless, the CA ordered respondents to pay petitioner his other monetary claims, including retirement pay, absent any proof that the former already paid the same.[36] Finally, the CA ordered Beltran to be dropped as party-respondent in this case, considering that petitioner failed to show why she

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[29] See *rollo*, p. 111.

[30] *Id*. at 110-113.

[31] See *Id*. at 111-112.

[32] Dated April 29, 2016. *Id*. at 52-65.

[33] *Id*. at 33-46.

[34] *Id*. at 45.

[35] See *id*. at 40-42.

[36] See *id*. at 43 and 45.

should be held solidarily liable with QCN and its admitted representative, Alonzo.

Dissatisfied, petitioner moved for partial reconsideration[37] which was, however, denied in a Resolution[38] dated October 20, 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 petitioner was not illegally dismissed by respondents, but rather, retired from his employment with the latter.

The Court's Ruling

The petition lacks merit.

"Preliminarily, the Court stresses the distinct approach in reviewing a CA's ruling in a labor case. In a Rule 45 review, the Court examines the correctness of the CA's Decision in contrast with the review of jurisdictional errors under Rule 65. Furthermore, Rule 45 limits the review to questions of law. In ruling for legal correctness, the Court views the CA Decision in the same context that the petition for *certiorari* was presented to the CA. Hence, the Court has to examine the CA's Decision from the prism of whether the CA correctly determined the presence or absence of grave abuse of discretion in the NLRC decision."[39]

"Case law states that grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion

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[37] See Motion for Partial Reconsideration dated August 16, 2017; *id*. at 160-168.

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

[39] *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, G.R. No. 184262, April 24, 2017, 824 SCRA 52, 60; citing *Quebral v. Angbus Construction, Inc.*, 798 Phil. 179, 187 (2016).

of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[40]

"In labor cases, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, which refers to that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion. Thus, if the NLRC's ruling has basis in the evidence and the applicable law and jurisprudence, then no grave abuse of discretion exists and the CA should so declare and, accordingly, dismiss the petition."[41]

Guided by the foregoing considerations, the Court finds that the CA correctly ascribed grave abuse of discretion on the part of the NLRC as the evidence of record show that petitioner retired from the service, as will be explained hereunder.

While retirement from service is similar to termination of employment insofar as they are common modes of ending employment, they are mutually exclusive, with varying juridical bases and resulting benefits. Retirement from service is contractual, while termination of employment is statutory.[42] Verily, the main feature of retirement is that it is the result of a bilateral act of both the employer and the employee based on their *voluntary* agreement that upon reaching a certain age, the employee agrees to sever his employment.[43] Since the core premise of retirement is that it is a voluntary agreement, it necessarily follows that if the intent to retire is not clearly

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[40] *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, *id*. at 61; citing *Gadia v. Sykes Asia, Inc.*, 752 Phil. 413, 419-420 (2015).

[41] *University of Santo Tomas (UST) v. Samahang Manggagawa ng UST*, *id*.; citing *Gadia v. Sykes Asia, Inc.*, *id*. at 420.

[42] *General Milling Corporation v. Viajar*, 702 Phil. 532, 546 (2013); citing *Quevedo v. Benguet Electric Cooperative, Inc.*, 615 Phil. 504, 509-510 (2009).

[43] See *Robina Farms Cebu v. Villa*, 784 Phil. 636, 649 (2016); citing *Universal Robina Sugar Milling Corporation v. Caballeda*, 582 Phil. 118, 133 (2008).

established or if the retirement is involuntary, it is to be treated as a discharge.[44]

The line between "voluntary" and "involuntary" retirement is thin but it is one which case law had already drawn. On the one hand, voluntary retirement cuts the employment ties leaving no residual employer liability; on the other, involuntary retirement amounts to a discharge, rendering the employer liable for termination without cause. The employee's intent is decisive. In determining such intent, the relevant parameters to consider are the fairness of the process governing the retirement decision, the payment of stipulated benefits, and the absence of badges of intimidation or coercion.[45]

In this case, petitioner's claim that respondents forced him to retire is anchored on the supposed fact that at the start of school year 2014-2015, he was suddenly not given any teaching load by the respondents on the ground that there were not enough enrollees in the school. However, aside from such bare claims, petitioner has not shown any evidence that would corroborate the same. It is settled that bare allegations of discharge, when uncorroborated by the evidence on record, cannot be given credence.[46]

Moreover, petitioner's aforesaid claim is belied by the fact that about a week after the beginning of school year 2014-2015,[47]

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[44] See *Laya, Jr. v. Philippine Veterans Bank*, G.R. No. 205813, January 10, 2018; citing *Paz v. Northern Tobacco Redrying Co., Inc.*, 754 Phil. 251, 266 (2015).

[45] See *Robina Farms Cebu v. Villa*, *supra* note 43, at 649-650; citing *Quevedo v. Benguet Electric Cooperative, Inc., supra* note 42, at 510-511.

[46] See *Hechanova Bugay Vilchez Lawyers v. Matorre*, 719 Phil. 608, 609 (2013); citing *Vicente v. CA*, 557 Phil. 777, 787 (2007).

[47] The Court takes judicial notice that school year 2014-2015 started on June 2, 2014. See Department of Education Department Order No. 18, Series of 2014, entitled "SCHOOL CALENDAR FOR SCHOOL YEAR (SY) 2014-2015" <http://www.deped.gov.ph/2014/03/28/do-18-s-2014-school-calendar-for-school-year-sy-2014-2015/> (last visited November 19, 2018). See also "Official School Calendar for School Year 2014-2015<https://www.officialgazette.gov.ph/2014/05/19/official-school-calendar-for-school-year-2014-2015/>(last

he submitted to respondents the 2014 Retirement Letter[48] wherein he expressed his intent to optionally retire at the age of 61. Notably, records are bereft of any showing that petitioner ever challenged the authenticity and due execution of such letter. Further, if petitioner really believed that respondents indeed illegally dismissed him from service, then he would have already made such claim at the earliest instance, *i.e.*, on July 28, 2014 when he filed a SENA Case against the latter. However, an examination of his SENA Form[49] readily shows that petitioner's claim against respondents was just for "non-payment of retirement benefits," which they ultimately agreed to settle.[50] Clearly, this agreement to settle cements petitioner's intent and decision to opt for voluntary retirement which, as mentioned, is separate and distinct from the concept of dismissal as a mode of terminating employment. Unfortunately, and as found by the tribunals *a quo* and the CA, respondents failed to comply with its undertaking under the Settlement of Agreement as petitioner's retirement benefits remain unpaid.[51]

From these circumstances, the Court is therefore inclined to hold that petitioner retired from service, but nonetheless, pursued the filing of the instant illegal dismissal case in order to recover the proper benefits due to him. In fact, it is telling that he never asked to be reinstated as he only sought the payment of his retirement benefits. In view of the foregoing, respondents must duly pay petitioner not only his retirement benefits, but also his other monetary claims (*i.e.*, proportionate 13th month pay for 2014 and service incentive leave pay from 1985 until his retirement) which the tribunals *a quo* and the CA also found to be unpaid.

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visited November 19, 2018) and "DepEd: School Year 2014-2015 to Start June 2"<http://www.gmanetwork.com/news/news/nation/355147/deped-school-year-2014-2015-to-start-june-2/story/> (last visited November 19, 2018).

[48] *Rollo*, p. 101.

[49] *Id*. at 114.

[50] *Id*. at 128.

[51] See *id*. at 43, 86, and 108.

On this note, case law instructs that in labor cases where the concerned employee is entitled to the wages/benefits prayed for, said employee is also entitled to attorney's fees amounting to ten percent (10%) of the total monetary award due him.[52] Hence, the CA erred in deleting the award of attorney's fees. Thus, the reinstatement of such award is in order.[53]

Further, all monetary awards due to petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of this ruling until full payment.[54]

Finally, the Court sustains the CA's order to drop Beltran as a party-respondent in this case for petitioner's failure to allege any fact which would make her solidarily liable with QCN and its representative, Alonzo.

WHEREFORE, the petition is **DENIED**. The Decision dated July 18, 2017 and the Resolution dated October 20, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 145828 are **AFFIRMED** with the following **MODIFICATIONS**: (*a*) respondents Quezon Colleges of the North and/or Ma. Cristina A. Alonzo are ordered to pay petitioner Edwin H. Barroga attorney's fees amounting to ten percent (10%) of the monetary claims granted to him; and (*b*) all monetary amounts due to petitioner shall earn legal interest at the rate of six percent (6%) per annum from finality of the ruling until full payment. The rest of the CA Decision stands.

SO ORDERED.

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

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[52] See *Horlador v. Philippine Transmarine Carriers, Inc.*, G.R. No. 236576, September 5, 2018, citations omitted.

[53] See *id*.

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

SECOND DIVISION

[G.R. No. 235956. December 5, 2018]

ARJAY GUTIERREZ *y* CONSUELO @ "RJ", *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT (RA 9165); ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** Gutierrez was charged with and convicted of the crime of illegal possession of dangerous drugs as defined and penalized under R.A. No. 9165, which demands the establishment of the following elements for a conviction: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug

2. **ID.; ID.; AMENDMENT PROVIDED BY RA NO. 10640; CHAIN OF CUSTODY; NON-COMPLIANCE ALLOWED ONLY UNDER JUSTIFIABLE GROUNDS, AND AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640, are material as their compliance affects the *corpus delicti* and warrants the identity and integrity of the substances and other evidence that are seized by apprehending officers. x x x It bears emphasis that the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, plus two other witnesses, particularly: (1) an elected public official, and (2) a representative of the National Prosecution Service or the media, who shall sign the copies of the inventory and be given a copy thereof. Proponents of the amendment recognized that the strict implementation of the original Section 21 of R.A. No. 9165 could be impracticable for the law enforcers' compliance, and that the stringent requirements could unduly

hamper their activities towards drug eradication. The amendment then substantially included the saving clause that was actually already in the IRR of the former Section 21, indicating that non-compliance with the law's 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 the seizures and custody over confiscated items. The Court reiterates though that a failure to fully satisfy the requirements under Section 21 must be strictly premised on "justifiable grounds." The primary rule that commands a satisfaction of the instructions prescribed by the statute stands. The value of the rule is significant; its non-compliance has serious effects.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

A. REYES, JR., *J.*:

This resolves the petition for review filed under Rule 45 of the Rules of Court by petitioner Arjay Gutierrez y Consuelo @ "RJ" (Gutierrez) to assail the Decision[1] dated June 28, 2017 and Resolution[2] dated November 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 38431, which affirmed his conviction for violation of Section 11, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] Penned by Associate Justice Jane Aurora C. Lantion, with Associate Justices Fernanda Lampas Peralta and Victoria Isabel A. Paredes concurring; *rollo*, pp. 34-48.

[2] *Id.* at 51-52.

The Facts

Gutierrez was charged before the Regional Trial Court (RTC) of Pasig City with violation of Section 11, Article II of R.A. No. 9165 *via* an Information[3] that reads:

> On or about October 16, 2014, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control five (5) heat-sealed transparent plastic sachets containing dried marijuana fruiting tops having the following recorded net weights: 0.16 gram; 0.15 gram; 0.12 gram; 0.14 gram; 0.14 gram; and one folded Marlboro cigarette paper containing 0.18 gram or with a total weight of 0.90 gram of dried Marijuana fruiting tops, which were all found positive to the test for Marijuana, a dangerous drug, in violation of the said law.
>
> Contrary to law.[4]

Upon arraignment, Gutierrez entered the plea of "not guilty."[5] After termination of the pre-trial conference, trial on the merits ensued.

Version of the Prosecution

The prosecution intended to present the following witnesses during the trial: (1) Police Senior Inspector Anghelisa S. Vicente (PSI Vicente), (2) Police Officer 2 Merlito B. Baturi (PO2 Baturi), and (3) Police Officer 3 Nelson G. Cruz (PO3 Cruz). Gutierrez was allegedly caught by PO2 Baturi in possession of *marijuana*, which was the subject of an examination made by PSI Vicente. During the initial presentation of the prosecution's evidence, however, the testimony of PSI Vicente was dispensed with given the following stipulations of facts that were jointly made by the trial prosecutor and the defense counsel:

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[3] Records, pp. 1-2.

[4] *Id*. at 1.

[5] *Id*. at 24.

(1) that [PSI] Vicente is a Forensic Chemist assigned at the PNP-EPD Crime Laboratory Office, Mandaluyong City; (2) that the witness is an expert in the field of Forensic Chemistry; (3) that the witness received the Request for Laboratory Examination, dated October 17, 2014, together with the specimens described in the request; (4) that upon receipt of the specimens, the witness conducted the physical, chemical and confirmatory test on the specimens submitted; (5) that the result of her examination is contained in the Physical Science Report No. D417-14E; (6) that the witness sealed the specimens and placed her marking thereon; (7) that she brought to [the RTC] the EPD Crime Laboratory's receiving copy of the letter-request for laboratory examination, the white copy of the Physical Science Report and the subject drugs; (8) the existence and due execution of the Physical Science Report No. D-417-14E and the Request for Laboratory Examination; (9) that the witness has no personal knowledge of the source and origin of the specimens subject of this case; (10) that the specimens she received were the same specimens she brought and submitted to the court; (11) that she has no personal knowledge of the circumstances leading to the arrest of the accused; and (12) that the evidence examined by the forensic chemist were already pre-marked when she received the same.[6]

Physical Sciences Report No. D-417-14E[7] referred to in the foregoing and which indicated the results of PSI Vicente's laboratory examination provided as follows:

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for the presence of Marijuana, a dangerous drug x x x

CONCLUSION:

Specimens A to F contain Marijuana, a dangerous drug x x x[8]

The circumstances that led to the prior arrest of Gutierrez and the confiscation of the subject drugs were testified on by

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[6] *Id*. at 39.

[7] *Id*. at 64.

[8] *Id*.

another member of the Philippine National Police, PO2 Baturi. He narrated in court that on October 16, 2014, at around 10:00 p.m., he was in an outpost within the Police Community Precinct (PCP) 6, Pasig City Police Station situated at Westbank Road, Floodway, when the Tactical Operation Center of the Pasig City Police Station Unit received a call from a concerned citizen about a group of male persons causing alarm and scandal, also along West Bank Road, Floodway. After receipt of the report, PO2 Baturi and PO1 Jeffrey Cangas (PO1 Cangas), together with members of the Barangay Security Force (BSF) of Barangay (Brgy.) Maybunga, acted on the matter and immediately went to the area where the persons were allegedly creating noise and trouble. There, they saw a group of five or six persons who were shouting and uttering unpleasant words. PO2 Baturi, in particular, arrested Gutierrez. After informing Gutierrez of his arrest for alarm and scandal followed by a statement of his constitutional rights, PO2 Baturi proceeded to conduct a routine body search for possible possession of illegal objects. Upon making a body frisk, PO2 Baturi recovered from Guiterrez a fliptop box that contained a plastic sachet with suspected dried *marijuana*. PO2 Baturi then informed Gutierrez of his arrest also for illegal possession of *marijuana*. Gutierrez and the other persons arrested were brought to the precinct, where the confiscated pieces of evidence were presented to the duty officer and markings thereon were made.[9] Specifically, the markings on the evidence were as follows:

1) first plastic sachet: 1MBB/ACG, with date 10-16-2014 and PO2 Baturi's signature;
2) second plastic sachet: 2MBB/ACG-10-16-2014 and signature;
3) third plastic sachet: 3MBB/ACG-10-16-2014 and signature;
4) fourth plastic sachet: 4MBB/ACG-10-16-2014 and signature;
5) fifth plastic sachet: 5MBB/ACG-10-16-2014 and signature;

[9] TSN, April 20, 2015, pp. 3-6.

6) folded cigarette pack containing dried *marijuana* leaves: 6MBB/ACG-10-16-2014 and signature.
7) flip-top box that contained the 5 plastic sachets and 1 cigarette pack: 7MBB/ACG-10-16-2014.[10]

Those who were present during the marking by PO2 Baturi were PO1 Cangas, the BSF of Brgy. Maybunga, PO2 Baturi's commander, the admin personnel of the precinct and Gutierrez.[11]

An Inventory of Seized Evidence[12] was later prepared, presented and signed at the barangay hall by PO2 Baturi before one Kagawad Pozon, a barangay official of Brgy. Maybunga to whom Gutierrez was also presented. Gutierrez and Kagawad Pozon were likewise among those who signed the inventory.[13] PO2 Baturi explained his failure to prepare the inventory at the place of arrest, and the other matters that affected the handling of the confiscated items by testifying that:

PROS. PONPON

x x x x x x x x x

Q: Why was it that you did not prepare [the inventory] at the place of the arrest?

