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DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

DECEMBER 10, 2018 TO JANUARY 22, 2019

SUPREME COURT
MANILA
2021

Prepared
by

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2021

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 200553. December 10, 2018]

SPOUSES GILDARDO C. LOQUELLANO and ROSALINA JULIET B. LOQUELLANO, *petitioners, vs.* **HONGKONG AND SHANGHAI BANKING CORPORATION, LTD., HONGKONG AND SHANGHAI BANKING CORPORATION-STAFF RETIREMENT PLAN and MANUEL ESTACION,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; ESTOPPEL, DEFINED AND EXPLAINED.—** Estoppel is a doctrine that prevents a person from adopting an inconsistent position, attitude, or action if it will result in injury to another. One who, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, can no longer deny the existence of such fact as it will prejudice the latter. The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice. It springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where, without its aid, injustice might result.

2. **ID.; ID.; ID.; WHEN DEBTORS WERE MADE TO BELIEVE THAT CREDITOR WAS APPLYING THEIR PAYMENTS**

TO THEIR MONTHLY LOAN OBLIGATIONS, CREDITOR IS NOW ESTOPPED FROM ENFORCING ITS RIGHT TO FORECLOSE BY REASON OF ITS ACCEPTANCE OF THE DELAYED PAYMENTS.— [R]espondent HSBC-SRP continuously sent out monthly Installment Due Reminders to petitioner Rosalina despite its demand letter dated September 25, 1995 to pay the full amount of the loan obligation within 3 days from receipt of the letter. It, likewise, continuously accepted petitioner Rosalina's subsequent monthly amortization payments until June 1996; thus, making their default immaterial. Moreover, there was no more demand for the payment of the full obligation afterwards. Consequently, petitioners were made to believe that respondent HSBC-SRP was applying their payments to their monthly loan obligations as it had done before. It is now estopped from enforcing its right to foreclose by reason of its acceptance of the delayed payments.

3. **ID.; ID.; OBLIGATIONS; CREDITOR'S ACCEPTANCE OF THE MONTHLY AMORTIZATION PAYMENTS FROM THE DEBTOR WITHOUT OBJECTION, THE OBLIGATION IS DEEMED COMPLIED WITH.—** Article 1235 of the Civil Code provides that when the creditor accepts performance, knowing its incompleteness and irregularity without protest or objection, the obligation is deemed complied with. Respondent HSBC-SRP accepted Rosalina's payment of her housing loan account for almost one year without any objection.

4. **ID.; ID.; DAMAGES; AMOUNT OF MORAL AND EXEMPLARY DAMAGES, REDUCED; ATTORNEY'S FEES, AWARDED.—** Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injuries unjustly caused. Petitioner Rosalina has adequately established the factual basis for the award of moral damages when she testified that she felt shocked and horrified upon knowing of the foreclosure sale. However, we find the RTC's award of ₱2,000,000.00 excessive and unconscionable, and reduce the same to ₱100,000.00. Exemplary damages are imposed by way of example for the public good, in addition to moral, temperate, liquidated or compensatory damages. We reduce the RTC's award of ₱500,000.00 to ₱30,000.00. Attorneys fees are allowed when

exemplary damages are awarded and when the party to a suit is compelled to incur expenses to protect his interest. We find the RTC's award of attorney's fees in the amount of ₱100,000.00 proper.

APPEARANCES OF COUNSEL

Tañada Vivo & Tan for petitioners.
Cruz Enverga & Lucero Law Offices for HSBC, Ltd. Staff Retirement Plan & Manuel Estacion.
Sanidad Viterbo Enriquez & Tan Law Firm for HSBC, Ltd.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Decision[1] dated August 11, 2011 and the Resolution[2] dated February 1, 2012 of the Court of Appeals in CA-G.R. CV No. 86805.

Petitioner Rosalina Juliet Loquellano used to be a regular employee in the Financial Central Department of respondent Hongkong and Shanghai Banking Corporation, Ltd. (*respondent bank*). As such, she became an automatic member of respondent Hongkong and Shanghai Banking Corporation – Staff Retirement Plan (*HSBC-SRP*) that provides retirement, disability and loan benefits to the bank's employees. In 1988, petitioner Rosalina applied with respondent HSBC-SRP a housing loan in the amount of ₱400,000.00 payable in twenty-five (25) years at six percent (6%) *per annum*, through monthly salary deduction from petitioner Rosalina's salary savings account with respondent HSBC.[3] It was provided in the loan application that the loan

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[1] Penned by Associate Justice Franchito N. Diamante, with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo concurring; *rollo*, pp. 35-49.

[2] *Id*. at 51-52.

[3] *Id.* at 85.

was secured by setting-off petitioner Rosalina's retirement benefits and chattel mortgage.[4] She executed a promissory note[5] for the payment of the said loan.

On September 5, 1990, petitioners spouses Gildardo and Rosalina Loquellano and Manuel S. Estacion, the managing trustee for and in behalf of the respondent HSBC-SRP, entered into a contract[6] of real estate mortgage wherein petitioners constituted a mortgage over their house and lot covered by TCT No. 95422 (44867) of the Register of Deeds of Pasay City to secure the payment of their housing loan. Petitioner Rosalina had been religiously paying the monthly installments and interests due on the housing loan through automatic salary deductions.

Subsequently, a labor dispute arose between the respondent bank and the bank union, to which petitioner Rosalina was a member, which culminated in a strike staged on December 22, 1993. Petitioner Rosalina, together with other bank employees, were dismissed from the service for abandonment, among others. Petitioner Rosalina and the other dismissed employees filed with the Labor Arbiter (*LA*) an illegal dismissal case against the respondent bank. The LA declared the strike illegal and dismissed the complaint. The labor case had reached us through a petition for review on *certiorari* filed by the dismissed concerned employees and had already been decided[7] by us on January 11, 2016. While we declared the strike illegal, we also held that the mere finding of such did not justify the wholesale termination of the strikers from their employment. We found that there was illegal dismissal and ordered the bank, among others, to pay the backwages and separation pay of the 18 employees named in the decision, which included petitioner Rosalina, in lieu of reinstatement.

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[4] *Id*. at 86.

[5] *Id.* at 87.

[6] *Id*. at 78-81.

[7] *The Hongkong and Shanghai Banking Corp., Employees Union, et al. v. NLRC, et al.*, 776 Phil. 14 (2016).

In the meantime, due to petitioner Rosalina's termination from employment with the bank on December 27, 1993, petitioners were unable to make any payments of the amortizations due in Rosalina's salary savings account beginning January 1994. Respondent HSBC-SRP sent demand letters dated June 13, 1994[8] and November 28, 1994,[9] respectively, to petitioner Rosalina for the payment of her outstanding obligation in full. Petitioner Rosalina offered to make partial payment of her housing loan arrears in the amount of ₱69,205.99,[10] which respondent HSBC-SRP rejected.[11]

Subsequently, petitioner Rosalina received an Installment Due Reminder[12] dated July 26, 1995 issued by respondent HSBC-SRP on her housing loan, wherein it was shown that the monthly installment overdue, the interest overdue and the interest accrued on the overdue installment amounted to ₱55,681.85 and the outstanding loan balance was ₱315,958.00. On August 11, 1995, petitioner Rosalina, through her salary savings account which was still existing, deposited the payments for all her monthly installment arrears and interests, and penalties from January 1994 up to August 1995. Respondent bank accepted the payments and credited them to her housing loan account.[13] Thereafter, petitioner Rosalina received an Installment Due Reminder[14] dated August 28, 1995, wherein it already reflected the payments she had made as her outstanding housing loan obligation was already reduced to ₱289,945.00.

In a letter[15] dated September 25, 1995 to petitioner Rosalina, respondent HSBC-SRP demanded for the payment of the entire

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[8] *Rollo*, p. 88.

[9] *Id*. at 89.

[10] *Id*. at 91.

[11] *Id*. at 93.

[12] *Id*. at 94.

[13] *Id*. at 107.

[14] *Id*. at 94.

[15] *Id*. at 90.

housing loan obligation in the amount of ₱289,945.00. Notwithstanding, petitioner Rosalina received an Installment Due Reminder[16] dated September 27, 1995, reflecting the then current monthly installment and interest due thereon. Petitioner Rosalina, subsequently, received more installment due reminders showing a reduction in the outstanding balance of her housing loan.[17] She continuously made deposits to her salary savings account with the respondent bank for the payment of her monthly amortizations. Respondent bank debited petitioner Rosalina's savings account[18] and credited the payments to the balance of the installment and the interest due on the housing loan up to June 1996.[19]

On May 20, 1996, petitioners' mortgaged property was extrajudicially foreclosed by respondent HSBC-SRP and was sold at public auction for the amount of ₱324,119.59, with respondent Manuel S. Estacion as the highest bidder. A Certificate of Sale dated June 5, 1996 was issued.

On August 22, 1996, petitioners filed with the Regional Trial Court (*RTC*) of Parañaque City, Branch 274, a Complaint[20] for Annulment of Sale with Damages and Preliminary Injunction against Hongkong and Shanghai Banking Corporation, Ltd; Manuel S. Estacion; Hongkong and Shanghai Banking Corporation-Staff Retirement Plan, as represented by Atty. Manuel G. Montecillo, Mr. Stuart P. Milne and Mr. Alejandro L. Custodio; Leonarda Leilani Amurao and Benedicto G. Hebron, in their capacities as Clerk of Court/*Ex-Officio* Sheriff and Sheriff-in-Charge of the RTC of Parañaque. Petitioners alleged, among others, that the foreclosure of their mortgaged property was tainted with bad faith, considering that they had paid all the arrears, interests and penalties due on their housing loan

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[16] *Id*. at 110.

[17] *Id*. at 111-112.

[18] *Id*. at 95-106.

[19] *Id*. at 107-109.

[20] Docketed as Civil Case No. 96-0363.

since August 1995, and were updated with their loan obligations up to June 1996.

In their Answer, respondents HSBC-SRP and Estacion argued that the entire loan obligations accelerated when petitioner Rosalina was terminated and ceased to be an employee of respondent bank as provided in the HSBC-SRP Rules and Regulations, and she failed to pay the entire balance of the housing loan. Also, petitioners were in default, having failed to pay the amortizations beginning January 1994 up to July 1995; thus, they had the right to extrajudicially foreclose the mortgaged property under their mortgage contract.

Respondent bank claimed that it should not have been impleaded in the complaint, since it was not privy to the real estate mortgage nor to the extrajudicial foreclosure proceedings.

On March 1, 2005, the RTC rendered its Decision[21] in favor of the petitioners, the dispositive portion of which reads:

> WHEREFORE, all the foregoing duly considered, judgment is hereby rendered for the plaintiffs and against the defendants, ordering —
>
> 1) The issuance of the Writ of Preliminary Injunction dated August 4, 1997 to be as it is hereby made permanent;
>
> 2) The annulment or cancellation of the extrajudicial foreclosure sale conducted by the defendant sheriff on May 20, 1996;
>
> 3) The defendants bank, Retirement Plan, and Manuel S. Estacion to pay, jointly and severally, the plaintiff spouses the sum of two million (₱2M) pesos as moral damages, ₱500,000.00 as exemplary damages; and
>
> 4) The defendants bank, Retirement Plan, and Manuel S. Estacion to pay, jointly and severally, the plaintiff spouses the sum of ₱100,000.00 as attorney's fees, plus ₱2,000.00 for every appearance, and costs of litigation.
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> SO ORDERED.[22]

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[21] Per Judge Fortunito L. Madrona; *rollo*, pp. 53-63.

[22] *Id*. at 62-63.

In so ruling, the RTC found, among others, that the contract of real estate mortgage executed between respondent HSBC-SRP and petitioners, which was the sole basis for the extrajudicial foreclosure, did not contain the former's rules and regulations nor were made known to petitioners during the execution of the contract; thus, not binding on petitioners. It ruled that when petitioner Rosalina resumed payment of their housing loan's monthly amortizations, including all the arrears and interests on August 11, 1995 through petitioner Rosalina's salary savings account, which the bank received and acknowledged the payment to the knowledge and acquiescence of respondent HSBC-SRP, the latter was estopped from disclaiming such payment and receipt of payment, despite the demand letters sent by respondent HSBC-SRP. It also found that the foremost contention that the foreclosure of the mortgage was valid, since petitioner Rosalina was terminated by the bank on December 27, 1993, which caused the acceleration of her housing loan, was not tenable since the issue of her termination was still pending appeal.

The RTC found respondents liable for damages under Articles 19[23] and 20[24] of the Civil Code. It based its finding on the act of respondent bank (willfully or negligently) in dismissing petitioner Rosalina, and when respondent HSBC-SRP followed through blindly and unilaterally by foreclosing the mortgage for failure of petitioners to pay the entire balance of her housing loan. Respondent Estacion's liability was due to his active participation in his co-respondents' actions.

Respondent bank filed its appeal. Respondent HSBC-SRP and Estacion filed their Motion for Reconsideration, which was denied by the RTC in an Order[25] dated November 8, 2005; thus, they also appealed the decision.

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[23] Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

[24] Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

[25] *Rollo*, pp. 64-65.

On August 11, 2011, the CA rendered its assailed Decision, the decretal portion of which reads:

> IN LIGHT OF THE FOREGOING, premises considered, the instant appeal is GRANTED. Accordingly, the Decision of the RTC, Branch 274 of Parañaque City, dated March 1, 2005, in Civil Case No. 96-0363 is hereby REVERSED and SET ASIDE, and the complaint in said case is DISMISSED.[26]

The CA found that petitioner Rosalina was able to avail of the housing loan from respondent HSBC-SRP by virtue of her employment with the bank; that when she availed of the housing loan under the SRP, she had, likewise, agreed and conformed to the rules and regulations laid down in the said retirement plan, which provides that should the employee's service with the bank be terminated prior to full repayment of the loan, the employee shall make a single payment to cover the outstanding balance. Hence, upon petitioner Rosalina's termination from employment on December 27, 1993, as an aftermath of joining the illegal strike, her entire outstanding obligations owing to the HSBC-SRP immediately became due and demandable in accordance with the SRP provision; that since petitioners refused and failed to settle their overdue loans and obligations in full, respondents merely exercised their right to foreclose their property in the event of default of payment in the principal obligation provided under the real estate mortgage.

The CA found no merit to petitioners' claim that the foreclosure of mortgage was anomalous, since they had not been remiss in paying their loan obligation. It ruled that there was no showing that the creditor had received and acknowledged full payment; that although partial payment had been credited and applied to the principal loan, a reservation for the complete satisfaction of the outstanding obligations was made known to petitioners; that petitioners must pay the amount due in its entirety for their obligation to be considered extinguished by payment; and that foreclosure was befitting in view of petitioners' default

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[26] *Id*. at 48.

in satisfying their loan obligations. The CA found that respondent bank should not have been impleaded since it is neither a party nor a signatory to the real estate mortgage contract.

Hence, this petition for review on *certiorari* filed by petitioners.

The issues for resolution are (1) whether the extrajudicial foreclosure and auction sale of petitioners' property by respondent HSBC-SRP on May 20, 1996 was valid; and (2) whether petitioners are entitled to the payment of damages as well as attorney's fees.

Our jurisdiction in a petition for review on *certiorari* under Rule 45 of the Rules of Court is limited only to questions of law as we are not a trier of facts. The matter of the validity of the foreclosure of petitioners' mortgaged property is factual. However, there are instances when we may review questions of fact, as when the findings of the Court of Appeals are contrary to those of the trial court, as in this case.[27]

We find that respondent HSBC-SRP's filing of the extrajudicial foreclosure proceedings on May 20, 1996 has no basis and, therefore, invalid.

It is established that petitioners failed to pay the monthly amortizations of their housing loan secured by a real estate mortgage on their property since January 1994, *i.e.*, after petitioner Rosalina was terminated by the bank on December 27,1993. Thus, respondent HSBC-SRP sent demand letters dated June 13, 1994 and November 28, 1994 to petitioner Rosalina asking her to pay the outstanding housing loan obligation in full. Petitioner Rosalina's offer of partial payment was rejected by respondent HSBC-SRP. In the meantime, no foreclosure proceedings was yet filed by respondent HSBC-SRP against petitioners' mortgaged property. Subsequently, petitioner Rosalina received an Installment Due Reminder dated July 26, 1995, informing her of the overdue monthly amortizations,

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[27] *Rural Bank of Cabadbaran, Inc. v. Melecio-Yap,* 740 Phil. 35, 48 (2014).

interests and penalty in the amount of ₱55,681.85, with an outstanding balance of ₱315,958.00. On August 11, 1995, petitioner Rosalina then deposited in her salary savings account the payment for all the principal and interest arrearages from January 1994 up to August 1995. The payments she made in her account were accepted by respondent bank and credited them to the payment of the overdue monthly amortizations of her housing loan.

While respondent HSBC-SRP wrote petitioner Rosalina a letter dated September 25, 1995 demanding payment of the latter's entire unpaid housing loan obligation, now with a reduced balance in the amount of ₱289,945.00, however, petitioner Rosalina still received an Installment Due Reminder[28] dated September 27, 1995 reminding her of her monthly installment and interest due, *sans* penalty charge, which she paid. Thereafter, petitioner Rosalina continuously received Installment Due Reminders[29] for the housing loan, to wit: dated December 21, 1995, February 26, 1996, March 13, 1996 and April 11, 1996, which showed a diminishing loan balance by reason of respondent HSBC-SRP's acceptance of payments of her monthly installments and interests due from September 1995 up to June 1996. Therefore, respondent HSBC-SRP is now estopped from foreclosing the mortgage property on May 20, 1996.

Article 1431 of the Civil Code defines estoppel as follows:

> Art. 1431. Through estoppel an admission or representation is rendered conclusive upon the person making it, and cannot be denied or disproved as against the person relying thereon.

And Section 2(a), Rule 131 of the Rules of Court provides:

> SEC. 2. *Conclusive presumptions*. The following are instances of conclusive presumptions:
>
> (a) Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe

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[28] *Rollo*, p. 110.

[29] *Id*. at 111-112.

> a particular thing is true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.

Estoppel is a doctrine that prevents a person from adopting an inconsistent position, attitude, or action if it will result in injury to another.[30] One who, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, can no longer deny the existence of such fact as it will prejudice the latter.[31] The doctrine of estoppel is based upon the grounds of public policy, fair dealing, good faith and justice. It springs from equitable principles and the equities in the case. It is designed to aid the law in the administration of justice where, without its aid, injustice might result.[32]

To stress, respondent HSBC-SRP continuously sent out monthly Installment Due Reminders to petitioner Rosalina despite its demand letter dated September 25, 1995 to pay the full amount of the loan obligation within 3 days from receipt of the letter. It, likewise, continuously accepted petitioner Rosalina's subsequent monthly amortization payments until June 1996; thus, making their default immaterial. Moreover, there was no more demand for the payment of the full obligation afterwards. Consequently, petitioners were made to believe that respondent HSBC-SRP was applying their payments to their monthly loan obligations as it had done before. It is now estopped from enforcing its right to foreclose by reason of its acceptance of the delayed payments.[33]

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[30] See *Dr. De los Santos v. Dr. Vibar*, 580 Phil. 393, 404 (2008).

[31] *Id.*, citing *Rimasug v. Martin,* 512 Phil. 348, 365 (2005), citing *Ganzon v. Court of Appeals,* 434 Phil. 626, 641 (2002).

[32] *Orix Metro Leasing and Finance Corp. v. M/V "Pilar-I," et al.*, 615 Phil. 412, 430-431.

[33] *Pagsibigan v. Court of Appeals*, 293 Phil. 205, 211 (1993).

Also, Article 1235 of the Civil Code provides that when the creditor accepts performance, knowing its incompleteness and irregularity without protest or objection, the obligation is deemed complied with. Respondent HSBC-SRP accepted Rosalina's payment of her housing loan account for almost one year without any objection.

Respondent HSBC-SRP argues that estoppel is not applicable since the payments upon which petitioners rely were made without its knowledge and consent; that the updated balances were automatically generated by the system; that petitioner Rosalina made unilateral payments to her salary savings account knowing that any amount she deposited therein will be automatically credited as payments for her loan obligations.

We are not persuaded.

It is respondent HSBC-SRP, not petitioner Rosalina, which has access and control of the computer system with regard to the crediting of the housing loan payments. It cannot now deny its action of continuously accepting petitioner Rosalina's monthly amortizations, coupled with the sending out of installment due reminders, and statements of her updated housing loan account to prejudice petitioners who relied thereon.

We find that petitioners are entitled to damages for the invalid foreclosure of their property. The RTC held respondent bank HSBC-SRP and Estacion solidarily liable for the payment of damages. However, we only find respondent HSBC-SRP liable as it was the one which illegally foreclosed petitioners' mortgaged property. However, respondent HSBC, as correctly pointed out by the CA, was not a party to the real estate mortgage executed between respondent HSBC-SRP and petitioners nor it had participation in the foreclosure proceedings. On the other hand, Estacion was only a trustee of respondent HSBC-SRP acting within the scope of its authority.

The RTC awarded moral damages, exemplary damages, attorney's fees, plus ₱2,000.00 for every appearance, and costs of litigation.

Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injuries unjustly caused.[34] Petitioner Rosalina has adequately established the factual basis for the award of moral damages when she testified that she felt shocked and horrified upon knowing of the foreclosure sale.[35] However, we find the RTC's award of ₱2,000,000.00 excessive and unconscionable, and reduce the same to ₱100,000.00.

Exemplary damages are imposed by way of example for the public good, in addition to moral, temperate, liquidated or compensatory damages.[36] We reduce the RTC's award of ₱500,000.00 to ₱30,000.00.

Attorneys fees are allowed when exemplary damages are awarded and when the party to a suit is compelled to incur expenses to protect his interest. We find the RTC's award of attorney's fees in the amount of ₱100,000.00 proper.

WHEREFORE, the petition for review on *certiorari* is **GRANTED**. The Decision dated August 11, 2011 and the Resolution dated February 1, 2012 of the Court of Appeals in CA-G.R. CV No. 86805 are hereby **REVERSED** and **SET ASIDE**. The Decision dated March 1, 2005 of the Regional Trial Court, Branch 274, of Parañaque City is hereby **AFFIRMED WITH MODIFICATION**.

Thus, as modified, the Decision dated March 1, 2005 of the Regional Trial Court is as follows:

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[34] Civil Code, Art. 2217. Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. Though incapable of pecuniary computation, moral damages may be recovered if they are the proximate result of the defendant's wrongful act for omission.

[35] TSN, April 17, 2001, pp. 9-10.

[36] Civil Code, Art. 2229.

WHEREFORE, all the foregoing duly considered, judgment is hereby rendered for the plaintiffs and against the defendant Hongkong and Shanghai Banking Corporation-Staff Retirement Plan, ordering:

(1) The issuance of the Writ of Preliminary Injunction dated August 4, 1997 to be as it is hereby made permanent;

(2) The annulment or cancellation of the extrajudicial foreclosure sale conducted by the defendant sheriff on May 20, 1996;

(3) To pay the plaintiff spouses the sum of one hundred thousand pesos (₱100,000.00) as moral damages and ₱30,000.00 as exemplary damages;

(4) To pay the plaintiff spouses the sum of ₱100,000.00 as attorney's fees; and

(5) To pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 210816. December 10, 2018]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **EDGAR S. GO,** *respondent.*

[G.R. No. 210854. December 10, 2018]

PURITA HIBE, JONATHAN A. TESSLER, CAROL T. MEJIAS, HEIDE V. LAUREL, NISSAN V. LAUREL, ESTELA LAUREL-GELI, KATHERINE DELA CRUZ-LAUREL, ARLENE OLANG, SARLINA SEPE, ALLAN CARONO-O, EPHRAIM OSORIO, JUARINA

R. CRUZ, NESHAMIE PAGLINAWAN, JOSEPHINE PADUA, VICENTA R. CHUA, ILLUMINADA TIMAJO, LILYBETH CUNANAN, ELORDE ILUSTRISIMO, BOB ILLUT, ERNESTO B. CLARIN, ROQUE LABAD, EVELYN BAJIT,[*] LARINA L. MATRIZ, BENITO S. ESPINA, MARLYN T. HIBE, CELERNA M. CALAYAG, NELLY T. LOPEZ, and SONIA O. MANZANILLA, *petitioners, vs.* **EDGAR S. GO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PARTIES; FAILURE TO IMPLEAD AN INDISPENSABLE PARTY IS NOT A GROUND FOR THE DISMISSAL OF AN ACTION; ONLY IF PLAINTIFF REFUSES TO IMPLEAD AN INDISPENSABLE PARTY DESPITE THE ORDER OF THE COURT THAT THE COMPLAINT MAY BE DISMISSED FOR FAILURE TO COMPLY.— Section 5, Rule 110 of the Revised Rules of Criminal Procedure provides that all criminal actions are prosecuted under the direction and control of the public prosecutor. Therefore, respondent's petition for *certiorari* before the CA which failed to implead the People of the Philippines as a party thereto was defective. It must be stressed that the true aggrieved party in a criminal prosecution is the People of the Philippines whose collective sense of morality, decency and justice has been outraged. The Court, however, has repeatedly declared that "the failure to implead an indispensable party is not a ground for the dismissal of an action. In such a case, the remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner's/plaintiff's failure to comply."

2. ID.; ID.; ID.; ID.; FAILURE TO IMPLEAD THE PEOPLE OF THE PHILIPPINES DOES NOT *IPSO FACTO* DEPRIVE THE COURT OF APPEALS OF JURISDICTION

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[*] Also referred to as Evelyn Bajet in some parts of the *rollo*.

OVER THE PETITION FOR *CERTIORARI*; IT WOULD BE THE HEIGHT OF INJUSTICE TO DISMISS THE PETITION FOR *CERTIORARI* FOR A PROCEDURAL DEFECT.— In this case, the CA, in a Resolution dated September 24, 2010, required then DOJ Secretary Leila De Lima, public respondent in the petition for *certiorari*, to comment on the said petition. However, in its Manifestation and Motion dated October 5, 2010, the Office of the Solicitor General (OSG) declared that "being the real party interested in upholding public respondent's questioned rulings, private respondents therefore have the duty to appear and defend in their behalf and in behalf of public respondent." It further stated, "being merely a nominal party, public respondent thus should not appear against petitioner, or any party for that matter, who seeks the reversal of her rulings that are unfavorable to the latter." Thus, the People, through the OSG, was given the opportunity to refute respondent's arguments, but it refused in the belief that it was merely a nominal party with little interest in upholding respondent's indictment for reckless imprudence. Accordingly, it would be the height of injustice to sustain the People's claim of denial of due process and to dismiss the petition for *certiorari* for a procedural defect.

3. ID.; ID.; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; COURTS WILL NOT INTERFERE WITH THE EXECUTIVE DETERMINATION OF PROBABLE CAUSE FOR THE PURPOSE OF FILING AN INFORMATION IN THE ABSENCE OF GRAVE ABUSE OF DISCRETION; NO GRAVE ABUSE OF DISCRETION IN CASE AT BAR.— In accordance with the policy of non-interference, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion. "[J]udicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion." x x x In the case at bar, the Court rules that no grave abuse of discretion attended the DOJ Panel's Resolution finding probable cause to indict respondent for reckless imprudence.

4. ID.; ID.; ID.; ID.; PROBABLE CAUSE, DEFINED AND EXPLAINED.— Probable cause refers to the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It does not mean "actual and positive cause" nor does it require absolute certainty. A finding of probable cause is merely based on opinion and reasonable belief that the act or omission complained of constitutes the offense charged. A finding of probable cause merely binds over the suspect to stand trial for the reception of prosecution evidence in support of the charge. It is not a pronouncement of guilt.

5. ID.; ID.; ID.; ID.; THE COURT CONCLUDES THAT THE DOJ PANEL'S RESOLUTION CLEARLY SUPPORTS A *PRIMA FACIE* FINDING THAT RECKLESS IMPRUDENCE HAS BEEN COMMITTED; THIS RULING OF THE COURT IS NOT EQUIVALENT TO A DETERMINATION OF RESPONDENT'S GUILT IN THE CRIMINAL CASE FOR RECKLESS IMPRUDENCE.— The Court, thus, concludes that the DOJ Panel's Resolution clearly supports a *prima facie* finding that reckless imprudence under Article 365 of the RPC has been committed. The DOJ Panel, in arriving at such conclusion, did not just rely on the affidavits of the complainants and the respondents as well as their respective witnesses. It also conducted clarificatory hearings on March 13 and 20, 2009[.] x x x The DOJ Panel merely acted on the belief that respondent's acts or omissions constitute the offense of reckless imprudence. Further, it is worthy to note that when a party files a special civil action for *certiorari*, he or she must allege the acts constituting grave abuse of discretion. However, respondent's petition or *certiorari* before the CA merely identified the alleged errors of fact and law in the DOJ Panel's Resolution. It must be emphasized that in this case, the Court is merely charged with determining whether the DOJ Panel acted with grave abuse of discretion in filing an Information for reckless imprudence against respondent. The Court does not concern itself yet with the evidence presented by the petitioners and respondent in support of their respective arguments. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. Hence, to be clear, the present ruling of the Court is not equivalent to a

determination of respondent's guilt in the criminal case for reckless imprudence.

6. **CRIMINAL LAW; REVISED PENAL CODE; RECKLESS IMPRUDENCE; CRIMINAL LIABILITY OF THOSE WHO MAY BE FOUND NEGLIGENT IS SEPARATE AND DISTINCT FROM THE SHIPOWNER'S LIABILITY BASED ON THE CONTRACT OF CARRIAGE; THE CIVIL ACTION AGAINST A SHIPOWNER FOR BREACH OF CONTRACT DOES NOT PRECLUDE CRIMINAL PROSECUTION AGAINST ITS EMPLOYEES WHOSE NEGLIGENCE RESULTED IN THE DEATH OF OR INJURIES TO PASSENGERS.—** Under Article 1755 of the Civil Code, a common carrier is bound to carry the passengers safely as far as human care and foresight can provide using the utmost diligence of very cautious persons with due regard for all the circumstances. Moreover, under Article 1756 of the Civil Code, in case of death or injuries to passengers, a common carrier is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence. In addition, pursuant to Article 1759 of the same Code, it is liable for the death of, or injuries to passengers through the negligence or willful acts of the former's employees. These provisions evidently refer to a civil action based not on the act or omission charged as a felony in a criminal case, but to one based on an obligation arising from other sources, such as law or contract. Thus, the obligation of the common carrier to indemnify its passenger or his heirs for injury or death arises from the contract of carriage entered into by the common carrier and the passenger. On the other hand, "the essence of the *quasi* offense of criminal negligence under [A]rticle 365 of the RPC lies in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes, thus, the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty; it does not qualify the substance of the offense." Consequently, in criminal cases for reckless imprudence, the negligence or fault should be established beyond reasonable doubt because it is the basis of the action, whereas in breach of contract, the action can be prosecuted merely by proving the existence of the contract and the fact that the common carrier failed to transport his passenger safely to his destination. The first punishes the negligent act, with civil liability being

a mere consequence of a finding of guilt, whereas the second seeks indemnification for damages. Moreover, the first is governed by the provisions of the RPC, and not by those of the Civil Code. Thus, it is beyond dispute that a civil action based on the contractual liability of a common carrier is distinct from an action based on criminal negligence. In this case, the criminal action instituted against respondent involved exclusively the criminal and civil liability of the latter arising from his criminal negligence as responsible officer of SLI. It must be emphasized that there is a separate civil action instituted against SLI based on *culpa contractual* incurred by it due to its failure to carry safely the passengers of Stars to their place of destination. The civil action against a shipowner for breach of contract of carriage does not preclude criminal prosecution against its employees whose negligence resulted in the death of or injuries to passengers.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner Republic in G.R. No. 210816.

Public Attorney's Office for petitioners in G.R. No. 210854.

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D E C I S I O N

REYES, J. JR., *J.*:

Assailed in these consolidated petitions for review on *certiorari* filed under Rule 45 of the Rules of Court are the March 22, 2013 Decision[1] and the January 8, 2014 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP. No. 115165 which dismissed the charge for reckless imprudence against respondent Edgar S. Go (respondent).

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[1] Penned by Associate Justice Melchor Q.C. Sadang, with Associate Justices Celia C. Librea-Leagogo and Franchito N. Diamante, concurring; *rollo* (G.R. No. 210816), Vol. I, pp. 77-109.

[2] *Id*. at 110-112.

The Facts

On June 20, 2008, M/V Princess of the Stars (Stars), a passenger cargo owned and operated by Sulpicio Lines, Inc. (SLI), was expected to depart at 8:00 p.m. from the Port of Manila for Cebu City. At 11:00 a.m. of June 20, 2008, the Philippine Atmospheric, Geophysical and Astronomical Services Administration (PAGASA) issued Severe Weather Bulletin (SWB) No. 7, raising Storm Warning Signal (SWS) No. 1 over Romblon, Marinduque, Southern Quezon, Cebu, Bohol, Panay Island, and Surigao del Norte. SWB No. 7 stated that the eye of Typhoon Frank was located 60 kilometers northeast of Guiuan, Eastern Samar, and forecasted to move west northwest at 19 kilometers per hour.[3]

At 3:00 p.m., Captain Benjamin Eugenio (Captain Eugenio), SLI Manila Port Captain, met with Captain Florencio Marimon (Captain Marimon), Master of the vessel,at SLI's Engineering Office for a pre-departure conference to discuss SWB No. 7. At said conference, Captain Eugenio and Captain Marimon decided to await the next PAGASA typhoon forecast, which was expected at around 5:00 p.m., considering that based on SWB No. 7, Stars' regular route would not be affected by Typhoon Frank.[4]

At 4:45 p.m., PAGASA issued SWB No. 8, hoisting SWS No. 3 over Camarines Norte, Camarines Sur, Burias Islands, Sorsogon, Catanduanes, Masbate, and the Samar provinces; SWS No. 2 over Quezon, Marinduque, Romblon, Northern Cebu, and Southern Leyte; and SWS No. 1 over Aurora, Rizal, Laguna, Batangas, Cavite, Mindoro provinces, Metro Manila, Panay Island, Guimaras, Cebu, Bohol, Siquijor, Negros provinces, Dinagat and Siargao Island. SWB No. 8 indicated that Typhoon Frank, then located in the vicinity of Western Samar, had intensified and was forecasted to move west northwest and cross

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[3] *Id*. at 80.

[4] *Id*. at 80-81.

Samar within the day and Camarines Sur in the afternoon of the following day, June 21, 2008.[5]

Prior to Stars' departure, Philippine Coast Guard (PCG) Boarding Officer PO1 Felix Sardan (PO1 Sardan) boarded the vessel to inspect its documents and conduct verification, specifically the correctness of the entries in the Master's Oath of Safe Departure,and the soundness and sufficiency of the cargo hold, the life saving devices, and all the navigational lights. Finding the vessel's documents in order and noting no deficiency in its safety equipment, PO1 Sardan concluded his inspection and informed Captain Marimon that SWS No. 3 was hoisted over Masbate, which was along the vessel's regular route. In response, Captain Marimon showed PO1 Sardan a new voyage plan and explained that he would instead navigate the route west of Tablas below Panay Island which would not be affected by SWS No. 3. PO1 Sardan immediately relayed the alternate route *via* text message to PCG Station Commander Erwin Balagtas who approved the alternate plan with the order that should SWS No. 3 affect the alternate route, the vessel should either take shelter or return to the port of Manila for the safety of the passengers and the crew. SLI received SWB No. 8 a few minutes prior to 8:00 p.m.[6]

After obtaining a clearance from the PCG, Stars departed at 8:04 p.m. for its regular Friday voyage to Cebu under Voyage No. 392 along its regular route. On board the vessel were 709 passengers, 29 contractors and 111 crew members or a total of 849 persons, which number was in compliance with the Minimum Safe Manning Certificate and the PCG rules and regulations.[7]

At around 11:20 p.m., when Stars was in the vicinity of Cape Santiago, within its regular route, Manila radio operator Edgar Gorillo (Gorillo) received PAGASA's SWB No. 9 which forecasted that Typhoon Frank was moving northwest away

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[5] *Id*. at 81.

[6] *Id*.

[7] *Id*.

from the vessel's route. Gorillo relayed SWB No. 9 to Stars' radio operator Santiago Doroy (Doroy). From that time until 1:00 a.m. of June 21, 2008, Gorillo kept close contact with Stars and SLI's ship officers were confident that the vessel was in the safe zone in view of SWB No. 9.[8]

At 5:00 a.m. of June 21, 2008, Gorillo and Captain Eugenio received SWB No. 10 indicating that for the past six hours, Typhoon Frank had been moving westward away from its original northwest movement. At 5:30 a.m., respondent arrived at SLI's Manila Office and checked on the radio room. Gorillo informed respondent that Captain Marimon assessed the sea condition as "slight." At 6:20 a.m., Doroy relayed to Gorillo that the vessel was still navigating its regular route at 1.3 miles off Sibuyan Point of Romblon and approaching Apunan Point and that the sea was rough but manageable.[9]

At 7:05 a.m., Captain Marimon sent SLI Manila a telegram stating that he was steering Stars away from its regular course, moving towards the south of Tablas to take shelter and evade the center of Typhoon Frank. At 8:30 a.m., the vessel was within the vicinity of Aklan Point where it was caught in the center of Typhoon Frank. At 9:00 a.m., communications with the vessel were cut off. Then, at 11:30 a.m., Captain Nestor Ponteres (Captain Ponteres), Cebu port captain, received a text message from his nephew Jay Franco Labiada (Labiada), then second mate in Stars, informing him that the vessel was "listing to port 25-30 degrees." At that point, Stars was within the vicinity of Aklan and was retreating to San Fernando, Sibuyan. Captain Ponteres called Labiada and asked to talk to Captain Marimon. Captain Marimon informed Captain Ponteres that the vessel had listed and he could no longer steer it and would instead adapt to the wind to keep the vessel stable and upright. Captain Ponteres communicated with Captain Marimon thrice between 11:30 a.m. and past 12 noon, the last of which was Captain

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[8] *Id*. at 82.

[9] *Id*.

Marimon's declaration that he had given the order to abandon ship *via* the vessel's public announcement system. Continuously pounded by heavy waves and buffeted by strong winds, Stars eventually capsized and sank in the Sibuyan Sea at around 12:30 p.m. of June 21, 2008.[10]

Respondent called the PCG to dispatch a rescue team and ordered that SLI's cargo vessel Surcon 12 and its M/V Princess of Caribbean sail to the area to undertake rescue operations. Due to inclement weather, immediate rescue efforts had to be deferred and it was only at noon time of June 23, 2008 when the rescue arrived at the site. Of the 849 persons on board, only 32 survived, 227 died and 592 were reported missing.[11]

Board of Marine Inquiry Findings

In an Investigation Report[12] dated August 18, 2008, the Board of Marine Inquiry (BMI) stated that SLI and its senior officers failed to ensure the safety of Stars, its passengers and its cargo because it did not assess the potential danger of Typhoon Frank before the vessel departed on June 20, 2008 and while the vessel was in transit. It added that SLI failed to monitor the condition of the vessel during the critical moment from 7:00 a.m. to 9:00 a.m. of June 21, 2008, a period when the vessel was about 40 nautical miles from Typhoon Frank. The BMI also noted that SLI could have discouraged the Master from sailing in its intended voyage considering that SWS No. 3 was hoisted in the vessel's route. It further observed that SLI did not inform immediately the PCG when the vessel lost contact with the company at 9:00 a.m. of June 21, 2008.[13] The BMI concluded:

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

[11] *Id.* at 83.

[12] *Id.* at 217-278.

[13] *Id.* at 261-262.

B. Conclusion

1. Causes of the Incident

1.1 Immediate Cause

After a thorough deliberation, the Board concludes that the immediate cause of the capsizing of MV Princess of the Stars was the failure of the Master to exercise [extraordinary] diligence and good seamanship thereby committing an error of judgment that brought MV Princess of the Stars in harm's way into the eye of typhoon "Frank."

x x x x x x x x x

Another cause was the failure of the company to exercise [extraordinary] diligence in preventing or discouraging the Master from leaving port and sailing despite the very severe weather condition (PSWS [N]o. 3) in the vessel's route particularly in Masbate and Biliran Island. The company likewise failed to monitor closely and assess the movement of the vessel relative to [the] movement of the typhoon which could have prompted the Master to take effective typhoon evasion procedures.

1.2 Proximate Cause

The Board further concludes that the proximate cause of [the] capsizing of [the] MV Princess of the Stars was the failure of SLI management to effectively implement its Safety Quality Management Manual issued on 07 May 2002 in compliance with IMO's-ISM Code for the Safe Operation of Ships and Pollution Prevention including the requirements of Quality/Safety System ISO 9001:2000. It was indicative of a system failure in which the company was responsible.

1.3 Contributory Cause(s)

President – x x x

Chief Executive Officer/ Executive Vice-President – x x x

First Vice-President – He failed to exercise [extraordinary] diligence to apprise the Master of M/V Princess of the Stars of the potential danger of typhoon Frank and its failure to discourage the Master from sailing on its intended voyage inspite of the severe weather condition (PSWS [N]o. 3) in the vessel's route specifically in Masbate and Biliran Island. This incident resulted to the capsizing of MV Princess of the Stars and the death of 227 persons onboard, 592 missing

and only 32 persons survive and damage to cargo and marine environment. He also failed to implement effectively the QSMS of the company and ensure smooth coordination between the different department heads in the company and effective ship/shore communication and for lack of contingency response plan on this account the Board finds him negligent.[14]

On September 2, 2008, the Volunteers Against Crime and Corruption and petitioners in G.R. No. 210854, who are some of the heirs of the passengers of Stars, instituted in the Department of Justice (DOJ) a complaint for reckless imprudence resulting in multiple homicide, serious physical injuries, and damage to property under Article 365 of the Revised Penal Code (RPC) against SLI, its officers and Captain Marimon. They alleged that the rough seas encountered by Stars on June 21, 2008 was reasonably foreseeable by the owners and officers of SLI had they performed their bounden duty to keep track of the weather conditions. They averred that SLI's officers allowed Stars to sail and proceed on its usual sailing schedule despite the presence of the typhoon.

The DOJ Panel's Resolution

In a Resolution[15] dated June 22, 2009, the panel of four prosecutors (DOJ Panel) created by the DOJ to conduct a preliminary investigation found probable cause to indict Captain Marimon and respondent for reckless imprudence resulting in multiple homicide, physical injuries, and damage to property. It declared that the alleged alternate route for Stars was a mere afterthought, employed merely to secure departure clearance from the PCG, especially considering that subsequent events established by uncontroverted evidence in fact showed that Stars embarked on that particular voyage using its original or regular route to Cebu. As a consequence, it navigated towards the center of Typhoon Frank and eventually ran into the eye of the typhoon at the vicinity of Sibuyan Island in the province of Romblon.

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

[15] *Id*. at 138-185.

The DOJ Panel pronounced that the lack of an appropriate passage plan, be it alternate voyage plan or alternate route, on the part of SLI was a clear evidence of inexcusable negligence and lack of foresight, and that such recklessness was further demonstrated when the vessel was allowed to sail despite severe weather condition along its route. It added that Captain Marimon and SLI failed to comply with PCG Memorandum Circular 04-07 which requires the former to study carefully the typhoon movement to ensure that the vessel would not be within the areas directly affected by typhoon signals, and for the latter to discourage any vessel movement except for sheltering purposes especially when typhoon signals are hoisted or expected to be hoisted within the area of origin, the route and the destination.

As regards respondent, the DOJ Panel found that as First Vice-President for Administration and team leader of the Crisis Management Committee, respondent was involved in making decisions on whether a vessel should be allowed to sail such that he should have cancelled or discouraged the voyage considering the severe weather at that time. The DOJ Panel held that allowing Captain Eugenio and Captain Marimon to decide if the vessel should depart speaks of respondent's failure to exercise extraordinary care and precaution in light of the brewing storm along the vessel's route. It also found out that upon learning that the vessel was navigating its regular route when the eye of Typhoon Frank was already in the vicinity of Romblon, respondent admittedly did not give instruction to take shelter or drop anchor, thus:

> As for the persons criminally liable for the resulting deaths and injuries, as well as damage to properties, well-settled is the rule that a corporation, like SLI in the instant case, acts through its officers, therefore, criminal liability for an offense attaches to those officers who appear to be responsible for its commission. To be sure, criminal liability is personal and circumscribed to acts or omissions of the person of the offender, not of other persons, natural or juridical, whom he might represent in his capacity as officer of a corporation. Taken in this light *vis-à-vis* the evidence adduced by the parties, the Panel finds probable cause for reckless imprudence resulting in multiple homicide, physical injuries and damage to properties against respondent

Edgar S. Go. As 1st [V]ice [P]resident for Administration and team leader of Crisis Management Committee, both Capt. Benjamin Eugenio who is in charge of vessel operations in Manila and Engr. Ernelson Morales, SLI safety officer, report directly to him. Thus, he is unarguably involved in making decisions on whether a vessel would be allowed to sail out of the Port of Manila, in fact Capt. Eugenio reported to him on the pre-departure conference with respondent Marimon. Considering the severe weather condition prevailing at that time, prudence should have dictated him to cancel or discourage voyage no. 392 of "Stars" especially after SWB No. 8 was issued by PAGASA, pursuant to the guidelines provided under PCG MC 04-07 as explained elsewhere above. The fact that he admittedly allowed respondent Marimon, Capt. Eugenio, and Engr. Morales to decide among themselves whether "Stars" should depart likewise bespeak[s] of his failure to exercise extraordinary care and precaution considering the brewing storm along the vessel's route and in reckless disregard to the 849 persons on board the "Stars." Then, after learning that "Stars" was navigating along its regular route when the eye of Typhoon Frank was already at the vicinity of Romblon, he admittedly did not give any specific instruction to take shelter or drop anchor. The Panel cannot subscribe to his defense that he trusted the judgment of respondent Marimon, for, to begin with, the latter's judgment in navigating along the vessel's regular route, thus, taking "Stars" into the eye of Typhoon Frank, is far from being reliable and trustworthy.[16]

The other SLI officers were excluded from the charge. The DOJ Panel declared that their specific participation in Voyage No. 392 was not satisfactorily established and there was no proof of their complicity in the negligent acts complained of. Although probable cause was also found against Captain Eugenio and Captain Ponteres for their direct involvement in Voyage No. 392, they were excluded from the indictment, considering that they were not impleaded as respondents. Nevertheless, preliminary investigation was recommended against them.[17]

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[16] *Id*. at 181-182.

[17] *Id*. at 182-183.

On June 22, 2009, an Information[18] for reckless imprudence, docketed as Crim. Case No. 09-269169, was filed with the Regional Trial Court of Manila and raffled to Branch 5 thereof.

Aggrieved, respondent filed a petition for review with the DOJ Secretary.

During the pendency of respondent's petition for review with the DOJ Secretary, then Department of Transportation and Communications Secretary Leandro Mendoza issued a Resolution[19] on August 28, 2009, exculpating SLI from any negligence and holding Captain Marimon solely responsible for the sinking of Stars, *viz.*:

x x x x x x x x x

1. That from all the evidence on hand as evaluated, assessed and considered[;] it can be stated that the capsizing and demise of the M/V "Princess of the Stars" was not entirely and completely attributable to a fortuitous event (Typhoon Frank) and that the determining element established herein is that the STARS' navigation and operation was dependent on the skill, discretion and authority of her Master, Captain Florencio M. Marimon, Sr. It can be deduced from the records and the evidence gathered during the investigation that the proximate cause of the tragedy was the fact that Captain Marimon made a calculated option and decision of maintaining his regular passage *via* East Tablas, despite the said area and its vicinity being earlier on tracked and identified to be affected by Typhoon Frank, and his not considering the West Tablas route earlier during the voyage. x x x. The proximate cause of the tragic encounter with Typhoon Frank and the eventual capsizing of the M/V "Princess of the Stars" is mainly attributable to HUMAN ERROR on the part of its Master, Captain Florencio Marimon, Sr. who with erroneous [judgment] and lack of sufficient foresight took a calculated option of maintaining his regular course while the vessel

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[18] *Id*. at 298-306.

[19] *Id*. at 337-370.

was already underway and solely under his authority and command.[20]

The DOJ Secretary's Resolution

On March 22, 2010, then DOJ Secretary Alberto Agra denied respondent's petition for review.[21] The DOJ Secretary ruled that there was sufficient evidence to warrant respondent's indictment and that the issue on whether or not respondent was responsible in the movement of Stars on June 20, 2008 was a matter that could be better appreciated by the trial court. He declared that when the DOJ Panel recommended the filing of information against respondent for reckless imprudence, it merely found probable cause that a crime had been committed and that respondent was probably guilty thereof, which finding was not tantamount to a declaration of guilt.[22]

Respondent filed a motion for reconsideration, but it was denied by the DOJ Secretary in a Resolution[23]dated June 8, 2010.

The CA Ruling

In a Decision dated March 22, 2013, the CA held that the rule on non-interference in the conduct of preliminary investigations is not absolute such that where the prosecutor's findings are tainted with grave abuse of discretion or manifest error, or when, for various reasons, there was a misapprehension of facts, judicial interference is warranted, for then it becomes the duty of the courts to temper the exclusive and unilateral authority of the prosecuting authorities lest they be used for persecution. It ruled that respondent's act of allowing the officers of the vessel to decide whether to set sail or not did not make him criminally liable as such decision was within the authority

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[20] *Id*. at 367-368.

[21] *Id*. at 114-136.

[22] *Id*. at 133.

[23] *Id*. at 137-137-A.

of the captain of the vessel, in coordination with the PCG, in view of the weather bulletin. The appellate court also found erroneous the finding of the DOJ Panel that respondent was criminally liable for not instructing the vessel to seek shelter or drop anchor in the face of the storm because there was not a shred of evidence from which such power to decide matters pertaining to the vessel's navigation could be inferred. It observed that the DOJ Panel did not cite any law or regulation that grants an administrative officer of a company operating a vessel the power to direct the vessel at sea and requires him to so act in times of emergency. Thus, the CA concluded that the charge for reckless imprudence against respondent in Criminal Case No. 09-269169 must be dismissed as the latter's constitutional right to due process and the higher interest of substantial justice must prevail over adherence to the policy of non-interference on the executive prerogatives of the DOJ.

The petitioners in G.R. No. 210854 moved for reconsideration, but the same was denied by the CA in a Resolution dated January 8, 2014. Hence, these consolidated petitions for review which were initially denied by the Court in a Resolution[24] dated July 2, 2014. However, in a subsequent Resolution[25] dated August 18, 2014, the Court granted the petitioners' motion for reconsideration and reinstated the consolidated petitions for review.

Issues

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN TAKING COGNIZANCE OF THE SUBJECT PETITION FOR *CERTIORARI* AND GRANTING THE SAME, DESPITE THE FAILURE TO IMPLEAD THE *PEOPLE OF THE PHILIPPINES* AS AN INDISPENSABLE PARTY IN THE PROCEEDINGS BELOW[;and]

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[24] *Id*. at 508-510.

[25] *Rollo* (G.R. No. 210816), Vol. II, pp. 600-601.

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II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN RULING THAT THERE IS NO PROBABLE CAUSE TO INDICT RESPONDENT EDGAR S. GO [THE PETITIONER BELOW], AND CONSEQUENTLY IN DISMISSING CRIMINAL CASE NO. 09-269169 AS AGAINST RESPONDENT EDGAR S. GO.[26]

x x x x x x x x x

The People argue that the CA erred in exercising jurisdiction and taking cognizance of the petition for *certiorari* and, thereafter, in granting the same because respondent failed to implead the People of the Philippines which is an indispensable party in criminal prosecutions; that the determination of the existence of probable cause for indictment is left to the sound discretion of the prosecutor, and the same may not be interfered with by courts, absent a showing of any grave abuse of discretion on the part of the prosecutor; that the CA unmistakably substituted its own judgment for that of the prosecutor and the Secretary of Justice; that the CA gravely erred in ruling that the case falls under the exception to the non-interference by the courts in the determination of the existence of probable cause; that in recommending that respondent be indicted for reckless imprudence resulting in multiple homicide, physical injuries and damage to property, the DOJ Panel, in accordance with law, and without unnecessary haste, conducted the requisite preliminary investigation for the purpose of determining whether or not probable cause exists in order to hold respondent for trial; that the DOJ Panel conducted clarificatory hearings on March 13 and 20, 2009 for the purpose of eliciting important facts necessary in determining whether probable cause exists; that it must be emphasized that the issue at hand involves only the existence of probable cause to indict and hold respondent for trial, and not his conviction for the crime charged; that it was established that respondent was remiss in his responsibilities

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[26] *Rollo* (G.R. No. 210816),Vol. I, pp. 36-37.

as an officer of SLI; that respondent failed to exercise extraordinary care and precaution in securing the safety of the passengers, among others, when he admittedly allowed Captain Marimon, Captain Eugenio and Engineer Ernelson Morales to decide among themselves on whether to permit the vessel to depart or not, notwithstanding the severe weather condition at that time; that respondent did not even dictate upon Captain Marimon to cancel or discourage the voyage of the vessel or to take shelter or drop anchor in order not to come face to face with the eye of the typhoon; and that the determination and appreciation of respondent's culpability for the crime charged are better left to the trial court's assessment.[27]

For their part, petitioners in G.R. No. 210854 contend that respondent possesses the authority and duty to control and decide matters pertaining to the vessel's navigation at sea; that the Port Captains and Safety Officers of SLI directly report to him; that it is within the power of respondent to order the Master of the vessel to drop anchor or seek shelter in a safe location immediately upon learning that the vessel was already in the path of Typhoon Frank; that despite his knowledge that Stars was moving towards the area where SWS No. 3 was already hoisted, he did not instruct the Master to take shelter to the nearest port; that if it becomes apparent that the Master's course of action would be disastrous, then it becomes the bounden duty of the company to avert the impending disaster; that the liability of respondent is not premised on his ownership of SLI, but on his active management and control over SLI's vessels and employees; that the DOJ Panel did not commit grave abuse of discretion because it did not just rely on the affidavits of the complainants and their witnesses and the counter-affidavits of respondent and his witnesses, but also conducted clarificatory hearings; and that the defenses raised by respondent are better threshed out in a full-blown trial.[28]

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[27] *Id*. at 20-71.

[28] *Rollo* (G.R. No. 210854), Vol. I, pp. 11-66.

In his Consolidated Comment,[29] respondent counters that in a reckless imprudence case involving a common carrier, it is the captain who should be subjected to criminal culpability as he is in the best position to determine the best measures to be taken for the protection of the passengers, crew, vessel and its cargo, a land-based person far removed from the situation, is unaware of the circumstances confronting the voyage; that the liability of the common carrier or shipowner is merely civil in nature even if the accident results in the death or injury of passengers, and even when the negligence of the shipowner concurs with the negligence of the captain; that the ship captain is the one in control, being the one actually in the open sea with direct first-hand knowledge of the running condition of his vessel and the actual wind and sea conditions prevailing at any given time affecting the voyage; that the ship captain is the one actually manning the vessel, hence, he is the one responsible for its safe navigation to its intended destination; that the DOJ committed manifest injustice by ordering his prosecution because he is not an officer or crew member manning the vessel or a person responsible for the vessel's safe navigation; that respondent's duties as Vice- President for Administration for Land-Based Personnel of the Manila Branch Office and the Head of the Crisis Management Committee did not include the authority to control and supervise matters pertaining to vessel movement and navigation; that no liability for criminal negligence may be imputed against respondent because he was never on board the vessel when the tragic accident occurred; and that he did not order the Master of the vessel to find a safe place and drop anchor because he had no authority to do so, the decision on how to navigate the vessel clearly resting solely on the captain thereof.

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[29] *Rollo* (G.R. No. 210816), Vol. II, pp. 622-671.

The Court's Ruling

Failure to implead the People of the Philippines does not ipso facto deprive the CA of jurisdiction over the petition for certiorari.

Section 5, Rule 110 of the Revised Rules of Criminal Procedure provides that all criminal actions are prosecuted under the direction and control of the public prosecutor. Therefore, respondent's petition for *certiorari* before the CA which failed to implead the People of the Philippines as a party thereto was defective. It must be stressed that the true aggrieved party in a criminal prosecution is the People of the Philippines whose collective sense of morality, decency and justice has been outraged.[30]

The Court, however, has repeatedly declared that "the failure to implead an indispensable party is not a ground for the dismissal of an action. In such a case, the remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just. If the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner's/plaintiff's failure to comply."[31] The Court declared the rationale for this exception in *Commissioner Domingo v. Scheer*[32] in this wise:

> There is nothing sacred about processes or pleadings, their forms or contents. Their sole purpose is to facilitate the application of justice to the rival claims of contending parties. They were created, not to hinder and delay, but to facilitate and promote, the administration

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[30] *People v. Dela Cerna*, 439 Phil. 394, 408 (2002).

[31] *Cuenca Vda. de Manguerra v. Risos,* 585 Phil. 490, 497 (2008).

[32] 466 Phil. 235, 266-267 (2004).

of justice. They do not constitute the thing itself, which courts are always striving to secure to litigants. They are designed as the means best adapted to obtain that thing. In other words, they are a means to an end. When they lose the character of the one and become the other, the administration of justice is at fault and courts are correspondingly remiss in the performance of their obvious duty.

In this case, the CA, in a Resolution[33] dated September 24, 2010,required then DOJ Secretary Leila De Lima, public respondent in the petition for *certiorari*, to comment on the said petition. However, in its Manifestation and Motion[34] dated October 5, 2010, the Office of the Solicitor General (OSG) declared that "being the real party interested in upholding public respondent's questioned rulings, private respondents therefore have the duty to appear and defend in their behalf and in behalf of public respondent."[35] It further stated, "being merely a nominal party, public respondent thus should not appear against petitioner, or any party for that matter, who seeks the reversal of her rulings that are unfavorable to the latter."[36] Thus, the People, through the OSG, was given the opportunity to refute respondent's arguments, but it refused in the belief that it was merely a nominal party with little interest in upholding respondent's indictment for reckless imprudence. Accordingly, it would be the height of injustice to sustain the People's claim of denial of due process and to dismiss the petition for *certiorari* for a procedural defect.

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[33] *Rollo* (G.R. No. 210816), Vol. I, p. 412.

[34] *Id*. at 413-416.

[35] *Id*. at 414.

[36] *Id*.

Courts will not interfere with the executive determination of probable cause for the purpose of filing an information in the absence of grave abuse of discretion.

In *First Women's Credit Corporation v. Hon. Perez,*[37] the Court declared that the policy of non-interference in the conduct of preliminary investigations was meant to leave to the investigating prosecutor "ample latitude of discretion in the determination of what constitutes sufficient evidence as will establish probable cause for the filing of an information against a supposed offender."[38]

The rationale for this policy was enunciated in *PCGG Chairman Elma v. Jacobi*,[39] *viz.*:

> The necessary component of the Executive's power to faithfully execute the laws of the land is the State's self-preserving power to prosecute violators of its penal laws. This responsibility is primarily lodged with the DOJ, as the principal law agency of the government. The prosecutor has the discretionary authority to determine whether facts and circumstances exist meriting reasonable belief that a person has committed a crime. The question of whether or not to dismiss a criminal complaint is necessarily dependent on the sound discretion of the investigating prosecutor and, ultimately, of the Secretary (or Undersecretary acting for the Secretary) of Justice. Who to charge with what crime or none at all is basically the prosecutor's call.
>
> Accordingly, the Court has consistently adopted the policy of non-interference in the conduct of preliminary investigations, and to leave the investigating prosecutor sufficient latitude of discretion in the determination of what constitutes sufficient evidence to establish probable cause. Courts cannot order the prosecution of one against whom the prosecutor has not found a *prima facie* case; as a rule,

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[37] 524 Phil. 305 (2006).

[38] *Id*. at 309.

[39] 689 Phil. 307, 340-341 (2012).

courts, too, cannot substitute their own judgment for that of the Executive. (Citations omitted)

In accordance with the policy of non-interference, courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause except in clear cases of grave abuse of discretion.[40] "[J]udicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation. Courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion."[41] Instructive is the Court's pronouncement in *Jacobi,* thus:

> In fact, the prosecutor may err or may even abuse the discretion lodged in him by law. This error or abuse alone, however, does not render his act amenable to correction and annulment by the extraordinary remedy of *certiorari*. To justify judicial intrusion into what is fundamentally the domain of the Executive, the petitioner must clearly show that the prosecutor gravely abused his discretion amounting to lack or excess of jurisdiction in making his determination and in arriving at the conclusion he reached. **This requires the petitioner to establish that the prosecutor exercised his power in an arbitrary and despotic manner by reason of passion or personal hostility; and it must be so patent and gross as to amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law, before judicial relief from a discretionary prosecutorial action may be obtained**.[42] (Emphasis supplied; citations omitted)

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[40] *United Coconut Planters Bank v. Looyuko,* 560 Phil. 581, 591 (2007).

[41] *Id*.

[42] *Elma v. Jacobi, supra* note 39, at 341-342.

In the case at bar, the Court rules that no grave abuse of discretion attended the DOJ Panel's Resolution finding probable cause to indict respondent for reckless imprudence.

Probable cause refers to the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted.[43] It does not mean "actual and positive cause" nor does it require absolute certainty.[44]A finding of probable cause is merely based on opinion and reasonable belief that the act or omission complained of constitutes the offense charged.[45] A finding of probable cause merely binds over the suspect to stand trial for the reception of prosecution evidence in support of the charge. It is not a pronouncement of guilt.[46]

"The elements of reckless imprudence are: (1) that the offender does or fails to do an act; (2) that the doing or the failure to do that act is voluntary; (3) that it be without malice; (4) that material damage results from the reckless imprudence; and (5) that there is inexcusable lack of precaution on the part of the offender, taking into consideration his employment or occupation, degree of intelligence, physical condition, and other circumstances regarding persons, time, and place."[47]

In this case, the DOJ Panel, in charging respondent with reckless imprudence, reasoned "As [First Vice-President] for Administration and team leader of Crisis Management Committee, both Capt. Benjamin Eugenio[,] who is in charge of vessel operations in Manila, and Engr. Ernelson Morales, SLI safety officer, report directly to him. Thus, he is unarguably

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[43] *R.R. Paredes v. Calilung*, 546 Phil. 198, 223 (2007).

[44] *Id*.

[45] *Id*.

[46] *Webb v. Hon. De Leon,* 317 Phil. 758, 789 (1995).

[47] *Senit v. People,* 776 Phil. 372, 385 (2016).

involved in making decisions on whether a vessel would be allowed to sail out of the Port of Manila, in fact[,] Capt. Eugenio reported to him on the pre-departure conference with respondent Marimon. Considering the severe weather condition prevailing at that time, prudence should have dictated him to cancel or discourage [V]oyage [N]o. 392 of [']Stars['] especially after SWB No. 8 was issued by PAGASA, pursuant to the guidelines provided under PCG MC 04-07 as explained elsewhere above. The fact that he admittedly allowed respondent Marimon, Capt. Eugenio, and Engr. Morales to decide among themselves whether [']Stars[']should depart likewise bespeak[s] of his failure to exercise extraordinary care and precaution considering the brewing storm along the vessel's route and in reckless disregard to the 849 persons on board the [']Stars.['] Then, after learning that [']Stars['] was navigating along its regular route when the eye of Typhoon Frank was already at the vicinity of Romblon, he admittedly did not give any specific instruction to take shelter or drop anchor."[48]

First, the DOJ Panel explicitly identified the decisions which respondent could have taken to prevent Stars from sailing and, consequently, to avert the accident. Among others, he failed to closely monitor and assess the movement of the vessel as against the movement of Typhoon Frank such that he did not instruct Captain Marimon to take shelter in the vicinity of Batangas despite information from PAGASA that the vessel would come face to face with the eye of Typhoon Frank if it continued along its regular route. *Second*, the DOJ Panel also made it clear that respondent's acts, though not malicious, were indeed voluntary. *Third*, it is undisputed that as a result of the sinking of Stars, only 32 persons survived out of the 849 on board the vessel. *Finally*, there was an explicit and reasonable conclusion drawn by the DOJ Panel that respondent's act of allowing the vessel to sail despite the severe weather condition at that time demonstrated inexcusable lack of precaution on the latter's part.

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[48] *Rollo* (G.R. No. 210816), Vol. I, pp. 181-182.

The Court, thus, concludes that the DOJ Panel's Resolution clearly supports a *prima facie* finding that reckless imprudence under Article 365 of the RPC has been committed. The DOJ Panel, in arriving at such conclusion, did not just rely on the affidavits of the complainants and the respondents as well as their respective witnesses. It also conducted clarificatory hearings on March 13 and 20, 2009 wherein respondent, Captain Eugenio (SLI Manila Port Captain), Captain Ponteres (SLI Cebu Port Captain), Engineer Morales (SLI Manila Safety Officer), Juanito Cabangonay and Gorillo (SLI Manila Radio Operators), and Noelito Alpas (SLI Cebu Radio Operator) appeared and testified.[49] The DOJ Panel merely acted on the belief that respondent's acts or omissions constitute the offense of reckless imprudence. Further, it is worthy to note that when a party files a special civil action for *certiorari*, he or she must allege the acts constituting grave abuse of discretion.[50] However, respondent's petition for *certiorari* before the CA merely identified the alleged errors of fact and law in the DOJ Panel's Resolution.

It must be emphasized that in this case, the Court is merely charged with determining whether the DOJ Panel acted with grave abuse of discretion in filing an Information for reckless imprudence against respondent. The Court does not concern itself yet with the evidence presented by the petitioners and respondent in support of their respective arguments. The presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits.[51] Hence, to be clear, the present ruling of the Court is not equivalent to a determination of respondent's guilt in the criminal case for reckless imprudence.

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[49] *Id*. at 153.

[50] *G.V. Florida Transport, Inc. v. Tiara Commercial Corporation*, G.R. No. 201378, October 18, 2017, 842 SCRA 576, 590.

[51] *Clay & Feather International, Inc. v. Lichaytoo,* 664 Phil. 764, 773 (2011).

Shipowner's liability based on the contract of carriage is separate and distinct from the criminal liability of those who may be found negligent.

Under Article 1755 of the Civil Code, a common carrier is bound to carry the passengers safely as far as human care and foresight can provide using the utmost diligence of very cautious persons with due regard for all the circumstances. Moreover, under Article 1756 of the Civil Code, in case of death or injuries to passengers, a common carrier is presumed to have been at fault or to have acted negligently, unless it proves that it observed extraordinary diligence. In addition, pursuant to Article 1759 of the same Code, it is liable for the death of, or injuries to passengers through the negligence or willful acts of the former's employees. These provisions evidently refer to a civil action based not on the act or omission charged as a felony in a criminal case, but to one based on an obligation arising from other sources, such as law or contract. Thus, the obligation of the common carrier to indemnify its passenger or his heirs for injury or death arises from the contract of carriage entered into by the common carrier and the passenger.[52]

On the other hand, "the essence of the *quasi* offense of criminal negligence under [A]rticle 365 of the RPC lies in the execution of an imprudent or negligent act that, if intentionally done, would be punishable as a felony. The law penalizes, thus, the negligent or careless act, not the result thereof. The gravity of the consequence is only taken into account to determine the penalty; it does not qualify the substance of the offense."[53]

Consequently, in criminal cases for reckless imprudence, the negligence or fault should be established beyond reasonable doubt because it is the basis of the action, whereas in breach

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[52] *Candano Shipping Lines, Inc. v. Sugata-on,* 547 Phil. 131, 143 (2007).

[53] *People v. Buan,* 131 Phil. 498, 500 (1968).

of contract, the action can be prosecuted merely by proving the existence of the contract and the fact that the common carrier failed to transport his passenger safely to his destination.[54] The first punishes the negligent act, with civil liability being a mere consequence of a finding of guilt, whereas the second seeks indemnification for damages. Moreover, the first is governed by the provisions of the RPC, and not by those of the Civil Code. Thus, it is beyond dispute that a civil action based on the contractual liability of a common carrier is distinct from an action based on criminal negligence.

In this case, the criminal action instituted against respondent involved exclusively the criminal and civil liability of the latter arising from his criminal negligence as responsible officer of SLI. It must be emphasized that there is a separate civil action instituted against SLI based on *culpa contractual* incurred by it due to its failure to carry safely the passengers of Stars to their place of destination. The civil action against a shipowner for breach of contract of carriage does not preclude criminal prosecution against its employees whose negligence resulted in the death of or injuries to passengers.

WHEREFORE, the consolidated petitions for review are **GRANTED**. The March 22, 2013 Decision and the January 8, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 115165 are **REVERSED** and **SET ASIDE**. The Regional Trial Court of Manila, Branch 5 is **ORDERED** to forthwith **REINSTATE** Criminal Case No. 09-269169 as against respondent **EDGAR S. GO**.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Gesmundo,* and *Hernando, JJ.,* concur.

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[54] *Air France v. Gillego,* 653 Phil. 138, 149 (2010).

THIRD DIVISION

[G.R. No. 210920. December 10, 2018]

MARTINIANO "Martin" B. SALDUA *a.k.a.* MARLON SALDUA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— For the charge of murder to prosper, the prosecution must prove that (1) a person is killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing is not parricide or infanticide.

2. ID.; ID.; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; REQUISITES.— To prove evident premeditation, three requisites are needed to be proven: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender had clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.

3. ID.; ID.; ID.; ID.; THE PREMEDITATION TO KILL MUST BE PLAIN AND NOTORIOUS, IT MUST BE SUFFICIENTLY PROVEN BY EVIDENCE OF OUTWARD ACTS SHOWING THE INTENT TO KILL; NOT ESTABLISHED IN CASE AT BAR.— Premeditation presupposes a deliberate planning of the crime before executing it. The execution of the criminal act, in other words, must be preceded by cool thought and reflection. As here, there must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to execute the crime. The record is bereft of any evidence to show when Vertudez reflected on his decision to kill the victim. There was no direct evidence whatsoever of any plan or preparations to kill the victim nor of the time when the plot to kill was conceived. Settled is the rule that when it is not shown how and when the plan to kill was hatched or what time had elapsed

before it was carried out, evident premeditation cannot be considered. Then again, the premeditation to kill must be plain and notorious; it must be sufficiently proven by evidence of outward acts showing the intent to kill. x x x In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient. It bears reiterating that a qualifying circumstance such as evident premeditation must be proven as clearly as the crime itself. Corollarily, every element thereof must be shown to exist beyond reasonable doubt and cannot be the mere product of speculation.

4. **ID.; ID.; PERSONS CRIMINALLY LIABLE FOR FELONIES; ACCOMPLICES; REQUISITES; ESTABLISHED IN CASE AT BAR.—** In order that a person may be considered an accomplice, the following requisites must concur: (1) that there be community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way; and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice. At the time the crime of homicide was committed, it was established that petitioner Saldua, who was armed, was present, as he was behind Vertudez when the latter fired his gun. However, mere presence does not make one a co-conspirator in the crime. The rule is that the existence of conspiracy cannot be presumed. Just like the crime itself, the elements of conspiracy must be proven beyond reasonable doubt. Because witnesses are rarely present when several accused come to an agreement to commit a crime, such agreement is usually inferred from their "concerted actions" while committing it. Indeed, the line that separates a conspirator by concerted action from an accomplice by previous or simultaneous acts is slight. Accomplices do not decide whether the crime should be committed; but they assent to the plan and cooperate in its accomplishment. Other than being present, it was not established what petitioner's purpose was when he stood behind Vertudez bearing a firearm. By merely standing behind Vertudez, it cannot be ascertained whether petitioner had prior knowledge of the criminal design of the principal perpetrator or that he was there

to give moral support. What was clear is that he was armed and he did not stop Vertudez from shooting the victim. The mere fact that a person is present when a crime is committed, when such presence does not have the purpose of encouraging the criminal and when there is no previous agreement between them as to the commission of the crime, will make the former responsible only as accomplice in the crime committed. This conclusion is in keeping with the principle that when there is doubt, such doubt should be resolved in favor of the accused. x x x Hence, in this case, lacking sufficient evidence of conspiracy, and there being doubt as to whether petitioner acted as principal or just a mere accomplice, the doubt should be resolved in his favor and, thus, he should be held liable only as an accomplice.

5. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENT; VARIANCE BETWEEN THE OFFENSE CHARGED IN THE INFORMATION AND THAT PROVED OR ESTABLISHED BY THE EVIDENCE; THE ACCUSED SHALL BE CONVICTED OF THE OFFENSE PROVED INCLUDED IN THAT WHICH IS CHARGED AND IT WILL NOT VIOLATE HIS RIGHT TO BE INFORMED OF THE CHARGES AGAINST HIM BECAUSE WHEN THE ACCUSED WAS CHARGED WITH A SPECIFIC CRIME, HE IS DULY INFORMED NOT ONLY OF SUCH SPECIFIC CRIME BUT ALSO OF LESSER CRIMES OR OFFENSES INCLUDED THEREIN.—** Under Sections 4 and 5, Rule 120 of the 1997 Rules of Court, when there is variance between the offense charged in the Information and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged. Here, accused was charged as principal to murder because of the qualifying circumstance of evident premeditation. Since the prosecution was not able to prove the said qualifying circumstance, it is correct that the accused should only be sentenced to the lesser crime of homicide which is necessarily included in murder. At any rate, this variance between the offense alleged and the offense proven did not violate petitioner's substantial rights. Petitioner's right to be informed of the charges against him has not been violated because where an accused is charged with a specific crime, he is duly informed not only of

such specific crime but also of lesser crimes or offenses included therein. The variance in the participation or complicity of the petitioner is likewise not sufficient to exonerate him. While the petitioner was being held responsible as a principal in the information, the evidence adduced, however, showed that his participation is merely that of an accomplice. Jurisprudence has taught that an accused can be validly convicted as an accomplice or accessory under an information charging him as a principal. The greater responsibility necessarily includes the lesser.