A: Because it was a remote area and we don't have necessary form of inventory of seized evidence.

Q: Why is it that you did not did you (sic) not prepare the inventory at PCP 6?

A: We need to make the inventory in the presence of the barangay official as well as in the presence of the accused because that was the prerequisite, sir.

Q: Before you start preparing the inventory, why you did (sic) not summon the presence of a representative from the media?

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[10] *Id*. at 2-4; records, pp. 66 and 75.

[11] *Id*. at 4.

[12] Records, p. 59.

[13] TSN, April 20, 2015, pp. 4-6.

A: We don't have contact with the media, sir.

Q: Why did you not summon the presence of the representative from the National Prosecution Service?

A: Because we will file the case at the court of law, sir.

Q: After you prepared the inventory, what happened next, if any?

A: Thereafter, we proceeded to the SAID Office to prepare for the necessary papers for the filing of the case, sir.

Q: From the place where you arrested the accused up to the barangay hall of Brgy. M[a]ybunga, who was in possession of the evidence that you confiscated from the accused?

A: The evidence was with me, sir.

Q: From the barangay, where did you proceed?

A: To the [Station Anti-Illegal Drugs (SAID)] Office to turn over the evidence confiscated from the suspect as well as the suspect to the duty investigator of SAID Police Station.

Q: While in transit from the barangay hall of Brgy. Maybunga to the office of SAID, who was in possession of the evidence that you confiscated from the accused?

A: It was in my custody, sir.

Q: You said you went to the Office of SAID for the purpose of turned (sic) over the evidence to the SAID, what proof do you have to show that you actually turned over the evidence to SAID?

A: Because the duty investigator at the time took my affidavit of arrest regarding the arrest of the accused and the turned (sic) over of the evidence confiscated from the possession of the accused.[14]

PO2 Baturi also identified during the trial[15] a Chain of Custody Form[16] that bore his signature and an indication that the

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

[15] TSN, April 20, 2015, p. 10.

[16] Records, p. 60.

confiscated items marked as 1MBB-ACG-10-16-2014 to 6MBB/ACG-10-16-2014 were turned over to PO3 Cruz, an Investigator of the Station Anti-Illegal Drugs Special Operation Task Group (SAID-SOTG) Pasig City. The trial prosecutor and defense counsel also opted to merely stipulate on the matters that were to be testified upon by PO3 Cruz, particularly:

> (1) that the witness is the investigator on case; (2) that he prepared the Request for Laboratory Examination, Chain of Custody Form; and Request for Drug Test; (3) that the witness can identify the aforesaid documents; (4) that the evidence was turned over by PO3 Nelson Cruz to PSI Anghelisa S. Vicente as reflected in the Chain of Custody Form; (5) that the witness has no personal knowledge of the source and origin of the specimens subject of this case; (6) that he has no personal knowledge of the facts and circumstances leading to the arrest of the accused; and (7) that he received the specimens already pre-marked.[17]

Version of the Defense

Only Gutierrez testified for his defense. He denied the charges against him as he claimed that on October 16, 2014, at around 10:30 p.m., he and his friends were hanging out, laughing and talking in front of his friend Russel's house along West Bank Road, Floodway, Maybunga, Pasig City when a police mobile car stopped before them. PO1 Cangas and PO2 Baturi alighted from the car and then frisked them even without first informing them of the reason for the body search. PO2 Baturi did not recover anything from Gutierrez during the frisk; Gutierrez and his friends were then ordered by the police to leave the place.[18]

Gutierrez's group then did as was instructed, and thereafter proceeded to the house of one Erickson Irvin Inocando (Erickson) to eat. While inside Erickson's house, Gutierrez and his friends heard a commotion, so they peered outside and were surprised to again see PO1 Cangas and PO2 Baturi. The police officers

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[17] *Id*. at 51.

[18] TSN, September 28, 2015, pp. 3-5.

approached Gutierrez's group. Gutierrez and Erickson were handcuffed, and then made to ride a patrol car without getting any explanation from the police. They were brought to PCP 6 and were told to admit as theirs a cigarette pack containing dried *marijuana*. When PO2 Baturi said that the cigarette pack was confiscated from Gutierrez, the latter opposed as he argued that nothing was found from him during the frisk. Gutierrez denied knowing where the cigarette pack came from. Out of fright, he still signed a document presented to him by the police even without reading its contents.[19]

The Ruling of the RTC

On October 28, 2015, the RTC rendered its Judgment[20] finding Gutierrez guilty as charged. For the trial court, PO2 Baturi made a valid warrantless arrest upon Gutierrez for causing disturbance in a public place. The frisk that was made following the lawful arrest yielded the confiscation of the plastic sachets and cigarette wrapper with suspected dried *marijuana* fruiting tops.[21] A qualitative examination conducted on the specimens submitted for laboratory examination confirmed the items to be *marijuana*, a dangerous drug under R.A. No. 9165.[22]

On the matter of sufficient compliance with the statutory requirements in the handling of the confiscated items, the RTC discussed:

> Attached to the record of the case are the inventory of seized properties/items and photographs of the seized evidence. The inventory, however, bears no signature of the representative from the media or the National Prosecution Service. It has, however, the signature of an elected public official, Kagawad Pozon. PO2 Baturi also admitted that he marked the evidence not at the place of arrest but at the PCP 6 outpost and that the inventory and photographing of the evidence were done at the *barangay* hall of Maybunga.

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

[20] Rendered by Presiding Judge Jennifer Albano Pilar; records, pp. 73-80.

[21] *Id*. at 77-78.

[22] *Id*. at 78.

The failure, however, of the arresting officer to comply strictly with the rule[,] specifically Section 21, Article II of RA 9165, as amended by Section 1 of RA 10640[,] is not fatal. It did not render accused'[s] arrest illegal nor the evidence adduced against him inadmissible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

In the instant case, the requirements of the law were substantially complied with and the integrity of the drugs seized from the accused was preserved. More importantly, an unbroken chain of custody of the prohibited drugs taken from the accused was sufficiently established. x x x[23]

On the chain of custody, the RTC referred to the fact that the marijuana was seized by PO2 Baturi from Gutierrez and then brought to PCP 6 outpost where the markings were made. Thereafter, these were brought to the barangay hall where PO2 Baturi accomplished the required inventory before Kagawad Pozon. After the inventory, the drugs were brought to the office of SAID-SOTG, Pasig City Police Station, and turned over to PO3 Cruz, the investigating officer. PO3 Cruz prepared the request for laboratory examination and delivered the evidence for laboratory examination to the EPD Crime Laboratory Service in Mandaluyong City, received by PSI Vicente.[24]

The RTC's judgment dated October 28, 2015 then ended with the following dispositive portion:

WHEREFORE, premises considered, the Court finds accused ARJAY [GUTIERREZ] y CONSUELO alias "RJ" **GUILTY** beyond reasonable doubt of violation of Section 11, Article II of RA No. 9165, and hereby sentences him to suffer imprisonment from ***twelve (12) years and one (1) day to fourteen (14) years and eight (8) months,*** **and a fine of** ***three hundred thousand pesos*** (₱300,000.00).

The 0.90 gram of dried marijuana fruiting tops (Exhibits "K" to "Q") subject matter of the instant case is forfeited in favor of the

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[23] *Id*. at 79.

[24] *Id*. at 79.

government, and its transmittal to the Dangerous Board for its immediate destruction is hereby ordered.

SO ORDERED.[25]

Dissatisfied with his conviction, Gutierrez filed a notice of appeal[26] from the RTC's decision to the CA.

The Ruling of the CA

On June 28, 2017, the CA rendered its Decision that denied Gutierrez's appeal. His illegal possession of dangerous drugs, particularly the *marijuana* that had a total weight of 0.90 gram, was duly established by the prosecution. The drugs were recovered during a valid warrantless search that was effected incidental to a lawful arrest by PO2 Baturi for alarms and scandal.[27] The appellate court cited the presumption that is generally applied to the actions of police officers, i.e., that they have performed their duties in a regular manner, unless there is evidence to the contrary. The presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of the prosecution witnesses, should prevail over Gutierrez's defenses of denial and frame-up which, as a rule, are viewed with disfavor by the courts.[28]

The police officers' failure to fully comply with Section 21 of R.A. No. 9165 on the immediate physical inventory and photograph of confiscated drugs, along with the failure to obtain the persons who were required to witness the proceedings, was not fatal to the case. Substantial compliance suffices under Section 21 (a) of R.A. No. 9165's Implementing Rules and Regulations (IRR).[29] "Slight infractions or nominal deviations

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[25] *Id*. at 82.

[26] *Id*. at 83.

[27] *Rollo*, pp. 40-41.

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

[29] *Id*. at 45-46.

by the police from the prescribed method of handling the *corpus delicti*, as provided in Section 21, should not exculpate an otherwise guilty defendant."[30]

Given the foregoing findings, the *fallo* of the CA decision reads:

> **WHEREFORE**, the instant appeal is hereby DENIED. The Judgment dated 28 October 2015 issued by the Regional Trial Court of Pasig City, Branch 164, in Criminal Case No. 19624-D, is hereby **AFFIRMED**.
>
> **SO ORDERED.**[31]

Hence, this petition for review on *certiorari* filed by Gutierrez.

The Present Petition

Gutierrez insists on an acquittal from the crime of illegal possession of dangerous drugs, as he assails the validity of his arrest and the admissibility of the pieces of evidence that were allegedly seized from and presented against him. He likewise claims that the prosecution has failed to prove the identity of the illegal drugs. Invoking the chain of custody requirement, Gutierrez cites the police officers' failure to immediately mark and conduct an inventory of the items that were considered sufficient to support conviction.

This Court's Ruling

The Court finds merit in the petition. The acquittal of Gutierrez from the drug charge is proper.

Gutierrez was charged with and convicted of the crime of illegal possession of dangerous drugs as defined and penalized under R.A. No. 9165, which demands the establishment of the following elements for a conviction: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the

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[30] *Id*. at 46.

[31] *Id*. at 47.

accused freely and consciously possessed the drug.[32] In the prosecution of drugs cases, the procedural safeguards that are embodied in Section 21 of R.A. No. 9165, as amended by R.A. No. 10640,[33] are material as their compliance affects the *corpus delicti* and warrants the identity and integrity of the substances and other evidence that are seized by apprehending officers. Specifically, Section 21 as amended provides the following rules:

> Sec. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, **immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same** in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, **with an elected public official and a representative of the National Prosecution Service or the media** who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or **at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable,**

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[32] *People v. Casacop*, 778 Phil. 369, 375 (2016).

[33] 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 Acts of 2002. R.A. No. 10640 took effect on July 23, 2013.

> **in case of warrantless seizures**: *Provided, finally*, That **noncompliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody** over said items.
>
> x x x x x x x x x (Emphasis ours)

It bears emphasis that the amendment that was introduced by R.A. No. 10640 in Section 21 prescribes a physical inventory and photograph of the seized items in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, plus two other witnesses, particularly: (1) an elected public official, and (2) a representative of the National Prosecution Service or the media, who shall sign the copies of the inventory and be given a copy thereof. Proponents of the amendment recognized that the strict implementation of the original Section 21[34] of R.A. No. 9165 could be impracticable for the law enforcers' compliance,[35] and that the stringent requirements could unduly hamper their activities towards drug eradication. The amendment then

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

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

x x x x x x x x x

[35] See *People of the Philippines v. Ramoncito Cornel y Asuncion*, G.R. No. 229047, April 16, 2018.

substantially included the saving clause that was actually already in the IRR of the former Section 21, indicating that non-compliance with the law's 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 the seizures and custody over confiscated items.

The Court reiterates though that a failure to fully satisfy the requirements under Section 21 must be strictly premised on "justifiable grounds." The primary rule that commands a satisfaction of the instructions prescribed by the statute stands. The value of the rule is significant; its non-compliance has serious effects. As the Court declared in *People of the Philippines v. Joshua Que y Utuanis*:[36]

> *People v. Morales* explained that "failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*. It "produce[s] doubts as to the origins of the [seized paraphernalia]."
>
> Compliance with Section 21's chain of custody requirements ensures the integrity of the seized items. Non-compliance with them tarnishes the credibility of the [*corpus delicti*] around which prosecutions under the Comprehensive Dangerous Drugs Act revolve. Consequently, they also tarnish the very claim that an offense against the Comprehensive Dangerous Drugs Act was committed. x x x[37]

In the present case, there was such failure on the part of the apprehending officers to fully comply with the strict requirements under Section 21 of R.A. No. 9165.

Under the law, a physical inventory and photograph of the items that were purportedly seized from Gutierrez should have been made at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable. The entire procedure must likewise be made in the presence of Gutierrez or his representative or counsel and two more witnesses,

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[36] G.R. No. 212994, January 31, 2018.

[37] *Id*.

particularly: (1) an elected public official, ***and*** (2) a representative of the National Prosecution Service or the media. They shall be required to sign the copies of the inventory and be given a copy thereof.

The irregularities in this case pertained to such initial handling of the confiscated items. While a photograph[38] of the pieces of evidence forms part of the case records, there is no testimony indicating the circumstances as to when and where it was taken. The prosecution failed to establish that it was made at the place and in the presence of the persons enumerated under the law.

The required inventory was also not conducted by PO2 Baturi upon his arrival at the precinct. It was not made until after he and Gutierrez later went to the barangay hall of Barangay Maybunga, apparently only because the barangay official was in the hall at that time. The required number of witnesses to the inventory was also not satisfied because other than Gutierrez, only the barangay *kagawad* was there to observe it. A representative of the National Prosecution Service or the media was not present, with PO2 Baturi attempting to justify the deficiency by mere general statements that do not offer persuasive reasons, specifically:

> PROS. PONPON:
>
> x x x x x x x x x
>
> Q: Why is it that you did you not (sic) prepare the inventory at PCP 6?
>
> A: We need to make the inventory in the presence of the barangay official as well as in the presence of the accused because that was the prerequisite, sir.
>
> Q: Before you start preparing the inventory, why you did (sic) not summon the presence of a representative from the media?
>
> A: We don't have contact with the media, sir.
>
> Q: Why you did not summon the presence of the representative from the National Prosecution Service?

[38] Records, p. 66.

A: Because we will file the case at the court of law, sir.

x x x x x x x x x[39]

It is clear from the foregoing that there were no concrete efforts on the police officers' part to have any representative from the media who could witness the inventory. Moreover, even granting that they really did not have a contact with the media, then they could have at least coordinated with the National Prosecution Service. PO2 Baton, however, offered an absurd answer when he was asked during the trial for an excuse for such failure.

The saving clause under Section 21 could not apply in light of the mere flimsy excuses that were presented by the prosecution to justify the irregularities. The belated inventory and the failure to meet the number of witnesses required by law raised doubts on the integrity and evidentiary value of the items that were allegedly seized from Gutierrez. The law deserved faithful compliance, especially by the police officers who ought to have known the proper procedure in the seizure and handling of the confiscated items, especially since the small volume of the suspected drugs made it easier for the items to be corrupted or tampered with. It was only for justifiable and unavoidable grounds that any deviation from the strict requirements under Section 21 could be excused, and proof of such circumstances should have been laid down through clear and complete accounts of the prosecution witnesses. The prosecution failed in this regard.

As the Court reiterated in *People of the Philippines v. Lulu Battung y Narmar*,[40] "(t)he presence of the persons who should witness the post-operation procedures is necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity. The insulating presence of such witnesses would have preserved an unbroken chain of custody." Unjustified gaps in the chain of custody militate against a finding of guilt beyond reasonable doubt.[41]

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[39] TSN, April 20, 2015, pp. 6-7.

[40] G.R. No. 230717, June 20, 2018.

[41] *People of the Philippines v. Nestor Año y Del Remedios*, G.R. No. 230070, March 14, 2018.

All told, the Court finds the errors committed by the apprehending team as sufficient to cast serious doubts on the guilt of Gutierrez. Absent faithful compliance with the legal provisions intended to, *first*, preserve the integrity and evidentiary value of seized items in drugs cases, and *second*, to safeguard accused persons from accusations and convictions that are unjust, an acquittal becomes the proper recourse.

WHEREFORE, the petition is **GRANTED**. The Court of Appeals' Decision dated June 28, 2017 and Resolution dated November 21, 2017 in CA-G.R. CR No. 38431, which affirmed the Judgment dated October 28, 2015 of the Regional Trial Court, Branch 164, Pasig City in Criminal Case No. 19624-D finding petitioner Arjay Gutierrez *y* Consuelo alias "RJ" guilty of violating Section 11, Article II of Republic Act No. 9165, is **REVERSED** and **SET ASIDE**. Petitioner Arjay Gutierrez *y* Consuelo alias "RJ" is **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. The Director of the Bureau of Corrections is **ORDERED** to immediately release petitioner from detention, unless he is being lawfully held in custody for any other reason, and to inform this Court of his action hereon within five (5) days from receipt of this Decision.