6. **CRIMINAL LAW; CIVIL LIABILITY; THE PENALTY AND LIABILITY IMPOSED UPON AN ACCUSED MUST BE COMMENSURATE WITH THE DEGREE OF PARTICIPATION IN THE COMMISSION OF THE CRIME; CASE AT BAR.—** As to petitioner's civil liability, the ruling in the case of *People v. Tampus* is instructive. In the said case, the Court ruled that the penalty and liability, including civil liability, imposed upon an accused must be commensurate with the degree of his participation in the commission of the crime. Thus, the Court held that the principal must be adjudged liable to pay two-thirds of the civil indemnity and moral damages, while the accomplice should pay one-third portion thereof. In *People v. Jugueta*, the amount of damages to be paid by the principal for consummated homicide are as follows: (1) ₱50,000.00, as civil indemnity; (2) ₱50,000.00, as moral damages without exemplary damages being awarded; and (3) ₱50,000.00 as temperate damages when no documentary evidence of burial or funeral expenses is presented in court. Pursuant to the ruling in the above-mentioned case of *People v. Tampus*, in relation to *People v. Jugueta*, petitioner, as accomplice in the crime of homicide is liable to pay ₱16,667.67 as civil indemnity, ₱16,667.67 as moral damages and ₱16,667.67 as temperate damages. The Court also clarified that the accomplice would not be subsidiarily liable for the amount allotted to the principal if the latter dies before the finality of the Decision. The reason for this is that there would be nothing that could be passed to the accomplice as the principal's criminal liability, including the civil liability arising thereon, had been extinguished by his death.

APPEARANCES OF COUNSEL

Torregosa Galeon Gravador Law Offices for petitioner.
Saleto B. Erames for private complainants.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

The Case

This resolves the Petition for Review on *Certiorari*[1] questioning the Decision[2] dated April 30, 2013 and the Resolution[3] dated December 10, 2013 of the Court of Appeals (CA)–Cebu City, in CA-G.R. CEB-C.R. No. 01675 which affirmed with modification the Decision dated December 17, 2010 of the Regional Trial Court (RTC) of Dumaguete City in Criminal Case No. 2006-17956 finding Martiniano "Martin" B. Saldua a.k.a. Marlon Saldua (petitioner), guilty as an accomplice for the crime of murder.

The Facts

Petitioner and Gerry Lalamunan (Lalamunan) were charged with murder in an Information, which reads:

That on or about 7:30 o'clock in the evening of November 12, 2005, at Barangay Poblacion, Municipality of Zamboanguita, Province of Negros Oriental, Philippines and within the jurisdiction of this court, the above-named accused, conspiring and confederating with each other, with intent to kill, and with evident premeditation, did then and there willfully, unlawfully and feloniously, attack, assault and shoot Jill Abella with the use of a handgun which accused was

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[1] *Rollo*, pp. 15-43.

[2] Penned by then Court of Appeals Associate Justice Ramon Paul L. Hernando, with Associate Justices Gabriel T. Ingles and Ma. Luisa C. Quijano-Padilla, concurring; *id*. at 45-58.

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

then armed and provided thereby inflicting upon said victim the following injuries:

1. Gunshot wound, point of entry (R) arm penetrating (R) chest and (L) chest;
2. R/I Injury major vessels of the heart; and
3. Hypovolemic shock secondary to massive blood loss

that caused his death, to the damage and prejudice of the heirs of said victim.

Contrary to Article 248 of the Revised Penal Code.[4]

Lalamunan fled and remained at-large up to present. Petitioner surrendered and faced his accusers. He was arraigned on February 29, 2008 and pleaded not guilty.

Evidence for the prosecution

From the combined testimonies of its witnesses, the prosecution tends to establish that on November 11, 2005, at 10:00 a.m., Lalamunan, Wilson Vertudez (Vertudez) and petitioner Saldua arrived at the kiosk owned by Victor Palalon (Palalon) on board a red XRM Honda motorcycle. Palalon's son-in-law witness Demetrio Flores (Flores), was also at the kiosk. Lalamunan introduced himself to Palalon and Flores as a nephew of Palalon. He also introduced Vertudez and petitioner Saldua to them. Petitioner Saldua was in *maong* pants, while Lalamunan was wearing a black long-sleeved shirt and camouflage shorts. At around noontime, they left the kiosk on board the same motorcycle.

On the following day of November 12, 2005 at 10:00 a.m., Vertudez and petitioner Saldua returned to the kiosk wearing the same clothes. At 6:30 p.m., Lalamunan arrived and the three of them left on foot towards the national highway. Lalamunan walked ahead to where the motorcycle was parked at a banana grove beside Magallanes Street, while petitioner Saldua and Vertudez went to the house of the victim, Jill Abella (Abella). Vertudez was next seen to be firing at the garage of

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[4] *Rollo*, pp. 46-47.

the house of Abella, with an armed Saldua behind him. Abella was able to shoot back and hit Vertudez. Saldua and Vertudez left the area on foot towards where the motorcycle was parked. Vertudez collapsed due to his gunshot wound. Meanwhile, Saldua and Lalamunan left the area on board the motorcycle, leaving Vertudez behind. Abella was found dead that day from gunshot wounds. Vertudez was also found dead the next day at the banana grove from gunshot wound.

Evidence for the defense

Only petitioner Saldua was apprehended. The other accused, Lalamunan, remains at-large, while Vertudez died as a result of gunshot wound that he sustained.

Saldua denied killing Abella. He insisted that he was in another place on November 12, 2005. He narrated that he was with his family in their home in Barangay San Jose, Sta. Catalina, Negros Oriental from November 10 to 15, 2005. He accounted for his whereabouts on the entire day of November 12, 2005 as follows: At 6:00 a.m., he went to his farm to weed out his peanut shrubs. At 10:00 a.m., he went home to eat lunch. At 2:00 p.m., he went back to his farm. And at 7:00 p.m., he tried to buy medicine for his ailing 5-year-old daughter by borrowing the XRM Honda motorcycle of Rommel Awing, but the river was flooded making him unable to cross it, hence, he went back home. In the afternoon of November 15, 2005, he left for Bacolod City to render duty in time for the South East Asian Games.

Ruling of the RTC

On December 17, 2010, the RTC rendered a Decision convicting petitioner as an accomplice to the crime of murder. The RTC ruled that the prosecution was able to establish by circumstantial evidence that Vertudez killed the victim while Saldua was proven to be armed and behind Vertudez. The RTC also considered the qualifying circumstance of evident premeditation as the attack appeared to be planned. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises considered, accused Martiniano "Martin" B. Saldua is GUILTY beyond reasonable doubt as an accomplice of the crime of Murder. There being neither mitigating or aggravating circumstances and applying the indeterminate sentence law, Martiniano Saldua is sentenced to serve the penalty of eight (8) years and one (1) day, as minimum, to fourteen (14) years, four (4) months and one (1) day of *reclusion temporal,* as maximum.

The accused is ordered to indemnify the heirs of Jill Abella in the amount of Fifty Thousand (₱50,000.00) pesos.

SO ORDERED.[5]

Dissatisfied, petitioner Saldua appealed before the CA.

Ruling of the CA

In its assailed Decision, the CA affirmed the RTC Decision, with modifications.

The CA gave weight to the testimony of the prosecution's witnesses. It was established that it was Vertudez who shot Abella, while petitioner Saldua, who was armed, was behind Vertudez during the incident. The CA, likewise, sustained the RTC as to the existence of evident premeditation to qualify the killing of the victim to murder. The CA, however, reduced the civil liability of petitioner and apportioned the same pursuant to the rule that a principal should have greater accountability than an accomplice, citing the case of *People v. Tampus*.[6] The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, this appeal is DENIED. The Decision dated December 17, 2010 rendered by the Regional Trial Court (RTC), Branch 41, Dumaguete City in Criminal Case No. 2006-17956 finding appellant Martiniano "Martin" Saldua a.k.a. Marlon Saldua guilty as an accomplice for the crime of Murder is AFFIRMED with the MODIFICATION that he is ordered to pay to [sic] the heirs of the victim the amount of Php25,000.00 as civil indemnity and Php16,667.00 as moral damages. Costs against accused-appellant.[7]

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[5] *Rollo*, p. 19.

[6] 607 Phil. 296, 330 (2009).

[7] *Rollo,* pp. 57-58.

Petitioner Saldua filed a Motion for Reconsideration. The CA issued a Resolution dated December 10, 2013 denying the said motion. Aggrieved, petitioner filed the instant petition.

The Issues

The issues which petitioner interposed before this Court may be summarized as follows:

1) Whether or not the CA is correct in convicting petitioner as an accomplice to the crime of murder.

2) Whether or not the CA is correct in affirming the RTC when it disregarded petitioner's defense of alibi.

Findings of the RTC on the credibility of the witnesses are binding on this Court.

In his appeal, petitioner Saldua questions the credibility of the witnesses by whose testimonies were relied upon by the trial court for his conviction. Credibility of witnesses is essentially a question of fact and is a matter peculiarly within the province of the trial judge. As such, the findings of the RTC that was affirmed by the CA in this case, that the witnesses of the prosecution were credible, is binding on this Court[8] given the clear advantage of a trial judge over an appellate magistrate in the appreciation of testimonial evidence. Absent any showing that the trial court's calibration of the credibility was flawed, we are bound by its assessment.[9] Thus:

It is a fundamental legal aphorism that the conclusions of the trial judge on the credibility of witnesses command great respect and consideration especially when the conclusions are supported by the evidence on record, and will not ordinarily be disturbed or interfered with. The only exception to the rule is when the trial court plainly overlooked certain facts and circumstances of weight and influence

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[8] *Lara v. People*, G.R. No. 235929 (Notice), March 14, 2018; *People v. Piosang*, 710 Phil. 519, 526 (2013).

[9] *Id*.

which, if considered, will materially alter the result. Such exception does not exist in the case at bench.[10]

No cogent reason exists which would justify the reversal of the RTC's assessment on the credibility of the witnesses. It bears to stress that the conviction of petitioner Saldua does not rest solely upon the uncorroborated testimony of witness Lemecito Pecore (Pecore) who testified that he saw Vertudez shooting into the garage of Abella, hitting the latter[11] with the armed petitioner Saldua behind him.[12] Pecore, however, did not see petitioner Saldua fire into the garage.[13] He also narrated how he had taken a closer look at their faces, when after the shooting incident, Vertudez and petitioner Saldua fled towards his direction.[14] This testimony was further bolstered by witnesses Flores and Palalon who recounted that at the date of the incident, the three accused were within the vicinity of the incident. All in all, the prosecution's witnesses positively identified petitioner Saldua, together with Vertudez and Lalamunan, to be present at the crime scene.

Prosecution's positive identification prevails over petitioner's defense of alibi.

Petitioner maintained that he was at their house in Barangay San Jose, Sta. Catalina, Negros Oriental from November 10-15 and he left on November 16, 2005 to Bacolod City. While the defense presented a certification mentioning persons who could attest that petitioner was at his house, not one of them was presented in court. As correctly ruled by the CA, said certification cannot be given probative value. Neither could we rely on the affidavits executed by a certain Rommel Awing

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[10] *People v. Padao*, 334 Phil.726, 740 (1997).

[11] *Rollo,* pp. 49-50.

[12] *Id*. at 51-52.

[13] *Id*. at 50.

[14] *Id*. at 30.

and Henry Lalamunan which purportedly corroborate petitioner's defense. Apart from the fact that they did not appear before the court to be cross-examined, affidavits are usually not a complete reproduction of what the declarant had in mind.[15] Often times, affidavits are prepared by the administering officer and cast in the latter's language or according to the latter's understanding of what the affiant has said, while the affiant would simply sign the affidavit after it has been read to him.[16] Being *ex parte,* they are almost always incomplete and often inaccurate and as such, affidavits are generally considered to be inferior to a testimony given in court although these factors do not denigrate the credibility of witnesses.[17] As in this case, the said affidavits executed by the defense's witnesses cannot prevail over the positive testimonies given in open court by the prosecution's witnesses.[18]

As the identity of petitioner is now a settled issue, we now proceed to determine his criminal liability for the crime charged.

Evident premeditation was not proven, hence, the crime committed was only Homicide.

For the charge of murder to prosper, the prosecution must prove that (1) a person is killed; (2) the accused killed him; (3) the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code (RPC); and (4) the killing is not parricide or infanticide.[19]

In this case, the fact of death of Abella is undisputed and the killing was not parricide or infanticide. It was, likewise, established that Vertudez killed the victim. In qualifying the

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[15] *People v. Avergonzado*, 445 Phil. 311, 320 (2003).

[16] *Id*.

[17] *People v. Mores*, 370 Phil. 368, 376 (1999).

[18] *People v. Corpuz*, G.R. No. 215320, February 28, 2018.

[19] *People v. Cosgafa*, G.R. No. 218250, July 10, 2017.

crime to murder, the RTC, as sustained by the CA, appreciated the qualifying circumstance of evident premeditation. To prove evident premeditation, three requisites are needed to be proven: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender had clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act.[20]

Premeditation presupposes a deliberate planning of the crime before executing it.[21] The execution of the criminal act, in other words, must be preceded by cool thought and reflection.[22] As here, there must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to execute the crime.[23] The record is bereft of any evidence to show when Vertudez reflected on his decision to kill the victim. There was no direct evidence whatsoever of any plan or preparations to kill the victim nor of the time when the plot to kill was conceived. Settled is the rule that when it is not shown how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered.[24] Then again, the premeditation to kill must be plain and notorious; it must be sufficiently proven by evidence of outward acts showing the intent to kill.[25]

What was clearly shown was the presence of the three accused at the kiosk the day before and the very day of the fatal incident. The CA held that their presence at the kiosk was to study the neighborhood and the surroundings and make the kiosk a staging area for their plan to kill the victim. However, these were all inferences devoid of any basis. No clear and convincing evidence

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[20] *People v. Illescas*, 396 Phil. 200, 209 (2000).

[21] *People v. Sanchez*, 636 Phil. 560, 582 (2010).

[22] *Id*.

[23] *Id*.

[24] *People v. Dadivo,* 434 Phil. 684, 689 (2002).

[25] *Id*. at 688-689.

was adduced to establish that these were the purpose why the accused were at the kiosk before and on the day of the incident. As a matter of fact, the prosecution even narrated that one of the accused, Lalamunan, even introduced himself as nephew of Palalon, and also introduced Vertudez and petitioner Saldua. On that day, the three accused stayed at the kiosk from 10:00 a.m. to 12:00 noon then came back again at 2:00 p.m. They went back the day after. Verily, it leaves us in doubt why the accused would volunteer their true identity and flaunt their faces in the neighborhood if they were indeed hatching a plan to kill someone in the vicinity. In the absence of clear and positive evidence, mere presumptions and inferences of evident premeditation, no matter how logical and probable, are insufficient.[26]

It bears reiterating that a qualifying circumstance such as evident premeditation must be proven as clearly as the crime itself.[27] Corollarily, every element thereof must be shown to exist beyond reasonable doubt and cannot be the mere product of speculation.[28] Based on the foregoing disquisition, it is clear that the court below erred in concluding that the crime of murder was committed. Absent the qualifying circumstances of evident premeditation, an accused could only be held liable for homicide.

Petitioner was guilty as an accomplice to homicide.

In order that a person may be considered an accomplice, the following requisites must concur: (1) that there be community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose; (2) that he cooperates in the execution by previous or simultaneous act, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way;

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[26] *Id*. at 689.

[27] *Id*.

[28] *Id*.

and (3) that there be a relation between the acts done by the principal and those attributed to the person charged as accomplice.[29]

At the time the crime of homicide was committed, it was established that petitioner Saldua, who was armed, was present, as he was behind Vertudez when the latter fired his gun. However, mere presence does not make one a co-conspirator in the crime. The rule is that the existence of conspiracy cannot be presumed.[30] Just like the crime itself, the elements of conspiracy must be proven beyond reasonable doubt.[31] Because witnesses are rarely present when several accused come to an agreement to commit a crime, such agreement is usually inferred from their "concerted actions" while committing it.[32] Indeed, the line that separates a conspirator by concerted action from an accomplice by previous or simultaneous acts is slight.[33] Accomplices do not decide whether the crime should be committed; but they assent to the plan and cooperate in its accomplishment.[34]

Other than being present, it was not established what petitioner's purpose was when he stood behind Vertudez bearing a firearm. By merely standing behind Vertudez, it cannot be ascertained whether petitioner had prior knowledge of the criminal design of the principal perpetrator or that he was there to give moral support. What was clear is that he was armed and he did not stop Vertudez from shooting the victim. The mere fact that a person is present when a crime is committed, when such presence does not have the purpose of encouraging the criminal and when there is no previous agreement between

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[29] *Napone, Jr. v. People*, G.R. No. 193085, November 29, 2017.

[30] *Garcia, Jr. v. Court of Appeals*, 394 Phil. 890, 905 (2000).

[31] *Id*.

[32] *People v. PO1 Eusebio*, 704 Phil. 569, 575-576 (2013).

[33] *Id*. at 576.

[34] *Id*.

them as to the commission of the crime, will make the former responsible only as accomplice in the crime committed.[35] This conclusion is in keeping with the principle that when there is doubt, such doubt should be resolved in favor of the accused. Thus:

> It was held that when there is doubt as to whether a guilty participant in a homicide performed the role of principal or accomplice, the Court should favor the "*milder form of responsibility*." He should be given the benefit of the doubt and can be regarded only as an accomplice. x x x Hence, in the case at bar, the accused x x x should be granted the benefit of doubt and should be considered merely as accomplices and should be meted a penalty one degree lower than that to be imposed on accused x x x who is unequivocally the principal.[36]

Hence, in this case, lacking sufficient evidence of conspiracy, and there being doubt as to whether petitioner acted as principal or just a mere accomplice, the doubt should be resolved in his favor and, thus, he should be held liable only as an accomplice.

Variance in the participation in the offense between what was alleged in the Information and what was proven is not a ground for acquittal.

The defense insists that there was variance between the allegations of the Amended Information and the proof adduced by the prosecution during trial which is prejudicial to petitioner and fatal to his conviction. The defense explains that the allegation in the Amended Information states that petitioner shot and killed Abella with a handgun and he is charged with

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[35] *People v. Manuel,* 304 Phil. 698, 710 (1994), citing the case of *People v. Ubina*, 97 Phil. 515, 534 (1955).

[36] *People v. Eusebio*, *supra* note 32, at 576, citing the case of *People v. Tamayo*, 44 Phil. 38 (1922); *People v. Bantangan*, 54 Phil. 834, 840 (1930); *People v. Lansang*, 82 Phil. 662, 667 (1949); *People v. Ubina*, 97 Phil. 515 (1955); *People v. Raganit*, 88 Phil. 467 (1951); *People v. Pastores*, 148-B Phil. 436 (1971); *People v. Tolentino*, 148-B Phil. 430 (1971).

murder. The same is substantially at variance with the proof adduced which was that petitioner never fired a shot but was merely behind the perpetrator.

Under Sections 4[37] and 5,[38] Rule 120 of the 1997 Rules of Court, when there is variance between the offense charged in the Information and that proved or established by the evidence, and the offense as charged necessarily includes the offense proved, the accused shall be convicted of the offense proved included in that which is charged.[39] Here, accused was charged as principal to murder because of the qualifying circumstance of evident premeditation. Since the prosecution was not able to prove the said qualifying circumstance, it is correct that the accused should only be sentenced to the lesser crime of homicide which is necessarily included in murder.[40] At any rate, this variance between the offense alleged and the offense proven did not violate petitioner's substantial rights. Petitioner's right to be informed of the charges against him has not been violated because where an accused is charged with a specific crime, he is duly informed not only of such specific crime but also of lesser crimes or offenses included therein.[41]

The variance in the participation or complicity of the petitioner is likewise not sufficient to exonerate him. While the petitioner

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[37] SECTION 4. *Judgment in case of variance between allegation and proof.* — When there is variance between the offense charged in the complaint or information and that proved, and the offense as charged is included in or necessarily includes the offense proved, the accused shall be convicted of the offense proved which is included in the offense charged, or of the offense charged which is included in the offense proved.

[38] SECTION 5. *When an offense includes or is included in another*. — An offense charged necessarily includes the offense proved when some of the essential elements or ingredients of the former, as alleged in the complaint or information, constitute the latter. And an offense charged is necessarily included in the offense proved, when the essential ingredients of the former constitute or form part of those constituting the latter.

[39] *People v. Cortez*, 401 Phil. 886, 901 (2000).

[40] *Id*.

[41] *People v. Noque*, 624 Phil. 187, 198 (2010).

was being held responsible as a principal in the information, the evidence adduced, however, showed that his participation is merely that of an accomplice. Jurisprudence has taught that an accused can be validly convicted as an accomplice or accessory under an information charging him as a principal.[42] The greater responsibility necessarily includes the lesser.[43]

Proper Penalty

Under Article 249 of the Revised Penal Code, the penalty for homicide is *reclusion temporal*. Since petitioner is only an accomplice, the imposable penalty is one degree lower than that imposable for the principal, *i.e., prision mayor*. There being neither aggravating nor mitigating circumstances, the said penalty shall be imposed in its medium period. Applying the Indeterminate Sentence Law, petitioner Saldua is, accordingly, sentenced to suffer the prison term of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.[44]

As to petitioner's civil liability, the ruling in the case of *People v. Tampus*[45] is instructive. In the said case, the Court ruled that the penalty and liability, including civil liability, imposed upon an accused must be commensurate with the degree of his participation in the commission of the crime. Thus, the Court held that the principal must be adjudged liable to pay two-thirds of the civil indemnity and moral damages, while the accomplice should pay one-third portion thereof.[46]

In *People v. Jugueta,*[47] the amount of damages to be paid by the principal for consummated homicide are as follows:

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[42] *Vino v. People*, 258-A Phil. 404, 410 (1989).

[43] *Id*. at 411.

[44] *People v. Illescas, supra* note 20, at 212.

[45] 607 Phil. 296, 330-331 (2009).

[46] *Napone, Jr. v. People*, *supra* note 29.

[47] 783 Phil. 806, 846 (2016).

(1) ₱50,000.00, as civil indemnity; (2) ₱50,000.00, as moral damages without exemplary damages being awarded; and (3) ₱50,000.00 as temperate damages when no documentary evidence of burial or funeral expenses is presented in court.

Pursuant to the ruling in the above-mentioned case of *People v. Tampus,* in relation to *People v. Jugueta,* petitioner, as accomplice in the crime of homicide is liable to pay ₱16,667.67 as civil indemnity, ₱16,667.67 as moral damages and ₱16,667.67 as temperate damages. The Court also clarified that the accomplice would not be subsidiarily liable for the amount allotted to the principal if the latter dies before the finality of the Decision. The reason for this is that there would be nothing that could be passed to the accomplice as the principal's criminal liability, including the civil liability arising thereon, had been extinguished by his death.[48]

WHEREFORE, in view of the foregoing, the Decision dated April 30, 2013 and the Resolution dated December 10, 2013 of the Court of Appeals–Cebu City are **AFFIRMED** with **MODIFICATION** such that petitioner Martiniano "Martin" B. Saldua, a.k.a. Marlon Saldua is held guilty as accomplice to homicide and is accordingly sentenced to a prison term of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, and to indemnify the heirs of Jill Abella the amount of ₱16,667.67 as civil liability, ₱16,667.67 as moral damages and ₱16,667.67 as temperate damages.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Reyes, A. Jr.,*[*] and *Gesmundo, JJ.,* concur.

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[48] *Napone, Jr. v. People, supra* note 29.

[*] Designated as additional member for Raffle held in the morning of December 11, 2018, in lieu of then Court of Appeals Associate Justice Ramon Paul L. Hernando (now Member of the Court), who penned the Decision.

THIRD DIVISION

[G.R. No. 211204. December 10, 2018]

GOLDSTAR RIVERMOUNT, INC., *petitioner, vs.* **ADVENT CAPITAL AND FINANCE CORP., (formerly ALL ASIA CAPITAL AND TRUST CORP.),**[*] *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; RULE 45 PETITION; ISSUES NOT RAISED IN THE COMMENT CONSIDERED AS WAIVED OR ABANDONED.—** The Court specifically stated in its Notice, dated November 10, 2014, that "*[n]o new issues may be raised by a party in his/its memorandum and the issues raised in his/its pleadings but not included in the memorandum shall be deemed waived or abandoned.*" Advent's failure to abide with the Court's notice violates the principles of due process and fair play. By not incorporating the two new issues in its Comment, Goldstar was not given the opportunity to submit its counter-arguments in its Reply. In *De los Santos v. Lucenio*, the Court held "*that x x x belated allegations x x x changed the theory of his case, which is not allowed under the Rules as it goes against the basic rules of fair play, justice, and due process.*" Thus, the Court resolves to disregard the new issues raised, and considers as waived or abandoned its original argument in the Comment.

2. **CIVIL LAW; CIVIL CODE; CONTRACTS; THE PROVISIONS OF THE SUBJECT DEED OF ASSIGNMENT ARE PROOF THAT RESPONDENT MAY VALIDLY ENTER IN A DATION IN PAYMENT WITH PETITIONER.—** The CA held that the transfer of rights or credits from Advent to DBP was conditioned on Advent's default in payment. The CA based its Decision on Sections 8 and 12 of the Deed of Assignment, which clearly indicate that Advent has the right to administer and enforce the loan, and unless it is in default in its payment to DBP, only then can DBP substitute Advent as a creditor of Investment Enterprises. x x x The Court

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[*] Also referred to as "Asia Capital and Trust Corporation" in some parts of the *rollo*.

agrees with the CA's finding, and found more bases to support the CA's Decision. Section 9 of the Deed of Assignment is crystal clear that Advent shall deal with Investment Enterprises, unless declared in default. x x x The Court further observed that Section 10 of the Deed of Assignment authorizes Advent to act as DBP's attorney-in-fact and to enter into any contract with Goldstar pertaining to its loan. x x x Section 10 of the Deed of Assignment gives Advent the authority to act in behalf of DBP in case the Project Loans are declared due and demandable. Advent has the power to enter into a contract with Investment Enterprises, such as Goldstar, to secure payment of an outstanding obligation, and to do acts to protect not just its interest as creditor, but also of DBP as assignee. In sum, both Sections 9 and 10 of the Deed of Assignment are proof that Advent may validly enter in a Dation in Payment with Goldstar. Sections 9 and 10 validate the Dacion in Payment and the Memorandum signed by Goldstar and Advent, as they settle a due and demandable loan and, at the same time, secure Advent's loan to DBP.

3. ID.; ID.; ID.; PETITIONER CANNOT RELY ON A NON-EXISTING DOCUMENT TO NULLIFY A BINDING AGREEMENT; THE ORIGINAL TERMS OF THE DEED OF ASSIGNMENT PREVAIL.— Article 1315 of the New Civil Code provides that "*[c]ontracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.*" From the moment Goldstar and Advent executed the Dation in Payment, Goldstar agreed to transfer its rights and titles over the mortgaged properties as settlement of its loan obligation. Goldstar cannot resort to delaying tactics in fulfilling its part of the contract, by alleging amendments in the Deed of Assignment. To reiterate, the Dation in Payment was signed on May 26, 2000, while the Amendment and Addendum was executed two months later on July 27, 2000. Undoubtedly, the Amendment and Addendum was non-existent at the time Goldstar and Advent signed the Dation in Payment. Therefore, Goldstar cannot rely on a non-existing document to nullify a legally binding agreement. The original terms of the Deed of Assignment prevail; in which case, Advent is the creditor and has the right to collect and manage Goldstar's loan.

APPEARANCES OF COUNSEL

Dagohoy Law and Accounting Office for petitioner.
Nograles Cabebe & Co. for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

This case is about the validity of a dation in payment entered into between a debtor and a creditor.

The Facts

On December 9, 1998, petitioner Goldstar Rivermount, Inc. (Goldstar) borrowed ₱55,000,000 from respondent Advent Capital and Finance Corp. (Advent), formerly All Asia Capital and Trust Corp. The loan was payable in seven years, and it was secured by a real estate mortgage over Goldstar's property, covered by Transfer Certificate of Title No. T-278069, and a chattel mortgage over its equipment.[1]

Goldstar failed to pay its amortizations, which prompted it to offer its mortgaged properties as payment for the loan that had ballooned to ₱66,012,292.85. On May 26, 2000, Goldstar and Advent signed a Dation in Payment as settlement for the loan. They also executed a Memorandum of Agreement (Memorandum) on the same day, wherein Goldstar was given the right to redeem the properties within one year, and may continue to occupy and lease it for a monthly rental of ₱600,000.00.[2]

Later on, Goldstar learned that Advent had previously assigned its receivables from the loan to the Development Bank of the Philippines (DBP) on November 24, 1998. Goldstar alleged that Advent was no longer its creditor when they agreed to a

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[1] *Rollo*, p. 28.

[2] *Id*.

Dation in Payment on May 26, 2000, thus, making the contract void.[3] It is Goldstar's position that since Advent had assigned its rights to DBP prior to the Dation in Payment, their contract is a nullity.[4] Goldstar filed a complaint for declaration of nullity of the Dation in Payment in the Regional Trial Court (RTC) of Davao City, Branch 13, and was docketed as Civil Case No. 28,484-01.

For its part, Advent declared that on February 18, 1997, it borrowed money from DBP for relending to Investment Enterprises such as Goldstar. The loan was embodied in a Subsidiary Loan Agreement.[5]

Advent admitted that it executed a Deed of Assignment in favor of DBP on November 24, 1998, to secure its loan and to transfer its receivables from the loans granted to Investment Enterprises. The Deed of Assignment also provided that DBP may exercise its rights as assignee on the condition that Advent defaults in its payment.[6]

Advent disclosed that it lent ₱55,000,000 to Goldstar on December 9, 1998, and when Goldstar failed to pay its amortizations, they agreed to settle the loan through a Dation in Payment and a Memorandum on May 26, 2000.[7]

On July 27, 2000, Advent and DBP signed an Amendment of, and Addendum to, the Deed of Assignment (Amendment and Addendum), wherein DBP has the right to manage Advent's loans to Investment Enterprises without the need of declaring Advent in default. Advent argued that since the Dation in Payment and the Memorandum were signed prior to the Amendment and Addendum, Advent remained in control of the loan and its

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[3] *Id*.

[4] *Id*. at 149.

[5] *Id*. at 28-29.

[6] *Id*. at 29.

[7] *Id*.

mortgages, and it was then required that Advent be in default before DBP may take over the management of the loan.[8]

The RTC Decision

On January 25, 2010, the RTC dismissed the complaint and rendered a Decision[9] in Advent's favor. The RTC observed that at the time Goldstar filed its complaint on March 23, 2001, it had barely two months before the expiration of its right of redemption over the properties subject of the Dation in Payment. The RTC determined that when Goldstar learned about the Deed of Assignment between Advent and DBP, Goldstar found an excuse to file an action to nullify the Dation in Payment.[10]

The RTC agreed with Advent's argument that the reason for the execution of the Deed of Assignment was to secure Advent's loan with DBP. Based on the wordings of the Deed of Assignment, Advent remains the creditor of Investment Enterprises until it defaults in its payment. Upon default, only then can DBP administer and enforce its rights on the loans of Investment Enterprises.[11]

Goldstar moved for reconsideration, which the RTC denied.[12] Undeterred, Goldstar appealed to the Court of Appeals-Cagayan de Oro City (CA).

The CA Decision

On May 30, 2013,[13] the CA affirmed the RTC, and sustained its finding that the Deed of Assignment between Advent and DBP was for the security of Advent's loan. The CA referred to

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

[9] Penned by Presiding Judge Isaac G. Robillo, Sr.; *id*. at 27.

[10] *Id*. at 30-31.

[11] *Id*. at 31.

[12] *Id*.

[13] Penned by Associate Justice Renato C. Francisco, with Associate Justices Romulo V. Borja and Oscar V. Badelles, concurring; *id*. at 27-37.

the terms of the Deed of Assignment, which disclosed that the transfer of rights and credits to DBP was conditioned on Advent's default in payment. In the absence of proof that Advent was in default at the time the Dation in Payment was signed, there is no transfer of rights and credits from Advent to DBP.[14]

The CA further discussed that it was only after the execution of the Amendment and Addendum that DBP was given the right to assume the management of Advent's loans to Investment Enterprises without the need of declaring it in default. Since the Dation in Payment and the Memorandum were signed prior to the Amendment and Addendum, the original terms of the Deed of Assignment apply. In which case, Advent has to be in default before DBP may assume the management of the loans.[15]

Lastly, the CA explained that DBP's Letter to Goldstar dated July 28, 2000, expressing its intention to exercise its rights under the Amendment and Addendum, did not affect the validity of the Dation in Payment because at the time of its execution, Advent is Goldstar's creditor who has a right to enter into a dation in payment contract.[16] Thus, the CA dismissed Goldstar's appeal.

Goldstar moved for reconsideration, which the CA denied in its January 13, 2014 Resolution.[17] Undaunted, Goldstar elevated the case before the Court through a petition for review on *certiorari*, under Rule 45 of the Rules of Court, as amended.

The Issues Presented

Goldstar raised two issues in its Memorandum:

1. WHETHER OR NOT THE COURT OF APPEALS ERRED IN RULING THAT THE DEED OF ASSIGNMENT IN QUESTION WAS MERELY FOR A SECURITY FOR THE

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[14] *Id*. at 33-35.

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

[16] *Id*. at 36.

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

LOAN OF THE RESPONDENT TO DBP AND THAT DBP COULD ONLY COME IN CASE THE FORMER DEFAULTED IN THE PAYMENT OF ITS OBLIGATION TO THE LATTER; [and]

2. WHETHER OR NOT THE COURT OF APPEALS ERRED IN DISREGARDING THE LETTER OF DBP DATED JULY 28, 2000 WHICH IN EFFECT [IS] A MANIFESTATION THAT RESPONDENT HAD INDEED DEFAULTED IN ITS OBLIGATION TO IT AND IT THEREFORE TOOK AWAY FROM THE RESPONDENT THE RIGHT TO COLLECT FROM THE PETITIONER, AS AN ASSIGNOR AND OR AS ATTORNEY-IN-FACT[.][18]

Likewise, Advent presented two issues in its Memorandum:

[1]. WHETHER OR NOT THE PETITIONER IS ESTOPPED FROM ASSAILING THE VALIDITY OF THE DACION IN PAYMENT; AND

[2]. WHETHER OR NOT THE PETITIONER IS GUILTY OF FORUM SHOPPING.[19]

In sum, the issue to be resolved is **whether or not the CA committed a reversible error in dismissing the appeal, and ruling that Advent may validly enter into a Dation in Payment with Goldstar.**

The Court's Ruling

The petition is denied.

Before proceeding to the substantive issue, the Court opts to first tackle a technical issue. The Court observed that the following two issues raised by Advent were not included in its Comment, and these were presented for the first time in its Memorandum:

[1] WHETHER OR NOT THE PETITIONER IS ESTOPPED FROM ASSAILING THE VALIDITY OF THE DACION IN PAYMENT; AND

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[18] *Id*. at 151.

[19] *Id*. at 131.

[2] WHETHER OR NOT THE PETITIONER IS GUILTY OF FORUM SHOPPING.[20]

Furthermore, Advent's Comment contained only one argument, that is, *"[w]e humbly submit that the issues/assignment of errors presented by the petitioner are not pure questions of law."*[21] Advent did not reiterate this argument in its Memorandum and instead focused its discussion on the two new issues.

The Court specifically stated in its Notice,[22] dated November 10, 2014, that "*[n]o new issues may be raised by a party in his/its memorandum and the issues raised in his/its pleadings but not included in the memorandum shall be deemed waived or abandoned.*"[23] Advent's failure to abide with the Court's notice violates the principles of due process and fair play. By not incorporating the two new issues in its Comment, Goldstar was not given the opportunity to submit its counter-arguments in its Reply. In *De los Santos v. Lucenio*,[24] the Court held "*that x x x belated allegations x x x changed the theory of his case, which is not allowed under the Rules as it goes against the basic rules of fair play, justice, and due process.*" Thus, the Court resolves to disregard the new issues raised, and considers as waived or abandoned its original argument in the Comment.

We now proceed to the substantive issue of whether or not the CA committed a reversible error in dismissing the appeal, and ruling that Advent may validly enter into a Dation in Payment with Goldstar.

The CA held that the transfer of rights or credits from Advent to DBP was conditioned on Advent's default in payment. The CA based its Decision on Sections 8 and 12 of the Deed of

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[20] *Id*.

[21] *Id*. at 98.

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

[23] *Id*. at 122.

[24] G.R. No. 215659, March 19, 2018.

Assignment, which clearly indicate that Advent has the right to administer and enforce the loan, and unless it is in default in its payment to DBP, only then can DBP substitute Advent as a creditor of Investment Enterprises.

8. **In accordance with the SLA, the administration and enforcement of the Project Loan/s**, including all matters provided for or contemplated by the Project Loan Agreement/s, the note/s, lien instruments, insurance policy/ies and other documents relating to the Project Loan/s, **shall be handled solely by the ASSIGNOR [Advent].** x x x

x x x x x x x x x

12. Any provision herein to the contrary notwithstanding, **should the ASSIGNOR be in default under the terms of the SLA, the ASSIGNEE may, at its option, enforce, sue on, collect, or take over the collection of payments** then or thereafter due on the note/s and notify the IE/s of the same to make payment to the ASSIGNEE or take such steps or remedies as it may deem proper or necessary to collect the proceeds of the note/s or to recover upon the liens, collaterals, insurance policies and other documents relating to the Project Loan/s for purposes of satisfying its claim on the Subsidiary Loan/s.[25] (Emphases supplied)

The Court agrees with the CA's finding, and found more bases to support the CA's Decision. Section 9 of the Deed of Assignment is crystal clear that Advent shall deal with Investment Enterprises, unless declared in default.

9. x x x. Accordingly, **the ASSIGNOR shall, unless an Event of Default** (as defined in the SLA) **is declared, continue to deal with the IE/s,** and payment of the obligations arising from the Project Loan/s, the note/s, lien instruments, insurance policy and other documents relating to the Project Loan/s when made to the ASSIGNOR shall effectively discharge such obligations of the IE/s.[26] (Emphasis supplied)

The Court further observed that Section 10 of the Deed of Assignment authorizes Advent to act as DBP's attorney-in-fact

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[25] *Rollo*, pp. 199-200.

[26] *Id*.

and to enter into any contract with Goldstar pertaining to its loan.

10. **Should the ASSIGNOR,** in the exercise of its power under the next preceding paragraph, **declare the entire outstanding balance of the Project Loan/s immediately due and payable, it is understood that the ASSIGNOR shall act**, as it is hereby constituted and appointed to act, **as the duly authorized attorney-in-fact of the ASSIGNEE, insofar as its rights, interest and participation then existing, in the notes, the Project Loan Agreement/s, lien instruments, insurance policy/ies and documents relating to the IE/s' loan are concerned, for purposes of such action, proceeding or remedy as the ASSIGNOR may deem necessary, convenient or expedient to recover any and all amounts due and owing from the IE/s. As such attorney-in-fact, the ASSIGNOR shall have** in addition to its power to prosecute any such action, proceedings or remedy, **the power to take or recover possession of, lease, collect rentals for, make repairs or improvements on, or execute any contract of sale, lease or other transaction concerning the properties or collaterals mortgaged as security for the payment of the note/s, and to exercise such powers, rights as may be necessary to protect the interest of the ASSIGNEE. x x x**[27] (Emphases supplied)

Section 10 of the Deed of Assignment gives Advent the authority to act in behalf of DBP in case the Project Loans are declared due and demandable. Advent has the power to enter into a contract with Investment Enterprises, such as Goldstar, to secure payment of an outstanding obligation, and to do acts to protect not just its interest as creditor, but also of DBP as assignee.

In sum, both Sections 9 and 10 of the Deed of Assignment are proof that Advent may validly enter in a Dation in Payment with Goldstar. Sections 9 and 10 validate the Dacion in Payment and the Memorandum signed by Goldstar and Advent, as they settle a due and demandable loan and, at the same time, secure Advent's loan to DBP.

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[27] *Id*. at 200.

Article 1159 of the New Civil Code states that "*[o]bligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.*" If the terms of a contract are clear and leave no doubt as to the intention of the contracting parties, the literal meaning of its stipulations shall control.[28] In its Decision, the CA simply enforced what was stated in the terms and conditions of the Deed of Assignment. Having established its basis in law and evidence on record, we see no error in the CA's Decision.

Goldstar's argument that Advent was no longer its creditor at the time the Dation in Payment and the Memorandum were signed is untenable, because the Deed of Assignment specifically provides a condition before DBP may exercise its rights as assignee. The deed clearly stated that Advent must be declared in default before DBP may take over as assignee of the Project Loans. The unanimous finding of the trial court and the appellate court that the condition was not met is persuasive and binding upon the Court in the absence of substantial evidence to the contrary.

Goldstar further avers that DBP's letter dated July 28, 2000, directing it to pay its loan to the latter, is an indication that Advent had defaulted in its payment and DBP is now its new creditor. The letter states that DBP was exercising its rights under the Deed of Assignment, as amended, and that it is now substituting Advent as the new creditor of Goldstar. The pertinent body of the letter declares:

> We refer to your subloan which was funded under the Wholesale Lending Program of the Development Bank of the Philippines (DBP) and assigned to DBP by All Asia Capital and Trust Corporation (AACTC) [now Advent] under its **Deed of Assignment dated November 24, 1998, as amended on July 27, 2000**.
>
> Under the terms and conditions of said Deed of Assignment of AACTC, **as amended,** the latter assigns, transfers and conveys in favor of DBP, its titles and interests in and to the credits specifically

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[28] *Hilltop Market Fish Vendors' Association, Inc. v. Hon. Yaranon*, G.R. No. 188057, July 12, 2017.

set forth in the subloan agreements executed between AACTC and its borrowers, including the mortgages, pledges, guarantees and other collaterals securing the subloans. By virtue of this provision, there is now a substitution of creditor and DBP is now effectively your creditor. Hence, the OECF obligation under your AACTC subloan is now transferred to DBP and becomes your direct obligation to DBP.

For this reason, we now request you to pay directly to DBP all amortizations falling due on your account until its maturity on December 24, 2005. We shall regularly send you the billing statements for amortizations falling due for your reference in making the remittances.[29] (Emphases supplied)

Goldstar's argument is unsustainable. First, whether or not Advent has defaulted in its payment since July 28, 2000 is a question of fact, which should be left for the trial court to decide. Second, the letter is immaterial and irrelevant in resolving whether or not Advent may validly enter into a Dation in Payment at the time of its execution on May 26, 2000. The basis of the letter is the Amendment and Addendum, which is inexistent at the time the Dation in Payment was signed. Further, the letter does not change the fact that, at the time of the execution of the Dation in Payment, Advent has the right to enter into any contract with Investment Enterprises, like Goldstar, under the original terms of the Deed of Assignment.

Article 1315 of the New Civil Code provides that "*[c]ontracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law.*"[30] From the moment Goldstar and Advent executed the Dation in Payment, Goldstar agreed to transfer its rights and titles over the mortgaged properties as settlement of its loan obligation. Goldstar cannot resort to delaying tactics in fulfilling

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[29] *Rollo*, p. 203.

[30] *Ka Kuen Chua, doing business under the name and style Ka Kuen Chua Architectural v. Colorite Marketing Corp.*, G.R. Nos. 193969-70 and 194027-28, July 5, 2017.

its part of the contract, by alleging amendments in the Deed of Assignment. To reiterate, the Dation in Payment was signed on May 26, 2000, while the Amendment and Addendum was executed two months later on July 27, 2000. Undoubtedly, the Amendment and Addendum was non-existent at the time Goldstar and Advent signed the Dation in Payment. Therefore, Goldstar cannot rely on a non-existing document to nullify a legally binding agreement. The original terms of the Deed of Assignment prevail; in which case, Advent is the creditor and has the right to collect and manage Goldstar's loan.

Section 1, Rule 45 of the Rules of Court states that only questions of law may be raised. While jurisprudence provided several exceptions to this rule, the petitioner must allege, substantiate, and prove the applicable exception/s so that the Court may review the facts of the case.[31] Otherwise, the factual findings of the trial court, when affirmed by the CA, are binding on the Court.

Here, Goldstar failed to demonstrate how the CA's factual findings presented an error of law. Goldstar's allegations on how the CA erred in ruling that DBP may take over only when Advent is in default and in disregarding DBP's letter rely on a re-evaluation of the evidence. Goldstar failed to prove that its petition falls under any of the exceptions to the general rule allowing only questions of law to be raised in a petition for review, so that this Court may review the evidence presented.

WHEREFORE, premises considered, the petition is **DENIED**. The Court of Appeals-Cagayan De Oro City Decision dated May 30, 2013 and its Resolution dated January 13, 2014 in CA-G.R. CV No. 02341-MIN are **AFFIRMED**.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Gesmundo,* and *Hernando, JJ.,* concur.

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[31] *Dee Hwa Liong Foundation Medical Center and Anthony Dee v. Asiamed Supplies and Equipment Corp.*, G.R. No. 205638, August 23, 2017.

THIRD DIVISION

[G.R. No. 211525. December 10, 2018]

JUDE DARRY A. DEL RIO, *petitioner, vs.* **DPO PHILIPPINES, INC., DANIEL PANS and GRACE LUCERO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; AN EMPLOYEE WHO VOLUNTARILY RESIGNS FROM EMPLOYMENT IS NOT ENTITLED TO SEPARATION PAY.—** There is no dispute that petitioner resigned from his employment. This fact is established by the letter of resignation dated September 7, 2009 sent by petitioner to respondents and was even admitted by the latter. Suffice it to say, an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or the CBA, or it is sanctioned by established employer practice or policy. The cited exceptions do not obtain in this case. As correctly found by the CA, there was no employment contract, much less a CBA, which contained the stipulation that would grant separation pay to resigning employees. Neither was there a company practice or policy that was proven to exist in the instant case.

2. **ID.; ID.; ID.; ID.; TO BE CONSIDERED A COMPANY PRACTICE, THE GIVING OF SEPARATION PAY TO RESIGNED EMPLOYEES MUST BE CONSISTENT AND DELIBERATE; AN EMPLOYEE MAY NOT DEMAND PAYMENT OF HIS SEPARATION PAY WHERE EMPLOYER DID NOT COMMIT THAT HE WOULD BE PAID AFTER HIS VOLUNTARY RESIGNATION.—** To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate. As records would show, the giving of the monetary benefit by respondents in favor of Legaspi and Martinez is merely an isolated instance. From the beginning of respondents' business and up until petitioner's resignation took effect on October 7, 2009, there

was no showing that payments of such benefit had been made by respondents to their employees who voluntarily resigned. The first and only instance when such a benefit was given to resigned employees was on or after November 15, 2009 — not because it was a company practice but only to pave the way for Legaspi and Martinez's graceful exit, so to speak. As explained by respondents, the said benefit was not intended as a separation pay but more of a promise or an assurance to Legaspi and Martinez that they would be paid a benefit if they tender their resignation. Given respondents' knowledge of Legaspi and Martinez's acts of disloyalty and betrayal of trust, respondents opted to give them an alternative way of exit, in lieu of termination. Respondents' decision to give Legaspi and Martinez a graceful exit is perfectly within their prerogative. It is settled that there is nothing reprehensible or illegal when the employer grants the employee a chance to resign and save face rather than smear the latter's employment record. x x x This was not the case for petitioner. There was no promise given to him. Rather, petitioner resigned on his own volition. Respondents did not make any commitment to petitioner that he would be paid after his voluntary resignation.

APPEARANCES OF COUNSEL

Echavez & Echavez Law Office for petitioner.
May Aguilar Law for respondents.

D E C I S I O N

REYES, J. JR., *J.*:

The Case

Assailed in this Petition for Review on *Certiorari*[1] are the Decision[2] dated November 6, 2013 and the

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[1] *Rollo*, pp. 8-23.

[2] Penned by then Court of Appeals Associate Justice Ramon Paul L. Hernando (now a member of the Court), with Associate Justices Carmelita Salandanan-Manahan and Ma. Luisa C. Quijano-Padilla, concurring; *id*. at 24-36.

Resolution[3] dated February 7, 2014 of the Court of Appeals-Cebu City (CA), in CA-G.R. CEB-SP No. 05921 which affirmed with modification the Decision dated January 26, 2011 and the Resolution dated March 31, 2011 of the National Labor Relations Commission (NLRC), in NLRC Case No. VAC-09-000523-2010, by deleting the award of separation pay to petitioner Jude Darry del Rio (Del Rio).

The Facts

Petitioner Del Rio is an employee of respondent DPO Philippines, Inc. (DPO) which is a Belgian multi-national food distribution company. He was tasked to set up the operations in Cebu to cover Visayas and Mindanao.[4] Respondent DPO succeeded with its business operations in Cebu and thereafter, petitioner was able to establish respondent's office in Davao.[5]

On September 7, 2009, petitioner submitted his notice of resignation[6] which would take effect on October 7, 2009. At the time of his resignation, he was holding the position of Assistant Country Manager.[7] In a letter[8] dated September 14, 2009, respondent DPO accepted petitioner's resignation. On October 11, 2009, respondent DPO published in a newspaper[9] that petitioner has resigned from DPO Philippines, Inc. effective October 7, 2009.

Petitioner realized that after October 7, 2009, he was not yet paid of his salary for the period of September 16, 2009 to October 7, 2009.[10] Petitioner sought from respondent DPO

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[3] *Id*. at 37-39.

[4] *Id*. at 25.

[5] *Id*.

[6] *Id*. at 40.

[7] *Id*. at 27.

[8] *Id*. at 40-A.

[9] *Id*. at 40-E.

[10] *Id*. at 12.

payments of his unpaid salaries, accrued leave credits and separation pay, but all of these were denied.[11]

Aggrieved, petitioner, on October 9, 2009, filed a complaint with the Regional Arbitration Branch of the NLRC in Cebu City for recovery of his monetary claims.

Respondents, for their part, averred that after petitioner resigned, they came to know that in the last part of his employment, he was engaged in activities in direct competition with the business of respondent DPO, which is a violation of the non-competition clause of his contract of employment. On or about August 28, 2009, which was 10 days prior to the date of his resignation letter, petitioner was able to secure from the Securities and Exchange Commission (SEC) the registration of a corporation named Judphilan Foods which has the same primary purpose as that of respondent DPO.

Respondent DPO was unhappy and disappointed with petitioner's act of disloyalty and betrayal but it still offered petitioner the amount of ₱110,692.75 inclusive of his salary from September 16-30, 2009 and October 1-6, 2009; 13th month pay; tax refund; and commissions for August and September 2009. Petitioner refused what was offered to him insisting that aside from what respondent DPO offered, he is also entitled to separation pay and cash conversion of his leave credits.

Respondent DPO asserted that petitioner is not entitled to conversion of unused leave credits from 2006 to 2008 because the same had been forfeited in accordance with the company policy. While his unused leave credits for 2009 was applied as terminal leave after he tendered his resignation. Respondent DPO also asserted that petitioner is not entitled to separation pay because he was the one who voluntarily resigned.

Ruling of the Labor Arbiter

In a Decision dated June 25, 2010, the Labor Arbiter ruled in favor of petitioner, thus:

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[11] *Id*. at 13.

WHEREFORE, premises considered, judgment is hereby rendered declaring that respondent DPO Philippines, Inc. should pay complainant Jude Darry Del Rio the following:

1.	Salary (Sept. 16-30, 2009) Salary (Oct. 1-6, 2009) 13th Month Pay Tax refund Commission- Aug. 2009 Commission- Sept. 2009	.....	₱110,692.75
2.	Separation Pay	.....	409,500.00
	Total	.....	**₱520,192.75**

SO ORDERED.[12]

Respondent DPO filed an appeal with the NLRC.

Ruling of the NLRC

In its January 26, 2011 Decision, the NLRC denied the appeal and affirmed *in toto* the Decision of the Labor Arbiter. Private respondent DPO moved for reconsideration of the NLRC Decision, but it was denied by the NLRC in its Resolution dated March 31, 2011.

Imputing grave abuse to the NLRC, respondent DPO filed a petition for *certiorari* with the CA questioning the award of separation pay despite the glaring fact that petitioner voluntarily resigned. Respondent DPO argued that there was no evidence of an established company practice or policy for the payment of separation pay to voluntarily resigning employees. The payment of separation pay to Michael Legaspi (Legaspi) and Felinio Martinez (Martinez) (resigned DPO employees) did not create company practice. But even if it created company practice, petitioner could not claim any right thereunder because at the time it was supposedly established, petitioner was no longer connected with respondent DPO.

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[12] *Id*. at 28.

Ruling of the CA

In the now assailed Decision dated November 6, 2013, the CA affirmed with modification the Decision of the NLRC by deleting the award of separation pay, ratiocinating that an employee who voluntarily resigns from his employment is not entitled to separation pay unless otherwise stipulated in the employment contract, or in the Collective Bargaining Agreement (CBA), or sanctioned by established employer practice or policy. The mentioned exceptions do not obtain in the instant case.

Petitioner filed a Motion for Reconsideration,[13] but the same was denied by the CA in another assailed Resolution dated February 7, 2014.

Hence, this petition.

Issue

The central issue in this case is whether or not the CA is correct in deleting the award of separation pay in favor of petitioner.

Petitioner faulted the CA for considering respondents' arguments which they raised for the first time on appeal, to wit:

a) That the giving of separation pay to resigned employees is not a company practice but merely a means by which to encourage them to resign considering that they connived with and helped petitioner with his objective of running down the business of respondent so that he may easily succeed with the operations of his competing business; and,

b) That the resignation of Legaspi and Martinez happened on October 15, 2009 after petitioner was already separated from employment on October 7, 2009.

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[13] *Id*. at 64-70.

Petitioner opined that the Labor Arbiter and the NLRC had already made factual findings relying mainly on the issues and evidence presented before it. Since their findings are entitled to respect and finality, it is error for the CA to disturb them on appeal by considering the issues introduced by respondents for the first time on appeal.

Ruling of this Court

Contrary to petitioner's assertion, the above-mentioned arguments were timely raised by respondents in their pleadings with the Labor Arbiter and with the NLRC, as follows:

1. Reply to Petitioner's Position Paper filed before the Labor Arbiter;[14]
2. Verified Memorandum of Appeal filed before the NLRC;[15] and
3. Motion for Reconsideration with the NLRC.[16]

In fact, the said arguments were repeatedly raised by respondents with the labor tribunals to counter petitioner's firm position that payment of separation pay to resigned employees is a company practice.

In their Reply to petitioner's Position Paper, respondents explained that the separation pay was given to Legaspi and Martinez in exchange for their resignation in order to spare the company of the pain of having to terminate them.[17] Respondent DPO explained that it knows of the disloyalty of Martinez and Legaspi and their connivance with petitioner, but rather than terminating them, respondent asked them to tender their resignation with a promise of a separation pay.

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[14] *Id*. at 102-105.

[15] *Id*. at 118-121.

[16] *Id*. at 129-132.

[17] *Id*. at 103-104.

In their Verified Memorandum of Appeal, respondents explained that the separation pay given to Legaspi and Martinez was not strictly separation pay, but in consideration of their resignation, more of a gift, an act of generosity because Legaspi and Martinez's resignation was more of a favor to the company as it was spared of going through litigation if it would terminate the employees.[18] In other words, Legaspi and Martinez were given the said pay because they were forced to resign.

In their Motion for Reconsideration, respondents maintained that the payments to Legaspi and Martinez were made after their resignations were tendered and accepted, or two months thereafter.[19] Hence, there can be no company policy or practice to speak of. In the said motion, respondents likewise averred that even assuming that by doing so, it became a company practice, it was created after the resignation of petitioner. Verily, petitioner cannot avail of it, because at the time it became a practice, he was already resigned.[20]

Even if these arguments were not considered by the NLRC and the Labor Arbiter in their Decisions, this does not preclude the CA from considering them, especially if they were raised and became part of the records.

It is a well-settled rule that the NLRC's factual findings, if supported by substantial evidence, are entitled to great respect and even finality, unless it was shown that it simply and arbitrarily disregarded evidence before it or had misapprehended evidence to such an extent as to compel a contrary conclusion if such evidence had been properly appreciated.[21] The CA, therefore, may review the factual findings of the NLRC and reverse its ruling if it finds that the NLRC disregarded and misappreciated the evidence extant on records.

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[18] *Id*. at 119.

[19] *Id*. at 129.

[20] *Id*. at 132.

[21] *Industrial Timber Corp. v. National Labor Relations Commission*, 323 Phil. 753, 759 (1996).

In the same manner, factual findings of the CA are generally not subject to this Court's review under Rule 45. However, the general rule on the conclusiveness of the factual findings of the CA is also subject to well-recognized exceptions such as, where the CA's findings of facts contradict those of the lower court, or the administrative bodies, as in this case.[22] Since their findings are at variance, we are compelled to review factual questions and make a further calibration of the evidence at hand.

There is no dispute that petitioner resigned from his employment. This fact is established by the letter of resignation[23] dated September 7, 2009 sent by petitioner to respondents and was even admitted by the latter.

Suffice it to say, an employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or the CBA, or it is sanctioned by established employer practice or policy.[24] The cited exceptions do not obtain in this case. As correctly found by the CA, there was no employment contract, much less a CBA, which contained the stipulation that would grant separation pay to resigning employees. Neither was there a company practice or policy that was proven to exist in the instant case.

In his attempt to prove that there was a company practice of giving separation pay to resigning employees, petitioner presented the payslips of Martinez and Legaspi showing that they received separation pay after they resigned. We are not convinced.

To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate.[25] As records would

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[22] *Vicente v. Court of Appeals*, 557 Phil. 777, 785 (2007).

[23] See: Letter of Resignation dated September 7, 2009, *supra* note 6.

[24] *"J" Marketing Corp. v. Taran*, 607 Phil. 414, 425 (2009).

[25] *Societe Internationale De Telecommunications Aeronautiques v. Huliganga*, G.R. No. 215504, August 20, 2018.

show, the giving of the monetary benefit by respondents in favor of Legaspi and Martinez is merely an isolated instance. From the beginning of respondents' business and up until petitioner's resignation took effect on October 7, 2009, there was no showing that payments of such benefit had been made by respondents to their employees who voluntarily resigned. The first and only instance when such a benefit was given to resigned employees was on or after November 15, 2009 — not because it was a company practice but only to pave the way for Legaspi and Martinez's graceful exit, so to speak.

As explained by respondents, the said benefit was not intended as a separation pay but more of a promise or an assurance to Legaspi and Martinez that they would be paid a benefit if they tender their resignation. Given respondents' knowledge of Legaspi and Martinez's acts of disloyalty and betrayal of trust, respondents opted to give them an alternative way of exit, in lieu of termination. Respondents' decision to give Legaspi and Martinez a graceful exit is perfectly within their prerogative. It is settled that there is nothing reprehensible or illegal when the employer grants the employee a chance to resign and save face rather than smear the latter's employment record.[26]

Relying on respondents' assurance, Legaspi and Martinez tendered their resignation and it is incumbent upon respondents to make good of their promise. As held in *Alfaro v. Court of Appeals*,[27] an employer who agrees to expend such benefit as an incident of the resignation should not be allowed to renege in the performance of such commitment. And true enough, after Legaspi and Martinez resigned, they were paid the promised benefit.

This was not the case for petitioner. There was no promise given to him. Rather, petitioner resigned on his own volition. Respondents did not make any commitment to petitioner that he would be paid after his voluntary resignation.

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[26] *Cosue v. Ferritz Integrated Development Corp.*, G.R. No. 230664, July 24, 2017.

[27] 416 Phil. 310, 312-313 (2001).

Based on the foregoing, it becomes all too apparent that the CA committed no reversible error in issuing the assailed decision and ruling that petitioner voluntarily resigned from his employment. Thus, the granting of separation pay in his favor has no basis in law and jurisprudence, and must be deleted.

WHEREFORE, premises considered, the instant petition is **DENIED**. Accordingly, the Decision dated November 6, 2013 and the Resolution dated February 7, 2014 of the Court of Appeals-Cebu City in CA-G.R. CEB-SP No. 05921, are hereby **AFFIRMED**.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Caguioa,*[*] and *Gesmundo, JJ.,* concur.

THIRD DIVISION

[G.R. Nos. 213365-66. December 10, 2018]

ASIA PACIFIC RESOURCES INTERNATIONAL HOLDINGS, LTD., *petitioner, vs.* **PAPERONE, INC.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE; UNFAIR COMPETITION; ELEMENTS; TWO TYPES OF CONFUSION OF MARKS AND TRADE NAMES, EXPLAINED; WHILE THERE IS CONFUSION OF GOODS WHEN THE PRODUCTS ARE COMPETING, CONFUSION OF BUSINESS EXISTS WHEN THE PRODUCTS ARE NOW COMPETING

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[*] Designated as additional member per Raffle dated December 5, 2018 in lieu of Justice Ramon Paul L. Hernando, who penned the Decision in the Court of Appeals.

BUT RELATED ENOUGH TO PRODUCE CONFUSION OF AFFILIATION.— The essential elements of an action for unfair competition are: (1) confusing similarity in the general appearance of the goods, and (2) intent to deceive the public and defraud a competitor. x x x As to the first element, the confusing similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods. Likelihood of confusion of goods or business is a relative concept, to be determined only according to peculiar circumstances of each case. x x x It can easily be observed that both have the same spelling and are pronounced the same. Although respondent has a different logo, it was always used together with its trade name. It bears to emphasize that, initially, respondent's trade name had separate words that read "Paper One, Inc." under its original Articles of Incorporation. This was later on revised to make it one word, and now reads "Paperone, Inc."At first glance, respondent may be correct that there would be no confusion as to the presentation or packaging of its products since it is not using its corporate name as a trademark of its goods/products. There is an apparent dissimilarity of presentation of the trademark PAPER ONE and the trade name and logo of Paperone, Inc. Nevertheless, a careful scrutiny of the mark shows that the use of PAPERONE by respondent would likely cause confusion or deceive the ordinary purchaser, exercising ordinary care, into believing that the goods bearing the mark are products of one and the same enterprise. Relative to the issue on confusion of marks and trade names, jurisprudence has noted two types of confusion, *viz.*: (1) confusion of goods *(product confusion),* where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business *(source or origin confusion),* where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product; and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent. Thus, while there is confusion of goods when the products are competing, confusion of business exists when the products are non-competing but related enough to produce confusion of affiliation.

2. ID.; ID.; ID.; ID.; ID.; WHILE THERE IS NOTICEABLE DIFFERENCE ON HOW THE TRADE NAME OF RESPONDENT IS BEING USED IN ITS PRODUCT AS COMPARED TO THE TRADEMARK OF PETITIONER, THERE COULD LIKELY BE CONFUSION AS TO THE ORIGIN OF THE PRODUCT; CONSUMER MIGHT CONCLUDE THAT PETITIONER'S PRODUCTS ARE MANUFACTURED BY OR ARE PRODUCTS OF RESPONDENT.— Although we see a noticeable difference on how the trade name of respondent is being used in its products as compared to the trademark of petitioner, there could likely be confusion as to the origin of the products. Thus, a consumer might conclude that PAPER ONE products are manufactured by or are products of Paperone, Inc.. Additionally, although respondent claims that its products are not the same as petitioner's, the goods of the parties are obviously related as they are both kinds of paper products.

3. ID.; ID.; ID.; ID.; THE ELEMENT OF INTENT TO DECEIVE AND TO DEFRAUD MAY BE INFERRED FROM THE SIMILARITY OF THE APPEARANCE OF THE GOODS; RESPONDENT'S INTENT TO TAKE ADVANTAGE OF PETITIONER'S GOODWILL IS MANIFESTED FROM THE FACT THAT IT ADOPTED "PAPERONE" IN ITS TRADE NAME WITH THE PRIOR KNOWLEDGE OF THE EXISTENCE OF "PAPER ONE" AS A TRADEMARK OF PETITIONER.— The element of intent to deceive and to defraud may be inferred from the similarity of the appearance of the goods as offered for sale to the public. Contrary to the ruling of the CA, actual fraudulent intent need not be shown. Factual circumstances were established showing that respondent adopted PAPERONE in its trade name even with the prior knowledge of the existence of PAPER ONE as a trademark of petitioner. As in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters available, respondent had to choose those so closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark.

LEONEN, *J.*, *separate concurring opinion*:

1. COMMERCIAL LAW; INTELLECTUAL PROPERTY CODE (RA 8293); UNFAIR COMPETITION; TWO TYPES OF CONFUSION WITH TRADEMARKS AND TRADE NAMES; THERE SHOULD BE OBJECTIVE, SCIENTIFIC, AND

ECONOMIC STANDARDS TO DETERMINE WHETHER GOODS OR SERVICES OFFERED BY TWO PARTIES ARE SO RELATED THAT THERE IS A LIKELIHOOD OF CONFUSION.— [T]here are two types of confusion with trademarks and trade names: confusion of goods and confusion of business. A finding of confusion is highly fact-specific based on the circumstances of the case. In *Canon Kabushiki Kaisha v. Court of Appeals*: The likelihood of confusion of goods or business is a relative concept, to be determined only according to the particular, and sometimes peculiar, circumstances of each case. x x x In cases of confusion of business or origin, the question that usually arises is whether the respective goods or services of the senior user and the junior user are so related as to likely cause confusion of business or origin, and thereby render the trademark or tradenames confusingly similar. x x x My discomfort with the prevailing doctrine is that determining whether goods or services are related is left solely to the subjective evaluation of the Philippine Intellectual Property Office or the judgment of the court. It is based on ad hoc inferences of similarity in class, physical attributes or descriptive properties, purpose, or points of sale of the goods or services. Here, the Bureau of Legal Affairs of the Intellectual Property Office, as affirmed by the Director-General, found that respondent committed unfair competition based on a simplistic conclusion that "[b]oth Complainant APRIL and Respondent's main business product is paper[;] both offer papers for sale to the public." We should improve on the standard by which likelihood of confusion is measured, considering the advances in the study of competition and economics in general. There should be objective, scientific, and economic standards to determine whether goods or services offered by two parties are so related that there is a likelihood of confusion.

2. ID.; ID.; ID.; ID.; APPROACH ON HOW TO DETERMINE RELATEDNESS OF GOODS AND SERVICES AS TO BRING LIKELIHOOD OF CONFUSION, EXPLAINED AND ELABORATED.— In a market, the relatedness of goods or services may be determined by consumer preferences. When two goods are proved to be perfect substitutes, where the marginal rate of substitution, or the "consumer's willingness to substitute one good for another while maintaining the same level of satisfaction" is constant, then it may be concluded that the goods are related for the purposes of determining likelihood of confusion. Even goods or services, which

superficially appear unrelated, may be proved related if evidence is presented showing that these have significant cross-elasticity of demand, such that changes of price in one party's goods or services change the price of the other party's goods and services. Should it be proved that goods or services belong to the same relevant market, they may be found related even if their classes, physical attributes, or purposes are different. While not binding on this Court, jurisprudence from the United States of America on the determination of related goods or services provide clues to this approach. In *Worthington Foods, Inc. v. Kellogg Co.*, both "reasonable interchangeability" of goods and consumer response through cross-elasticity were factors in the court's assessment on whether the goods were in the same relevant market[.] x x x The lack of evidence that the parties directly competed in the same marketplace led to a finding that no likelihood of confusion would ensue in *Exxon Corporation v. Exxene Corporation*. In *Amstar Corp. v. Domino's Pizza, Inc.*, among the factors used to determine that the parties' goods were unrelated were: (1) the distribution channels by which their goods were sold; and (2) the demographics of the predominant purchasers of the goods. In *AMF, Inc. v. Sleekcraft Boats*, competition between the parties' lines of boats was found negligible despite the potential market overlap, since the respective lines catered to different kinds of activities. Similarly, in *Thompson Tank Mfg. Co., Inc. v. Thompson*, the contested goods represented only one percent (1%) of complainant's business, while ninety percent (90%) of the defendant's business were in fields that complainant did not engage in. This also disproves the claim of likelihood of confusion.

3. **ID.; ID.; ID.; RATIONALE BEHIND PROSECUTING UNFAIR COMPETITION; COURTS SHOULD NOT INTERFERE IN A FREE AND FAIR MARKET, OR TO FOSTER MONOPOLISTIC PRACTICES; MEASURABLE STANDARDS BY WHICH FUTURE CASES OF UNFAIR COMPETITION MAY BE RESOLVED, SUGGESTED.—** After determining the relevant market, the purpose of prosecuting unfair competition is to prohibit and restrict deception of the consuming public whenever persons or firms attempt to pass off their goods or services for another's. Underlying the prohibition against unfair competition is that business competitors cannot do acts which deceive, or which are designed to deceive the public into buying their goods or availing their services instead. Even if products are found to be in the same market, in all cases of unfair

> competition, competition should be presumed. Courts should take care not to interfere in a free and fair market, or to foster monopolistic practices. Instead, they should confine themselves to prevent fraud and misrepresentation on the public. x x x Thus, complainants bear the burden of objectively proving that the deception or fraud has actually or has probably taken place, or that the defendant had the actual or probable intent to deceive the public. This will require, in a future case, measurable standards to show that: (1) the goods or services belong to the same market; and (2) the likelihood of confusion or doubt is adequately and empirically demonstrated, not merely left to the subjective judgment of an administrative body or this Court.

APPEARANCES OF COUNSEL

Federis & Associates for petitioner.
Generosa R. Jacinto for respondent.

D E C I S I O N

GESMUNDO, *J.*:

Before the Court is a Petition for Review on Certiorari[1] under Rule 45 of the Rules of Court, assailing the November 28, 2013 Decision[2] and the July 9, 2014 Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. SP Nos. 122288 and 122535. The CA reversed and set aside the November 10, 2011 Decision[4] of the Intellectual Property Office *(IPO)* Director General, finding Paperone, Inc. *(respondent)* liable for unfair competition.

The Facts

The dispute in this case arose from a complaint for unfair competition, trademark infringement, and damages filed against

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[1] *Rollo*, pp. 17-72.

[2] *Id*. at 79-91; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam (now Member of this Court) and Priscilla J. Baltazar-Padilla.

[3] *Id*. at 93-94.

[4] *Id*. at 97-109.

respondent by Asia Pacific Resources International Holdings, Ltd. *(petitioner)*.

Petitioner is engaged in the production, marketing, and sale of pulp and premium wood free paper.[5] It alleged that it is the owner of a well-known trademark, PAPER ONE, with Certificate of Registration No. 4-1999-01957 issued on September 5, 2003.[6] The said trademark enjoyed legal protection in different countries worldwide and enjoyed goodwill and high reputation because of aggressive marketing and promotion. Petitioner claimed that the use of PAPERONE in respondent's corporate name without its prior consent and authority was done in bad faith and designed to unfairly ride on its good name and to take advantage of its goodwill. It was calculated to mislead the public into believing that respondent's business and/or products were manufactured, licensed or sponsored by petitioner. It was also alleged that respondent had presumptive, if not actual knowledge, of petitioner's rights to the trademark PAPER ONE, even prior to respondent's application for registration of its corporate name before the Securities and Exchange Commission *(SEC)*.[7]

Respondent, on its part, averred that it had no obligation to secure prior consent or authority from petitioner to adopt and use its corporate name. The Department of Trade and Industry *(DTI)* and the SEC had allowed it to use *Paperone, Inc.,* thereby negating any violation on petitioner's alleged prior rights. Respondent was registered with the SEC, having been organized and existing since March 30, 2001. Its business name was likewise registered with the DTI. Respondent also denied any awareness of the existence of petitioner and/or the registration of PAPER ONE, as the latter is a foreign corporation not doing business in the Philippines. While the business of respondent dealt with paper conversion such as manufacture of table napkins, notebooks

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[5] *Id*. at 22; Petition.

[6] *Id*. at 118; Attachment to Annex "D" of the Petition. In *rollo*, pp. 22 and 87, the date February 10, 2003 appears to be the date of Registration.

[7] *Id*. at 17-72.

and intermediate/collegiate writing pads, it did not use its corporate name PAPERONE on any of its products. Further, its products had been widely sold in the Philippines even before petitioner could claim any business transaction in the country. The public could not have possibly been deceived into believing that any relation or sponsorship existed between the parties, considering these circumstances.[8]

In its decision,[9] the Bureau of Legal Affairs *(BLA)* Director, Intellectual Property Office, found respondent liable for unfair competition. It ordered respondent to cease and desist from using PAPERONE in its corporate name, and to pay petitioner ₱300,000.00, as temperate damages; ₱200,000.00, as exemplary damages; and ₱100,000.00, as attorney's fees. It ruled that petitioner was the first to use PAPER ONE in 1999 which had become a symbol of goodwill of its paper business. Respondent's use of PAPERONE in its corporate name was to benefit from the established goodwill of petitioner. There was, however, no trademark infringement since PAPER ONE was registered in the Philippines only in 2003.[10]

On appeal to the IPO Director General, the BLA decision was affirmed with modification insofar as the increase in the award of attorney's fees to ₱300,000.00.[11]

The CA Ruling

Both parties appealed to the CA. Petitioner maintained that it was entitled to actual damages amounting to ₱46,032,569.72 due to unfair competition employed by respondent. Respondent claimed that it was not liable for unfair competition.

In its decision, the CA reversed and set aside the IPO Director General's decision. It held that there was no confusing similarity

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[8] *Id*. at 1061-1073; Comment.

[9] *Id*. at 356-377.

[10] *Id*. at 355-377; Annex "K".