SO ORDERED.

Carpio, S.A.J. (Chairperson), Perlas-Bernabe, Caguioa, and *Carandang*,[*] *JJ.*, concur.

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[*] Designated additional Member as per Special Order No. 2624, dated November 29, 2018.

SECOND DIVISION

[G.R. No. 236461. December 5, 2018]

REYNALDO ARBAS RECTO, *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; WHEN A PROPER REMEDY; GRAVE ABUSE OF DISCRETION; ESTABLISHED IN CASE AT BAR.—** A petition for *certiorari* under Rule 65 of the Rules of Court is the proper remedy when (1) any 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 and (2) there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding. Grave abuse of discretion exists when there is an arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or a whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. In this case, the denial of the Motion to Fix Bail by the RTC amounted to an evasion or refusal to perform a positive duty enjoined by law. The Order denying the Motion to Fix Bail was thus issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; 1987 CONSTITUTION; BILL OF RIGHTS; RIGHT TO BAIL; ALL PERSONS CHARGED WITH A CRIMINAL OFFENSE HAVE THE RIGHT TO BAIL, EXCEPT WHEN CHARGED WITH AN OFFENSE PUNISHABLE BY *RECLUSION PERPETUA* AND THE EVIDENCE OF GUILT IS STRONG; CASE AT BAR.—** [A]s a rule, all persons charged with a criminal offense have the right to bail. However, persons charged with an offense punishable by *reclusion perpetua* cannot avail of this right **if the evidence of guilt is strong.** In the present case, Recto was charged with Murder — an offense punishable by *reclusion perpetua*. Thus, the RTC was acting

within its powers or jurisdiction when it denied Recto's initial Petition for Bail. The RTC possesses sufficient discretion to determine, based on the evidence presented before it during the bail hearing, whether the evidence of guilt is strong. ***However***, after the prosecution had rested its case, Recto filed a Motion to Fix Bail on the ground that bail had become a matter of right as the evidence presented by the prosecution could only convict Recto of Homicide, not Murder. This Motion to Fix Bail was denied by the RTC, reiterating its earlier finding that, in its judgment, the evidence of guilt is strong. This is where the RTC committed grave abuse of discretion, and the CA thus erred in upholding the RTC's Order denying the Motion to Fix Bail. As correctly pointed out by Recto, the evidence of the prosecution could, at best, only convict him of Homicide and not Murder. The testimony of the main prosecution witness, Rabillas, was to the effect that his mother and Recto had an argument prior to her death.

3. CRIMINAL LAW; REVISED PENAL CODE; QUALIFYING CIRCUMSTANCERS; 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; CASE AT BAR.— Jurisprudence provides that 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. Mere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the aggressor does not positively tend to prove that they thereby **knowingly intended** to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer. Specifically, it must clearly appear that the method of assault adopted by the aggressor was **deliberately chosen** with a view to accomplishing the act without risk to the aggressor. Applying the same principles, the Court in *People v. Rivera* concluded that treachery is not present when the killing was preceded by a heated argument.

4. ID.; ID.; ID.; EVIDENT PREMEDITATION; TO BE APPRECIATED, IT MUST FIRST BE SHOWN THAT

THERE WAS A SUFFICIENT LAPSE OF TIME BETWEEN THE DECISION TO COMMIT THE CRIME AND THE EXECUTION THEREOF TO ALLOW THE ACCUSED TO REFLECT UPON THE CONSEQUENCES OF HIS ACT.— For the circumstance of evident premeditation to be properly appreciated, it must first be shown that there was a **sufficient lapse of time** between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act.

5. ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; IT MUST BE SHOWN THAT THE ASSAILANTS CONSCIOUSLY SOUGHT THE ADVANTAGE OR THAT THERE WAS DELIBERATE INTENT ON THE PART OF THE MALEFACTOR TO TAKE ADVANTAGE THEREOF.— [F]or abuse of superior strength to be properly appreciated, there must be evidence showing that the assailants "**consciously sought the advantage**" or that "there was **deliberate intent** on the part of the malefactor **to take advantage thereof**."

6. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; "EVIDENCE OF GUILT IS STRONG" STANDARD; APPLICATION THEREOF SHOULD BE IN RELATION TO THE CRIME AS CHARGED; CASE AT BAR.— In the case of *Bernardez v. Valera,* the Court emphasized that the "evidence of guilt is strong" standard **should be applied in relation to the crime *as charged***. Thus: While the charge against petitioner is undeniably a capital offense, it seems likewise obvious that the evidence submitted by the prosecution to the respondent judge for the purpose of showing that the evidence of petitioner's guilt is strong, is not sufficient to establish that the offense committed by petitioner, if any, was that of murder. On the basis of the sworn statement of Benedito himself petitioner could only be held liable for homicide. **It must be observed in this connection that a person charged with a criminal offense will not be entitled to bail even before conviction only if the charge against him is a capital offense and the evidence of his guilt *of said offense* is strong.** In the present case, as already stated, the evidence submitted by the prosecution in support of its opposition to the motion for bail could prove, at most, homicide and not murder, because it does not sufficiently prove either known premeditation or alevosia. x x x Applying the foregoing principles to the case at bar, the

RTC should have determined whether the evidence of guilt is strong **for Murder,** as opposed to simply determining if the evidence that he was responsible for Carlosita's death was strong. As previously illustrated above, the evidence of Recto's guilt — for Murder — was not strong. In sum, the RTC should have granted Recto's Motion to Fix Bail.

APPEARANCES OF COUNSEL

Arturo S. Santos for petitioner.
Office of the Solicitor General for respondent.

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 assailing the Decision[2] dated June 29, 2017 and Resolution[3] dated January 11, 2018 issued by the Thirteenth Division and Former Thirteenth Division, respectively of the Court of Appeals (CA) in CA-G.R. SP No. 146120.

The Facts

An Information[4] for Murder was filed against petitioner Reynaldo Arbas Recto (Recto)for the death of Margie Carlosita (Carlosita), the accusatory portion of which reads:

That on or about the 18th day of February, 2011 in the Municipality of Gen. Mariano Alvarez, Province of Cavite, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a hard object, with intent to kill, qualified by treachery and evident premeditation, abuse of superior strength, did

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[1] *Rollo,* pp. 11-28, excluding Annexes.

[2] *Id*. at 29-34. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Apolinario D. Bruselas, Jr. and Marie Christine Azcarraga-Jacob concurring.

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

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

then and there, wilfully, unlawfully and feloniously attack, assault and hit one **Margie Carlosita** on the head and on the parts of her body with the use of said hard object, thereby inflicting upon the latter traumatic injuries on the head and on her trunk, which caused her instantaneous death, to the damage and prejudice of the heirs of said Margie Carlosita.

CONTRARY TO LAW.[5]

Thereafter, on May 23, 2011, Recto's former counsel filed a Petition for Bail[6] with the Regional Trial Court of Bacoor City, Branch 89 (RTC). However, on April 11, 2014, the RTC issued an Order[7] denying Recto's Petition for Bail as it gave credence to the testimony of prosecution witness Joshua Emmanuel Rabillas (Rabillas), son of Carlosita, that Recto was the one who killed his mother. The RTC, in denying the Petition for Bail, noted that "without, however, prejudging in any way the result of the case, the Court is of the impression that the evidence of guilt is strong, and it is incumbent on the part of the accused to take the witness stand to show otherwise."[8]

Trial on the merits then ensued. After the prosecution rested its case, Recto filed a Demurrer to Evidence[9] on June 22, 2015 for insufficiency of evidence to hold him guilty of the crime of Murder. The RTC, however, denied the Demurrer to Evidence through an Order[10] dated December 22, 2015. In the said Order, the RTC stated:

Considering, therefore, the testimony of Joshua pointing to the accused as the perpetrator of the crime compared with the mere allegations of the accused that the victim committed suicide, it is imperative on the part of the accused to take the witness stand, that is, if he so desires, to support his claim that he is not guilty as charged.[11]

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[5] *Id*. at 39.

[6] *Id*. at 41-44.

[7] *Id*. at 45-46. Penned by Executive Judge Eduardo Israel Tanguanco.

[8] *Id*. at 46.

[9] *Id*. at 47-61.

[10] *Id*. at 62-65.

[11] *Id*. at 65.

Subsequently, on April 27, 2016, petitioner filed a Motion to Fix Bail[12] alleging that the prosecution was able to show that the crime charged should be Homicide only and not Murder. He pointed out that Rabillas, who was five years old at the time of the incident, testified that Carlosita was hit by the bottle during a quarrel over money. Citing *People v. Rivera*,[13] a case with substantially the same facts wherein the common-law wife was killed by the common-law husband during a heated argument, Recto argued that the case established by the prosecution was thus merely Homicide due to the absence of the qualifying circumstance of treachery.

On June 8, 2016, the RTC issued an Order[14] denying the Motion to Fix Bail. The RTC reiterated that it was of the impression that the evidence of guilt is strong and that it was incumbent on Recto to take the witness stand and show otherwise. As Recto had not taken the witness stand, then the RTC ruled against the Motion to Fix Bail. Recto moved for reconsideration, but the same was denied by the RTC on January 29, 2016.[15]

Aggrieved by the Order of the RTC denying his Motion to Fix Bail, Recto then filed a petition for *certiorari*[16] under Rule 65 of the Rules of Court with the CA.

Ruling of the CA

In the assailed Decision dated June 29, 2017, the CA affirmed the denial of Recto's Motion to Fix Bail. The CA reasoned that Recto failed to show that the RTC's issuance of the Order was attended by grave abuse of discretion amounting to lack or excess of jurisdiction. Furthermore, the CA held that "the evaluation of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court because of its

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[12] *Id*. at 66-70.

[13] 356 Phil. 409 (1998).

[14] *Rollo,* pp. 37-38.

[15] *Id*. at 30.

[16] *Id*. at 72-92.

unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct, and attitude under grilling examination."[17] The CA, thus, deferred to the RTC's assessment of the credibility of Rabillas' testimony, and also relied on its judgment that the evidence of guilt was strong. The CA ultimately dismissed the case.

Recto then sought reconsideration of the Decision, but the same was denied by the CA in a Resolution dated January 11, 2018.

Recto thus filed this Petition on February 26, 2018. The People, through the Office of the Solicitor General (OSG), filed its Comment[18] on September 13, 2018. Recto then filed his Reply[19] on October 5, 2018.

Issue

The sole issue to be resolved in this case is whether the CA erred in dismissing Recto's petition for *certiorari*.

The Court's Ruling

The Petition is meritorious.

A petition for *certiorari* under Rule 65 of the Rules of Court is the proper remedy when (1) any 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 and (2) there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law for the purpose of annulling or modifying the proceeding.[20] Grave abuse of discretion exists when there is an arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or a whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform

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[17] *Id*. at 32-33, citing *People v. Abat,* 731 Phil. 304, 312 (2014).

[18] *Id*. at 109-124.

[19] *Id*. at 127-134.

[20] *Ang Bian Huat Sons Industries, Inc. v. Court of Appeals,* 547 Phil. 588, 594 (2007).

a positive duty enjoined by law or to act at all in contemplation of law.[21]

In this case, the denial of the Motion to Fix Bail by the RTC amounted to an evasion or refusal to perform a positive duty enjoined by law. The Order denying the Motion to Fix Bail was thus issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Section 13, Article III of the Constitution provides:

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

The following Constitutional provision is implemented by the following provisions of the Rules of Court:

> SEC. 4. *Bail, a matter of right*; *exception*. — All persons in custody shall be admitted to bail as a matter of right, with sufficient sureties, or released on recognizance as prescribed by law or this Rule (a) before or after conviction by the Metropolitan Trial Court, Municipal Trial Court, Municipal Trial Court in Cities, or Municipal Circuit Trial Court, and (b) before conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua,* or life imprisonment.
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> x x x x x x x x x
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> SEC. 7. *Capital offense or an offense punishable by reclusion perpetua or life imprisonment, not bailable*. — No person charged with a capital offense, or an offense punishable by *reclusion perpetua* or life imprisonment, shall be admitted to bail when evidence of guilt is strong, regardless of the stage of the criminal prosecution.[22]

Thus, as a rule, all persons charged with a criminal offense have the right to bail. However, persons charged with an offense

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[21] *Badiola v. Court of Appeals,* 575 Phil. 514, 531 (2008).

[22] RULES OF COURT, Rule 114.

punishable by *reclusion perpetua* cannot avail of this right **if the evidence of guilt is strong.**

In the present case, Recto was charged with Murder – an offense punishable by *reclusion perpetua*. Thus, the RTC was acting within its powers or jurisdiction when it denied Recto's initial Petition for Bail. The RTC possesses sufficient discretion to determine, based on the evidence presented before it during the bail hearing, whether the evidence of guilt is strong.

However, after the prosecution had rested its case, Recto filed a Motion to Fix Bail on the ground that bail had become a matter of right as the evidence presented by the prosecution could only convict Recto of Homicide, not Murder. This Motion to Fix Bail was denied by the RTC, reiterating its earlier finding that, in its judgment, the evidence of guilt is strong. This is where the RTC committed grave abuse of discretion, and the CA thus erred in upholding the RTC's Order denying the Motion to Fix Bail.

As correctly pointed out by Recto, the evidence of the prosecution could, at best, only convict him of Homicide and not Murder. The testimony of the main prosecution witness, Rabillas, was to the effect that his mother and Recto had an argument prior to her death. Specifically, Rabillas testified as follows:

> PROSECUTOR DUMAUAL: You said a while ago that your mother had a quarrel with Recto?
>
> WITNESS: Yes, sir.
>
> PROSECUTOR DUMAUAL: What did Recto do when he quarreled with your mother Margie?
>
> WITNESS: Pinalo po.
>
> INTERPRETER: Make it of record that the witness is touching his forehead with his right hand.[23]

Jurisprudence provides that treachery cannot be appreciated if the accused **did not make any preparation** to kill the deceased

[23] TSN, May 8, 2012, p. 6; *rollo,* p. 103.

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.[24] Mere suddenness of the attack is not sufficient to hold that treachery is present, where the mode adopted by the aggressor does not positively tend to prove that they thereby **knowingly intended** to insure the accomplishment of their criminal purpose without any risk to themselves arising from the defense that the victim might offer.[25] Specifically, it must clearly appear that the method of assault adopted by the aggressor was **deliberately chosen** with a view to accomplishing the act without risk to the aggressor.[26]

Applying the same principles, the Court in *People v. Rivera*[27] concluded that treachery is not present when the killing was preceded by a heated argument:

> Applying these principles to the case at bar, we hold that the prosecution has not proven that the killing was committed with treachery. Although accused-appellant shot the victim from behind, the fact was that this was done during a heated argument. Accused-appellant, filled with anger and rage, apparently had no time to reflect on his actions. It was not shown that he consciously adopted the mode of attacking the victim from behind to facilitate the killing without risk to himself. Accordingly, we hold that accused-appellant is guilty of homicide only.[28]

The other qualifying circumstances alleged in the Information filed against Recto — evident premeditation and abuse of superior strength — are likewise negated by the foregoing fact. For the circumstance of evident premeditation to be properly appreciated, it must first be shown that there was a **sufficient lapse of time** between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences

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[24] *People v. Bautista,* 325 Phil. 83, 92 (1996).

[25] See *People v. Delgado,* 77 Phil. 11, 15-16 (1946).

[26] *People v. Bacho,* 253 Phil. 451, 458 (1989).

[27] *Supra* note 13.

[28] *Id*. at 426.

of his act.[29] Similarly, for abuse of superior strength to be properly appreciated, there must be evidence showing that the assailants "**consciously sought the advantage**"[30] or that "there was **deliberate intent** on the part of the malefactor **to take advantage thereof**."[31]

Based on the foregoing, there is thus merit in Recto's claim that the evidence presented by the prosecution could, at most, convict him only of Homicide and not Murder. The RTC thus gravely abused its discretion when it denied Recto's Motion to Fix Bail.

In the case of *Bernardez v. Valera,*[32] the Court emphasized that the "evidence of guilt is strong" standard **should be applied in relation to the crime *as charged***. Thus:

> While the charge against petitioner is undeniably a capital offense, it seems likewise obvious that the evidence submitted by the prosecution to the respondent judge for the purpose of showing that the evidence of petitioner's guilt is strong, is not sufficient to establish that the offense committed by petitioner, if any, was that of murder. On the basis of the sworn statement of Benedito himself petitioner could only be held liable for homicide. **It must be observed in this connection that a person charged with a criminal offense will not be entitled to bail even before conviction only if the charge against him is a capital offense and the evidence of his guilt *of said offense* is strong.** In the present case, as already stated, the evidence submitted by the prosecution in support of its opposition to the motion for bail could prove, at most, homicide and not murder, because it does not sufficiently prove either known premeditation or alevosia.[33] (Emphasis supplied)

In *People v. Plaza*,[34] the accused also filed a demurrer to evidence after the prosecution had rested its case. After a finding

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[29] *People v. Abadies,* 436 Phil. 98, 105-106 (2002).

[30] *Valenzuela v. People*, 612 Phil. 907, 917 (2009).

[31] *People v. Escoto,* 313 Phil. 785, 799 (1995).

[32] 114 Phil. 851 (1962).

[33] *Id*. at 855-856.

[34] 617 Phil. 669 (2009).

that the qualifying circumstance of treachery could not be appreciated in the case, the accused also filed a motion to fix bail. The RTC granted the motion, and its validity was upheld by the CA. Upon appeal to the Court, it likewise upheld the grant of bail, ratiocinating that the grant of bail to an accused charged with a capital offense depends on whether the evidence of guilt is strong.

Applying the foregoing principles to the case at bar, the RTC should have determined whether the evidence of guilt is strong **for Murder,** as opposed to simply determining if the evidence that he was responsible for Carlosita's death was strong. As previously illustrated above, the evidence of Recto's guilt — for Murder — was not strong. In sum, the RTC should have granted Recto's Motion to Fix Bail.

WHEREFORE, premises considered, the Petition for Review on *Certiorari* is hereby **GRANTED**. The Decision dated June 29, 2017 and Resolution dated January 11, 2018 issued by the Thirteenth Division and Former Thirteenth Division, respectively, of the Court of Appeals in CA-G.R. SP No. 146120 are **REVERSED** and **SET ASIDE.** Accordingly, the Regional Trial Court of Bacoor City, Branch 89 is **ORDERED** to fix the bail of Reynaldo Arbas Recto in relation to Criminal Case No. B-2011-226.

SO ORDERED.

Carpio, S.A.J. (Chairperson), Perlas-Bernabe, Reyes, A. Jr., and *Carandang, JJ.,* concur.

FIRST DIVISION

[G.R. No. 238112. December 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ANDRES TALIB-OG *y* TUGANAN,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ARTICLE 266-A THEREOF; RAPE BY SEXUAL ASSAULT AND STATUTORY RAPE; ELEMENTS.— Under Article 266-A, paragraph 1, of the Revised Penal Code (RPC), as amended by Republic Act No. 8353 or otherwise known as "The Anti-Rape Law of 1997," the crime of rape may be committed: 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: a) Through force, threat, or intimidation; b) When the offended party is deprived of reason or otherwise unconscious; c) By means of fraudulent machination or grave abuse of authority; and d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present[.] In Criminal Case Numbers (Nos.) 12890 and 13001, the prosecution sufficiently established the presence of the elements of statutory rape under paragraph 1(d) as cited above, *viz*: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse. Here, it is undisputed that AAA was a minor when accused-appellant had sexual intercourse with her on two separate incidents, *i.e.* on November 13 and 28, 2004.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S FACTUAL FINDINGS, ESPECIALLY ITS ASSESSMENT OF THE CREDIBILITY OF WITNESSES, ARE ACCORDED GREAT WEIGHT AND RESPECT AND BINDING UPON THE COURT, PARTICULARLY WHEN AFFIRMED BY THE COURT OF APPEALS.— Accused-appellant's defense of denial does not persuade. As correctly ruled by the RTC,

and affirmed by the CA, AAA's direct, positive, and straightforward narration of the incidents in detail prevails over accused- appellant's unsubstantiated allegations. Basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the CA. As such, We find no cogent reason to deviate from the lower courts' factual findings.

3. **CRIMINAL LAW; REVISED PENAL CODE; ARTICLE 266-A THEREOF; RAPE BY SEXUAL ASSAULT; DEFINED.—** [I]n Criminal Case Nos. 13002 and 13003, the RTC correctly convicted accused-appellant for two counts of rape by sexual assault instead of statutory rape as erroneously designated in the corresponding Information. Rape by sexual assault is defined under paragraph 2 of Article 266-A of the RPC, as follows: 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, **shall commit an act of sexual assault by inserting** his penis into another person's mouth or anal orifice, or **any instrument or object, into the genital** or anal orifice of another person. As narrated by AAA, she was still a minor when accused-appellant inserted his finger into her vagina on October 25 and 28, 2004, or roughly a month before he raped her by sexual intercourse.

4. **ID.; ID.; ID.; ID.; PROPER IMPOSABLE PENALTY. —** x x x [W]e affirm the conviction of accused-appellant for two counts of rape by sexual assault under Art. 266-A, paragraph 2 of the RPC subject to modification as to the penalty imposed. After applying the Indeterminate Sentence Law, accused-appellant is thereby sentenced to suffer an indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

5. **ID.; ID.; ID.; STATUTORY RAPE AND RAPE BY SEXUAL ASSAULT; CIVIL LIABILITY OF ACCUSED-APPELLANT.—** [P]ursuant to current jurisprudence, accused-appellant is further ordered to pay exemplary damages to AAA in the amount of ₱75,000.00 for each count of statutory rape, and ₱30,000.00 for each count of rape by sexual assault.

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

TIJAM, *J.*:

This is an appeal from the Decision[1] dated December 15, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 01536-MIN, affirming with modification the Joint Judgment[2] dated April 20, 2015 of the Regional Trial Court (RTC) of Dipolog City, Branch 7, in Criminal Case Nos. 12890, 13001, 13002 and 13003, finding accused-appellant Andres Talib-og *y* Tuganan guilty beyond reasonable doubt of two (2) counts of rape by sexual assault and two (2) counts of statutory rape, committed against AAA,[3] a ten-year old girl.

The Antecedent Facts

On December 4, 2004, accused-appellant was charged with statutory rape and was charged with three (3) additional counts in separate Informations,[4] the accusatory portions of which read:

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[1] *Rollo*, pp. 66-75; penned by CA Associate Justice Oscar V. Badelles and concurred in by CA Associate Justices Romulo V. Borja and Perpetua T. Atal-Pano.

[2] CA *Rollo*, pp. 24-36; penned by Judge Rogelio D. Laquihon.

[3] The identity of the victim or any information which could establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, An Act Providing for Stronger Deterrence And Special Protection Against Child Abuse, Exploitation And Discrimination, And for Other Purposes; Republic Act No. 9262, An Act Defining Violence Against Women And Their Children, Providing For Protective Measures For Victims, Prescribing Penalties Therefor, and for Other Purposes; and Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence against Women and Their Children, effective November 15, 2004. *People v. Dumadag*, 667 Phil. 664, 669 (2011).

[4] *Rollo*, pp. 4-5.

Criminal Case No. 12890

The undersigned City Prosecutor I of Dipolog accuses ANDRES TALIB-OG y Tuganan of the crime of STATUTORY RAPE, committed as follows:

That on November 28, 2004, at 11:00 o'clock in the evening, more or less at XXX, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, moved by lewd and unchaste designs, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, a ten-year old minor, against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. 13001

The undersigned Third Assistant City Prosecutor of Dipolog accuses ANDRES TALIB-OG y Tuganan of the crime of 'STATUTORY RAPE', committed as follows:

That on November 13, 2004, at 10:00 o'clock in the evening, more or less at XXX, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, moved by lewd and unchaste design, did then and there willfully, unlawfully and feloniously have carnal knowledge with AAA, a ten-year old minor, against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. 13002

The undersigned Third Assistant City Prosecutor of Dipolog accuses ANDRES TALIB-OG y Tuganan of the crime of 'STATUTORY RAPE', committed as follows:

That on October 25, 2004, at 8:00 o'clock in the evening, more or less at XXX, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, moved by lewd and unchaste design, did then and there willfully, unlawfully and feloniously insert his middle right finger into the vagina of AAA, a ten-year old minor, against her will and without her consent.

CONTRARY TO LAW.

Criminal Case No. 13003

The undersigned Third Assistant City Prosecutor of Dipolog accuses ANDRES TALIB-OG y Tuganan of the crime of 'STATUTORY RAPE', committed as follows:

That on October 28, 2004, at 10:00 o'clock in the evening, more or less at XXX, Dipolog City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, moved by lewd and unchaste design, did then and there willfully, unlawfully and feloniously insert his middle right finger into the vagina of AAA, a ten-year old minor, against her will and without her consent.

CONTRARY TO LAW.[5] (Underscore supplied)

Upon arraignment, accused-appellant pleaded not guilty to each of the crimes charged against him. After the pre-trial conference, the cases were heard on consolidated trial.[6]

The prosecution presented four (4) witnesses, including AAA, the victim. AAA testified in open court that she was born on March 16, 1994.[7]

AAA recalled that in the evening of October 25, 2004, she and her younger sibling were sleeping in their house while her father was out drinking and her mother was in Jolo. She woke up around 8 o'clock that night, when accused-appellant was removing her panty. She tried to flee, but accused-appellant held her feet, made her lie down and covered her mouth with his left hand. Accused-appellant inserted his right hand finger into her vagina and left shortly thereafter. She was able to recognize the accused-appellant because his face was illuminated by the light from a lamp in their house. Before the incident, she already knew accused-appellant as Dodoy, her father's friend, whose house was located less than a kilometer away from their home. She did not report the incident to her father because accused-appellant had threatened her.[8]

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[5] *Id*. at 25-26.

[6] *Id*. at 5.

[7] *Id*.

[8] *Id*.

On October 28, 2004, accused-appellant raped AAA again around 10 o'clock in the evening while she and her younger sister were sleeping. The accused-appellant removed her underwear and inserted his middle finger into her vagina.[9]

On November 13, 2004 at around 10 o'clock in the evening, AAA felt pain as accused-appellant inserted his organ into her vagina and did a pumping motion. She was not able to shout because the accused-appellant covered her mouth. Accused-appellant left through the back of the house when AAA's father arrived. AAA explained that the former could easily enter their house as their door was only covered by a tarpaulin.[10]

Finally, on November 28, 2004 at 11 o'clock in the evening, AAA narrated that when her father came home drunk that night, she retreated to the *bodega* of their neighbor and slept on an empty sack. Accused-appellant went there and inserted his penis into her vagina after removing her underwear. When accused-appellant was done with his deeds, AAA ran to the house of her aunt nearby. She slept on the bench outside the said house and woke up the next morning. She finally told her aunt about the four incidents. They reported the same to the barangay, and accused-appellant was brought to the police for questioning. AAA was also brought to the doctor for examination and then to the Department of Social Welfare and Development (DSWD) where she was fetched by her mother.[11]

For his part, accused-appellant proffered the defense of denial. He claimed that he was asleep in his house during three out of the four incidents narrated by AAA. On November 28, 2014, the fourth incident, he narrated that he was at the bodega to get a sack when he saw somebody sleeping on the floor. He woke that person up and told her to go home but he did not recognize the said person.[12]

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[9] *Id*. at 6.

[10] *Id*.

[11] *Id*.

[12] *Id*. at 7.

The RTC Ruling

On April 20, 2015, the RTC promulgated its Joint Judgment, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered finding accused Andres Talib-og y Tuganan guilty beyond reasonable doubt of the following crimes:

1) In Criminal Case No. 13002, the accused is found guilty of rape by sexual assault, a crime defended [sic] under paragraph 2 of Article 266-A of the Revised Penal Code and is hereby sentenced to suffer the penalty of 2 years, 4 months and 1 day of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum. He is further ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity and ₱30,000.00 as moral damages, and the costs of the suit;

2) In Criminal Case No. 13003, the accused is found guilty of rape by sexual assault, a crime defined under paragraph 2 of Article 266-A of the Revised Penal Code and is hereby sentenced to suffer the penalty of 2 years, 4 months and 1 day of *prision correccional*, as minimum, to 10 years of *prision mayor*, as maximum. He is further ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity and ₱30,000.00 as moral damages, and the costs of the suit;

3) In Criminal Case No. 13001, the accused is found guilty of statutory rape by sexual intercourse, a crime defined under paragraph 1 of Article 266-A of the Revised Penal Code and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, and the costs of the suit;

4) In Criminal Case No. 12890, the accused is found guilty of statutory rape by sexual intercourse, a crime defined under paragraph 1 of Article 266-A of the Revised Penal Code and is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay AAA the amounts of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages, and the costs of the suit;

The award of damages shall earn legal interest at the rate of six percent (6%) *per annum* from the finality of this judgment until fully paid.

SO ORDERED.[13]

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[13] CA *Rollo*, pp. 35-36.

Accused-appellant appealed his conviction to the CA and argued that the prosecution failed to prove his guilt beyond reasonable doubt.

In his Brief,[14] accused-appellant questioned the credibility of AAA's testimony. He pointed out that the actuations of AAA before, during and after the alleged incidents were not in conformity with human experience. According to accused-appellant, AAA had every opportunity to flee from him but chose not to. He also mentioned that he had a quarrel with AAA's father, which could be the reason behind the accusations against him.[15]

The CA Ruling

On December 15, 2017, the CA rendered a Decision affirming with modification RTC Joint Judgment by increasing the amount of civil indemnity and moral damages to ₱75,000.00, respectively, pursuant to *People v. Jugueta*.[16]

Hence, this appeal.

On July 9, 2018, the Court required both parties to file their respective supplemental briefs. Accused-appellant, through the Public Attorney's Office, filed his Supplemental Brief.[17] The Solicitor General, on the other hand, filed a Manifestation[18] stating that they are adopting the arguments they had previously proffered in their Brief submitted with the CA.

Our Ruling

The appeal is bereft of merit.

Under Article 266-A, paragraph 1, of the Revised Penal Code (RPC), as amended by Republic Act No. 8353 or otherwise

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[14] *Id*. at 15-23.

[15] *Id*. at 17.

[16] 783 Phil. 806 (2016).

[17] *Rollo*, pp. 25-32.

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

known as "The Anti-Rape Law of 1997," the crime of rape may be committed:

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

In Criminal Case Numbers (Nos.) 12890 and 13001, the prosecution sufficiently established the presence of the elements of statutory rape under paragraph 1(d) as cited above, *viz*: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat, or intimidation or grave abuse of authority. It is enough that the age of the victim is proven and that there was sexual intercourse.[19] Here, it is undisputed that AAA was a minor when accused-appellant had sexual intercourse with her on two separate incidents, *i.e.* on November 13 and 28, 2004.

Accused-appellant's defense of denial does not persuade. As correctly ruled by the RTC, and affirmed by the CA, AAA's direct, positive, and straightforward narration of the incidents in detail prevails over accused-appellant's unsubstantiated allegations. Basic is the rule that the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the CA.[20] As such, We find no cogent reason to deviate from the lower courts' factual findings.

Likewise, in Criminal Case Nos. 13002 and 13003, the RTC correctly convicted accused-appellant for two counts of rape

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[19] *People v. Ronquillo*, G.R. No. 214762, September 20, 2017.

[20] *People v. Leonardo*, 638 Phil. 161, 189 (2010).

by sexual assault instead of statutory rape as erroneously designated in the corresponding Information. Rape by sexual assault is defined under paragraph 2 of Article 266-A of the RPC, as follows:

> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, **shall commit an act of sexual assault by inserting** his penis into another person's mouth or anal orifice, or **any instrument or object, into the genital** or anal orifice of another person. (Emphasis ours)

As narrated by AAA, she was still a minor when accused-appellant inserted his finger into her vagina on October 25 and 28, 2004, or roughly a month before he raped her by sexual intercourse.

However, in accordance with prevailing jurisprudence, We modify the penalty imposed by the CA for the two counts of rape by sexual assault.

In *People v. Chingh*,[21] the Court ruled that the penalty under Article III, Section 5(b) of Republic Act No. 7610, also known as the "Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act" shall be imposed in a conviction for rape by sexual assault when the victim is a minor. Thus:

> In this case, the offended party was ten years old at the time of the commission of the offense. Pursuant to the above-quoted provision of law, Armando was aptly prosecuted under paragraph 2, Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353, for Rape Through Sexual Assault. However, instead of applying the penalty prescribed therein, which is prision mayor, considering that VVV was below 12 years of age, and considering further that Armando's act of inserting his finger in VVV's private part undeniably amounted to lascivious conduct, the appropriate imposable penalty should be that provided in Section 5 (b), Article III of R.A. No. 7610, which is *reclusion temporal* in its medium period.
>
> The Court is not unmindful to the fact that the accused who commits acts of lasdviousness under Article 366, in relation to Section 5 (b),

[21] 661 Phil. 208 (2011).