[11] *Id*. at 96-109; Annex "C".

in the general appearance of the goods of both parties. Petitioner failed to establish through substantial evidence that respondent intended to deceive the public or to defraud petitioner. Thus, the essential elements of unfair competition were not present.[12]

ISSUES

In the petition before us, petitioner raises various issues for our resolution. However, given the facts of this case, we find that the only issues to be resolved are:

I.

WHETHER RESPONDENT IS LIABLE FOR UNFAIR COMPETITION, and

II.

WHETHER PETITIONER IS ENTITLED TO ACTUAL DAMAGES.

OUR RULING

The core of the controversy is the adoption of "PAPERONE" in the trade name of respondent, which petitioner claims it has prior right to, since it was the first to use it as its trademark for its paper products. Petitioner claims that respondent committed unfair competition by adopting PAPERONE in its trade name. It is noteworthy that the issue of trademark infringement is not the subject of the appeal before us.

The relevant provisions of the Intellectual Property Code[13] provide:

> SECTION 168. Unfair Competition, Rights, Regulation and Remedies. –

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[12] *Id*. at 79-91.

[13] Republic Act No. 8293 otherwise known as "An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, providing for its powers and functions, and for other purposes" (June 6, 1997).

168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

> (a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who, otherwise, clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose.

The essential elements of an action for unfair competition are: (1) confusing similarity in the general appearance of the goods, and (2) intent to deceive the public and defraud a competitor.[14] Unfair competition is always a question of fact.[15]

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[14] *In-N-Out Burger, Inc. v. Sehwani, Inc. and/or Benita's Frites, Inc.*, 595 Phil. 1119, 1149 (2008).

[15] *Shell Company of the Philippines, Ltd. v. Insular Petroleum Refining Co., Ltd., et al.,* 120 Phil. 434, 441 (1964).

At this point, it bears to stress that findings of fact of the highly technical agency — the IPO — which has the expertise in this field, should have been given great weight by the Court of Appeals.[16]

a) Confusing similarity

As to the first element, the confusing similarity may or may not result from similarity in the marks, but may result from other external factors in the packaging or presentation of the goods.[17] Likelihood of confusion of goods or business is a relative concept, to be determined only according to peculiar circumstances of each case.[18]

The marks under scrutiny in this case are hereby reproduced for easy reference:

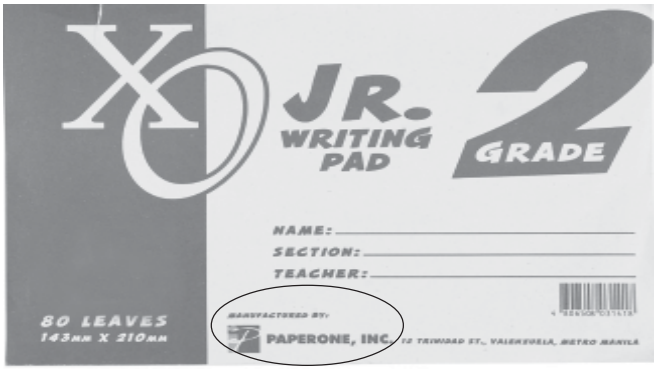
Petitioner's:

[16] See *UFC Philippines, Inc. v. Barrio Fiesta Manufacturing Corp.*, 778 Phil. 763, 791 (2016).

[17] *In-N-Out Burger, Inc. v. Sehwani, Inc. and/or Benita's Frites, Inc., supra* note 14, at 1149.

[18] See *Canon Kabushiki Kaisha v. Court of Appeals, et al.*, 391 Phil. 154, 162 (2000).

Respondent's:



It can easily be observed that both have the same spelling and are pronounced the same. Although respondent has a different logo, it was always used together with its trade name. It bears to emphasize that, initially, respondent's trade name had separate words that read "Paper One, Inc." under its original Articles of Incorporation. This was later on revised to make it one word, and now reads "Paperone, Inc."[19]

At first glance, respondent may be correct that there would be no confusion as to the presentation or packaging of its products since it is not using its corporate name as a trademark of its goods/products. There is an apparent dissimilarity of presentation of the trademark PAPER ONE and the trade name and logo of Paperone, Inc. Nevertheless, a careful scrutiny of the mark shows that the use of PAPERONE by respondent would likely cause confusion or deceive the ordinary purchaser, exercising ordinary care, into believing that the goods bearing the mark are products of one and the same enterprise.

Relative to the issue on confusion of marks and trade names, jurisprudence has noted two types of confusion, *viz.*: (1) confusion of goods *(product confusion),* where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business *(source or origin confusion),* where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product; and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent.[20] Thus, while there is confusion of goods when the products are competing, confusion of business exists when the products are non-competing but related enough to produce confusion of affiliation.[21]

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[19] *Rollo,* p. 1064 (Comment); *rollo,* p. 370 (Decision of BLA).

[20] *Skechers, U.S.A., Inc. v. Inter Pacific Industrial Trading Corp., et al.* (Resolution), 662 Phil. 11, 19-20 (2011).

[21] *Mcdonald's Corp., et al. v. L.C. Big Mak Burger, Inc., et al.,* 480 Phil. 402, 429-430 (2004).

This case falls under the second type of confusion. Although we see a noticeable difference on how the trade name of respondent is being used in its products as compared to the trademark of petitioner, there could likely be confusion as to the origin of the products. Thus, a consumer might conclude that PAPER ONE products are manufactured by or are products of Paperone, Inc. Additionally, although respondent claims that its products are not the same as petitioner's, the goods of the parties are obviously related as they are both kinds of paper products.

The BLA Director aptly ruled that "[t]o permit respondent to continue using the same or identical Paperone in its corporate name although not [used] as label for its paper products, but the same line of business, that of manufacturing goods such as PAPER PRODUCTS, therefore their co-existence would result in confusion as to source of goods and diversion of sales to [r]espondent knowing that purchasers are getting products from [petitioner] APRIL with the use of the corporate name Paper One, Inc. or Paperone, Inc. by herein [r]espondent."[22]

The matter of prior right over PAPERONE, again, is a matter of factual determination; therefore, we give credence to the findings of the IPO, who has the expertise in this matter, being supported by substantial evidence. The Court has consistently recognized the specialized functions of the administrative agencies — in this case, the IPO. *Berris Agricultural Co., Inc. v. Abyadang*[23] states, thus:

> The determination of priority of use of a mark is a question of fact. Adoption of the mark alone does not suffice. One may make advertisements, issue circulars, distribute price lists on certain goods, but these alone will not inure to the claim of ownership of the mark until the goods bearing the mark are sold to the public in the market. Accordingly, receipts, sales invoices, and testimonies of witnesses as customers, or orders of buyers, best prove the actual use of a mark in trade and commerce during a certain period of time.

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[22] *Rollo,* p. 370.

[23] 647 Phil. 517 (2010).

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Verily, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods. **On this matter of particular concern, administrative agencies, such as the IPO, by reason of their special knowledge and expertise over matters falling under their jurisdiction, are in a better position to pass judgment thereon. Thus, their findings of fact in that regard are generally accorded great respect, if not finality by the courts, as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of the appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect to sufficiency of evidence.**[24] (Emphasis supplied)

The BLA Director found, as affirmed by the IPO Director General, that it was petitioner who has priority rights over PAPER ONE, thus:

One essential factor that has led this Office to tilt the scales of justice in favor of Complainant is the latter's establishment of prior use of the word PaperOne for paper products in the Philippines. Records will show that there was prior use and adoption by Complainant of the word "PaperOne." PaperOne was filed for trademark registration on 22 March 1999 (Exhibit "D", Complainant) in the name of Complainant Asia Pacific Resources International Holdings, Ltd. and matured into registration on 10 February 2003. Respondent's corporate or trade name is Paper One, Inc. which existed and was duly registered with the Securities and Exchange Commission on 31 March 2001 (Exhibit "11", Respondent). If anyone files a suit and can prove priority of adoption, he can assert his right to the exclusive use of a corporate name with freedom from infringement by similarity (Philips Export B.V. et al. vs. CA, G.R. No. 96161). Respondent was incorporated in March 2001 by virtue of SEC registration No. A200104788 (Exhibit "11", Complainant) and was registered two (2) years thereafter as business name with the

[24] *Id*. at 526-533.

Department of Trade and Industry under DTI Business Name Registration No. 00068456 (Exhibit "13", Respondent). Complainant Asia Pacific Resources International Holdings, Ltd., APRIL for brevity, presented evidence of its use of the label PaperOne on paper products in the Philippines earlier than the date of its trademark application in 1999 when its marketing and promotion agent JND International Corporation ("JND" for brevity) licensed one of its clients, National Paper Products & Printing Corporation ("NAPPCO" for brevity) to import, sell and distribute Complainant's APRIL paper products in 1998 (par. 3, Exhibit "AA", Complainant). To support this declaration are documents evidencing transactions of NAPPCO with Complainant APRIL with the earliest documented transaction on 22 January 1999 (Exhibit "G", Complainant) bearing [I]nvoice [N]o. LCA9812133.

[The] fact of earlier use was not disputed by the Respondent. In point of fact, Respondent already knew of Complainant's APRIL existence prior to Respondent's incorporation as Paper One, Inc. in 2001. Most of the incorporators of National Paper Products & Printing Corporation or NAPPCO for brevity (Exhibits "H" and "H-A" to "H-H", Complainant) which in late 1990s transacted with Complainant APRIL through Invoice No. LCA9812133 dated 22 January 1999, the earliest invoice noted (Exhibit "G", Complainant) are likewise incorporators of Paper One, Inc. (Exhibit "11", Respondent) namely Tan Tian Siong, Chong Ping Tat, Thelma J. Uy, Conchita Francisco, Sy Siong Sun, to name a few. Also, NAPPCO, through Complainant's marketing and promotion agent JND International Corporation, or JND for brevity (Exhibit "AA", Complainant) expressed interest in a letter dated 19 January 2000 to work with JND and APRIL, as its exlusive distributor and we quote "to become your exclusive distributor of 'Paper One' Multi Purpose Copy Paper" (Exhibit "AA-1-d", Complainant). Worth mentioning at this point is the jurisprudence pronounced in the case of Converse Rubber Corporation vs. Universal Rubber Products, Inc. and Tiburcio S. Evalle (G.R. No. L-27906, Jan. 18, 1987) where the court said:

> Knowing therefore that the word "CONVERSE" belongs to and is being used by petitioner, and is in fact the dominant word in petitioner's corporate name, respondent has no right to appropriate the same for use on its products which are similar to those being produced by petitioner.[25] (Emphasis supplied)

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[25] *Rollo*, pp. 368-369.

b) intent to deceive the public and defraud a competitor

The element of intent to deceive and to defraud may be inferred from the similarity of the appearance of the goods[26] as offered for sale to the public.[27] Contrary to the ruling of the CA, actual fraudulent intent need not be shown.[28] Factual circumstances were established showing that respondent adopted PAPERONE in its trade name even with the prior knowledge of the existence of PAPER ONE as a trademark of petitioner. As in all other cases of colorable imitations, the unanswered riddle is why, of the millions of terms and combinations of letters available, respondent had to choose those so closely similar to another's trademark if there was no intent to take advantage of the goodwill generated by the other mark.[29]

With regard to the issue on damages, we likewise agree with the IPO that the actual damages prayed for cannot be granted because petitioner has not presented sufficient evidence to prove the amount claimed and the basis to measure actual damages.

WHEREFORE, the petition is **GRANTED**. The November 28, 2013 Decision and the July 9, 2014 Resolution of the Court of Appeals in CA G.R. SP Nos. 122288 and 122535 are **REVERSED** and **SET ASIDE**. Accordingly, the November 10, 2011 Decision of the Intellectual Property Office Director General finding respondent liable for unfair competition is hereby **REINSTATED**.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, J. Jr.,* and *Hernando, JJ.,* concur.

Leonen, J., see separate concurring opinion.

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[26] See *NBI - Microsoft Corp. v. Hwang, et al.,* 499 Phil. 423, 439 (2005).

[27] *In-N-Out Burger, Inc. v. Sehwani, Inc. and/or Benita's Frites, Inc., supra* note 14, at 1149-1150.

[28] *Id.* at 1149.

[29] See *American Wire & Cable Co. v. Director of Patents,* 142 Phil. 523 (1970).

SEPARATE CONCURRING OPINION

LEONEN, *J.*:

I concur in the result. Respondent should be liable for unfair competition under Section 168[1] of the Republic Act No. 8293, or the Intellectual Property Code of the Philippines.

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[1] INTELLECTUAL PROP. CODE, Sec. 168 states:

SECTION 168. Unfair Competition, Rights, Regulation and Remedies. — 168.1. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature of their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose;

(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

I agree that we should base our decision in this case on present jurisprudence. This means, generally, that there are two types of confusion with trademarks and trade names: confusion of goods and confusion of business. A finding of confusion is highly fact-specific based on the circumstances of the case.[2] In *Canon Kabushiki Kaisha v. Court of Appeals*:[3]

> The likelihood of confusion of goods or business is a relative concept, to be determined only according to the particular, and sometimes peculiar, circumstances of each case. Indeed, in trademark law cases, even more than in other litigation, precedent must be studied in the light of the facts of the particular case. Contrary to petitioner's supposition, the facts of this case will show that the cases of *Sta. Ana vs. Maliwat*, *Ang vs. Teodoro* and *Converse Rubber Corporation vs. Universal Rubber Products, Inc.* are hardly in point. The just cited cases involved goods that were confusingly similar, if not identical, as in the case of *Converse Rubber Corporation vs. Universal Rubber Products, Inc.* Here, the products involved are so unrelated that the public will not be misled that there is the slightest nexus between petitioner and the goods of private respondent.
>
> In cases of confusion of business or origin, the question that usually arises is whether the respective goods or services of the senior user and the junior user are so related as to likely cause confusion of business or origin, and thereby render the trademark or tradenames confusingly similar. Goods are related when they belong to the same class or have the same descriptive properties; when they possess the same physical attributes or essential characteristics with reference to their form, composition, texture[,] or quality. They may also be related because they serve the same purpose or are sold in grocery stores.[4] (Citations omitted)

My discomfort with the prevailing doctrine is that determining whether goods or services are related is left solely to the subjective

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168.4. The remedies provided by Sections 156, 157 and 161 shall apply *mutatis mutandis*.

[2] *Shell Co. of the Philippines, Ltd. v. Ins. Petroleum Refining Co., Ltd. and CA,* 120 Phil. 434 (1964) [Per *J*. Paredes, *En Banc]*.

[3] 391 Phil. 154 (2000) [Per *J*. Gonzaga-Reyes, Third Division].

[4] *Id*. at 162–163.

evaluation of the Philippine Intellectual Property Office or the judgment of the court. It is based on ad hoc inferences of similarity in class, physical attributes or descriptive properties, purpose, or points of sale of the goods or services. Here, the Bureau of Legal Affairs of the Intellectual Property Office, as affirmed by the Director-General, found that respondent committed unfair competition based on a simplistic conclusion that "[b]oth Complainant APRIL and Respondent's main business product is paper[;] both offer papers for sale to the public."[5] We should improve on the standard by which likelihood of confusion is measured, considering the advances in the study of competition and economics in general.

There should be objective, scientific, and economic standards to determine whether goods or services offered by two parties are so related that there is a likelihood of confusion. In a market, the relatedness of goods or services may be determined by consumer preferences. When two goods are proved to be perfect substitutes,[6] where the marginal rate of substitution, or the "consumer's willingness to substitute one good for another while maintaining the same level of satisfaction"[7] is constant, then it may be concluded that the goods are related for the purposes of determining likelihood of confusion. Even goods or services, which superficially appear unrelated, may be proved related if evidence is presented showing that these have significant cross-elasticity of demand, such that changes of price in one party's goods or services change the price of the other party's goods and services.[8] Should it be proved that goods or services belong to the same relevant market, they may be found related even if their classes, physical attributes, or purposes are different.

While not binding on this Court, jurisprudence from the United States of America on the determination of related goods or

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[5] *Rollo*, p. 374. Intellectual Property Office Decision.

[6] DAVID BESANKO AND RONALD BRAEUTIGAM, *MICROECONOMICS*, 92-93 (4th ed., 2010).

[7] *Id*. at 86.

[8] *Id*. at 52.

services provide clues to this approach. In *Worthington Foods, Inc. v. Kellogg Co.*,[9] both "reasonable interchangeability"[10] of goods and consumer response through cross-elasticity were factors in the court's assessment on whether the goods were in the same relevant market:

> One analogous body of law sheds light on the issue of direct competition between goods, namely market definition under Section 2 of the Sherman Anti-Trust Act, 15 U.S.C. § 2 (1982). Professor McCarthy, in his seminal trademark treatise, states that products which are "competitive" for purposes of trademark analysis are "goods which are reasonably interchangeable by buyers for the same purposes." Determining whether products are "reasonably interchangeable" is the analysis which the Court must undertake when defining the relevant product market in an action under section 2 of the Sherman Act. The Court holds that the same analysis is helpful for determining whether the parties' goods are "directly competing" for purposes of assessing palming off liability.
>
> A relevant product market includes all products that are either identical or available substitutes for each other. To determine whether products are "available substitutes" or "reasonably interchangeable," the Court must first scrutinize the uses of the product. It must assess whether the products can perform the same function. The second factor to weigh is consumer response, or more specifically, cross-elasticity. That is, the Court must assess to what extent consumers will choose substitutes for the parties' goods in response to price increases.
>
> . . . . . .
>
> The second market factor to be considered is consumer response or cross-elasticity. Unfortunately, the parties did not present evidence concerning any tendency or lack of tendency of consumers to switch from the plaintiff's products to the defendant's if Worthington were to raise its prices or vice versa. Therefore, the Court cannot conclude that the plaintiff has demonstrated cross-elasticity of the parties' products indicating that their goods are in the same relevant market.

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[9] 732 F. Supp. 1417 (1990).

[10] *Id.* at 1437.

In short, on an examination of the current record, the Court, finds that Worthington's goods are not in the same relevant market as Kellogg's cereal. The parties' products have different uses or functions. Also, the Court has no evidence of any degree of cross-elasticity between the plaintiff's foods and the defendant's cereal.[11] (Citations omitted)

The lack of evidence that the parties directly competed in the same marketplace led to a finding that no likelihood of confusion would ensue in *Exxon Corporation v. Exxene Corporation.*[12] In *Amstar Corp. v. Domino's Pizza, Inc.*,[13] among the factors used to determine that the parties' goods were unrelated were: (1) the distribution channels by which their goods were sold; and (2) the demographics of the predominant purchasers of the goods. In *AMF, Inc. v. Sleekcraft Boats*,[14] competition between the parties' lines of boats was found negligible despite the potential market overlap, since the respective lines catered to different kinds of activities. Similarly, in *Thompson Tank Mfg. Co., Inc. v. Thompson*,[15] the contested goods represented only one percent (1%) of complainant's business, while ninety percent (90%) of the defendant's business were in fields that complainant did not engage in. This also disproves the claim of likelihood of confusion.

We can build on past jurisprudence of this Court. In *Shell Co. of the Philippines, Ltd. v. Ins. Petroleum Refining Co., Ltd. and CA*,[16] this Court did not give credence to a complainant's claim that the entry into the market of the defendant's products, which were allegedly sold in complainant's drums, caused a decrease in complainant's sales. Thus, no unfair competition could be imputed to the defendant:

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[11] *Id*. at 1436–1438.

[12] 696 F.2d 544 (7th Cir. 1982).

[13] 615 F.2d 252 (5th Cir. 1980).

[14] 599 F.2d 341 (9th Cir. 1979).

[15] 693 F.2d 991, 993 (9th Cir. 1982).

[16] 120 Phil. 434 (1964) [Per *J*. Paredes, *En Banc*].

Petitioner contends that there had been a marked decrease in the volume of sales of low-grade oil of the company, for which reason it argues that the sale of respondent's low-grade oil in Shell containers was the cause. We are reluctant to share the logic of the argument. We are more inclined to believe that several factors contributed to the decrease of such sales. But let us assume, for purposes of argument, that the presence of respondent's low-grade oil in the market contributed to such decrease. May such eventuality make respondent liable for unfair competition? There is no prohibition for respondent to sell its goods, even in places where the goods of petitioner had long been sold or extensively advertised. Respondent should not be blamed if some of petitioner's dealers buy Insoil oil, as long as respondent does not deceive said dealers. If petitioner's dealers pass off Insoil oil as Shell oil, that is their responsibility. If there was any such effort to deceive the public, the dealers to whom the defendant (respondent) sold its products and not the latter, were legally responsible for such deception. The passing of said oil, therefore, as product of Shell was not performed by the respondent or its agent, but petitioner's dealers, which act respondent had no control whatsoever.[17]

These cases illustrate the many ways by which specialized agencies and courts may objectively evaluate the relatedness of allegedly competing goods and services. An analysis that ends in a mere finding of confusing similarity in the general appearance of the goods[18] should not suffice.

After determining the relevant market, the purpose of prosecuting unfair competition is to prohibit and restrict deception of the consuming public whenever persons or firms attempt to pass off their goods or services for another's.[19] Underlying the prohibition against unfair competition is that business competitors cannot do acts which deceive, or which are designed

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[17] *Id.* at 443.

[18] *Superior Commercial Enterprises, Inc. v. Kunnan Enterprises Ltd., et al.*, 632 Phil. 546 (2010) [Per J. Brion, Second Division].

[19] *Coca-Cola Bottlers, Phils., Inc., Naga Plant v. Gomez,* 591 Phil. 642 (2008) [Per J. Brion, Second Division].

to deceive the public into buying their goods or availing their services instead.[20]

Even if products are found to be in the same market, in all cases of unfair competition, competition should be presumed. Courts should take care not to interfere in a free and fair market, or to foster monopolistic practices. Instead, they should confine themselves to prevent fraud and misrepresentation on the public. In *Alhambra Cigar, etc., Co. v. Mojica*:[21]

> Protection against unfair competition is not intended to create or foster a monopoly and the court should always be careful not to interfere with free and fair competition, but should confine itself, rather, to preventing fraud and imposition resulting from some real resemblance in name or dress of goods. Nothing less than conduct tending to pass off one man's goods or business as that of another will constitute unfair competition. Actual or probable deception and confusion on the part of customers by reason of defendant's practices must always appear.[22]

Thus, complainants bear the burden of objectively proving that the deception or fraud has actually or has probably taken place, or that the defendant had the actual or probable intent to deceive the public.[23] This will require, in a future case, measurable standards to show that: (1) the goods or services belong to the same market; and (2) the likelihood of confusion or doubt is adequately and empirically demonstrated, not merely left to the subjective judgment of an administrative body or this Court.

Accordingly, in this case, I vote to **GRANT** the Petition.

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[20] *E. Spinner & Co. v. Neuss Hesslein Corporation*, 54 Phil. 224 (1930) [Per J. Street, *En Banc*].

[21] 27 Phil. 266 (1914) [Per J. Moreland, First Division].

[22] *Id.* at 271.

[23] *Shang Properties Realty Corp., et al. v. St. Francis Dev't. Corp.*, 739 Phil. 244 (2014) [Per J. Perlas-Bernabe, Second Division].

THIRD DIVISION

[G.R. No. 220721. December 10, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NADY MAGALLANO, JR. *y* FLORES and ROMEO TAPAR *y* CASTRO,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S FACTUAL FINDINGS AND APPRECIATION OF WITNESSES' TESTIMONIES ARE GIVEN RESPECT, ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS; CASE AT BAR.—** Trial courts have the advantage of personally scrutinizing the conduct and attitude of witnesses when giving their testimonies. Thus, "assignment of values to the testimony of a witness is virtually left, almost entirely, to the trial court which has the opportunity to observe the demeanor of the witness on the stand." Due to their unique position, the trial courts' factual findings and appreciation of the witnesses' testimonies are given much respect, more so when their conclusions are affirmed by the Court of Appeals. Factual findings of trial courts will only be disturbed on appeal if it is convincingly shown that they "overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance." Here, the Regional Trial Court and the Court of Appeals both found Pineda to be a credible and reliable witness.

2. **ID.; ID.; ID.; AN INCONSISTENCY IN THE TESTIMONY OF A WITNESS, WHICH HAS NOTHING TO DO WITH THE ELEMENTS OF A CRIME, IS NOT A GROUND TO REVERSE A CONVICTION; CASE AT BAR.—** As for the supposed inconsistencies in Pineda's testimony, *People v. Nelmida, et al.* explained, "An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction." The Court of Appeals thus held: As to the imputed inconsistencies in Pineda's testimony, they refer only to minor if not inconsequential or trivial matters which do not impair the credibility of Pineda. In fact, it even signifies that he was neither coached nor was lying on the witness stand. What commands greater importance is that there is no inconsistency in Pineda's complete and vivid narration as far as the principal

occurrence and positive identification of accused-appellants as the victim's assailants.

3. CRIMINAL LAW; REVISED PENAL CODE; MURDER; ELEMENTS.— Murder is committed when a person is killed under any of the circumstances enumerated under Article 248 of the Revised Penal Code, as amended. x x x To sustain a conviction under Article 248 of the Revised Penal Code, the prosecution must prove the following beyond reasonable doubt: (1) that a person was killed;(2) that the accused-appellants killed the victim; (3) that the killing was not parricide or infanticide; and (4) that the killing was attended by any of the qualifying circumstances under Article 248.

4. ID.; ID.; ID.; TREACHERY; THE ESSENCE OF TREACHERY IS THE SWIFT AND UNEXPECTED ATTACK ON THE UNARMED VICTIM WITHOUT THE SLIGHTEST PROVOCATION ON HIS PART; TWO CONDITIONS THAT MUST BE PROVEN TO BE APPRECIATED AS A QUALIFYING CIRCUMSTANCE; CASE AT BAR.— In *People v. Abadies*, this Court held that "[t]he essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on his part." It further provided that two (2) conditions must be established by the prosecution for a killing to be properly qualified by treachery to murder: "(1) that at the time of the attack, the victim was not in a position to defend himself[;] and (2) that the offender consciously adopted the particular means, method[,] or form of attack employed by him." The prosecution failed to show the presence of treachery as a qualifying circumstance. Pineda's testimony began when accused-appellants were in the middle of mauling the victim, and there was no testimony to prove that the victim did not provoke them or expect their attack. The prosecution did not present evidence that would show that accused-appellants reflected on and decided on the form of their attack to secure an unfair advantage over the victim. Even when accused-appellants returned after chasing the screaming woman and hit the crawling victim with rocks, treachery is still absent. This is because the second attack was not a surprise, as shown by the victim's attempt to go back to the safety of his own house. *People v. Tigle* stated that for treachery to qualify a killing to murder, it must be present at the inception of the attack.

5. ID.; ID.; CONSPIRACY; EXISTS WHEN TWO (2) OR MORE PERSONS COME TO AN AGREEMENT CONCERNING THE COMMISSION OF A FELONY AND DECIDE TO COMMIT IT.— Article 8 of the Revised Penal Code provides that "[a] conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy may be proven by direct or circumstantial evidence that show a "common design or purpose" to commit the crime.

6. ID.; ID.; HOMICIDE; RANGE OF PENALTY IMPOSABLE; CASE AT BAR.— [T]he range of penalty imposable on accused-appellants is six (6) years and one (1) day to 12 years of *prision mayor,* as minimum, to 12 years and one (1) day to 20 years of *reclusion temporal,* as maximum. With the absence of any mitigating or aggravating circumstance, the penalty should be imposed in its medium period. Thus, accused-appellants are sentenced to an indeterminate penalty of imprisonment ranging from 12 years of *prision mayor*, as minimum, to 17 years and four (4) months of *reclusion temporal*, as maximum.

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

LEONEN, *J.*:

"The essence of treachery is the swift and unexpected attack on the unarmed victim without the slightest provocation on his part."[1] For treachery to be appreciated as a qualifying circumstance, two (2) things must be proven: (1) that during the attack, the victim could not have defended himself or herself from the offender; and (2) that the offender deliberately chose a form of attack which would render him or her immune from risk or retaliation by the victim.[2]

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[1] *People v. Abadies*, 436 Phil. 98, 105 (2002) [Per *J.* Ynares-Santiago, *En Banc*].

[2] REV. PEN. CODE, Art. 248.

For this Court's resolution is an Ordinary Appeal from the December 12, 2014 Decision[3] of the Court of Appeals in CA-G.R. CR-HC No. 06160, which affirmed the conviction of Nady F. Magallano, Jr. (Magallano) and Romeo C. Tapar (Tapar) for the crime of murder.

In an Information, Magallano and Tapar were charged with murder punished under Article 248 of the Revised Penal Code:

> The undersigned Asst. Provincial Prosecutor accuses Nady Magallano [Jr.] y Flores and Romeo Tapar y Castro of the crime of murder, penalized under the provisions of Art. 248 of the Revised Penal Code, as amended by RA 7659, committed as follows:
>
> That on or about the 1st day of October 2005, in the municipality of San Miguel, province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the [abovenamed] accused, armed with a hard object and bladed weapon and with intent to kill one [1] Ronnie Batongbakal with evident premeditation[,] treachery[,] and conspiring with each other, did then and there willfully, unlawfully, and feloniously attack[,] assault, hit with a hard object[,] and stab with the said bladed weapon they were then provided (sic) the said Ronnie Batongbakal, hitting the latter in different parts of his body, thereby inflicting upon him serious physical injuries which directly caused his death.
>
> Contrary to law.[4]

Magallano and Tapar, assisted by counsel, pleaded not guilty to the crime charged against them. Pre-trial and trial soon followed.[5]

The prosecution presented three (3) witnesses: (1) Rogelio Batongbakal (Rogelio); (2) Dr. Edgar S. Ernie (Dr. Ernie); and (3) Miguel Angelo Pineda, Jr. (Pineda).[6]

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[3] *Rollo,* pp. 2–15. The Decision was penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Japar B. Dimaampao and Elihu A. Ybañez of the Twelfth Division, Court of Appeals, Manila.

[4] CA *rollo,* p. 61, RTC Decision.

[5] *Rollo,* p. 3.

[6] *Id*. at 4 and CA *rollo,* pp. 61-63.

Pineda testified that at around 1:00 a.m. of October 1, 2005, he was at home sleeping beside his wife when loud voices outside roused him from sleep. He then heard a woman shout, *"Romy, bakit mo s[i]ya sinasaktan, inaano ba kayo[?]"*[7]

Pineda peeked through his window and saw two (2) men, whom he later identified as Magallano and Tapar, ganging up on Ronnie Batongbakal (Batongbakal), who was by then lying on the ground. He testified that he saw Magallano repeatedly strike Batongbakal with a "*dos por dos,*" while Tapar watched.[8]

As Magallano was hitting Batongbakal, a woman suddenly bolted from the fray. Magallano and Tapar then jumped inside a tricycle and chased the woman. By then, a still-conscious Batongbakal began to crawl slowly towards a gate.[9]

Magallano and Tapar returned after a few minutes carrying several stones, each about a volleyball's size. Magallano threw the stones on Batongbakal's head and body, while Tapar prevented him from crawling away.[10]

Pineda attested that he wanted to help Batongbakal, but his wife stopped him out of fear. He then shouted at Magallano and Tapar, but his wife covered his mouth to muffle his voice. However, Magallano and Tapar still heard him,so they stopped attacking Batongbakal, loaded him into the tricycle, and sped off towards Poblacion.[11]

Pineda testified that he knew Magallano and Tapar since they both worked at the nearby National Food Authority warehouse. He also stated that the street outside their house, where Batongbakal was mauled, was well-lit by a streetlight, and that there was a second streetlight near his house.[12]

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[7] CA *rollo,* p. 62.

[8] *Id*.

[9] *Id*. at 62.

[10] *Id*.

[11] *Id*.

[12] *Id*.

Pineda explained that he did not immediately give his statement to the police officers because the day after the incident, he was informed by a police officer that a woman had already given her statement; thus, his statement was no longer needed.[13]

The prosecution dispensed with the testimony of Rogelio, Batongbakal's father, after both parties stipulated that before his death, Batongbakal worked as a tricycle driver and earned around ₱200.00 to ₱300.00 per day. They also stipulated that Rogelio spent ₱60,000.00 on his son's wake and funeral expenses.[14]

The prosecution also dispensed with the testimony of Dr. Ernie, a Municipal Health Officer of San Miguel, Bulacan, who was presented as an expert witness. Both parties stipulated that Dr. Ernie examined Batongbakal and signed his Postmortem Certificate. They also stipulated that Dr. Ernie concluded that Batongbakal died due to a skull fracture caused by a heavy blow to the head, and that he had multiple stab wounds.[15]

For its part, the defense presented the testimonies of Tapar and Magallano, and their employers, Edgar Valdez and Monette Valdez.[16] Lourdes Bonus was also presented as a witness, but her testimony was stricken out for lack of cross-examination.[17]

Tapar testified that he worked the whole day of September 30, 2005 and went home directly after his shift, arriving at his house in Sta. Rita, San Miguel, Bulacan at around 5:10 p.m. He rested, ate dinner, and fell asleep at about 10:00 p.m.[18]

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[13] *Id*.

[14] *Id*. at 61–62.

[15] *Id*. at 62.

[16] *Id*. at 63. Monette is sometimes spelled "Monet."

[17] *Id*. at 66.

[18] *Id*. at 63.

At about 6:30 a.m. the following day, Tapar claimed that police officers woke him up, saying a certain Cristina accused him of killing someone. They then ordered him to come with them to the municipal hall.[19]

There, Tapar repeatedly proclaimed his innocence,but nobody believed him and he was beaten up. The police officers pressed him to tell them where he threw the victim's body, but he denied doing this, let alone killing anybody.[20]

Tapar admitted knowing Magallano since they both worked at the National Food Authority, but denied being with him in the early morning of October 1, 2005 since he was home at that time and the night before.[21]

For his part, Magallano testified that on October 1, 2005, he was at Tyson Plant in Barangay Guyong, Sta. Maria, Bulacan with his brother and their helper, waiting for their truck to be loaded with feeds. While he was at Tyson Plant, Nardo Varilla Santos (Nardo), the brother of his former common-law wife Cristina Santos (Santos), borrowed money because he supposedly ran into an accident with Batongbakal. Magallano gave money to Nardo, who then hurriedly left for Lucena City.[22]

On July 3, 2006, while Magallano was sleeping at a garage in Sta. Maria, Bulacan, two (2) police officers shot him on his thigh. They said that Santos pointed to him as Batongbakal's killer. They brought him to the police station for questioning and treated his gunshot wound.[23]

During trial, Magallano denied knowing Batongbakal, much more killing him. He claimed that Santos falsely accused him of murder to get back at him since he had custody of their

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

[20] *Id*. at 64.

[21] *Id*.

[22] *Id*.

[23] *Id*. at 64-65.

three (3) children. However, he could not explain why Pineda would point to him as Batongbakal's killer.[24]

Both Edgar Valdez and Monet Valdez testified that Magallano worked as their truck driver at the time of the incident. However, they both admitted that they could not remember if Magallano was deployed to deliver cargo on October 1, 2005.[25]

In its May 3, 2013 Decision,[26] the Regional Trial Court found Magallano and Tapar guilty of murder. They were sentenced to suffer the penalty of *reclusion perpetua* and were ordered to indemnify Batongbakal's heirs.

The Regional Trial Court gave much weight to Pineda's testimony pointing to Magallano and Tapar as Batongbakal's killers. It found Pineda's testimony to be "straightforward, credible[,] and consistent."[27] Additionally, the Regional Trial Court found that his testimony was backed by the medico-legal officer's findings on the location of Batongbakal's injuries. Moreover, it found no improper motive on Pineda's part that would motivate him to concoct tales against them.[28]

The dispositive portion of the Regional Trial Court May 3, 2013 Decision read:

> ***WHEREFORE,*** the foregoing considered, this Court hereby finds accused Nady Magallano[, Jr.] y Flores and Romeo Tapar y Castro ***GUILTY*** of the crime of Murder penalized under the provisions of Art. 248 of the Revised Penal Code. Accordingly, they are hereby sentenced to suffer the penalty of ***RECLUSION PERPETUA*** and to indemnify the heirs of Ronnie Batongbakal: a. ₱75,000.00 as civil indemnity for his death; b. ₱50,000.00 as moral damages; and

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[24] *Id*. at 65.

[25] *Id*.

[26] *Id*. at 61-69. The Decision, in the case docketed as Crim. Case No. 89-M-2006, was penned by Judge Gregorio S. Sampaga of the Regional Trial Court, Branch 78, Malolos, Bulacan.

[27] *Id*. at 66.

[28] *Id*. at 66–67.

c. ₱60,000.00 representing the funeral and burial expenses incurred by the family.

In the service of their sentence, accused who are detention prisoners shall be credited with the entire period they have undergone preventive imprisonment.

SO ORDERED.[29] (Emphasis in the original)

Magallano[30] and Tapar[31] filed separate Appeal Briefs before the Court of Appeals.

In his Appeal Brief, Magallano dwelt on the supposed inconsistencies[32] in Pineda's testimony. He insinuated that the prosecution, after failing to produce its principal witness,belatedly brought Pineda as a witness and merely manufactured his testimony.[33]He further posited that the prosecution failed to prove the elements of murder, particularly treachery and conspiracy.[34]

Tapar also stressed in his Appeal Brief that Pineda's testimony contained "serious inconsistencies and contradictions[.]"[35]He pointed out that Pineda's late revelation to police investigators that he witnessed the attack on Batongbakal was contrary to human nature, since the natural tendency is to immediately disclose what one knew.[36]

For its part, the Office of the Solicitor General[37] maintained that the prosecution proved beyond reasonable doubt that

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[29] *Id*. at 69.

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

[31] *Id*. at 46-60.

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

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

[34] *Id*. at 25-26.

[35] *Id*. at 53.

[36] *Id*. at 53-56.

[37] *Id*. at 78-95.

Magallano and Tapar conspired to kill and actually killed Batongbakal.[38] It emphasized that the Regional Trial Court's ruling that Pineda was a credible witness should be respected by the Court of Appeals since it was the trial court that personally observed Pimentel's demeanor as a witness. It further pointed out that the supposed inconsistencies adverted to by Magallano and Tapar focused on collateral matters that had no bearing on the nature of the offense.[39]

The Office of the Solicitor General also underscored that Pineda's failure to immediately execute a sworn testimony did not detract from his credibility. It likewise stated that Magallano and Tapar failed to allege that Pineda had an improper motive to testify against them.[40]

In its December 12, 2014 Decision,[41] the Court of Appeals upheld the findings of the Regional Trial Court.

The Court of Appeals gave much weight to the Regional Trial Court's assessment of Pineda's testimony, justifying that the trial court had a front-row seat in observing him and his demeanor while testifying. Hence, it "can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to disbelieve."[42]

As for Pineda's late submission of his sworn statement and failure to aid the victim, the Court of Appeals again concurred with the Regional Trial Court's ruling, and affirmed that different people react differently. Moreover, it held that there was no standard response to a strange or frightening experience such as witnessing a murder. It pointed out that since Pineda explained his delay in reporting the crime to law enforcers, he remained a credible witness.[43]

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[38] *Id*. at 85-88.

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

[40] *Id*. at 87-88.

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

[42] *Id*. at 9.

[43] *Id*. at 11.

Moreover, the Court of Appeals stated that Magallano and Tapar's defense of denial and alibi crumbled in light of Pineda's categorical and straightforward testimony pointing to them as Batongbakal's killers.[44]

The Court of Appeals further upheld the Regional Trial Court's findings that Magallano and Tapar conspired to kill Batongbakal, and that treachery attended his killing.[45]

The dispositive portion of the Court of Appeals Decision read:

> **WHEREFORE**, premises considered, the appeal is **DENIED**. The Decision dated 3 May 2013 of the Regional Trial Court of Malolos[,] Bulacan, Branch 78 in Criminal Case No. 89-M-2006 is hereby **AFFIRMED** with **MODIFICATIONS** in so far as exemplary damages in the amount of ₱30,000.00 is **AWARDED.** All damages awarded herein shall earn interest at the rate of 6% per annum from date of finality of this Decision until fully paid.
>
> **SO ORDERED.**[46] (Emphasis in the original)

On January 12, 2015, Magallano and Tapar filed a Notice of Appeal.[47]

On October 21, 2015, the Court of Appeals elevated the case records to this Court.[48]

This Court, in its December 9, 2015 Resolution,[49] noted the records forwarded by the Court of Appeals. It required accused-appellants Nady F. Magallano, Jr. and Romeo C. Tapar, and plaintiff-appellee People of the Philippines, through the Office of the Solicitor General, to submit their supplemental briefs.Both parties manifested that they would no longer file supplemental briefs.[50]

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

[45] *Id*. at 12-14.

[46] *Id*. at 15.

[47] *Id*. at 16-18.

[48] *Id*. at 1.

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

[50] *Id*. at 23-27 and 28-32.

The sole issue for this Court's resolution is whether or not the prosecution proved accused-appellants' guilt for murder beyond reasonable doubt.

I

Trial courts have the advantage of personally scrutinizing the conduct and attitude of witnesses when giving their testimonies. Thus, "assignment of values to the testimony of a witness is virtually left, almost entirely, to the trial court which has the opportunity to observe the demeanor of the witness on the stand."[51]Due to their unique position, the trial courts' factual findings and appreciation of the witnesses' testimonies are given much respect, moreso when their conclusions are affirmed by the Court of Appeals.[52] Factual findings of trial courts will only be disturbed on appeal if it is convincingly shown that they "overlooked, misapprehended, or misapplied any fact or circumstance of weight and substance."[53]

Here, the Regional Trial Court and the Court of Appeals both found Pineda to be a credible and reliable witness, thus:

> The straightforward, credible[,] and consistent testimony of eyewitness Miguel Angelo Pineda[, Jr.] also proves with certainty that both accused Nady Magallano and Romeo Tapar were the ones responsible for the crime. He was able to narrate in minute details how the crime transpired and the respective participation of the accused. Also, his testimony is reinforced by the findings of the medico[-]legal officer relative to the location of the injuries sustained by the victim resulting in his death. Finally, there was no showing that the witness was impelled by any improper motive to implicate upon the accused the commission of the crime.[54]

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[51] *People v. Harovilla*, 436 Phil. 287, 293 (2002) [Per J. Ynares-Santiago, First Division].

[52] *People v. Musa*, *et al.,* 609 Phil. 396, 410 (2009) [Per J. Brion, Second Division].

[53] *People v. De Jesus*, *et al.,* 695 Phil. 114, 122 (2012) [Per J. Brion, Second Division].

[54] CA *rollo,* pp. 66-67.

Accused-appellants assail Pineda's credibility as a witness because his actions during and after the incident supposedly went against human nature. Moreover, they assert that his testimony was riddled with inconsistencies.

Accused-appellants are mistaken.

This Court has consistently held that there is no standard form of behavior when confronted by a shocking incident.[55] It must be recalled that it was very early in the morning when Pineda was roused from sleep by a screaming woman outside his house. He peered out of his window and saw two (2) men ganging up on a third man who was by then lying helplessly on the ground.Pineda testified that he wanted to help the victim, but his wife, understandably, refused to let him out of their house in fear of a similar harm befalling him. In *People v. Del Prado*:[56]

> There is no standard form of human behavioral response when confronted with a frightful experience.Not every witness to a crime can be expected to act reasonably and conformably with the expectations of mankind, because witnessing a crime is an unusual experience that elicit[s] different reactions from witnesses, and for which no clear-cut, standard form of behavior can be drawn.In the case at bar, it was not even unusual for Hudo's unarmed companions to refrain from risking their lives to defend him when the assailants were brandishing a foot-long knife, a baseball bat[,] and a 6x8-inch stone.[57] (Citations omitted)

Likewise, Pineda's delay in reporting the incident or making a statement before the police, when adequately explained,neither impairs his credibility as a witness nor destroys the probative

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[55] *People v. Amoncio, et al.,* 207 Phil. 591, 597–598 (1983) [Per *J.* Gutierrez, Jr., First Division]; *People v. Radomes,* 225 Phil. 480, 488 (1986) [Per *J.* Gutierrez, Jr., First Division]; *People v. Fuertes,* 299 Phil. 285, 296 (1994) [Per *J.* Regalado, Second Division]; *People v. Del Prado*, 618 Phil. 674, 682 (2009) [Per *J.* Chico-Nazario, Third Division].

[56] 618 Phil. 674 (2009) [Per *J.* Chico-Nazario, Third Division].

[57] *Id.* at 682.

value of his testimony.[58] Further, "there is no rule that the suspect in a crime should be hurriedly named by a witness."[59]

Here, Pineda testified that the day after the victim was killed, a police investigator told him that a woman had already executed a sworn statement, and was willing to testify against accused-appellants. Hence, there was no need for him to execute a similar statement. The lower courts found this as a satisfactory explanation for Pineda's failure to immediately file his sworn statement with the police. This Court sees no reason to reverse their findings.

As for the supposed inconsistencies in Pineda's testimony, *People v. Nelmida, et al.*[60] explained, "An inconsistency, which has nothing to do with the elements of a crime, is not a ground to reverse a conviction."[61] The Court of Appeals thus held:

> As to the imputed inconsistencies in Pineda's testimony, they refer only to minor if not inconsequential or trivial matters which do not impair the credibility of Pineda. In fact, it even signifies that he was neither coached nor was lying on the witness stand. What commands greater importance is that there is no inconsistency in Pineda's complete and vivid narration as far as the principal occurrence and positive identification of accused-appellants as the victim's assailants.[62]

II

Murder is committed when a person is killed under any of the circumstances enumerated under Article 248 of the Revised Penal Code, as amended:[63]

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[58] *People v. Bihag, Jr.*, 396 Phil. 289, 297 (2000) [Per *J.* Quisumbing, *En Banc*].

[59] *Id.*

[60] 694 Phil. 529 (2012) [Per *J.* Perez, *En Banc*].

[61] *Id.* at 559.

[62] *Rollo,* pp. 10-11.

[63] Republic Act No. 7659 (1993), Sec. 6.

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

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

To sustain a conviction under Article 248 of the Revised Penal Code, the prosecution must prove the following beyond reasonable doubt: (1) that a person was killed;(2) that the accused-appellants killed the victim; (3) that the killing was not parricide or infanticide; and (4) that the killing was attended by any of the qualifying circumstances under Article 248.

A few hours after Pineda saw accused-appellants pound Batongbakal with rocks, then cart his body away on their tricycle, the victim's lifeless body was found floating on a creek in Barangay Biclat, San Miguel, Bulacan.[64] The prosecution likewise proved the lack of relationship between the victim and accused-appellants, which satisfies the first and third elements of a conviction under Article 248.

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[64] CA *rollo,* p. 66.

The lower courts both found that the victim's killing was attended by treachery and conspiracy. Article 14(16) of the Revised Penal Code defines treachery:

> ARTICLE 14. *Aggravating Circumstances*. — The following are aggravating circumstances:
>
> . . . .
>
> 16. That the act be committed with treachery (*alevosia*).
>
> 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. (Emphasis in the original)

The Court of Appeals found that treachery attended Batongbakal's killing because accused-appellants continued to hit him even when he was defenseless and unable to strike back. It held:

> In this case, records show that when the victim was already on the ground, appellant Magallano who deliberately armed himself with a piece of wood continued to hit and maul the victim. At this juncture, the victim, being completely helpless and unarmed[,] certainly had no effective opportunity to defend himself and to strike back at his assailant.
>
> Moreover, when the victim was already crawling, appellants further pursued the victim by throwing and hitting the latter with big stones and if only to ensure the success of their criminal design, appellant Tapar also cornered the victim to prevent him from crawling. Clearly, from all indications, appellants consciously and deliberately adopted their mode of attack to ensure the accomplishment of their criminal objective without risk to themselves which the victim might make.[65]

The Court of Appeals is mistaken.

In *People v. Abadies*,[66] this Court held that"[t]he essence of treachery is the swift and unexpected attack on the unarmed

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[65] *Rollo,* pp. 13-14.

[66] 436 Phil. 98 (2002) [Per *J.* Ynares-Santiago, *En Banc*].

victim without the slightest provocation on his part."[67] It further provided that two (2) conditions must be established by the prosecution for a killing to be properly qualified by treachery to murder: "(1) that at the time of the attack, the victim was not in a position to defend himself[;] and (2) that the offender consciously adopted the particular means, method[,] or form of attack employed by him."[68]

The prosecution failed to show the presence of treachery as a qualifying circumstance. Pineda's testimony began when accused-appellants were in the middle of mauling the victim, and there was no testimony to prove that the victim did not provoke them or expect their attack. The prosecution did not present evidence that would show that accused-appellants reflected on and decided on the form of their attack to secure an unfair advantage over the victim.[69] Even when accused-appellants returned after chasing the screaming woman and hit the crawling victim with rocks, treachery is still absent. This is because the second attack was not a surprise, as shown by the victim's attempt to go back to the safety of his own house.

People v. Tigle[70] stated that for treachery to qualify a killing to murder, it must be present at the inception of the attack:

> For treachery to be appreciated, *it must exist at the inception of the attack, and if absent and the attack continues, even if present at the subsequent stage, treachery is not a qualifying or generic aggravating circumstance.* The prosecution must adduce conclusive proof as to the manner in which the altercation started and resulted in the death of the victim. If the prosecution fails to discharge its burden, the crime committed is homicide and not murder.[71] (Emphasis supplied, citation omitted)

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[67] *Id.* at 105.

[68] *Id.*

[69] *Cirera v. People,* 739 Phil. 25, 45 (2014) [Per J. Leonen, Third Division].

[70] 465 Phil. 368 (2004) [Per J. Carpio, *En Banc*].

[71] *Id.* at 382.

The prosecution thus only proved that accused-appellants committed homicide, not murder. Nonetheless, the conspiracy between accused-appellants was proven beyond reasonable doubt.

Article 8 of the Revised Penal Code provides that "[a] conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it." Conspiracy may be proven by direct or circumstantial evidence that show a "common design or purpose"[72] to commit the crime.

In upholding the Regional Trial Court's finding of a conspiracy between accused-appellants, the Court of Appeals noted their concerted and overt acts as evidence of their common purpose to kill and dispose of the victim's body:

> In the case at bar, conspiracy was manifestly shown through the concerted and overt acts of appellants which demonstrated their actual cooperation in the pursuit of a common purpose and design. The trial court correctly observed that conspiracy consisted the following acts of accused-appellants: (1) while Magallano was hitting the victim with a [*dos por dos*], Tapar was watching them; (2) they both chased Cristina Varilla; (3) they both returned and continued mauling the victim; [4] Magallano threw stones at the victim while Tapar cornered the victim to prevent him from crawling; [5] they helped each other in loading the victim into the tricycle; and [6] Magallano drove the tricycle while Tapar stayed with the victim inside the tricycle as they fled from the crime scene.[73] (Citation omitted)

Article 249 of the Revised Penal Code provides a penalty of *reclusion temporal* for the crime of homicide:

> ARTICLE 249. *Homicide*. — Any person who, not falling within the provisions of Article 246 shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal*. (Emphasis in the original)

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[72] *Preferred Home Specialties, Inc. v. Court of Appeals (Seventh Div.),* 514 Phil. 574, 601 (2005) [Per J. Callejo, Sr., Second Division].

[73] *Rollo,* pp. 12–13.

In computing the applicable penalty for crimes, the Indeterminate Sentence Law provides:

SEC. 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an indeterminate sentence *the maximum term of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and to a minimum which shall be within the range of the penalty next lower to that prescribed by the Code for the offense*; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same. (Emphasis supplied)

Hence, the range of penalty[74] imposable on accused-appellants is six (6) years and one (1) day to 12 years of *prision mayor,* as minimum, to 12 years and one (1) day to 20 years of *reclusion temporal,* as maximum. With the absence of any mitigating or aggravating circumstance, the penalty should be imposed in its medium period.[75] Thus, accused-appellants are sentenced to an indeterminate penalty of imprisonment ranging from 12 years

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[74] REV. PEN. CODE, Art. 76 provides:

ARTICLE 76. Legal Period of Duration of Divisible Penalties. — The legal period of duration of divisible penalties shall be considered as divided into three parts, forming three periods, the minimum, the medium, and the maximum in the manner shown in the following table:

. . . . . .

[75] REV. PEN. CODE, Art. 64 provides:

ARTICLE 64. Rules for the Application of Penalties which Contain Three Periods. — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the courts shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.

of *prision mayor*, as minimum, to 17 years and four (4) months of *reclusion temporal*, as maximum.

As to the award of damages, this Court upholds the award of ₱60,000.00, representing the funeral and burial expenses incurred by the victim's heirs, as actual damages. However, the award of ₱75,000.00 as civil indemnity *ex delicto* is modified to ₱50,000.00, while the award of ₱50,000.00 as moral damages is upheld in line with prevailing jurisprudence.[76] Despite the lack of any aggravating circumstance, the award of ₱50,000.00 as exemplary damages is merited by the circumstances of the case to deter similarly reprehensible and outrageous conduct.[77]

WHEREFORE, the December 12, 2014 Decision of the Court of Appeals is **MODIFIED**. Accused-appellants Nady F. Magallano, Jr. and Romeo C. Tapar are found **GUILTY** beyond reasonable doubt of the crime of homicide under Article 249 of the Revised Penal Code.

As the crime was not attended by either mitigating or aggravating circumstances, accused-appellants are **SENTENCED** to suffer the indeterminate penalty of imprisonment of twelve (12) years of *prision mayor*, as minimum, to seventeen (17) years and four (4) months of *reclusion temporal*, as maximum. The period of their preventive imprisonment shall be credited in their favor if they have given their written conformity to abide by the disciplinary rules on convicted prisoners under Article 29 of the Revised Penal Code, as amended.[78]

Accused-appellants are, likewise, **ORDERED** to solidarily indemnify the heirs of Ronnie Batongbakal: (1) Sixty Thousand Pesos (₱60,000.00) as actual damages; (2) Fifty Thousand Pesos (₱50,000.00) as civil indemnity *ex delicto*; (3) Fifty Thousand Pesos (₱50,000.00) as moral damages; and (4) Fifty Thousand

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[76] *People v. Jugueta,* 783 Phil. 806, 852 (2016) [Per J. Peralta, *En Banc*].

[77] *Id.* at 832.

[78] Republic Act No. 6127 (1970), Sec. 1.

Pesos (₱50,000.00) as exemplary damages. All damages awarded shall be subject to the rate of six percent (6%) per annum from the finality of this Decision until its full satisfaction.[79]

SO ORDERED.

Peralta (*Chairperson*), *Gesmundo, Reyes, J. Jr.,* and *Hernando, JJ.,* concur.

THIRD DIVISION

[G.R. No. 226991. December 10, 2018]

ERLINDA ESCOLANO *y* IGNACIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; A QUESTION OF FACT CANNOT BE GENERALLY ENTERTAINED BY THE SUPREME COURT; EXCEPTIONS, ENUMERATED; WHERE THE JUDGMENT IS BASED ON MISAPPREHENSION OF FACTS, THE COURT DEEMS IT PROPER TO TACKLE THE FACTUAL QUESTION PRESENTED.— Well settled is the rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on *certiorari* is limited to reviewing errors of law that may have been committed by the lower courts. x x x Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the

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[79] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per J. Peralta, *En Banc*].

findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. Here, one of the exceptions exists – that the judgment is based on misapprehension of facts. To finally resolve the factual dispute, the Court deems it proper to tackle the factual question presented.

2. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (RA 7610); SECTION 10(a) IN RELATION TO SECTION 3(b) REQUIRES AN INTENTION TO DEBASE, DEGRADE, OR DEMEAN THE INTRINSIC WORTH OF THE CHILD VICTIM; DEBASEMENT DEGRADATION, AND DEMEAN, DEFINED RESPECTIVELY.— Sec. 10(a) of R.A. No. 7610, in relation thereto, Sec. 3(b) of the same law, highlights that in child abuse, the act by deeds or words must debase, degrade or demean the intrinsic worth and dignity of a child as a human being. *Debasement* is defined as the act of reducing the value, quality, or purity of something; *degradation*, on the other hand, is a lessening of a person's or thing's character or quality; while *demean* means to lower in status, condition, reputation or character. When this element of intent to debase, degrade or demean is present, the accused shall be convicted of violating Sec. 10(a) of R.A. No. 7610, which carries a heavier penalty compared to that of slight physical injuries or other light threats under the RPC.

3. ID.; ID.; ID.; IN THE ABSENCE OF EVIDENCE TO PROVE PETITIONER'S INTENTION TO DEBASE, DEGRADE OR DEMEAN THE CHILD VICTIM, SHE CANNOT BE HELD CRIMINALLY LIABLE UNDER SECTION 10(a) OF RA 7610.— In this case, the Court finds that the act of petitioner in shouting invectives against private complainants does not constitute child abuse under the foregoing provisions of R.A. No. 7610. Petitioner had no intention to debase the intrinsic worth and dignity of the child. It was rather an act carelessly done out of anger. The circumstances surrounding the incident

proved that petitioner's act of uttering invectives against the minors AAA, BBB, and CCC was done in the heat of anger. It is clear that petitioner's utterances against private complainants were made because there was provocation from the latter. x x x [T]he prosecution failed to present any iota of evidence to prove petitioner's intention to debase, degrade or demean the child victims. The record does not show that petitioner's act of threatening the private complainants was intended to place the latter in an embarrassing and shameful situation before the public. There was no indication that petitioner had any specific intent to humiliate AAA, BBB, and CCC; her threats resulted from the private complainants' vexation. Verily, as the prosecution failed to specify any intent to debase the "intrinsic worth and dignity" of complainants as human beings, or that she had intended to humiliate or embarrass AAA, BBB, and CCC; thus, petitioner cannot be held criminally liable under Sec. 10(a) of R.A. No. 7610.

4. ID.; REVISED PENAL CODE (RPC); OTHER LIGHT THREATS, COMMITTED; PETITIONER'S UTTERANCES AND INVECTIVES MADE IN THE HEAT OF HER ANGER TO STOP PRIVATE COMPLAINANTS FROM THROWING KETCHUP SACHETS AT HER CONSTITUTES OTHER LIGHT THREATS; PENALTY.— [T]hough the prosecution failed to prove the intent to debase, degrade or demean the intrinsic worth of private complainants, petitioner still uttered insults and invectives at them. Specifically, petitioner's statement "*Putang ina ninyo, gago kayo, wala kayong pinag-aralan, wala kayong utak, subukan ninyong bumaba dito, pakakawalan ko ang aso ko, pakakagat ko kayo sa aso ko,*"were directed against private complainants. In this regard, AAA testified that this particular utterance from petitioner was scary. DDD also corroborated said claim that private complainants were too traumatized even to go downstairs because of their fear that petitioner might release her dog to chase and bite them. However, it must also be emphasized that, as discussed, petitioner's utterances were made in the heat of her anger because private complainants had thrown ketchup sachets at her. Petitioner merely intended that private complainants stop their rude behavior. Thus, petitioner committed the crime of Other Light Threats under Article 285(2) of the RPC[.] x x x In other light threats, the wrong threatened does not amount to a crime and there is no condition. Here, the threat made by petitioner of releasing her dogs to chase

private complainants was expressed in the heat of anger. Petitioner was merely trying to make private complainants stop throwing ketchup sachets at her. However, instead of doing so, private complainants still continued to throw ketchup sachets against petitioner, which infuriated the latter causing her to utter invectives against private complainants. Given the surrounding circumstances, the offense committed falls under Article 285, par. 2 (other light threats) since: (1) threat does not amount to a crime, and (2) the prosecution did not establish that petitioner persisted in the idea involved in her threat. Assuming *arguendo* that private complainants were also affected and distressed by the threat made by petitioner against DDD in brandishing a bolo, such act is still within the ambit of Other Light Threats under Article 285 (1). Insofar as private complainants are concerned, petitioner committed an act of threatening their mother with a weapon in a quarrel. As discussed earlier, the present case is only concerned with the threats that affected private complainants; it should not refer to the threats specifically aimed towards DDD. The criminal complaint for grave threats against petitioner filed by DDD should be resolved in a separate action. Thus, for threatening private complainants, petitioner is criminally liable for Other Light Threats under Article 285 of the Revised Penal Code. She must suffer the straight penalty of imprisonment of 10 days of *arresto menor* and to pay the costs of suit.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This appeal by certiorari[1] seeks to reverse and set aside the June 15, 2016 Decision[2] and August 12, 2016

[1] *Rollo*, pp. 12-35.

[2] *Id*. at 40-59; penned by Associate Justice Remedios A. Salazar-Fernando, and concurred in by Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting.

Resolution[3] of the Court of Appeals *(CA)* in CA-G.R. CR. No. 37239. The CA affirmed the December 5, 2014 Decision[4] of the Regional Trial Court of Quezon City, Branch 94 (*RTC*), finding Erlinda Escolano *y* Ignacio *(petitioner)* guilty beyond reasonable doubt of violation of Section 10(a) of Republic Act (*R.A.*) No. 7610, otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

Antecedents

In an Information, dated January 13, 2011, petitioner was charged with violation of Sec.10(a) of R.A. No. 7610. The accusatory portion of the information states:

That on or about the 30th day of May 2009 in [XXX],[5] Philippines, the above-named accused, did then and there wilfully, unlawfully, and feloniously commit an act of child abuse/cruelty against [AAA],[6] 11 years old; [BBB], 9 years old; [CCC], 8 years old, all minors, by then and there making hacking gestures with a bolo and uttering insults and invectives at them, which act debases, demeans and degrades the intrinsic worth and dignity of the said minors as human being[s], to the damage and prejudice of the said offended parties.

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[3] *Id*. at 61-62.

[4] CA *rollo*, pp. 51-56; penned by Presiding Judge Roslyn M. Rabara-Tria.

[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)*.

CONTRARY TO LAW.[7]

Upon arraignment on February 28, 2011, petitioner pleaded not guilty to the offense charged. Thereafter, trial on the merits ensued.

Version of the Prosecution

The prosecution presented the following witnesses: AAA, BBB, and CCC, private complainants; DDD,[8] mother of complainants; and Barangay Peace and Security Officer Wilfredo Lim *(BPSO Lim)*. Their testimony tended to establish the following:

AAA testified that he was 11 years old at the time of the incident; that on May 29, 2009, at around eleven o'clock in the morning, he and his two brothers: BBB, 9 years old, and CCC, 8 years old, were flying paper planes from the third floor of their house when the planes landed in front of the house of Perlin Escolano (*Perlin*),[9] the daughter of petitioner. Perlin uttered "*putang ina*" directed at CCC.

The following day, the siblings saw Perlin in front of their house. Private complainants got three ketchup sachets from their refrigerator and threw these at her. However, Perlin went inside their house so it was petitioner who was twice hit instead by the sachets. Petitioner exclaimed, "*Putang ina ninyo, gago kayo, wala kayong pinag-aralan, wala kayong utak, subukan ninyong bumaba dito, pakakawalan ko ang aso*

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[7] *Rollo*, pp. 85-86.

[8] 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)*.

[9] Also referred to as "Ferlin Escolano" which appears in some parts of the records, particulary, in *Kontra Salaysay* (Records, p. 128); *Testigo* (Records, p. 129); Formal Offer of Evidence (Records, pp. 135-136); and RTC Decision (Records, p. 144).

ko, pakakagat ko kayo sa aso ko."[10] Private complainants reported the incident to their mother DDD when she arrived from the market.

When DDD confronted petitioner, the latter uttered "*nagpuputa ka, puta-puta ka.*" Petitioner then went inside her house, came out with a bolo, and threatened DDD, "*walang demanda demanda sa akin, basta bumaba kayo dito lahat, papatayin ko kayong lahat. Tatagain ko kayo, papatayin ko kayo.*" The incident left private complainants terrified. They only went downstairs when they had a companion; and they no longer played as they usually did. BBB and CCC corroborated AAA's testimony that they threw ketchup sachets at Perlin because she uttered bad words against CCC.

On the other hand, DDD testified that on May 30, 2009, private complainants told her about the incident, thus, she confronted petitioner. The latter pointed her finger at her and uttered, "*Hoy, putang ina mo,*" got a bolo, and yelled "*Kaya ninyo ito? Pagtatatagain ko kayo*."[11] Thereafter, DDD noticed a change in the *behavior* of private complainants as they no longer played downstairs and they even transferred residence because of the incident. DDD averred that her children were traumatized, and they were in constant fear because of petitioner's threat.

BPSO Lim corroborated the testimony of private complainants that he heard petitioner utter, "*Putang-ina ninyo, walang dimandemanda, papatayin ko na lang kayo, lalaban na lang akong patayan*." He tried to pacify the parties. He stated that petitioner was being held by his co-BPSO Rolando Estrella as she was shouting invectives while brandishing a bolo. After the incident, he brought petitioner inside the latter's house and the bolo was confiscated by his fellow BPSO.

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[10] *Rollo*, p. 42; TSN, September 5, 2011, p. 14; and TSN, October 25, 2011, p. 4.

[11] *Id*. at 44; TSN, November 12, 2012, pp. 12-13.

Version of the Defense

The defense offered the testimonies of Rosario Bondoc (*Bondoc*), Rodolfo Niebres (*Niebres*), and petitioner.

Bondoc testified that petitioner and DDD had been neighbors since 1992. Sometime on May 30, 2009, she saw petitioner sweeping her house premises. Then, she heard petitioner warning private complainants that she would report them to their mother DDD. Thereafter, DDD approached petitioner's house yelling at her, "*Poñeta ka, putang ina mo, bobo, wala kang pinag-aralan.*" Bondoc also said that a BPSO accompanied DDD to her house to pacify her since DDD had started the quarrel. Bondoc also averred that petitioner did not brandish a bolo against DDD and private complainants. She added that the parties had a previous disagreement or misunderstanding involving DDD's construction of a high-rise home.

In his testimony, Niebres averred that at around eleven o'clock in the morning of May 30, 2009, he heard petitioner arguing only with DDD and not with private complainants; that he did not see the petitioner brandishing a bolo; and that petitioner merely lightly reprimanded private complainants for throwing stones that hit petitioner's roof.

Petitioner, on her part, testified that in the morning of May 30, 2009, while she was sitting beside the gate of her house, AAA threw a sachet of ketchup at her. She scolded AAA saying, "*Huwag kang mamamato*." Instead of desisting, AAA and his brothers BBB and CCC continued to throw ketchup sachets. Thereafter, AAA shouted, "*Linda, putang ina mo, wala kang kwenta*." Petitioner warned that she would report them to DDD, their mother. DDD suddenly arrived uttering invectives and pointing her finger at petitioner while uttering, "*Linda, putang ina mo! Bobo ka! Wala kang pinag-aralan!*"

The RTC Ruling

In its December 5, 2014 decision, the RTC found petitioner guilty of violating Sec.10(a) of R.A.No. 7610. It gave credence to the clear testimony of private complainants. The RTC noted

the gravity of petitioner's act of threatening private complainants by wielding and making hacking gestures with a bolo while uttering invectives. It took into account the negative effect of petitioner's act that resulted in private complainants' transfer of residence because they were in constant fear. The dispositive portion of the RTC decision reads:

> **WHEREFORE**, premises considered, this court finds accused Erlinda Escolano *y* Ignacio guilty beyond reasonable doubt of the crime of Violation of Section 10(a) of Republic Act No. 7610 otherwise known as the Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act and she is hereby sentenced to suffer an indeterminate penalty of Four (4) years, Nine (9) months and Eleven (11) days of *prision correccional* as minimum, to Six (6) years and One (1) day of *prision mayor* as maximum and to pay the costs.
>
> SO ORDERED.[12]

Aggrieved, petitioner filed an appeal before the CA. On February 7, 2011, the RTC issued a Commitment Order[13] against petitioner; hence, she was imprisoned pending appeal.

The CA Ruling

In its June 15, 2016 decision, the CA affirmed the ruling of the RTC. It held that the acts of petitioner caused untoward repercussions in the life and dignity of private complainants. The incident made hostile the environment for private complainants where they could no longer freely live and enjoy their childhood and were forced to move out. Private complainants were even deprived of their chance to play games and enjoy leisure time within their own home.[14] The CA ruled in this wise:

> **WHEREFORE,** premises considered, the instant appeal is **DENIED**. The assailed Decision dated December 5, 2014 of the RTC,

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

[13] Records, p. 27.

[14] *Rollo*, p. 57.

Branch 94, Quezon City in Criminal Case No. Q-11-168269 is hereby **AFFIRMED.**

SO ORDERED.[15]

Hence, this petition.

ISSUE

WHETHER THE CA ERRED IN AFFIRMING PETITIONER'S CONVICTION OF VIOLATION OF SECTION 10(A) OF R.A. NO. 7610.

Petitioner averred that private complainants' inconsistencies could only have come from prevaricated testimonies and judicial admissions which engender reasonable doubt in her favor.[16] Also, the bolo allegedly used by petitioner to make hacking gestures while uttering invectives against private complainants should be disregarded in light of the unrelenting disavowals in the testimonies of AAA, BBB, and CCC.[17] Aside from the point that the existence of the bolo was not established, petitioner averred that the testimony of DDD had no probative value to support the alleged threatening remarks against her children. The testimony of DDD that she did not exactly hear the statements made by the petitioner and the "*sumbong*" of her children constitute hearsay evidence.[18] Petitioner also argued that the purported hacking gesture with a bolo was actually geared towards DDD.[19]

In its Comment,[20] dated March 22, 2017, the Office of the Solicitor General *(OSG)*averred that the testimonies of the prosecution witnesses are consistent on all material points showing

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[15] *Id*. at 59.

[16] *Id*. at 20.

[17] *Id*.

[18] *Id*. at 27.

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

[20] *Id*. at 127-132.

that petitioner's words, demeanor, and actions towards them constitute the crime as charged. The OSG maintained that the incident caused the children to become frantic due to such threat; and it affected them so much that they had to move as far away as possible from the petitioner. Further, the OSG posits that the non-presentation of the "bolo" used by petitioner to threaten the children does not offset the categorical statements of the prosecution witnesses regarding its existence.[21]

THE COURT'S RULING

The petition is partially meritorious.

Generally, a question of fact cannot be entertained by the Court.

Petitioner essentially raises the issue of whether the testimonies of the prosecution's witnesses were consistent and credible. The question posited is evidently factual because it requires an examination of the evidence on record. Well settled is the rule that the Supreme Court is not a trier of facts. The function of the Court in petitions for review on certiorari is limited to reviewing errors of law that may have been committed by the lower courts.[22]

Exceptions

Nevertheless, the Court has enumerated several exceptions to this rule: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary

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[21] *Id.* at 129.

[22] *Gepulle-Garbo v. Spouses Garabato, et al.,* 750 Phil. 846, 854-855 (2015).

to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.[23]

Here, one of the exceptions exists – that the judgment is based on misapprehension of facts. To finally resolve the factual dispute, the Court deems it proper to tackle the factual question presented.

Section 10(a) of R.A. No. 7610 requires an intent to debase, degrade, or demean the intrinsic worth of a child victim.

Sec. 10(a), Article VI of R.A. No. 7610 states:

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and other Conditions Prejudicial to the Child's Development. —

(a) Any person who shall commit any other acts of **child abuse**, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. (Emphasis supplied)

On the other hand, child abuse is defined by Section 3(b) of Republic Act No. 7610, as follows:

Section 3. Definition of terms. —

x x x x x x x x x

b) "Child Abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

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[23] *Carbonell v. Carbonell-Mendes*,762 Phil. 529, 537 (2015).

> **(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;**
>
> (3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or
>
> (4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.[24] (Emphasis supplied)

Verily, Sec. 10(a) of R.A. No. 7610, in relation thereto, Sec. 3(b) of the same law, highlights that in child abuse, the act by deeds or words must debase, degrade or demean the intrinsic worth and dignity of a child as a human being. *Debasement* is defined as the act of reducing the value, quality, or purity of something; *degradation*, on the other hand, is a lessening of a person's or thing's character or quality; while *demean* means to lower in status, condition, reputationor character.[25]

When this element of intent to debase, degrade or demean is present, the accused shall be convicted of violating Sec. 10(a) of R.A. No. 7610, which carries a heavier penalty compared to that of slight physical injuries or other light threats under the RPC.[26]

In *Bongalon v. People*,[27] the petitioner therein was charged under Sec. 10(a) of R.A. No. 7610 because he struck and

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[24] Section 3(b), Article I, *Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act,* Republic Act No. 7610, June 17, 1992.

[25] *Jabalde v. People*, 787 Phil. 255, 269-270 (2016), citing *Black's Law Dictionary* 430 (8th ed. 2004) and *Webster's Third New International Dictionary* 599 (1986).

[26] Under Sec. 10(a) of R.A. No. 7610, the offender shall suffer the penalty of *prision mayor* in its minimum period; while under the RPC, if the offender commits slight physical injuries or other light threats, he shall suffer the penalty of *arresto menor*.

[27] 707 Phil. 11 (2013).

slapped the face of a minor, done at the spur of the moment and in the heat of anger. The Court ruled that only when the accused intends to debase, degrade or demean the intrinsic worth of the child as a human being should the act be punished with child abuse under Sec. 10(a) of R.A. No. 7610. Otherwise, the act must be punished for physical injuries under the RPC. It was emphasized therein that the records must establish that there must be a specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being,being the essential element in child abuse.[28] Since the prosecution failed to establish the said intent, the petitioner in that case was convicted only of slight physical injuries.

Similarly, in *Jabalde v. People*,[29] the petitioner therein slapped, struck, and choked a minor as a result of the former's emotional rage. The Court declared that the absence of any intention to debase, degrade or demean the intrinsic worth of a child victim, the petitioner's act was merely slight physical injuries punishable under the RPC since there is no evidence of actual incapacity of the offended party for labor or of the required medical attendance. Underscored is that the essential element of intent must be established with the prescribed degree of proof required for a successful prosecution under Sec. 10(a) of R.A. No. 7610.[30]

In contrast, in *Lucido v. People*,[31] the petitioner strangled, severely pinched, and beat an eight-year-old child, causing her to limp. The Court held that these abusive acts are intrinsically cruel and excessive as they impair the child's dignity and worth as a human being and infringe upon her right to grow up in a safe, wholesome, and harmonious place. It was also highlighted that these abusive acts are extreme measures of punishment not commensurate with the discipline of an eight-year-old child.

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[28] See *Id*. at 21.

[29] *Supra* note 25.

[30] See *Id*. at 271.

[31] G.R. No. 217764, August 7, 2017.

In this case, the Court finds that the act of petitioner in shouting invectives against private complainants does not constitute child abuse under the foregoing provisions of R.A. No. 7610. Petitioner had no intention to debase the intrinsic worth and dignity of the child. It was rather an act carelessly done out of anger. The circumstances surrounding the incident proved that petitioner's act of uttering invectives against the minors AAA, BBB, and CCC was done in the heat of anger.

It is clear that petitioner's utterances against private complainants were made because there was provocation from the latter. AAA, BBB, and CCC were throwing ketchup sachets at petitioner's daughter Perlin. The latter evaded this by getting inside their house,so that private complainants hit petitioner on the head and feet, instead. The complainants continued to throw these sachets which angered petitioner. Evidently, petitioner's statements "*bobo, walang utak, putang ina*" and the threat to "*ipahabol*" and "*ipakagat sa aso*" were all said out of frustration or annoyance. Petitioner merely intended that the children stop their unruly behavior.

On the other hand, the prosecution failed to present any iota of evidence to prove petitioner's intention to debase, degrade or demean the child victims. The record does not show that petitioner's act of threatening the private complainants was intended to place the latter in an embarrassing and shameful situation before the public. There was no indication that petitioner had any specific intent to humiliate AAA, BBB, and CCC; her threats resulted from the private complainants' vexation.

Verily, as the prosecution failed to specify any intent to debase the "intrinsic worth and dignity" of complainants as human beings, or that she had intended to humiliate or embarrass AAA, BBB, and CCC; thus, petitioner cannot be held criminally liable under Sec. 10(a) of R.A. No. 7610.[32]

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[32] *Jabalde v. People, supra* note 25, at 269-270.

The subsequent profanities and alleged hacking gestures were not directed against private complainants.

When private complainants threw ketchup sachets at petitioner, it was only at that moment that she hurled invectives against them, particularly, "*bobo, walang utak, putang ina,*" and "*ipahabol at ipakagat sa aso*."

After petitioner had uttered those words, it was not shown that she continued her slurs. Private complainants reported the incident to their mother DDD when she arrived from the market. It was only when DDD confronted petitioner that the latter uttered profanities, particularly, "*putang ina mo*" and made hacking gestures with a bolo.

It must also be emphasized that the alleged hacking gestures and the expression "*putang ina mo*" were not specifically directed to the children; rather, these were made against DDD, their mother. DDD testified as follows:

Q: I am asking when this case was referred to the Barangay, I was asking what action did the Barangay do?

A: *Nag-statement po ako doon na ganoon ang nangyari sa aking mga anak.*

Q: What specific action or what specific act did the barangay do?

FISCAL

May we know the materiality because the Grave Threat[s] is not connected with this case, your honor?

COUNSEL

I am trying to prove in the case of Grave Threat[s] the accusation of the private complainant that the accused brandished a knife against her in that case. She is telling here that the bolo was brandished towards the children which is totally inconsistent with her claim in the case of Grave Threat[s]. We are trying to prove that if the hacking gesture was indeed made by Escolano, it was directed against this witness, the mother and not against the children and that is also the allegation of the witness in the other case.

COURT

All right, witness may answer.

COUNSEL

Madam witness, what specific act did the accused do which comprised your charge or which was the subject matter of the case for Grave Threat[s] which you filed against her?

WITNESS

"Acts ng bolo *sa aming mag-iina, nandoon kaming lahat mag-iina. Bumaba ako ng magsumbong sila sa akin, galit na galit siya*." I heard that the accused was uttering invective words to my children together with me, and then, the accused went inside her house and took a bolo and when she went out from her house, she was holding a bolo and uttering the words "*kaya ninyo ito, pagtatatagain ko kayo.*"

Q: But you will agree with me, Madam Witness, that during that point in time, the accused was already quarrelling with you. In fact, prior to that hacking incident, based from your Affidavit or *Sinumpaang Salaysay*, she told you "*putang ina mo,*" is it not and she is referring to you, and when she mentioned that, she was quarrelling with you and not to your children, is it not?

A: "*Lahat kami, inaaway niya* at that time."

Q: That's what you felt but the fact was that the word is directed to you only?

A: "*Kayo*." That is "*Kayo, marami. Kayo. Pagtatatagain ko kayo. Kaya ninyo ito. Bumaba kayo dito*."

Q: But it was you to whom she was talking?

FISCAL

She said "*kayo*." Already answered. We leave that to the appreciation of the Court.

COUNSEL

Q: When she mentioned "*putang ina mo*", to whom was she referring?

A: "Ako."

Q: And during that time, she was stating that word to you?
A: Yes, sir.[33] (Emphasis supplied)

x x x x x x x x x

Also, the testimony of AAA revealed that the statements made by petitioner were indeed directed to his mother DDD, *viz.:*

Q: Aside from telling you that she will release the dog, what else did she do?
A: After I told my mother that, my mother told us that she will confront Erlinda Escolano. Then, "dinuro po ni Erlinda Escolano iyong Nanay ko po, tapos sabi niya, nagpuputa ka, puta-puta ka, tapos binabaan po siya sabi niya wala kayong mga utak kasi ikaw nagpuputa ka, puta-puta ka."

COURT
"Kanino sinabi iyon?"
A: "Sa Nanay ko. Tapos pumasok ng bahay si Erlinda Escolano, tapos pagkalabas niya, meron siyang itak po."[34] (Emphasis supplied)

The testimonies of the prosecution witnesses reveal that the alleged hacking gestures and profanities subsequently hurled by petitioner were not directed against private complainants but towards DDD. Petitioner's ensuing outbursts were due to DDD's confronting her. AAA clearly testified that the threats stated by petitioner were aimed towards DDD.

Notably, DDD filed a separate criminal complaint for grave threats against petitioner because petitioner brandished a bolo against her. The present case is only concerned with the acts committed by petitioner against private complainants; and not those committed against DDD which purportedly constituted grave threats.

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[33] TSN, November 12, 2012, pp. 11-14.

[34] TSN, September 5, 2011, p. 15.

Further, DDD conceded that the profanity hurled by petitioner was directed at her. The expression "*putang ina mo*" is a common enough utterance in the dialect that is often employed, not really to slander but rather to express anger or displeasure. In fact, more often, it is just an expletive that punctuates one's expression of profanity.[35]

Thus, it cannot be held with moral certainty that the purported hacking gestures and profanities subsequently hurled by petitioner were intended for private complainants.

Petitioner committed the crime of other light threats.

Nevertheless, though the prosecution failed to prove the intent to debase, degrade or demean the intrinsic worth of private complainants, petitioner still uttered insults and invectives at them. Specifically, petitioner's statement"*Putang ina ninyo, gago kayo, wala kayong pinag-aralan, wala kayong utak, subukan ninyong bumaba dito, pakakawalan ko ang aso ko, pakakagat ko kayo sa aso ko,*"were directed against private complainants. In this regard, AAA testified that this particular utterance from petitioner was scary.[36] DDD also corroborated said claim that private complainants were too traumatized even to go downstairs because of their fear that petitioner might release her dog to chase and bite them.[37]

However, it must also be emphasized that, as discussed, petitioner's utterances were made in the heat of her anger because private complainants had thrown ketchup sachets at her. Petitioner merely intended that private complainants stop their rude behavior. Thus, petitioner committed the crime of Other Light Threats under Article 285(2) of the RPC, to wit:

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[35] *Pader v. People,* 381 Phil. 932, 936 (2000), citing *Reyes v. People,*137 Phil. 112, 120 (1969).

[36] *Rollo,* p. 50.

[37] *Id*. at 57.

Art. 285. Other light threats. — The penalty of *arresto menor* in its minimum period or a fine not exceeding 200 pesos shall be imposed upon:

1. Any person who, without being included in the provisions of the next preceding article, shall threaten another with a weapon or draw such weapon in a quarrel, unless it be in lawful self-defense.

2. **Any person who, in the heat of anger, shall orally threaten another with some harm not constituting a crime, and who by subsequent acts show that he did not persist in the idea involved in his threat, provided that the circumstances of the offense shall not bring it within the provisions of Article 282 of this Code.** (Emphasis supplied)

x x x x x x x x x

In grave threats, the wrong threatened to be committed amounts to a crime which may or may not be accompanied by a condition. In light threats, the wrong threatened does not amount to a crime but is always accompanied by a condition. In other light threats, the wrong threatened does not amount to a crime and there is no condition.[38]

Here, the threat made by petitioner of releasing her dogs to chase private complainants was expressed in the heat of anger. Petitioner was merely trying to make private complainants stop throwing ketchup sachets at her. However, instead of doing so, private complainants still continued to throw ketchup sachets against petitioner, which infuriated the latter causing her to utter invectives against private complainants.

Given the surrounding circumstances, the offense committed falls under Article 285, par. 2 (other light threats) since: (1) threat does not amount to a crime, and (2) the prosecution did not establish that petitioner persisted in the idea involved in her threat.[39]

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[38] *Caluag v. People*, 599 Phil. 717, 727 (2009).

[39] *Id*. at 728.

Assuming *arguendo* that private complainants were also affected and distressed by the threat made by petitioner against DDD in brandishing a bolo, such act is still within the ambit of Other Light Threats under Article 285 (1). Insofar as private complainants are concerned, petitioner committed an act of threatening their mother with a weapon in a quarrel. As discussed earlier, the present case is only concerned with the threats that affected private complainants; it should not refer to the threats specifically aimed towards DDD. The criminal complaint for grave threats against petitioner filed by DDD should be resolved in a separate action.

Thus, for threatening private complainants, petitioner is criminally liable for Other Light Threats under Article 285 of the Revised Penal Code. She must suffer the straight penalty of imprisonment of 10 days of *arresto menor* and to pay the costs of suit.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The June 15, 2016 Decision and August 12, 2016 Resolution of the Court of Appeals in CA-G.R. CR. No. 37239 are **AFFIRMED with MODIFICATION**, that Erlinda Escolano *y* Ignacio is **GUILTY** of Other Light Threats under Article 285 of the Revised Penal Code. She is hereby sentenced to suffer the straight penalty of imprisonment of ten (10) days of *arresto menor* and to pay the costs of suit.

SO ORDERED.

Peralta (*Chairperson*), *Leonen, Reyes, J. Jr.,* and *Hernando, JJ.,* concur.

THIRD DIVISION

[G.R. No. 229071. December 10, 2018]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EANNA O'COCHLAIN,** *accused-appellant.*

SYLLABUS

1. **POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES; EXCEPTIONS; SEARCH AND SEIZURE OF AN ILLEGAL DRUG DURING A ROUTINE AIRPORT INSPECTION MADE PURSUANT TO THE AVIATION SECURITY PROCEDURES, SUSTAINED; CASE AT BAR.—** The search and seizure of an illegal drug during a routine airport inspection made pursuant to the aviation security procedures has been sustained by this Court in a number of cases. x x x Thus, while the right of the people to be secure in their persons, houses, papers, and effects against **unreasonable** searches and seizures is guaranteed by Section 2, Article III of the 1987 Constitution, a routine security check being conducted in air and sea ports has been a recognized exception. This is in addition to a string of jurisprudence ruling that search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incidental to a lawful arrest; (2) search of a moving motor vehicle; (3) customs search; (4) seizure of evidence in "plain view"; (5) consented warrantless search; (6) "stop and frisk" search; and (7) exigent and emergency circumstance.

2. **ID.; ID.; ID.; ID.; AIRPORT ADMINISTRATIVE SEARCHES ARE USED FOR SCREENING LUGGAGE AND PASSENGERS FOR WEAPONS OR EXPLOSIVES ONLY AND REMAIN A VALID ADMINISTRATIVE SEARCH SO LONG AS THE SCOPE OF THE ADMINISTRATIVE SEARCH EXCEPTION IS NOT EXCEEDED; CASE AT BAR.—** The constitutional bounds of an airport administrative search require that the individual screener's actions be no more intrusive than necessary to determine the existence or absence of explosives that could result in harm to the passengers and aircraft. The search cannot also serve unrelated law enforcement purposes as it effectively

transforms a limited check for weapons and explosives into a general search for evidence of crime, substantially eroding the privacy rights of passengers who travel through the system. As in other exceptions to the search warrant requirement, the screening program must not turn into a vehicle for warrantless searches for evidence of crime. It is improper that the search be tainted by "general law enforcement objectives" such as uncovering contraband unrelated to that purpose or evidence of unrelated crimes or evidencing general criminal activity or a desire to detect "evidence of ordinary criminal wrongdoing." x x x Hence, an airport search remains a valid administrative search only so long as the scope of the administrative search exception is not exceeded; "once a search is conducted for a criminal investigatory purpose, it can no longer be justified under an administrative search rationale." Where an action is taken that cannot serve the administrative purpose, either because the threat necessitating the administrative search has been dismissed or because the action is simply unrelated to the administrative goal, the action clearly exceeds the scope of the permissible search. To the extent that airport administrative searches are used for purposes other than screening luggage and passengers for weapons or explosives, they fall outside the rationale by which they have been approved as an exception to the warrant requirement, and the evidence obtained during such a search should be excluded.

3. **ID.; ID.; ID.; ID.; AIRPORT SECURITY SEARCH MUST BE REASONABLE; REQUISITES OF REASONABLENESS; RIGHT TO ABANDON AIR TRAVEL MUST BE EXERCISED PRIOR TO COMMENCING THE SCREENING PROCEDURES.—** [A]n airport security search is considered as reasonable if: (1) the search is no more extensive or intensive than necessary, in light of current technology, to satisfy the administrative need that justifies it, that is to detect the presence of weapons or explosives; (2) the search is confined in good faith to that purpose; and (3) a potential passenger may avoid the search by choosing not to fly. x x x According to *United States v. Aukai*, US case law had erroneously suggested that the reasonableness of airport screening searches is dependent upon the passenger's consent, either ongoing consent or irrevocable implied consent. x x x Currently, US courts are of the view that the constitutionality of a screening search does

not depend on the passenger's consent once he enters the secured area of an airport. The requirement in *Davis* of allowing passengers to avoid the search by electing not to fly does not extend to one who has already submitted his luggage for an x-ray scan. If a potential passenger chooses to avoid a search, he must elect not to fly *before* placing his baggage on the x-ray machine's conveyor belt. The right to abandon air travel must be exercised *prior to* commencing the screening procedures. Any other rule would allow potential hijackers to leave whenever detection seemed imminent and permit them to try again another day.

4. ID.; ID.; ID.; ID.; AIRPORT SEARCH IS REASONABLE WHEN LIMITED IN SCOPE TO THE OBJECT OF THE ANTI-HIJACKING PROGRAM, NOT THE WAR ON ILLEGAL DRUGS; CASE AT BAR.— Among others, the OTS has to enforce R.A. No. 6235 or the Anti-Hijacking Law. It provides that an airline passenger and his hand-carried luggage are subject to search for, and seizure of, prohibited materials or substances and that it is unlawful for any person, natural or juridical, to ship, load or carry in any passenger aircraft, operating as a public utility within the Philippines, any explosive, flammable, corrosive or poisonous substance or material. It is in the context of air safety-related justifications, therefore, that routine airport security searches and seizures are considered as permissible under Section 2, Article III of the Constitution. In this case, what was seized from Eanna were two rolled sticks of dried marijuana leaves. Obviously, they are not explosive, flammable, corrosive or poisonous substances or materials, or dangerous elements or devices that may be used to commit hijacking or acts of terrorism. More importantly, the illegal drugs were discovered only during the final security checkpoint, after a pat down search was conducted by SSO Suguitan, who did not act based on personal knowledge but merely relied on an information given by CSI Tamayo that Eanna was possibly in possession of marijuana. x x x Airport search is reasonable when limited in scope to the object of the Anti-Hijacking program, not the war on illegal drugs. Unlike a routine search where a prohibited drug was found by chance, a search on the person of the passenger or on his personal belongings in a deliberate and conscious effort to discover an illegal drug is not authorized under the exception to the warrant and probable cause

requirement. The Court is not empowered to suspend constitutional guarantees so that the government may more effectively wage a "war on drugs." If that war is to be fought, those who fight it must respect the rights of individuals, whether or not those individuals are suspected of having committed a crime.

5. ID.; ID.; ID.; A PERSONAL RIGHT WHICH MAY BE WAIVED; A PERSON'S CONSENT TO A WARRANTLESS SEARCH, IN ORDER TO BE VOLUNTARY, MUST BE UNEQUIVOCAL, SPECIFIC AND INTELLIGENTLY GIVEN, AND UNCONTAMINATED BY ANY DURESS OR COERCION; CASE AT BAR.— The constitutional immunity against unreasonable searches and seizures is a personal right which may be waived. A person may voluntarily consent to have government officials conduct a search or seizure that would otherwise be barred by the Constitution. Like the Fourth Amendment, Section 2, Article III of the Constitution does not proscribe voluntary cooperation. Yet, a person's "consent to a [warrantless] search, in order to be voluntary, must be unequivocal, specific and intelligently given, [and] uncontaminated by any duress or coercion[.]" The question of whether a consent to a search was "voluntary" or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances. x x x Consent to a search is not to be lightly inferred, but shown by clear and convincing evidence. The government bears the burden of proving "consent." x x x Here, we have ruled that to constitute a waiver, it must first appear that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such a right; and, lastly, that said person had an actual intention to relinquish the right. x x x In this case, the Court finds that there is a valid warrantless search based on express consent. When SSO Suguitan requested to conduct a pat down search on Eanna, the latter readily agreed. Record is devoid of any evidence that he manifested objection or hesitation on the body search.

6. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; A VARIATION OF THE PRINCIPLE THAT REAL EVIDENCE MUST BE AUTHENTICATED PRIOR TO ITS ADMISSION INTO EVIDENCE; ADMISSION OF AN EXHIBIT

MUST BE PRECEDED BY EVIDENCE SUFFICIENT TO SUPPORT A FINDING THAT THE MATTER IN QUESTION IS WHAT THE PROPONENT CLAIMS IT TO BE; CASE AT BAR.— The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence. To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a **rational basis** from which to conclude that the evidence is what the party claims it to be. In a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could **reasonably believe** that an item still is what the government claims it to be. As regards the prosecution of illegal drugs, the well-established US federal evidentiary rule is when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with **sufficient completeness** to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with. This evidentiary rule was adopted in *Mallillin v. People*, where this Court also discussed how, ideally, the chain of custody of seized items should be established: As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. In the present case, the prosecution was able to prove, through the documentary and testimonial evidence, that the integrity and evidentiary value of the seized items were properly preserved in every step of the way.

7. ID.; ID.; ID.; IMMEDIATE MARKING, PHYSICAL INVENTORY, AND PHOTOGRAPH OF ILLEGAL DRUG SEIZED IN THE

COURSE OF AIRPORT SEARCH NEED NOT BE DONE AT THE PLACE WHERE IT WAS CONFISCATED AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SUBJECT ILLEGAL DRUG ARE PRESERVED.— The peculiar situation in airports calls for a different treatment in the application of Section 21 (1) of R.A. No. 9165 and its IRR. To require all the time the immediate marking, physical inventory, and photograph of the seized illegal drug will definitely have a domino effect on the entire airport operation no matter how brief the whole procedure was conducted. Stuck passengers will cause flight delays, resulting not just economic losses but security threats as well. Besides, to expect the immediate marking, physical inventory, and photograph of the dangerous drug at the place of arrest is to deny the reality that the persons required by law to witness the procedure are unavailable at the moment of arrest. Unlike in a buy-bust operation which is supposed to be pre-planned and already coordinated in order to ensure the instant presence of necessary witnesses, arrests and seizures in airports due to illegal drugs are almost always spontaneous and unanticipated. In our view, the period of waiting for the arrival of the witnesses did not affect the integrity and evidentiary value of the subject illegal drug.

8. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; ABSENT A SHOWING OF BAD FAITH, ILL WILL, OR TAMPERING WITH THE EVIDENCE, INTEGRITY OF PHYSICAL EVIDENCE IS PRESUMED AND THAT THE PUBLIC OFFICERS PROPERLY DISCHARGED THEIR DUTIES.—** Where a defendant identifies a defect in the chain of custody, the prosecution must introduce sufficient proof so that the judge could find that the item is in substantially the same condition as when it was seized, and may admit the item if there is a reasonable probability that it has not been changed in important respects. However, there is a presumption of integrity of physical evidence absent a showing of bad faith, ill will, or tampering with the evidence. Merely raising the possibility of tampering or misidentification is insufficient to render evidence inadmissible. Absent some showing by the defendant that the evidence has been tampered with, it will not be presumed that those who had custody of it would do so. Where there is no evidence indicating that tampering with the exhibits occurred, the courts presume that the public officers have discharged their duties

properly. In this jurisdiction, it has been consistently held that considering 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, the defendant bears the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by the public officers and a presumption that the public officers properly discharge their duties. *People v. Agulay* in fact ruled that failure to comply with the procedure in Section 21 (a), Article II of the IRR of R.A No. 9165 does not bar the application of presumption of regularity in the performance of official duties.

9. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY RULE; A COMPLETE CHAIN OF CUSTODY NEED NOT ALWAYS BE PROVED; FAILURE TO STRICTLY COMPLY THEREWITH DOES NOT NECESSARILY RENDER AN ACCUSED PERSON'S ARREST ILLEGAL OR THE ITEMS SEIZED OR CONFISCATED FROM HIM INADMISSIBLE OR RENDER VOID AND INVALID SUCH SEIZURE, AS LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEM ARE PRESERVED.— It is unfortunate that rigid obedience to procedure on the chain of custody creates a scenario wherein the safeguards supposedly set to shield the innocent are more often than not exploited by the guilty to escape rightful punishment. The Court reiterates that while the procedure on the chain of custody should be perfect, in reality, it is almost always impossible to obtain an unbroken chain. The chain of custody need not be perfect for the evidence to be admissible. A complete chain of custody need not always be proved. Thus, failure to strictly comply with Section 21 (1) of R.A. No. 9165 does not necessarily render an accused person's arrest illegal or the items seized or confiscated from him inadmissible or render void and invalid such seizure. The most important factor is the preservation of the integrity and evidentiary value of the seized item.

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT AGAINST UNREASONABLE SEARCHES AND SEIZURES UNDER SECTION 2, ARTICLE III OF THE

CONSTITUTION; FINDS NO APPLICATION IN A REASONABLE SEARCH THAT ARISES FROM A REDUCED EXPECTATION OF PRIVACY LIKE INSPECTIONS OF PERSONS AND THEIR EFFECTS UNDER ROUTINE AIRPORT SECURITY PROCEDURES; REASONABLE SEARCH DISTINGUISHED FROM WARRANTLESS SEARCH.— Conducting inspections of persons and their effects under routine airport security procedures do not trigger the constitutional right against unreasonable searches and seizures, as they arise from a reduced expectation of privacy. In *Saluday v. People:* To emphasize, a reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application. Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. In contrast, a warrantless search is presumably an "unreasonable search," but for reasons of practicality, a search warrant can be dispensed with. Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle.

2. **ID.; ID.; ID.; CONDITIONS THAT MUST BE MET FOR AN INSPECTION OF PASSENGERS AND THEIR BELONGINGS UNDER ROUTINE SECURITY PROCEDURES TO BE A VALID REASONABLE SEARCH.—** [F]or an inspection of passengers and their belongings under routine security procedures to be a valid reasonable search, certain conditions must be met. In *Saluday*: In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. First, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. Second, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should

be protected. Third, as to the purpose of the search, it must be confined to ensuring public safety. Fourth, as to the evidence seized from the reasonable search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.

3. ID.; ID.; ID.; ID.; ABSENT AN IMMINENT THREAT TO LIFE, THERE MUST BE PROBABLE CAUSE THAT A CRIME IS BEING, OR HAS BEEN COMMITTED TO MAKE THE SEARCH REASONABLE; CASE AT BAR.— However, if there is no imminent threat to life, there must be probable cause that a crime is being, or has been committed to make the search reasonable. x x x Here, it is undisputed that there was no imminent threat to life that warranted the search of the accused. He passed through routine airport security procedures at the Laoag City International Airport. At the final security check, he went through a pat-down search conducted by Security Screening Officer Dexter Suguitan (Suguitan), upon which two (2) cigarette packs were found in his possession. One (1) pack contained hand-rolled cigarette sticks. The accused explained that this was hand-rolled tobacco, but Suguitan stated that he knew the sticks had dried marijuana leaves. Unlike in *Sales*, the accused here did not act suspiciously during the routine inspection to believe that he was committing, or had committed an offense. No metal detectors or x-ray machines were triggered, and the pat-down of the accused did not yield any suspicious materials apart from hand-rolled cigarettes.

4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; MUST YIELD TO THE CONSTITUTIONAL PRESUMPTION OF INNOCENCE AND REQUIREMENT OF PROOF BEYOND REASONABLE DOUBT.— For the majority, the integrity of the evidence is presumed to be preserved unless there is bad faith, ill will, or proof of tampering, to which the defendant has the burden of showing. This is to overcome a presumption of regularity in the public officers' handling of the exhibits, and the presumption that the public officers properly discharged their duties. However, the presumption of regularity must yield to the constitutional presumption of innocence and requirement of proof beyond reasonable doubt.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); PROSECUTION'S FAILURE TO SHOW COMPLIANCE WITH THE MANDATORY PROVISION OF SECTION 21 THEREOF CREATES REASONABLE DOUBT ON THE VERY *CORPUS DELICTI* OF THE OFFENSE CHARGED, WARRANTING ACQUITTAL OF THE ACCUSED.— The general rule remains that there must be strict compliance with Section 21 of Republic Act No. 9165, due to the characteristics of illegal drugs as not readily identifiable, and vulnerable "to tampering, alteration, or substitution by accident or otherwise." The prosecution's failure to show compliance with the mandatory procedures in Section 21 of Republic Act No. 9165 creates reasonable doubt on the very *corpus delicti* of the offense charged. Noncompliance is a ground for the accused's acquittal. Searches and seizures of drugs found under routine security procedures must still comply with Section 21 of Republic Act No. 9165. Neither the express text of the provision nor its implementing rules and regulations carve out an exception for airport searches. This Court has consistently evaluated the integrity of dangerous drugs seized during such searches, as well as the preservation of the chain of custody, against the mandatory requirements of Section 21.

6. ID.; ID.; LINKS IN THE CHAIN OF CUSTODY OF THE CONFISCATED ITEM THAT MUST BE ESTABLISHED.— Despite the majority's citation of United States jurisprudence on the establishment of chain of custody on a rational basis, this Court has consistently held that the illegal drug's identity must be proved with moral certainty, "established with the same degree of certitude as that needed to sustain a guilty verdict." The four (4) links in the chain of custody of the confiscated item must be established: Thus, the following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

7. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; ARISES ONLY WHEN IT CAN BE SHOWN THAT THE APPREHENDING OFFICER FOLLOWED THE REQUIREMENTS OF THE LAW; CASE AT BAR.— The presumption of regularity of performance of official duty only arises when it can be shown that the apprehending officer followed the requirements in Section 21 of Republic Act No. 9165, or met the conditions for the saving clause in the Implementing Rules and Regulations of Republic Act No. 9165. x x x Here, several deviations from the procedures in Section 21 of Republic Act No. 9165 cast in doubt the links in the chain of custody of the seized items. x x x Considering the doubts raised not only on why the officers here failed to strictly comply with Section 21 of Republic Act No. 9165, but also on the integrity of the chain of custody over the seized items, the presumption of regularity must be negated.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Salud P. Aldana for accused-appellant.

D E C I S I O N

PERALTA, ***J.*:**

On appeal is the February 9, 2016 Decision[1] and July 21, 2016 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CR No. 36412, which affirmed the November 22, 2013 Decision[3] of the Regional Trial Court *(RTC)*, Branch 13, Laoag City, in Criminal Case No. 15585-13, finding accused-appellant Eanna O'Cochlain *(Eanna)* guilty of violating Section 11, Article II of Republic Act *(R.A.)* No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rodil V. Zalameda and Pedro B. Corales concurring; *rollo*, pp. 3-26.

[2] CA *rollo*, p. 237.

[3] Records, pp. 116-133.

At the time of his arrest, Eanna was a 53-year old Irish national married to a Filipina and residing in Barangay Aring, Badoc, Ilocos Norte. In an Information[4] dated July 15, 2013, he was charged with illegal possession of marijuana, committed as follows:

> That on or about [the] 14th day of July 2013 in the City of Laoag and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously had in his possession, custody and control: two (2) sticks of dried Marijuana Leaves, a dangerous drug, with an aggregate weight of 0.3824 grams, without any license or authority to possess, in violation of the aforesaid law.[5]

With the assistance of a counsel *de parte* and in the presence of a public prosecutor, Eanna pleaded "NOT GUILTY" in his arraignment.[6] He was allowed to post bail for his temporary liberty, but a hold departure order was issued to prevent him from leaving the Philippines and his passport was surrendered to the court for its custody in the course of the proceedings.[7]

Version of the Prosecution

Aside from the sworn statements of other intended witnesses,[8] the testimonies in open court of Security Screening Officer

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[4] *Id.* at 1-2.

[5] *Id.* at 1.

[6] *Id.* at 43-45.

[7] *Id.* at 31, 40, 44-45.

[8] The presentation of CSI Flor Tamayo as a witness for the prosecution was dispensed with after the parties stipulated that the affidavit he previously executed would be his direct testimony and admitted that he did not witness the search on the person of Eanna and on his luggage (TSN, September 11, 2013, pp. 23-25). Likewise, PO3 John Edwin Padayao and Police Inspector Amiely Ann Luis Navarro were no longer presented as witnesses after their proffered testimonies were admitted (TSN, August 20, 2013, pp. 2-3). The prosecution admitted that PO3 Padayao and Police Inspector Navarro have no personal knowledge of the specific source of the specimens they received on July 15, 2013 (TSN, August 20, 2013, pp. 3-4).

Dexter Suguitan *(SSO Suguitan)*, Police Officer 3 Joel Javier *(PO3 Javier)*, and PO1 Erald Terson *(PO1 Terson)* reveal as follows:

While on his break time around 7:00 p.m. on July 14, 2013, SSO Suguitan of the Department of Transportation – Office of Transportation Security *(OTS),* assigned at the initial security screening checkpoint of the Laoag City International Airport, was told by CAAP[9] Security and Intelligence Flor Tamayo *(CSI Tamayo)* that the parking space in front of the departure area smelled like marijuana *("agat sa marijuana")*. He suspected that Eanna was the one who smoked the illegal drug, recounting that at around 6:35 p.m. he saw a certain male Caucasian at the parking area lighting something unrecognizable as he was covering it with his palm. CSI Tamayo observed that whenever he would suck what he seemed to be smoking, no visible vapor would come out from his mouth.

However, SSO Suguitan dismissed CSI Tamayo's story as he thought that it would be impossible for a passenger to smoke marijuana at the airport. After a while, he returned to his post at the initial check-in area. Meanwhile, CSI Tamayo reported what he saw to PO2 Pancho Caole, Jr. *(PO2 Caole, Jr.)* and SSO Fidel Bal-ot *(SSO Bal-ot)*, who were manning the final screening area.

Later on, SSO Bal-ot directed SSO Suguitan to proceed to the final security checkpoint.[10] The latter was instructed to conduct a pat down search on Eanna, who agreed. He was frisked while he raised his hands by stretching sideward to the level of his shoulders with palms open. When something was felt inside the pocket of his upper garment, he was asked to take it out. He then brought out a pack of Marlboro red from his left pocket, as well as a matchbox and another pack of Marlboro red from his right pocket. The pack of Marlboro red on his left hand contained cigarettes but the one on his right

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[9] Civil Aviation Authority of the Philippines.

[10] Records, p. 6; TSN, August 20, 2013, pp. 54-55.

hand contained two (2) rolled sticks of what appeared to be dried marijuana leaves. SSO Suguitan knew it was marijuana because that was what CSI Tamayo earlier told him. He took the pack of Marlboro red containing the two rolled sticks of dried marijuana leaves and showed it to PO1 Peter Warner Manadao, Jr. *(PO1 Manadao, Jr.)* and other police personnel on duty. SSO Suguitan put them on the nearby screening table in front of Eanna and PO1 Manadao, Jr. The two rolled sticks of dried marijuana leaves were the only items placed thereon.

PO1 Udel Tubon[11] then called the attention of PO3 Javier, who was the investigator on duty of the Philippine National Police *(PNP)* - Aviation Security Group *(ASG)*. PO1 Manadao, Jr., PO2 Caole, Jr., SSO Suguitan, and SSO Bal-ot were at the final checkpoint when he arrived. They told him that marijuana was found in Eanna's pocket. SSO Suguitan turned over to PO3 Javier the pack of Marlboro red containing the two rolled sticks of dried marijuana leaves. PO3 Javier then placed them on a tray, together with Eanna's other belongings. As the area started to become crowded, the seized items were brought by PO3 Javier to the PNP-ASG office. He was accompanied by SSO Suguitan and Eanna.

Together with PO3 Javier at the PNP-ASG office were Police Superintendent Diosdado Apias *(P/Supt. Apias)*, PO1 Manadao, Jr., PO2 Caole, Jr., SSO Suguitan, SSO Bal-ot, and a certain SPO3 Domingo. While waiting for the arrival of the barangay officials, which took 15-20 minutes, the two rolled sticks of dried marijuana leaves were placed on the investigation table where everybody could look but not touch. Eanna was seated in front of the table, while the others guarded him. PO3 Javier then prepared the inventory. The two rolled sticks of dried marijuana leaves and other seized items were listed. The check-in baggage of Eanna was also inspected, but it only contained clothes and other personal belongings. The confiscation/inventory receipts were signed by PO3 Javier and SSO Suguitan, as well

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[11] Also referred to as PO1 Judel Tugon (see TSN, September 11, 2013, p. 14).

as two (2) officials of Barangay Araniw, Laoag City (Barangay Chairman Edilberto Bumanglag and Barangay Kagawad Benjamin Teodoro) and an ABS-CBN cameraman (Juanito Badua), who acted as witnesses. In their presence, as well as of Eanna, PO3 Javier marked the two rolled sticks of dried marijuana leaves as *"EO-1"* and *"EO-2"* and, thereafter, placed them inside a Ziploc re-sealable plastic bag. The guard of the PNP-ASG office, PO1 Terson, took pictures during the inventory and marking, while P/Supt. Apias prepared the requests for the medico-legal examination of Eanna and the laboratory examination of the two rolled sticks of dried marijuana leaves. The marking, physical inventory, and photographing were likewise witnessed by PO1 Manadao, Jr. and PO2 Caole, Jr., who executed a Joint Affidavit of Arrest with PO3 Javier.

Subsequently, Eanna was brought to the Governor Roque R. Ablan, Sr. Memorial Hospital for his medico-legal examination. PO3 Javier proceeded to the Ilocos Norte Provincial Crime Laboratory Office to submit the request for laboratory examination and the two rolled sticks of dried marijuana leaves. The request and the specimens were received by PO3 Padayao, the evidence custodian. Based on the qualitative examination conducted by Forensic Chemist Police Inspector Amiely Ann Luis Navarro *(P/Insp. Navarro)*, which was reduced into writing, the specimens were found to be positive for the presence of marijuana.

Version of the Defense

At around 6:30 p.m. on July 14, 2013, Eanna was with his wife at the Laoag City International Airport for their Cebu Pacific flight bound for Manila. Since the x-ray machine operator at the initial security screening was not yet around, he left his wife in the line and smoked his pre-rolled tobacco and Marlboro cigarette outside, about 30 meters away. Ten minutes passed, he went back to the initial security checkpoint carrying his check-in and cabin luggage, camera bag, and some shopping bags. The airport police conducted a body search and examined his belongings. Afterwards, he proceeded to the final security check where he was inspected by a male "immigration officer" wearing

a brown shirt. As a result, a red Marlboro cigarette pack, containing two pieces of rolled paper of flavored tobacco, was found in his possession.[12] It was shown to him while he was in front of his wife. The cigarette pack was then put on the desk, on top of one of his luggage. A camera bag (containing a Sony camera, connecting cables, headphones, an MP3 player, cigarette paper, and a pack of Marlboro) was also searched. The officer got some tiny grains after sticking his fingers into the bag. He showed them to Eanna and asked what they were. The latter replied that they were flavored tobacco, which he has been smoking for the past 30 years. Despite the claim, the officer directed an airport police to bring Eanna to the police station that was about 150 meters away.

Together with his wife, Eanna was escorted by about five to six airport police. At the PNP-ASG office, his camera bag and other luggage arrived approximately 20 minutes later. They were placed on top of the table and stayed there for 30-45 minutes before the police started to search the contents and catalog the items. Prior to the inventory of the seized items, Eanna and his wife repacked their luggage as the latter still proceeded with her scheduled flight. Thereafter, with the permission of PO3 Javier, Eanna went outside the office to smoke as he waited for his Batac-based Filipino relatives who arrived approximately after two hours. While smoking outside, he could not see what was happening, if any, to his luggage and camera bag.

The camera crew of ABS-CBN arrived at almost 11:00 p.m. An asset from the Philippine Drug Enforcement Agency *(PDEA)* called Badua and told him to come to the PNP-ASG office. He went with an off-duty security guard of ABS-CBN Laoag City. There, he was allowed to cover the incident, which became the basis of a television news report.

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[12] Eanna contended that it was actually one rolled paper containing flavored tobacco that was broken into two (TSN, October 2, 2013, pp. 36-38). There were two red Marlboro boxes, one almost full, containing 19 cigarettes, and the other one contained pre-rolled crushed tobacco (TSN, October 2, 2013, p. 19).

The sticks of the alleged marijuana were shown to Eanna thrice – once at the airport and twice at the police station. On the second instance, he was shown two thin rolled sticks that were placed on top of the table in front of him. On the third time, however, he saw a thin and a fat rolled sticks made of paper that were different from what he was using.

RTC Ruling

After trial, Eanna was convicted of the crime charged. The *fallo* of the November 22, 2013 Decision states:

> **WHEREFORE**, accused Eanna O'Cochlain is hereby pronounced GUILTY beyond reasonable doubt of the charge of illegal possession of marijuana weighing 0.3824 gram and is therefore sentenced to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and ONE (1) DAY to FOURTEEN (14) YEARS and to pay a fine of THREE HUNDRED THOUSAND PESOS (₱300,000.00).
>
> The two sticks of marijuana subject hereof are confiscated, the same to be disposed in the manner that the law prescribes.
>
> **SO ORDERED**.[13]

The search conducted on Eanna and his subsequent arrest were upheld. According to the RTC, the search upon his person was not unreasonable but was actually an exception to the proscription against warrantless searches and seizures. It was justified as it proceeded from a duty or right that was enforced in accordance with the aviation rules and regulations to maintain peace, order and security at the airports. In fact, Eanna's plane ticket carried a proviso allowing airport authorities to check on his person and baggage pursuant to the requirement of Section 9 of R.A. No. 6235.[14] Moreover, another exception

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[13] Records, p. 133; CA *rollo,* pp. 70, 136.

[14] **Section 9.** Every ticket issued to a passenger by the airline or air carrier concerned shall contain among others the following condition printed thereon: "Holder hereof and his hand-carried luggage(s) are subject to search for, and seizure of, prohibited materials or substances. Holder refusing to be searched shall not be allowed to board the aircraft," which shall constitute a part of the contract between the passenger and the air carrier.

to the rule is consented warrantless search and seizure. In this case, Eanna agreed to the body pat down search that was requested by SSO Suguitan.

For the RTC, SSO Suguitan was a credible witness. It was observed that he was spontaneous in his testimony and that he appeared candid and truthful in his statements. There was nothing in his testimony or in the manner he testified that could arouse serious suspicion of lying. Some of his inconsistent statements, which the defense considered as irreconcilable, were insignificant and trivial as they do not impinge on any of the elements of the offense charged. Instead, the statements bolster SSO Suguitan's credibility as they were indicia of his unrehearsed testimony.

The RTC opined that Eanna's denial was not based on clear and convincing evidence; rather, it was bare and self-serving. His testimony was even fraught with incoherence and serious inconsistencies which he obviously committed as he desperately tried to show that what was taken from his possession was mere tobacco. Considering his flip-flopping testimony, his denial was not given credence and did not prevail over the credible testimony of SSO Suguitan and the unquestioned findings of the forensic chemist.

Finally, as to the chain of custody of the illegal drug seized, the RTC was satisfied that the prosecution was able to preserve the integrity and evidentiary value of the subject marijuana. It ruled:

> In this case, the Court does not doubt a bit that the two sticks of marijuana presented in evidence are the same sticks of marijuana confiscated from the accused. There was not only compliance by the airport authorities of the requirements of Section 21 of the law and its implementing rules and regulations, there is a complete account of the complete chain of custody of the two sticks of marijuana that negates any doubt that their integrity and evidentiary value have been preserved. As it has been established by the prosecution, upon being informed of the arrest of the accused, after SSO Suguitan had confiscated the two [sticks] of marijuana from the accused, PO3 Joel Javier, the duty police investigator at the airport at [the] time who was at the ramp outside the departure terminal was called and when

he arrived at the place where the accused was accosted and was informed of the arrest of the accused, he took custody of the two sticks of marijuana which were then on the screening desk or table and invited the accused to the office of the PNP-CAAP Aviation Security Group located within the premises of the airport not far from the departure terminal. There, PO3 Javier marked the two sticks of marijuana with EO-1 and EO-2. Upon the arrival of two Barangay officials, Barangay Chairman Edilberto Bumanglag and Kagawad Benjamin Teodoro of Barangay Araniw, Laoag City which has territorial jurisdiction over the airport, and a member of the media in the person of Juanito Badua, a cameraman of ABS-CBN, Laoag, PO3 Javier also conducted the required inventory not only of the two sticks of marijuana but the other belongings of the accused contained in his luggage. In the course of the inventory, PO1 Erald Terson, also a member of the PNP-Aviation Security Group, took pictures of the seized items as he was directed to do by their superior. Sometime later, as the accused was brought for medical examination, PO3 Javier was the one who brought the two sticks of marijuana together with the prepared letter request to the Ilocos Norte Provincial Crime Laboratory Office for examination. And to complete the chain, the prosecution established that at the said crime lab, the two sticks were received by PO3 Padayao who thereupon turned them over to the forensic chemist, Police Inspector Amiely Ann Navarro. As the Court takes judicial notice from the record of the case, the two sticks were finally submitted to court on July 19, 2013, received by the Branch Clerk of Court, Atty. Bernadette Espejo[,] who issued the corresponding Acknowledgment Receipt therefor.

Significantly relative to the chain of custody and as would have equally done by the other concerned witnesses such as forensic chemist Police Inspector Navarro who issued her written chemistry reports of the qualitative examinations she conducted on the specimens, and PO3 Padayao, both of the crime lab, SSO Suguitan[,] who discovered the two sticks of marijuana[,] identified the same in open court, pointing in the process the respective markings EO-1 and EO-2 that he witnessed to have been placed by the investigating police officer, PO3 Javier[,] which, after the inventory, the latter placed in a plastic bag (Ziploc). PO3 Javier himself also identified the two sticks of marijuana.

At this point, the Court is not oblivious of the fact that in his testimony SSO Suguitan initially claimed that he turned over the two sticks of marijuana to PO1 Manadao, Jr. But actually[,] as it can be

clearly appreciated from the testimony of SSO Suguitan, the turn over that he said was merely the placing of the two sticks of marijuana on top of the table at the final screening area, in front of PO1 Manadao and the accused. In fact, as SSO Suguitan corroborated PO3 Javier, the two sticks of marijuana which were still on the screening desk were thereafter placed on a tray and PO3 Javier was the one who then actually took custody thereof as the accused was invited to the office of the PNP-CAAP Aviation Security Group. PO3 Javier himself, when he was asked by the defense if it was PO1 Manadao who turned over the specimens to him, categorically said, "No, sir, Mr. Dexter Suguitan."

Also, the Court cannot be amiss to point out that the two sticks of marijuana could not have been switched with another or contaminated while it was in the custody of PO3 Javier. While admitting that there were many things that they prepared while they were already in their office, he testified in effect that no such [thing] happened. The people there at the office were not examining the specimens, they were just looking and not holding it.

The Court at this point cannot but express its observation that PO3 Javier, just like SSO Suguitan, was equally credible. He was straightforward, consistent and candid in his testimony that it cannot in any way be considered suspect.[15]

Eanna moved to reconsider the RTC judgment, but it was denied; hence, a notice of appeal was filed.[16]

CA Ruling

Finding no cause to overturn the findings of fact and conclusions of law, the CA affirmed the assailed RTC Decision.

The CA affirmatively answered the issue of whether there was probable cause to justify the warrantless search of Eanna and the seizure of his belongings. It appreciated the prosecution's version that CSI Tamayo saw him smoking while outside the departure area of the airport terminal. Although no smoke coming from his mouth was seen, CSI Tamayo still smelled the scent

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[15] Records, pp. 129-131; CA *rollo,* pp. 66-68, 132-134.

[16] Records, pp. 165-166.

of marijuana. Similar to the RTC ruling, the warrantless search and seizure was also valid because the search was conducted pursuant to a routine airport security procedure and Eanna voluntarily gave his consent thereto.

It was likewise held that all the elements of the crime of illegal possession of dangerous drug were satisfactorily established. *First*, Eanna was caught in possession and custody of two sticks of marijuana on July 14, 2013 at the Laoag City International Airport during the routine search conducted by the airport authorities. *Second*, he failed to prove that he was authorized by law to possess the same. And *third*, he freely and consciously possessed the illegal drug.

The CA downplayed the alleged varying testimonies of the prosecution witnesses. As the RTC opined, the inconsistences raised by the defense were minor and trivial and could not affect the RTC's finding as to the credibility of the airport police officers.

Finally, anent the chain of custody rule, the CA regarded as specious Eanna's claim that the procedures set forth in Section 21 of R.A. No. 9165 were not followed. The testimony of SSO Suguitan was quoted and the ratiocination of the RTC was adopted to support the finding that the airport officials complied with the rule.

Eanna filed a motion for reconsideration, but it was denied on July 21, 2016.

Now before us, the Office of the Solicitor General manifested that it would no longer file a supplemental brief as it had exhaustively discussed the legal issues and arguments in its appeal brief before the CA.[17] On his part, Eanna filed a Supplemental Brief[18] to bolster his claim that there were gaps in the chain of custody of the alleged illegal drug seized. He argues that:

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[17] *Rollo,* pp. 54-57.

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

1. PO3 Javier was not at the scene where Eanna was found in possession of the alleged illegal drug; thus, he had no personal knowledge of its possession by Eanna and its seizure by SSO Suguitan.
2. It was not made clear by the prosecution that the two sticks of rolled paper allegedly containing marijuana were marked immediately upon confiscation.
3. The drug evidence was rendered susceptible to alteration, tampering and swapping because the Ziploc where it was placed was not sealed by an adhesive tape or any means other than the natural, built-in re-sealable feature of the plastic bag.
4. The presence of the marking "JEP" on the two rolled sticks of alleged marijuana could not be explained and the marking made thereon compromised their integrity and physical appearance.
5. The presumption of regularity in the performance of official duty is unavailing because the police authorities deviated from the mandated procedure and offered no valid ground to show that their actuations were justified.

Our Ruling

The judgment of conviction is affirmed.

Airport screening search is a constitutionally reasonable administrative search.

The search and seizure of an illegal drug during a routine airport inspection made pursuant to the aviation security procedures has been sustained by this Court in a number of cases.[19] In the leading case of *People v. Johnson*,[20] we held:

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[19] See *People v. Cadidia,* 719 Phil. 538 (2013); *Sales v. People,* 703 Phil. 133 (2013); *People v. Suzuki*, 460 Phil. 146 (2003); *People v. Canton,* 442 Phil. 743 (2002); and *People v. Johnson*, 401 Phil. 734 (2000).

[20] *Id.*

Persons may lose the protection of the search and seizure clause by exposure of their persons or property to the public in a manner reflecting a lack of subjective expectation of privacy, which expectation society is prepared to recognize as reasonable. Such recognition is implicit in airport security procedures. With increased concern over airplane hijacking and terrorism has come increased security at the nation's airports. Passengers attempting to board an aircraft routinely pass through metal detectors; their carry-on baggage as well as checked luggage are routinely subjected to x-ray scans. Should these procedures suggest the presence of suspicious objects, physical searches are conducted to determine what the objects are. There is little question that such searches are reasonable, given their minimal intrusiveness, the gravity of the safety interests involved, and the reduced privacy expectations associated with airline travel. Indeed, travelers are often notified through airport public address systems, signs, and notices in their airline tickets that they are subject to search and, if any prohibited materials or substances are found, such would be subject to seizure. These announcements place passengers on notice that ordinary constitutional protections against warrantless searches and seizures do not apply to routine airport procedures.[21]

Thus, while the right of the people to be secure in their persons, houses, papers, and effects against **unreasonable** searches and seizures is guaranteed by Section 2, Article III of the 1987 Constitution,[22] a routine security check being conducted

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[21] *People v. Johnson*, *id.* at 743, as cited in *People v. Cadidia, supra* note 19, at 556; *Sales v. People, supra* note 19, at 140; *People v. Suzuki, supra* note 19, at 159-160; and *People v. Canton, supra* note 19, at 758-759. See also *Saluday v. People,* G.R. No. 215305, April 3, 2018; *People v. Gumilao,* G.R. No. 208755, October 5, 2016 (Resolution); and *Dela Cruz v. People,* 653 Phil. 653, 683 (2016).

[22] SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

in air[23] and sea[24] ports has been a recognized exception. This is in addition to a string of jurisprudence ruling that search and seizure may be made without a warrant and the evidence obtained therefrom may be admissible in the following instances: (1) search incidental to a lawful arrest; (2) search of a moving motor vehicle; (3) customs search; (4) seizure of evidence in "plain view"; (5) consented warrantless search; (6) "stop and frisk" search; and (7) exigent and emergency circumstance.[25]

Notably, Section 2, Article III of the Constitution was patterned after the Fourth Amendment to the Constitution of the United States of America.[26] Having been derived almost verbatim therefrom, the Court may turn to the pronouncements of the US Federal Supreme Court and State Appellate Courts, which are considered doctrinal in this jurisdiction.[27]

Like in our country, the circumstances under which a warrantless search, unsupported by probable cause, may be considered reasonable under the Fourth Amendment are very limited and that exceptions thereto are few specifically established and well delineated.[28] In a similar way, the government bears the burden of proving that a warrantless search was conducted

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[23] *People v. Cadidia, supra* note 19; *Sales v. People, supra* note 19; *People v. Suzuki, supra* note 19; *People v. Canton, supra* note 19; and *People v. Johnson*, *supra* note 19.

[24] *People v. Gumilao, supra* note 21; and *Dela Cruz v. People, supra* note 21, at 683.

[25] See *Martinez v. People,* 703 Phil. 609, 617 (2013); *Luz v. People,* 683 Phil. 399, 411 (2012); *Valdez v. People,* 563 Phil. 934, 949 (2007); *People v. Chua Ho San,* 367 Phil. 703, 715-716 (1999); *People v. Doria,* 361 Phil. 595, 627-628 (1999); and *Malacat v. CA,* 347 Phil. 462, 479 (1997).

[26] *Saluday v. People, supra* note 21.

[27] *People v. Marti,* 271 Phil. 51, 57 (1991), as cited in *Pollo v. Chairperson Constantino-David, et al.,* 675 Phil. 225, 249 (2011).

[28] See *United States v. McCarty,* 648 F.3d 820 (2010); *Higerd v. State,* 54 So. 3d 513 (2010); *United States v. Fofana,* 620 F. Supp. 2d 857 (2009); and *United States v. Aukai,* 497 F.3d 955 (2007).

pursuant to an established exception to the Fourth Amendment warrant requirement.[29]

US courts have permitted exceptions to the Fourth Amendment when "special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirement impracticable" such as work-related searches of government employees' desks and offices, warrantless searches conducted by school officials of a student's property, government investigators conducting searches pursuant to a regulatory scheme when the searches meet "reasonable legislative or administrative standards," and a State's operation of a probation system.[30] The Fourth Amendment permits the warrantless search of "closely regulated" businesses; "special needs" cases such as schools, employment, and probation; and "checkpoint" searches such as airport screenings under the administrative search doctrine.[31]

Searches and seizures are ordinarily unreasonable in the absence of individualized suspicion of wrongdoing.[32] However, because administrative searches primarily ensure public safety instead of detecting criminal wrongdoing, they do not require individual suspicion.[33] Where the risk to public safety is substantial and real, blanket suspicionless searches calibrated to the risk may rank as "reasonable."[34] In particular, airport searches have received judicial sanction essentially because of the magnitude and pervasiveness of the danger to the public safety and the

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[29] *United States v. Oliver*, 686 F.2d 356, 371 (6th Cir. 1982); *Higerd v. State, id.*; and *United States v. Fofana, id.*

[30] *Griffin v. Wis.,* 483 U.S. 868 (1987). See also *Vernonia Sch. Dist. 47J v. Acton,* 515 U.S. 646 (1995).

[31] *Corbett v. Transp. Sec. Admin.,* 767 F.3d 1171 (2014).

[32] *United States v. McCarty, supra* note 28, citing *United States v. Aukai, supra* note 28 (quoting *City of Indianapolis v. Edmond*, 531 U.S. 32 [2000]).

[33] *Corbett v. Transp. Sec. Admin., supra* note 31.

[34] See *United States v. McCarty, supra* note 28, citing *United States v. Aukai, supra* note 28 (quoting *Chandler v. Miller*, 520 U.S. 305 [1997]).

overriding concern has been the threat of death or serious bodily injury to members of the public posed by the introduction of inherently lethal weapons or bombs.[35]

Although the US Supreme Court has not specifically *held* that airport screening searches are constitutionally reasonable administrative searches, it has *suggested* that they qualify as such.[36] Airport security searches can be deemed lawful administrative searches because (1) these searches constitute relatively limited intrusions geared toward finding particular items (weapons, explosives, and incendiary devices) that pose grave danger to airplanes and air travelers; (2) the scrutiny of carry-on luggage is no more intrusive (in both its scope and intensity) than is necessary to achieve the legitimate aims of the screening process (that is, to ensure air travel safety); (3) airline passengers have advance notice that their carry-on luggage will be subjected to these security measures, thus giving passengers the opportunity to place their personal effects in checked luggage; (4) all passengers are subject to the same screening procedures; and (5) passengers are aware that they can avoid the screening process altogether by electing not to board the plane.[37] Moreover, abuse is unlikely because of its public nature.[38]

As a permissible administrative search, the scope of airport routine check is not limitless.[39] Airport screening procedures are conducted for two primary reasons: first, to prevent passengers from carrying weapons or explosives onto the aircraft;

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[35] *State v. Hanson,* 97 Haw. 77 (2001).

[36] *United States v. Aukai, supra* note 28, citing *City of Indianapolis v. Edmond, supra* note 32; *Chandler v. Miller, supra* note 34; and *Nat'l. Treasury Employees Union v. Von Raab*, 489 U.S. 656 (1989). See also *Corbett v. Transp. Sec. Admin., supra* note 31; *United States v. McCarty,* 2011 U.S. App. LEXIS 18874 (2011) and *supra* note 28; and *Vanbrocklen v. United States,* 2009 U.S. Dist. LEXIS 24854 (2009).

[37] *Schaffer v. State,* 988 P.2d 610 (1999).

[38] *Corbett v. Transp. Sec. Admin., supra* note 31.

[39] *United States v. Aukai, supra* note 28.

and second, to deter passengers from even attempting to do so.[40] The oft-cited case of *United States v. Davis*[41] sets the appropriate standards for evaluating airport screening searches as constitutionally reasonable administrative searches, thus:

> [S]earches conducted as part of a general regulatory scheme in furtherance of an administrative purpose, rather than as part of a criminal investigation to secure evidence of crime, may be permissible under the Fourth Amendment though not supported by a showing of probable cause directed to a particular place or person to be searched.
>
> As we have seen, screening searches of airline passengers are conducted as part of a general regulatory scheme in furtherance of an administrative purpose, namely, to prevent the carrying of weapons or explosives aboard aircraft, and thereby to prevent hijackings. The essential purpose of the scheme is not to detect weapons or explosives or to apprehend those who carry them, but to deter persons carrying such material from seeking to board at all.
>
> Of course, routine airport screening searches will lead to discovery of contraband and apprehension of law violators. This practical consequence does not alter the essentially administrative nature of the screening process, however, or render the searches unconstitutional. x x x.
>
> There is an obvious danger, nonetheless, that the screening of passengers and their carry-on luggage for weapons and explosives will be subverted into a general search for evidence of crime. If this occurs, the courts will exclude the evidence obtained.[42] (Citations omitted.)

The constitutional bounds of an airport administrative search require that the individual screener's actions be no more intrusive than necessary to determine the existence or absence of explosives

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[40] *United States v. Marquez,* 410 F.3d 612 (2005), citing *United States v. Davis,* 482 F.2d 893 (1973).

[41] *Id.*

[42] See also *United States v. McCarty, supra* note 28; *Higerd v. State, supra* note 28; *United States v. Aukai, supra* note 28; and *United States v. Marquez, supra* note 40.

that could result in harm to the passengers and aircraft.[43] The search cannot also serve unrelated law enforcement purposes as it effectively transforms a limited check for weapons and explosives into a general search for evidence of crime, substantially eroding the privacy rights of passengers who travel through the system.[44] As in other exceptions to the search warrant requirement, the screening program must not turn into a vehicle for warrantless searches for evidence of crime.[45] It is improper that the search be tainted by "general law enforcement objectives" such as uncovering contraband unrelated to that purpose or evidence of unrelated crimes or evidencing general criminal activity or a desire to detect "evidence of ordinary criminal wrongdoing."[46] In *United States v. $124,570 U.S. Currency,*[47] the US Court of Appeals for the Ninth Circuit noted that the US Supreme Court has repeatedly emphasized the importance of keeping criminal investigatory motives from coloring administrative searches.[48]

Hence, an airport search remains a valid administrative search only so long as the scope of the administrative search exception is not exceeded; "once a search is conducted for a criminal investigatory purpose, it can no longer be justified under an administrative search rationale."[49] Where an action is taken

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[43] *United States v. McCarty, id.,* citing *United States v. $124,570 U.S. Currency*, 873 F.2d 1240 (1989).

[44] See *United States v. $124,570 U.S. Currency, id*.

[45] *State v. Salit,* 613 P.2d 245 (1980), citing *Terry v. Ohio,* 392 U.S. 1 (1968).

[46] See *United States v. Fofana, supra* note 28; *United States v. $124,570 U.S. Currency, supra* note 43; and *State v. Salit, id*.

[47] *Id*., citing *Wyman v. James*, 400 U.S. 309 (1971); *Camara v. Municipal Court*, 387 U.S. 523 (1967); and *Abel v. United States*, 362 U.S. 217 (1960).

[48] See also *United States v. Huguenin,* 154 F.3d 547 (1998); and *Alexander v. City & County of San Francisco,* 29 F.3d 1355 (1994).

[49] *United States v. McCarty, supra* note 28, citing *United States v. $124,570 U.S. Currency, supra* note 43. See also *Higerd v. State, supra* note 28; and *United States v. Fofana, supra* note 28.

that cannot serve the administrative purpose, either because the threat necessitating the administrative search has been dismissed or because the action is simply unrelated to the administrative goal, the action clearly exceeds the scope of the permissible search.[50] To the extent that airport administrative searches are used for purposes other than screening luggage and passengers for weapons or explosives, they fall outside the rationale by which they have been approved as an exception to the warrant requirement, and the evidence obtained during such a search should be excluded.[51]

Furthermore, to be constitutionally permissible, warrantless and suspicionless airport screening searches must meet the Fourth Amendment standard of reasonableness.[52] "What is reasonable depends upon all of the circumstances surrounding the search or seizure and the nature of the search or seizure itself."[53] There can be no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.[54] In other words, an administrative screening search must be as limited in its intrusiveness as is consistent with satisfaction of the administrative need that justifies it.[55] Specifically, the Court must balance an individual's right to be free of intrusion with "society's interest in safe air travel."[56] On this score, *Davis*

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[50] *United States v. McCarty, id.*

[51] *United States v. Fofana, supra* note 28.

[52] *United States v. Fofana, id.,* citing *United States v. Davis, supra* note 40.

[53] *State v. Hanson, supra* note 35, citing *United States v. Pulido-Baquerizo,* 800 F.2d 899 (1986).

[54] *United States v. Davis, supra* note 40, citing *Camara v. Municipal Court, supra* note 47.

[55] *Bruce v. Beary,* 498 F.3d 1232 (2007), citing *United States v. Davis, supra* note 40. See also *Gilmore v. Gonzales,* 435 F.3d 1125 (2006).

[56] *United States v. Pulido-Baquerizo*, *supra* note 53. See also *Higerd v. State, supra* note 28; *United States v. Fofana, supra* note 28; *United States v. Marquez*, *supra* note 40; and *State v. Hanson, supra* note 35.

again has provided a guidepost. There it was held that an airport security search is considered as reasonable if: (1) the search is no more extensive or intensive than necessary, in light of current technology, to satisfy the administrative need that justifies it, that is to detect the presence of weapons or explosives; (2) the search is confined in good faith to that purpose; and (3) a potential passenger may avoid the search by choosing not to fly.[57]

In *State v. Hanson*,[58] the Intermediate Court of Appeals of Hawai'i believed in the soundness of the logic of the US Court of Appeals for the Fifth Circuit in *United States v. Skipwith*,[59] which ruled:

> Necessity alone, however, whether produced by danger or otherwise, does not in itself make all non-probable-cause searches reasonable. Reasonableness requires that the courts must weigh more than the necessity of the search in terms of possible harm to the public. The equation must also take into account the likelihood that the search procedure will be effective in averting the potential harm. On the opposite balance we must evaluate the degree and nature of intrusion into the privacy of the person and effects of the citizen which the search entails.
>
> In undertaking our calculation of the weight to be accorded to these three factors in the case at bar – public necessity, efficacy of the search, and degree of intrusion – we need not reiterate what was said in *Moreno* about the dangers posed by air piracy; suffice it to say that there is a judicially-recognized necessity to insure that the potential harms of air piracy are foiled. The search procedures have every indicia of being the most efficacious that could be used. The group being screened is limited to persons with the immediate

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[57] See also *United States v. McCarty, supra* note 28; *Higerd v. State, supra* note 28; *United States v. Fofana, supra* note 28; *United States v. Aukai, supra* note 28; *Gilmore v. Gonzales, supra* note 55; *State v. Book,* 165 Ohio App. 3d 511 (2006); *United States v. Marquez, supra* note 40; *United States v. Pulido-Baquerizo, supra* note 53; and *United States v. Henry,* 615 F.2d 1223 (1980).

[58] *Supra* note 35.

[59] 482 F.2d 1272 (1973).

intention of boarding aircraft. Metal detectors, visual inspection, and rare but potential physical searches appear to this court to provide as much efficiency to the process as it could have.

On the other side of the judicial scales, the intrusion which the airport search imposes on the public is not insubstantial. It is inconvenient and annoying, in some cases it may be embarrassing, and at times it can be incriminating. There are several factors, however, which make this search less offensive to the searched person than similar searches in other contexts. One such factor is the almost complete absence of any stigma attached to being subjected to search at a known, designated airport search point. As one commentator has put it in the border search context, "individuals searched because of their membership in a morally neutral class have less cause to feel insulted ...." In addition, the offensiveness of the screening process is somewhat mitigated by the fact that the person to be searched must voluntarily come to and enter the search area. He has every opportunity to avoid the procedure by not entering the boarding area. Finally, the circumstances under which the airport search is conducted make it much less likely that abuses will occur. Unlike searches conducted on dark and lonely streets at night where often the officer and the subject are the only witnesses, these searches are made under supervision and not far from the scrutiny of the traveling public. Moreover, the airlines, which have their representatives present, have a definite and substantial interest in assuring that their passengers are not unnecessarily harassed. The officers conducting the search under these circumstances are much more likely to be solicitous of the Fourth Amendment rights of the traveling public than in more isolated, unsupervised surroundings.

Our conclusion, after this tripartite weighing of the relevant factors, is that the standards for initiating a search of a person at the boarding gate should be no more stringent than those applied in border crossing situations. In the critical pre-boarding area where this search started, reasonableness does not require that officers search only those passengers who meet a profile or who manifest signs of nervousness or who otherwise appear suspicious. Such a requirement would have to assume that hijackers are readily identifiable or that they invariably possess certain traits. The number of lives placed at hazard by this criminal paranoia forbid taking such deadly chances. As Judge Friendly has stated:

> Determination of what is reasonable requires a weighing of the harm against the need. When the object of the search is simply

> the detection of past crime, probable cause to arrest is generally the appropriate test .... When the risk is the jeopardy to hundreds of human lives and millions of dollars of property inherent in the pirating or blowing up of a large airplane, the danger *alone* meets the test of reasonableness, so long as the search is conducted in good faith for the purpose of preventing hijacking or like damage and with reasonable scope and the passenger has been given advance notice of his liability to such a search so that he can avoid it by choosing not to travel by air. (Citations omitted.)

According to *United States v. Aukai*,[60] US case law had erroneously suggested that the reasonableness of airport screening searches is dependent upon the passenger's consent, either ongoing consent or irrevocable implied consent. It opined:

> The constitutionality of an airport screening search, however, does not depend on consent, *see* Biswell, 406 U.S. at 315, and requiring that a potential passenger be allowed to revoke consent to an ongoing airport security search makes little sense in a post-9/11 world. Such a rule would afford terrorists multiple opportunities to attempt to penetrate airport security by "electing not to fly" on the cusp of detection until a vulnerable portal is found. This rule would also allow terrorists a low-cost method of detecting systematic vulnerabilities in airport security, knowledge that could be extremely valuable in planning future attacks. Likewise, given that consent is not required, it makes little sense to predicate the reasonableness of an administrative airport screening search on an irrevocable implied consent theory. Rather, where an airport screening search is otherwise reasonable and conducted pursuant to statutory authority, 49 U.S.C. § 44901, all that is required is the passenger's election to attempt entry into the secured area of an airport. *See* Biswell, 406 U.S. at 315; 49 C.F.R. § 1540.107. Under current TSA regulations and procedures, that election occurs when a prospective passenger walks through the magnetometer or places items on the conveyor belt of the x-ray machine.[61] (Citation omitted.)

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[60] *Supra* note 28. See *Arrahim v. Cho,* 2018 U.S. Dist. LEXIS 32708 (2018); and *Herrera v. Santa Fe Pub. Sch.,* 956 F. Supp. 2d 1191 (2013).

[61] *United States v. Aukai, id.,* citing *United States v. Biswell*, 406 U.S. 311 (1972).

Currently, US courts are of the view that the constitutionality of a screening search does not depend on the passenger's consent once he enters the secured area of an airport. The requirement in *Davis*[62] of allowing passengers to avoid the search by electing not to fly does not extend to one who has already submitted his luggage for an x-ray scan.[63] If a potential passenger chooses to avoid a search, he must elect not to fly *before* placing his baggage on the x-ray machine's conveyor belt.[64] The right to abandon air travel must be exercised *prior to* commencing the screening procedures. Any other rule would allow potential hijackers to leave whenever detection seemed imminent and permit them to try again another day.[65]

The instant case does not qualify as a legitimate administrative search in an airport.

Similar to the mission of the Transportation Security Administration of the US Department of Homeland Security, the Office of Transportation Security under the Department

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[62] According to *United States v. Davis, supra* note 40, "airport screening searches of the persons and immediate possessions of potential passengers for weapons and explosives are reasonable under the Fourth Amendment provided each prospective boarder retains the right to leave rather than submit to the search." It held that "as a matter of constitutional laws, a prospective passenger has a choice: he may submit to a search of his person and immediate possessions as a condition to boarding; or he may turn around and leave. If he chooses to proceed, that choice, whether viewed as a relinquishment of an option to leave or an election to submit to the search, is essentially a 'consent,' granting the government a license to do what it would otherwise be barred from doing by the Fourth Amendment." See also *Gilmore v. Gonzales, supra* note 55.

[63] *United States v. Pulido-Baquerizo, supra* note 53.

[64] *State v. Hanson, supra* note 35, citing *United States v. Pulido-Baquerizo, id*.

[65] See *United States v. Marquez, supra* note 40; and *State v. Hanson, supra* note 35.

of Transportation and its predecessors has been primarily[66] mandated to ensure civil aviation security.[67] To be precise,

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[66] During the administration of then President Ferdinand E. Marcos, acts constituting dollar salting or dollar black marketing was declared illegal and was screened in airports (*see* Executive Order No. 934 dated February 13, 1984; Executive Order No. 953 dated May 4, 1984; Presidential Decree No. 1936 dated June 22, 1984; Letter of Instructions No. 1445 dated January 11, 1985; and Presidential Decree No. 2002 dated December 16, 1985). Likewise, due to the alarming increase in the number of overseas Filipino workers who have been enticed, duped, and subsequently recruited to act as drug couriers by international drug trafficking syndicates, former President Gloria Macapagal-Arroyo created the Drug Couriers Task Force, which was an Inter-Agency Task Force composed of the PDEA as Chairman, the Department of Foreign Affairs as Co-Chairman, and the Department of Labor and Employment, Bureau of Immigration, Bureau of Customs, National Bureau of Investigation, Philippine Information Agency, Manila International Airport Authority and Philippine Tourism Authority as Members (*see* Administrative Order No. 279 dated February 8, 2010).

[67] Taking into account the series of aircraft hijackings which have threatened the airline industry and civil aviation, former President Ferdinand E. Marcos issued Letter of Instructions *(LOI)* No. 399 dated April 28, 1976. It constituted the National Action Committee on Anti-Hijacking *(NACAH)*, under the Chairmanship of the Secretary of National Defense, to formulate plans for, coordinate, integrate, direct, control and supervise all measures aimed at preventing/suppressing **any and all forms of hijacking**; ensuring the safe and continuous operation of civil aviation; and handling all incidents of hijacking to include immediate and follow-up actions to be taken up to the termination or resolution thereof.

In the implementation of LOI No. 399, LOI No. 961, dated November 22, 1979, created the Aviation Security Command (AVSECOM) to be responsible for the protection of the airline industry to ensure its continued and uninterrupted operations. It was tasked to maintain peace and order within airport complexes and secure all airports against **offensive and terroristic acts that threaten civil aviation**. In the discharge of its responsibilities, the AVSECOM was directed to confine itself to its primary responsibility of security.

Pursuant to Executive Order *(EO)* No. 393 dated January 24, 1990, then President Corazon C. Aquino, reconstituted the NACAH and mandated it to formulate plans to coordinate, integrate, direct, control and supervise all measures aimed at preventing or suppressing **all forms of hijacking or kidnapping involving civil aviation and airline industry operations**; ensuring the safe and continuous operation of the airline industry and civil

the OTS is tasked to implement Annex 17 of the ICAO Convention on aviation security which seeks to safeguard civil aviation and its facilities against acts of unlawful interference, which include but not limited to:

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aviation; and handling **all incidents of hijacking and all other offensive and terroristic activities**. EO No. 452, dated April 5, 1991, further reconstituted the NACAH by designating the Secretary of the Interior and Local Government as its Chairman.

On May 18, 1995, former President Fidel V. Ramos issued EO No. 246, reconstituting and renaming the NACAH as the National Action Committee on Anti-Hijacking and Anti-Terrorism *(NACAHT)*. In addition to the provisions of LOI No. 399 and EO No. 393, NACAHT was empowered to: (a) formulate plans to direct, control, supervise and integrate all measures aimed at preventing and suppressing **hijacking, other threats to civil aviation, and all other forms of terrorism** with the end in view of protecting national interests, and (b) adopt measures geared towards the implementation of the following main objectives: (1) to effectively monitor the activities of suspected terrorists, and (2) to develop the capability of local law enforcement agencies to contain the threats of terrorism. The NACAHT was ordered to establish close coordination and cooperation with concerned agencies of countries which are vigorously opposing international terrorism and to enhance the intelligence and operational functions of concerned entities and authorities in dealing with crimes perpetrated by terrorist.

Under the administration of then President Joseph Ejercito Estrada, the NACAHT was reconstituted and renamed as the National Council for Civil Aviation Security *(NCCAS)*. In addition to the provisions of LOI No. 399, EO No. 393, and EO No. 246, the NCCAS was tasked by EO No. 336, dated January 5, 2001, to: (a) formulate plans to direct, control, supervise and integrate all measures aimed at preventing and suppressing **all terrorist threats to civil aviation especially hijacking, commandeering, sabotage of plane and airport facilities, violence directed against civil aviation personnel as well as the plane riding public and/or the citizens-at-large, and all other forms of terrorism** with the end in view of protecting Philippine national interests, and (b) to develop and continue enhancing the level of operational effectiveness of local law enforcement agencies under jurisdiction and immediate supervision of the NCCAS.

On January 30, 2004, former President Gloria Macapagal-Arroyo issued EO No. 277 in view of the urgent need to safeguard civil aviation against **acts of unlawful interference** and the responsibility of the NCCAS for formulating plans to direct, control, supervise and integrate all measures aimed at preventing and suppressing **all terrorist threats to civil aviation**.