Article III of R.A. No. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period than the one who commits Rape Through Sexual Assault, which is merely punishable by *prision mayor*. This is undeniably unfair to the child victim. To be sure, it was not the intention of the framers of R.A. No. 8353 to have disallowed the applicability of R.A. No. 7610 to sexual abuses committed to children. Despite the passage of R.A. No. 8353, R.A. No. 7610 is still good law, which must be applied when the victims are children or those persons below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.[22]

The afore-cited rule in *Chingh* was applied in the case of *Ricalde v. People*[23] wherein although the accused was charged and convicted with the crime of rape by sexual assault, the Court applied the penalty for an offense under Section 5(b), Article III of R.A. No. 7610.

Likewise, in the recent case of *People v. Bagsic*,[24] the Court, citing *Chingh* and *Ricalde*, reiterated the rationale behind the modification and increase of the penalty applicable for rape by sexual assault committed against a minor, as follows:

From the foregoing, it can be easily discerned that if the courts would not opt to impose the higher penalty provided in R.A. No. 7610 in cases of rape by sexual assault, wherein the victims are children, an accused who commits acts of lasciviousness under Article 336 of the RPC, in relation to Section 5 (b), Article III of R.A. 7610, suffers the more severe penalty of *reclusion temporal* in its medium period, than the one who commits rape by sexual assault which is punishable by *prision mayor*.

Although accused-appellant was not specifically charged for an offense under R.A. 7610, *Ricalde* instructs that as long as the Information is clear about the facts constitutive of the offense, there is no violation of the right of the accused to due process.[25]

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[22] *Id*. at 222.

[23] 751 Phil. 793 (2015).

[24] G.R. No. 218404, December 13, 2017.

[25] *Ricalde v. People*, *supra* note 28.

Here, the Informations in Criminal Case Nos. 13002 and 13003 clearly indicated that the accused-appellant "*willfully, unlawfully and feloniously insert his right finger into the vagina of AAA, a ten-year old minor, against her will and without her consent*,"[26] which undeniably amounts to lascivious conduct under Section 5(b) of R.A. 7610.[27] Under the said provision, the imposable penalty shall be *reclusion temporal* in its medium period.

Accordingly, We affirm the conviction of accused-appellant for two counts of rape by sexual assault under Art. 266-A, paragraph 2 of the RPC subject to modification as to the penalty imposed. After applying the Indeterminate Sentence Law, accused-appellant is thereby sentenced to suffer an indeterminate penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days of *reclusion temporal*, as maximum.

In addition, pursuant to current jurisprudence, accused-appellant is further ordered to pay exemplary damages to AAA

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[26] *Rollo*, pp. 4-5.

[27] Section 5. Child Prostitution and Other Sexual Abuse. — Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* shall be imposed upon the following:

x x x x x x x x x

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victim is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, **That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be *reclusion temporal* in its medium period;**

x x x (Emphasis supplied)

in the amount of ₱75,000.00 for each count of statutory rape,[28] and ₱30,000.00 for each count of rape by sexual assault.[29]

WHEREFORE, the appeal is **DENIED**. The Decision of the Court of Appeals dated December 15, 2017 in CA-G.R. CR HC No. 01536-MIN is **AFFIRMED** with **MODIFICATION**. Judgment is hereby rendered as follows:

1. In Criminal Case No. 12890, accused-appellant Andres Talib-og *y* Tuganan is found guilty of statutory rape defined under paragraph 1(d) of Article 266-A of the Revised Penal Code and hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and another ₱75,000.00 as exemplary damages, as well as the costs.

2. In Criminal Case No. 13001, accused-appellant Andres Talib-og *y* Tuganan is found guilty of statutory rape defined under paragraph 1(d) of Article 266-A of the Revised Penal Code and hereby sentenced to suffer the penalty of *reclusion perpetua*. He is further ordered to pay AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and another ₱75,000.00 as exemplary damages, as well as the costs.

3. In Criminal Case No. 13002, accused-appellant Andres Talib-og *y* Tuganan is found guilty of rape by sexual assault defined under paragraph 2 of Article 266-A of the Revised Penal Code and hereby sentenced to suffer the penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days. He is further ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and another ₱30,000.00 as exemplary damages, as well as the costs.

4. In Criminal Case No. 13003, accused-appellant Andres Talib-og *y* Tuganan is found guilty of rape by sexual assault

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[28] *People v. Ronquillo*, *supra* note 24.

[29] *People v. Marmol*, 800 Phil. 813 (2016).

defined under paragraph 2 of Article 266-A of the Revised Penal Code and hereby sentenced to suffer the penalty of twelve (12) years, ten (10) months and twenty-one (21) days of *reclusion temporal*, as minimum, to fifteen (15) years, six (6) months and twenty (20) days. He is further ordered to pay AAA the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and another ₱30,000.00 as exemplary damages, as well as the costs.

SO ORDERED.

Bersamin, C.J. (Chairperson), del Castillo, Jardeleza, and *Gesmundo, JJ.*, concur.

SECOND DIVISION

[G.R. No. 239137. December 5, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **CEZAR CORTEZ and FROILAN BAGAYAWA,** *accused,* **CEZAR CORTEZ,** *accused-appellant.*

SYLLABUS

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

2. **CRIMINAL LAW; MURDER; ELEMENTS.—** To successfully prosecute the crime of Murder, the following elements must

be established: (*a*) a person was killed; (*b*) the accused killed him or her; (*c*) the killing is not Parricide or Infanticide; and (*d*) the killing was accompanied with any of the qualifying circumstances mentioned in Article 248 of the RPC. Notably, if the accused killed the victim without the attendance of any of the qualifying circumstances of Murder, or by that of Parricide or Infanticide, a conviction for the crime of Homicide will be sustained.

3. **ID.; ID.; QUALIFYING CIRCUMSTANCES; TREACHERY; REQUISITES; CASE AT BAR.—** Case law instructs that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make." In other words, to appreciate treachery, it must be shown that: (*a*) the means of execution employed gives the victim no opportunity to defend himself or retaliate; and (*b*) the methods of execution were deliberately or consciously adopted; indeed, treachery cannot be presumed, it must be proven by clear and convincing evidence. x x x [R]ecords clearly show that Cezar killed Mario by hitting him on the head with an object similar to a rolling pin while he was sleeping, thereby indicating that Cezar purposely sought such means of attack against Mario so as the latter would have no opportunity to defend himself or retaliate and thus, ensuring the execution of the criminal act. x x x [Also,] the qualifying circumstance of treachery may be appreciated in [the] case [of] Minda, Baby, and Jocelyn — similar to Mario — were attacked in the middle of the night while they were sleeping, unarmed, and defenseless. As such, their killings were correctly classified as Murders.

4. **ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; THE EVIDENCE MUST ESTABLISH THAT THE ASSAILANTS HAD THE DELIBERATE INTENT TO USE OR PURPOSELY SOUGHT THE ABUSE OF SUPERIOR STRENGTH.—** [A]buse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim

does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. x x x Although there have been cases where abuse of superior strength was appreciated where a male equipped with a deadly weapon attacked an unarmed and defenseless woman, jurisprudence nonetheless provides that for abuse of superior strength to be appreciated, "[t]he evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked."

5. ID.; HOMICIDE AND MURDER; RESPECTIVE PENALTIES AND DAMAGES.— In fine, the Court holds that Cezar should be held liable for one (1) count of Homicide for the killing of Efren, and for four (4) counts of Murder for the killings of Mario, Minda, Baby, and Jocelyn, respectively defined and penalized under Articles 249 and 248 of the RPC. Under the said Code, the crime of Homicide is punishable by *reclusion temporal*, the range of which is from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law and there being no modifying circumstance, it is proper to sentence him with the penalty of imprisonment for the indeterminate period 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. As to the crime of Murder, the same is penalized with *reclusion perpetua* to death. However, since both penalties are indivisible and there are no aggravating circumstance other than the qualifying circumstance of treachery, the lower of the two (2) penalties, which is *reclusion perpetua*, should be properly imposed for each count of Murder. Anent the award of damages, the Court notes that the CA's imposition of the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages for the crime of Homicide is proper. Likewise, the imposition of the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for each count of Murder is correct, except as to the amount of ₱75,000.00 as temperate damages

which must be reduced to ₱50,000.00 in line with prevailing jurisprudence. Accordingly, all damages awarded to the heirs of Mario, Minda, Efren, Baby, and Jocelyn, should earn legal interest at the rate of six percent (6%) per annum from the date of finality of this Decision until full payment.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is an ordinary appeal[1] filed by accused-appellant Cezar Cortez (Cezar) assailing the Decision[2] dated June 29, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08301 which affirmed the Decision[3] dated April 4, 2016 of the Regional Trial Court of Angeles City, Branch 60 (RTC) in Criminal Case No. 10401, finding him guilty beyond reasonable doubt of two (2) counts of Homicide and three (3) counts of Murder, respectively defined and penalized under Articles 249 and 248 of the Revised Penal Code (RPC).

The Facts

This case stemmed from an Information[4] filed before the RTC charging Cezar Cortez and Froilan Bagayawa (Froilan) of the crime of Robbery with Multiple Homicide, defined and penalized under Article 294 (1) of the RPC, the accusatory portion of which states:

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[1] See Notice of Appeal dated July 20, 2017; *rollo*, pp. 16-17.

[2] *Rollo*, pp. 2-15. Penned by Associate Justice Franchito N. Diamante with Associate Justices Japar B. Dimaampao and Zenaida T. Galapate-Laguilles, concurring.

[3] CA *rollo*, pp. 46-65. Penned by Presiding Judge Eda P. Dizon-Era.

[4] Dated June 8, 1988; records, pp. 1-2.

That on or about the 19th day of May, 1988, in the City of Angeles, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually aiding and abetting one another, with intent [to] gain, and by means of force, violence and/or intimidation of persons, rob, steal, take and carry away from the house/bake shop of MR. & MRS. MARIO PUNZALAN and MINDA DUARTE PUNZALAN, located along McArthur Hi-way Rd., Bgy. Virgen Delos Remedios, Angeles City, cash money valued at ₱50,000.00 and assorted jewelries, belonging to the spouses Mario Punzalan, against their will and consent, and the accused in pursuance of and on occasion of the said Robbery with treachery and abuse of superior strength, did then and there willfully, unlawfully and feloniously with intent to kill, attack, assault, strike, stab and hit MARIO PUNZALAN, MINDA DUARTE PUNZALAN, JOSIELYN MESINA, BABY MESINA, and EFREN VILLANUEVA, with a knife and wooden club with a length approximately one meter and four inches in diameter on the different parts of their bodies, thereby inflicting upon the [latter] fatal stab wounds, causing the death of the said MARIO PUNZALAN, MINDA DUARTE PUNZALAN, JOSIELYN MESINA, BABY MESINA, and EFREN VILLANUEVA.

ALL CONTRARY TO LAW.[5]

The prosecution alleged that in the evening of May 19, 1988, eyewitness Janet Quiambao (Janet) was sleeping with her cousins, namely, Baby Mesina (Baby) and Jocelyn[6] Mesina (Jocelyn), in a room at the back of "Minda's Bakery" owned by her sister, Minda Punzalan (Minda), and brother-in-law, Mario Punzalan (Mario), located along Old Remedian Barbeque Place in Angeles City. Minda and Mario were occupying the other room of the bakery, while their bakers, Cezar and Froilan, were staying in another room upstairs. At around two (2) to three (3) o'clock in the morning of the following day, Janet was awakened by a banging sound on the wall. She then peeped through the door of her room and saw Cezar hitting Mario on the head with an object similar to a rolling pin while the latter was asleep. Subsequently, she witnessed Cezar stabbing Minda with a knife

[5] Records, p. 1.

[6] "Josielyn", "Joseilyn", or "Jesielyn" in some parts of the records.

and Froilan stabbing his co-baker, Efren Villanueva (Efren). Shortly thereafter, Cezar and Froilan forcibly entered Janet's room and proceeded to stab and kill Baby and Jocelyn. Fortunately for Janet, she was able to immediately hide under a table just before Cezar and Froilan barged in, leaving her unscathed. After Cezar and Froilan left, Janet came out of her hiding place and saw the dead bodies of her relatives. Janet's assertions were then corroborated by Mario and Minda's son, Richard Punzalan (Richard), who was able to hide with his sister at the back of an electric fan during the whole ordeal.[7]

Meanwhile, Mario's brother, Leonardo Punzalan (Leonardo), also corroborated Janet and Richard's testimonies, stating that on the day of the incident, he dropped by "Minda's Bakery" before going to the market to check if they needed anything. Upon arrival thereat, he saw Janet crying, with the latter telling him that Mario, Minda, Efren, Baby, and Jocelyn are already dead. Leonardo then went to inspect the dead bodies, noticing that Mario's watch was missing. Leonardo and Janet then went to report the matter to the police, who in turn, conducted a manhunt for Cezar and Froilan, killing the latter in the process. Consequently, they inspected Froilan's body and recovered the missing watch of Mario. Finally, Leonardo claimed that Cezar was initially apprehended but was able to escape.[8]

On December 28, 1988, the case was archived for failure to apprehend Cezar, but the same was revived after his arrest in 2010.[9]

In his defense, Cezar invoked denial and alibi, maintaining that at the time of the incident, he was working for the husband of his sister, Salvador Pineda, as a stay-in "tinapa maker" in San Jose, Concepcion, Tarlac. He claimed that he did not know Froilan or any of the five (5) victims. He also insisted that he only learned of the case against him when he was arrested in 2010, which arrest was allegedly conducted without the benefit of a warrant.[10]

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[7] See *rollo*, pp. 4-5 and CA *rollo*, pp. 47-48.

[8] See *rollo*, p. 5 and CA *rollo*, pp. 47-48.

[9] See CA *rollo*, p. 46.

[10] See *rollo*, p. 5 and CA *rollo*, p. 49.

The RTC Ruling

In a Decision[11] dated April 4, 2016, the RTC found Cezar guilty beyond reasonable doubt not of the crime charged, but of two (2) counts of Homicide for the deaths of Mario and Efren and three (3) counts of Murder for the deaths of Minda, Baby, and Jocelyn, and accordingly: (*a*) for each count of Homicide, sentenced him to suffer the penalty of imprisonment of eight (8) years of *prision mayor*, as minimum, to seventeen (17) years of *reclusion temporal*, as maximum, and ordered to pay the heirs of Mario and Efren the amounts: (*a*) of ₱50,000.00 as civil indemnity and ₱25,000.00 as temperate damages each; and (*b*) for each count of Murder, sentenced him to suffer the penalty of *reclusion perpetua*, and ordered to pay the heirs of Minda, Baby, and Jocelyn the amounts of ₱50,000.00 as civil indemnity and ₱25,000.00 as temperate damages each.[12]

The RTC found that the prosecution failed to prove the elements of the crime of Robbery, considering that the witnesses' testimonies focused more on the killings of the victims, and that it was not established that the watch recovered from Froilan indeed belonged to Mario.[13] Nonetheless, the prosecution had established, through the positive testimonies of the witnesses, that Cezar and Froilan killed Mario, Efren, Minda, Baby, and Jocelyn. In this regard, the RTC opined that the killing of Mario and Efren was not attended by the circumstances of treachery and abuse of superior strength, there being no showing of facts tending to prove their existence. On the other hand, the RTC ruled that the killings of Minda, Baby, and Jocelyn were attended by abuse of superior strength, considering that Minda was reportedly pregnant at the time of the incident, while Baby and Jocelyn were defenseless when the perpetrators killed them.[14]

Aggrieved, Cezar appealed to the CA.[15]

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[11] CA *rollo*, pp. 46-65.

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

[13] *Id*. at 50.

[14] *Id*. at 49-64.

[15] See Notice of Appeal dated May 4, 2016; *id*. at 13-14.

The CA Ruling

In a Decision[16] dated June 29, 2017, the CA affirmed Cezar's conviction for two (2) counts of Homicide and three (3) counts of Murder, with the following modifications: (*a*) for each count of Homicide, he is sentenced to suffer the 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, and ordered to pay the heirs of Mario and Efren the amounts of ₱50,000.00.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000 as temperate damages each; (*b*) for each count of Murder, he is sentenced to suffer the penalty of *reclusion perpetua*, and ordered to pay the heirs of Minda, Baby, and Jocelyn the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱75,000.00 as temperate damages each; and (*c*) all damages shall earn legal interest at the rate of six percent (6%) per annum from finality of the judgment until full payment.[17] It held that the killings of Mario and Efren were not attended by any qualifying circumstances; while the killings of Minda, Baby, and Jocelyn were attended by abuse of superior strength, as they were attacked in the middle of the night while they were sleeping, unarmed, and defenseless.[18]

Hence, this appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not Cezar is guilty beyond reasonable doubt of two (2) counts of Homicide and three (3) counts of Murder.

The Court's Ruling

The appeal is denied.

Time and again, it has been held that an appeal in criminal cases opens the entire case for review and, thus, it is the duty

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

[17] *Id*. at 14.

[18] *Id*. at 7-13.

of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned. "The appeal confers the appellate court full jurisdiction over the case and renders such court competent to examine records, revise the judgment appealed from, increase the penalty, and cite the proper provision of the penal law."[19]

Guided by the foregoing considerations, the Court deems it proper to modify Cezar's conviction to one (1) count of Homicide, for the killing of Efren, and four (4) counts of Murder, for the killings of Mario, Minda, Baby, and Jocelyn, as will be explained hereunder.

To successfully prosecute the crime of Murder, the following elements must be established: (*a*) a person was killed; (*b*) the accused killed him or her; (*c*) the killing is not Parricide or Infanticide; and (*d*) the killing was accompanied with any of the qualifying circumstances mentioned in Article 248 of the RPC.[20] Notably, if the accused killed the victim without the attendance of any of the qualifying circumstances of Murder, or by that of Parricide or Infanticide, a conviction for the crime of Homicide will be sustained.[21]

As it is undisputed that Cezar and Froilan were responsible for the killing of Efren, Mario, Minda, Baby, and Jocelyn, the Court is left to determine whether or not the qualifying circumstances of treachery and/or abuse of superior strength, as alleged in the information, obtains in this case.

Case law instructs that "[t]here is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make."

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[19] See *People v. Manlao*, G.R. No. 234023, September 3, 2018.

[20] See *Ramos v. People*, 803 Phil. 775, 783 (2017), citing *People v. Las Piñas*, 739 Phil. 502, 524 (2014).

[21] See *Wacoy v. People*, 761 Phil. 570, 578 (2015), citing *Villanueva v. Caparas*, 702 Phil. 609, 616 (2013); citation omitted.

In other words, to appreciate treachery, it must be shown that: (*a*) the means of execution employed gives the victim no opportunity to defend himself or retaliate; and (*b*) the methods of execution were deliberately or consciously adopted; indeed, treachery cannot be presumed, it must be proven by clear and convincing evidence.[22]

On the other hand, abuse of superior strength is present whenever there is a notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not *per se* establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage.[23]

To recall, the RTC ruled that neither of the aforesaid circumstances attended the killings of Efren and Mario, while abuse of superior strength was present in the killings of Minda, Baby, and Jocelyn. However, a more circumspect review of the records reveals that: (*a*) Mario's killing was attended by treachery; (*b*) Minda, Baby, and Jocelyn's killings were qualified into Murder not by abuse of superior strength, but by treachery; and (*c*) neither circumstance attended Efren's killing.

Anent Mario's killing, records clearly show that Cezar killed Mario by hitting him on the head with an object similar to a rolling pin while he was sleeping, thereby indicating that Cezar purposely sought such means of attack against Mario so as the latter would have no opportunity to defend himself or retaliate and thus, ensuring the execution of the criminal act.[24] Hence,

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[22] *People v. Casas*, 755 Phil. 210, 221 (2015); citation omitted.

[23] See *People v. Villanueva*, 807 Phil. 245, 253 (2017), citing *People v. Beduya*, 641 Phil. 399, 410 (2010).

[24] See *People v. Antonio, Jr.*, 441 Phil. 425, 436 (2002).

contrary to the courts *a quo*'s findings, there is sufficient factual basis to support the existence of treachery, and therefore, the same may be properly appreciated.

As to the killings of Minda, Baby, and Jocelyn, the courts *a quo* opined that abuse of superior strength attended their killings, considering that Cezar and Froilan used deadly weapons, *i.e.*, knives, in killing them.[25] Although there have been cases where abuse of superior strength was appreciated where a male equipped with a deadly weapon attacked an unarmed and defenseless woman,[26] jurisprudence nonetheless provides that for abuse of superior strength to be appreciated, "[t]he evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage. To take advantage of superior strength means to purposely use excessive force out of proportion to the means of defense available to the person attacked."[27] In this case, it does not appear that Cezar and Froilan specifically sought the use of deadly weapons so as to be able to take advantage of their superior strength against Minda, Baby, and Jocelyn. In fact, their criminal design to raid the house and consequently, to use deadly weapons in killing whomever they encounter therein was applied indiscriminately, regardless of whether their victims were male (Mario and Efren) or female (Minda, Baby, and Jocelyn). Therefore, there is reasonable doubt as to whether abuse of superior strength may be appreciated in this case. Nevertheless, the Court finds that the qualifying circumstance of treachery may be appreciated in this case, considering that Minda, Baby, and Jocelyn — similar to Mario — were attacked in the middle of the night while they were sleeping, unarmed, and defenseless.[28] As such, their killings were still correctly classified as Murders.

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[25] See *rollo*, p. 12 and CA *rollo*, p. 64.

[26] See *People v. Brodett*, 566 Phil. 87, 92 (2008), citing *People v. Tubongbanua*, 532 Phil. 434, 450 (2006).

[27] See *People v. Miraña*, G.R. No. 219113, April 25, 2018, citing *People v. Villanueva*, 807 Phil. 245, 253 (2017); citation omitted.

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

Finally, suffice it to say that the killing of Efren was properly classified as Homicide absent any factual averment showing that the same is attended by treachery and/or abuse of superior strength.

In fine, the Court holds that Cezar should be held liable for one (1) count of Homicide for the killing of Efren, and for four (4) counts of Murder for the killings of Mario, Minda, Baby, and Jocelyn, respectively defined and penalized under Articles 249 and 248 of the RPC. Under the said Code, the crime of Homicide is punishable by *reclusion temporal*, the range of which is from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law and there being no modifying circumstance, it is proper to sentence him with the penalty of imprisonment for the indeterminate period 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.[29] As to the crime of Murder, the same is penalized with *reclusion perpetua* to death. However, since both penalties are indivisible and there are no aggravating circumstance other than the qualifying circumstance of treachery, the lower of the two (2) penalties, which is *reclusion perpetua*, should be properly imposed for each count of Murder.[30]

Anent the award of damages, the Court notes that the CA's imposition of the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages for the crime of Homicide is proper. Likewise, the imposition of the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages for each count of Murder is correct, except as to the amount of ₱75,000.00 as temperate damages which must be reduced to ₱50,000.00 in line with prevailing jurisprudence.[31] Accordingly, all damages awarded to the heirs of Mario, Minda, Efren, Baby, and Jocelyn, should earn legal interest at the rate

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[29] See paragraph 1, Article 64 of the RPC.

[30] See Article 63 of the RPC.

[31] See *People v. Jugueta*, 783 Phil. 806, 848 and 846-847 (2016).

of six percent (6%) per annum from the date of finality of this Decision until full payment.

WHEREFORE, the appeal is **DENIED**. The Decision dated June 29, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08301 finding accused-appellant Cezar Cortez (Cezar) guilty beyond reasonable doubt of two (2) counts of Homicide and three (3) counts of Murder is hereby **AFFIRMED with MODIFICATIONS** as follows:

(*a*) As to the killing of Efren Villanueva, accused-appellant Cezar is found **GUILTY** beyond reasonable doubt of one (1) count of Homicide, defined and penalized under Article 249 of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of imprisonment for a period 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, and ordered to pay the heirs of the victim the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱50,000.00 as temperate damages, with legal interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of this Decision until full payment; and

(*b*) As to the killings of Mario Punzalan, Minda Punzalan, Baby Mesina, and Jocelyn Mesina, accused-appellant Cezar is found **GUILTY** beyond reasonable doubt of four (4) counts of Murder, defined and penalized under Article 248 of the Revised Penal Code. Accordingly, he is sentenced to suffer the penalty of *reclusion perpetua*, for each count, and ordered to pay the heirs of the aforesaid victims the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 as exemplary damages, and ₱50,000.00 as temperate damages, for each count, all with legal interest at the rate of six percent (6%) per annum on all monetary awards from the date of finality of this Decision until full payment.

SO ORDERED.

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

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ownership, the courts may pass upon the issue to determine who between the parties has the right to possess the property. (*Id*.)

ACTIONS

Action in rem — The action filed by Orlina is a petition seeking the cancellation of Ventura's title and the issuance of a new one under his name, brought under the auspices of Secs. 75 and 108 of P.D. No. 1529, otherwise known as the *Property Registration Decree*, which is evidently an action *in rem*; while jurisdiction over the parties in an action *in rem* is not a prerequisite to confer jurisdiction on the court, it is nonetheless required to satisfy the requirements of due process. (Orlina *vs*. Ventura, G.R. No. 227033, Dec. 3, 2018) p. 334

ADMINISTRATIVE PROCEEDINGS

Absolution from criminal charge — Owing to the administrative nature of the instant case, several important considerations must be taken into serious account: *first*, the finding of administrative guilt is independent of the results of the criminal charges against the Sheriff; *second*, the Sheriff stands scrutiny and treated not as an accused in a criminal case, but as a respondent court officer; *third*, the Supreme Court, in taking cognizance of this administrative case, acts not as a prosecutor, but as the administrative superior specifically tasked to discipline its Members and personnel; *fourth*, the quantum of proof required for a finding of administrative guilt remains to be substantial evidence; and *fifth*, the paramount interest sought to be protected in an administrative case is the preservation of the Constitutional mandate that a public office is a public trust; well settled is the rule that an absolution from a criminal charge is not a bar to an administrative prosecution or vice-versa. (In Re: Special Report on the Arrest of Rogelio M. Salazar, Jr., Sheriff IV, RTC-OCC, Boac, Marinduque, for Violation of R.A. No. 9165, A.M. No. 15-05-136-RTC, Dec. 4, 2018) p. 369

five years after the enactment of the ADR Act, the Department of Justice issued the ADR Act's Implementing Rules and Regulations, and the Supreme Court issued the Special Rules of Court on Alternative Dispute Resolution (Special ADR Rules); our courts, in recognizing or enforcing a foreign arbitral award, shall also take into consideration the laws applied by the arbitral tribunal; as agreed upon by the parties under the arbitral clause in their Agreement, the substantive law of the contract is the Philippine law and the procedural rules are the ICC Rules. (Mabuhay Holdings Corp. *vs.* Sembcorp Logistics Ltd., G.R. No. 212734, Dec. 5, 2018) p. 813

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. NO. 3019, AS AMENDED)

Section 3(a) — For a charge to be valid under Sec. 3(e) of R.A. No. 3019, it must be shown that the accused "acted with manifest partiality, evident bad faith, or inexcusable negligence; on the other hand, for liability to attach under Sec. 3(g), it must be shown that the accused entered into a grossly disadvantageous contract on behalf of the government. (PCGG *vs*. Office of the Ombudsman, G.R. No. 187794, Nov. 28, 2018) p. 1

Section 3(e) — Requires manifest partiality, evident bad faith or gross inexcusable negligence and the element of arbitrariness and malice in taking risks must be palpable; there must be a showing of "undue injury" to the government; Sec. 3(g), on the other hand, requires a showing of a "contract or transaction manifestly and grossly disadvantageous to the government. (PCGG *vs*. Office of the Ombudsman, G.R. No. 187794, Nov. 28, 2018) p. 1

— The elements of which are the following: a) The accused must be a public officer discharging administrative, judicial or official functions; b) He must have acted with manifest partiality, evident bad faith or inexcusable negligence; and c) That his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or

APPEALS

Appeals in criminal cases — In criminal cases, an appeal throws the entire case wide open for review and allows the reviewing tribunal to correct errors, though unassigned, in the appealed judgment; 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; this principle has been applied by the Court even in petitions for review on *certiorari*. (AAA *vs*. People, G.R. No. 229762, Nov. 28, 2018) p. 213

— Time and again, it has been held that an appeal in criminal cases opens the entire case for review and, thus, it is the duty of the reviewing tribunal to correct, cite, and appreciate errors in the appealed judgment whether they are assigned or unassigned; "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." (People *vs*. Cortez, G.R. No. 239137, Dec. 5, 2018) p. 1086

Factual findings of administrative agencies — The findings by the COA must be treated with utmost respect; by reason of their special knowledge and expertise over matters falling under their jurisdiction, administrative agencies are in a better position to pass judgment on the same, and their findings of fact are generally accorded great respect, if not finality, by the courts; such findings must be respected as long as they are supported by substantial evidence, even if such evidence is not overwhelming or even preponderant. (Geronimo *vs*. COA, G.R. No. 224163, Dec. 4, 2018) p. 651

— The findings of fact of administrative bodies, such as the DARAB, will not be interfered with by the courts in the absence of grave abuse of discretion on the part of the former, or unless the aforementioned findings are not supported by substantial evidence; findings of fact by administrative agencies are generally accorded great

institution named in the arbitration agreement as the appointing authority; or the regular arbitration institution under whose rule the arbitration is agreed to be conducted; where the parties have agreed to submit their dispute to institutional arbitration rules, and unless they have agreed to a different procedure, they shall be deemed to have agreed to procedure under such arbitration rules for the selection and appointment of arbitrators. (Mabuhay Holdings Corp. *vs.* Sembcorp Logistics Ltd., G.R. No. 212734, Dec. 5, 2018) p. 813

— The pertinent rules in the ICC Arbitration Rules of 1998 provide: Art. 9 - Appointment and Confirmation of the Arbitrators 5. The sole arbitrator or the chairman of the Arbitral Tribunal shall be of a nationality other than those of the parties; it bears stressing that the pro-arbitration policy of the State includes its policy to respect party autonomy; Rule 2.3 of the Special ADR Rules provides that "the parties are free to agree on the procedure to be followed in the conduct of arbitral proceedings"; the procedure to be followed on the appointment of an arbitrator are among the procedural rules that may be agreed upon by the parties; under Rule 7.2 of the Special ADR Rules, a challenge to the appointment of an arbitrator may be raised in court only when the appointing authority fails or refuses to act on the challenge within such period as may be allowed under the applicable rule or in the absence thereof, within thirty (30) days from receipt of the request, that the aggrieved party may renew the challenge in court; the Court shall not entertain any challenge to the appointment of an arbitrator disguised as a ground for refusing enforcement of an award. (*Id*.)

Foreign arbitral awards — Under Art. V of the New York Convention, the grounds for refusing enforcement and recognition of a foreign arbitral award are: x x x (c) The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; (d) The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement,

policy pursuant to the pro-enforcement policy of the New York Convention; the public policy exception, thus, is "a safety valve to be used in those exceptional circumstances when it would be impossible for a legal system to recognize an award and enforce it without abandoning the very fundaments on which it is based"; the Court adopts the majority and narrow approach in determining whether enforcement of an award is contrary to Our public policy; mere errors in the interpretation of the law or factual findings would not suffice to warrant refusal of enforcement under the public policy ground; the illegality or immorality of the award must reach a certain threshold such that, enforcement of the same would be against Our State's fundamental tenets of justice and morality, or would blatantly be injurious to the public, or the interests of the society. (*Id*.)

Scope of disputes submitted to arbitration — Under Art. V(1)(c) of the New York Convention, the court may refuse enforcement of a foreign arbitral award when the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; the CA correctly applied the *Kompetenz-Kompetenz* principle expressly recognized under Rule 2.2 of the Special ADR Rules, *viz:* The Special ADR Rules recognize the principle of competence-competence, which means that the arbitral tribunal may initially rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement or any condition precedent to the filing of a request for arbitration; the Special ADR Rules expounded on the implementation of the said principle: The court must exercise judicial restraint and defer to the competence or jurisdiction of the arbitral tribunal by allowing the arbitral tribunal the first opportunity to rule upon such issues; the Special ADR Rules specifically provides that in resolving the petition for recognition and enforcement of a foreign arbitral award, the court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law.