1. unlawful seizure of aircraft,
2. destruction of an aircraft in service,

The executive order created an OTS under the Department of Transportation and Communication *(DOTC)*, which shall be primarily responsible for the implementation of Annex 17 of the ICAO Convention on aviation security. Moreover, the NCCAS was reconstituted as the National Civil Aviation Security Committee *(NCASC)* under the Chairmanship of the DOTC Secretary. In addition to its existing functions, the NCASC shall be responsible for the implementation and maintenance of the National Civil Aviation Security Programme (*NCASP*) and shall:

a. Define and allocate tasks and coordinate activities among the agencies of the government, airport authorities, aircraft operators and other entities concerned with, or responsible for, the implementation of various aspects of the NCASP;
b. Coordinate security activities among the agencies of the government, airport authorities, aircraft operators and other entities concerned with, or responsible for, the implementation of various aspects of the NCASP;
c. Define and allocate tasks for the implementation of the NCASP among the agencies of the government, airport authorities, aircraft operators and other concerned entities;
d. Ensure that each airport serving international civil aviation shall establish and implement a written airport security programme appropriate to meet the requirements of the NCASP;
e. Arrange for an authority at each airport serving international civil aviation to be responsible for coordinating the implementation of security controls;
f. Arrange for the establishment of an airport security committee at each airport serving international civil aviation to assist the authority mentioned in paragraph (e) above, in the coordination of the implementation of security controls and procedures;
g. Coordinate and collaborate with the Task Force for Security of Critical Infrastructure under the Cabinet Oversight Committee on International Security; and
h. Perform such other functions as the President may direct.

Barely three months after, President Macapagal-Arroyo issued EO No. 311 on April 26, 2004. It took note of the recent international and domestic events reminding that the nation must constantly be vigilant to prevent **weapons, explosives, other dangerous elements or devices, hazardous materials and cargoes, which may be used to commit an act of terrorism and the carriage or bearing of which is not authorized**, from being introduced into and carried on board a public transport system. The OTS was designated as the single authority responsible for the security of the transportation systems of the country, including, but not limited to civil

3. hostage-taking on board aircraft or on aerodromes,
4. forcible intrusion on board an aircraft, at an airport or on the premises of an aeronautical facility,

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aviation, sea transport and maritime infrastructure, and land transportation, rail system and infrastructure. The OTS shall exercise the following powers and functions:

a. Assume the functions of the NCASC enumerated in Section 4 of EO No. 277 as well as all other powers and functions of the NCASC subject, however, to Section 3 of the Executive Order;
b. Exercise operational control and supervision over all units of law enforcement agencies and agency personnel providing security services in the transportation systems, except for motor vehicles in land transportation, jointly with the heads of the bureaus or agencies to which the units or personnel organically belong or are assigned;
c. Exercise responsibility for transportation security operations including, but not limited to, security screening of passengers, baggage and cargoes, and hiring, retention, training and testing of security screening personnel;
d. In coordination with the appropriate agencies and/or instrumentalities of the government, formulate, develop, promulgate and implement comprehensive security plans, policies, measures, strategies and programs to ably and decisively deal with any threat to the security of transportation systems, and continually review, assess and upgrade such security plans, policies, measures, strategies and programs, to improve and enhance transportation security and ensure the adequacy of these security measures;
e. Examine and audit the performance of transportation security personnel, equipment and facilities, and, thereafter, establish, on a continuing basis, performance standards for such personnel, equipment and facilities, including for the training of personnel;
f. Prepare a security manual/master plan or programme which shall prescribe the rules and regulations for the efficient and safe operation of all transportation systems, including standards for security screening procedures, prior screening or profiling of individuals for the issuance of security access passes, and determination of levels of security clearances for personnel of the OTS, the DOTC and its attached agencies, and other agencies of the government;
g. Prescribe security and safety standards for all transportation systems in accordance with existing laws, rules, regulations and international conventions;
h. Subject to the approval of the Secretary of the DOTC, issue Transportation Security Regulations/Rules and amend, rescind or revise such regulations or rules as may be necessary for the security of the transportation systems of the country;

5. introduction on board an aircraft or at an airport of a weapon or hazardous device or material intended for criminal purposes,
6. use of an aircraft in service for the purpose of causing death, serious bodily injury, or serious damage to property or the environment,
7. communication of false information such as to jeopardize the safety of an aircraft in flight or on the ground, of passengers, crew, ground personnel or the general public, at an airport or on the premises of a civil aviation facility.[68]

Among others, the OTS has to enforce R.A. No. 6235 or the Anti-Hijacking Law.[69] It provides that an airline passenger and his hand-carried luggage are subject to search for, and seizure of, prohibited materials or substances and that it is unlawful for any person, natural or juridical, to ship, load or carry in any passenger aircraft, operating as a public utility

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i. Enlist the assistance of any department, bureau, office, instrumentality, or government-owned or controlled corporation, to carry out its functions and mandate including, but not limited to, the use of their respective personnel, facilities and resources;

j. Actively coordinate with law enforcement agencies in the investigation and prosecution of any illegal act or unlawful interference committed at or directed to any public transportation system;

k. Perform such other functions necessary to effectively carry out the provisions of this Executive Order or as may be directed by the Secretary of the DOTC.

Under the same EO, the NCASC shall henceforth act as an advisory body to, and consultative forum for the DOTC Secretary in matters relative to civil aviation security. For this purpose, the NCASC was transferred to the DOTC and its composition was reconstituted. The OTS shall continue to serve as the Secretariat of the NCASC.

[68] See https://ext.eurocontrol.int/lexicon/index.php/Acts_of_ unlawful_ interference and https://to70.com/unlawful-interference/. (last accessed on December 5, 2018).

[69] Entitled *"An Act Prohibiting Certain Acts Inimical To Civil Aviation, And For Other Purposes,"* Approved on June 19, 1971.

within the Philippines, any explosive, flammable, corrosive or poisonous substance or material.[70]

It is in the context of air safety-related justifications, therefore, that routine airport security searches and seizures are considered as permissible under Section 2, Article III of the Constitution.

In this case, what was seized from Eanna were two rolled sticks of dried marijuana leaves. Obviously, they are not explosive, flammable, corrosive or poisonous substances or materials, or dangerous elements or devices that may be used to commit hijacking or acts of terrorism. More importantly, the illegal drugs were discovered only during the final security checkpoint, after a pat down search was conducted by SSO Suguitan, who did

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[70] Section 5 of R.A. No. 6235 states:

SEC. 5. As used in this Act

(1) "Explosive" shall mean any substance, either solid or liquid, mixture or single compound, which by chemical reaction liberates heat and gas at high speed and causes tremendous pressure resulting in explosion. The term shall include but not limited to dynamites, firecrackers, blasting caps, black powders, bursters, percussions, cartridges and other explosive materials, except bullets for firearm.

(2) "Flammable" is any substance or material that is highly combustible and self-igniting by chemical reaction and shall include but not limited to acrolein, allene, aluminum dyethyl monochloride, and other aluminum compounds, ammonium chlorate and other ammonium mixtures and other similar substances or materials.

(3) "Corrosive" is any substance or material, either liquid, solid or gaseous, which through chemical reaction wears away, impairs or consumes any object. It shall include but not limited to alkaline battery fluid packed with empty storage battery, allyl chloroformate, allytrichlorosilane, ammonium dinitro-orthocresolate and other similar materials and substances.

(4) "Poisonous" is any substance or material, except medicinal drug, either liquid, solid or gaseous, which through chemical reaction kills, injures or impairs a living organism or person, and shall include but not limited to allyl isothiocyanate, ammunition (chemical, non-explosive but containing Class A, B or poison), aniline oil, arsine, bromobenzyle cyanide, bromoacetone and other similar substances or materials.

not act based on personal knowledge but merely relied on an information given by CSI Tamayo that Eanna was possibly in possession of marijuana. In marked contrast, the illegal drugs confiscated from the accused in *Johnson* and the subsequent cases of *People v. Canton,*[71] *People v. Suzuki,*[72] *Sales v. People,*[73] and *People v. Cadidia,*[74] where incidentally uncovered during the initial security check, in the course of the routine airport screening, after the defendants were frisked and/or the alarm of the metal detector was triggered.

Airport search is reasonable when limited in scope to the object of the Anti-Hijacking program, not the war on illegal drugs. Unlike a routine search where a prohibited drug was found by chance, a search on the person of the passenger or on his personal belongings in a deliberate and conscious effort to discover an illegal drug is not authorized under the exception to the warrant and probable cause requirement.[75] The Court is not empowered to suspend constitutional guarantees so that the government may more effectively wage a "war on drugs." If that war is to be fought, those who fight it must respect the rights of individuals, whether or not those individuals are suspected of having committed a crime.[76]

Nonetheless, there is a valid consented warrantless search in this case.

The constitutional immunity against unreasonable searches and seizures is a personal right which may be waived.[77] A person may voluntarily consent to have government officials

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[71] *Supra* note 19.

[72] *Supra* note 19.

[73] *Supra* note 19.

[74] *Supra* note 19.

[75] See *State v. Salit, supra* note 45.

[76] See *Fla. v. Bostick,* 501 U.S. 429 (1991).

[77] *Valdez v. People,* 563 Phil. 934, 950 (2007).

conduct a search or seizure that would otherwise be barred by the Constitution. Like the Fourth Amendment, Section 2, Article III of the Constitution does not proscribe voluntary cooperation.[78]

Yet, a person's "consent to a [warrantless] search, in order to be voluntary, must be unequivocal, specific and intelligently given, [and] uncontaminated by any duress or coercion[.]"[79] The question of whether a consent to a search was "voluntary" or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances.[80]

Relevant to this determination are the following characteristics of the person giving consent and the environment in which consent is given: (1) the age of the defendant; (2) whether [he] was in a public or a secluded location; (3) whether [he] objected to the search or passively looked on; (4) the education and intelligence of the defendant; (5) the presence of coercive police procedures; (6) the defendant's belief that no incriminating evidence [will] be found; (7) the nature of the police questioning; (8) the environment in which the questioning took place; and (9) the possibly vulnerable subjective state of the person consenting.[81]

Consent to a search is not to be lightly inferred, but shown by clear and convincing evidence.[82] The government bears the burden of proving "consent."[83] In the US, it has been held that when the government relies on the "consent" exception to the

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[78] See *Fla. v. Bostick, supra* note 76.

[79] *Schaffer v. State, supra* note 37. See also *Luz v. People, supra* note 25, at 411; and *Valdez v. People, supra* note 25, at 950.

[80] *Schneckloth v. Bustamonte,* 412 U.S. 218 (1973), as cited in *United States v. Henry, supra* note 57; and *United States v. Davis, supra* note 40. See also *Luz v. People, supra* note 25, at 411; and *Valdez v. People, supra* note 25, at 950.

[81] *Luz v. People, id.* at 411-412; and *Valdez v. People, id.* at 950.

[82] *Luz v. People, id*. at 411; and *Valdez v. People, id.*

[83] *United States v. Henry, supra* note 57; and *United States v. Davis, supra* note 40.

warrant requirement, two main issues must be litigated: did the defendant indeed consent, and did the defendant do so with the requisite voluntariness?[84] Here, we have ruled that to constitute a waiver, it must first appear that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such a right; and, lastly, that said person had an actual intention to relinquish the right.[85]

While knowledge of the right to refuse consent is one factor to be taken into account, the government need not establish such knowledge as the *sine qua non* of effective consent.[86] On the other hand, lack of objection to the search and seizure is not tantamount to a waiver of constitutional right or a voluntary submission to the warrantless search and seizure.[87] Even when security agents obtain a passenger's express assent to a search, this assent ordinarily will not constitute a valid "consent" if the attendant circumstances will establish nothing more than acquiescence to apparent lawful authority.[88] The Fourth Amendment inquiry of whether a reasonable person would have felt free to decline the officers' requests or otherwise terminate the encounter applies equally to police encounters that take place on trains, planes, and city streets.[89] "Consent" that is the product of official intimidation or harassment is not consent at all.[90]

In this case, the Court finds that there is a valid warrantless search based on express consent. When SSO Suguitan requested

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[84] *Schaffer v. State, supra* note 37, citing *Schneckloth v. Bustamonte*, *supra* note 80.

[85] *People v. Chua Ho San, supra* note 25, at 721.

[86] *Schneckloth v. Bustamonte, supra* note 80, as cited in *United States v. Davis, supra* note 40.

[87] *Valdez v. People, supra* note 25, at 951.

[88] See *Schaffer v. State, supra* note 37; and *United States v. Miner,* 484 F.2d 1075 (1973).

[89] *Fla. v. Bostick, supra* note 76.

[90] *Id.*

to conduct a pat down search on Eanna, the latter readily agreed. Record is devoid of any evidence that he manifested objection or hesitation on the body search. The request to frisk him was orally articulated to him in such language that left no room for doubt that he fully understood what was requested. Unperturbed, he verbally replied to the request demonstrating that he also understood the nature and consequences of the request. He voluntarily raised his hands by stretching sideward to the level of his shoulders with palms open. His affirmative reply and action cannot be viewed as merely an implied acquiescence or a passive conformity to an authority considering that SSO Suguitan is not even a police officer and cannot be said to have acted with a coercive or intimidating stance. Further, it is reasonable to assume that Eanna is an educated and intelligent man. He is a 53-year old working professional (claimed to be employed or attached to a drug addiction center) and a well-travelled man (said to have been in 22 different countries and spent hours in customs).[91] Indubitably, he knew, actually or constructively, his right against unreasonable searches or that he intentionally conceded the same. Having been obtained through a valid warrantless search, the sticks of marijuana are admissible in evidence against him. Corollarily, his subsequent arrest, although likewise without warrant, was justified since it was effected upon the discovery and recovery of an illegal drug in his person *in flagrante delicto*.

There is substantial compliance with the chain of custody rule.

At the time of the commission of the crime, the applicable law is R.A. No. 9165.[92] Section 1 (b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, which implements the law, defines chain of custody as –

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[91] TSN, October 2, 2013, pp. 20, 41.

[92] R.A. No. 9165 took effect on July 4, 2002 (see *People v. De la Cruz,* 591 Phil. 259, 272 [2008]). R.A. No. 10640 was approved on July 15, 2014, amending R.A. No. 9165.

[T]he duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody [was] made in the course of safekeeping and use in court as evidence, and the final disposition.[93]

The chain of custody rule is but a variation of the principle that real evidence must be authenticated prior to its admission into evidence.[94] To establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a **rational basis** from which to conclude that the evidence is what the party claims it to be.[95] In a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could **reasonably believe** that an item still is what the government claims it to be.[96] As regards the prosecution of illegal drugs, the well-established US federal evidentiary rule is when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination, courts require a more stringent foundation entailing a chain of custody of the item with **sufficient completeness** to render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.[97] This evidentiary rule was adopted in *Mallillin*

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[93] See *People v. Badilla,* 794 Phil. 263, 278 (2016); *People v. Arenas,* 791 Phil. 601, 610 (2016); and *Saraum v. People,* 779 Phil. 122, 132 (2016).

[94] *United States v. Rawlins,* 606 F.3d 73 (2010).

[95] *Id.,* as cited in *United States v. Mehmood,* 2018 U.S. App. LEXIS 19232 (2018); *United States v. De Jesus-Concepcion,* 652 Fed. Appx. 134 (2016); *United States v. Rodriguez*, 2015 U.S. Dist. LEXIS 35215 (2015); and *United States v. Mark,* 2012 U.S. Dist. LEXIS 95130 (2012).

[96] See *United States v. Rawlins, id.,* as cited in *United States v. Mark, id*.

[97] See *United States v. Cardenas,* 864 F.2d 1528 (1989), as cited in *United States v. Yeley-Davis,* 632 F.3d 673 (2011); *United States v. Solis,* 55 F. Supp. 2d 1182 (1999); *United States v. Anderson,* 1994 U.S. App.

v. People,[98] where this Court also discussed how, ideally, the chain of custody of seized items should be established:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[99]

In the present case, the prosecution was able to prove, through the documentary and testimonial evidence, that the integrity and evidentiary value of the seized items were properly preserved in every step of the way.

Upon confiscation of the two rolled sticks of dried marijuana leaves from Eanna, SSO Suguitan put them on the nearby screening table in front of Eanna and PO1 Manadao, Jr. The sticks were the only items placed on the table.[100] Thereafter,

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LEXIS 9193 (1994); *United States v. Hogg,* 1993 U.S. App. LEXIS 13732 (1993); *United States v. Rodriguez-Garcia,* 983 F.2d 1563 (1993); *United States v. Johnson,* 977 F.2d 1360 (1992); and *United States v. Clonts,* 966 F.2d 1366 (1992).

[98] 576 Phil. 576 (2008).

[99] *Id.* at 587, as cited in *People v. Tamaño,* G.R. No. 208643, December 5, 2016, 812 SCRA 203, 229; *People v. Badilla, supra* note 91, at 280; *Saraum v. People, supra* note 93, at 132-133; *People v. Dalawis,* 772 Phil. 406, 417-418 (2015); and *People v. Flores,* 765 Phil. 535, 541-542 (2015). It appears that *Mallillin* was erroneously cited as "*Lopez v. People"* in *People v. Abelarde,* G.R. No. 215713, January 22, 2018; *People v. Denoman,* 612 Phil. 1165 (2009); *People v. Garcia,* 599 Phil. 416 (2009); *People v. Sanchez,* 590 Phil. 214 (2008); and *People v. Dela Cruz,* 589 Phil. 259 (2008).

[100] TSN, August 20, 2013, pp. 20-21; TSN, September 4, 2013, p. 7.

the seized items were turned-over by SSO Suguitan to PO3 Javier, who placed them on a tray together with the other belongings of Eanna.[101] It must be emphasized that SSO Suguitan is an airport screening officer and not a police officer who is authorized to "arrest" or "apprehend"[102] Eanna. Hence, he should not be considered as the "apprehending officer" who must immediately mark and conduct the physical inventory and photograph of the seized items conformably with Section 21 of R.A. No. 9165 and its Implementing Rules and Regulations (*IRR*).

PO3 Javier was the only one in possession of the two rolled sticks of dried marijuana leaves from the time he took custody of the same at the airport up to the time he submitted the same to the crime laboratory office.[103] At the PNP-ASG office, the confiscated illegal drug was marked, physically inventoried, and photographed in front of Eanna, with SSO Suguitan, a Barangay Chairman, a Barangay Kagawad, and an ABS-CBN cameraman as witnesses.[104] Per Request for Laboratory Examination,[105] the specimens were personally delivered by PO3 Javier to the Ilocos Norte Provincial Crime Laboratory Service where PO3 Padayao received them. Finally, based on the Chemistry Report[106] of Police Inspector Navarro and the stipulation of facts[107] agreed

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

[102] "Arrest" or "apprehend" should be understood in its traditional terminology. It contemplates one which "eventuate in a trip to the station house and prosecution for crime" and not merely "whenever a **police officer** accosts an individual and restrains his freedom to walk away." "An arrest is the initial stage of a criminal prosecution. It is intended to vindicate society's interest in having its laws obeyed, and it is inevitably accompanied by future interference with the individual's freedom of movement, whether or not trial or conviction ultimately follows." (See *Terry v. Ohio,* 392 U.S. 1 [1968]).

[103] TSN, September 11, 2013, pp. 5-6.

[104] TSN, September 4, 2013, p. 13.

[105] Records, p. 24.

[106] *Id.* at 25.

[107] TSN, August 20, 2013, pp. 2-3.

upon by the parties, the specimens tested positive for the presence of marijuana after a qualitative examination.

The specimens contained in the Ziploc re-sealable plastic bag that were marked, tested, and presented in court were positively identified not only by PO3 Javier but also by SSO Suguitan as the same two rolled sticks of dried marijuana leaves seized from Eanna.[108] Hence, it would be immaterial even if, as Eanna argues, PO3 Javier had no personal knowledge of their possession by Eanna and their seizure by SSO Suguitan.

Eanna contends that the two sticks of rolled paper allegedly containing marijuana were not marked immediately and were just laid bare on a table at the PNP-ASG office. According to him, the ABS-CBN video footage taken shortly before midnight, which Badua submitted and which was already edited following the news report format, showed that the two sticks were without markings at first and then with markings later on.

The Court notes that the compact disk showing the video of what transpired inside the PNP-ASG office does not contain the full footage that Badua had taken. It was already edited for purposes of news report.[109] Assuming that there is truth to the allegation that the two sticks of marijuana were not immediately marked, such fact does not automatically result in an acquittal. As long as the integrity and evidentiary value of an illegal drug were not compromised, non-compliance with Section 21 (1) of R.A. No. 9165 and its IRR may be excused. In several cases,[110] we affirmed the conviction of the accused-appellant

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[108] *Id.* at 30-31; TSN, September 11, 2013, pp. 3-4.

[109] TSN, September 27, 2013, p. 11.

[110] See *People v. Guillergan,* 797 Phil. 775 (2016); *People v. Asislo,* 778 Phil. 509 (2016); *People v. Yable,* 731 Phil. 650 (2014); *People v. Ladip,* 729 Phil. 495 (2014); *People v. Macala,* G.R. No. 203123, March 24, 2014 (First Division); *People v. Amadeo,* G.R. No. 199099, June 5, 2013 (First Division); *People v. Brainer,* 697 Phil. 171 (2012); *People v. Bautista,* 682 Phil. 487 (2012); *People v. Mondejar,* 675 Phil. 91 (2011); *People v. Politico, et al.,* 647 Phil. 728 (2010); *People v. Resurreccion,* 618 Phil. 520 (2009); and *People v. Rivera,* 590 Phil. 894 (2008).

despite recognizing that the seized illegal drug was not immediately marked at the place of arrest. Likewise, in *People v. Sic-open,*[111] the Court sustained the conviction of the accused-appellant even if the physical inventory and photograph of the illegal drug were not immediately done at the place where it was confiscated. Here, the reason for the non-observance with the rule is justified. Immediate marking, physical inventory, and photograph of the confiscated drug cannot be done at the final checkpoint area because it started to become crowded by the constant comings and goings of departing passengers. The seized items were fittingly brought by PO3 Javier to the PNP-ASG office where it was made sure that the barangay officials and a media man were in attendance to witness the regularity of the entire proceedings.

The peculiar situation in airports calls for a different treatment in the application of Section 21 (1) of R.A. No. 9165 and its IRR. To require all the time the immediate marking, physical inventory, and photograph of the seized illegal drug will definitely have a domino effect on the entire airport operation no matter how brief the whole procedure was conducted. Stuck passengers will cause flight delays, resulting not just economic losses but security threats as well. Besides, to expect the immediate marking, physical inventory, and photograph of the dangerous drug at the place of arrest is to deny the reality that the persons[112]

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[111] 795 Phil. 859 (2016), citing *People v. Asislo, supra* note 110; *People v. Mammad, et al.,* 769 Phil. 782 (2015); *Miclat, Jr. v. People,* 672 Phil. 191 (2011); and *People v. Felipe,* 663 Phil. 132 (2011).

[112] Under the original provision of Section 21 (1) of R.A. No. 9165, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physical inventory and to photograph the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. As amended by R.A. No. 10640, it is now mandated that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official and (3) a

required by law to witness the procedure are unavailable at the moment of arrest. Unlike in a buy-bust operation which is supposed to be pre-planned and already coordinated in order to ensure the instant presence of necessary witnesses, arrests and seizures in airports due to illegal drugs are almost always spontaneous and unanticipated.

In our view, the period of waiting for the arrival of the witnesses did not affect the integrity and evidentiary value of the subject illegal drug, on the following grounds:

First, the airport police ensured that only authorized personnel were inside the PNP-ASG office during the investigation. PO3 Javier claimed that he was with SPO3 Domingo, PO1 Manadao, Jr., PO2 Caole, Jr., SSO Suguitan, SSO Bal-ot, and P/Supt. Apias.[113] It was only the members of the PNP-ASG and of the Laoag City PNP, the media, and the two barangay officials who were allowed to stay inside the room.[114] The defense counsel recognized that the PNP-ASG office has a limited space and not big in size, estimating it to be around three by four meters (although PO1 Terson approximated it to be five by seven meters).[115]

Second, the airport police made sure that no one could touch the confiscated drug even if it was in full view of everyone. PO3 Javier testified that the two rolled sticks of dried marijuana leaves were placed on the investigation table where everybody could look but not hold.[116] Eanna could also see any attempt to switch or alter the evidence as he was seated just in front

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representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof (See *People v. Lim,* G.R. No. 231989, September 4, 2018; *People v. Sipin,* G.R. No. 224290, June 11, 2018; *People v. Reyes,* G.R. No. 219953, April 23, 2018; and *People v. Mola,* G.R. No. 226481, April 18, 2018).

[113] TSN, September 11, 2013, pp. 17-18.

[114] TSN, September 17, 2013, pp. 15-16.

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

[116] TSN, September 11, 2013, pp. 18-20.

of the table while the others guarded him.[117] Interestingly, instead of being concerned at the time of the risk of substitution, he even requested to smoke so he was allowed to go out of the PNP-ASG office.[118] Although the apprehending officers could have exercised a better judgment, they are under no obligation to explain why the accused was permitted to leave the office in order to smoke. Such fact should not be taken against them as the integrity and evidentiary value of the seized items are not automatically rendered infirmed. Certainly, we consider the totality of circumstances present in this case. Eanna's right to be presumed innocent until proven otherwise includes the constitutional right to enjoy his liberty, albeit in a restricted sense due to his arrest. He retains his (limited) freedom of movement during the course of the investigation. Likewise, it must be added that the natural tendency of an innocent person accused of committing a crime is not to rest easy by ensuring that the evidence being used against him is not altered, tampered or swapped. In this case, Eanna's resolve to smoke outside notwithstanding a pending concern either shows that he was adamant in his claim that what was confiscated from him were merely flavored tobacco or that he was already resigned to the fact that he was busted possessing marijuana. The Court cannot speculate or engage in guesswork.

And *third*, the plausibility of tampering with the evidence is nil as the airport police were preoccupied in accomplishing the necessary documentation relative to the arrest and seizure. PO3 Javier shared that while waiting for the arrival of the barangay officials, their group were busy preparing documents which mainly consist of reports regarding the incident.[119] The trial court equally noted that "there were a lot of things they were doing like the preparation of the spot report that they [would] forward to Manila such that their Deputy Chief even helped them. It is precisely for [this] reason that the two sticks

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

[118] *Id.* at 21.

[119] *Id.* at 19.

of marijuana [appear] to have been submitted to the crime lab only at 12:50 a.m. of the following day, July 15, 2013."[120]

It has been raised that the drug evidence should have been placed in a sealed container. Eanna asserts that the evidence was rendered susceptible to alteration, tampering and swapping because the Ziploc was not sealed by an adhesive tape or any means other than the natural, built-in re-sealable feature of the plastic bag. Contrary to his allegation, however, the specimens that were submitted to the RTC were actually placed in a big transparent re-sealable Hefty One Zip plastic bag sealed with a masking tape with markings.[121] Even if there is truth to his representation, the specimens contained in the Ziploc re-sealable plastic bag that were marked, tested, and presented in court were positively identified by SSO Suguitan and PO3 Javier, who both testified under oath, as the same two rolled sticks of dried marijuana leaves that were seized from Eanna. Raising a mere possibility is not enough. Eanna should have shown with particularity how the drug evidence was altered, tampered or swapped. The nature of illegal drugs as fungible things is not new to him. He is not a stranger to prohibited drugs, claiming to be familiar with marijuana since he is employed or attached to a drug addiction center and has been in 22 different countries and spent hours in customs.[122] As the RTC opined, he could have submitted for laboratory examination the tiny grains of dried leaves and seeds that were found in his camera bag in order to prove that the alleged sticks of marijuana seized from him were in fact flavored tobacco that he used to smoke all the time.[123]

The same reasoning as above can be said even if we are to admit that PO3 Padayao placed his own marking on the specimens he received from PO3 Javier and before he turned them over

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[120] Records, pp. 131-132.

[121] *Id.* at 26.

[122] TSN, October 2, 2013, pp. 20, 41.

[123] See Records, p. 131.

to the forensic chemist. A marking made on the corpus delicti itself is not automatically considered a form of contamination which irreversibly alters its physical state and compromises its integrity and evidentiary value.

Where a defendant identifies a defect in the chain of custody, the prosecution must introduce sufficient proof so that the judge could find that the item is in substantially the same condition as when it was seized, and may admit the item if there is a reasonable probability that it has not been changed in important respects.[124] However, there is a presumption of integrity of physical evidence absent a showing of bad faith, ill will, or tampering with the evidence.[125] Merely raising the possibility of tampering or misidentification is insufficient to render evidence inadmissible.[126] Absent some showing by the defendant that the evidence has been tampered with, it will not be presumed that those who had custody of it would do so.[127] Where there is no evidence indicating that tampering with the exhibits occurred, the courts presume that the public officers have discharged their duties properly.[128]

In this jurisdiction, it has been consistently held that considering 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, the defendant bears the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits by the public officers and a presumption that the public officers

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[124] See *United States v. Osuna-Alvarez,* 614 Fed. Appx. 353 (2015), citing *United States v. Matta-Ballesteros*, 71 F.3d 754 (1995).

[125] *United States v. Johnson,* 688 F.3d 494 (2012), citing *United States v. Robinson,* 617 F.3d 984 (2010).

[126] *United States v. Granderson,* 651 Fed. Appx. 373 (2016); *United States v. Williams,* 640 Fed. Appx. 492 (2016); and *United States v. Allen,* 619 F.3d 518 (2010).

[127] See *United States v. Cardenas, supra* note 97.

[128] *United States v. Mehmood, supra* note 95, citing *United States v. Allen, supra* note 126.

properly discharge their duties.[129] *People v. Agulay*[130] in fact ruled that failure to comply with the procedure in Section 21 (a), Article II of the IRR of R.A No. 9165 does not bar the application of presumption of regularity in the performance of official duties. Thus:

> The dissent agreed with accused-appellant's assertion that the police operatives failed to comply with the proper procedure in the custody of the seized drugs. It premised that **non-compliance with the procedure in Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165 creates an irregularity and overcomes the presumption of regularity accorded police authorities in the performance of their official duties.** This assumption is without merit.
>
> **First, it must be made clear that in several cases decided by the Court, failure by the buy-bust team to comply with said section did not prevent the presumption of regularity in the performance of duty from applying.**
>
> **Second, even prior to the enactment of R.A. 9165, the requirements contained in Section 21 (a) were already there per Dangerous Drugs Board Regulation No. 3, Series of 1979. Despite the presence of such regulation and its non-compliance by the buy-bust team, the Court still applied such presumption.** We held:
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> The failure of the arresting police officers to comply with said DDB Regulation No. 3, Series of 1979 is a matter strictly between

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[129] See *People v. Miranda,* 560 Phil. 795, 810 (2007), as cited in *People v. Dela Cruz, supra* note 99, at 524-525; *People v. Ando, et al.,* 793 Phil. 791, 800 (2016); *People v. Ygot,* 790 Phil. 236, 247 (2016); *People v. Domingo,* 786 Phil. 246, 255 (2016); *People v. Akmad, et al.,* 773 Phil. 581, 591 (2015); *People v. Baticolon,* 762 Phil. 468, 482 (2015); *People v. Dela Peña, et al.,* 754 Phil. 323, 344 (2015); *People v. Tapugay,* 753 Phil. 570, 581 (2015); *People v. De la Trinidad,* 742 Phil. 347, 360 (2014); *People v. Ortega,* 738 Phil. 393, 403-404 (2014); *People v. Yable, supra* note 110, at 660-661; *People v. Octavio, et al.,* 708 Phil. 184, 195-196 (2013); *People v. De Mesa, et al.,* 638 Phil. 245, 254 (2010); *Balarbar v. People,* 632 Phil. 295, 299 (2010); *People v. Hernandez, et al.,* 607 Phil. 617, 640 (2009); *People v. Macatingag,* 596 Phil. 376, 392 (2009); and *People v. Agulay,* 588 Phil. 247, 302 (2008).

[130] *Id.*

the Dangerous Drugs Board and the arresting officers and is totally irrelevant to the prosecution of the criminal case for the reason that the commission of the crime of illegal sale of a prohibited drug is considered consummated once the sale or transaction is established and the prosecution thereof is not undermined by the failure of the arresting officers to comply with the regulations of the Dangerous Drugs Board.[131] (Emphasis in the original)

People v. Daria, Jr.,[132] *People v. Gratil,*[133] and *People v. Bala*[134] have followed the *Agulay* ruling.

It is unfortunate that rigid obedience to procedure on the chain of custody creates a scenario wherein the safeguards supposedly set to shield the innocent are more often than not exploited by the guilty to escape rightful punishment.[135] The Court reiterates that while the procedure on the chain of custody should be perfect, in reality, it is almost always impossible to obtain an unbroken chain.[136] The chain of custody need not be perfect for the evidence to be admissible.[137] A complete chain of custody need not always be proved.[138] Thus, failure to strictly comply with Section 21 (1) of R.A. No. 9165 does not necessarily render an accused person's arrest illegal or the items seized or confiscated from him inadmissible or render void and invalid

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[131] *Id.* at 299-300, citing *People v. De los Reyes,* 299 Phil. 460, 470-471 (1994). See also *People v. Naelga,* 615 Phil. 539, 559 (2009).

[132] 615 Phil. 744, 757-758 (2009).

[133] 667 Phil. 681, 696-697 (2011).

[134] 741 Phil. 254, 266 (2014).

[135] See *People v. Moner,* G.R. No. 202206, March 5, 2018.

[136] *People v. Tamaño, supra* note 99, at 229; *People v. Badilla, supra* note 93, at 280; *Saraum v. People, supra* note 93, at 133; and *People v. Asislo, supra* note 110, at 517.

[137] *United States v. Johnson, supra* note 125; *United States v. Yeley-Davis, supra* note 97; and *United States v. Cardenas, supra* note 97.

[138] *United States v. Mitchell,* 816 F.3d 865 (2016); and *United States v. Rawlins, supra* note 94.

such seizure.[139] The most important factor is the preservation of the integrity and evidentiary value of the seized item.[140]

Non-compliance with the requirements of the law is not automatically fatal to the prosecution's case and the accused may still be held guilty of the offense charged. This Court ratiocinated in *People v. Del Monte*:[141]

> Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is *not excluded by the law or these rules*. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will [be] accorded [to] it by the courts. x x x
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> We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight – evidentiary merit or probative value – to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.[142] (Italics in the original.)

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[139] *People v. Tamaño, supra* note 99, at 229; *People v. Badilla, supra* note 93, at 280; *Saraum v. People, supra* note 93, at 133; *People v. Asislo, supra* note 110, at 517; *People v. Dalawis, supra* note 99, at 416; and *People v. Flores, supra* note 99, at 540-542.

[140] *People v. Tamaño, id.* at 229; *People v. Badilla, id.* at 280; and *People v. Asislo, id.* at 517.

[141] 575 Phil. 576 (2008).

[142] *Id.* at 586-587, as reiterated in *People v. Moner, supra* note 135; *People v. Calvelo,* G.R. No. 223526, December 6, 2017; *People v. Tripoli,* G.R. No. 207001, June 7, 2017; *Saraum v. People, supra* note 93, at 133; *People v. Mercado,* 755 Phil. 863, 879 (2015); *People v. Steve, et al.,* 740 Phil. 727, 739-740 (2014); *People v. Gamata,* 735 Phil. 688, 700-701 (2014); *People v. Ladip, supra* note 110, at 517; *People v. Cardenas,* 685 Phil. 205, 221 (2012); *People v. Soriaga,* 660 Phil. 600, 606-607 (2011); *People v. Domado,* 635 Phil. 74, 93-94 (2010); *Zalameda v. People,* 614 Phil. 710, 741-742 (2009); and *People v. Macatingag, supra* note 129, at 392-393.

We restated in *People v. Moner*[143] that if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case. The saving clause under Section 21 (1) of R.A. No. 9165 recognizes that the credibility of the prosecution's witnesses and the admissibility of other evidence are well within the power of trial court judges to decide. The Court went on to state that under the doctrine of separation of powers, it is important to distinguish if a matter is a proper subject of the rules of evidence, which are promulgated by the Court pursuant to paragraph (5), Section 5, Article VIII of the 1987 Constitution, or if it is a subject of substantive law, which is passed by an act of Congress. Taking into account the distinction in criminal law that a substantive law declares what acts are crimes and prescribes the punishment for committing them while a procedural law provides or regulates the steps by which one who commits a crime is to be punished, it was concluded that the chain of custody rule is a matter of evidence and a rule of procedure; therefore, it is the Court which has the last say regarding the appreciation of evidence.

Certainly, the chain of custody rule is a matter of evidence and a rule of procedure, it being ultimately anchored on the weight and admissibility of evidence which the courts have the exclusive prerogative to decide. Any missing link, gap, doubt, challenge, break, problem, defect or deficiency in the chain of custody goes to the weight of the evidence, not its admissibility.[144]

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[143] *Supra* note 135.

[144] *United States v. Mehmood, supra* note 95; *United States v. Wilson,* 720 Fed. Appx. 209 (2018); *United States v. Arnold,* 696 Fed. Appx. 903 (2017); *United States v. Marrero,* 2016 U.S. App. LEXIS 4570 (2016); *United States v. Mitchell, supra* note 138; *United States v. Granderson, supra* note 126; *United States v. Hemphill,* 642 Fed. Appx. 448 (2016); *United States v. Williams, supra* note 126; *United States v. Perez,* 625 Fed. Appx. 919 (2015); *United States v. Osuna-Alvarez, supra* note 124; *United States v. Johnson, supra* note 125; *United States v. Yeley-Davis, supra* note 97; *United States v. Allen, supra* note 126; *United States v. Rawlins,*

Once admitted, the court evaluates it and, based thereon, may accept or disregard the evidence.[145] In *People v. Sipin*,[146] this Court, through the *ponente*, recently conveyed:

> At this point, it is not amiss for the *ponente* to express his position regarding the issue of which between the Congress and the Judiciary has jurisdiction to determine sufficiency of compliance with the rule on chain of custody, which essentially boils down to the application of procedural rules on admissibility of evidence. In this regard, the *ponente* agrees with the view of Hon. Associate Justice Teresita J. Leonardo-De Castro in *People v. Teng Moner y Adam* that "if the evidence of illegal drugs was not handled precisely in the manner prescribed by the chain of custody rule, the consequence relates not to inadmissibility that would automatically destroy the prosecution's case but rather to the weight of evidence presented for each particular case." As aptly pointed out by Justice Leonardo-De Castro, the Court's power to promulgate judicial rules, including rules of evidence, is no longer shared by the Court with Congress.
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> The *ponente* subscribes to the view of Justice Leonardo-De Castro that the chain of custody rule is a matter of evidence and a rule of procedure, and that the Court has the last say regarding the appreciation of evidence. Evidentiary matters are indeed well within the powers of courts to appreciate and rule upon, and so, when the courts find appropriate, substantial compliance with the chain of custody rule as long as the integrity and evidentiary value of the seized items have been preserved may warrant the conviction of the accused.
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> The *ponente* further submits that **the requirements of marking the seized items, conduct of inventory and taking photograph in the presence of a representative from the media or the DOJ and a local elective official, are police investigation procedures which call for administrative sanctions in case of non-compliance. Violation of such procedure may even merit penalty under R.A. No. 9165**, to wit:

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supra note 94; *United States v. Mejia,* 597 F.3d 1329 (2010); and *United States v. Cardenas, supra* note 97.

[145] See *United States v. Wilson, supra* note 144; *United States v. Arnold, supra* note 144; *United States v. Yeley-Davis, supra* note 97; and *United States v. Cardenas, supra* note 97.

[146] *Supra* note 112.

> **Section 29.** *Criminal Liability for Planting of Evidence.* – Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death.
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> **Section 32.** *Liability to a Person Violating Any Regulation Issued by the Board.* – The penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten thousand pesos (₱10,000.00) to Fifty thousand pesos (₱50,000.00) shall be imposed upon any person found violating any regulation duly issued by the Board pursuant to this Act, in addition to the administrative sanctions imposed by the Board.

However, non-observance of such police administrative procedures should not affect the validity of the seizure of the evidence, because the issue of chain of custody is ultimately anchored on the admissibility of evidence, which is exclusively within the prerogative of the courts to decide in accordance with the rules on evidence. (Emphasis and italics in the original)

Strict compliance with the requirements of Section 21 (1) of R.A. No. 9165 may not always be possible under field conditions; the police operates under varied conditions, many of them far from ideal, and cannot at all times attend to all the niceties of the procedures in the handling of confiscated evidence.[147] Like what have been done in past cases, we must not look for the stringent step-by-step adherence to the procedural requirements; what is important is to ensure the preservation of the integrity and the evidentiary value of the seized items, as these would determine the guilt or innocence of the accused.[148] The identity of the confiscated drugs is preserved when the drug presented and offered as evidence in court is the exact same item seized

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[147] *People v. Sanchez*, *supra* note 99.

[148] See *People v. Domado, supra* note 142, at 93, as cited in *People v. Calvelo, supra* note 142; *People v. Mercado, supra* note 142, at 879; *People v. Steve, et al., supra* note 142, at 739; *People v. Alcala,* 739 Phil. 189, 201 (2014); *People v. Ladip, supra* note 110, at 516-517; and *People v. Soriaga, supra* note 142, at 606.

from the accused at the time of his arrest, while the preservation of the drug's integrity means that its evidentiary value is intact as it was not subject to planting, switching, tampering or any other circumstance that casts doubt as to its existence.[149]

To assess an allegedly faulty chain of custody, the court looks for ample corroborative evidence as to the evidence's acquisition and subsequent custody.[150] Before admitting or excluding real evidence, it must consider the nature of the evidence, and the surrounding circumstances, including presentation, custody and probability of tampering or alteration.[151] If, after considering these factors, it is determined that the evidence is substantially in the same condition as when the crime was committed, the evidence may be admitted.[152] The court need not rule out every possibility that the evidence underwent alteration; it needs only to find that the **reasonable probability** is that the evidence has not been altered in any material aspect.[153] Physical evidence is admissible when the possibilities of misidentification or alteration are eliminated, not absolutely, but as a matter of reasonable probability.[154] All that is required is that the evidence in question was the same as that involved in the offense and that it is substantially unchanged.[155]

Courts are reminded to tread carefully before giving full credit to the testimonies of those who conducted the illegal drug operations and must thoroughly evaluate and differentiate those

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[149] *People v. Bintaib,* G.R. No. 217805, April 2, 2018.

[150] *United States v. Mitchell, supra* note 138.

[151] *United States v. Cardenas, supra* note 97.

[152] *Id*.

[153] *Id*.

[154] *United States v. Mehmood, supra* note 95; *United States v. Mitchell, supra* note 138; *United States v. Williams, supra* note 126; *United States v. Johnson, supra* note 125; *United States v. Allen, supra* note 126; *United States v. Mejia, supra* note 144; and *United States v. Stewart*, 104 F.3d 1377 (1997).

[155] *United States v. Johnson, id*.

errors that constitute a simple procedural lapse from those that amount to a gross, systematic, or deliberate disregard of the safeguards drawn by the law and the rules.[156] In the performance of this function, among the evidentiary rules to apply are the following: test in measuring the value of a witness' testimony, appreciation of inculpatory facts, positive and negative evidence, one-witness rule, best evidence rule, suppression of evidence, presumption of regular performance of official duty, rules on circumstantial evidence and conspiracy, and (non) presentation of poseur buyer or marked money.[157]

WHEREFORE, premises considered, the February 9, 2016 Decision and the July 21, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36412, which affirmed the November 22, 2013 Decision of the Regional Trial Court, Branch 13, Laoag City, in Criminal Case No. 15585-13, finding accused-appellant Eanna O'Cochlain guilty for violation of Section 11, Article II of Republic Act No. 9165, are **AFFIRMED**.

SO ORDERED.

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

Leonen, J., see separate dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

This Court resolves the Appeal filed by Eanna O'Cochlain (O'Cochlain) from the February 9, 2016 Decision and July 21, 2016 Resolution of the Court of Appeals in CA-G.R. CR No. 36412. The Court of Appeals affirmed the November 22, 2013 Decision of the Regional Trial Court, which found O'Cochlain guilty beyond reasonable doubt of possession of illegal drugs

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[156] See *People v. Umipang,* 686 Phil. 1024, 1037 (2012).

[157] NITAFAN, DAVID G., *Annotations on the Dangerous Drugs Act,* First Edition (1995), Central Professional Books, Inc., pp. 135-146.

under Article II, Section 11 of Republic Act No. 9165,[1] or the Comprehensive Dangerous Drugs Act of 2002.

The majority finds that: (1) there was a valid warrantless search conducted on O'Cochlain under airport security measures; and (2) there was no violation of Article II, Section 21 of Republic Act No. 9165 concerning the custody and disposition of confiscated, seized, or surrendered dangerous drugs.

I dissent to the findings of the majority.

I

Conducting inspections of persons and their effects under routine airport security procedures do not trigger the constitutional right against unreasonable searches and seizures,[2]

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[1] Republic Act No. 9165 (2002), Art. II, Sec. 11 states:

SECTION 11. Possession of Dangerous Drugs. — …

. . . .

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, *marijuana* resin or *marijuana* resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of *marijuana*.

[2] CONST. Art. III, Sec. 2 states:

SECTION 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

as they arise from a reduced expectation of privacy.[3] In *Saluday v. People:*[4]

> To emphasize, a reasonable search, on the one hand, and a warrantless search, on the other, are mutually exclusive. While both State intrusions are valid even without a warrant, the underlying reasons for the absence of a warrant are different. A reasonable search arises from a reduced expectation of privacy, for which reason Section 2, Article III of the Constitution finds no application. Examples include searches done at airports, seaports, bus terminals, malls, and similar public places. In contrast, a warrantless search is presumably an "unreasonable search," but for reasons of practicality, a search warrant can be dispensed with. Examples include search incidental to a lawful arrest, search of evidence in plain view, consented search, and extensive search of a private moving vehicle.[5]

Nonetheless, for an inspection of passengers and their belongings under routine security procedures to be a valid reasonable search, certain conditions must be met.[6] In *Saluday*:

> In both situations, the inspection of passengers and their effects prior to entry at the bus terminal and the search of the bus while in transit must also satisfy the following conditions to qualify as a valid reasonable search. First, as to the manner of the search, it must be the least intrusive and must uphold the dignity of the person or persons being searched, minimizing, if not altogether eradicating, any cause for public embarrassment, humiliation or ridicule. Second, neither can the search result from any discriminatory motive such as insidious profiling, stereotyping and other similar motives. In all instances, the fundamental rights of vulnerable identities, persons with disabilities, children and other similar groups should be protected. Third, as to the purpose of the search, it must be confined to ensuring public safety. Fourth, as to the evidence seized from the reasonable

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[3] *People v. Johnson*, 401 Phil. 734 (2000) [Per *J*. Mendoza, Second Division].

[4] *Saluday v. People,* G.R. No. 215305, April 3, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/215305.pdf> [Per *J*. Carpio, *En Banc*].

[5] *Id*. at 14.

[6] *Id*. 15.

search, courts must be convinced that precautionary measures were in place to ensure that no evidence was planted against the accused.[7]

If the conditions are not met, then an initially reasonable search will be unreasonable.

The purpose of the search must be confined to ensuring public safety. This Court has recognized that increasing concerns over terrorism and other imminent threats to life warrant additional safety measures in public places, including the implementation of security procedures, inspections, and searches.[8]

However, if there is no imminent threat to life, there must be probable cause that a crime is being, or has been committed to make the search reasonable. In *Dela Cruz v. People*:[9]

> The presentation of petitioner's bag for x-ray scanning was voluntary. Petitioner had the choice of whether to present the bag or not. He had the option not to travel if he did not want his bag scanned or inspected. X-ray machine scanning and actual inspection *upon showing of probable cause that a crime is being or has been committed are part of reasonable security regulations to safeguard the passengers passing through ports or terminals.* Probable cause is:
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> > reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged. It refers to the existence of such facts and circumstances that can lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law are in the place to be searched.
>
> It is not too burdensome to be considered as an affront to an ordinary person's right to travel if weighed against the safety of all

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[7] *Id*.

[8] *People v. Johnson*, 401 Phil. 734 (2000) [Per J. Mendoza, Second Division]; *People v. Suzuki*, 460 Phil. 146 (2003) [Per J. Sandoval-Gutierrez, *En Banc*].

[9] 776 Phil. 653 (2016) [Per J. Leonen, Second Division].

passengers and the security in the port facility.[10] (Emphasis supplied, citation omitted)

This Court has, in several instances, upheld the validity of searches under routine security procedures, resulting in convictions for possession of illegal items because there had been probable cause.

In *People v. Johnson*,[11] during a routine frisking of departing passengers at the Ninoy Aquino International Airport, the duty frisker felt something hard on the accused's abdominal area. This aroused the suspicion of the duty frisker, who doubted the accused's explanation that she was wearing two (2) panty girdles. A subsequent search of the accused found methamphetamine hydrochloride (*shabu*) hidden on the accused's abdomen.

In *People v. Canton*,[12] the accused passing through the metal detector at the Ninoy Aquino International Airport triggered a beeping sound. The accused was then frisked, and *shabu* was discovered on her body.

Similarly, in *People v. Suzuki*,[13] the activation of a metal detector at the Bacolod Airport Terminal pre-departure area prompted officers from the Police Aviation Security Command to inspect the accused's body and the package he was carrying. A search of the package revealed marijuana.

In *Sales v. People*,[14] an Aviation Security Group on-duty member had suspicions over the accused, who had a slight bulge in his short pants pocket, but refused to show what it was. When the accused finally revealed the item, it turned out to be two (2) rolled sticks of marijuana.

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[10] *Id*. at 684–685.

[11] 401 Phil. 734 (2000) [Per *J*. Mendoza, Second Division].

[12] 442 Phil. 743 (2002) [Per *C.J*. Davide, Jr., First Division].

[13] 460 Phil. 146 (2003) [Per *J*. Sandoval-Guiterrez, *En Banc*].

[14] 703 Phil. 133 (2013) [Per *J*. Villarama, Jr., First Division].

In *People v. Cadidia*,[15] during a routine frisking at the Manila Domestic Airport Terminal I, the on-duty frisker noticed an unusual thickness around the accused's buttocks area. Unconvinced by the accused's explanation, the on-duty frisker conducted a more stringent body search that yielded sachets of *shabu*.

In *Dela Cruz v. People*,[16] when the accused placed his bag on the x-ray scanning machine for inspection at the Cebu Domestic Port, the operator-on-duty saw what appeared to be three (3) firearms in the bag. This alerted the port personnel, who conducted a manual inspection of the bag and discovered three (3) revolvers and four (4) live ammunitions, without proper documents.

In *Saluday v. People*,[17] during a checkpoint inspection of a bus near the Tefasco Wharf, an army task force member noticed that one (1) small bag was heavy for its size, with the bag's owner acting suspiciously outside. A search of the bag revealed firearms and explosives.

Here, it is undisputed that there was no imminent threat to life that warranted the search of the accused. He passed through routine airport security procedures at the Laoag City International Airport. At the final security check, he went through a pat-down search conducted by Security Screening Officer Dexter Suguitan (Suguitan), upon which two (2) cigarette packs were found in his possession. One (1) pack contained hand-rolled cigarette sticks. The accused explained that this was hand-rolled tobacco, but Suguitan stated that he knew the sticks had dried marijuana leaves.[18]

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[15] 719 Phil. 538 (2013) [Per J. Perez, Second Division].

[16] 776 Phil. 653 (2016) [Per J. Leonen, Second Division].

[17] G.R. No. 215305, April 3, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/april2018/215305.pdf> [Per J. Carpio, *En Banc*].

[18] *Ponencia*, p. 3.

Unlike in *Sales*,[19] the accused here did not act suspiciously during the routine inspection to believe that he was committing, or had committed an offense. No metal detectors or x-ray machines were triggered, and the pat-down of the accused did not yield any suspicious materials apart from hand-rolled cigarettes.

Notably, Suguitan claimed that he knew the sticks were marijuana because Security and Intelligence Flor Tamayo, of the Civil Aviation Authority of the Philippines, had earlier told him that he saw a Caucasian man smoking at the parking space in front of the airport departure area. The area smelled like marijuana, even though no smoke came out of the man's mouth.[20] Suguitan himself did not know of any suspicious activities of the accused that would have warranted his conclusion that the accused's hand-rolled cigarettes contained marijuana.

To emphasize, probable cause that a crime is or has been committed requires "reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged."[21] The mere possession of hand-rolled cigarettes is not by itself suspicious. Likewise, hearsay tips or secondhand knowledge of allegedly suspicious behavior cannot be a ground to believe that a person is committing or has committed a crime. For a valid finding of probable cause, law enforcers and their agents must have, based on observation, personally known the facts of the commission of a crime.[22]

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[19] 703 Phil. 133 (2013) [Per J. Villarama, Jr., First Division].

[20] *Ponencia*, pp. 2–3.

[21] *Dela Cruz v. People,* 776 Phil. 653, 684 (2016) [Per J. Leonen, Second Division], citing *People v. Mariacos*, 635 Phil. 315, 329 (2010) [Per J. Nachura, Second Division].

[22] *Veridiano v. People*, G.R. No. 200370, June 7, 2017, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2017/june2017/200370.pdf> [Per J. Leonen, Second Division].

II

For the majority, the integrity of the evidence is presumed to be preserved unless there is bad faith, ill will, or proof of tampering, to which the defendant has the burden of showing. This is to overcome a presumption of regularity in the public officers' handling of the exhibits, and the presumption that the public officers properly discharged their duties.[23]

However, the presumption of regularity must yield to the constitutional presumption of innocence[24] and requirement of proof beyond reasonable doubt.[25]

The general rule remains that there must be strict compliance with Section 21[26] of Republic Act

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[23] *Ponencia*, p. 30.

[24] CONST. Art. III, Sec. 14(2) states:

SECTION 14. …

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[25] *People v. Holgado, et al.,* 741 Phil. 78 (2014) [Per *J.* Leonen, Third Division]; *People v. Ramos*, 791 Phil. 162 (2016) [Per *J.* Brion, Second Division].

[26] Republic Act No. 9165 (2002), Sec. 21 states:

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

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

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: Provided, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of the same, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided, further, That a representative sample, duly weighed and recorded is retained;

No. 9165,[27] due to the characteristics of illegal drugs as not readily identifiable, and vulnerable "to tampering, alteration, or substitution by accident or otherwise."[28] The prosecution's failure to show compliance with the mandatory procedures in Section 21 of Republic Act No. 9165 creates reasonable doubt

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(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

(8) Transitory Provision: a) Within twenty-four (24) hours from the effectivity of this Act, dangerous drugs defined herein which are presently in possession of law enforcement agencies shall, with leave of court, be burned or destroyed, in the presence of representatives of the Court, DOJ, Department of Health (DOH) and the accused and/or his/her counsel, and, b) Pending the organization of the PDEA, the custody, disposition, and burning or destruction of seized/surrendered dangerous drugs provided under this Section shall be implemented by the DOH.

[27] *People v. Cayas*, 789 Phil. 70 (2016) [Per *J.* Brion, Second Division].

[28] *Id.* at 79. See also *People v. Andrada*, G.R. No. 232299, June 20, 2018 [Per *J.* Peralta, Second Division].

on the very *corpus delicti* of the offense charged.[29] Noncompliance is a ground for the accused's acquittal.[30]

Searches and seizures of drugs found under routine security procedures must still comply with Section 21 of Republic Act No. 9165. Neither the express text of the provision nor its implementing rules and regulations carve out an exception for airport searches. This Court has consistently evaluated the integrity of dangerous drugs seized during such searches, as well as the preservation of the chain of custody, against the mandatory requirements of Section 21.[31]

Despite the majority's citation of United States jurisprudence on the establishment of chain of custody on a rational basis,[32] this Court has consistently held that the illegal drug's identity must be proved with moral certainty, "established with the same degree of certitude as that needed to sustain a guilty verdict."[33] The four (4) links in the chain of custody of the confiscated item must be established:

Thus, the following links should be established in the chain of custody of the confiscated item: first, the seizure and marking, if

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[29] *People v. Callejo,* G.R. No. 227427, June 6, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/227427.pdf> [Per J. Caguioa, Second Division].

[30] *People v. Holgado, et al.*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

[31] *Sales v. People,* 703 Phil. 133 (2013) [Per J. Villarama, Jr., First Division]; *People v. Cadidia*, 719 Phil. 538 (2013) [Per J. Perez, Second Division].

[32] *Ponencia*, p. 11.

[33] *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per J. Perez, Second Division]. See also *Mallillin v. People*, 576 Phil. 576 (2008) [Per J. Tinga, Second Division]; *People v. Baga*, 649 Phil. 232 (2010) [Per J. Velasco, Jr., First Division]; *People v. Climaco,* 687 Phil. 593 (2012) [Per J. Carpio, Second Division]; *People v. Balibay, et al.*, 742 Phil. 746 (2014) [Per J. Perez, First Division]; *People v. Que*, G.R. No. 212994, January 31, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/212994.pdf> [Per J. Leonen, Third Division].

practicable, of the illegal drug recovered from the accused by the apprehending officer; second, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; third, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and fourth, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.[34] (Citation omitted)

The presumption of regularity of performance of official duty only arises when it can be shown that the apprehending officer followed the requirements in Section 21 of Republic Act No. 9165, or met the conditions for the saving clause in the Implementing Rules and Regulations of Republic Act No. 9165.[35] As to the latter:

All the above requirements must be complied with for a successful prosecution for the crime of illegal sale and possession of drugs under Sections 5 and 11 of RA 9165. Any deviation in the mandatory procedure must be satisfactorily justified by the apprehending officers. Under Section 21 of the IRR, the Court may allow deviation from the procedure only where the following requisites concur: (a) the existence of justifiable grounds to allow departure from the rule on strict compliance; and (b) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. If these two elements are present, the seizure and custody over the confiscated items shall not be rendered void and invalid.[36] (Citation omitted)

Here, several deviations from the procedures in Section 21 of Republic Act No. 9165 cast in doubt the links in the chain of custody of the seized items. First, Suguitan made no immediate

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[34] *People v. Nandi*, 639 Phil. 134, 144–145 (2010) [Per J. Mendoza, Second Division].

[35] *People v. Ramirez*, G.R. No. 225690, January 17, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/january2018/225690.pdf> [Per J. Martires, Third Division].

[36] *People v. Callejo,* G.R. No. 227427, June 6, 2018, <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2018/june2018/227427.pdf> 9–10 [Per J. Caguioa, Second Division].

marking, physical inventory, and photograph of the seized items.[37] Instead, the seized items were merely placed on a screening table at the final checkpoint area.[38] Second, there was no immediate turnover of the seized items from Suguitan to Police Officer 3 Joel Javier, the investigator on duty for the Philippine National Police-Airport Security Group.[39] Moreover, it was Javier, instead of Suguitan, who marked the seized items with "EO-1" and "EO-2," and inventoried them in the presence of two (2) barangay officials and a member of the media.[40]

Justifying these deviations, the majority pointed out that the apprehending officers could not have observed the rule due to the crowded final checkpoint area. This made it necessary for the seized items to be brought to the Philippine National Police-Airport Security Group office. The delay in the inventory, marking, and even turnover of the seized items to the forensic laboratory were all justified as the apprehending officers' preoccupation with accomplishing the necessary documentation for the arrest and seizure.[41]

However, the integrity of the items' initial seizure and marking, and their turnover have already been put in doubt. No explanation was made as to why Suguitan did not immediately turn over the seized items to Javier, despite allegedly being present when Javier arrived. Why the seized items were merely placed on a table at the final checkpoint area, a public space that the majority noted was crowded with departing passengers, instead of being immediately marked by Suguitan under Section 21 of Republic Act No. 9165, was also inadequately explained.

The accused leaving to smoke,[42] while the seized items remained in the Philippine National Police-Airport Security Group

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[37] *Ponencia*, pp. 3-4.

[38] *Id*.

[39] *Id*.

[40] *Id*. at 4.

[41] *Id*. at 26-28.

[42] *Id*. at 28.

office, does not mitigate the noncompliance of the apprehending officers with the requirements of Section 21 of Republic Act No. 9165. It should have been the apprehending officers who were made to explain why the accused was permitted to leave the office, even if the inventory and turnover of the seized items had not been completed.

Considering the doubts raised not only on why the officers here failed to strictly comply with Section 21 of Republic Act No. 9165, but also on the integrity of the chain of custody over the seized items, the presumption of regularity must be negated.[43] In *Mallillin v. People*:[44]

> Given the foregoing deviations of police officer Esternon from the standard and normal procedure in the implementation of the warrant and in taking post-seizure custody of the evidence, the blind reliance by the trial court and the Court of Appeals on the presumption of regularity in the conduct of police duty is manifestly misplaced. *The presumption of regularity is merely just that — a mere presumption disputable by contrary proof and which when challenged by the evidence cannot be regarded as binding truth. Suffice it to say that this presumption cannot preponderate over the presumption of innocence that prevails if not overthrown by proof beyond reasonable doubt. In the present case the lack of conclusive identification of the illegal drugs allegedly seized from petitioner, coupled with the irregularity in the manner by which the same were placed under police custody before offered in court, strongly militates a finding of guilt.*
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> In our constitutional system, basic and elementary is the presupposition that the burden of proving the guilt of an accused lies on the prosecution which must rely on the strength of its own evidence and not on the weakness of the defense. The rule is invariable whatever may be the reputation of the accused, for the law presumes his innocence unless and until the contrary is shown. *In dubio pro reo.* When moral certainty as to culpability hangs in

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[43] *People v. Holgado, et al.*, 741 Phil. 78 (2014) [Per J. Leonen, Third Division].

[44] 576 Phil. 576 (2008) [Per J. Tinga, Second Division].

the balance, acquittal on reasonable doubt inevitably becomes a matter of right.[45] (Emphasis supplied, citations omitted)

The doubts on the existence of probable cause for the search and seizure of the confiscated drugs, and the noncompliance with the mandatory requirements in Section 21 of Republic Act No. 9165 should be resolved in favor of the accused.

ACCORDINGLY, I vote to **ACQUIT** respondent Eanna O'Cochlain of possession of illegal drugs under Article II, Section 11 of Republic Act No. 9165. He should be released from detention, unless he is held for some other offense.

THIRD DIVISION

[G.R. No. 235348. December 10, 2018]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **STANLEY MADERAZO *y* ROMERO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; REQUIREMENTS FOR THE ISSUANCE OF A SEARCH WARRANT, EXPLAINED.— [A] search warrant may be issued only if there is probable cause in connection with a specific offense alleged in an application based on the personal knowledge of the applicant and his witnesses. This is the substantive requirement for the issuance of a search warrant. Procedurally, the determination of probable cause is a personal

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[45] *Id.* at 593.

task of the judge before whom the application for search warrant is filed, as he has to examine the applicant and his or her witnesses in the form of "searching questions and answers" in writing and under oath. Thus, in *Oebanda, et al. v. People*, the Court held that, in determining the existence of probable cause in an application for search warrant, the mandate of the judge is for him to conduct a full and searching examination of the complainant and the witnesses he may produce. The searching questions propounded to the applicant and the witnesses must depend on a large extent upon the discretion of the judge. ***Although there is no hard-and-fast rule as to how a judge may conduct his examination, it is axiomatic that the said examination must be probing and exhaustive and not merely routinary, general, peripheral or perfunctory. He must make his own inquiry on the intent and factual and legal justifications for a search warrant. The questions should not merely be repetitious of the averments stated in the affidavits/ deposition of the applicant and the witnesses***.

2. ID.; ID.; ID.; ID.; WHERE THE TRIAL JUDGE FAILED TO CONDUCT EXHAUSTIVE PROBING AND SEARCHING QUESTIONS, THE FINDINGS OF THE EXISTENCE OF PROBABLE CAUSE BECOME DUBIOUS.— [I]t can easily be gleaned from the investigation that the applicant's and his witnesses' knowledge of the offense that allegedly has been committed and that the objects sought in connection with the offense are in the place sought to be searched was not based on their personal knowledge but merely based on Maderazo's alleged admission. The judge even failed to inquire as to how Roco and Lozano were able to elicit said admission from Maderazo. Suffice it to say that the questions propounded on the witnesses were not searching and probing. The trial judge failed to make an independent assessment of the evidence adduced and the testimonies of the witnesses in order to support a finding of probable cause which warranted the issuance of a search warrant, for violation of R.A. No. 9165 and illegal possession of firearms. Consequently, because the trial judge failed to conduct exhaustive probing and searching questions, the findings of the existence of probable cause becomes dubious.

3. ID.; ID.; ID.; ID.; ABSENT THE ELEMENT OF PERSONAL KNOWLEDGE BY THE APPLICANT OR HIS WITNESSES OF THE FACTS UPON WHICH THE ISSUANCE OF A SEARCH

WARRANT MAY BE JUSTIFIED, THE WARRANT IS DEEMED A NULLITY FOR HAVING BEEN ISSUED WITHOUT PROBABLE CAUSE.— It must be emphasized anew that the core requisite before a warrant shall validly issue is the existence of a probable cause, meaning "*the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched.*" And when the law speaks of facts, the reference is to facts, data or information personally known to the applicant and the witnesses he may present. Absent the element of personal knowledge by the applicant or his witnesses of the facts upon which the issuance of a search warrant may be justified, the warrant is deemed not based on probable cause and is a nullity, its issuance being, in legal contemplation, arbitrary. While hearsay information or tips from confidential informants could very well serve as basis for the issuance of a search warrant, the same is only true if such information or tip was followed-up personally by the recipient and validated. However, here, no such follow-up transpired. Tolentino's claim of casing and surveillance was, in fact, unsubstantiated. Futhermore, testimony based on what is supposedly told to a witness, as in this case, being patent hearsay and, as a rule, of no evidentiary weight or probative value, whether objected to or not, would, alone, not suffice under the law on the existence of probable cause.

4. **ID.; ID.; ID.; ID.; IN A SEARCH WARRANT RELATIVE TO THE OFFENSE OF ILLEGAL POSSESSION OF FIREARMS, THERE MUST BE PROOF OF THE PRESENCE OF THE ELEMENTS OF THE OFFENSE; WHEN NO EVIDENCE WAS PRESENTED TO PROVE THE EXISTENCE OF PROBABLE CAUSE THAT RESPONDENT HAD NO LICENSE TO POSSESS A FIREARM, THE SEARCH WARRANT ISSUED IS VOID.—** [I]nsofar as Search Warrant No. 10-2015 was issued in connection with the offense of illegal possession of firearms, the elements of the offense should be present, to wit: (1) the existence of the subject firearm; and (2) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. Thus, the probable cause as applied to illegal possession of firearms would, therefore, be such facts and circumstances which would lead a reasonably discreet and

prudent man to believe that a person is in possession of a firearm and that *he does not have the license or permit to possess the same*. In the instant case, neither the testimonies of the witnesses nor Tolentino's application for the issuance of the search warrants mentioned that Maderazo had no license to possess a firearm. No certification from the appropriate government agency was presented to show that Maderazo was not licensed to possess a firearm. Regardless of the nature of the surveillance and verification of the information carried out by the police officers, the fact remains that both the applicant Tolentino and his witnesses did not have personal knowledge of Maderazo's lack of license to possess firearms and ammunitions. They, likewise, failed to adduce the evidence required to prove the existence of probable cause that Maderazo had no license to possess a firearm. In *Paper Industries Corporation of the Philippines (PICOP) v. Asuncion*, we declared as void the search warrant issued by the trial court in connection with the offense of illegal possession of firearms, ammunitions and explosives, on the ground, *inter alia*, of failure to prove the requisite probable cause. The applicant and the witness presented for the issuance of the warrant were found to be without personal knowledge of the lack of license to possess firearms of the management of PICOP and its security agency. They, likewise, did not testify as to the absence of license and failed to attach to the application a no-license certification from the Firearms and Explosives Office of the Philippine National Police. Possession of any firearm becomes unlawful only if the required permit or license therefore is not first obtained**.** Hence, the search and seizure warrant issued on the basis of the evidence presented is void.

5. ID.; EVIDENCE; ADMISSIBILITY OF EVIDENCE; WHEN ENTRY INTO THE PREMISES WAS EFFECTED BY VIRTUE OF A VOID WARRANT AND THERE WAS NO VALID WAIVER OF SUCH RIGHT BY RESPONDENT, THE ITEMS SEIZED THEREIN ARE INADMISSIBLE IN EVIDENCE.— Settled is the rule that where entry into the premises to be searched was gained by virtue of a void search warrant, prohibited articles seized in the course of the search are inadmissible against the accused. In ruling against the admissibility of the items seized, the Court held that prohibited articles may be seized but only as long as the search is valid. In this case, it was not because:

(1) there was no valid search warrants; and (2) absent such a warrant, the right thereto was not validly waived by Maderazo. In short, the police officers who entered petitioner's premises had no right to search the premises and, therefore, had no right either to seize the prohibited drugs and articles and firearms. It is as if they entered Maderazo's house without a warrant, making their entry therein illegal, and the items seized, inadmissible.

6. ID.; ID.; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY CANNOT BE INVOKED TO JUSTIFY AN ENCROACHMENT OF RIGHTS SECURED BY THE CONSTITUTION.— [I]t must be stressed anew that no presumption of regularity may be invoked in aid of the process when the officer undertakes to justify an encroachment of rights secured by the Constitution. Considering that the search and seizure warrant in this case was procured in violation of the Constitution and the Rules of Court, all the items seized in Maderazo's house, being fruits of the poisonous tree, are inadmissible for any purpose in any proceeding.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Rodrigo C. Dimayacyac for respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated April 26, 2017 and the Resolution[3] dated October 11, 2017 of the Court of Appeals (*CA*) in CA-G.R. SP No. 143187, which

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[1] *Rollo*, pp. 11-29.

[2] Penned by Associate Justice Pedro B. Corales, with Associate Justices Celia C. Librea-Leagogo and Amy C. Lazaro-Javier, concurring; *id.* at 30-45.

[3] *Id.* at 46-47.

granted Stanley Maderazo's (*Maderazo*) petition for *certiorari*, and nullified and set aside Search Warrant Nos. 09-2015 and 10-2015.

The facts are as follows:

On March 31, 2015, before the Regional Trial Court of Calapan City, Branch 40 *(RTC*), Police Superintendent Jaycees De Sagun Tolentino (*Tolentino*) filed two (2) separate applications for search warrants against Maderazo, Nestor Alea (*Alea*), Daren Mabansag (*Mabansag*) and Lovely Joy Alcantara (*Alcantara*). In his search warrant applications, Tolentino alleged that he has been informed by *barangay* officials, Loida Tapere Roco (*Roco*) and Rexcel Lozano Rivera (*Rivera*), that Maderazo, along with Alea, Mabansag and Alcantara, is keeping an undetermined quantity of dangerous drugs, drug paraphernalia, and firearms of unknown caliber and ammunitions inside his residence in *Barangay* Lazareto, Calapan City, Oriental Mindoro.

According to Roco and Rivera, at 6 o'clock in the morning of March 31, 2015, they learned that members of the Calapan City Police Station will be serving a warrant of arrest against Maderazo for attempted murder. When they reached the house which Maderazo is renting, the latter was already arrested. As *barangay* officials, Roco and Rivera decided to talk to Maderazo, who admitted to them that he is keeping inside the subject house approximately 40 grams of illegal drugs, drug paraphernalia, and a firearm. Tolentino allegedly verified said informations through casing and surveillance.

On March 31, 2015, after the preliminary investigation of witnesses Roco and Rivera, under oath, Executive Judge Tomas C. Leynes (*Judge Leynes*) issued Search Warrant No. 09-2015 for violation of Republic Act (*R.A.*) No. 9165 and Search Warrant No. 10-2015 for violation of R.A. No. 10591. On even date, both search warrants were served in the subject house in *Barangay* Lazareto, Calapan City, Oriental Mindoro. By virtue of the search warrants, police officers recovered heat-sealed transparent plastic sachets which were suspected to be containing *shabu,* various drug paraphernalia, a .38 caliber

revolver, live ammunitions, mobile phones, computer laptop, cash, among others, from the premises.

Maderazo, Alea, and Mabansag were, subsequently, charged with illegal possession of dangerous drugs and drug paraphernalia, and illegal possession of firearm respectively docketed as Criminal Case Nos. CR-15-12, 201, CR-15-12,202, and CR-15-12, 203.

On July 1, 2015, Maderazo filed the Motion to Quash, arguing that Search Warrant Nos. 09-2015 and 10-2015 were issued without probable cause; thus, all items seized by virtue of their enforcement were inadmissible in evidence. He claimed that Tolentino did not have personal knowledge of Maderazo's supposed possession of illegal drugs and an unlicensed firearm, because the police officer merely relied on Roco and Rivera's statements. Maderazo insisted that Tolentino lied when he stated that the Calapan City Police conducted prior surveillance and casing because the same could not have possibly happened, considering that he was already under police custody in the morning of March 31, 2015, and the house subject of the search was cordoned off.

Maderazo further asserted that nothing in the records show how and when Tolentino conducted the casing and surveillance. The statements of Roco and Rivera cannot also be given probative value, since the information that Maderazo has in his custody illegal drugs, drug paraphernalia, and an unlicensed firearm were not derived from their own perception but allegedly from Maderazo's own admission.

Thereafter, Maderazo requested for certified true copy of the transcript of stenographic notes (*TSN*) of the proceedings conducted on March 31, 2015 regarding the application for Search Warrant Nos. 09-2015 and 10-2015. Subsequently, Maderazo manifested that instead of the TSN, he was only given copies of Roco, Rivera, and Cueto's respective sworn statements which bear exactly the same questions and answers, except for their personal circumstances.