— In order for a *Certiorari* petition to prosper, the abuse of discretion alleged must be so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. (Heirs of Geminiano Francisco *vs*. Court of Appeals, G.R. No. 215599, Nov. 28, 2018) pp. 168-169

— The remedy from an order of dismissal granting a demurrer to evidence is reviewable by the CA, but only through *certiorari* under Rule 65 of the Rules of Court; in turn, if the CA finds no grave abuse of discretion on the part of the trial court in granting the demurrer, such finding is reviewable by the Court through a petition for review on *certiorari* under Rule 45 of the Rules of Court; *Asistio v. People, et al.*, cited; this is in line with the established rule "that one of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy; where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion." (People *vs*. Ting, G.R. No. 221505, Dec. 5, 2018) p. 868

— While it is doctrinally entrenched that *certiorari* is not a substitute for a lost appeal, the Court has allowed the resort to a petition for *certiorari* despite the existence of or prior availability of an appeal, such as: (1) where the appeal does not constitute a speedy and adequate remedy; (2) where the orders were also issued either in excess of or without jurisdiction; (3) for certain special considerations, as public welfare or public policy; (4) where in criminal actions, the court rejects rebuttal evidence for the prosecution as, in case of acquittal, there could be no remedy; (5) where the order is a patent nullity; and (6) where the decision in the *certiorari* case will avoid future litigations. (Orlina *vs*. Ventura, G.R. No. 227033, Dec. 3, 2018) p. 334

in accordance with its auditing rules and regulations. (Fernando *vs*. COA, G.R. Nos. 237938 and 237944-45, Dec. 4, 2018) p. 664

— Sec. 2, Art. IX-D of the 1987 Constitution provides for the COA's audit jurisdiction: The COA was envisioned by our Constitutional framers to be a dynamic, effective, efficient and independent watchdog of the Government; it granted the COA the authority to determine whether government entities comply with laws and regulations in disbursing government funds, and to disallow illegal or irregular disbursements of government funds; in *Funa v. Manila Economic and Cultural Office, et al.*, the Court enumerated and clarified its jurisdiction over various governmental entities: 1. The government, or any of its subdivisions, agencies and instrumentalities; 2. GOCCs with original charters; 3. GOCCs without original charters; 4. Constitutional bodies, commissions and offices that have been granted fiscal autonomy under the Constitution; and 5. Non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the government, which are required by law or the granting institution to submit to the COA for audit as a condition of subsidy or equity; the COA's audit jurisdiction generally covers public entities; however, its authority to audit extends even to non-governmental entities insofar as the latter receives financial aid from the government; the determination of COA's jurisdiction over a specific entity does not merely require an examination of the nature of the entity; should the entity be found to be non-governmental, further determination must be had as to the source of its funds or the nature of the account sought to be audited by the COA. (*Id*.)

— The Executive Committee has two sources of funds: 1. The donations from the local government units comprising the Metropolitan Manila covering the period of holding the MMFF from December 25 to January 3; and 2. The non-tax revenues that come in the form of donations from private entities; as a committee under MMDA, a

Chain of custody rule — 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"; rationale; 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 Sec. 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which was later adopted into the text of R.A. No. 10640; 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. (People *vs*. Medina *y* Cruz, G.R. No. 225747, Dec. 5, 2018) p. 897

(People *vs*. Dela Cruz, G.R. No. 225741, Dec. 5, 2018) p. 886

— 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 is indispensable to make a finding of guilt. (People *vs*. Cabezudo *y* Rieza, G.R. No. 232357, Nov. 28, 2018) p. 227

— In all drugs cases, compliance with the chain of custody rule is crucial in any prosecution that follows such

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 of the same and the seized drugs must be turned over to a forensic laboratory within twenty-four (24) hours from confiscation for examination. (People *vs*. Dela Cruz *y* Libonao, G.R. No. 234151, Dec. 5, 2018) p. 1012

— 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 must 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. (People *vs*. Leon *y* Weves, G.R. No. 214472, Nov. 28, 2018) p. 145

—— In the prosecution of drugs cases, the procedural safeguards that are embodied in Sec. 21 of R.A. No. 9165, as amended by R.A. No. 10640, are material as their compliance affects the *corpus delicti* and warrants the identity and integrity of the substances and other evidence that are seized by apprehending officers; the amendment that was introduced by R.A. No. 10640 in Sec. 21 prescribes a physical inventory and photograph of the seized items in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, plus two other witnesses, particularly: (1) an elected public official, and (2) a representative of the National Prosecution Service or the media, who shall sign the copies of the inventory and be given a copy thereof; the amendment then substantially included the saving clause that was actually already in the IRR of the former Sec. 21, indicating that non-compliance with the law's requirements under justifiable grounds, as long as the integrity and the

and the photographing of the same immediately after seizure and confiscation 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. (People *vs.* Cabezudo *y* Rieza, G.R. No. 232357, Nov. 28, 2018) p. 227

— Sec. 21 of the IRR of R.A. No. 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 and custody over said items. (*Id*.)

— The Court has clarified that under varied field conditions, strict compliance with the requirements of Sec. 21 of R.A. No. 9165 may not always be possible; and, the failure of the apprehending team to strictly comply with the procedure laid out in Sec. 21 of R.A. No. 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; without any justifiable explanation, which must be proven as a fact, 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. (People *vs*. Dela Cruz *y* Libonao, G.R. No. 234151, Dec. 5, 2018) p. 1012

(People *vs*. Malana *y* Sambolledo, G.R. No. 233747, Dec. 5, 2018) p. 988

(People *vs*. Casco *y* Villamer, G.R. No. 212819, Nov. 28, 2018) p. 124

— 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; the purpose of the law in

(15) days from the receipt of the results; the positive screening test result is not valid in a court of law unless confirmed; the confirmatory urine test is therefore not the direct or indirect result of the illegal search; rather, it comes into play not only upon the apprehension or arrest of the offender, but also, (1) when the apprehending or arresting officer has reasonable ground to believe that the offender is under the influence of dangerous drugs; and (2) only after a screening laboratory test yields a positive result; the basis for the confirmatory drug test was, in fact, a reasonable belief of drug use and a positive screening test, both of which are neither a necessary nor automatic consequence of an illegal search; Section 36, Article III of R.A. No. 9165 provides for the mandatory drug testing of: x x x (d) Officers and employees of public and private offices; in A.M. No. 06-1-01-SC dated January 17, 2006, the Court has adopted guidelines for a program to prevent drug use and eliminate the hazards of drug abuse in the Judiciary, specifically in the first and second level courts. (In Re: Special Report on the Arrest of Rogelio M. Salazar, Jr., Sheriff IV, RTC-OCC, Boac, Marinduque, for Violation of R.A. No. 9165, A.M. No. 15-05-136-RTC, Dec. 4, 2018) p. 369

Marking, physical inventory, and taking of photograph — R.A. No. 9165 requires that the marking, physical inventory, and taking of photograph of the seized items be conducted immediately after seizure and confiscation of the same; the said law further requires that the physical inventory and taking of photograph of the seized items 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, any elected public official, a representative from the media and the Department of Justice; or (b) if after the amendment of R.A. No. 9165 by R.A. No. 10640, any elected public official and a representative from either the National Prosecution Service or the media. (People *vs*. Torio *y* Paragas, G.R. No. 225780, Dec. 3, 2018) p. 323

being based merely on opinion and reasonable belief, it does not import absolute certainty; probable cause need not be based on clear and convincing evidence of guilt, as the investigating officer acts upon reasonable belief. (PCGG *vs*. Office of the Ombudsman, G.R. No. 187794, Nov. 28, 2018) p. 1

DAMAGES

Temperate damages — Temperate damages should be awarded when it has been established that the private complainant or respondent suffered a loss but the amount thereof cannot be proven with certainty; the determination of the amount of temperate damages is left to the sound discretion of the Court subject to the standard of reasonableness, in that temperate damages should be more than nominal but less than compensatory. (Ambagan, Jr. *vs*. People, G.R. No. 233443-44, Nov. 28, 2018) p. 270

***DELITO CONTINUADO* OR CONTINUOUS CRIME**

Principle of — A single crime consisting of a series of acts arising from a single criminal resolution or intent not susceptible of division; when the actor, there being unity of purpose and of right violated, commits diverse acts, each of which, although of a delictual character, merely constitutes a partial execution of a single particular delict, such concurrence or delictual acts is called a "delito continuado"; in order that it may exist, there should be "plurality of acts performed separately during a period of time; unity of penal provision infringed upon or violated and unity of criminal intent and purpose, which means that two or more violations of the same penal provision are united in one and the same intent leading to the perpetration of the same criminal purpose or aim. (Ambagan, Jr. *vs*. People, G.R. No. 233443-44, Nov. 28, 2018) p. 270

DEMURRER TO EVIDENCE

Nature — A demurrer to evidence is filed after the prosecution has rested its case and the trial court is required to evaluate whether the evidence presented by the prosecution is sufficient enough to warrant the conviction of the

considered by the RTC before it decided to apply the ruling in the *Larrazabal* case. (Rep. of the Phils. *vs*. Heirs of Sps. Flaviano and Salud Maglasang, G.R. No. 203608, Dec. 5, 2018) p. 774

Parol evidence rule — Respondent's explanation regarding her alleged true intent in executing the Agreement/ Promissory Note, *i.e.*, merely to obtain clearance for her transfer to the RTC not to admit accountability, can only be given scant consideration; the Court is constrained to give more weight to the documentary evidence over respondent's bare allegation; while technical rules of procedure and evidence are not strictly applied in administrative proceedings, such liberal interpretation in administrative cases does not allow unsupported claim to prevail over a written document; "the parol evidence rule forbids any addition to or contradiction of the terms of a written instrument by testimony." (Public Assistance and Corruption Prevention Office *vs*. Social Welfare Officer II Paumig, A.M. No. P-18-3882 [Formerly OCA IPI No. 13-4207-P], Dec. 4, 2018) p. 440

Substantial evidence in administrative proceeding — The adjudged irregularity in the application and implementation of the search warrant does not have any clear causal relation between the evidence which was illegally obtained by virtue of such quashed warrant and respondent's admission before a separate and distinct proceeding and authority; the admission was made by respondent during the preliminary investigation stage which is a source independent from the illegal search, seizure, and arrest, and is presumed to have been regularly performed; further, there is no allegation, much less proof, that any of respondent's basic rights in giving such admission were violated; respondent's admission of his drug use is relevant for purposes of the present administrative case and as such, it may properly be considered by this Court in this administrative proceeding as substantial evidence. (In Re: Special Report on the Arrest of Rogelio M. Salazar, Jr., Sheriff IV, RTC-OCC,

GOVERNMENT AUDITING CODE OF THE PHILIPPINES (P.D. NO. 1445)

Government contracts — Ordinarily, a written contract along with a written certification showing availability of funds for the project are among the conditions necessary for the execution of government contracts; it has been held, however, that the absence of these documents would not necessarily preclude the contractor from receiving payment for the services he or she has rendered for the government; recovery on the basis of *quantum meruit* was also allowed despite the invalidity or absence of a written contract between the contractor and the government agency. (Geronimo *vs*. COA, G.R. No. 224163, Dec. 4, 2018) p. 651

HOMICIDE

Commission of — The meeting between the parties was casual, and the attack was done impulsively; therefore, the killing could not have been attended by treachery; with the removal of the qualifying circumstance of treachery, the crime committed is therefore homicide and not murder. (People *vs*. Bulutano *y* Alvarez, G.R. No. 232649, Nov. 28, 2018) p. 255

HOMICIDE AND MURDER

Penalty — The accused should be held liable for one (1) count of Homicide for the killing of the victim, and for four (4) counts of Murder, respectively defined and penalized under Arts. 249 and 248 of the RPC; applying the Indeterminate Sentence Law and there being no modifying circumstance, it is proper to sentence him with the penalty of imprisonment for the indeterminate period 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; as to the crime of Murder, the same is penalized with *reclusion perpetua* to death; since both penalties are indivisible and there are no aggravating circumstance other than the qualifying circumstance of treachery, the

an execution sale acquires only whatever rights that the judgment obligor may have over the property at the time of levy; if the judgment obligor has no right, title or interest over the levied property — as in this case — there is nothing for him to transfer. (Miranda *vs*. Sps. Mallari, G.R. No. 218343, Nov. 28, 2018) p. 176

— Sec. 9(b), Rule 39 of the Rules, which authorizes a "levy upon the properties of the judgment obligor of every kind and nature whatsoever which may be disposed of for value and not otherwise exempt from execution" presupposes that the property to be levied belongs to and is owned by the judgment debtor; according to Sec. 12, Rule 39, the effect of levy on execution as to third persons is to create a lien in favor of the judgment obligee over the right, title and interest of the judgment obligor in such property at the time of the levy, subject to liens and encumbrances then existing; if the judgment obligor no longer has any right, title or interest in the property levied upon, then there can be no lien that may be created in favor of the judgment obligee by reason of the levy. (*Id*.)

Petition for relief from judgments, orders, or other proceedings — A petition for relief from judgment, order, or other proceedings is an equitable remedy which is allowed only in exceptional circumstances; it is the proper remedy of a party seeking to set aside a judgment rendered against him by a court whenever he was unjustly deprived of a hearing, was prevented from taking an appeal, or a judgment or final order entered because of fraud, accident, mistake or excusable negligence; however, as an equitable remedy, strict compliance with the applicable reglementary periods for its filing must be satisfactorily shown because a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order, or proceeding must, at some definite time, attain finality in order to put an end to litigation; Sec. 3, Rule 38 of the Rules of Court provides that a petition for relief from judgment must be filed within:

JUDICIAL REVIEW

Actual case or controversy — Whether under the traditional or expanded setting, the Court's judicial review power, pursuant to Sec. 1, Art. VIII of the Constitution, is confined to actual cases or controversies; expounded in *SPARK, et. al. v. Quezon City, et. al.*: 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; according to recent jurisprudence, in the Court's exercise of its expanded jurisdiction under the 1987 Constitution, this requirement is simplified by merely requiring a *prima facie* showing of grave abuse of discretion in the assailed governmental act; corollary to the requirement of an actual case of controversy is the requirement of ripeness; explained; existent in this case. (Peralta *vs*. Phil. Postal Corp. (PHILPOST), G.R. No. 223395, Dec. 4, 2018) p. 603

Legal standing — In *Mamba, et. al. v. Lara, et. al.*, the Court explained the legal standing of a taxpayer in this wise: A taxpayer is allowed to sue where there is a claim that public funds are illegally disbursed, or that the public money is being deflected to any improper purpose, or that there is wastage of public funds through the enforcement of an invalid or unconstitutional law; a person suing as a taxpayer, however, must show that the act complained of directly involves the illegal disbursement of public funds derived from taxation; he must also prove that he has sufficient interest in preventing the illegal expenditure of money raised by taxation and that he will sustain a direct injury because of the enforcement of the questioned statute or contract; application. (Peralta *vs*. Phil. Postal Corp. (PHILPOST), G.R. No. 223395, Dec. 4, 2018) p. 603

Moot-and-academic principle — It is precisely PhilPost's issuance, printing and sale of the INC commemorative stamps that created a justiciable controversy since the said acts allegedly violated Sec. 29(2), Art. VI of the

otherwise stated, 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 opportunity; and (4) the issue of constitutionality must be the very *lis mota* (the cause of the suit or action) of the case, *i.e.*, the decision on the constitutional or legal decision must be necessary to the determination of the case itself. (Peralta *vs*. Phil. Postal Corp. (PHILPOST), G.R. No. 223395, Dec. 4, 2018) p. 603

KIDNAPPING AND SERIOUS ILLEGAL DETENTION

Elements — Under Art. 267 of the RPC, the elements of the crime of Kidnapping and Serious Illegal Detention are, as follows: "(1) the offender is a private individual; (2) he kidnaps or detains another or in any other manner deprives the victim of his liberty; (3) the act of kidnapping or detention is illegal; and (4) in the commission of the offense, any of the following circumstances is present: (a) the kidnapping or detention lasts for more than three days; (b) it is committed by simulating public authority; (c) serious physical injuries are inflicted on the victim or threats to kill are made; or (d) the person kidnapped or detained is a minor, female or public officer"; all the elements of the crime of Kidnapping and Serious Illegal Detention are present in this case. (People *vs*. Chan, G.R. No. 226836, Dec. 5, 2018) p. 916

LABOR CODE

Labor-only contracting — Described in Art. 106 of the Labor Code; Rule VIII-A, Book III of the Amended Rules to Implement the Labor Code define contracting or subcontracting and labor-only contracting; as stated by the Court in *PCI Automation Center, Inc. v. NLRC*, the legitimate job contractor provides services, while the labor-only contractor provides only manpower; the legitimate job contractor undertakes to perform a specific job for the principal employer, while the labor-only contractor merely provides the personnel to work for the principal employer; respondent was engaged in labor-

authorize the oppression or self-destruction of the employer; management also has its own rights, which, as such, are entitled to respect and enforcement in the interest of simple fair play; social justice, defined. (Coca-Cola Bottlers Phils., Inc. *vs*. Iloilo Coca-Cola Plant Employees Labor Union (ICCPELU), G.R. No. 195297, Dec. 5, 2018) p. 696

LABOR STANDARDS

Premium pay — Despite the mistaken notion of CCBPI that Saturday work is synonymous to overtime work, the Court still disagrees with the CA ruling that the previous practice of instituting Saturday work by CCBPI had ripened into a company practice covered by Article 100 of the Labor Code; it is not Saturday work *per se* which constitutes a benefit to the company's employees; rather, the benefit involved in this case is the premium which the company pays its employees above and beyond the minimum requirements set by law; the CBA between CCBPI and the respondent guarantees the employees that they will be paid their regular wage plus an additional 50% thereof for the first eight (8) hours of work performed on Saturdays. (Coca-Cola Bottlers Phils., Inc. *vs*. Iloilo Coca-Cola Plant Employees Labor Union (ICCPELU), G.R. No. 195297, Dec. 5, 2018) p. 696

— Even assuming *arguendo* that the Saturday work involved in this case falls within the definition of a "benefit" protected by law, the fact that it was made subject to a condition (*i.e.*, the existence of operational necessity) negates the application of Art. 100 pursuant to the established doctrine that when the grant of a benefit is made subject to a condition and such condition prevails, the rule on non-diminution finds no application. (*Id*.)