On August 14, 2015, the trial court rendered its Order denying the motion to quash. The dispositive portion of its Order reads:

> ACCORDINGLY, the Omnibus Motion to Quash Search Warrant(s) and to Suppress Evidence filed by all the accused, through counsel, is hereby DENIED for lack of merit.

Maderazo moved for reconsideration, but the same was denied in its September 21, 2015 Order.[4]

Thus, before the appellate court, Maderazo filed a petition for *certiorari* alleging grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the trial court when it denied the motion to quash search warrants.[5]

On April 26, 2017, the CA granted the petition for *certiorari*, and nullified and set aside Search Warrant Nos. 09-2015 and 10-2015.[6] It, likewise, held that the items allegedly seized in the house being rented by Maderazo by virtue of the said search warrants are inadmissible in evidence against him since the access therein by the police officers used void search warrants.

Aggrieved, petitioner raised the lone issue of *whether or not the Honorable Court of Appeals erred in ruling that Judge Leynes committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the assailed Orders dated August 14, 2015 and September 21, 2015 in Criminal Case Nos. CR-15-12-201 to 203, denying respondent's motion to quash the subject search warrants.*

Maderazo asserted that there was no probable cause for the issuance of Search Warrant Nos. 09-2015 and 10-2015. He added that Judge Leynes did not personally examine P/Supt. Tolentino and his witnesses through searching questions and answers. He alleged that there was no TSN of the supposed personal examination of the judge attached to the records of

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[4] *Id*. at 93.

[5] *Id*. at 94-120.

[6] *Supra* note 2.

the case. He asserted that the sworn statements of Roco, Rivera, and Cueto were not based on their personal knowledge but on the alleged admission of Maderazo.

The Office of the Solicitor General (*OSG*), meanwhile, countered that while there may be no actual TSNs of the proceedings, the sworn statements of witnesses Roco, Rivera and Cueto are actual written records of the preliminary examination conducted by Judge Leynes. It insisted that the admission of Maderazo constituted probable cause which was determined by Judge Leynes after personally examining the witnesses.

The petition has no merit.

The rules pertaining to the issuance of search warrants are enshrined in Section 2, Article III of the 1987 Constitution:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and **no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce**, and particularly describing the place to be searched and the persons or things to be seized.[7]

The purpose of the constitutional provision against unlawful searches and seizures is to prevent violations of private security in person and property, and unlawful invasion of the sanctity of the home, by officers of the law acting under legislative or judicial sanction, and to give remedy against such usurpations when attempted.[8]

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[7] *Worldwide Web Corp., et al. v. People, et al.,* 724 Phil. 18, 43 (2014). (Emphasis supplied)

[8] *Silva v. Presiding Judge, Regional Trial Court of Negros, Oriental, Branch XXXIII*, 280 Phil. 151, 155-156 (1991), citing *Alvero v. Dizon*, 76 Phil. 637, 646 (1946).

Corollarily, Sections 4 and 5 of Rule 126 of the 2000 Rules on Criminal Procedure provide for the requisites for the issuance of a search warrant, to wit:

> SEC. 4. *Requisites for issuing search warrant.* A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.
>
> SEC. 5. *Examination of complainant; record.* The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

To paraphrase this rule, a search warrant may be issued only if there is probable cause in connection with a specific offense alleged in an application based on the personal knowledge of the applicant and his witnesses. This is the substantive requirement for the issuance of a search warrant. Procedurally, the determination of probable cause is a personal task of the judge before whom the application for search warrant is filed, as he has to examine the applicant and his or her witnesses in the form of "searching questions and answers" in writing and under oath.[9]

Thus, in *Oebanda, et al. v. People*,[10] the Court held that, in determining the existence of probable cause in an application for search warrant, the mandate of the judge is for him to conduct a full and searching examination of the complainant and the witnesses he may produce. The searching questions propounded to the applicant and the witnesses must depend on a large extent upon the discretion of the judge. ***Although there is no hard-***

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[9] *Coca-Cola Bottlers, Phils., Inc. v. Gomez, et al.,* 591 Phil. 642, 653-654 (2008).

[10] 786 Phil. 706, 714 (2016).

and-fast rule as to how a judge may conduct his examination, it is axiomatic that the said examination must be probing and exhaustive and not merely routinary, general, peripheral or perfunctory. He must make his own inquiry on the intent and factual and legal justifications for a search warrant. The questions should not merely be repetitious of the averments stated in the affidavits/deposition of the applicant and the witnesses.

Following the foregoing principles, the Court agrees with the CA in ruling that the trial judge failed to conduct the probing and exhaustive inquiry as mandated by the Constitution. A perusal of the preliminary examination taken on all the witnesses on March 31, 2015 appeared to be coached in identical form of questions and answers. We quote the pertinent portions, to wit:

Preliminary Examination taken of witness Loida Tapere Roco:

Q: Maaari mo bang sabihin ang iyong tunay na pangalan at iba pang bagay na pagkakakilanlan sa iyo?
A: Ako po ay si Loida Tapere Roco, 50 taong gulang, may asawa, barangay konsehal ng barangay Lazareto at naninirahan sa barangay Lazareto, Calapan, Oriental Mindoro.

Q. Bakit ka naririto ngayon sa aming tanggapan?
A. Nais ko pong ipagbigay-alam sa inyo na noong ika-6:00 ng umaga ng 31 March 2015, ako ay nakatanggap ng impormasyon na ang miyembro ng Calapan City Police Station na pinangungunahan ni PSupt. Jaycees DS Tolentino na mayroon silang huhulihin sa aming barangay na may warrant of arrest.

Q. Ano ang iyong nalaman?
A. Napag-alaman ko na ang taong huhulihin sa aming barangay ay naroon sa bahay ni Major Roger Garcia kung saan ito nangungupahan at kung saan ang caretaker ng naturang bahay ay itong si Sally Cueto.

x x x x x x x x x

Q. Ano pa ang iyong napag-alaman?
A. Napag-alaman ko din na ang taong huhulihin ng mga pulis na nangungupahan sa bahay na iyon ay si Stanley Maderazo na may kasong Attempted Murder.

Q. Ano ang sumunod na nangyari?
A. Na pagdating ko sa bahay na inuupahan ni Stanley Maderazo ay nakita ko na siya ay hinuli na ng mga pulis ng Calapan at narinig ko din na siya ay binabasahan ng kanyang mga karapatan tungkol sa kanyang pagkaaresto ni Police Inspector Jude Nicolasora.

Q. Ano pa ang sumunod na nangyari?
A. Bilang kagawad ng aming barangay, ako ay lumapit kay Stanley Maderazo at sa aking pakikipag-usap sa kanya ay umamin siya sa akin na siya ay mayroong baril sa loob ng kanyang inuupahang bahay.

Q. Sa anong kadahilanan mo naman naisipang isalaysay ang mga bagay na ito?
A. Ito po ay sa kadahilanang si Stanley Maderazo ay umamin sa akin na siya ay mayroong baril doon sa bahay na kanyang inuupahan.

Q. Mayroon ka pa bang nais idagdag?
A. Wala na po at kung mayroon man ay sa hukuman ko na lamang sasabihin ang mga iyon.

Q. Ikaw ba ay tinakot, pinilit o pinangakuan ng anumang bagay upang magbigay ng salaysay na ito?
A. Hindi po.[11]

In comparison, the preliminary investigation conducted on witness Rexcel Lozano Rivera on the same date contained similar line of questioning and the answers were framed in the same manner, to wit:

Preliminary Examination taken of witness Rexcel Lozano Rivera:

Q: Maaari mo bang sabihin ang iyong tunay na pangalan at iba pang bagay na pagkakakilanlan sa iyo?
A: Ako po ay si Rexcel Lozano Rivera, 43 taong gulang, may asawa, barangay konsehal ng barangay Lazareto at naninirahan sa barangay Lazareto, Calapan, Oriental Mindoro.

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[11] *Rollo,* pp. 66-67.

Q. Bakit ka naririto ngayon sa aming tanggapan?
A. Nais ko pong ipagbigay-alam sa inyo na noong ika-6:00 ng umaga ng 31 March 2015, ako ay nakatanggap ng impormasyon na ang mga miyembro ng Calapan City Police Station na pinangungunahan ni PSupt. Jaycees DS Tolentino na mayroon silang huhulihin sa aming barangay na may warrant of arrest.

Q. Ano ang iyong nalaman?
A. Napag-alaman ko na ang taong huhulihin sa aming barangay ay naroon sa bahay ni Major Roger Garcia kung saan ito nangungupahan at kung saan ang caretaker ng naturang bahay ay itong si Sally Cueto.

x x x x x x x x x

Q. Ano pa ang iyong napag-alaman?
A. Napag-alaman ko din na ang taong huhulihin ng mga pulis na nangungupahan sa bahay na iyon ay si Stanley Maderazo na may kasong Attempted Murder.

Q. Ano ang sumunod na nangyari?
A. Na pagdating ko sa bahay na inuupahan ni Stanley Maderazo ay nakita ko na siya ay hinuli na ng mga pulis ng Calapan at narinig ko din na siya ay binabasahan ng kanyang mga karapatan tungkol sa kanyang pagkaaresto ni Police Inspector Jude Nicolasora.

Q. Ano pa ang sumunod na nangyari?
A. Bilang kagawad ng aming barangay, ako ay lumapit kay Stanley Maderazo at sa aking pakikipag-usap sa kanya ay umamin siya sa akin na siya ay mayroong humigit kumulang na 40 gramo ng mga iligal na droga at mga paraphernalia na ginagamit sa iligal na droga sa loob ng kanyang inuupahang bahay.

Q. Sa anong kadahilanan mo naman naisipang isalaysay ang mga bagay na ito?
A. Ito po ay sa kadahilanang si Stanley Maderazo ay umamin sa aking na siya ay mayroong iligal na droga at mga paraphernalia na ginagamit sa iligal na droga doon sa bahay na kanyang inuupahan.

Q. Mayroon ka pa bang nais idagdag?
A. Wala na po at kung mayroon man ay sa hukuman ko na lamang sasabihin ang mga iyon.

Q. Ikaw ba ay tinakot, pinilit o pinangakuan ng anumang bagay upang magbigay ng salaysay na ito?
A. Hindi po.[12]

Clearly, the interrogation conducted by the trial judge appeared to be merely routinary, considering that same questions were thrown on both witnesses Roco and Lozano. In fact, there were only three questions relating to the facts and circumstances involving illegal drugs and alleged illegal possession of firearms; to wit:

x x x x x x x x x

Q. **Ano ang sumunod na nangyari?**
A. Na pagdating ko sa bahay na inuupahan ni Stanley Maderazo ay nakita ko na siya ay hinuli na ng mga pulis ng Calapan at narinig ko din na siya ay binabasahan ng kanyang mga karapatan tungkol sa kanyang pagkaaresto ni Police Inspector Jude Nicolasora.

Q. **Ano pa ang sumunod na nangyari?**
A. Bilang kagawad ng aming barangay, ako ay lumapit kay Stanley Maderazo at sa aking pakikipag-usap sa kanya ay umamin siya sa akin na siya ay mayroong humigit kumulang na 40 gramo ng mga iligal na droga at mga paraphernalia na ginagamit sa iligal na droga sa loob ng kanyang inuupahang bahay.

Q. **Sa anong kadahilanan mo naman naisipang isalaysay ang mga bagay na ito?**
A. Ito po ay sa kadahilanang si Stanley Maderazo ay umamin sa akin na siya ay mayroong iligal na droga at mga paraphernalia na ginagamit sa iligal na droga doon sa bahay na kanyang inuupahan.

x x x x x x x x x[13]

None of the above-quoted questions appeared to probe on the applicant's and his witnesses' personal knowledge of the offense respondent allegedly committed. The trial judge failed

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

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

to propound questions as to how the applicants came to know of the existence of the items, where they found it, or what they have seen and observed inside the premises. There was no probing, exhaustive, and extensive questions.

In fact, it can easily be gleaned from the investigation that the applicant's and his witnesses' knowledge of the offense that allegedly has been committed and that the objects sought in connection with the offense are in the place sought to be searched was not based on their personal knowledge but merely based on Maderazo's alleged admission. The judge even failed to inquire as to how Roco and Lozano were able to elicit said admission from Maderazo. Suffice it to say that the questions propounded on the witnesses were not searching and probing. The trial judge failed to make an independent assessment of the evidence adduced and the testimonies of the witnesses in order to support a finding of probable cause which warranted the issuance of a search warrant, for violation of R.A. No. 9165 and illegal possession of firearms.

Consequently, because the trial judge failed to conduct exhaustive probing and searching questions, the findings of the existence of probable cause becomes dubious. To recapitulate, Tolentino, in his application for search warrant, stated therein that "*he was informed and verily believes that accused were keeping dangerous drugs and paraphernalia in his residence, and that he has verified the report based on the statements executed by Rivera and Roco.*" While he claimed that they also conducted verification through casing and surveillance, there was no statement as to when and how the surveillance was made. Clearly, Tolentino solely relied on the statements of Rivera and Roco who also did not personally see the subjects of the search warrants as they were not even inside the premises. Rivera and Roco merely relied on Maderazo's alleged admission. The facts and circumstances which supposedly were the basis for the finding of probable cause were not based on Tolentino's and his witnesses' personal knowledge. Consequently, Tolentino's application and his witnesses' testimonies, are inadequate proof to establish that there exists probable cause to issue the assailed search warrants.

It must be emphasized anew that the core requisite before a warrant shall validly issue is the existence of a probable cause, meaning "*the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be searched.*" And when the law speaks of facts, the reference is to facts, data or information personally known to the applicant and the witnesses he may present. Absent the element of personal knowledge by the applicant or his witnesses of the facts upon which the issuance of a search warrant may be justified, the warrant is deemed not based on probable cause and is a nullity, its issuance being, in legal contemplation, arbitrary.[14]

While hearsay information or tips from confidential informants could very well serve as basis for the issuance of a search warrant, the same is only true if such information or tip was followed-up personally by the recipient and validated.[15] However, here, no such follow-up transpired. Tolentino's claim of casing and surveillance was, in fact, unsubstantiated. Futhermore, testimony based on what is supposedly told to a witness, as in this case, being patent hearsay and, as a rule, of no evidentiary weight or probative value, whether objected to or not, would, alone, not suffice under the law on the existence of probable cause.[16]

Moreover, as correctly pointed out by the CA, insofar as Search Warrant No. 10-2015 was issued in connection with the offense of illegal possession of firearms, the elements of the offense should be present, to wit: (1) the existence of the subject firearm; and (2) the fact that the accused who owned or possessed it does not have the license or permit to possess the same. Thus, the probable cause as applied to illegal possession

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[14] *Columbia Pictures, Inc. v. Court of Appeals,* 329 Phil. 875, 918 (1996).

[15] See *Cupcupin v. People*, 440 Phil. 714 (2002).

[16] *Sony Music Entertainment v. Judge Espanol*, 493 Phil. 507, 517-518 (2005).

of firearms would, therefore, be such facts and circumstances which would lead a reasonably discreet and prudent man to believe that a person is in possession of a firearm and that *he does not have the license or permit to possess the same*.

In the instant case, neither the testimonies of the witnesses nor Tolentino's application for the issuance of the search warrants mentioned that Maderazo had no license to possess a firearm. No certification from the appropriate government agency was presented to show that Maderazo was not licensed to possess a firearm. Regardless of the nature of the surveillance and verification of the information carried out by the police officers, the fact remains that both the applicant Tolentino and his witnesses did not have personal knowledge of Maderazo's lack of license to possess firearms and ammunitions. They, likewise, failed to adduce the evidence required to prove the existence of probable cause that Maderazo had no license to possess a firearm.

In *Paper Industries Corporation of the Philippines (PICOP) v. Asuncion*,[17] we declared as void the search warrant issued by the trial court in connection with the offense of illegal possession of firearms, ammunitions and explosives, on the ground, *inter alia*, of failure to prove the requisite probable cause. The applicant and the witness presented for the issuance of the warrant were found to be without personal knowledge of the lack of license to possess firearms of the management of PICOP and its security agency. They, likewise, did not testify as to the absence of license and failed to attach to the application a no-license certification from the Firearms and Explosives Office of the Philippine National Police.[18] Possession of any firearm becomes unlawful only if the required permit or license therefore is not first obtained.[19] Hence, the search and seizure warrant issued on the basis of the evidence presented is void.

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[17] 366 Phil. 717, 736-737 (1999).

[18] *Id*.

[19] *Del Rosario v. People,* 410 Phil. 642, 659 (2001), citing *People v. Castillo*, 382 Phil. 499, 508 (2000).

As a general rule, the finding of probable cause for the issuance of a search warrant by a trial judge is accorded respect by the reviewing courts. However, when in issuing the search warrant, the issuing judge failed to comply with the requirements set by the Constitution and the Rules of Court, the resulting search warrants must be struck down as it was issued with grave abuse of discretion which is tantamount to in excess or lack of jurisdiction.

Settled is the rule that where entry into the premises to be searched was gained by virtue of a void search warrant, prohibited articles seized in the course of the search are inadmissible against the accused. In ruling against the admissibility of the items seized, the Court held that prohibited articles may be seized but only as long as the search is valid. In this case, it was not because: (1) there was no valid search warrants; and (2) absent such a warrant, the right thereto was not validly waived by Maderazo. In short, the police officers who entered petitioner's premises had no right to search the premises and, therefore, had no right either to seize the prohibited drugs and articles and firearms.[20] It is as if they entered Maderazo's house without a warrant, making their entry therein illegal, and the items seized, inadmissible.[21]

Finally, it must be stressed anew that no presumption of regularity may be invoked in aid of the process when the officer undertakes to justify an encroachment of rights secured by the Constitution.[22] Considering that the search and seizure warrant in this case was procured in violation of the Constitution and the Rules of Court, all the items seized in Maderazo's house, being fruits of the poisonous tree, are inadmissible for any purpose in any proceeding.

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[20] See *Roan v. Gonzales*, 230 Phil. 90 (1986).

[21] *Id*.

[22] *Nala v. Judge Barroso, Jr.*, 455 Phil. 999, 1015 (2003).

WHEREFORE, the petition is **DENIED**. The Decision dated April 26, 2017 and the Resolution dated October 11, 2017 of the Court of Appeals in CA-G.R. SP No. 143187 are hereby **AFFIRMED**.

SO ORDERED.

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

SPECIAL THIRD DIVISION

[G.R. No. 215999. December 17, 2018]

SPS. FELIX A. CHUA and CARMEN L. CHUA; JAMES B. HERRERA; EDUARDO L. ALMENDRAS; MILA NG ROXAS; EUGENE C. LEE; EDICER H. ALMENDRAS; BENEDICT C. LEE; LOURDES C. NG; and LUCENA INDUSTRIAL CORPORATION, LUCENA GRAND CENTRAL TERMINAL, INC., represented by FELIX A. CHUA, *petitioners, vs.* **UNITED COCONUT PLANTERS BANK; ASSET POOL A (SPV-AMC); REVERE REALTY AND DEVELOPMENT CORPORATION; JOSE C. GO; and the REGISTRAR OF DEEDS OF LUCENA CITY,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULE 137 OF THE RULES OF COURT IN RELATION TO RULE 8 OF THE INTERNAL RULES OF THE SUPREME COURT; INHIBITION OF A MEMBER OF THE SUPREME COURT; VALID GROUNDS FOR INHIBITION MUST BE STATED IN THE MOTION; THAT THE EARLIER VOLUNTARY INHIBITION OF A MEMBER OF THE COURT

WOULD NOT DETER HIM FROM WIELDING UNDUE INFLUENCE OVER THE REMAINING MEMBERS OF A DIVISION IS AN ASSAULT TO THE CHARACTER OF THE CONCERNED MEMBERS WHICH IS BOTH UNFAIR AND PRESUMPTUOUS.— The motion by the litigant for the inhibition or disqualification of a judge is regulated by the *Rules of Court*. Section 1, first paragraph, Rule 137 of the *Rules of Court* stipulates that a judge or judicial officer shall be *mandatorily disqualified* to sit in any of the instances enumerated therein, namely: where he, or his wife or child is pecuniarily interested as heir, legatee, creditor or otherwise; or where he is related to either party within the sixth degree of consanguinity or affinity; or where he is related to counsel within the fourth degree; or where he has been executor, administrator, guardian, trustee or counsel; or where he has presided in any inferior court, and his ruling or decision is the subject of review. The second paragraph of the rule concerns voluntary inhibition, and allows the judge, in the exercise of his sound discretion, to disqualify himself from sitting in a case "for just or valid reasons other than those mentioned above." The exercise of discretion for this purpose is a matter of conscience for him, and is addressed primarily to his sense of fairness and justice. The grounds for the mandatory inhibition of the Members of the Court, which are analogous to those mentioned in Rule 137 of the *Rules of Court*, are embodied in Section 1, Rule 8 of the *Internal Rules of the Supreme Court*[.] x x x The grounds for seeking the inhibition of the Members of the Court must be stated in the motion. Yet, in now seeking the inhibition of all the Members of the Third Division who have ruled on the appeal, respondents neither advert to any of the grounds for mandatory inhibition nor point to the bias or partiality of said Members. Their motion only suggests that the earlier voluntary inhibition by Justice Velasco would not deter him from wielding undue influence over the remaining Members of the Third Division because he remained their Chairman. The suggestion assaults not only Justice Velasco's character but also the character of the remaining Members of the Third Division. The assault is both unfair, and even worse, presumptuous. Indeed, Justice Velasco, following his self-disqualification, had nothing more to do with the case. At any rate, respondents ignore that the remaining Members of the Third Division would not be influenced by a disqualified Member upon matters involved in the case in which the latter no longer takes part.

2. ID.; ID.; ID.; GRANTING A MOTION FOR INHIBITION OF A MEMBER OF THE COURT AFTER A DECISION ON THE MERITS OF THE CASE HAS BEEN RENDERED IS GENERALLY FORBIDDEN.— [R]espondents' calling now for the inhibition of the Members of the Third Division only after they had rendered their decision adversely was no longer a viable remedy. Under Section 2, Rule 8 of the *Internal Rules of the Supreme Court*, the granting of any motion for the inhibition of a Division or a Member of the Court after a decision on the merits of the case had been rendered is forbidden except if there is some valid or just reason (such as a showing of graft and corrupt practice, or such as a valid ground not earlier apparent).

3. ID.; INTERNAL RULES OF THE SUPREME COURT; REFERRAL OF THE CASE TO THE *EN BANC* MUST BE BASED ON VALID GROUNDS ENUMERATED IN SECTION 3, RULE 2 OF THE INTERNAL RULES.— Respondents' motion to refer the case to the Court *En Banc* is equally unworthy of consideration. In this regard, the grounds to justify a referral of any case to the *En Banc* are long recognized. Section 3, Rule 2 of the *Internal Rules of the Supreme Court* specifically enumerates the matters and cases that the Court *En Banc* shall act on, *viz.*: SEC. 3. *Court en banc matters and cases.* – The Court *en banc* shall act on the following matters and cases: (a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question; (b) criminal cases in which the appealed decision imposes the death penalty or *reclusion perpetua*; (c) cases raising novel questions of law; (d) cases affecting ambassadors, other public ministers, and consuls; (e) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit; (f) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos; (g) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;

(h) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate courts; (i) cases where a doctrine or principle laid down by the Court *en banc* or by a Division may be modified or reversed; (j) cases involving conflicting decisions of two or more divisions; (k) cases where three votes in a Division cannot be obtained; (l) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community; (m) subject to Section 11 (b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc;* (n) cases that the Court *en banc* deems of sufficient importance to merit its attention; and (o) all matters involving policy decisions in the administrative supervision of all courts and their personnel. None of the aforecited matters and cases is applicable to this case, for respondents did not show in their motion how, if at all, this case came under any of the matters and cases listed in Section 3, Rule 2 of the *Internal Rules of the Supreme Court*.

4. ID.; ID.; THE COURT *EN BANC* IS NOT APPELLATE IN RESPECT OF THE DIVISIONS, FOR EACH DIVISION IS LIKE THE COURT *EN BANC* ITSELF, NOT INFERIOR TO THE COURT *EN BANC*.— Worthy to stress is that the Court is composed of 15 Members who are assigned to the three Divisions. The assignment of the Members to the Divisions pursuant to the *Internal Rules of the Supreme Court* is based on seniority and on the vacancies to be filled. All the decisions promulgated and actions taken in Division cases rest upon the concurrence of at least three Members of the Division who actually take part in the deliberations and vote. The decisions or resolutions of each Division are not any less the decisions or resolutions of the Court itself. In short, the Court *En Banc* is not appellate in respect of the Divisions, for each Division is like the Court *En Banc* itself, not the inferior to the Court *En Banc*.

5. ID.; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; PARAGRAPH C OF THE *FALLO* OF THE AUGUST 16, 2017 DECISION SUBJECT OF THE INSTANT MOTION FOR RECONSIDERATION SHOULD STAND AND BE MAINTAINED FOR SEVERAL SUBSTANTIAL AND PRACTICAL REASONS; TO DELETE THE SAID PARAGRAPH FROM THE

***FALLO* OF THE SUBJECT DECISION WOULD RESULT TO AN IRRECONCILABLE CONFLICT WITH THE FINAL AND IMMUTABLE SEPTEMBER 6, 2005 PARTIAL JUDGMENT OF THE TRIAL COURT.—** Although he agrees that the CA erred in declaring that the 1997 REM between petitioners and UCPB still subsisted despite the execution of the MOA of March 21, 2000, Justice Caguioa contends that the fact that the Revere REM and petitioners' REM had been executed on the same date indicated that petitioners had expressly consented to Revere REM; hence, the Revere REM was valid. He concludes that UCPB's foreclosure of the mortgage covering the 10 parcels of land involved in the Revere REM was effective; and that only UCPB's application of payments was not proper. As a result, he recommends that paragraphs c., d. and e., x x x be deleted from the *fallo* of the decision of August 16, 2017, x x x The recommendation of Justice Caguioa is unacceptable. The original paragraph c. found in the *fallo* of the decision of August 16, 2017, *supra*, should stand and be maintained for several substantial and practical reasons. To start with, we should not ignore that the Lucena RTC as the trial court rendered against respondents Jose Go and Revere a partial judgment on September 6, 2005[.] x x x The partial judgment became final and executory because Go and Revere did not appeal. If we were to accept Justice Caguioa's recommendation to declare the Revere REM valid and to adopt his proposed disposition, we would be abetting an irreconcilable conflict between his recommendation, on one hand, and the *fallo* of the final and immutable September 6, 2005 partial judgment[.]

6. **ID.; ID.; ID.; PARAGRAPH D OF THE *FALLO* OF THE SUBJECT DECISION MUST ALSO BE MAINTAINED AND AFFIRMED FOR IT IS FAIR TO THE PARTIES AND PREVENTS RESPONDENT BANK'S UNJUST ENRICHMENT.—** We cannot join Justice Caguioa's recommendation. In the following disquisition, we graphically explain why paragraph e. of the *fallo* of the decision of August 16, 2017 – "ordering defendant UNITED COCONUT PLANTERS BANK to return so much of plaintiff's titles, of their choice, equivalent to Php 200,000,000.00" – must be maintained and affirmed. With the Revere REM being null and void as demonstrated herein and, therefore, ineffective, petitioners should not be thereby prejudiced. Consequently, the 10 parcels of land subject of the Revere REM have to be

reconveyed to petitioners. **Anent the 20 parcels of land subject of petitioners' REM, title over so much of the 24.8182 hectares (*i.e.*, the total area of the 20 parcels of land) corresponding to their total obligation of ₱204,597,177.04 could remain in the name of UCPB, but the excess thereof should be returned to petitioners. The obligation of petitioners to UCPB would be thereby fully paid**. Such proper allocation of payment is fair to the parties, and ultimately prevents UCPB's unjust enrichment.

CAGUIOA, *J.*, *separate opinion*:

1. CIVIL LAW; CIVIL CODE; CONTRACTS; *COMPLEMENTARY CONTRACTS CONSTRUED* DOCTRINE, APPLIED; PETITIONER'S REAL ESTATE MORTAGAGE (REM) AND THE ASSAILED REVERE REM MUST BE READ IN CONSONANCE WITH THE MEMORANDUM OF AGREEMENT (MOA) SUBJECT OF THE INSTANT CASE; THE TWO REMs WERE EXECUTED TO IMPLEMENT THE TERMS AND CONDITIONS OF THE MOA.— [T]he parties admit that the Petitioners' REM and the Revere REM were executed **to implement the terms and conditions of the MOA**. As explained earlier, that this is the clear intent of the parties is also evident from the fact that the properties identified in Annex "A" of the MOA (as the properties to be transferred and conveyed to UCPB) are the very same properties mortgaged to UCPB through the execution of both the Petitioners' REM and the Revere REM — which were the same properties thereafter foreclosed and acquired by UCPB. Following the "*complementary contracts construed together* doctrine" correctly used by the CA, the terms of both Petitioners' REM and Revere REM must be read in consonance with the MOA. Pursuant to the MOA, the properties that were conveyed and transferred to UCPB (**as enumerated in Annex "A" of the MOA and as listed in both REMs**) were to be applied against the loan obligations of the Borrowers stated in the MOA — which, again, are only LGCTI and the Spouses Chua. If, as UCPB and APA admit, the REMs were executed to implement the "first mode of payment (conveyance of properties to UCPB)" under the MOA, **then the foreclosure proceeds from the REMs could only be applied pursuant to the terms of the MOA — which is for the payment of the obligations only of LGCTI and Spouses Chua**. There is absolutely nothing in the MOA (*i.e.*, the primordial instrument

governing the relationship of the parties thereto) which provides that the enumerated properties to be transferred and conveyed to UCPB would also be used to secure and thereafter answer for the debts of any other third parties.

2. ID.; ID.; ID.; REAL ESTATE MORTGAGE; UCPB's FORECLOSURE OF THE TWO REMs WAS VALID BUT ITS APPLICATION OF THE PROCEEDS THEREOF WAS NOT PROPER; THE FORECLOSURE PROCEEDS MUST BE APPLIED ONLY TO THE DEBTS OF LGCTI AND SPOUSES CHUA.— Accordingly, UCPB's application of the foreclosure proceeds to the debts of a third party (which in this case is Jose Go) is in clear contravention of the MOA and therefore erroneous and without basis. Both APA and UCPB, however, argue that based on the recitals of the REMs, the petitioners as mortgagors agreed to also cover the loan of Jose Go. This assertion, however, misses and fails to establish two crucial facts to justify the action of applying the foreclosure proceeds to Jose Go's debt — (a) the existence and the actual amount of Jose Go's debt; and (b) the default on the part of Jose Go in the payment of his obligations. It is a basic doctrine in civil law that a mortgage is a mere accessory contract — as such, the principal obligation must exist for the mortgage to subsist. Similarly, it must also be established that at the time of the foreclosure, the debt is already due and demandable and that the debtor is in default in the payment of his obligation. In this case, the only principal obligation that was admitted, established and proven by competent evidence was that of the Spouses Chua and LGCTI. In fact, the only loan document that was presented by UCPB and APA to establish the indebtedness of the debtors was the MOA — which, again, enumerates only the Spouses Chua and LGCTI as the borrowers. Apart from the Petitioners' REM and the Revere REM, there is nothing on record that indicates the existence (*i.e.*, Promissory Note) or the exact amount of Jose Go's indebtedness so as to justify the application of more than half of the foreclosure proceeds to extinguish this purported debt. x x x In this regard, it bears noting that the petitioners had repeatedly demanded UCPB to show proof of Jose Go's liabilities and to render an accounting thereof. In response, UCPB refused to present, as it never did, any evidence to prove the existence and amount of Jose Go's indebtedness. Had UCPB produced the loan documents showing

Jose Go's indebtedness as demanded by the petitioners, it could have easily proved the existence and amount of Jose Go's indebtedness. That UCPB failed to do so — ***that it refused to do so*** — can only lead to the conclusion that no such debt or loan exists. Verily, the presumption that evidence willfully suppressed would be adverse if produced applies foursquare here. Based on the foregoing, I agree with and find merit in the petitioners' assertion that "absent proof of unpaid loans of Go x x x there is utterly no basis for applying the proceeds of the foreclosure x x x to the asserted obligations of Go." Accordingly, considering that the only loan that was substantiated by concrete evidence was that of the Spouses Chua and LGCTI, the foreclosure proceeds may only be applied to their debts — and no one else's.

3. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; THE SEPTEMBER 6, 2005 PARTIAL JUDGMENT WHICH HAS BECOME FINAL AND IMMUTABLE DOES NOT AFFECT UCPB; THERE IS NOTHING IMPROPER IN A SITUATION WHERE THE REVERE REM WILL BE CONSIDERED VALID AS BETWEEN UCPB AND PETITIONERS DESPITE ITS EARLIER NULLIFICATION BY THE TRIAL COURT, WHICH IS BINDING, FINAL AND IMMUTABLE ONLY AS TO JOSE GO AND REVERE.— The first reason posited by the *ponencia* is that the Lucena RTC Partial Judgment, which upheld the validity of the DoTs and nullified the Revere REM for failure to secure the approval and consent of the Spouses Chua, had already become final and executory and cannot be disturbed, for the reason that Jose Go and Revere did not file any appeal. However, as earlier narrated, after it had rendered its Partial Judgment on September 6, 2005, the RTC, on November 9, 2005, modified this Partial Judgment[.] x x x [T]he specific issue of whether or not defendant UCPB is obliged to reconvey the properties listed in the Partial Judgment in favor of the petitioners, as well as the other issues between UCPB and the petitioners "shall be determined after the parties shall have presented their evidence." Stated differently, the doctrine of immutability of judgment does not even come into play as far as UCPB is concerned vis-à-vis the failure of Jose Go and Revere to appeal the Partial Judgment of September 6, 2005. Thus, there is nothing anomalous nor improper in a situation arising where the Revere REM will be considered valid (between UCPB and the petitioners) despite

its earlier nullification by the Lucena RTC (which is binding, final and immutable only as to Jose Go and Revere, and only because the latter did not appeal the September 6, 2005 Partial Judgment). To hold otherwise, as what the *ponencia* is doing, is, in turn, to render inutile the November 9, 2005 modification by the RTC.

APPEARANCES OF COUNSEL

Virgilio C. Leynes and *Morales Risos-Vidal & Daroy Morales* for petitioners.

Hortensio G. Domingo for respondent Asset Pool A.

De Sagun Law Office for Revere Realty Dev't. Corp. and J.C. Go.

Office of the Government Corporate Counsel for UCPB.

R E S O L U T I O N

BERSAMIN, *C.J.*:

We hereby consider and resolve: (1) the respective motions for reconsideration filed by respondents United Coconut Planters Bank (UCPB),[1] Asset Pool A,[2] and Revere Realty Corp. and Jose Go;[3] (2) the motion to inhibit the Third Division, and to reassign the case to another Division of the Court by raffle;[4] and (3) the urgent motions to refer the case to the Court *En Banc*.[5]

Antecedents

For perspective, the Court revisits the factual and procedural antecedents.

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[1] *Rollo* (Vol. 3), pp. 1569-1605.

[2] *Id*. at 1249-1367.

[3] *Id*. at 1234-1246.

[4] *Id*. at 1211-1218.

[5] *Id*. at 1608-1674; (Vol. 4), 1825-1838.

Petitioners Felix A. Chua and Carmen L. Chua (Spouses Chua) and their co-petitioners entered into a Joint Venture Agreement[6] (JVA) with Gotesco Properties, Inc. (Gotesco) for the development of petitioners' properties into a subdivision. Pursuant to the JVA, deeds of absolute sale were executed to transfer 32 parcels of land to Revere Realty and Development Corporation (Revere), a corporation controlled and represented by Jose C. Go. The deeds of absolute sale were in turn complemented by two deeds of trust,[7] both dated April 30, 1998. The deeds of trust confirmed that the petitioners remained the true and absolute owners of the properties.

Subsequently, on March 21, 2000, petitioners Spouses Chua and Lucena Grand Central Terminal, Inc. (LGCTI), on the one hand, and respondent United Coconut Planters Bank (UCPB), on the other, entered into a Memorandum of Agreement (MOA) to consolidate petitioners' obligations as of November 30, 1999 to UCPB amounting to ₱204,597,177.04.[8] They agreed to deduct ₱103,893,450.00 from such consolidated amount in exchange for petitioners' 30 parcels of land and the improvements existing thereon. To implement the MOA as regards the conveyance of the properties, petitioners executed a Real Estate Mortgage (REM) involving 26 of the 30 parcels of land also on March 21, 2000.[9] UCPB and Revere executed another REM involving 18 properties on the same day.[10] Apparently, UCPB agreed to waive the penalties and interests due on petitioners' obligations amounting to ₱32,703,727.04 thereby leaving a balance of ₱68,000,000.00. To settle such balance of petitioners' liability, the parties executed another agreement, the Deed of Assignment of Liabilities,[11] converting the balance of ₱68,000,000.00 into equity interest in LGCTI in favor of UCPB.

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[6] *Rollo* (Vol. 1), pp. 204-214.

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

[8] *Id*. at 237-243.

[9] *Id*. at 245-260.

[10] *Id*. at 261-274.

[11] *Id*. at 233-236.

Enforcing petitioners' REM as well as the Revere REM, UCPB foreclosed the mortgages, and the properties were sold for a total bid price of ₱227,700,000.00.

On February 14, 2003, UCPB and LGCTI executed a deed of assignment of liabilities whereby LGCTI would issue 680,000 preferred shares of its stocks to UCPB to offset its remaining obligations totalling ₱68,000,000.00.

On September 4, 2003, UCPB wrote a letter to the Spouses Chua and LGCTI regarding the transfer of LGCTI shares of stock to its favor pursuant to the deed of assignment of liabilities.[12]

On November 11, 2003, Spouses Chua wrote UCPB to request an accounting of Jose Go's liabilities that had been mistakenly secured by the mortgage of petitioners' properties, as well as to obtain a list of all the properties subject of their REM as well as of the Revere REM for re-appraisal by an independent appraiser. The Spouses Chua further requested that the proceeds of the foreclosure sale of the properties be applied only to petitioners' obligation of ₱204,597,177.04; and that the rest of the properties or any excess of their obligations should be returned to them.[13]

However, UCPB did not heed petitioners' requests. Thus, on February 3, 2004, petitioners filed their complaint against UCPB, Revere, Jose Go, and the Register of Deeds of Lucena City in the RTC in Lucena City.[14] The RTC issued a writ of preliminary injunction at the instance of petitioners.

On October 4, 2004, the RTC declared Jose Go and Revere in default. On February 22, 2005, the RTC denied the motion for reconsideration of Jose Go and Revere.[15]

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[12] *Id*. at 21.

[13] *Id*. at 283.

[14] *Id*. at 21; 284-301.

[15] *Id*. at 21.

On September 6, 2005, the RTC, through Judge Virgilio C. Alpajora, rendered a partial judgment against Jose Go and Revere, *viz.*:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants JOSE C. GO and REVERE REALTY DEVELOPMENT CORPORATION, as follows:

a) Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties held in trust for plaintiff by defendants REVERE and GO.

b) Declaring that defendants REVERE and GO are not the owners of the properties covered by the deeds of trust and did not have any authority to constitute a mortgage over them to secure their personal and corporate obligations, for which they should be liable.

c) Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and GO in favor of co-defendant UNITED COCONUT PLANTERS BANK.

d) Ordering defendants REVERE and GO to reconvey in favor of the plaintiff the thirty-two (32) real properties listed in the deeds of trust and originally registered in the names of the plaintiffs under the following titles, to wit: TCT Nos. T-40450, 40452, 40453, 64488, 71021, 71022, 71023, 71024, 71025, 71136, 55033, 55287, 58945, 58946, 58947, 58948, 54186, 54187, 54189, 54190, 54191, 55288, 54186, 54187, 54188, 55030, 55031, 50426, 50427, 50428, 50429, and 50430.

e) Ordering defendants REVERE and GO to pay plaintiffs the amount of Php1,000,000.00 and as by way of moral damages, and Php200,000.00 and by way of attorney's fees.

SO ORDERED.[16]

On November 9, 2005, the RTC modified the partial judgment upon UCPB's motion for reconsideration, but otherwise affirmed it as against Revere and Jose Go, disposing thusly:

WHEREFORE, premises considered, the Partial Judgment dated September 6, 2005 is reconsidered and clarified as to United Coconut Planters Bank, as follows:

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[16] *Id.* at 623.

a) The contested portion of the Partial Judgment ordering reconveyance is directed at defendants Revere Realty and Development Corp. and Jose Go and not at defendant United Coconut Planters Bank; and

b) The resolution of the issue of whether or not defendant UCPB is obliged to reconvey the properties listed in the Partial Judgment in favor of the plaintiffs, as well as the other issues between UCPB and the plaintiffs, shall be determined after the parties shall have presented their evidence.

SO ORDERED.[17]

Subsequently, UCPB foreclosed the two REMs. The Apportionment of Bid Price certified by UCPB's Account Officer stated that the properties under mortgage had been sold to UCPB during the foreclosure sale for the aggregate price of ₱227,700,000.00 broken down into ₱152,606,820.00 for petitioners' REM and ₱75,093,180.00 for the Revere REM.[18]

Despite UCPB's subsequent inquiries on the issuance of the preferred shares pursuant to the Deed of Assignment of Liabilities, petitioners refused to issue the stocks. They instead protested the application of the proceeds of the foreclosure sale to settle the personal and corporate obligations of Go for having been without their knowledge and consent. They also protested the inclusion in the foreclosure of the properties under the Revere REM on the ground that such inclusion had been undertaken without their express consent as the owners of the properties.

On January 6, 2009, the Lucena RTC rendered judgment in favor of petitioners.[19] On appeal by respondents, the Court of Appeals (CA) reversed the RTC.[20]

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[17] *Id*. at 623-624.

[18] *Id*. at 383.

[19] *Id*. at 612-632; penned by Judge Virgilio C. Alpajora.

[20] *Id*. at 11-51; penned by Associate Justice Vicente S.E. Veloso, with the concurrence of Associate Justice Jane Aurora Lantion, and Associate Justice Nina G. Antonio-Valenzuela.

In the decision of August 16, 2017,[21] the Court reversed the decision of the CA and reinstated the judgment of the RTC, disposing thusly:

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **SETS ASIDE** the decision of the Court of Appeals promulgated on March 25, 2014 in CA-G.R. No. 93644; **REINSTATES** the judgment rendered on January 6, 2009 by the Regional Trial Court, Branch 59, in Lucena City, with the addition of TCT No. 89334, to wit:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants UNITED COCONUT PLANTERS BANK, ASSET POOL A, REGISTRAR OF DEEDS OF LUCENA CITY and *EX-OFFICIO* SHERIFF OF LUCENA CITY, thus:
>
> a. Declaring that the loan obligations of plaintiffs to defendant UNITED COCONUT PLANTERS BANK under the Memorandum of Agreement dated March 21, 2000 have been fully paid;
>
> b. Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties listed therein were merely held-in-trust for plaintiffs by defendants REVERE and JOSE GO and/or corporations owned or associated with him;
>
> c. Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and JOSE GO in favor of co-defendant UNITED COCONUT PLANTERS BANK and the Deed of Assignment of Liability dated February 14, 2003 executed by plaintiffs in favor of UNITED COCONUT PLANTERS BANK;
>
> d. Ordering defendant REGISTRAR OF DEEDS of Lucena City to cancel any and all titles derived or transferred from TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384), 89334 and issue new ones returning the ownership and registration of these titles of the plaintiffs. For this purpose, defendant UNITED COCONUT PLANTERS BANK

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[21] *Rollo* (Vol. 2), pp. 1190-1209.

is directed to execute the appropriate Deeds of Reconveyance in favor of the plaintiffs over the eighteen (18) real properties listed in the Real Estate Mortgage dated March 21, 2000 executed by defendants Revere Realty and JOSE GO and originally registered in the names of the plaintiffs.

e. Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

f. Declaring the Real Estate Mortgage dated June 02, 1997 as having been extinguished by the Memorandum of Agreement date March 21, 2000, and converting the writ of preliminary injunction issued on March 22, 2004 to a permanent one, forever prohibiting UNITED COCONUT PLANTERS BANK and ASSET POOL A and all persons/entities deriving rights under them from foreclosing on TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135. The court hereby orders said defendants, or whoever is in custody of the said certificates of title, to return the same to plaintiffs and to execute the appropriate release of mortgage documents.

g. Finally, ordering defendant UNITED COCONUT PLANTERS BANK, to pay plaintiffs:

i. The excess of the foreclosure proceeds in the amount of Php23,102,822.96, as actual damages;

ii. Legal interest on the amount of Php223,102,822.96 at the rate of 6% *per annum* from February 3, 2004 until finality of judgment. Once the judgment becomes final and executory, the interest of 6% *per annum,* should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied, as compensatory damages;

iii. Php1,000,000.00 as moral damages;

iv. Php100,000.00 as exemplary damages;

v. Php2,000,000.00 as attorney's fees; and

vi. Costs of suit;

SO ORDERED.

and **DIRECTS** respondents, except the Registrar of Deeds of Lucena City and the *Ex-Officio* Sheriff of Lucena City, to pay the costs of suit.

SO ORDERED.[22]

Hence, the motions for reconsideration.

Issues

Through their respective motions for reconsideration, UCPB, Asset Pool A, Revere and Jose C. Go assail the decision of August 16, 2017 on supposed procedural and substantive infirmities.

Asset Pool A particularly submits that:

I. The Honorable Court erred in assuming that the petitioners were misled into signing or agreeing to the stipulations in the Petitioners' REM, MOAs, etc. as they were supplied by UCPB itself and in concluding that UCPB is a mortgagee in bad faith.

II. The Honorable Court erred in nullifying the Revere REM executed by Jose Go as titles registered under REVERE are merely held "in trust" by Jose Go.

The Honorable Court erred in finding that petitioners have no knowledge or conformity to the Revere REM.

Consequently, the Honorable Court committed grave error in ordering UCPB to execute Deeds of Reconveyance in favour of petitioners of real properties listed in the Revere REM.

III. The Honorable Court committed grave abuse of discretion when it ruled that the proceeds of foreclosure sale of properties to be conveyed to UCPB should have been applied to fully extinguish the debts of Spouses Chua and LGCTI to UCPB before they can be applied to the obligations of Jose Go to the Bank. This condition is nowhere to be found in the First MOA, Second MOA, Petitioners REM, Revere REM and the Deed of Assignment.

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[22] *Id*. at 1208-1209.

IV. The Honorable Court erred in declaring that the Real Estate Mortgage dated June 2, 1997 is deemed extinguished by the Memorandum of Agreement dated March 21, 2000.

As Spouses Chua and LCTI have remaining outstanding principal obligation to UCPB and/or its successor-in-interest APA, it is serious error for the Honorable Court to order the release of the mortgage and return of titles.

V. The Honorable Court erred in declaring that the remaining loan obligations of petitioners LGCTI and Spouses Chua are fully paid notwithstanding their non-payment.

VI. There is no legal and factual basis for the Honorable Court to award petitioners actual damages, interest, moral damages, exemplary damages, attorney's fees and costs of suit against UCPB.

VII. The Honorable Court promulgated the Decision of August 16, 2017 in less than two (2) days from the assignment or appointment to office of four of the five Members of the Supreme Court. This clearly violated the Constitution and the Internal Rules of the Supreme Court and resulted to the violation of respondents' right to procedural due process. Hence, it is null and void.

VIII. The Decision of August 16, 2017 is null and void for failure to comply with the substantive requirement of Sec. 14, Article VIII of the Constitution, *i.e.* "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based."

This resulted to further violation of respondents' right to due process.[23]

On the other hand, UCPB cites the following errors, namely:

I. THE HONORABLE COURT ERRED IN HOLDING THAT THE LOAN OBLIGATIONS OF HEREIN PETITIONERS TO UCPB UNDER THE MEMORANDUM OF AGREEMENT DATED MARCH 21, 2000 HAVE BEEN FULY PAID

II. THE HONORABLE COURT ERRED IN DECLARING THE REAL ESTATE MORTGAGE DATED JUNE 02, 1997 AS HAVING

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[23] *Rollo* (Vol. 3), pp. 1305-1307.

BEEN EXTINGUISHED BY THE MEMORANDUM OF AGREEMENT DATED MARCH 21, 2000

III. THE HONORABLE COURT ERRED IN NULLIFYING THE DEED OF REAL ESTATE MORTGAGE DATED MARCH 21, 2000 EXECUTED BY REVERE AND GO IN FAVOR OF UCPB AND THE DEED OF ASSIGNMENT OF LIABILITY DATED FEBRUARY 14, 2003 EXECUTED BY HEREIN PETITIONERS IN FAVOR OF UCPB

IV. THE HONORABLE COURT ERRED IN HOLDING THAT HEREIN PETITIONERS WERE ENTITLED TO EXCESS FORECLOSURE PROCEEDS OF ₱23,000,000.00

V. THE HONORABLE COURT ERRED IN ORDERING UCPB TO RETURN ₱200,000,000.00 WORTH OF PROPERTIES TO HEREIN PETITIONERS

VI. WORSE, THE HONORABLE COURT ERRED IN IMPOSING INTERESTS AT 6% PER ANNUM ON THE RETURN OF PROPERTIES

VII. THE HONORABLE COURT ERRED IN ORDERING UCPB TO PAY PETITIONERS MORAL DAMAGES, EXEMPLARY DAMAGES, ATTORNEY'S FEES AND COSTS OF SUIT.[24]

On their part, Revere and Jose C. Go posit that they had not been duly heard on the issues resolved by the Court.

Ruling of the Court

After careful consideration of the motions for reconsideration, we find and declare that respondents have not offered any argument or tendered any matter that would have justifiably overturned the factual basis and *ratio decidendi* of the decision of August 16, 2017. Accordingly, we deny the motions for reconsideration, and reiterate the decision.

1.

On the validity of the decision of August 16, 2017

Asset Pool A has taken issue against the promulgation of our decision on August 16, 2017, alleging that the promulgation was made –

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[24] *Id*. at 1588-1589.

x x x less than two (2) days from the assignment or appointment to office of four of the five Members of the Supreme Court. This clearly violated the Constitution and the Internal Rules of the Supreme Court and resulted to the violation of respondents' right to procedural due process. Hence, it is null and void.

and insisting that the decision was thereby rendered:

x x x null and void for failure to comply with the substantive requirement of Sec. 14, Article VIII of the Constitution, *i.e.* "No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.

Additionally, respondents seek the referral of the case to the *Banc* on the ground of the supposed bias of the deciding Members of the Division, whose recusal they hereby also seek.

The attack against the validity of the decision is entirely bereft of merit and justification.

For sure, every party-litigant has the right to an impartial and disinterested tribunal. In view of this right, every party may seek the inhibition or disqualification of a judge who does not appear to be wholly free, disinterested, impartial and independent in handling a case. Nonetheless, the invocation of the right is always weighed against the duty of the judge to decide cases without fear of repression.[25]

The motion by the litigant for the inhibition or disqualification of a judge is regulated by the *Rules of Court*. Section 1,[26] first

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[25] *Castro v. Mangrobang,* A.M. No. RTJ-16-2455, April 11, 2016, 789 SCRA 67, 85.

[26] Section 1. *Disqualification of judges*. — No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which he is related to either party within the sixth degree of consanguinity or affinity, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been executor, administrator, guardian, trustee or counsel, or in which he has been presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

paragraph, Rule 137 of the *Rules of Court* stipulates that a judge or judicial officer shall be *mandatorily disqualified* to sit in any of the instances enumerated therein, namely: where he, or his wife or child is pecuniarily interested as heir, legatee, creditor or otherwise; or where he is related to either party within the sixth degree of consanguinity or affinity; or where he is related to counsel within the fourth degree; or where he has been executor, administrator, guardian, trustee or counsel; or where he has presided in any inferior court, and his ruling or decision is the subject of review. The second paragraph of the rule concerns voluntary inhibition, and allows the judge, in the exercise of his sound discretion, to disqualify himself from sitting in a case "for just or valid reasons other than those mentioned above." The exercise of discretion for this purpose is a matter of conscience for him, and is addressed primarily to his sense of fairness and justice.[27]

The grounds for the mandatory inhibition of the Members of the Court, which are analogous to those mentioned in Rule 137 of the *Rules of Court*, are embodied in Section 1, Rule 8 of the *Internal Rules of the Supreme Court*,[28] quoted as follows:

Section 1. *Grounds for inhibition.* – A Member of the Court shall inhibit himself or herself from participating in the resolution of the case for any of these and similar reasons:

(a) The Member of the Court was the *ponente* of the decision or participated in the proceedings in the appellate or trial court;

(b) The Member of the Court was counsel, partner, or member of a law firm that is or was the counsel in the case subject to Section 3(c) of this rule;

(c) The Member of the Court or his or her spouse, parent or child is pecuniarily interested in the case;

A judge may, in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above.

[27] *Castro v. Mangrobang,* note 25, at 83.

[28] A.M. No. 10-4-20-SC, May 7, 2010.

(d) The Member of the Court is related to either party in the case within the sixth degree of consanguinity or affinity;

(e) The Member of the Court was executor, administrator, guardian or trustee in the case; and

(f) The Member of the Court was an official or is the spouse of an official or former official of a government agency or private entity that is a party to the case, and the Justice or his or her spouse has reviewed or acted on any matter relating to the case.

A Member of the Court may in the exercise of his or her sound discretion, inhibit himself or herself for a just or valid reason other than any of those mentioned above.

The inhibiting Member must state the precise reason for the inhibition.

The grounds for seeking the inhibition of the Members of the Court must be stated in the motion. Yet, in now seeking the inhibition of all the Members of the Third Division who have ruled on the appeal, respondents neither advert to any of the grounds for mandatory inhibition nor point to the bias or partiality of said Members. Their motion only suggests that the earlier voluntary inhibition by Justice Velasco would not deter him from wielding undue influence over the remaining Members of the Third Division because he remained their Chairman.

The suggestion assaults not only Justice Velasco's character but also the character of the remaining Members of the Third Division. The assault is both unfair, and even worse, presumptuous. Indeed, Justice Velasco, following his self-disqualification, had nothing more to do with the case. At any rate, respondents ignore that the remaining Members of the Third Division would not be influenced by a disqualified Member upon matters involved in the case in which the latter no longer takes part.

Moreover, respondents' calling now for the inhibition of the Members of the Third Division only after they had rendered their decision adversely was no longer a viable remedy. Under Section 2, Rule 8 of the *Internal Rules of the Supreme Court*, the granting of any motion for the inhibition of a Division or a

Member of the Court after a decision on the merits of the case had been rendered is forbidden except if there is some valid or just reason (such as a showing of graft and corrupt practice, or such as a valid ground not earlier apparent).

Respondents' motion to refer the case to the Court *En Banc* is equally unworthy of consideration. In this regard, the grounds to justify a referral of any case to the *Banc* are long recognized. Section 3, Rule 2 of the *Internal Rules of the Supreme Court* specifically enumerates the matters and cases that the Court *En Banc* shall act on, *viz.*:

SEC. 3. *Court en banc matters and cases.* – The Court *en banc* shall act on the following matters and cases:

(a) cases in which the constitutionality or validity of any treaty, international or executive agreement, law, executive order, presidential decree, proclamation, order, instruction, ordinance, or regulation is in question;

(b) criminal cases in which the appealed decision imposes the death penalty or *reclusion perpetua*;

(c) cases raising novel questions of law;

(d) cases affecting ambassadors, other public ministers, and consuls;

(e) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit;

(f) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos;

(g) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law;

(h) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate courts;

(i) cases where a doctrine or principle laid down by the Court *en banc* or by a Division may be modified or reversed;

(j) cases involving conflicting decisions of two or more divisions;

(k) cases where three votes in a Division cannot be obtained;

(l) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community;

(m) subject to Section 11 (b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc;*

(n) cases that the Court *en banc* deems of sufficient importance to merit its attention; and

(o) all matters involving policy decisions in the administrative supervision of all courts and their personnel.

None of the aforecited matters and cases is applicable to this case, for respondents did not show in their motion how, if at all, this case came under any of the matters and cases listed in Section 3, Rule 2 of the *Internal Rules of the Supreme Court*.

Respondents did not also demonstrate how the Third Division could have contravened the procedures for handling the appeal set in the *Internal Rules of the Supreme Court*. Their insistence that Justice Martires and Justice Gesmundo had not studied the case prior to the deliberations and voting held on August 16, 2017 was speculative, if not outrightly false. The truth is that the four deciding Members of the Third Division deliberated and unanimously voted on the result. The fifth Member, Justice Caguioa, was absent because he was then on leave, but his absence did not render the deliberation and voting irregular. Far to the contrary, the deliberation and voting conformed to Section 4, second paragraph, Rule 8 of the *Internal Rules of the Supreme Court*, which reads:

Section 4. x x x

x x x x x x x x x

When a Member of the Division is on leave, he/she shall no longer be replaced as long as there is a quorum of at least three (3) members, and said absent Member who participated in the deliberation of the case shall be allowed to leave his or her vote pursuant to Section 4 of Rule 12.

Worthy to stress is that the Court is composed of 15 Members who are assigned to the three Divisions.[29] The assignment of the Members to the Divisions pursuant to the *Internal Rules of the Supreme Court* is based on seniority and on the vacancies to be filled.[30] All the decisions promulgated and actions taken in Division cases rest upon the concurrence of at least three Members of the Division who actually take part in the deliberations and vote.[31] The decisions or resolutions of each Division are not any less the decisions or resolutions of the Court itself.[32] In short, the Court *En Banc* is not appellate in respect of the Divisions, for each Division is like the Court *En Banc* itself, not the inferior to the Court *En Banc*.[33]

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[29] See Section 4(1), Article VIII of the 1987 Constitution.

[30] See Section 9, Rule 2 of the *Internal Rules of the Supreme Court*, which states:

SEC. 9. *Composition and reorganization of a Division.* – The composition of each Division shall be based on seniority as follows:

(a) First Division – Chief Justice, the fourth in seniority as working chairperson, the seventh in seniority, the tenth in seniority, and the thirteenth in seniority.

(b) Second Division – the second in seniority as Chairperson, the fifth in seniority, the eighth in seniority; the eleventh in seniority, and the fourteenth in seniority.

(c) Third Division – the third in seniority as Chairperson, the sixth in seniority, the ninth in seniority, the twelfth in seniority, and the fifteenth in seniority.

The Chief Justice may, however, consider factors other than seniority in Division assignments. The appointment of a new Member of the Court shall necessitate the reorganization of Divisions at the call of the Chief Justice.

[31] Section 1(b), Rule 12 of the *Internal Rules of the Supreme Court.*

[32] SC Circular No. 2-89, February 07, 1989.

[33] *Firestone Ceramics, Inc. v. Court of Appeals,* G.R. No. 127022, June 28, 2000, 334 SCRA 465, 478.

Lastly, respondents point to the initial dismissal of the appeal. However, such initial dismissal no longer matters considering that the Court already reconsidered it and reinstated the appeal as a consequence. As such, the decision on the merits promulgated herein was entirely valid and effective.

2.

Response to and comments on Justice Caguioa's separate opinion

The decision of August 16, 2017 has expressly concluded that the Memorandum of Agreement (MOA) of March 21, 2000 reflected the consolidation of all obligations of petitioners as of November 30, 1999.

Although he agrees that the CA erred in declaring that the 1997 REM between petitioners and UCPB still subsisted despite the execution of the MOA of March 21, 2000, Justice Caguioa contends that the fact that the Revere REM and petitioners' REM had been executed on the same date indicated that petitioners had expressly consented to Revere REM; hence, the Revere REM was valid. He concludes that UCPB's foreclosure of the mortgage covering the 10 parcels of land involved in the Revere REM was effective; and that only UCPB's application of payments was not proper. As a result, he recommends that paragraphs c., d. and e., to wit:

x x x x x x x x x

c. Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and JOSE GO in favor of co-defendant UNITED COCONUT PLANTERS BANK and the Deed of Assignment of Liability dated February 14, 2003 executed by plaintiffs in favor of UNITED COCONUT PLANTERS BANK;

d. Ordering defendant REGISTRAR OF DEEDS of Lucena City to cancel any and all titles derived or transferred from TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384), 89334 and issue new ones returning the ownership and registration of these titles of the plaintiffs. For this purpose, defendant

UNITED COCONUT PLANTERS BANK is directed to execute the appropriate Deeds of Reconveyance in favor of the plaintiffs over the eighteen (18) real properties listed in the Real Estate Mortgage dated March 21, 2000 executed by defendants Revere Realty and JOSE GO and originally registered in the names of the plaintiffs.

e. Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

x x x x x x x x x

be deleted from the *fallo* of the decision of August 16, 2017, and the following dispositive paragraph should instead be stated, namely:

x x x x x x x x x

c. Declaring the Deed of Real Estate Mortgage dated March 21, 2000 executed by respondents Revere and Jose Go in favor of co-respondent United Coconut Planters Bank to be valid;

x x x x x x x x x

The recommendation of Justice Caguioa is unacceptable. The original paragraph c. found in the *fallo* of the decision of August 16, 2017, *supra*, should stand and be maintained for several substantial and practical reasons.

To start with, we should not ignore that the Lucena RTC as the trial court rendered against respondents Jose Go and Revere a partial judgment on September 6, 2005, disposing therein as follows:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants JOSE C. GO, and REVERE REALTY DEVELOPMENT CORPORATION, as follows:

a) Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties held in trust for plaintiff by defendants REVERE and GO.

b) Declaring that defendants REVERE and GO are not the owners of the properties covered by the deeds of trust and did not have any authority to constitute a mortgage over them to secure their personal and corporate obligations, for which they should be liable.

c) **Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and GO in favor of co-defendant UNITED COCONUT PLANTERS BANK**.

d) **Ordering defendants REVERE and GO to reconvey in favor of the plaintiff the thirty-two (32) real properties listed in the deeds of trust and originally registered in the names of the plaintiffs under the following titles, to wit: TCT Nos. T-40450, 40452, 40453, 64488, 71021, 71022, 71023, 71024, 71025, 71136, 55033, 55287, 58945, 58946, 58947, 58948, 54186, 54187, 54189, 54190, 54191, 55288, 54186, 54187, 54188, 55030, 55031, 50426, 50427, 50428, 50429, and 50430**.

e) Ordering defendants REVERE and GO to pay plaintiffs the amount of Php1,000,000.00 and as by way of moral damages, and Php200,000.00 and by way of attorney's fees.

SO ORDERED.[34]

The partial judgment became final and executory because Go and Revere did not appeal.

If we were to accept Justice Caguioa's recommendation to declare the Revere REM valid and to adopt his proposed disposition, we would be abetting an irreconcilable conflict between his recommendation, on one hand, and the *fallo* of the final and immutable September 6, 2005 partial judgment, on the other. It is true that the November 9, 2005 order of the Lucena RTC clarified that only Go and Revere were to be covered and adversely affected by the partial judgment; but it is also undeniable that Justice Caguioa's proposed disposition would give rise to the situation of the Revere REM being validated despite being already nullified under the September 6, 2005 partial judgment rendered in the same case. The consequences

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[34] *Rollo*, p. 623 (note – this *fallo* is quoted in the decision of August 16, 2017 under note 16).

would be difficult and ridiculous, for how would petitioners enforce in their own favor *by writ of execution* the already final and executory partial judgment for the reconveyance of their 32 lots subject of the Deeds of Trust if the subsequent result decreed in the same case were to be as recommended by Justice Caguioa?

Secondly, Justice Caguioa assumes that petitioners had given their express consent to the Revere REM from the fact that the titles of the parcels of land subject of the Revere REM were then in the name of Revere. He theorizes that the only way petitioners could have "conveyed and transferred the parcels of land to UCPB was for petitioners to cause Revere to execute the Revere REM."

The assumption lacks factual basis. For one, the written agreements of the parties contained no express stipulation to support the assumption. Also, UCPB presented no evidence during the trial to establish the giving of petitioners' consent – whether express or implied – to the Revere REM. On the contrary, the MOA nowhere expressly authorized Revere to enter into and execute the REM in favor of UCPB in order to implement the terms of the MOA or realize the object of the MOA. In this connection, the Lucena RTC expressly observed as follows:

> The Court therefore affirms the nullity of the Revere REM dated March 21, 2000 (Exhibit "I", Exhibit "7-APA") executed by Revere in favor of defendant UCPB. **There is no proof that plaintiffs have consented to the application of the properties listed in Annex "B" thereof to the loan obligation of defendant Jose Go. UCPB is therefore lawfully bound to return to plaintiffs TCT Nos.** (numbers omitted), *conformably with this court's disquisition in the Partial Judgment rendered on September 6, 2005.*
>
> **The conformity of the plaintiffs through Felix A. Chua only appears on the Plaintiff's REM dated March 21,2000** (Exhibit 'G", Exhibit "6-APA").[35] x x x

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[35] RTC Decision, p. 13 (bold underscoring supplied for emphasis).

Thirdly, the stipulations of the MOA of March 21, 2000 related exclusively to the obligation of petitioners, to wit:

> (A) As of 30 November 1989, the BORROWER has outstanding obligations due in favor of the Bank in the aggregate amount of Two Hundred Four Million Five Hundred Ninety Seven Thousand One Hundred Seventy Seven and 04/100 Pesos (₱204,597,177.04), Philippine currency, inclusive of all interest, charges and fees (the "Obligation")."

The MOA of March 21, 2000 made no mention therein that petitioners had given their consent and approval to the Revere REM to securitize the obligations of Go. As such, it was unwarranted to assume that petitioners had consented to and approved the Revere REM, for to do so would run counter to the Parol Evidence Rule embodied in Section 9, Rule 130 of the *Rules of Court*, *viz.*:

> Section 9. *Evidence of written agreements*. – When the terms of an agreement have been reduced into writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors-in-interest, no evidence of such terms other than the contents of the written agreement.
>
> x x x x x x x x x

Under the Parol Evidence Rule, the affected party's pleadings must allege the basis for the exception, and only then may such party adduce evidence thereon.[36] However, UCPB adduced

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[36] The Parol Evidence Rule and its exceptions are stated in Section 9, Rule 130 of the *Rules of Court*, *viz.*:

> Section 9. *Evidence of written agreements*. – When the terms of an, agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
>
> However, **a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading**:
>
> (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;

no evidence showing that the Spouses Chua had consented to or approved the Revere REM.

Moreover, the express terms of the MOA of March 21, 2000, which UCPB itself had prepared and drafted, did not indicate that the Spouses Chua had consented to or approved the Revere REM. On the contrary, Section 5.4 of the MOA expressly forbade the parties from varying or modifying the written terms thereof. For reference, Section 5.4 is quoted hereunder:

> Section 5.4 Entire Agreement – This Agreement constitutes the entire, complete and exclusive statement of the terms and conditions of the agreement between the parties with respect to the subject matter referred to herein. **No statement or agreement, oral or written, made prior to the signing hereof and no prior conduct or practice by either party shall vary or modify the written terms embodied hereof, and neither party shall claim any modification of any provision set forth herein unless such modification is in writing and signed by both parties**.

Also underscoring the non-consent of petitioners, the Revere REM was signed only by Go acting for and in behalf of Revere. Nowhere in any of its 11 pages did the Revere REM bear the signatures of the Spouses Chua although its Article I patently lumped together the obligations of petitioners and Go at ₱404,597,177.04, as follows:

> 1. The payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained or hereinafter obtained by the MORTGAGORS and/or by LUCENA GRAND CENTRAL TERMINAL, INC., SPOUSES FELIX AND CARMEN CHUA and JOSE C. GO (hereinafter referred to as DEBTORS) in the total aggregate amount of FOUR HUNDRED FOUR MILLION FIVE HUNDRED NINETY SEVEN THOUSAND ONE HUNDRED SEVENTY SEVEN and 04/100 PESOS (₱404,597,177.04).

(b) The failure of the written agreement to express the true intent and agreement of the parties thereto;

(c) The validity of the written agreement; or

(d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

The terms "agreement" includes wills. (7a)

Fourthly, UCPB admittedly knew of stipulation 2[37] in the Deeds of Trust whereby Revere expressly acknowledged that it could not dispose of, sell, transfer, convey, lease or mortgage the 12 parcels of land "without the written consent of the TRUSTORS first obtained." In that regard, the decision of August 16, 2017 has pointed out:

> Additionally, UCPB could not now feign ignorance of the deeds of trust. As the RTC aptly pointed out, UCPB's own Vice President expressly mentioned in writing that UCPB would secure from Jose Go the titles necessary for the execution of the mortgages. As such, UCPB's actual knowledge of the deeds of trust became undeniable. In addition, UCPB, being a banking institution whose business was imbued with public interest, was expected to exercise much greater care and due diligence in its dealings with the public. Any failure on its part to exercise such degree of caution and diligence would invariably stigmatize its dealings with bad faith. It should be customary and prudent for UCPB, therefore, to adopt certain standard operating procedures to ascertain and verify the genuineness of the titles to determine the real ownership of real properties involved in its dealings, particularly in scrutinizing and approving loan applications. By approving the loan application of Revere obviously without making prior verification of the mortgaged properties' real owners, UCPB became a mortgagee in bad faith.

The foregoing indicated that UCPB had entered into the Revere REM in bad faith, rendering its foreclosure of the Revere REM as patently devoid of factual and legal support.

And, lastly, although the decision of August 16, 2017 points out that neither Revere nor Go was a party to the MOA of March 21, 2000, which concerned only petitioners' obligation of ₱204,597,177.04, the Revere REM stated the larger amount of ₱404,597,177.04 as the obligation, without mentioning or including therein petitioners' actual obligation of ₱204,597,144.04. As such, the Revere REM must be struck down as null and

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[37] 2. **The TRUSTEE hereby acknowledges and obliges itself not to dispose of, sell, transfer, convey, lease or mortgage the said twelve (12) parcels of land without the written consent of the TRUSTORS first obtained**;

void for implicating petitioners in the foreclosure undertaken upon Jose Go's separate but undetermined liability.

Justice Caguioa further recommends the deletion of paragraph e. of the *fallo* of the decision promulgated on August 16, 2017, which says:

> e. Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs' titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

He explains that because petitioners' REM and the Revere REM were valid, and UCPB's foreclosure of such mortgages was consequently validly effected, the consolidated obligations of petitioners were extinguished and the properties subject of the foreclosure should be declared to rightfully belong to UCPB. He states:

> x x x the two REMS are valid and as admitted by the parties, executed to effect or implement the obligations of the parties as detailed in the MOA. Because the REMS were valid and subsisting, their foreclosure was likewise proper and valid as they were done pursuant to the terms and conditions stated in both the REMS and MOA. And if the foreclosure was validly done by UCPB, then the entire consolidated obligations of the Petitioners was extinguished and the properties foreclosed now rightfully belong to UCPB. Consequently, the Decision's directive for UCPB to "execute the appropriate Deeds of Reconveyance in favor of {Petitioners}" and return so much of the {Petitioners'} titles . . . after applying so much of the mortgaged properties . . . to the payment of {Petitioners'} consolidated obligation to the bank is without legal basis. That said, UCPB's obligation is, as stated earlier, to return the excess of the foreclosure proceeds to the Petitioners.

We cannot join Justice Caguioa's recommendation. In the following disquisition, we graphically explain why paragraph e. of the *fallo* of the decision of August 16, 2017 – "ordering defendant UNITED COCONUT PLANTERS BANK to return

so much of plaintiff's titles, of their choice, equivalent to Php 200,000,000.00" – must be maintained and affirmed.

With the Revere REM being null and void as demonstrated herein and, therefore, ineffective, petitioners should not be thereby prejudiced. Consequently, the 10 parcels of land subject of the Revere REM have to be reconveyed to petitioners. **Anent the 20 parcels of land subject of petitioners' REM, title over so much of the 24.8182 hectares (*i.e.*, the total area of the 20 parcels of land) corresponding to their total obligation of ₱204,597,177.04 could remain in the name of UCPB, but the excess thereof should be returned to petitioners. The obligation of petitioners to UCPB would be thereby fully paid**.

Such proper allocation of payment is fair to the parties, and ultimately prevents UCPB's unjust enrichment. As the decision of August 16, 2017 elucidates:

> It can be further concluded that UCPB could not have validly assigned to Asset Pool A any right or interest in the ₱68,000,000.00 balance because **the proper application of the proceeds of the foreclosure sale would have necessarily resulted in the full extinguishment of petitioners' entire obligation. Otherwise, unjust enrichment would ensue at the expense of petitioners. There is unjust enrichment when a person unjustly retains a benefit to the loss of another, or when a person retains money or property of another against the fundamental principles of justice, equity and good conscience. The principle of unjust enrichment requires the concurrence of two conditions, namely: (1) that a person is benefited without a valid basis or justification; and (2) that such benefit is derived at the expense of another. The main objective of the principle against unjust enrichment is to prevent a person from enriching himself at the expense of another without just cause or consideration. This principle against unjust enrichment would be infringed if we were to uphold the decision of the CA despite its having no basis in law and in equity**.

The MOA of March 21, 2000 put petitioners' total liability at ₱204,597,177.04. On the other hand, the Revere REM stated the total of ₱404,597,177,04 ostensibly to include the outstanding obligation of Go although the entire extent of such obligation

was not specifically disclosed. Given that petitioners' REM involved 20 parcels of land (as distinguished from the 10 parcels of land involved in the Revere REM), we should determine the true extent of petitioners' liability by extracting the ratio of ₱204,597,177.04 to the total of ₱404,597,177.04. This results to 50.56%, and the remainder is 49.44%, which was equivalent to ₱200,000,000.00. The latter amount represented petitioners' *unused* portion of the total credit accommodation of ₱404,597,177.04. Hence, UCPB should return to petitioners the equivalent of 49.44% of the total area of the 30 parcels of land involved in the transactions.

This proportionality was similarly discussed by the trial court, stating:

> From the foregoing provisions, it is evident that the over-all intent of the said Real Estate Mortgage was to secure ALL past and future obligations of the plaintiffs and Jose Go to the extent of Php404,597,177.04. Considering that the outstanding obligation of the plaintiffs under the MOA dated March 21, 2000 were re-structured and consolidated to the final amount of Php204,597,177.04 which is 50.56% of the entire credit accommodation, defendant UCPB had no right to foreclose on the remaining 49.44% of the credit accommodation, which plaintiffs had not yet availed of at the time of the foreclosure.

As mentioned, the consolidated area of the 10 parcels of land involved in the Revere REM accounted for 121,907 square meters, while the consolidated area of the 20 parcels of land under petitioners' REM aggregated 248,182 square meters. In all, the 30 parcels of land had a combined area of 370,089 square meters. To derive the value per square meter, therefore, ₱404,597,177.04 is divided by 370,089, and the result is ₱1,093.24/ square meter.

To determine the exact extent of the 370,089 square meters to be considered as payment to UCPB, we should multiply 370,089 by 50.568%, and the product is 187,146.60, which, rounded off, is 187,147. Hence, 187,147 multiplied by ₱1,093.24 results in ₱204,597,177.04, which sum represented the full payment to UCPB of petitioners' obligation in accordance with the MOA.

To prevent UCPB's unjust enrichment, the reconveyance by UCPB of so much of petitioners' assets as would be equal to the unused portion of their total credit accommodation of ₱404,597,177.04 should be decreed. The product of multiplying 370,089 by 49.43188% is 182,941.95, rounded off to 182,942, which, multiplied by ₱1,093.24, equates to ₱200,000,000.00, the value of petitioners' unused portion.

IN VIEW OF THE FOREGOING, the Court **DENIES** the respective motions for reconsideration of respondents United Coconut Planters Bank (UCPB), Asset Pool A, and Revere Realty Corp. and Jose Go; the motion to inhibit the Third Division and to reassign the case to another Division of the Court by raffle; and the urgent motions to refer the case to the Court *En Banc*; and **REITERATES IN ALL RESPECTS** the decision promulgated on August 16, 2017.

SO ORDERED.

Tijam, Gesmundo, and *Reyes, J. Jr.,*[*] *JJ.,* concur.
Caguioa, *J.*, see separate opinion.

SEPARATE OPINION

CAGUIOA, *J.*:

I vote to **partially grant** the Motion for Reconsideration.

The Salient Facts and Antecedents

As culled from the records, the salient facts are:

On March 3, 1997, Petitioners — *Spouses Felix A. Chua and Carmen L. Chua, James B. Herrera, Eduardo L. Almendras, Mila Ng Roxas, Eugene C. Lee, Edicer H. Almendras, Benedict C. Lee, Lourdes C. Ng and Lucena*

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[*] In lieu of Justice Ramon Paul L. Hernando, who has inhibited from the case because his spouse is a lawyer in the Office of the Government Corporate Counsel, who represents one of the parties, per the raffle of December 11, 2018.

Industrial Corporation (LIC), Lucena Grand Central Terminal, Inc. (LGCTI), as represented by Felix Chua — along with Francisco A. Chua, Adela C. Chua, Green Valley Development Corporation, Doña Industries Corporation and Quezon Mktg. Corp. as represented again by its President, Felix A. Chua (hereinafter collectively referred to as the Owners) entered into a Joint Venture Agreement[1] (JVA) with Gotesco Properties, Inc. (Gotesco), a corporation controlled and represented by respondent Jose Go, for the purpose of developing a 44-hectare property in Ilayang Dupay, Lucena City.[2] This 44-hectare property is comprised of sixty-one (61) parcels of land registered in the names of the Owners.[3] As the developer, Gotesco undertook to carry out the development work on the property, whereby a portion thereof would be developed as a Business Park and a Residential Subdivision.[4]

Based on the terms of the JVA, the Owners undertook to transfer certain parcels of land to the developer for the purpose of developing a commercial shopping mall complex.[5] Pursuant to this undertaking, petitioners conveyed to Revere Realty and Development Corporation (Revere), another corporation controlled and represented by respondent Jose Go, by way of absolute sale dated November 18, 1997, twelve (12) parcels of land located in Lucena City.[6]

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[1] *Rollo* (Vol. 1), pp. 204-214.

[2] See Decision dated August 16, 2017 (SC Decision), *rollo* (Vol. 2), p. 1191; see also Deeds of Trust dated April 30, 1998, *rollo* (Vol. 1), pp. 215-220; Regional Trial Court Decision dated January 6, 2009 (RTC Decision), *rollo* (Vol. 1), p. 612; and Court of Appeals Decision dated March 25, 2014 (CA Decision), *rollo* (Vol. 1), p. 14.

[3] See Joint Venture Agreement dated March 3, 1997 (JVA), *rollo* (Vol. 1), pp. 211-212; see also RTC Decision, *rollo* (Vol. 1), p. 612.

[4] See JVA, *id*. at 205.

[5] See *id*. at 208.

[6] See SC Decision, *rollo* (Vol. 2), p. 1191; see also RTC Decision, *rollo* (Vol. 1), p. 612; CA Decision, *id*. at 14; Petition for Review under Rule 45 dated February 23, 2015, *id*. at 67.

On April 30, 1998, two (2) Deeds of Trust[7] (DoTs) were executed between (a) the petitioners, as the Trustors; and (b) Revere and Gotesco (as represented by Lydia Sevilla and Jose Go, respectively), as Trustees. The first DoT covered twelve (12) parcels of land originally registered under the names of Spouses Felix and Carmen Chua (Spouses Chua) and Adela C. Chua (as Trustors) and which were transferred to Revere.[8] Pursuant to the provisions of the DoT, Revere "acknowledge[d] and confirm[ed]" (a) "[t]he absolute title and ownership of the TRUSTORS over the twelve (12) parcels of land x x x;"[9] and (b) its role as Trustee was to hold the 12 parcels of land "in trust for the sole and exclusive use, benefit, enjoyment of the TRUSTORS."[10]

The second DoT covered twenty (20) parcels of land registered under the names of several of the petitioners, specifically James Herrera, Mila Ng Roxas, Eugene C. Lee, Edicer H. Almendras, Eduardo L. Almendras, Benedict C. Lee, Lourdes C. Ng and Lucena Industrial Corporation (as represented by Felix A. Chua), who were also the Trustors under the second DoT. Gotesco, as the Trustee, acknowledged "receipt of the x x x certificates of title from the TRUSTORS" and similarly confirmed the absolute ownership of the latter over the properties listed in the second DoT.[11]

Pursuant to both DoTs, the Trustees further undertook not to sell, transfer, convey, lease or mortgage the said parcels of land without the written consent of the petitioners.[12]

However, as observed by the Court of Appeals (CA), it appears that the project under the JVA did not materialize.[13]

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[7] *Rollo* (Vol. 1), pp. 215-220.

[8] *Id*. at 215.

[9] *Id*. at 216.

[10] *Id*.

[11] *Id*. at 219.

[12] *Id*. at 216 and 219.

[13] *Id*. at 14.

In the interim, petitioners Spouses Chua, Spouses Edicer and Evalor Almendras, and Eugene C. Lee executed a Real Estate Mortgage dated June 2, 1997 (1997 REM) in favor of United Coconut Planters Bank (UCPB) involving several parcels of land registered under their names. The 1997 REM served to secure all credit accommodations granted to or which may be obtained thereafter by the said mortgagors and Lucena Grand Central Terminal, Inc. (LGCTI) (of which the mortgagors were corporate officers and stockholders) in the amount of ₱103,000,000.00.[14] It should be emphasized that these lots are separate and distinct from the lots covered by the JVA, the Deeds of Absolute Sale and the DoTs.

In 1998, LGCTI and the Spouses Chua both defaulted in the payment of their respective loans to UCPB.[15] To forestall the impending foreclosure of the 1997 REM, the Spouses Chua and LGCTI, through their counsel,[16] requested for a restructuring of their loans.[17]

On March 21, 2000, petitioners Spouses Chua and LGCTI (as the Borrower) entered into a Memorandum of Agreement[18] (MOA) with UCPB to consolidate their obligations, which was determined at ₱204,597,177.04 as of November 30, 1999.[19] The MOA provides in part:

(A) As of 30 November 1999, the BORROWER has outstanding obligations due in favor of the BANK in the aggregate amount of Two Hundred Four Million Five Hundred Ninety Seven Thousand

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[14] See Annex "2" of respondent Asset Pool A (SPV-AMC)'s Motion for Reconsideration dated October 2, 2017 (APA's MR), *rollo* (Vol. 3), pp. 1386-1391.

[15] *Rollo* (Vol. 1), p. 15.

[16] See Annex "2" of APA's MR, *rollo* (Vol. 3), p. 1250; see also United Coconut Planters Bank's Motion for Reconsideration (UCPB's MR), *rollo* (Vol. 3), p. 1572.

[17] *Rollo* (Vol. 1), p. 15.

[18] *Id*. at 225-232.

[19] *Id*. at 225.

One Hundred Seventy Seven and 04/100 Pesos (₱204,597,177.04), Philippine currency, inclusive of all interest[s], charges and fees (the "Obligation").

(B) To partially satisfy the Obligation to the extent of ONE HUNDRED THREE MILLION EIGHT HUNDRED NINETY THREE THOUSAND FOUR HUNDRED FIFTY PESOS (₱103,893,450.00), Philippine currency, the BORROWER has agreed that the BANK shall acquire title to the real property enumerated and described in the schedule attached hereto and made an integral part hereof as Annex "A", together with all the improvement thereon, if any (collectively called, the "Property").

(C) The balance of the Obligation, in the total amount of Sixty Eight Million Pesos (₱68,000,000.00), Philippine currency, shall be converted by the BANK to equity interest in LGCTI, with the conformity of the BORROWER.[20]

While there is no reference in the MOA as to the waiver of the penalties and charges, both petitioners and UCPB, in their submissions before the Court, have noted that there was a waiver of penalties and interest due in the amount of ₱32,703,727.04.[21]

To address the balance of ₱68,000,000.00, petitioners Spouses Chua and LGCTI and respondent UCPB executed another Memorandum of Agreement[22] on the same date (2nd MOA), where petitioners Spouses Chua and LGCTI acknowledged their remaining obligation (*i.e.*, the amount of ₱68,000,000.00) and undertook to issue new shares of capital stock in LGCTI with an aggregate par value equivalent to this amount.[23]

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[20] *Id.*

[21] See UCPB's MR, at par. 15.c, p. 7, *rollo* (Vol. 3), p. 1575; and *rollo* (Vol. 1), p. 71. Thus, the total obligation of ₱204,597,177.04 was broken down as follows: ₱103,893,450.00 (partial obligation to be satisfied through conveyance of real properties); ₱68,000,000.00 (balance to be settled through issuance of LGCTI shares to UCPB); and ₱32,703,727.04 (waiver of penalties and charges).

[22] *Rollo* (Vol. 1), pp. 237-244.

[23] *Id.* at 237.

On the same date, and precisely to implement the undertaking of the Spouses Chua and LGCTI to transfer and convey the properties listed in the MOA,[24] two Real Estate Mortgages (REMs) were entered into: one between UCPB and the petitioners, specifically Eduardo L. Almendras, Edicer H. Almendras, Benedict C. Lee, Eugene C. Lee, James B. Herrera, Lourdes C. Ng, Mila Ng Roxas and LIC as represented by Felix A. Chua[25] (Petitioners' REM); and another between UCPB and Revere[26] (Revere REM). As indicated in each of the REMs executed, these were supposed to secure credit accommodations in the total aggregate amount of ₱404,597,177.04.[27] Moreover, under their terms, both REMs covered the payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained or hereinafter obtained by the mortgagors, LGCTI, Spouses Chua and Jose Go.[28]

It bears to note that the properties enumerated in Annex "A"[29] of the MOA are the very same properties that are covered by both the Petitioners' REM[30] and the Revere REM[31] — as shown by the table below:

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[24] See SC Decision, *rollo* (Vol. 2), pp. 1192 & 1200; APA's MR, par. 13, p. 4, *rollo* (Vol. 3), p. 1252; UCPB's MR, par. 16, p. 7, *rollo* (Vol. 3), p. 1575; and *rollo* (Vol. 1), p. 197.

[25] *Rollo* (Vol. 1), pp. 245-260.

[26] *Id*. at 261-274.

[27] *Id*. at 246 and 261.

[28] *Id*.

[29] *Id*. at 231.

[30] *Id*. at 256-260.

[31] *Id*. at 272 to 274.

MOA (Lot No.)	Petitioners' REM	Revere REM
3853	√	
3864	√	
4607	√	
5	√	
3833	√	
3838	√	
3839	√	
3827	√	
3842 A	√	
3835	√	
3843 A	√	
3843 C	√	
3847 A	√	
3847 B	√	
3836	√	
3842 B	√	
3846	√	
3841	√	
3843 B	√	
7	√	
3878		√
3885		√
3881		√
3854		√
3852		√
3851		√

3877		√
3876		√
3834		√
3845		√
3867-C		√

Subsequently, and in accordance with the MOA's expressed intent that UCPB "shall acquire title to the real property enumerated and described in the schedule attached hereto and made an integral part hereof as Annex 'A', together with all the improvement thereon, if any,"[32] the Petitioners' REM and Revere REM were foreclosed on November 13, 2001 and December 20, 2001, respectively.[33]

In the Apportionment of Bid Price[34] certified by UCPB's Account Officer, the properties from both REMs were sold for a total bid price of ₱227,700,000.00. The properties from Petitioners' REM yielded a bid price of ₱152,606,820.00, while the properties from Revere REM yielded a bid price of ₱75,093,180.00.

On February 14, 2003, UCPB and LGCTI executed a Deed of Assignment[35] whereby LGCTI acknowledged that it had outstanding obligations in the amount of ₱68,000,000.00 and, as means of settling the said obligations, it would issue 680,000 preferred shares of its stocks to UCPB.

On August 18, 2003, UCPB wrote a letter to LGCTI inquiring about the status of the issuance of the shares in favor of UCPB.[36]

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[32] *Id*. at 225.

[33] *Id*. at 20.

[34] *Id*. at 277.

[35] *Id*. at 233-236.

[36] Annex "35", *rollo* (Vol. 3), pp. 1549-1550.

In the same letter, UCPB noted that should LGCTI continue to refuse to abide by the terms of the MOA, it would "be compelled to exercise alternative means for recovery as provided for under previously executed loan and security documents."[37]

Instead of issuing the said shares in favor of UCPB, LGCTI (through the Spouses Chua) wrote UCPB on November 11, 2003[38] assailing the (a) acceptance and foreclosure by UCPB of the Revere REM notwithstanding its knowledge that the properties registered under the name of Revere were held in trust for the sole benefit of the petitioners; and (b) malicious and fraudulent application of the foreclosure proceeds of the Petitioners' REM and Revere REM to the personal and corporate obligation of Jose Go without the knowledge of the petitioners.[39] LGCTI further accused UCPB of conniving with respondent Jose Go to secure the latter's "clean"/unsecured loans by deliberately (a) undervaluing the petitioners' properties (with the difference between the actual value and the undervaluation as sufficient to cover Jose Go's liabilities); and (b) concealing from the petitioners the Apportionment of Bid Price — which contains a breakdown of the application of the proceeds from the extrajudicial foreclosure of the Petitioners' REM and Revere REM.[40]

Based on the foregoing, LGCTI requested for an accounting of Jose Go's liabilities that had been secured and/or settled using petitioners' properties, and for UCPB to (a) submit all the properties subject of the Petitioners' REM and Revere REM for reappraisal by an independent appraiser; (b) apply only so much of their properties to cover their obligation in the amount to ₱204,597,177.04; and (c) reconvey any properties that are no longer necessary to cover their total obligation.[41] However, UCPB did not heed these requests.

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[37] *Id*. at 1550.

[38] *Rollo* (Vol. 1), pp. 278-283.

[39] *Id*. at 282.

[40] *Id*.

[41] *Id*. at 283.

Thus, on February 3, 2004, petitioners filed before the Regional Trial Court (RTC) in Lucena City a complaint[42] against UCPB, Revere, Jose Go and the Registrar of Deeds of Lucena City, for the Annulment of Real Estate Mortgage and Deed of Assignment of Liability, Delivery of Titles, Accounting, Re-Appraisal and Damages. The RTC issued a writ of preliminary injunction at the instance of petitioners.[43]

On October 4, 2004, the RTC declared Jose Go and Revere in default. On February 22, 2005, the RTC denied the motion for reconsideration of Jose Go and Revere and on September 6, 2005 the RTC rendered Partial Judgment against Jose Go and Revere — nullifying the Revere REM.[44]

Subsequently, respondent Asset Pool A (SPV-AMC) (APA) filed a Motion for Partial Substitution of UCPB as defendant alleging that UCPB had assigned to APA all its rights and interests over the (a) remaining ₱68,000,000.00 receivable from the Spouses Chua and LGCTI, and (b) 1997 REM.[45]

The rulings of the lower court and the CA, as summarized in the Decision[46] dated August 16, 2017, are repeated herein:

Rulings of the RTC

On September 6, 2005, the RTC, through Judge Virgilio C. Alpajora, rendered a partial judgment against Jose Go and Revere, *viz*.:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants JOSE C. GO and REVERE REALTY DEVELOPMENT CORPORATION, as follows:

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[42] *Id*. at 284-302.

[43] *Id*. at 21.

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

[45] *Id*. at 23.

[46] *Rollo* (Vol. 3), pp. 1190-1210. Penned by Associate Justice Lucas P. Bersamin and concurred in by Associate Justices Samuel R. Martires, Noel Gimenez Tijam and Alexander G. Gesmundo; Associate Justice Alfredo Benjamin S. Caguioa was on leave.

a) Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties held in trust for plaintiff by defendants REVERE and GO.

b) Declaring that defendants REVERE and GO are not the owners of the properties covered by the deeds of trust and did not have any authority to constitute a mortgage over them to secure their personal and corporate obligations, for which they should be liable.

c) Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and GO in favor of co-defendant UNITED COCONUT PLANTERS BANK.

d) Ordering defendants REVERE and GO to reconvey in favor of the plaintiff the thirty-two (32) real properties listed in the deeds of trust and originally registered in the names of the plaintiffs under the following titles, to wit: TCT Nos. T-40450, 40452, 40453, 64488, 71021, 71022, 71023, 71024, 71025, 71136, 55033, 55287, 58945, 58946, 58947, 58948, 54186, 54187, 54189, 54190, 54191, 55288, 54186, 54187, 54188, 55030, 55031, 50426, 50427, 50428, 50429, and 50430.

e) Ordering defendants REVERE and GO to pay plaintiffs the amount of Php1,000,000.00 and as by way of moral damages, and Php200,000.00 [as] and by way of attorney's fees.

SO ORDERED.

On November 9, 2005, the RTC modified the partial judgment upon UCPB's motion for reconsideration, but otherwise affirmed it as against Revere and Jose Go, disposing thusly:

WHEREFORE, premises considered, the Partial Judgment dated September 6, 2005 is reconsidered and clarified as to United Coconut Planters Bank, as follows:

a) The contested portion of the Partial Judgment ordering reconveyance is directed at defendants Revere Realty and Development Corp. and Jose Go and not at defendant United Coconut Planters Bank; and

b) **The resolution of the issue of whether or not defendant UCPB is obliged to reconvey the properties listed in the Partial Judgment in favor of the plaintiffs, as well as the other issues**

between UCPB and the plaintiffs, shall be determined after the parties shall have presented their evidence.

SO ORDERED.

Meanwhile, Asset Pool A moved to be substituted for UCPB as a party-defendant on February 15, 2006 on the basis that UCPB had assigned to it the rights over petitioners' ₱68,000,000.00 obligation. The RTC approved the substitution on March 14, 2006.

On January 6, 2009, the RTC rendered judgment in favor of petitioners, thusly:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants UNITED COCONUT PLANTERS BANK, ASSET POOL A, REGISTRAR OF DEEDS OF LUCENA CITY and *EX-OFFICIO* SHERIFF OF LUCENA CITY, thus:

a) Declaring that the loan obligations of plaintiffs to defendant UNITED COCONUT PLANTERS BANK under the Memorandum of Agreement dated March 21, 2000 [to] have been fully paid;

b) Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties listed therein were merely held-in-trust for plaintiffs by defendants REVERE and JOSE GO and/or corporations owned or associated with him;

c) Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and JOSE GO in favor of co-defendant UNITED COCONUT PLANTERS BANK and the Deed of Assignment of Liability dated February 14, 2003 executed by plaintiffs in favor of UNITED COCONUT PLANTERS BANK;

d) Ordering defendant REGISTRAR OF DEEDS of Lucena City to cancel any and all titles derived or transferred from TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384) and issue new ones returning the ownership and registration of these titles of the plaintiffs. For this purpose, defendant UNITED COCONUT PLANTERS BANK is directed to execute the appropriate Deeds of Reconveyance in favor of the plaintiffs over the eighteen (18) real properties listed in the Real Estate Mortgage dated March 21, 2000 executed

by defendants Revere Realty and JOSE GO and originally registered in the names of the plaintiffs.

e) Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

f) Declaring the Real Estate Mortgage dated June 02, 1997 as having been extinguished by the Memorandum of Agreement date[d] March 21, 2000, and converting the writ of preliminary injunction issued on March 22, 2004 to a permanent one, forever prohibiting UNITED COCONUT PLANTERS BANK and ASSET POOL A and all persons/entities deriving rights under them from foreclosing on TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135. The court hereby orders said defendants, or whoever is in custody of the said certificates of title, to return the same to plaintiffs and to execute the appropriate release of mortgage documents.

g) Finally, ordering defendant UNITED COCONUT PLANTERS BANK, to pay plaintiffs:

(i) The excess of the foreclosure proceeds in the amount of Php23,102,822.96, as actual damages;

(ii) Legal interest on the amount of Php223,102,822.96 at the rate of 6% *per annum* from February 3, 2004 until finality of judgment. Once the judgment becomes final and executory, the interest of 12% *per annum*, should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied, as compensatory damages;

(iii) Php1,000,000.00 as moral damages;

(iv) Php100,000.00 as exemplary damages;

(v) Php2,000,000.00 as attorney's fees; and

(vi) costs of suit;

SO ORDERED.

The RTC *declared the Revere REM as null and void for having been entered into outside the intent of the JVA*; and opined that the Revere REM did not even bear any of herein petitioners' signatures. It ruled that the application of the proceeds of the foreclosure sale of petitioners' properties to settle Jose Go's liabilities was improper, invalid and contrary to the intent of the March 21, 2000 MOA, the principal contract of the parties.

The RTC observed that UCPB's claim that it had no knowledge of the trust nature of the properties covered by the deeds of trust, which were also included in the MOA was belied by the letter signed by its First Vice President Enrique L. Gana addressed to Spouses Chua wherein he stated that UCPB had undertaken to obtain from Jose Go the certificates of title necessary for the execution of the mortgages, and that should there be any excess or residual value, the same would be applied to any outstanding obligations that Jose Go would have in favor of UCPB; and that, accordingly, it was an error on the part of UCPB to apply any portion of the proceeds to settle the obligations of Jose Go without first totally extinguishing petitioners' obligations.

Decision of the CA

Respondents appealed to the CA.

In the decision promulgated on March 25, 2014, the CA reversed and set aside the judgment of the RTC, disposing instead as follows:

> **WHEREFORE**, the assailed January 6, 2009 Decision of the Regional Trial Court of Lucena City, Branch 59, as well as its September 6, 2005 Partial Judgment are **REVERSED and SET ASIDE**. In its stead, judgment is hereby rendered:
>
> a) Declaring the Real Estate Mortgage dated June 2, 1997 as valid and subsisting — accordingly, the writ of preliminary injunction issued on March 22, 2004 by the Regional Trial Court of Lucena City, Branch 59 is hereby lifted;
>
> b) Declaring as legal and binding the March 21, 2000 Deed of Real Estate Mortgage of defendants REVERE REALTY AND DEVELOPMENT CORPORATION and/or JOSE GO in favor of defendant-appellant UNITED COCONUT PLANTERS BANK;
>
> c) Declaring, pursuant to the parties' March 21, 2000 Deed of Real Estate Mortgage, that the loan obligations of defendant

JOSE GO to defendant-appellant UNITED COCONUT PLANTERS BANK have been satisfied up to ₱123,806,550.00; and

d) Declaring that the loan obligations of plaintiffs-appellees SPOUSE CHUA, ET AL. to defendant-appellant UNITED COCONUT PLANTERS BANK under the first Memorandum of Agreement dated March 21, 2000 have been paid up to ₱103,893,450.00.

SO ORDERED.

The CA made reference to three REMs: the first, executed on June 2, 1997, would secure the Spouses Chua's obligations with UCPB; the second, executed on March 21, 2000, was petitioners' REM in connection with the March 21, 2000 MOA; and the Revere REM, executed also on March 21, 2000. It opined that the first REM remained outstanding and was not extinguished as claimed by petitioners; that the Revere REM was valid based on the application of the *complementary contracts construed together* doctrine whereby the accessory contract must be read in its entirety and together with the principal contract between the parties; that it was the intention of the parties to extend the benefits of the two REMs under the first MOA in favor of Jose Go and/or his group of companies; and that petitioners' obligations with UCPB under the first MOA had not been fully settled."[47] (Emphasis supplied)

Aggrieved by the CA Decision[48] and Resolution[49] promulgated on March 25, 2014 and December 23, 2014, petitioners filed before the Court a Petition for Review[50] under Rule 45 assailing the said CA Decision and Resolution, which reversed and set aside the decision rendered by the RTC and granted the appeal of the respondents UCPB, Revere, Jose Go and the Registrar of Deeds of Lucena.

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[47] *Id*. at 1193-1197.

[48] *Rollo* (Vol. 1), pp. 11-51. Penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Jane Aurora C. Lantion and Nina G. Antonio-Valenzuela, concurring.

[49] *Id*. at 52-59.

[50] *Id*. at 61-105.

In a Decision[51] dated August 16, 2017 (Decision), the Court's Third Division held that the CA committed reversible errors and reinstated the ruling of the RTC:

First, the Court declared that the 1997 REM cannot subsist separately from the consolidated obligations of the petitioners as stated in the MOA. Based on the tenor of the correspondences between UCPB, on the one hand, and the Spouses Chua and LGCTI, on the other, the obligations of the latter were already consolidated — and no distinction was made between the loans obtained in 1997 and those made in subsequent years. Moreover, based on the provisions of the MOA, it is evident that the MOA constituted the "entire, complete and exclusive agreement between the parties"[52] consolidating the past and future obligations of the Spouses Chua and LGCTI. The REMs, executed on the same date as the MOA, also indicated that the mortgages would secure the payment of all loans, overdrafts, credit lines and other credit facilities or accommodations obtained or thereinafter to be obtained by the mortgagors.

Second, while the Court in the Decision upheld the validity of the MOA and the Petitioners' REM, it agreed with the RTC's conclusion and declared the Revere REM null and void. The reason of the Decision was because the properties covered by the Revere REM were covered by the DoTs which specifically acknowledged that (a) the said properties were still owned by petitioners for all intents and purposes, and (b) the consent and approval of the petitioners were necessary to sell, dispose and/or mortgage the properties covered by the DoT. Thus, absent any allegation that the consent/approval of the petitioners was obtained or a showing that petitioners transferred the beneficial ownership over the properties to Revere, Revere did not have the authority to mortgage said properties. Moreover, the Court agreed with the RTC that UCPB cannot feign ignorance of the DoTs as its knowledge is evident when "UCPB's own Vice President expressly mentioned in writing that UCPB would secure

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[51] SC Decision, *supra* note 46.

[52] *Id*. at 1201.

from Jose Go the titles necessary for the execution of the mortgages"[53] — making UCPB a mortgagee in bad faith.

The Decision also declared that it was erroneous for the CA to hold that Revere and/or Jose Go's obligations "enjoyed a primacy or precedence over the remaining ₱68,000,000.00 obligation of petitioners"[54] for the following reasons: (a) no evidence was presented to prove the precise amount of Jose Go's loan obligation, (b) the CA's interpretation where more than half of the balance of the foreclosure proceeds would be applied to Jose Go's debts "does not find support in their contracts as well as in the course of ordinary human experience,"[55] and (c) this contravened the "agreement that Revere's or Jose Go's obligation would be paid only if there were excess in the application of the foreclosure proceeds."[56] Accordingly, based on the Apportionment of Bid Price executed by UCPB, the foreclosure proceeds amounting to ₱227,700,000.00 should have been applied to the entire obligation of the Spouses Chua and LGCTI (in the amount of ₱204,597,177.04), and only the excess, if any, should have been applied to pay off the obligations of Jose Go.

As the Spouses Chua and LGCTI had no remaining obligation left to settle after the application of the entire foreclosure proceeds to their debt, the Deed of Assignment where the petitioners undertook to transfer LGCTI's shares of stock as payment for their remaining obligation in the amount of ₱68,000,000.00 was null and void. Similarly, as the entire obligation of the Spouses Chua and LGCTI have been extinguished, UCPB could not have validly assigned to APA any right or interest in the ₱68,000,000.00 balance.

Based on the foregoing rulings, the dispositive portion of the Decision provided as follows:

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[53] *Id*. at 1203-1204.

[54] *Id*. at 1204.

[55] *Id*. at 1206.

[56] *Id*.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **SETS ASIDE** the decision of the Court of Appeals promulgated on March 25, 2014 in CA-G.R. No. 93644; **REINSTATES** the judgment rendered on January 6, 2009 by the Regional Trial Court, Branch 59, in Lucena City, with the addition of TCT No. 89334, to wit:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiffs and against defendants UNITED COCONUT PLANTERS BANK, ASSET POOL A, REGISTRAR OF DEEDS OF LUCENA CITY and *EX-OFFICIO* SHERIFF OF LUCENA CITY, thus:
>
> a. Declaring that the loan obligations of plaintiffs to defendant UNITED COCONUT PLANTERS BANK under the Memorandum of Agreement dated March 21, 2000 have been fully paid;
>
> b. Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties listed therein were merely held-in-trust for plaintiffs by defendants REVERE and JOSE GO and/or corporations owned or associated with him;
>
> c. Nullifying the Deed of Real Estate Mortgage dated March 21, 2000 executed by defendants REVERE and JOSE GO in favor of co-defendant UNITED COCONUT PLANTERS BANK and the Deed of Assignment of Liability dated February 14, 2003 executed by plaintiffs in favor of UNITED COCONUT PLANTERS BANK;
>
> d. Ordering defendant REGISTRAR OF DEEDS of Lucena City to cancel any and all titles derived or transferred from TCT Nos. T-40452 (89339), 40453 (89340), 84488 (89342), 71021 (89330), 71022 (89331), 71023 (89332), 71025 (95580-95581), 71136 (95587-95590), 55033 (89384), 89334 and issue new ones returning the ownership and registration of these titles of the plaintiffs. For this purpose, defendant UNITED COCONUT PLANTERS BANK is directed to execute the appropriate Deeds of Reconveyance in favor of the plaintiffs over the eighteen (18) real properties listed in the Real Estate Mortgage dated March 21, 2000 executed by defendants Revere Realty and JOSE GO and originally registered in the names of the plaintiffs.
>
> e. Ordering defendant UNITED COCONUT PLANTERS BANK to return so much of the plaintiffs[’] titles, of their choice, equivalent to Php200,000,000.00 after applying so much of the

mortgaged properties, including those presently or formerly in the name of REVERE, to the payment of plaintiffs' consolidated obligation to the bank in the amount of Php204,597,177.04.

f. Declaring the Real Estate Mortgage dated June 02, 1997 as having been extinguished by the Memorandum of Agreement date March 21, 2000, and converting the writ of preliminary injunction issued on March 22, 2004 to a permanent one, forever prohibiting UNITED COCONUT PLANTERS BANK and ASSET POOL A and all persons/entities deriving rights under them from foreclosing on TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135. The court hereby orders said defendants, or whoever is in custody of the said certificates of title, to return the same to plaintiffs and to execute the appropriate release of mortgage documents.

g. Finally, ordering defendant UNITED COCONUT PLANTERS BANK, to pay plaintiffs:

i. The excess of the foreclosure proceeds in the amount of Php23,102,822.96, as actual damages;

ii Legal interest on the amount of Php223,102,822.96 at the rate of 6% *per annum* from February 3, 2004 until finality of judgment. Once the judgment becomes final and executory, the interest of 6% *per annum,* should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied, as compensatory damages;

iii. Php1,000,000.00 as moral damages;

iv. Phpl00,000.00 as exemplary damages;

v. Php2,000,000.00 as attorney's fees; and

vi. Costs of suit;

SO ORDERED.

and **DIRECTS** respondents, except the Registrar of Deeds of Lucena City and the *Ex-Officio* Sheriff of Lucena City, to pay the costs of suit.

SO ORDERED.[57]

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[57] *Id*. at 1208-1209.

From the foregoing Decision, respondents UCPB, APA, Revere and Jose Go filed their respective motions for reconsideration (MRs).

Respondents Revere and Jose Go, in their MR[58] dated October 2, 2017, merely reiterated the pronouncements of the CA to support the contention that the Revere REM is valid. However, they did not raise any arguments as regards the application of the proceeds of the foreclosure sale.

On the other hand, respondent UCPB, in its MR[59] dated October 4, 2017, raised the following arguments: (a) the obligations of the petitioners under the MOA have not been fully paid because based on the terms of the MOA only the obligation in the amount of ₱103,893,450.00 was settled with the foreclosure; (b) the 1997 REM was not extinguished by the MOA as the annotations on the properties subject of the 1997 REM remain uncancelled; (c) the Revere REM and the Deed of Assignment should not have been declared void as the petitioners (i) consented to mortgage the properties covered by the REM by signing the MOA; and (ii) are estopped from assailing the validity of the Revere REM. Considering the foregoing, UCPB asserts that the Court erred in ordering UCPB to (a) return ₱200,000,00.00 worth of properties to the petitioners, (b) return the excess of the foreclosure proceeds to the petitioners, (c) pay interests on the "return of the properties," and (d) pay the petitioners moral damages, exemplary damages, attorney's fees and costs of suit.

For its part, APA raises the following arguments in its MR[60] dated October 2, 2017:

(a) The petitioners were not misled into signing or executing the MOA, Petitioners' REM, Revere REM and the Deeds of Absolute Sale. Further, there was never any

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[58] *Rollo* (Vol. 3), pp. 1234-1248.

[59] *Id*. at 1569-1607.

[60] *Id*. at 1249-1378.

allegation that Revere was a debtor and as such, there is no factual basis for the Court's declaration that UCPB is in bad faith;

(b) Revere REM is valid and the petitioners validly consented and had knowledge that the properties covered by the Revere REM would be conveyed to UCPB through foreclosure based on the language of the MOA;

(c) There is no provision in the two MOAs, Petitioners' REM, Revere REM and the Deed of Assignment that the foreclosure proceeds should be applied first to the entire obligation of the petitioners before such can be applied to the debt of Jose Go;

(d) The 1997 REM has not been extinguished by the execution of the MOAs as these can co-exist in harmony with the other documents;

(e) The petitioners cannot be considered to have fully paid their obligations to UCPB as the petitioners explicitly acknowledged their remaining balance of ₱68,000,000.00 in the two MOAs and the Deed of Assignment; and

(f) There is no legal and factual basis for the award of actual damages, interest, moral damages, exemplary damages, attorney's fees and costs of suit against UCPB.

THE COURT'S RULING

I agree with the Decision that the CA erred in declaring that the 1997 REM still subsisted separately from the consolidated obligations stated in the MOA. As noted in the Decision, to which I fully concur, the MOA superseded the 1997 REM so that the MOA constituted the "entire, complete and exclusive" agreement "between the parties." This, to me, is quite clear and readily apparent from the plain language of the MOA as well as the REMs which were executed at the same time as the MOA precisely to effect the intent of the MOA.

However, I disagree with the Decision's conclusion that the Revere REM is null and void — and its consequent effect

on the foreclosure of the REMs, as well as the application of the foreclosure proceeds.

At the outset, there appears to be no issue as to the existence of the DoTs and the terms and conditions stated therein. The DoTs categorically stated that Revere acknowledges the "absolute title and ownership of [Spouses Chua]"[61] over the properties, *i.e.,* twelve (12) parcels of land notwithstanding that the titles were registered under Revere's name. Further, the DoTs expressly provided that Revere "acknowledges and obliges itself not to dispose of, sell, transfer, convey, lease or mortgage [the property] without the written consent of the [Spouses Chua]."[62]

Thus, to me, the preliminary question that must be answered is whether or not the consent of the Spouses Chua was secured by Revere when it executed the Revere REM.

The Decision echoed the RTC ruling that the Revere REM is null and void for failure of Revere to secure the express approval and consent of Spouses Chua, as stated in the DoTs. According to the Decision, which relied on the factual findings by the RTC,[63] "the records are bereft of any allegation that Revere had obtained the approval of [Spouses Chua] or that the latter had acquiesced to the mortgage of the properties in favor of UCPB,"[64] and therefore, the Revere REM is invalid and without effect. To reiterate, I disagree with this finding.

To stress, the following facts are undisputed: (a) the MOA was executed by the petitioners to consolidate all their obligations to UCPB; (b) **the properties listed in the MOA all belong to the petitioners**; and (c) the REMs were executed to implement and give life to the terms and conditions of the MOA.

Further, there is no question — as this is clear from even a cursory perusal of the MOA and the REMs — that the

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[61] *Rollo* (Vol. 1), p. 216.

[62] *Id*.

[63] *Id*. at 582 and 583.

[64] *Rollo* (Vol. 2), p. 1203.

properties enumerated in Annex "A" of the MOA include the parcels of land subject of the Revere REM, as properties to be conveyed and transferred to UCPB to partially secure the obligations of the petitioners.

In this regard, it should be stressed that the Spouses Chua could not have conveyed and transferred to UCPB the parcels of land under the DoTs as they were not in their name. As the titles of these parcels were in the name of, and their owner's duplicate copies were in the possession of, Revere, then the only way for the Spouses Chua to have conveyed and transferred the parcels of land to UCPB was precisely to cause Revere to execute the Revere REM. In other words, by freely, voluntarily and knowingly entering into the MOA — which, to reiterate, enumerated (in Annex "A") the properties to be transferred to UCPB, including those in the name of Revere and covered by the Revere REM — the Spouses Chua had already expressly given their consent and approval to Revere to execute the Revere REM and to mortgage the parcels of land under the DoTs in favor of UCPB, precisely as security for the loan obligations of the petitioners as stated in the MOA. That this was the intent is evident not only from the language of the MOA and the inclusion of the Revere properties in the MOA's Annex "A," but also especially considering that the Revere REM was, like the Petitioners' REM, executed on the same day as the MOA. **This compellingly reveals that, to be sure, the two REMs were executed to effect or otherwise implement the obligations of the parties enumerated and fleshed out in the MOA**.

Given the validity of both REMs, as discussed above, the real questions on which this case pivot are these: whether the foreclosure of UCPB and its application of the foreclosure proceeds were legal and proper.

I submit that the foreclosure of UCPB was valid, but its application of payments was not proper.

First, it is clear from the submissions of both parties and the decisions rendered by both the RTC and the CA that the primordial

instrument that must be considered and given weight is the MOA — as it embodies and encapsulates the agreement of the parties. It is equally clear that the only parties to the MOA are UCPB, LGCTI and the Spouses Chua. Likewise, it is also plainly evident from the terms of the MOA that the only "debtors" and/or the borrowers covered by the MOA are LGCTI and the Spouses Chua.

Most importantly, the parties admit that the Petitioners' REM and the Revere REM were executed **to implement the terms and conditions of the MOA**.[65] As explained earlier, that this is the clear intent of the parties is also evident from the fact that the properties identified in Annex "A" of the MOA (as the properties to be transferred and conveyed to UCPB) are the very same properties mortgaged to UCPB through the execution of both the Petitioners' REM and the Revere REM — which were the same properties thereafter foreclosed and acquired by UCPB.[66]

Following the "*complementary contracts construed together* doctrine" correctly used by the CA, the terms of both Petitioners' REM and Revere REM must be read in consonance with the MOA. Pursuant to the MOA, the properties that were conveyed and transferred to UCPB (**as enumerated in Annex "A" of the MOA and as listed in both REMs**) were to be applied against the loan obligations of the Borrowers stated in the MOA — which, again, are only LGCTI and the Spouses Chua. If, as UCPB and APA admit, the REMs were executed to implement the "first mode of payment (conveyance of properties to UCPB)"[67] under the MOA, **then the foreclosure proceeds from the REMs could only be applied pursuant to the terms of the MOA — which is for the payment of the obligations only of LGCTI and Spouses Chua**. There is absolutely nothing in the MOA (*i.e.*, the primordial instrument

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[65] See APA's MR, par. 13, p. 4, *rollo* (Vol. 3), p. 1252; see also UCPB's MR, pp. 5-7, *id*. at 1573-1575; *rollo* (Vol. 1), p. 197.

[66] See APA's MR, pp. 34-38, *id*. at 1282-1286.

[67] See APA's MR, p. 28, *id*. at 1276.

governing the relationship of the parties thereto) which provides that the enumerated properties to be transferred and conveyed to UCPB would also be used to secure and thereafter answer for the debts of any other third parties. Accordingly, UCPB's application of the foreclosure proceeds to the debts of a third party (which in this case is Jose Go) is in clear contravention of the MOA and therefore erroneous and without basis.

Both APA and UCPB, however, argue that based on the recitals of the REMs, the petitioners as mortgagors agreed to also cover the loan of Jose Go. This assertion, however, misses and fails to establish two crucial facts to justify the action of applying the foreclosure proceeds to Jose Go's debt — (a) the existence and the actual amount of Jose Go's debt; and (b) the default on the part of Jose Go in the payment of his obligations.

It is a basic doctrine in civil law that a mortgage is a mere accessory contract — as such, the principal obligation must exist for the mortgage to subsist.[68] Similarly, it must also be established that at the time of the foreclosure, the debt is already due and demandable and that the debtor is in default in the payment of his obligation.[69]

In this case, the only principal obligation that was admitted, established and proven by competent evidence was that of the Spouses Chua and LGCTI. In fact, the only loan document that was presented by UCPB and APA to establish the indebtedness of the debtors was the MOA — which, again, enumerates only the Spouses Chua and LGCTI as the borrowers.

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[68] See *Spouses Rigor v. Consolidated Orix Leasing and Finance Corporation,* 436 Phil. 243, 251-252 (2002); *PNB v. Dee*, 727 Phil. 473, 482 (2014); *Acme Shoe, Rubber & Plastic Corporation v. CA*, 329 Phil. 531, 538-539 (1996).

[69] See *RCBC v. Buenaventura,* 646 Phil. 673, 679 (2010); *Producers Bank of the Philippines v. Court of Appeals,* 417 Phil. 646, 656-657 (2001); *Orix Metro Leasing and Finance Corp. v. M/V "Pilar-I",* 615 Phil. 412, 427 (2009)*; Development Bank of the Phils. v. Guariña Agricultural & Realty Development Corp.,* 724 Phil. 209, 218-222 (2014)*;* and *Development Bank of the Philippines v. Licuanan,* 545 Phil. 544, 554 (2007).

Apart from the Petitioners' REM and the Revere REM, there is nothing on record that indicates the existence (*i.e.*, Promissory Note) or the exact amount of Jose Go's indebtedness so as to justify the application of more than half of the foreclosure proceeds to extinguish this purported debt. As astutely observed by the RTC, "neither x x x UCPB nor APA presented any evidence to prove the precise amount of Jose Go's loan obligations to the bank x x x [nor] the obligations of any of the corporations owned by him in the majority."[70]

In this regard, it bears noting that the petitioners had repeatedly demanded UCPB to show proof of Jose Go's liabilities and to render an accounting thereof.[71] In response, UCPB refused to present, as it never did, any evidence to prove the existence and amount of Jose Go's indebtedness. Had UCPB produced the loan documents showing Jose Go's indebtedness as demanded by the petitioners, it could have easily proved the existence and amount of Jose Go's indebtedness. That UCPB failed to do so — ***that it refused to do so*** — can only lead to the conclusion that no such debt or loan exists. Verily, the presumption that evidence willfully suppressed would be adverse if produced applies foursquare here.[72]

Based on the foregoing, I agree with and find merit in the petitioners' assertion that "absent proof of unpaid loans of Go x x x there is utterly no basis for applying the proceeds of the foreclosure x x x to the asserted obligations of Go."[73] Accordingly, considering that the only loan that was substantiated by concrete evidence was that of the Spouses Chua and LGCTI, the foreclosure proceeds may only be applied to their debts — and no one else's.

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[70] *Rollo* (Vol. 1), p. 625.

[71] *Id*. at 278-283 and 300.

[72] RULES OF COURT, Rule 131, Sec. 3(e). See *Garcia v. Thio*, 547 Phil. 341, 350 (2007); *People v. Yabut*, 285 Phil. 895, 899 (1992) and *Caltex (Philippines), Inc. v. Court of Appeals*, 287 Phil. 497, 511 (1992).

[73] *Rollo* (Vol. 1), p. 99.

Based on the Apportionment of Bid Price, the total foreclosure proceeds amounted to ₱227,700,000.00. As provided in the MOA, LGCTI and the Spouses Chua had an outstanding obligation in the aggregate amount of ₱204,497,177.04. Notwithstanding that the MOA stipulated that all the properties transferred and conveyed to UCPB would only extinguish Spouses Chua and LGCTI's debt to the extent of ₱103,893,450.00, when the foreclosure sale actually yielded an amount that was more than ₱103,893,450.00, that is, more than sufficient to discharge the debt of LGCTI and Spouses Chua — then such proceeds should have been applied to the entirety of their debt, including already the ₱68,000,000.00 owed and which should have been paid through the issuance of 680,000 shares in LGCTI.

This application (*i.e.*, that extinguishes the entire obligation) finds basis in the very language of the REMs, which provides that the mortgages shall secure all loans of the mortgagors, LGCTI, Spouses Chua and Jose Go.[74] This clearly covers the entire obligation of LGCTI and Spouses Chua as provided in the MOA — which, to repeat once more, is the only obligation that was proven and established before the RTC and the CA. Accordingly, the ₱227,700,000.00 foreclosure proceeds must be applied to the entire outstanding obligation of LGCTI and the Spouses Chua in the amount of ₱204,497,177.04 (inclusive already of the ₱68,000,000.00). Such application would totally extinguish the debt of LGCTI and the Spouses Chua and would yield a balance in their favor of ₱23,102,822.96.

As regards this remaining balance of ₱23,102,822.96, the Court's pronouncement in *Spouses Suico v. PNB*[75] explaining the application of Section 4,[76] Rule 68 is instructive:

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[74] *Id.* at 246.

[75] 558 Phil. 265 (2007).

[76] SEC. 4. *Disposition of proceeds of sale.* – The amount realized from the foreclosure sale of the mortgaged property shall, after deducting the costs of the sale, be paid to the person foreclosing the mortgage, and *when there shall be any balance or residue, after paying off the mortgage debt due, the same shall be paid* to junior encumbrancers in the order of their

x x x The application of the proceeds from the sale of the mortgaged property to the mortgagor's obligation is an act of payment, not payment by *dacion*; hence, it is the ***mortgagee's duty to return any surplus in the selling price to the mortgagor***. Perforce, a mortgagee who exercises the power of sale contained in a mortgage is considered a custodian of the fund and, being bound to apply it properly, is liable to the persons entitled thereto if he fails to do so. And even though the mortgagee is not strictly considered a trustee in a purely equitable sense, but ***as far as concerns the unconsumed balance, the mortgagee is deemed a trustee for the mortgagor or owner of the equity of redemption***.

Thus it has been held that if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply give the mortgagor a cause of action to recover such surplus.[77] (Italics and underscoring supplied)

Thus, considering that there is a balance left after paying off the entire obligation of LGCTI and Spouses Chua, and considering further that there is no allegation that there are any junior encumbrancers, the balance in the amount of ₱23,102,822.96 must be returned to the owners of the mortgaged properties who, in this case, are the petitioners.

To reiterate, the two REMS were valid and, as admitted by the parties, executed to effect or implement the obligations of the parties as detailed in the MOA. Because the REMS were valid and subsisting, their foreclosure was likewise proper and valid as they were done pursuant to the terms and conditions stated in both the REMs and MOA. And if the foreclosure was validly done by UCPB, then the entire consolidated obligation of the petitioners was extinguished, and the properties foreclosed now rightfully belong to UCPB. Consequently, the Decision's directive for UCPB to "execute the appropriate Deeds of Reconveyance in favor of [the petitioners]" and "return so much

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priority, to be ascertained by the court, or if there be no such encumbrancers or there be a balance or residue after payment to them, then ***to the mortgagor or his duly authorized agent, or to the person entitled to it***. (Italics and underscoring supplied.)

[77] *Spouses Suico v. PNB*, *supra* note 75, at 280.

of the [the petitioners'] titles x x x after applying so much of the mortgaged properties x x x to the payment of [petitioners'] consolidated obligation to the bank" is without legal basis. That said, UCPB's obligation is, as stated earlier, to return the excess of the foreclosure proceeds to the petitioners.

In its Resolution denying the motions for reconsideration of UCPB, APA, Revere and Jose Go, the *ponencia* maintains the dispositions or *fallo* of the Decision, refusing to consider the above reasoning, and insisting that the Revere REM is null and void, for a number of reasons. I respond to these *ad seriatim*:

Partial Judgment does not affect UCPB.

The first reason posited by the *ponencia* is that the Lucena RTC Partial Judgment, which upheld the validity of the DoTs and nullified the Revere REM for failure to secure the approval and consent of the Spouses Chua, had already become final and executory and cannot be disturbed, for the reason that Jose Go and Revere did not file any appeal. However, as earlier narrated, after it had rendered its Partial Judgment on September 6, 2005, the RTC, on November 9, 2005, modified this Partial Judgment by expressly and categorically clarifying as follows:

> **WHEREFORE**, premises considered, the Partial Judgment dated September 6, 2005 is reconsidered and clarified as to United Coconut Planters Bank, as follows:
>
> a) The contested portion of the Partial Judgment ordering reconveyance is directed at defendants Revere Realty and Development Corp. and Jose Go and not at defendant United Coconut Planters Bank; and
>
> b) **The resolution of the issue of whether or not defendant UCPB is obliged to reconvey the properties listed in the Partial Judgment in favor of the plaintiffs, as well as the other issues between UCPB and the plaintiffs, shall be determined after the parties shall have presented their evidence.**
>
> **SO ORDERED**.[78] (Emphasis supplied)

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[78] *Rollo* (Vol. 1), pp. 623-624.

Clearly, therefore, the specific issue of whether or not defendant UCPB is obliged to reconvey the properties listed in the Partial Judgment in favor of the petitioners, as well as the other issues between UCPB and the petitioners "shall be determined after the parties shall have presented their evidence." Stated differently, the doctrine of immutability of judgment does not even come into play as far as UCPB is concerned vis-à-vis the failure of Jose Go and Revere to appeal the Partial Judgment of September 6, 2005.

Thus, there is nothing anomalous nor improper in a situation arising where the Revere REM will be considered valid (between UCPB and the petitioners) despite its earlier nullification by the Lucena RTC (which is binding, final and immutable only as to Jose Go and Revere, and only because the latter did not appeal the September 6, 2005 Partial Judgment). To hold otherwise, as what the *ponencia* is doing, is, in turn, to render inutile the November 9, 2005 modification by the RTC.

The Spouses Chua's consent and approval to Revere REM established.

That the petitioners gave their express consent to the Revere REM is characterized by the *ponencia* as a "mere inference" and insists that "there was neither factual basis or express stipulation in the written agreements" to support this inference. With due respect to the *ponente*, the conclusion that the petitioners had indeed given their express consent to the Revere REM is found in the very language of the MOA itself. As stated earlier, the properties enumerated in Annex "A" of the MOA **are the very same properties that are covered by both the Petitioners' REM and the Revere REM. Again,** for easier reference, the following table is presented anew:

MOA (Lot No.)	Petitioners' REM	Revere REM
3853	√	
3864	√	
4607	√	

5	√	
3833	√	
3838	√	
3839	√	
3827	√	
3842 A	√	
3835	√	
3843 A	√	
3843 C	√	
3847 A	√	
3847 B	√	
3836	√	
3842 B	√	
3846	√	
3841	√	
3843 B	√	
7	√	
3878		√
3885		√
3881		√
3854		√
3852		√
3851		√
3877		√
3876		√
3834		√
3845		√
3867-C		√

What this means is that all the properties listed in Annex A of the MOA — which includes the Revere REM properties — were conveyed by the Spouses Chua and transferred to UCPB under the MOA. In other words, in executing the MOA, the Spouses Chua were representing to UCPB that the parcels of land in the name and possession of Revere, were being conveyed by the Spouses Chua to UCPB as collateral for their loans. Thus, when the Revere REM was executed on the same date as the MOA, this was precisely in pursuance of the terms of the MOA. This is not, by any means, a "mere inference" but a reasonable conclusion drawn from undisputed facts. **This compellingly reveals that, to be sure, the two REMs were executed to effect or otherwise implement the obligations of the parties enumerated and fleshed out in the MOA**.

Hence, inasmuch as the factual basis is drawn from the very language of the MOA, and the attached Annex "A", there is no contravention of the Parol Evidence Rule.

Indeed, the MOA is replete with provisions that show that the Spouses Chua agreed to transfer and convey to the UCPB **all the properties listed in Annex "A"**.

What is more, Section 4(b) of the MOA provides that the parties (*i.e.*, the petitioners) warrant that they "have taken all appropriate and/or necessary corporate and legal action to authorize the execution, delivery and performance of this Agreement x x x and this Agreement constitutes legal, valid and binding obligations of all the parties."[79] This warranty includes the delivery of all instruments necessary to transfer title over the properties in Annex A – including those covered by the Revere REM.

Thus, the *ponencia*'s insistence that UCPB failed to adduce evidence during the trial to establish the giving of the petitioners' consent — is absolutely and egregiously wrong because the MOA itself is the evidence of the consent of the Spouses Chua to the Revere REM. To insist that the MOA should have contained

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[79] *Rollo* (Vol. 1), p. 228.

explicit language that the Spouses Chua "were giving consent" is to render nugatory the clear and unequivocal language of the MOA itself, which the *ponencia* concedes is valid.

The extent of the consent.

That the MOA related only to the obligations of the petitioners is not an argument to nullify the Revere REM. As I had previously stated, the only principal obligation that was admitted, established and proven by competent evidence was that of the Spouses Chua and LGCTI. The only loan document that was presented by UCPB and APA to establish the indebtedness of the debtors was the MOA — which, again, enumerates only the Spouses Chua and LGCTI as the borrowers. To be sure, there is nothing on record that indicates the existence (*i.e.*, Promissory Note) or the exact amount of Jose Go's indebtedness. Thus, I agree with the *ponencia* that it has not been proven that the petitioners had given "their consent and approval to the Revere REM to securitize the obligations of Go".[80] However, this does not *ipso facto* mean that the Revere REM is null and void. On the contrary, it is admitted that the Revere REM was meant to securitize the obligations of the petitioners — as so provided in the MOA.

No requirement for Spouses Chua to sign the Revere REM

The *ponencia* makes much of the fact that the Revere REM was signed only by Jose Go, and that the Spouses Chua did not. This is much ado over nothing really. The Spouses Chua did not sign the Revere REM for the simple reason that the Revere properties were in the name of Revere, and that the Revere REM was executed only by Revere. What is important, however, is that the Spouses Chua had signed the MOA — and it is in the MOA, and the listing of the Revere properties in the MOA — that signified their consent to using the Revere properties (which they beneficially owned under the terms of the DoTs) as security for the petitioners' loans.

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[80] *Ponencia*, p. 17.

As to the fact that the Revere REM "lumped together the obligations of the petitioners and Go"[81] does not furnish any basis for holding that the Revere REM was null and void. As already exhaustively explained, the Revere REM still stood as security for the obligations of the petitioners. The Revere REM did not stand as security for Jose Go's obligations.

UCPB's awareness of Deed of Trust

Once more, the *ponencia* harps on UCPB's awareness of the DoTs between the petitioners and Jose Go as a sign of UCPB's bad faith. However, this misses the point. It is precisely because of this awareness of UCPB that petitioners were the true beneficial owners of the Revere properties that gives meaning to the dispositions made by the MOA. That the Spouses Chua were the real beneficial owners of the Revere properties show that they could, as they did, convey and deliver them to UCPB to secure their obligations.

RECAPITULATION

All told, I believe, and so submit that the evidence establishes the following:

(1) The MOA was executed by the petitioners to consolidate all their obligations to UCPB;

(2) The properties listed in Annex "A" of the MOA (which include the parcels of land subject of the Revere REM) all belong to the petitioners;

(3) All these properties were conveyed and transferred by the MOA to UCPB to partially secure the obligations of the petitioners — which means that the Spouses Chua had, by their signing the MOA, already expressly given their consent and approval to Revere to execute the Revere REM and to mortgage the parcels of land under the DoTs in favor of UCPB, precisely as security for the loan obligations of the petitioners as stated in the MOA;

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[81] *Id*. at 18.

(4) The Revere REM was thus executed to implement and give life to the terms and conditions of the MOA;

(5) Since the Revere REM was valid, its foreclosure by UCPB was likewise valid;

(6) The application of the foreclosure proceeds was not proper; the proceeds could be applied only to the debts of the MOA, that is, the debts of LGCTI and the Spouses Chua;

(7) The foreclosure proceeds could not have been applied to the debts of any other party, so that UCPB's application of the foreclosure proceeds to the debts of Jose Go is in clear contravention of the MOA and therefore erroneous and without basis;

(8) Based on the Apportionment of Bid Price, the total foreclosure proceeds amounted to ₱227,700,000.00. As provided in the MOA, LGCTI and the Spouses Chua had an outstanding obligation in the aggregate amount of ₱204,497,177.04. Notwithstanding that the MOA stipulated that all the properties transferred and conveyed to UCPB would only extinguish Spouses Chua and LGCTI's debt to the extent of ₱103,893,450.00, when the foreclosure sale actually yielded an amount that was more than ₱103,893,450.00, that is, more than sufficient to discharge the entirety of the debt of LGCTI and Spouses Chua — then such proceeds should have been applied to the entirety of their debt, including already the ₱68,000,000.00 owed and which should have been paid through the issuance of 680,000 shares in LGCTI.

(9) This application thus extinguishes the entire obligation of the petitioners, and yields a balance in their favor of ₱23,102,822.96, which amount should be returned to the owners of the mortgaged properties who, in this case, are the petitioners;

(10) Consequently, the Decision's directive for UCPB to "execute the appropriate Deeds of Reconveyance in favor of [the petitioners]"[82] and "return so much of the [the petitioners'] titles x x x after applying so much of the mortgaged properties

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[82] *Rollo* (Vol. 2), p. 1208.

x x x to the payment of [the petitioners'] consolidated obligation to the bank"[83] is without legal basis. UCPB's only obligation is to return the excess of the foreclosure proceeds to the petitioners.

(11) Anent the interest rate, the excess of the foreclosure proceeds in the amount of ₱23,102,822.96 will earn interest at the rate of 6% per annum from the date of filing of the complaint until finality of judgment, consistent with the Court's pronouncement in *Spouses Suico v. PNB*,[84] as follows:

> In *Philippine National Bank v. Court of Appeals,* it was held that:
>
> The rate of 12% interest referred to in Cir. 416 applies only to:
>
> Loan or forbearance of money, or to cases where money is transferred from one person to another and the obligation to return the same or a portion thereof is adjudged. Any other monetary judgment which does not involve or which has nothing to do with loans or forbearance of any, money, goods or credit does not fall within its coverage for such imposition is not within the ambit of the authority granted to the Central Bank. When an obligation not constituting a loan or forbearance of money is breached then an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum in accordance with Art. 2209 of the Civil Code. Indeed, the monetary judgment in favor of private respondent does not involve a loan or forbearance of money, hence the proper imposable rate of interest is six (6%) per cent.
>
> Using the above rule as yardstick, since the responsibility of PNB arises not from a loan or forbearance of money which bears an interest rate of 12%, the proper rate of interest for the amount which PNB must return to the petitioners is only 6%. This interest according to *Eastern Shipping* shall be computed from the time of the filing of the complaint. However, once the judgment becomes final and executory, the "interim period from the finality of judgment awarding a monetary claim and until payment thereof, is deemed to be equivalent

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[83] *Id*.

[84] *Supra* note 75.

to a forbearance of credit." Thus, in accordance with the pronouncement in *Eastern Shipping,* the rate of 12% *per annum* should be imposed, to be computed from the time the judgment becomes final and executory until fully satisfied.[85] (Underscoring supplied)

(12) Once the judgment becomes final and executory, an interest of 6% per annum should be imposed, to be computed from the time of finality of judgment until full payment. This follows *Nacar v. Gallery Frames*[86]:

> Recently, however, the Bangko Sentral ng Pilipinas Monetary Board (BSP-MB), in its Resolution No. 796 dated May 16, 2013, approved the amendment of Section 2 of Circular No. 905, Series of 1982 and, accordingly, issued Circular No. 799, Series of 2013, effective July 1, 2013, the pertinent portion of which reads:
>
> > The Monetary Board, in its Resolution No. 796 dated 16 May 2013, approved the following revisions governing the rate of interest in the absence of stipulation in loan contracts, thereby amending Section 2 of Circular No. 905, Series of 1982:
> >
> > **Section 1.** The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum.
> >
> > **Section 2.** In view of the above, Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of Regulations for Non-Bank Financial Institutions are hereby amended accordingly.
> >
> > This Circular shall take effect on 1 July 2013.
>
> Thus, from the foregoing, in the absence of an express stipulation as to the rate of interest that would govern the parties, the rate of legal interest for loans or forbearance of any money, goods or credits and the rate allowed in judgments shall no longer be twelve percent (12%) *per annum* — as reflected in the case of *Eastern Shipping Lines* and Subsection X305.1 of the Manual of Regulations for Banks and Sections 4305Q.1, 4305S.3 and 4303P.1 of the Manual of

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[85] *Id*. at 283-284.

[86] 716 Phil. 267 (2013).

Regulations for Non-Bank Financial Institutions, before its amendment by BSP-MB Circular No. 799 — but will now be six percent (6%) *per annum* effective July 1, 2013. It should be noted, nonetheless, that the new rate could only be applied prospectively and not retroactively. Consequently, the twelve percent (12%) *per annum* legal interest shall apply only until June 30, 2013. Come July 1, 2013 the new rate of six percent (6%) *per annum* shall be the prevailing rate of interest when applicable.[87]

(13) Lastly, as regards the award of damages, I agree with the RTC's finding on the petitioners' entitlement to damages on the ground of UCPB's fraud and deceit. As summarized by the RTC:

> x x x Defendant UCPB committed breach of contract when it foreclosed on all the forty-five (45) properties in the two (2) Real Estate Mortgages dated March 21, 2000 for the total aggregate liability of Php404,596,177.04, despite the fact that the total outstanding obligation of the plaintiffs is only Php204,597,177.04. Despite the overpayment, it represented that the plaintiffs still had a remaining liability of Php68,000,000.00 that was to be converted into equity shares in Lucena Grand Central Terminal. The bank had also sought to foreclose TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135, where the Lucena Grand Central Terminal stands, shortly after the filing of this Complaint, and relying on a Loan dated May 19, 1997 which the bank's own witness admits had already been included in the Memorandum of Agreement dated March 21, 2000.[88]

UCPB's deceit and fraud is most evident in its unjustified refusal and failure to present proof of Jose Go's indebtedness despite repeated demands by the petitioners. Moreover, UCPB's unwarranted application of the foreclosure proceeds to the liabilities of Jose Go — which, to reiterate, have not been established — also manifests its bad faith that warrants the award of damages.[89]

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[87] *Id*. at 279-281.

[88] *Rollo* (Vol. 1), p. 630.

[89] See *Producers Bank of the Philippines v. Court of Appeals, supra* note 69.

WHEREFORE, premises considered, the Motion for Reconsideration is **PARTIALLY GRANTED**, and the Court's Decision dated August 16, 2017 is **MODIFIED**, as follows:

a. Declaring the loan obligations of petitioners to respondent United Coconut Planters Bank under Memorandum of Agreement dated March 21, 2000 to have been fully paid;

b. Declaring as legal and binding the Deeds of Trust dated April 30, 1998 and holding the properties listed therein were merely held-in-trust for petitioners by respondent Revere and Jose Go and/or corporations owned or associated with him;

c. Declaring the Deed of Real Estate Mortgage dated March 21, 2000 executed by respondents Revere and Jose Go in favor of co-respondent United Coconut Planters Bank to be valid;

d. Declaring the Real Estate Mortgage dated June 02, 1997 as having been extinguished by the Memorandum of Agreement dated March 21, 2000, and converting the writ of preliminary injunction issued on March 22, 2004 to a permanent one, forever prohibiting respondent UNITED COCONUT PLANTERS BANK and ASSET POOL A and all persons/entities deriving rights under them from foreclosing on TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135;

e. Directing respondents, or whoever is in custody of the said certificates of title, namely, TCT Nos. T-54182, T-54184, T-54185, T-54192, and T-71135, to return the same to petitioners and to execute the appropriate release of mortgage documents;

f. Ordering respondent United Coconut Planters Bank to pay petitioners the following:

   i. The excess of the foreclosure proceeds in the amount of ₱23,102,822.96;

ii. Legal interest on the amount of ₱223,102,822.96 at the rate of 6% *per annum* from the time of the filing of the complaint on February 3, 2004 until finality of judgment. Once the judgment becomes final and executory, the interest of 6% *per annum* should be imposed, to be computed from the time the judgment became final and executory until fully satisfied;

iii. ₱1,000,000.00 as moral damages;

iv. ₱100,000.00 as exemplary damages;

v. ₱2,000,000.00 as attorney's fees; and

vi. Costs of suit.

SO ORDERED.

SECOND DIVISION

[A.C. No. 11334. January 7, 2019]

JOCELYN SORENSEN, *complainant, vs.* **ATTY. FLORITO T. POZON,** *respondent.*

[A.C. No. 11335. January 7, 2019]

JOCELYN SORENSEN, *complainant, vs.* **ATTY. FLORITO T. POZON,** *respondent.*

SYLLABUS

LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; CANON 18 PROVIDES THAT A LAWYER SHALL SERVE HIS CLIENT WITH

COMPETENCE AND DILIGENCE; VIOLATED IN CASE AT BAR; PENALTY.— A lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed in him. When a lawyer accepts a case, his acceptance is an implied representation that he possesses the requisite academic learning, skill, and ability to handle the case. Thus, a lawyer's duty to safeguard the interests of his client commences from his retainer, the time the lawyer accepts money from a client, until his effective release from the case, the time the legal matter in litigation is finally disposed of. In this case, it is undisputed that respondent neglected the legal matters entrusted to him by complainant. Respondent even failed to at least inform complainant of the progress of the cases. Respondent's inaction is clearly in violation of Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. x x x With regard to the appropriate penalty on an errant lawyer, sound judicial discretion based on the surrounding facts is required. This Court has consistently meted out the penalty of suspension from the practice of law to lawyers who neglect their client's affairs and, at the same time, fail to return the latter's money and/or property despite demand. Considering respondent's lack of prior administrative record, suspension from the practice of law for one year is sufficient for respondent's misconduct. The case of *Meneses v. Atty. Macalino* further emphasized that when a lawyer receives money from a client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose. Conversely, if the lawyer does not use the money for the intended purpose, he must immediately return the money to the client. In the present case, respondent failed to safeguard complainant's interests after the retainer commenced. Respondent's mere acceptance of the money from the client without fulfilling his duties as a lawyer is indicative of lack of integrity and propriety. Respondent's actions constitute a clear violation of the trust reposed in him by complainant.

APPEARANCES OF COUNSEL

Nitura Malabanan Lagunilla Mendoza & Gaddi Law Offices for complainant.

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

These consolidated administrative cases stemmed from the continuous negligence of respondent Atty. Florito T. Pozon to handle the legal matters entrusted to him by his client and herein complainant, Jocelyn Sorensen, or to at least inform complainant of the progress of the cases. This is in violation of Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility.

The Facts

Complainant Jocelyn Sorensen alleges that she first engaged the legal services of respondent Atty. Florito T. Pozon in 1995 for the reconstitution of the title of Lot No. 6662 in Pangan-an, Lapu-Lapu City for the sum of Ten Thousand Pesos (PhP 10,000.00).

In 1996, complainant again engaged respondent's services to file a petition for the issuance of a new owner's copy of the title of Lot No. 6659 in Pangan-an, Lapu-Lapu City for the sum of Fifteen Thousand Pesos (PhP 15,000.00).

In 2000, complainant engaged respondent's services for a third time to secure the title of Lot No. 6651 in Pangan-an, Lapu-Lapu City for the sum of Fifteen Thousand Pesos (PhP 15,000.00).

In 2003, complainant engaged respondent as her counsel for the last time to secure the title of Lot No. 2393-M in Yati, Liloan, Cebu for the sum of Twenty-Four Thousand Pesos (PhP 24,000.00).

In 2011, complainant filed a verified Complaint[1] against respondent, docketed as CBD Case No. 11-3151 and CBD Case

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[1] *Rollo* (A.C. No. 11334), pp. 3-4 and *Rollo,* (A.C. No. 11335), pp. 2-A-3.

No. 11-3182, with the Integrated Bar of the Philippines Commission on Bar Discipline (Commission) for respondent's alleged neglect to handle complainant's cases or to at least inform complainant of the progress of the cases, in violation of Rules 18.03 and 18.04 of the Code of Professional Responsibility. The Complaint alleged that despite complainant's payment amounting to Seventy-Two Thousand Pesos (PhP 72,000.00), the above-mentioned cases have yet to be concluded.

To support her allegations, complainant attached copies of the following to her complaint:

(1) Annex A - copy of the acknowledgement receipt for PhP 2,000.00 for Lot No. 6662 and PhP 3,000.00 for Lot No. 6659 dated 4 November 1996;

(2) Annex B - a copy of the acknowledgement receipt for PhP 5,000.00 for Lot No. 6662 dated 15 November 1995;

(3) Annex C - a copy of the acknowledgement receipt for PhP 3,000.00 dated 17 March 1999;

(4) Annex D - a copy of the acknowledgement receipt for PhP 3,000.00 for Lot No. 6662 dated 17 March 1999;

(5) Annex E - a copy of a check amounting to PhP 5,000.00 dated 27 October 2001;

(6) Annex F -a copy of a check amounting to PhP 40,000.00 for Lot Nos. 6651 and 6659 dated 22 January 2003; and

(7) Annex G - a copy of a check amounting to PhP 6,000.00 dated 7 May 2000.

In his Answer,[2] respondent admitted that he was the legal counsel for complainant's lots in Cebu. For the 1995 case covering Lot No. 6662, respondent alleged that the acceptance fee of Ten Thousand Pesos (PhP 10,000.00) was made in several installments. Respondent alleged that the 1996 case turned out to be a difficult case because an aggrieved party appeared and filed a criminal action against complainant including respondent.

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[2] *Rollo* (A.C. No. 11334), pp. 37-40.

The case was settled amicably and complainant decided to forego the case.

For the 1996 case covering Lot No. 6659, respondent alleged that he only received a partial payment of Three Thousand Pesos (PhP 3,000.00) out of the agreed upon acceptance fee of Fifteen Thousand Pesos (PhP 15,000.00).

For the 2000 case covering Lot No. 6651, respondent alleged that he had already gone to the City Assessor of Lapu-Lapu City and to the Revenue Regional Director of the Bureau of Internal Revenue in Banilad, Cebu City to handle the matter. Respondent averred that the delay was due to complainant's refusal to shoulder respondent's travel costs to the Land Registration Office in Quezon City. Similar to the second case, complainant failed to present any witness to prove the circumstance of loss of the owner's copy of the title.

Lastly, for the 2003 case, respondent alleged that the delay was again due to complainant's failure to present any witness to show that she or her predecessors-in-interest possessed the lot since 1940 or prior thereto.

The Commission ruled that "[e]ven if the complainant did in fact fail to provide witnesses, it was the duty of the respondent as her counsel to communicate the importance and necessity of getting witnesses to advance their cause."[3] The Commission faulted respondent for allowing eight years to pass without addressing complainant's cases. Furthermore, even without the presentation of witnesses, respondent was able to secure a favorable decision from the Regional Trial Court of Lapu-Lapu City in the 1996 case involving Lot No. 6659 in Pangan-an, Lapu-Lapu City.

Thus, respondent averred that what remains unresolved are the legal matters involving Lot No. 6651 in Pangan-an, Lapu-Lapu City, and Lot No. 2393-M in Liloan, Cebu.

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[3] *Id*. at 117.

The Reports and Recommendations of the Commission on Bar Discipline

On two separate instances, the Commission submitted two Reports and Recommendations to the Integrated Bar of the Philippines, finding respondent guilty of violating Rules 18.03 and 18.04 of the Code of Professional Responsibility.