— The age-old rule governing the relation between labor and capital, or management and employee, of a "fair day's wage for a fair day's labor" remains the basic factor in determining employees' wages; in cases where the employee's failure to work was occasioned neither by his abandonment nor by termination, the burden of

— There is no merit to the contention that only the State may bring an action for reconveyance with respect to property proven to be private property by virtue of open, continuous, exclusive and notorious possession; the nullification of the free patent and title would not therefore result in its reversion to the public domain; the State, represented by the Solicitor General, is not the real party-in-interest; inasmuch as there was no reversion of the disputed property to the public domain, the State is not the proper party to bring a suit for reconveyance. (*Id*.)

LOCAL GOVERNMENTS

Fiscal autonomy — The Local Government Code gave flesh to Sec. 7, under Sec. 18. *Power to Generate and Apply Resources*; Sec. 289. *Share in the Proceeds from the Development and Utilization of the National Wealth*; Sec. 290. *Amount of Share of Local Government Units;* and Sec. 291. *Share of the Local Governments from any Government Agency or Owned or Controlled Corporation*; underlying these and other fiscal prerogatives granted to the LGUs under the Local Government Code is an enhanced policy of local autonomy that entails not only a sharing of powers, but also of resources, between the National Government and the LGUs. (Rep. of the Phils. *vs*. Provincial Gov't. of Palawan, G.R. No. 170867, Dec. 4, 2018) p. 453

Powers — Under Sec. 25, Art. II of the 1987 Constitution, "the State shall ensure the autonomy of local governments"; the 1987 Constitution conferred on LGUs the power to create its own sources of revenue and the right to share not only in the national taxes, but also in the proceeds of the utilization of national wealth in their respective areas; Secs. 5, 6, and 7 of Art. X of the 1987 Constitution, cited. (Rep. of the Phils. *vs*. Provincial Gov't. of Palawan, G.R. No. 170867, Dec. 4, 2018) p. 453

Territorial jurisdiction of LGUs — Fundamental is the rule that the State cannot be estopped by the omission, mistake or error of its officials or agents; by indicating that the LGUs comprise the territorial subdivisions of the State,

the Constitution did not *ipso facto* make every portion of the national territory a part of an LGU's territory; the Court is inclined to agree with the Republic's argument that assuming Sec. 1 of Art. X was meant to divide the entire Philippine territory among the LGUs, it cannot be deemed as self-executing; LGUs are constituted by law and it is through legislation that their respective territorial boundaries are delineated; furthermore, in the creation, division, merger and abolition of LGUs and in the substantial alteration of their boundaries, Sec. 10 of Art. X requires satisfying the criteria set by the Local Government Code. (Rep. of the Phils. *vs*. Provincial Gov't. of Palawan, G.R. No. 170867, Dec. 4, 2018) p. 453

—— The question principally raised is whether the national wealth, in this case the Camago-Malampaya reservoir, is within the Province of Palawan's "area" for it to be entitled to 40% of the government's share under Service Contract No. 38; the Local Government Code does not define the term "territorial jurisdiction"; in the creation of municipalities, cities and barangays, the LGC uniformly requires that the territorial jurisdiction of these government units be "properly identified by metes and bounds"; the intention is to consider an LGU's territorial jurisdiction as pertaining to a physical location or area as identified by its boundaries; "area" refers to a particular extent of space or surface or a *geographic* region; *Mariano, Jr. v. COMELEC*, cited. (*Id*.)

—— The Republic has enumerated the laws defining the territory of Palawan; as defined in the organic law, the Province of Palawan is comprised merely of islands; the continental shelf, where the Camago-Malampaya reservoir is located, was not included in the territory; under Palawan's charter, the Camago-Malampaya reservoir is not located within its territorial boundaries. (*Id*.)

—— The term "territorial jurisdiction" is evidently synonymous with the term "territory"; "territorial jurisdiction" is defined as the limits or *territory* within which authority may be exercised; territorial jurisdiction and territory,

defined under the Local Government Code; that the LGUs' respective territories under the LGC pertain to the land area is clear from the fact that: (a) the law generally requires the territory to be "contiguous"; (b) the minimum area of the contiguous territory is measured in square kilometers; (c) such minimum area must be certified by the Lands Management Bureau; and (d) the territory should be identified by metes and bounds, with technical descriptions; the word "contiguous" signifies two solid masses being in actual contact; "metes and bounds" are the boundaries or limits of a tract of land especially as described by reference and distances between points on the land, while "technical descriptions" are used to describe these boundaries and are commonly found in certificates of land title. (*Id*.)

Utilization of national wealth — The LGU's share under Sec. 7, Art. X of the 1987 Constitution cannot be denied on the basis of the archipelagic and regalian doctrine; Palawan's claim is anchored not on ownership of the reservoir but on a revenue-sharing scheme, under Sec. 7, Art. X of the 1987 Constitution and Sec. 290 of the Local Government Code, that allows LGUs to share in the proceeds of the utilization of national wealth provided they are found within their respective areas; to deny the LGU's share on the basis of the State's ownership of all natural resources is to render Sec. 7 of Art. X nugatory for in such case, it will not be possible for any LGU to benefit from the utilization of national wealth; the LGU's share cannot be granted also based on equity; the Province of Palawan's remedy is legislation that clearly entitles it to share in the proceeds of the utilization of the Camago-Malampaya reservoir. (Rep. of the Phils. *vs*. Provincial Gov't. of Palawan, G.R. No. 170867, Dec. 4, 2018) p. 453

MITIGATING CIRCUMSTANCES

Passion and obfuscation — In order to be entitled to the mitigating circumstance of passion and obfuscation, the following elements should occur: (1) there should be an act both unlawful and sufficient to produce such condition

mentioned in Art. 248 of the RPC; if the accused killed the victim without the attendance of any of the qualifying circumstances of Murder, or by that of Parricide or Infanticide, a conviction for the crime of Homicide will be sustained. (People *vs*. Cortez, G.R. No. 239137, Dec. 5, 2018) p. 1086

NATIONAL ECONOMY AND PATRIMONY

Mining rights –– There is no vested right to mining rights, save for patented mining claims that were granted under the Philippine Bill of 1902; however, once the 1935 Constitution took effect, the alienation of mineral lands, among other natural resources of the State, was expressly prohibited; Commonwealth Act No. 137 or the Mining Act, as amended, echoing the prohibition in the 1935 Constitution, granted only lease rights to mining claimants; both the 1935 and 1973 Constitutions maintained the proscription on State alienation of mineral land while allowing qualified applicants to lease mineral land. (NAREDICO, Inc. *vs.* KROMINCO, Inc., G.R. No. 196892, Dec. 5, 2018) p. 721

Modes of control and supervision –– Under the 1987 Constitution, the State is expected to take on a more hands-on approach or "a more dynamic role in the exploration, development, and utilization of the natural resources of the country" as a consequence of its full control and supervision over natural resources; it exercises control and supervision through the following modes: 1. The State may directly undertake such activities; or 2. The State may enter into co-production, joint venture or production-sharing agreements with Filipino citizens or qualified corporations; 3. Congress may, by law, allow small-scale utilization of natural resources by Filipino citizens; 4. For the large-scale exploration, development and utilization of minerals, petroleum and other mineral oils, the President may enter into agreements with foreign-owned corporations involving technical or financial assistance; instead of a first-in-time, first-in right approach toward applicants for mining claims and mining rights,

PLEADINGS

Filing and service of — Under Sec. 3, Rule 13 of the Rules of Court, there are only two (2) modes by which a party may file a pleading before the courts: (1) by personal filing – presenting the original copies thereof personally to the clerk of court, or (2) by registered mail. (Heirs of Geminiano Francisco *vs*. Court of Appeals, G.R. No. 215599, Nov. 28, 2018) pp. 168-169

PRESUMPTIONS

Presumption in favor of enforcement of a foreign arbitral award — Our jurisdiction adopts a policy in favor of arbitration; the ADR Act and the Special ADR Rules both declare as a policy that the State shall encourage and actively promote the use of alternative dispute resolution, such as arbitration, as an important means to achieve speedy and impartial justice and declog court dockets; this pro-arbitration policy is further evidenced by the rule on presumption in favor of enforcement of a foreign arbitral award under the Special ADR Rules, *viz:* Rule 13.11. *Court action*. - It is presumed that a foreign arbitral award was made and released in due course of arbitration and is subject to enforcement by the court; the court shall recognize and enforce a foreign arbitral award unless a ground to refuse recognition or enforcement of the foreign arbitral award under this rule is fully established; the decision of the court recognizing and enforcing a foreign arbitral award is immediately executory; the court shall not disturb the arbitral tribunal's determination of facts and/or interpretation of law. (Mabuhay Holdings Corp. *vs.* Sembcorp Logistics Ltd., G.R. No. 212734, Dec. 5, 2018) p. 813

Presumption of regular performance of official duties — It was error for both the RTC and the CA to convict accused-appellant by relying on the presumption of regularity in the performance of duties supposedly extended in favor of the police officers; the presumption of regularity in the performance of duty cannot overcome the stronger

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. (People *vs*. Ilagan *y* Baña, G.R. No. 227021, Dec. 5, 2018) p. 926

PUBLIC OFFICERS AND EMPLOYEES

Grave misconduct and conduct prejudicial to the best interest of the service — The use of prohibited drugs constitute grave misconduct; in In *Re: Administrative Charge of Misconduct Relative to the Alleged Use of Prohibited Drug ("Shabu") of Reynard B. Castor, Electrician II, Maintenance Division, Office of Administrative Services*, the Court ruled that under Sec. 46(A)(3), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, grave misconduct is a grave offense punishable by dismissal even for the first offense; under Civil Service Memorandum Circular No. 13, series of 2010, any official or employee found positive for use of dangerous drugs shall be subjected to disciplinary/administrative proceedings with a penalty of dismissal from the service at first offense pursuant to Sec. 46(19) of Book V of E.O. No. 292 and Sec. 22(c) of its Omnibus Rules Implementing Book V of E.O. No. 292 and other pertinent civil service laws; respondent's conduct tarnished the very image and integrity of the Judiciary, constitutive of a conduct prejudicial to the best interest of the service; respondent guilty of both grave misconduct and conduct prejudicial to the best interest of the service, the penalty of dismissal for grave misconduct, the most serious offense in this case, is proper. (In Re: Special Report on the Arrest of Rogelio M. Salazar, Jr., Sheriff IV, RTC-OCC, Boac, Marinduque, for Violation of R.A. No. 9165, A.M. No. 15-05-136-RTC, Dec. 4, 2018) p. 369

Misappropriation of public funds — While the OMB has no authority to discipline respondent, the latter being a

of whether there was force, threat, or intimidation or grave abuse of authority; it is enough that the age of the victim is proven and that there was sexual intercourse. (People *vs*. Talib-og *y* Tuganan, G.R. No. 238112, Dec. 5, 2018) p. 1073

RES JUDICATA

Bar by prior judgment and conclusiveness of judgment — *Res judicata* embraces two concepts: (I) bar by prior judgment as enunciated in Rule 39, Sec. 47(b) of the Rules of Civil Procedure; and (2) conclusiveness of judgment in Rule 39, Sec. 47(c); there is bar by prior judgment when, as between the first case where the judgment was rendered and the second case that is sought to be barred, there is identity of parties, subject matter, and causes of action; here, the judgment in the first case constitutes an absolute bar to the second action; but where there is identity of parties in the first and second cases, but no identity of causes of action, the first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved therein; this is the concept of *res judicata* known as conclusiveness of judgment. (Igot *vs*. Valenzona, G.R. No. 230687, Dec. 5, 2018) p. 948

Elements — The elements of *res judicata* are: (1) the judgment sought to bar the new action must be final; (2) the decision must have been rendered by a court having jurisdiction over the subject matter and the parties; (3) the disposition of the case must be a judgment on the merits; and (4) there must be as between the first and second action, identity of parties, subject matter, and causes of action; should identity of parties, subject matter, and causes of action be shown in the two cases, then *res judicata* in its aspect as a bar by prior judgment would apply; if as between the two cases, only identity of parties can be shown, but not identical causes of action, then *res judicata* as conclusiveness of judgment applies; absolute identity of parties is not required but only substantial identity, and there is substantial identity of parties when there is

The Hall Of Justice Building In Quezon City; the words "pay" and "employ" should be understood to mean that what is prohibited is the use of public money or property for the sole purpose of benefiting or supporting any church; the aforecited constitutional provision "does not inhibit the use of public property for religious purposes when the religious character of such use is merely incidental to a temporary use which is available indiscriminately to the public in general"; what is prohibited is the State using its resources to solely benefit one religion. (*Id*.)

— There is no quibbling that as to the 50,000 stamps ordered, printed and issued to INC, the same did not violate the Constitutional prohibitions separating State matters from religion; the costs for the printing and issuance of the aforesaid stamps were all paid for by INC.; any perceived use of government property, machines or otherwise, is *de minimis* and certainly do not amount to a sponsorship of a specific religion; the Court agrees with respondents that the printing of the INC commemorative stamp was endeavored merely as part of PhilPost's ordinary business. (*Id*.)

Separation of the Church and the State — The "wall" between the Church and the State exists along with the recognition of freedom of religion; in *Estrada vs. Escritor*, this Court encapsulated its policy towards these kinds of disputes as "benevolent neutrality": Benevolent neutrality recognizes the religious nature of the Filipino people and the elevating influence of religion in society; at the same time, it acknowledges that government must pursue its secular goals; the Court has adopted a stance of "benevolent neutrality." (Peralta *vs*. Phil. Postal Corp. (PHILPOST), G.R. No. 223395, Dec. 4, 2018) p. 603

STATUTES

Interpretation of — Tax incentives partake of the nature of tax exemptions; they are a privilege to which the rule that tax exemptions must be strictly construed against the taxpayer apply; one who seeks an exemption must justify it by words too plain to be mistaken and too

by the President; under the doctrine of qualified political agency, department secretaries may act for and on behalf of the President on matters where the President is required to exercise authority in their respective departments. (*Id*.)

VALUE ADDED TAX (VAT)

Exemption from payment of advance VAT — Exemption from the payment of VAT on sales made by the agricultural cooperatives to members or to non-members necessarily includes exemption from the payment of "advance VAT" upon the withdrawal of the refined sugar from the sugar mill; VAT is a tax on transactions, imposed at every stage of the distribution process on the sale, barter, exchange of goods or property, and on the performance of services, even in the absence of profit attributable thereto, so much so that even a non-stock, non-profit organization or government entity, is liable to pay VAT on the sale of goods or services; there are certain transactions exempt from VAT such as the sale of agricultural products in their original state, including those which underwent simple processes of preparation or preservation for the market, such as raw cane sugar; by express provisions of the law under Sec. 109 (L) of R.A. No. 8424, as amended by R.A. No. 9337, and Art. 61 of R.A. No. 6938 as amended by R.A. No. 9520, the sale itself by agricultural cooperatives duly registered with the CDA to their members as well as the sale of their produce, whether in its original state or processed form, to non-members are exempt from VAT. (Commissioner of Internal Revenue *vs.* Negros Consolidated Farmers Multi-Purpose Cooperative, G.R. No. 212735, Dec. 5, 2018) p. 848

— In the interim, or on September 19, 2008, the BIR issued RR No. 13-2008 consolidating the regulations on the *advance payment of VAT* or "*advance VAT*" on the sale of refined sugar; generally, the advance VAT on the sale of the refined sugar is required to be paid in advance by the owner/seller before the refined sugar is *withdrawn*

— The victim's direct, positive, and straightforward narration of the incidents in detail prevails over accused-appellant's unsubstantiated allegations; the trial court's factual findings, especially its assessment of the credibility of witnesses, are accorded great weight and respect and binding upon this Court, particularly when affirmed by the CA. (People *vs*. Talib-og *y* Tuganan, G.R. No. 238112, Dec. 5, 2018) p. 1073

— When the case pivots on the issue of the credibility 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. (People *vs*. Bulutano *y* Alvarez, G.R. No. 232649, Nov. 28, 2018) p. 255

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