On 18 June 2013, the Commission, through Commissioner Leo B. Malagar, submitted a Report and Recommendation[4] for CBD Case No. 11-3151. The Commission stated:

> Clearly, the respondent is guilty of neglecting the complainant's legal matter which was entrusted to him in 1995, and such negligence in connection with the above-mentioned transactions renders respondent liable. Moreover, respondent failed to keep the complainant who was his client informed of the status of the transactions and he likewise failed to respond within a reasonable time to his client's request for information.
>
> In view of the foregoing premises, it is respectfully recommended that the respondent be ADMONISHED considering that the complainant has not been materially prejudiced from respondent's omissions. Moreover, it is respectfully recommended that the respondent be ORDERED TO RETURN the full amount of PhP 72,000.00 which the complainant has paid to the respondent.
>
> RESPECTFULLY SUBMITTED.[5]

On 2 February 2015, Commissioner Hannibal Augustus B. Bobis of the Commission on Bar Discipline likewise submitted a similar Report and Recommendation[6] for CBD Case No. 11-3182. The Commission stated:

> The respondent should be penalized for the acts alleged in the complaint. Although there are no more issues concerning Lots 6662 and 6659 both located in Pangan-an, Lapu-Lapu City, there are remaining issues involving Lot 6651 in Pangan-an, Lapu-Lapu City

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[4] *Id*. at 120-123.

[5] *Id*. at 122-123.

[6] *Id*. at 114-119.

and Lot 2393-M in Liloan, Cebu. Admittedly, respondent started work on these lots some time in the years 2000 and 2003, respectively. Thus, by the time the complainant filed her complaint in September 2011, there has already been a lapse of eight (8) years since its inception.

x x x x x x x x x

As for the reimbursement of the sum of PhP 72,000.00, only a partial amount shall be returned to the complainant.

x x x x x x x x x

In view of the foregoing, it is respectfully recommended that respondent be suspended for three (3) months and that he should return the amount of twenty one thousand pesos (PhP 21,000.00) to the [complainant].

Respectfully submitted.[7]

The Resolution of the Board of Governors of the Integrated Bar of the Philippines

On 5 June 2015, a Resolution[8] was passed by the Board of Governors of the Integrated Bar of the Philippines, modifying the Reports and Recommendations of the Commission:

x x x x x x x x x

RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED, with modification, the Report and Recommendation of the Investigating Commissioners in the above-entitled cases, herein made part of this Resolution as Annex "A", considering applicable laws and Respondent's [guilt for] violating Canon 18, Rule 18.03 and Rule 18.04 of the Code of Professional Responsibility. Thus, Respondent Atty. Florito T. Pozon is hereby SUSPENDED from the practice of law for one (1) year. Moreover, he is Ordered to Return the amount of Twenty One Thousand (₱21,000.00) Pesos.

RESOLVED FURTHER, that the Board of Governors consolidated the above-entitled cases as they involved the same parties and raised similar issues.

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[7] *Id*. at 116, 118-119.

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

The Issue

Whether or not respondent Atty. Florito T. Pozon is guilty of neglecting the legal matters entrusted to him by his client and herein complainant, Jocelyn Sorensen.

The Ruling of the Court

We adopt the ruling of the Board of Governors of the Integrated Bar of the Philippines.

A lawyer owes fidelity to the cause of his client and must be mindful of the trust and confidence reposed in him. When a lawyer accepts a case, his acceptance is an implied representation that he possesses the requisite academic learning, skill, and ability to handle the case. Thus, a lawyer's duty to safeguard the interests of his client commences from his retainer, the time the lawyer accepts money from a client, until his effective release from the case, the time the legal matter in litigation is finally disposed of.[9]

In this case, it is undisputed that respondent neglected the legal matters entrusted to him by complainant. Respondent even failed to at least inform complainant of the progress of the cases. Respondent's inaction is clearly in violation of Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. The Rules state:

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.

Rule 18.04 -A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

With regard to the appropriate penalty on an errant lawyer, sound judicial discretion based on the surrounding facts is

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[9] *Segovia v. Atty. Javier,* A.C. No. 10244, 12 March 2018.

required. This Court has consistently meted out the penalty of suspension from the practice of law to lawyers who neglect their client's affairs and, at the same time, fail to return the latter's money and/or property despite demand.[10]

Considering respondent's lack of prior administrative record, suspension from the practice of law for one year is sufficient for respondent's misconduct.

The case of *Meneses v. Atty. Macalino*[11] further emphasized that when a lawyer receives money from a client for a particular purpose, the lawyer is bound to render an accounting to the client showing that the money was spent for the intended purpose.

Conversely, if the lawyer does not use the money for the intended purpose, he must immediately return the money to the client.

In the present case, respondent failed to safeguard complainant's interests after the retainer commenced. Respondent's mere acceptance of the money from the client without fulfilling his duties as a lawyer is indicative of lack of integrity and propriety. Respondent's actions constitute a clear violation of the trust reposed in him by complainant.

Complainant alleged that respondent received PhP 72,000.00 for filing fees. However, we agree with the Resolution of the Board of Governors that only PhP 21,000.00 shall be returned to the complainant for failing to fulfill his duties as a lawyer. The return of only the partial amount of PhP 21,000.00 was explained in the Report and Recommendation of the Commission in CBD Case No. 11-3182. The Commission explained:

The March 17, 1999 acknowledgement receipt with the amount of three thousand pesos (PhP 3,000.00) cannot be used against the respondent as he did not receive it personally. Likewise, the

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[10] *Andrada v. Atty. Cera,* 764 Phil. 346 (2015); *Maglente v. Atty. Agcaoili, Jr.,* 756 Phil. 116 (2015); *Segovia-Ribaya v. Atty. Lawsin,* 721 Phil. 44 (2013).

[11] 518 Phil. 378, 385 (2006).

October 27, 2001 check in the amount of five thousand pesos (PhP 5,000.00) is not evidence that respondent received the said amount as it is a "pay to cash" check.

The aggregate amount of ten thousand pesos (PhP 10,000.00) represented in the July 4, 1996 acknowledgement receipt, the November 15, 1995 acknowledgement receipt, and the March 17, 1999 acknowledgement receipt were all specified to be for the services rendered by the respondent for Lot 6662 in Pangan-an, Lapu-Lapu City which had already been resolved. Thus, respondent had already worked for this amount.

Legal services were likewise concluded for the titling of Lot 6659 in Pangan-an, Lapu-Lapu City. Thus, complainant is not entitled to the reimbursement of the agreed upon legal fee of fifteen thousand pesos (PhP 15,000.00).

Nonetheless, complainant should be reimbursed for the agreed legal fee of fifteen thousand pesos (PhP 15,000.00) to secure the title to Lot 6651 in Pangan-an, Lapu-Lapu City. The remaining balance shall be considered as spent for the expenses incurred by the respondent as this amount was beyond the agreed upon legal fee as stated in the position paper of the complainant.

For the agreed fee to secure the title to Lot 2393-M in Yati, Liloan, Cebu, the complainant was only able to prove that respondent received the amount of six thousand pesos (PhP 6,000.00). Thus, the said amount shall likewise be reimbursed to her.

x x x x x x x x x

In view of the foregoing, it is respectfully recommended that respondent x x x should return the amount of twenty one thousand pesos (PhP 21,000.00) to the [complainant].[12]

WHEREFORE, the Court finds respondent Atty. Florito T. Pozon **GUILTY** of violating Rules 18.03 and 18.04, Canon 18 of the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for one (1) year effective immediately upon receipt of this Decision. He is **STERNLY WARNED** that a repetition of the same or similar

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[12] *Rollo* (A.C. No. 11334), pp. 118-119.

acts shall be dealt with more severely in the future. Respondent is **ORDERED** to return to complainant Jocelyn Sorensen the amount of PhP 21,000.00 with interest at the rate of six percent (6%) *per annum* from the finality of this Decision until fully paid for the unresolved legal matters involving Lot No. 6651 in Pangan-an, Lapu-Lapu City and Lot No. 2393-M in Liloan, Cebu. Respondent shall submit to the Court proof of restitution within ten (10) days from payment.

Let all the courts, through the Office of the Court Administrator, as well as the Integrated Bar of the Philippines and the Office of the Bar Confidant, be notified of this Decision. Let a copy of this Decision be entered in the records of respondent.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Hernando,*[*] *JJ.,* concur.

SECOND DIVISION

[A.M. No. 18-07-153-RTC. January 7, 2019]

RE: DROPPING FROM THE ROLLS OF LAYDABELL G. PIJANA, Sheriff IV, Regional Trial Court of Tagaytay City, Cavite, Branch 18

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RACCS); PROCEDURE OF DROPPING FROM THE

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[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

ROLLS OF EMPLOYEES WHO ARE ABSENT WITHOUT APPROVED LEAVE FOR AN EXTENDED PERIOD OF TIME.— Section 107, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS) authorizes and provides the procedure for the dropping from the rolls of employees who are absent without approved leave for an extended period of time. Pertinent portions of this provision read: Section 107. *Grounds and Procedure for Dropping from the Rolls.* – Officers and employees who are absent without approved leave, x x x may be dropped from the rolls within thirty (30) days from the time a ground therefor arises subject to the following procedures: a. Absence Without Approved Leave 1. An official or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days may be dropped from the rolls without prior notice which shall take effect immediately. He/she shall, however, have the right to appeal his/her separation within fifteen (15) days from receipt of the notice of separation which must be sent to his/her last known address. x x x This provision is in consonance with Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular No. 13, s. 2007.

2. ID.; ID.; ID.; ID.; CASE AT BAR.— Indeed, prolonged unauthorized absence causes inefficiency in the public service. A court employee's continued absence without leave disrupts the normal functions of the court. It contravenes the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. The Court stresses that a court personnel's conduct is laden with the heavy burden of responsibility to uphold public accountability and maintain people's faith in the judiciary. By failing to report for work without filing any leave application since March 1, 2018, Pijana grossly disregarded and neglected the duties of her office. Undeniably, she failed to adhere to the high standards of public accountability imposed on all those in the government service. In view of the foregoing, the Court is constrained to drop Pijana from the rolls. At this point, the Court deems it worthy to stress that the instant case is non-disciplinary in nature. Thus, Pijana's separation from the service shall result neither in the forfeiture of any benefits which have accrued in her favor, nor in her disqualification in the government service. This is, however, without prejudice to the outcome of the pending administrative cases against her.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative matter involves Ms. Laydabell G. Pijana (Pijana), Sheriff IV in the Regional Trial Court of Tagaytay City, Cavite, Branch 18 (RTC).

The Facts

The records of the Employees' Leave Division, Office of Administrative Services, Office of the Court Administrator (OCA) show that Pijana has neither submitted her Daily Time Record (DTR) since March 1, 2018 up to the present nor filed any application for leave. Thus, she has been on absence without official leave (AWOL) since March 1, 2018.[1]

To date, Pijana has still not reported for work. Her salaries and benefits were withheld pursuant to a Memorandum[2] dated May 2, 2016.

The OCA informed the Court of its findings based on the records of its different offices: (*a*) Pijana is still in the plantilla of court personnel, and thus considered to be still in active service; (*b*) she is no longer in the payroll; (*c*) she has no application for retirement; and (*d*) she is not an accountable officer.[3] Notably, nine (9) administrative cases are pending against her based on the records of the Docket and Clearance Division, Legal Office, OCA.[4]

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[1] *Rollo*, p. 1.

[2] *Id*. at 15-16. Signed by OCA Chief of Office, Office of Administrative Services Caridad A. Pabello and approved by Court Administrator Jose Midas P. Marquez.

[3] See *id*. at 2 and 17.

[4] See *id*. at 2. See also Clearance Certificate showing the pending cases as follows: OCA IPI Nos. 17-4763-P; 17-4746-P; 17-4684-P; 17-4683-P; 17-4682; 15-4378-P; A.M. No. 18-01-11-RTC; UDK MISC.-M20170306-01; and UDK MISC.-M20171211-02; *id*. at 18-19.

In its report and recommendation[5] dated July 19, 2018, the OCA recommended that: (*a*) Pijana be dropped from the rolls effective March 1, 2018[6] for having been absent without official leave for more than thirty (30) working days; (*b*) her position be declared vacant; and (*c*) she be informed about her separation from the service or dropping from the rolls at her last known address on record at 109 Lucsuhin, Silang, Cavite appearing in her 201 File. The OCA added, however, that Pijana is still qualified to receive the benefits she may be entitled to under existing laws and may still be reemployed in the government, without prejudice to the outcome of the nine (9) pending administrative cases against her.[7]

The Court's Ruling

The Court adopts the findings and recommendations of the OCA.

Section 107, Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS)[8] authorizes and provides the procedure for the dropping from the rolls of employees who are absent without approved leave for an extended period of time.[9] Pertinent portions of this provision read:

> Section 107. *Grounds and Procedure for Dropping from the Rolls*. – Officers and employees who are absent without approved leave, x x x may be dropped from the rolls within thirty (30) days from the time a ground therefor arises subject to the following procedures:
>
> a. Absence Without Approved Leave

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[5] See Administrative Matter for Agenda signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Raul Baustista Villanueva and OCA Chief of Office, Office of Administrative Services Caridad A. Pabello; *id*. at 1-3.

[6] Erroneously dated as March 1, 2018; *id*. at 3.

[7] *Id*.

[8] The 2017 RACCS took effect on August 17, 2017.

[9] See *Re: Arno D. Del Rosario*, A.M. No. 17-12-135-MeTC, April 16, 2018.

> 1. An official or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days may be dropped from the rolls without prior notice which shall take effect immediately.
>
> He/she shall, however, have the right to appeal his/her separation within fifteen (15) days from receipt of the notice of separation which must be sent to his/her last known address.
>
> x x x x x x x x x

This provision is in consonance with Section 63, Rule XVI of the Omnibus Rules on Leave, as amended by Memorandum Circular No. 13, s. 2007,[10] which states:

> Sec. 63. *Effect of absences without approved leave*. – An official or an employee who is **continuously absent without approved leave for at least thirty (30) working days** shall be considered on absence without official leave (AWOL) and shall be separated from the service or dropped from the rolls without prior notice. x x x. (Emphasis supplied)

Based on these provisions, Pijana should be separated from the service or dropped from the rolls in view of her continued absence since March 1, 2018.

Indeed, prolonged unauthorized absence causes inefficiency in the public service.[11] A court employee's continued absence without leave disrupts the normal functions of the court.[12] It contravenes the duty of a public servant to serve with the utmost degree of responsibility, integrity, loyalty, and efficiency. The Court stresses that a court personnel's conduct is laden with the heavy burden of responsibility to uphold public accountability and maintain people's faith in the judiciary.[13]

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[10] Amendment to Section 63, Rule XVI of the Omnibus Rules on Leave, Civil Service Commission (CSC) Memorandum Circular Nos. 41 and 14, Series of 1998 and 1999, respectively; approved on July 25, 2007.

[11] *Re: Dropping from the Rolls of Rowie A. Quimno*, A.M. No. 17-03-33-MCTC, April 17, 2017, 822 SCRA 476, 479.

[12] *Re: AWOL of Ms. Fernandita B. Borja*, 549 Phil. 533, 536 (2007).

[13] See *id*; citing *Re: Absence Without Official Leave of Mr. Basri A. Abbas*, 520 Phil. 558, 561 (2006).

By failing to report for work without filing any leave application since March 1, 2018, Pijana grossly disregarded and neglected the duties of her office. Undeniably, she failed to adhere to the high standards of public accountability imposed on all those in the government service.[14]

In view of the foregoing, the Court is constrained to drop Pijana from the rolls. At this point, the Court deems it worthy to stress that the instant case is non-disciplinary in nature. Thus, Pijana's separation from the service shall result neither in the forfeiture of any benefits which have accrued in her favor, nor in her disqualification in the government service.[15] This is, however, without prejudice to the outcome of the pending administrative cases against her.[16]

WHEREFORE, Laydabell G. Pijana, Sheriff IV, Regional Trial Court of Tagaytay City, Cavite, Branch 18, is hereby **DROPPED** from the rolls effective March 1, 2018 and her position is declared **VACANT**. She is, however, still qualified to receive the benefits she may be entitled to under existing laws and may still be reemployed in the government, without prejudice to the outcome of the administrative cases pending against her.

Let a copy of this resolution be served upon her at the address appearing in her 201 file pursuant to Section 107 (a) (1), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service.

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[14] *Re: Dropping from the Rolls of Ms. Marissa M. Nudo*, A.M. No. 17-08-191-RTC, February 7, 2018.

[15] Section 110, 2017 RRACCS states thus:

Section 110. *Dropping from the Rolls; Non-disciplinary in Nature*. – This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical or mental disorder is non-disciplinary in nature and shall not result in the forfeiture of any benefit on the part of the official or employee or in disqualification from reemployment in the government. (See also *Re: Arno D. Del Rosario*, *supra* note 10)

[16] *Re: Noel C. Lindo*, A.M. No. 18-07-131-RTC, September 3, 2018.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Caguioa, Reyes, J. Jr.*, and *Hernando,*[**] *JJ.*, concur.

SECOND DIVISION

[A.M. No. P-19-3925. January 7, 2019]
(Formerly OCA IPI No. 16-4635-P)

ASUNCION Y. ARIÑOLA, *complainant, vs.* **ANGELES D. ALMODIEL, JR., Interpreter II, Municipal Trial Court in Cities, Masbate City, Masbate,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; RETURN OF WRIT OF EXECUTION; DUTIES OF A SHERIFF. ––Section 14, Rule 39 of the Rules of Court **mandates** the sheriff to make a return on the writ of execution to the Clerk or Judge issuing the Writ. Specifically, a sheriff is required: (1) to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and (2) if judgment cannot be satisfied in full, to state why full satisfaction cannot be made. As well, the sheriff is required to make a report every thirty (30) days in the proceedings being undertaken by him until judgment is fully satisfied.

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[*] Designated Acting Chief Justice per Special Order No. 2631 dated December 28, 2018.

[**] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

2. ID.; ID.; ID.; ID.; ID.; FAILURE TO COMPLY THEREWITH CONSTITUTES SIMPLE NEGLECT OF DUTY. –– In *Zamudio v. Auro*, the Court ruled that: **Failure to comply with Section 14, Rule 39 constitutes simple neglect of duty**, which is defined as the failure of an employee to give one's attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference. x x x The reason is simple. A judgment, if not executed, would be an empty victory on the part of the prevailing party; and sheriffs are the ones primarily responsible for the execution of final judgments. Thus, they are expected at all times to show a high degree of professionalism in the performance of their duties. Accordingly, disregard of the rules on execution of judgment is tantamount to neglect of duty.

3. POLITICAL LAW; ADMINISTRATIVE LAW; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); SIMPLE NEGLECT OF DUTY; PENALTY. ––Pursuant to Section 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service – which apply to the instant case – simple neglect of duty is classified as a less grave offense and is punishable by suspension for one (1) month and one (1) day and six (6) months for the first offense and dismissal from the service for the second offense. The Court has, however, in several cases, imposed the penalty of fine instead of suspension as an alternative penalty, to prevent any undue adverse effect on public service which would ensue if work were otherwise left unattended by reason of respondent's suspension. Accordingly, and in accordance with previous rulings, since sheriffs discharge frontline functions, the penalty of fine may be imposed in lieu of suspension from office pursuant to Section 47 (1)(b), Rule 10 of the RRACCS.

R E S O L U T I O N

CAGUIOA, *J.*:

This resolves the administrative complaint[1] filed by Complainant Asuncion Y. Ariñola (Complainant) against

[1] *Rollo*, pp. 2-6.

Respondent Angeles D. Almodiel, Jr., (Respondent Sheriff) in his capacity as Sheriff III (now, Interpreter II) at the Municipal Trial Court in Cities (MTCC), Masbate City, Masbate, charging the latter with gross neglect of duty, inefficiency, incompetence in the performance of official duties and refusal to perform an official duty relative to Civil Case No. 1475 entitled "*Sps. Celestino Ariñola and Asuncion Ariñola v. Sps. John Mark Viceo and Ma. Michelle Lobrigo*."

Complainant, along with her husband, was the plaintiff in an action for the collection of sum of money with damages filed with the MTCC, Masbate City and docketed as Civil Case No. 1475 against respondents therein, John Mark Viceo and Ma. Michelle Lobrigo (Spouses Viceo). On May 28, 2012, the MTCC rendered a *Judgment*[2] in Complainant's favor, ordering the Spouses Viceo to pay Complainant ₱209,000.00, among others. After the *Judgment* attained finality on July 6, 2012,[3] the MTCC issued a *Writ of Execution*[4] on July 18, 2012 commanding Respondent Sheriff to enforce the judgment.

On July 25, 2012,[5] Respondent Sheriff served upon John Mark Viceo a copy of the *Writ of Execution* and a *Notice of Demand for Immediate Payment with Notice of Levy on Execution*.[6] Later, on July 26[7] and July 30,[8] 2012, Respondent Sheriff sent a *Notice of Levy upon Realty*[9] (covered by Tax Declaration No. 0291) to the Provincial Assessor's Office and

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[2] *Id*. at 7-13. Through Presiding Judge Rolando G. Sandigan.

[3] *Id*. at 14.

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

[5] *Id*. at 38.

[6] *Id*. at 18.

[7] *Id*. at 19.

[8] *Id*. at 20.

[9] *Id*. at 19.

to the Spouses Viceo.[10] Based on a Certification[11] issued by the Office of the Provincial and Municipal Assessor of Masbate dated July 25, 2012 and August 1, 2012, the declared owner of the property covered by Tax Declaration No. 0291 is John Mark Viceo.

On August 3, 2012, Respondent Sheriff submitted his Report on the Implementation of the Writ[12] to the MTCC informing the court that he had served the *Writ of Execution and a Notice of Demand for Immediate Payment with Notice of Levy on Execution* as well as the *Notice of Levy upon Realty* on the Spouses Viceo. The Spouses Viceo failed to pay, leading Respondent Sheriff to cause the issuance and publication of a *Notice of Sale on Execution of Real Property*[13] on August 1, 2012.

However, before the scheduled date of the execution sale on August 1, 2012, Respondent Sheriff learned that the subject property had already been sold by John Mark Viceo to his uncle and former Masbate Mayor Konrad Ramos (Ramos). Subsequently, Respondent Sheriff sent a letter[14] to Ramos on September 4, 2012 advising him to file a third-party claim over the property.

Heeding Respondent Sheriffs advice, Ramos filed an *Affidavit of Third-Party Claim*[15] before the MTCC Masbate on October 4, 2012. Attached to the *Affidavit of Third-Party Claim* was a Deed of Absolute Sale[16] dated May 27, 2008 executed between

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[10] Per Certification from the Provincial and Municipal Assessor's Office, the owner of the property covered by Tax Declaration No. 0291 is John Mark Viceo, see *id*. at 22-23.

[11] *Id*. at 22, 23.

[12] *Id*. at 16-17.

[13] *Id*. at 21.

[14] *Id*. at 24.

[15] *Id*. at 26.

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

John Mark Viceo and Ramos. In his *Affidavit*, Ramos claims that he purchased the property from John Mark Viceo for ₱2.5 million and that he had been in open, continuous and peaceful possession of the property since 2008. Finally, Ramos claimed that he was the occupant of the property and was never served a copy of the *Notice of Levy upon Realty*, in violation of the requirement of Section 7, Rule 57 of the Rules of Court.[17]

Following Ramos' *Affidavit of Third-Party Claim*, Respondent Sheriff issued a *Notice of Filing of Third-Party Claim*[18] dated October 4, 2012, requiring Complainant to post an indemnity bond in the amount of ₱2,500,000.00. After the hearing on the third-party claim, the MTCC Masbate, in an *Order*[19] dated July 11, 2014, ruled that the *Notice of Levy upon Realty* was **invalid** for Respondent Sheriffs failure to serve a copy of the notice of levy on the actual occupant of the property (*i.e.*, Ramos), *viz.*:

> x x x [t]here can be no valid sale without a valid levy. Under *Section 9, Rule 39*, in conjunction with *Section 7, Rule 57 of the Rules of Court*, the sheriff is required to do only two specific things to effect a levy upon a realty: (a) file with the register of deeds a copy of the order of execution, together with the description of the levied property and notice of execution; and (b) leave with the occupant of the property [a] copy of the same order, description and notice (*Hulst v. PR Builders, Inc., G.R. No. 156364, September 3, 2007, 532 SCRA 74*). These are prerequisites to a valid levy, non-compliance with any of which is fatal.

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[17] SEC. 7. *Attachment of real and personal property; recording thereof.*— Real and personal property shall be attached by the sheriff executing the writ in the following manner:

(a) Real property, x x x by filing with the registry of deeds a copy of the order, together with a description of the property attached, and a notice that it is attached, or that such real property and any interest therein held by or standing in the name of such other person are attached, and by leaving a copy of such order, description, and notice with the occupant of the property, if any, or with such other person or his agent if found within the province. x x x

[18] *Rollo*, p. 29.

[19] See *id*. at 30-31. Through Judge-Designate Diana Tambago-Sanchez.

Sadly, the record in the instant case is bereft of any evidence showing that the Court Sheriff left a copy of the notice of levy to the actual occupant of the property being levied. In view of the fact that no notice of the levy was given to herein third-party claimant who was then in occupancy of the property, it follows that there was no valid levy on the land and, therefore, its registration in the registry of deeds and annotation in the tax declaration of the property levied upon were also invalid and ineffective.

WHEREFORE, in view of the foregoing, the motion of the plaintiff is GRANTED. Consequently, the execution proceedings conducted by the Court Sheriff are hereby declared NULL and VOID and OF NO FORCE AND EFFECT. The levy on execution is hereby LIFTED and/or CANCELLED and the Sheriff is restrained from proceeding with the auction sale of the levied real property.

The Court Sheriff is directed to proceed with the enforcement of the Writ of Execution issued in this case according to its mandate and to make a periodic report to the Court as required by the Rules until the judgment is fully satisfied.

SO ORDERED.[20]

Four months having lapsed since the MTCC issued the above order directing Respondent Sheriff to proceed with the enforcement of the execution, no action had yet been taken by Respondent Sheriff, leading Complainant to send a letter[21] to Judge-Designate Diana Tambago-Sanchez of the MTCC on November 14, 2014, calling the attention of the court to Respondent Sheriffs inaction on the writ of execution. Notably, by then, two years had already lapsed since Complainant had obtained a favorable judgment from the MTCC and the *Writ of Execution* enforcing the judgment had been issued. Despite the letter, no action was taken on the enforcement of the writ, leading Complainant to file the present administrative complaint against Respondent Sheriff on August 25, 2016.

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[20] *Id*. at 30-31.

[21] *Id*. at 32.

In his *Answer to the Administrative Complaint*,[22] Respondent Sheriff claims that the allegation that he did not leave a copy of the *Notice of Levy* on the actual occupant of the property is not true.[23] According to him, he made two attempts to serve the notice of levy on the younger brother of John Mark Viceo but was unable to do so. Respondent Sheriff further claims that going to the area where the land is levied is not practicably advisable because said area where the land is located is frequented by different armed groups.[24]

Insofar as Ramos was concerned, Respondent Sheriff claims that he deemed it more proper to write first to former Mayor Ramos before he proceeded with the auction sale, because "per information given by the Municipal Assessor of Mobo, Masbate," Ramos had already purchased the property from John Mark Viceo but was unable to transfer ownership over the property for being preoccupied with the elections.[25]

The OCA Recommendation

In its *Report and Recommendation*,[26] the Office of the Court Administrator (OCA) found that Respondent Sheriff failed to perform his mandated duty to implement the writ of execution, specifically considering that, at the time the MTCC issued its last *Order* on July 11, 2014 (in which the MTCC declared the execution sale null and void and ordered Respondent Sheriff to proceed with the enforcement of the *Writ of Execution* until the judgment is fully satisfied) until the time he filed his comment to the administrative complaint on December 9, 2016, Respondent Sheriff has never denied that he failed to fully implement the judgment. Quite the contrary, the OCA observed that all that Respondent Sheriff did instead was to put forward justifications

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[22] *Id*. at 36-37.

[23] *Id*. at 37.

[24] *Id*.

[25] *Id*. at 36.

[26] *Id*. at 38-42.

for his failure to carry out the writ of execution (*i.e.*, he could not locate another property upon which the judgment could be enforced; the subject property is located in an area with armed groups making it dangerous for him to visit).[27]

Thus, the OCA noted that Respondent Sheriff failed to fully enforce the judgment *and* to submit a Sheriff's Report as required by the Rules of Court, making him administratively liable for Simple Neglect of Duty.[28] On the basis of the foregoing, the OCA recommended that Respondent Sheriff be found **GUILTY** of Simple Neglect of Duty and **FINED** the amount of ₱5,000.00 with a **STERN WARNING** that a repetition of the same or any similar act shall be dealt with more severely.

The Court's Ruling

The Court agrees with, and accordingly adopts, the findings and recommendation of the OCA.

Section 14, Rule 39 of the Rules of Court **mandates** the sheriff to make a return on the writ of execution to the Clerk or Judge issuing the Writ. Specifically, a sheriff is required: (1) to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and (2) if judgment cannot be satisfied in full, to state why full satisfaction cannot be made. As well, the sheriff is required to make a report every thirty (30) days in the proceedings being undertaken by him until judgment is fully satisfied.

Respondent Sheriff failed to do both. He neither fully enforced the judgment nor submitted his Sheriffs Report. In *Zamudio v. Auro*,[29] the Court ruled that:

> **Failure to comply with Section 14, Rule 39 constitutes simple neglect of duty**, which is defined as the failure of an employee to give one's attention to a task expected of him and signifies a disregard of a duty resulting from carelessness or indifference.

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[27] *Id*. at 37, 40.

[28] *Id*. at 41.

[29] 593 Phil. 575 (2008).

However, the Court finds that respondent's infraction does not end with his failure to make a report.

As the Court has held time and again, execution of a final judgment is the fruit and end of the suit and is the life of the law. x x x[30] (Emphasis and underscoring supplied)

The reason is simple. A judgment, if not executed, would be an empty victory on the part of the prevailing party; and sheriffs are the ones primarily responsible for the execution of final judgments. Thus, they are expected at all times to show a high degree of professionalism in the performance of their duties.[31] Accordingly, disregard of the rules on execution of judgment is tantamount to neglect of duty.[32]

Pursuant to Section 46(D)(1), Rule 10 of the Revised Rules on Administrative Cases in the Civil Service – which apply to the instant case[33] – simple neglect of duty is classified as a less grave offense and is punishable by suspension for one (1) month and one (1) day and six (6) months for the first offense and dismissal from the service for the second offense. The Court has, however, in several cases,[34] imposed the penalty of fine instead of suspension as an alternative penalty, to prevent any undue adverse effect on public service which would ensue if

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[30] *Id*. at 582.

[31] *Id*., citing *Mangubat v. Camino*, 518 Phil. 333, 343 (2006).

[32] *Zamudio v. Auro*, *id*. at 583, citing *Mangubat v. Camino*, *id*.

[33] The RRACCS has been repealed by the CSC Resolution No. 1701077, promulgated on July 3, 2017, also known as the 2017 Rules on Administrative Cases in the Civil Service (2017 RACCS); Section 124, Rule 23 thereof provides that, "[t]he provisions of the existing RRACCS shall continue to be applied to all pending cases which were filed prior to the effectivity of these Rules, provided it will not unduly prejudice substantive rights." Section 125, Rule 23 thereof states that, "[said] Rules shall take effect after fifteen (15) days from date of publication in the Official Gazette, or in a newspaper of general circulation." See also *Mañalac v. Bidan*, A.M. No. P-18-3875, October 3, 2018.

[34] *Juario v. Labis*, 579 Phil. 33 (2008); *Patawaran v. Nepomuceno*, 543 Phil. 249 (2007).

work were otherwise left unattended by reason of respondent's suspension.[35] Accordingly, and in accordance with previous rulings,[36] since sheriffs discharge frontline functions, the penalty of fine may be imposed in lieu of suspension from office pursuant to Section 47 (1)(b), Rule 10 of the RRACCS.[37]

WHEREFORE, in view of the foregoing, the Court finds Respondent Angeles D. Almodiel, Jr., **GUILTY** of Simple Neglect of Duty and is hereby **FINED** the amount of ₱5,000.00 with a **STERN WARNING** that a repetition of the same or any similar act shall be dealt with more severely.

SO ORDERED.

Carpio (*Chairperson*), *Perlas-Bernabe, Reyes, J. Jr.*, and *Hernando*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 209047. January 7, 2019]

ANGELA USARES *y* SIBAY, *petitioner, vs.* **PEOPLE OF PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROCEDURE IN THE COURT OF APPEALS; DISMISSAL OF APPEAL FOR ABANDONMENT OR FAILURE TO PROSECUTE; RATIONALE. — Under Section 8, Rule 124 of the Rules of

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[35] *Juario v. Labis*, *id*. at 37.

[36] *Mañalac v. Bidan*, *supra* note 33.

[37] See *id.* at 5-6.

[*] Designated additional member per Special Order No. 2030 dated December 18, 2018.

Court, the CA is authorized to dismiss an appeal, whether upon motion of the appellee or *motu proprio,* once it is determined that the appellant, among others, jumps bail, *viz.*: Section 8. *Dismissal of appeal for abandonment or failure to prosecute.* — The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de oficio*. The Court of Appeals may also, **upon motion of the appellee or *motu proprio,*** dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal. x x x In *People v. Mapalao,* the Court explained that: The reason for this rule is x x x once an accused escapes from prison or confinement or jumps bail or flees to a foreign country, **he loses his standing in court and unless he surrenders or submits to the jurisdiction of the court he is deemed to have waived any right to seek relief from the court.** Thus when as in this case he escaped from confinement x x x, he should not be afforded the right to appeal therefrom x x x. While at large as above stated he cannot seek relief from the Court as he is **deemed to have waived the same and he has no standing in court.**

2. ID.; ID.; ID.; NOT APPLICABLE AS THERE WAS AN EXISTING CASH BAIL BOND. — Under Section 5, Rule 114 of the Rules of Court, when the RTC, after the conviction of the accused, grants the latter's application for bail based on its discretion, the accused-appellant may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman, x x x [Here,] what Usares posted was a cash bail bond which to date remained in the government coffers. x x x Verily, the cash bond and Usares's written undertaking executed pursuant to the Rules – which the RTC approved – stood as sufficient security for her release during the appeal proceedings. As long as the amount deposited remains in the government coffers, the same sufficiently secures her continued provisional liberty during the entire appeal proceedings upon the RTC's approval of her bail application, following Section 5, Rule 114 of the Rules of Court. This is in contrast with the other types of securities given for the temporary release of an accused which require the participation of a third party, *i.e.,* the surety or bondsman (either

corporate surety or property surety), whose qualification must first be ascertained by the court. Thus, considering that Usares has an existing cash bail bond x x x she cannot be considered to have jumped bail, which thus renders erroneous the dismissal of her appeal on the said ground.

3. ID.; ID.; ID.; LIBERAL APPLICATION OF THE RULE IN THE INTEREST OF SUBSTANTIAL JUSTICE. — [W]hile it appears that Usares belatedly filed her motion for reconsideration before the CA, which resulted in the issuance of an entry of judgment against her, the Court finds it proper to relax such technicalities in the interest of substantial justice given that there was, in the first place, no cogent basis for the dismissal of her appeal. In addition, the Court recognizes that Usares had duly explained in her petition that her previous lawyer, Atty. Vijiga, who received the copy of the February 14, 2013 CA Resolution on February 21, 2013, unfortunately abandoned her cause without any explanation to her whatsoever. x x x Time and again, the Court has ruled that "[d]ismissal of appeals purely on technical grounds is frowned upon, and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims."

APPEARANCES OF COUNSEL

Bernardo Q. Cuaresma for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated February 14, 2013[2] and September 6, 2013[3]

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[1] *Rollo,* pp. 17-55.

[2] *Id*. at 8-11. Penned by Associate Justice Romeo F. Barza with Associate Justices Noel G. Tijam (now a member of this Court) and Ramon A. Cruz, concurring.

[3] *Id*. at 13, 13a-c, 14.

of the Court of Appeals (CA) in CA-G.R. CR No. 35317, which dismissed the appeal[4] filed by petitioner Angela Usares *y* Sibay (Usares) and referred the Motion for the Issuance of Warrant of Arrest[5] against her to the Regional Trial Court of Manila, Branch 21 (RTC) for appropriate action.

The Facts

In a Decision[6] dated February 23, 2012 in Criminal Case No. 08-259156, the RTC found Usares guilty beyond reasonable doubt of the crime of Homicide, and accordingly, sentenced her to suffer the penalty of imprisonment for an indeterminate period of eight (8) years and one (1) day, as minimum, to twelve (12) years and one (1) day, as maximum, and to pay the heirs of the victim the amounts of ₱50,000.00 as actual and compensatory damages, ₱50,000.00 as moral damages, and ₱50,000.00 as exemplary damages, as well as the costs of suit.[7] Additionally, the RTC cancelled the bond[8] posted for the provisional liberty of Usares.

On March 21, 2012, the RTC Decision was promulgated. Atty. Jojo Soriano Vijiga (Atty. Vijiga), representing Usares, thereafter manifested in open court that they *"intend to file a Notice of Appeal within fifteen (15) days from [March 21, 2012]"* and moved that Usares be *"released under the same bond x x x."*[9] **The RTC granted the said motion in an Order**[10] **issued on even date.**

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[4] See Notice of Appeal dated April 12, 2012; *id*. at 78.

[5] Dated November 28, 2012; *id*. at 82-83.

[6] *Id*. at 59-67. Penned by Judge Amor A. Reyes.

[7] *Id*. at 67.

[8] See Certification dated October 22, 2013 signed by the RTC Clerk of Court and *Ex-Officio* Sheriff Jennifer H. Dela Cruz-Buendia; *id*. at 76.

[9] See Order dated March 21, 2012; *id*. at 69.

[10] See *id*.

Subsequently, Usares filed a Notice of Appeal[11] on April 12, 2012, which the RTC granted in an Order[12] dated May 10, 2012.

On November 28, 2012, a certain Deodoro A. Edillo (Edillo) filed a Motion for the Issuance of Warrant of Arrest,[13] praying that the warrant be issued against Usares to enforce the RTC Decision.

The CA Ruling

In a Resolution[14] dated February 14, 2013, the CA dismissed Usares's appeal and referred the Motion for the Issuance of Warrant of Arrest to the RTC for its appropriate action.[15] According to the CA, despite the judgment of conviction against her and the cancellation of her bail bond, Usares nonetheless continued to enjoy her liberty during the pendency of the appeal proceedings without a valid bail bond having been posted and approved by the court.[16] As such, she is considered to have jumped bail, and thus, her appeal should be dismissed in accordance with Section 8, Rule 124 of the Revised Rules on Criminal Procedure and the prevailing jurisprudence.[17]

On March 11, 2013, the February 14, 2013 CA Resolution became final and executory, and was thereby recorded in the Book of Entries of Judgments.[18]

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[11] *Id*. at 78. See also Certification dated July 9, 2013 issued by the Clerk of Court of the CA; *id*. at 77.

[12] *Id*. at 80.

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

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

[15] *Id*. at 11.

[16] See *id*. at 10.

[17] The CA cited the case of *Alva v. CA*, 521 Phil. 286 (2006).

[18] See Entry of Judgment dated March 11, 2013; *rollo*, p. 108. See also Notice of Resolution in CA-G.R. CR No. 35317 dated June 26, 2013; CA *rollo*, p. 46. Records show that Atty. Vijiga received a copy of the February 14, 2013 Resolution on February 21, 2013 (see Registry Return Receipt; *rollo*, p. 86).

Aggrieved, Usares, through Atty. Bernardo Q. Cuaresma (Atty. Cuaresma),[19] moved for reconsideration[20] on July 15, 2013, pointing out, among others, that during the promulgation of the RTC Decision, her counsel, Atty. Vijiga, moved that she be allowed to be released under the same bond, which the RTC granted.[21]

In a Resolution[22] dated September 6, 2013, the CA denied Usares's motion.[23] Aside from reiterating its earlier ruling anent the cancellation of Usares's bail bond, it further observed that an entry of judgment had already been issued, and hence, her motion for reconsideration was already considered filed out of time.[24] Dissatisfied, Usares filed the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA was correct in dismissing Usares's appeal.

The Court's Ruling

The petition is meritorious.

Under Section 8, Rule 124 of the Rules of Court, the CA is authorized to dismiss an appeal, whether upon motion of the appellee or *motu proprio,* once it is determined that the appellant, among others, jumps bail, *viz.*:

> Section 8. *Dismissal of appeal for abandonment or failure to prosecute.* – The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed

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[19] See Formal Entry of Appearance dated July 3, 2013; CA *rollo*, p. 48.

[20] See Urgent Motion for Reconsideration dated July 15, 2013; *rollo,* pp. 92-104.

[21] See *id*. at 97.

[22] *Id*. at 13, 13a-c, 14.

[23] *Id*. at 115.

[24] See *id*. at 115.

by this Rule, except where the appellant is represented by a counsel *de oficio*.

The Court of Appeals may also, **upon motion of the appellee or *motu proprio*,** dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal. (Emphasis and underscoring supplied)

The reason behind this provision is not difficult to discern. Same as one who escapes from prison or confinement, or flees to a foreign country, an accused-appellant who jumps bail during the pendency of his appeal is considered to have evaded the established judicial processes to ensure his proper criminal prosecution, and in so doing, forfeits his right to pursue an appeal. In *People v. Mapalao,*[25] the Court explained that:

> The reason for this rule is x x x once an accused escapes from prison or confinement or jumps bail or flees to a foreign country, **he loses his standing in court and unless he surrenders or submits to the jurisdiction of the court he is deemed to have waived any right to seek relief from the court.**
>
> Thus when as in this case he escaped from confinement x x x, he should not be afforded the right to appeal therefrom x x x. While at large as above stated he cannot seek relief from the Court as he is **deemed to have waived the same and he has no standing in court.**[26] (Emphases and underscoring supplied)

In this relation, it should be pointed out that the right to appeal is merely a statutory remedy and that the party who seeks to avail of the same must strictly follow the requirements therefor.[27] As the Court discerns, Section 8, Rule 124 evokes an implicit requirement for an appellant to duly observe prevailing criminal processes pending appeal, else, he runs the risk of, among others, having the same dismissed. In *People v. Taruc*,[28] the Court enunciated that:

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[25] 274 Phil. 354 (1991).

[26] *Id*. at 363.

[27] See *Manila Mining Corporation v. Amor,* 758 Phil. 268, 277 (2015).

[28] 599 Phil. 149 (2009).

> There are certain fundamental rights which cannot be waived even by the accused himself, but the right of appeal is not one of them. This right is granted solely for the benefit of the accused. He may avail of it or not, as he pleases. He may waive it either expressly or by implication. When the accused flees after the case has been submitted to the court for decision, he will be deemed to have waived his right to appeal from the judgment rendered against him. (Citing *People v. Ang Gioc Ko,* 73 Phil. 366, 369 [1941])

By putting himself beyond the reach and application of the legal processes of the land, accused-appellant revealed his contempt of the law and placed himself in a position to speculate, at his pleasure on his chances for a reversal. In the process, he kept himself out of the reach of justice, but hoped to render the judgment nugatory at his option. Such conduct is intolerable and does not invite leniency on the part of the appellate court.[29]

According to the CA, Usares was "considered at-large following the judgment of conviction and cancellation of her bail bond, and [yet] enjoys liberty pending appeal without a valid a bail bond having been posted and approved by the court even untl now."[30] As such, it deemed Usares to have jumped bail, and hence, dismissed her appeal pursuant to Section 8, Rule 124.

However, records reveal that Usares, through Atty. Vijiga, had manifested in open court during the promulgation of the RTC Decision on March 21, 2012, that she intended to appeal within fifteen (15) days therefrom, and further moved that she be released under the same cash bail bond. As clearly reflected in the March 21, 2012 RTC Order, the RTC **granted the said motion.**[31] Under Section 5, Rule 114 of the Rules of Court, when the RTC, after the conviction of the accused, grants the latter's application for bail based on its discretion, the accused-appellant may be allowed to continue on provisional liberty

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

[30] *Rollo,* p. 10.

[31] See *id.* at 69.

during the pendency of the appeal under the same bail subject to the consent of the bondsman, *viz.*:

Section 5. *Bail, when discretionary.* – Upon conviction by the Regional Trial Court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court. However, if the decision of the trial court convicting the accused changed the nature of the offense from non-bailable to bailable, the application for bail can only be filed with and resolved by the appellate court.

Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.

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At this juncture, it deserves mentioning that what Usares posted was a cash bail bond which to date remained in the government coffers. The Certification[32] dated October 22, 2013 issued by the Office of the Clerk of Court and Ex-Officio Sheriff Jennifer H. Dela Cruz-Buendia confirms this fact and further certifies that as of its date, the *"cash bond has not yet been withdrawn."* The Certification[33] dated October 24, 2013 issued by the Clerk of Court of the CA further validates Usares's posting of a cash bond as it certifies that a *"CERTIFIED photocopy of the 'WAIVER/UNDERTAKING' with attached Official Receipt Nos. 7595717 K, 7330732 A, 7596909 K and Legal Fees Form*

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[32] *Id*. at 76. The Certification pertinently states:

"This is to certify that after careful verification of our records, the cash bond amounting to Forty Thousand Pesos (Php 40,000.00) under O.R. No. 7330732 dated February 11, 2008 was posted by accused Angela S. Usares in Criminal Case No. 08-259156, raffled to Branch 21.

This is to certify further that as of this date, the above-mentioned cash bond has not yet been withdrawn.

x x x x x x x x x"

[33] Signed by Acting Chief, Archives Section Ronnie A. Inacay; proofread and verified by Doerlyn D. Dural and Josefina L. Hermoso. *Id*. at 70.

dated February 11, 2008" are *"found on page/s 291 to 295 in the Folder of Original Records in Crim. Case No. 08-259156 of the Regional Trial Court, Branch 21 of the City of Manila docketed with this [c]ourt as CA G.R. CR No. 35317 x x x."*[34] Moreover, the Certification[35] dated July 9, 2013, also of the CA's Clerk of Court, confirms that the March 21, 2012 RTC Order (which granted Usares's motion to be released under the same bail bond) *"is found on page 526 in the folder of the Original of Criminal Case No. 08-259156 of RTC-MANILA, BR. 21, docketed in this court as CA- G.R. CR-35317."* Verily, the cash bond and Usares's written undertaking executed pursuant to the Rules — which the RTC approved — stood as sufficient security for her release during the appeal proceedings. As long as the amount deposited remains in the government coffers, the same sufficiently secures her continued provisional liberty during the entire appeal proceedings upon the RTC's approval of her bail application, following Section 5, Rule 114 of the Rules of Court. This is in contrast with the other types of securities given for the temporary release of an accused which require the participation of a third party, *i.e.,* the surety or bondsman (either corporate surety or property surety), whose qualification must first be ascertained by the court.

Thus, considering that Usares has an existing cash bail bond — which the CA should have known had it reviewed more carefully the records of this case — she cannot be considered to have jumped bail, which thus renders erroneous the dismissal of her appeal on the said ground.

Notably, while it appears that Usares belatedly filed her motion for reconsideration before the CA, which resulted in the issuance of an entry of judgment against her, the Court finds it proper to relax such technicalities in the interest of substantial justice given that there was, in the first place, no cogent basis for the dismissal of her appeal. In addition, the Court recognizes that

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[34] Italics supplied.

[35] Signed by Chief, Criminal Cases Section, Medella A. Carrera. *Rollo,* p. 68.

Usares had duly explained in her petition that her previous lawyer, Atty. Vijiga, who received the copy of the February 14, 2013 CA Resolution on February 21, 2013,[36] unfortunately abandoned her cause without any explanation to her whatsoever. It was only when she asked her present lawyer, Atty. Cuaresma, to check on the status of her appeal that she found out that the same had long been dismissed by the CA.[37] "While as a general rule, the negligence of counsel may not be condoned and should bind the client, the exception is when such negligence is so gross, reckless and inexcusable that the client is deprived of his [or her] day in court,"[38] as in Usares's case. Time and again, the Court has ruled that "[d]ismissal of appeals purely on technical grounds is frowned upon, and the rules of procedure ought not to be applied in a very rigid, technical sense, for they are adopted to help secure, not override, substantial justice, and thereby defeat their very aims."[39]

In fine, the Court, based on the considerations above-discussed, resolves to grant the petition. Accordingly, the case is remanded to the CA for resolution of Usares's appeal on the merits, with reasonable dispatch.

WHEREFORE, the petition is **GRANTED**. The Resolutions dated February 14, 2013 and September 6, 2013 of the Court of Appeals (CA) in CA-G.R. CR No. 35317 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the case is **REMANDED** to the CA which is **DIRECTED** to resolve the appeal filed by petitioner Angela Usares *y* Sibay on the merits, with reasonable dispatch.

SO ORDERED.

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[36] See *id*. at 85 (reverse side) and 86.

[37] See *id*. at 27-28.

[38] See *Hilario v. People of the Philippines,* 574 Phil. 348, 365 (2008).

[39] *Sarmiento v. Zaratan,* 543 Phil. 232, 245 (2007).

Carpio,[*] *Acting C.J. (Chairperson)*, *Caguioa, Reyes, J. Jr.,* and *Hernando,*[**] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 215545. January 7, 2019]

QUIRINO T. DELA CRUZ, *petitioner, vs.* **NATIONAL POLICE COMMISSION,** *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; APPEALS UNDER RULE 45; SHALL PERTAIN ONLY TO QUESTIONS OF LAW; CASE AT BAR. — Under Rule 45 of the Rules of Court, a petition for review on *certiorari* shall only pertain to questions of law. The factual findings of the Court of Appeals bind this Court. While several exceptions to these rules were provided by jurisprudence, they must be alleged, substantiated, and proved by the parties so this Court may evaluate and review the facts of the case. Both of petitioner's arguments are questions of fact not proper for review in this case. The date he received the assailed National Police Commission Resolution is a question of fact that was resolved by the Civil Service Commission. As the Court of Appeals pointed out, the Civil Service Commission might have resolved his motion for reconsideration differently, had petitioner substantiated his claim with evidence that he received the National Police Commission Resolution on January 4, 2011. Yet, petitioner failed to do so. It is not this

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[*] Designated Acting Chief Justice per Special Order No. 2631 dated December 28, 2018.

[**] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

> Court's role to review the evidence to resolve this question. x x x Similarly, whether there was sufficient evidence to find petitioner liable of grave misconduct is also an evidentiary matter, which this Court will not look into. He claims that the judgment was based on a misapprehension of facts to persuade this Court to review the case's factual questions. However, he has failed to sufficiently substantiate this claim to convince this Court to look into the evidence. This Court notes that the findings of the National Police Commission were based on its appreciation of testimony, together with the conclusions of the Regional Trial Court in its July 23, 2009 Decision, which, in turn, found that petitioner made an unlawful warrantless arrest. This Court further notes that petitioner has neither denied nor explained the circumstances surrounding Villarias's unlawful warrantless arrest. Supported by substantial evidence, the National Police Commission Decision was properly affirmed by the Civil Service Commission and the Court of Appeals. There is no cogent reason to reverse their factual findings.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

This is a Petition for Review on Certiorari[1] assailing the June 27, 2014 Decision[2] and November 18, 2014 Resolution[3]

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[1] *Rollo*, pp. 12-34.

[2] *Id*. at 36-41. The Decision was penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang of the Fourteenth Division, Court of Appeals, Manila.

[3] *Id*. at 43-44. The Resolution was penned by Associate Justice Franchito N. Diamante, and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q.C. Sadang of the Former Fourteenth Division, Court of Appeals, Manila.

of the Court of Appeals in CA-G.R. SP No. 131189. The Court of Appeals affirmed the Civil Service Commission September 11, 2012 Decision[4] holding that petitioner's appeal was filed out of time, and thus affirmed the January 12, 2010 National Police Commission Decision[5] dismissing petitioner for grave misconduct.[6]

In an October 15, 2001 Information,[7] a certain Sonny H. Villarias was charged with violation of Presidential Decree No. 1866 after he was arrested on October 13, 2001 for allegedly possessing two (2) firearms without permits.[8]

On August 15, 2002, Villarias filed before the National Police Commission a Complaint-Affidavit,[9] where he narrated what happened when he was arrested. By filing the Complaint against the four (4) officers who arrested him, Villarias said that he would be doing his share in helping the police force rid itself of bad elements.[10]

He narrated that at about 8:00 p.m. that night, he was awakened by four (4) uniformed officers, namely: Special Police Officer 4 Quirino Dela Cruz (SPO4 Dela Cruz), Police Officer 1 Ariel Cantorna (PO1 Cantorna), whom he said he had known, and two others. He said that SPO4 Dela Cruz poked an armalite rifle at him, pulled him up, and frisked him without any explanation

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[4] *Id*. at 96-99. The Decision (120576) was signed by Commissioner Mary Ann Z. Fernandez-Mendoza, Chairman Francisco T. Duque III, Commissioner Robert S. Martinez, and attested by Commission on Secretariat and Liaison Office Director IV Dolores B. Bonifacio.

[5] *Id*. at 78-82. The Decision in the administrative case docketed as SD Case No. 2003-016 (NCR) was signed by Commissioners Eduardo U. Escueta, Luis Mario M. General, and Jesus A. Verzosa. Chairman Ronaldo V. Puno did not sign.

[6] *Id*. at 82.

[7] *Id*. at 76.

[8] *Id*.

[9] *Id*. at 65-67.

[10] *Id*. at 66.

despite him repeatedly asking what he had done wrong. They still did not say anything even after they had handcuffed him. He only stopped asking after SPO4 Dela Cruz poked him with his armalite rifle again and, along with the others, took him to their patrol vehicle and handcuffed him to its steering wheel. The officers then returned to his house.[11]

Villarias stated that while he was handcuffed to the vehicle, he saw his common-law wife, Claudia Nicar (Nicar), approaching their house. He then told her that the police officers were in their house and that they might do something to their belongings. When the officers returned to the vehicle, they had with them eight (8) of Villarias's most valuable fighting cocks, a large plastic bag containing items from his house, two (2) air guns, and two (2) bolos.

After the officers left with Villarias, Nicar took photos of their personal belongings in the house, which had been left in disarray when the officers ransacked their home. While Villarias was in jail, she informed him that the police officers had stolen a pair of wedding rings, a necklace, a coin bank filled with ₱5.00 coins, cash worth ₱12,000.00, and a bottle of men's cologne. At the precinct, the officers told Villarias to admit to owning two (2) old and defective-looking handguns, which SPO4 Dela Cruz had earlier shown him.[12]

Later, Villarias learned that his arrest had been instigated by the complaint of his neighbor, Ruby Carambas, whom he said was angry at him because he refused to let her build a house on a lot of which he was a caretaker. He also learned that Carambas had previously filed a complaint against him for Illegal Discharge of Firearm and Grave Threats against him. He alleged that Carambas was the friend of POl Cantorna, a cockfighting fanatic who frequently visited Carambas' father, a gaffer at cockfights. Villarias believed that the officers concocted this plan to simultaneously benefit Carambas and

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[11] *Id*. at 65.

[12] *Id*. at 66.

steal Villarias's fighting cocks and valuables. He pointed out that, as of his sworn statement, Carambas and her family had gone into hiding.[13]

Based on Villarias's Complaint, the National Police Commission, represented by Inspector IV Pedro T. Magannon, Acting Chief, Technical Service Division, National Capital Region, filed a Complaint[14] against SPO4 Dela Cruz and PO2 Cantorna. It charged them as follows:

> That on October 13, 2001 at about 8:00 o'clock in the evening at No. 20 Williams Street, Subdivision, Tandang Sora, Quezon City, and within the administrative jurisdiction of this Honorable Commission, respondents, conspiring and confederating and mutually helping one another, with intent to gain and with grave abuse of authority being police officers, did then and there willfully, unlawfully, and feloniously without any legal grounds enter and search the house of complainant against his will. Thereafter, respondent SPO4 Quirino dela Cruz poked his armalite rifle on the side of complainant, pull[ed] him out of the house and handcuff[ed] the latter on the steering wheel of respondent's patrol vehicle. After that[,] respondents went back inside the house of complainant and carted away some personal belongings of herein complainant, to wit: one (1) piece wedding ring; one (1) piece 18 karats necklace; one (1) coin bank filled with 5 cents coins; cash amount of ₱12,000.00; one (1) bottle men's cologne; eight (8) live fighting cocks; two (2) airguns[,] and two (2) bolos, to the damage and prejudice of complainant Sonny Villarias in the amount of more or less SEVENTY THOUSAND PESOS (Php70,000.00).
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> Acts contrary to law and existing rules and regulations.[15]

Pending resolution of the administrative complaint against SPO4 Dela Cruz and PO2 Cantorna, Villarias was exonerated by the Regional Trial Court in its July 23, 2009 Decision.[16] The Decision read:

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[13] *Id*.

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

[15] *Id*. at 63.

[16] *Id*. at 103-104. The full copy of the Regional Trial Court Decision was not attached to the *rollo*.

The accused, at the time of his arrest, had not committed, nor was he actually committing or attempting to commit an offense in the presence of the arresting officers. Neither was there probable cause for them to believe based on personal knowledge of facts or circumstances that the accused committed the crime.

Verily, the warrantless arrest of the accused was unlawful being outside the scope of Sec. 5, Rule 113. He was arrested solely on the basis of a call from a woman claiming he illegally fired a gun, and upon being pointed to, while he was inside his house doing nothing. Consequently, the guns seized from the accused, if ever the same came from him, are inadmissible in evidence being the 'fruit of the poisonous tree.'

. . . . . .

The Court entertains very serious doubt as to the culpability of the accused and cannot in conscience pronounce verdict of guilt for the crime with which he was charged.

WHEREFORE, for failure of the prosecution to prove the guilt of the accused, the Court finds Sonny H. Villarias **NOT GUILTY**. His **ACQUITTAL** is hereby pronounced.[17]

In its January 12, 2010 Decision,[18] the National Police Commission declared SPO4 Dela Cruz and PO2 Cantorna culpable of grave misconduct.[19] It found that Villarias had substantiated his case, and was convinced that the officers did what they were accused of doing.[20] It also noted that the Regional Trial Court July 23, 2009 Decision cited the testimony of a witness, Eneceto Gargallano (Gargallano), who saw four (4) police officers enter Villarias's home and take out cartons containing fighting cocks, with one (1) carrying two (2) air guns.[21]

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[17] *Id*.

[18] *Id*. at 78-82.

[19] *Id*. at 82.

[20] *Id*. at 80.

[21] *Id*. at 81.

The National Police Commission considered SPO4 Dela Cruz and PO2 Cantorna's acts of unlawfully arresting Villarias and taking his belongings as "unforgivable atrocit[ies] by one who has sworn to uphold the law."[22] It found that they made a mockery of administrative proceedings when they made untruthful statements during its summary dismissal proceedings, as well as before the Regional Trial Court.[23] Thus, SPO4 Dela Cruz and PO2 Cantorna were dismissed from service:

> **WHEREFORE**, premises considered, the COMMISSION finds **SPO4 QUIRINO DE LA CRUZ** and **PO2 ARIEL CANTORNA** culpable of Grave Misconduct and are hereby meted the penalty of **DISMISSAL** from the service.
>
> **SO ORDERED.**[24]

SPO4 Dela Cruz filed a Motion for Reconsideration, but it was denied in the National Police Commission December 15, 2010 Resolution.[25] In its Resolution, the National Police Commission found that SPO4 Dela Cruz neither presented newly discovered evidence nor cited errors of law or irregularities that would affect the assailed Decision. Further, it found that he filed the Motion on September 21, 2010, well beyond the ten (10)-day non-extendible period after he received the Decision on September 8, 2010.[26]

Undaunted, SPO4 Dela Cruz filed before the Civil Service Commission an Appeal,[27] which was dismissed. In its September 11, 2012 Decision,[28] the Civil Service Commission

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[22] *Id*.

[23] *Id*.

[24] *Id*. at 82.

[25] *Id*. at 87-89. The Resolution, docketed as SD Case No. 2003-016 (NCR), was signed by Chairman Jesse M. Robredo, Commissioners Eduardo U. Escueta, Luisito T. Palmera, Alejandro S. Urro, Constancia P. De Guzman, and Raul M. Bacalzo.

[26] *Id*. at 89.

[27] *Id*. at 90-94.

[28] *Id*. at 96-99.

found that the Appeal had been filed out of time, as SPO4 Dela Cruz did so on January 14, 2011, beyond the fifteen (15)-day period after the Decision for review was promulgated on December 15, 2010. Thus, the questioned Resolution had attained finality.[29]

The dispositive portion of the Civil Service Commission September 11, 2012 Decision read:

> **WHEREFORE**, the appeal of Quirino Dela Cruz is hereby **DISMISSED**. Accordingly, the Resolution dated December 15, 2010 of the National Police Commission (NAPOLCOM), finding him guilty of the offense Grave Misconduct, and imposing upon him the penalty of dismissal from the service, **STANDS**. It shall be clarified that the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits, perpetual disqualification from reemployment in the government service, and bar from taking any Civil Service examination are likewise imposed.[30]

SPO4 Dela Cruz moved for reconsideration,[31] insisting that he filed his Appeal within the allowable period, but it was denied for lack of merit. In its July 9, 2013 Resolution,[32] the Civil Service Commission said the Motion failed to provide substantial evidence under the Revised Rules on Administrative Cases in the Civil Service to establish that he had timely perfected his appeal.[33]

SPO4 Dela Cruz filed before the Court of Appeals a Petition for Review, but it was dismissed for lack of merit. In its June 27, 2014 Decision,[34] the Court of Appeals explained that, while technical rules of procedure may be relaxed on occasion, he must first exert effort to establish the basis for it. In this case, he merely alleged that he had timely filed his Appeal to

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[29] *Id*. at 98.

[30] *Id*. at 99.

[31] *Rollo*, p. 100.

[32] *Id*. at 102-105.

[33] *Id*. at 104.

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

merit relaxation of the rules, without documentary proof. Further, the Court of Appeals found that he was not denied due process, as he had been given the chance to present evidence that he had timely perfected his appeal when he moved for reconsideration before the Civil Service Commission, but he failed to do this.[35]

In its November 18, 2014 Resolution,[36] the Court of Appeals denied Dela Cruz's Motion for Reconsideration.

Thus, SPO4 Dela Cruz filed before this Court a Petition for Review on Certiorari.[37] Respondent then filed its Comment,[38] to which petitioner was directed to file a reply,[39] and was then granted two (2) extensions of time to file it. Eventually, petitioner manifested[40] that he would no longer file one.

Petitioner insists that the Court of Appeals erred when it held that his Appeal was filed beyond the allowable period. He points out that the Civil Service Commission reckoned his period for appeal from the Resolution's promulgation date, December 15, 2010, as opposed to the date he said he actually received it, which was on January 4, 2011.[41] Moreover, petitioner points out that when the National Police Commission held him liable for grave misconduct, it committed reversible error[42] as it did not expound on his alleged grave misconduct and summarily disregarded the evidence he presented in his defense.[43] He also argues that the evidence Villarias submitted was insufficient

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[35] *Id*. at 40.

[36] *Id*. at 43-44.

[37] *Id*. at 12-34.

[38] *Id*. at 132-149.

[39] *Id*. at 151.

[40] *Id*. at 163-168.

[41] *Id*. at 22.

[42] *Id*. at 25.

[43] *Id*.

to justify petitioner's dismissal.[44] Petitioner invokes presumption of regularity in the performance of official functions, and says it has not been overcome by clear and convincing evidence to the contrary.[45]

Respondent points out that save for his bare allegation, petitioner has no proof that he received the National Police Commission Resolution on January 4, 2011, and that he even admitted to this failure. Thus, it was proper for the Court of Appeals to affirm the Civil Service Commission's dismissal of his appeal for having been filed out of time.[46] Further, respondent points out that in an administrative proceeding, the quantum of proof required to establish guilt is substantial evidence,[47] as in this case. The evidence sufficiently established that petitioner arrested Villarias without legal basis for a warrantless arrest, and that he stole valuables from Villarias, constituting grave misconduct and conduct unbecoming of a police officer. He also untruthfully entered the incident in a police blotter, an act of dishonesty. Respondent further points out that factual findings the National Police Commission's findings were affirmed by the Civil Service Commission, whose role was not to weigh conflicting evidence.[48] It adds that petitioner's bare denials and the presumption of regularity in the performance of official duty are insufficient to exculpate him, saying that Villarias's, Nicar's, and Gargallano's testimonies in the Regional Trial Court July 23, 2009 Decision are substantial evidence to conclude that petitioner is guilty of grave misconduct.[49]

The issues raised by petitioner for this Court's resolution are:

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[44] *Id*. at 26.

[45] *Id*. at 27.

[46] *Id*. at 138-139.

[47] *Id*. at 139-140.

[48] *Id*. at 143.

[49] *Id*. at 144.

First, whether or not the Court of Appeals erred when it sustained the Civil Service Commission's dismissal of petitioner's appeal for having been filed out of time; and

Second, whether or not the evidence presented to the National Police Commission was sufficient to establish petitioner's liability for grave misconduct.

The Petition is denied.

Under Rule 45 of the Rules of Court, a petition for review on certiorari shall only pertain to questions of law.[50] The factual findings of the Court of Appeals bind this Court. While several exceptions to these rules were provided by jurisprudence, they must be alleged, substantiated, and proved by the parties so this Court may evaluate and review the facts of the case.[51]

Both of petitioner's arguments are questions of fact not proper for review in this case. The date he received the assailed National Police Commission Resolution is a question of fact that was resolved by the Civil Service Commission. As the Court of Appeals pointed out, the Civil Service Commission might have resolved his motion for reconsideration differently, had petitioner substantiated his claim with evidence that he received the National Police Commission Resolution on January 4, 2011. Yet, petitioner failed to do so. It is not this Court's role to review the evidence to resolve this question. Further, petitioner has not addressed the December 15, 2010 Resolution of the National Police Commission, which found that his motion for reconsideration was filed out of time.[52] Thus, the January 12, 2010 Decision would have already attained finality when he failed to timely seek its reconsideration, regardless of whether the December 15, 2010 Resolution was received on January 4, 2011.

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[50] RULES OF COURT, Rule 45, Sec. 1.

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

[52] *Rollo*, p. 89.

Similarly, whether there was sufficient evidence to find petitioner liable of grave misconduct is also an evidentiary matter, which this Court will not look into. He claims that the judgment was based on a misapprehension of facts[53] to persuade this Court to review the case's factual questions. However, he has failed to sufficiently substantiate this claim to convince this Court to look into the evidence.[54]

This Court notes that the findings of the National Police Commission were based on its appreciation of testimony, together with the conclusions of the Regional Trial Court in its July 23, 2009 Decision, which, in turn, found that petitioner made an unlawful warrantless arrest. This Court further notes that petitioner has neither denied nor explained the circumstances surrounding Villarias's unlawful warrantless arrest.

Supported by substantial evidence, the National Police Commission Decision was properly affirmed by the Civil Service Commission and the Court of Appeals. There is no cogent reason to reverse their factual findings.

Finally, the relaxation of procedural rules is warranted only if compelling and justifiable reasons exist. In *Asia United Bank v. Goodland Company*:[55]

The relaxation or suspension of procedural rules or the exemption of a case from their operation is warranted only by compelling reasons or when the purpose of justice requires it.

As early as 1998, in *Hon. Fortich v. Hon. Corona,* we expounded on these guiding principles:

Procedural rules, we must stress, ***should be treated with utmost respect and due regard since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice.***

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[53] *Id*. at 20.

[54] *Pascual v. Burgos, et al.*, 716 Phil. 167 (2016) [Per *J*. Leonen, Second Division].

[55] 650 Phil. 174 (2010) [Per *J*. Nachura, Second Division].

The requirement is in pursuance to the [B]ill of [R]ights inscribed in the Constitution which guarantees that "all persons shall have a right to the speedy disposition of their cases before all judicial, quasi-judicial and administrative bodies." The adjudicatory bodies and the parties to a case are thus enjoined to abide strictly by the rules. While it is true that a litigation is not a game of technicalities, it is equally true that every case must be prosecuted in accordance with the prescribed procedure to ensure an orderly and speedy administration of justice. ***There have been some instances wherein this Court allowed a relaxation in the application of the rules, but this flexibility was "never intended to forge a bastion for erring litigants to violate the rules with impunity." A liberal interpretation and application of the rules of procedure can be resorted to only in proper cases and under justifiable causes and circumstances.***[56] (Citations omitted; emphasis supplied)

This is not a case that calls for relaxation of the rules. This Court will not tolerate abuse of police authority over civilians. Where a police officer has been shown to have committed atrocities against a civilian, such as in this case, and is punished for his actions, he will find no relief in this Court.

WHEREFORE, the Petition is **DENIED**. The June 27, 2014 Decision and November 18, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 131189 are **AFFIRMED**.

SO ORDERED.

Peralta (*Chairperson*), *Hernando*, and *Carandang, JJ.*, concur.

Reyes, A. Jr., J., on leave.

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[56] *Id*. at 183-184.

SECOND DIVISION

[G.R. No. 223713. January 7, 2019]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RODELINA MALAZO *y* DORIA,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY UNDER SEC. 21(1), ART. II THEREOF, AS AMENDED BY SEC. 1 OF RA 10640; THE ORIGINAL PROVISION REQUIRING FOUR PERSONS TO BE PRESENT DURING INVENTORY AND PHOTOGRAPHING OF THE CONFISCATED DRUGS APPLIES WHERE ALLEGED CRIME WAS COMMITTED PRIOR TO THE AMENDMENT OF THE LAW IN 2014; CASE AT BAR. — The recent case of *People v. Lim* discussed the importance of the chain of custody rule which adheres to the principle that "real evidence must be authenticated prior to its admission into evidence." This is in accordance with Section 21(1), Article II of RA 9165, as amended by Section 1 of Republic Act No. 10640. However, the original provision of Section 21(1) still applies to this case because the alleged crime was committed in 2008 prior to the amendment of the law in 2014. x x x The original provision of Section 21(1) enumerates the four persons who need to be present during the physical inventory and taking of photograph of the drugs after the apprehending team seizes and confiscates the same. These are: (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media; (3) a representative from the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The presence of these persons will guarantee "against planting of evidence and frame up." They are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."

2. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE PROCEDURE; ALLOWED ONLY UNDER JUSTIFIABLE

GROUNDS AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED; CASE AT BAR. — In the present case, P/Insp. Cabaddu testified that the seized illegal drugs were physically inventoried and photographed in the presence of Malazo and an elected public official at the place of arrest. However, there were no representatives from the media and the DOJ, and the elected public official failed to sign the copies of the inventory, in this case the confiscation receipt, and was not given copies thereof, as required by Section 21 of RA 9165 and its IRR. The absence of these requirements is glaring from the testimony of P/Insp. Cabaddu when he was questioned in court by Public Prosecutor Julie Namoro: x x x According to Section 21(a) of the IRR, non-compliance with the procedure shall not render void and invalid the seizure and custody of the drugs only when: (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team. x x x Recent jurisprudence has expounded on the policy by consistently ruling that the prosecution must at least adduce a justifiable reason for non-observance of the rules or show a genuine and sufficient effort to secure the required witnesses, in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also **clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item**. We reiterate that a stricter adherence to this rule is required especially when the quantity of the illegal drugs is miniscule since it is highly susceptible to planting, tampering, and alteration.

3. ID.; ID.; ID.; ID.; GUIDELINES IN *PEOPLE V. LIM* THAT MUST BE FOLLOWED IN ORDER THAT THE PROVISIONS IN SECTION 21 OF RA 9165, AS AMENDED, BE WELL-ENFORCED AND DULY PROVEN IN COURTS.— [W]e laid down guidelines in *People v. Lim* that must be followed in order that the provisions of Section 21 of RA 9165, as amended, be well-enforced and duly proven in courts: 1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR. 2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor

as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items. 3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause. 4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court. It must be noted that the above-mentioned guidelines are prospective in nature.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

This is an appeal to reverse the 27 January 2014 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 05371 which affirmed the 3 November 2011 Joint Decision[2] of the Regional Trial Court of Dagupan City, Branch 44 (RTC), in Criminal Case Nos. 2008-0225-D and 2008-0226-D, finding appellant Rodelina Malazo *y* Doria[3] (Malazo) guilty of violating Sections 5 and 11, Article II of Republic Act No. 9165 (RA 9165) or the Comprehensive Dangerous Drugs Act of 2002.

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[1] *Rollo*, pp. 2-17. Penned by Associate Justice Isaias P. Dicdican, with Associate Justices Michael P. Elbinias and Victoria Isabel A. Paredes, concurring.

[2] CA *rollo*, pp. 8-16. Penned by Judge Genoveva Coching-Maramba.

[3] Also referred to in the Records as "Rubelina Malazo *y* Doria."

The Charge

In an Information dated 29 April 2008, Malazo was charged with illegal sale of the drug Methamphetamine Hydrochloride (shabu). The accusatory portion of the Information reads:

> That on or about the 28th day of April, 2008, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused RUBELINA MALAZO Y DORIA, did then and there, willfully, unlawfully and criminally, sell and deliver to a customer Shabu contained in one (1) heat-sealed plastic sachet, weighing more or less 0.15 gram, without authority to do so.
>
> Contrary to Article II, Section 5, R.A. 9165.[4]

Another Information was filed on the same date indicting Malazo for illegal possession of shabu. The accusatory portion reads:

> That on or about the 28th day of April, 2008, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, RUBELINA MALAZO Y DORIA, did then and there, willfully, unlawfully and criminally, have in [her] possession, custody and control Shabu contained in three (3) heat-sealed plastic sachets, weighing more or less 0.190 gram, without authority to possess the same.
>
> Contrary to Article II, Section 11, R.A. 9165.[5]

During her arraignment on 13 May 2009, Malazo pleaded not guilty. A pre-trial was conducted on 7 October 2009. A trial on the merits of the two cases ensued thereafter.

The prosecution presented the testimonies of the following witnesses: (1) Police Inspector Joel Cabaddu (P/Insp. Cabaddu), a member of the Philippine National Police (PNP) Dagupan City, who was designated as the duty investigator and poseur-buyer during the buy-bust operation; and (2) Police Officer 2 Angelita Canilang (PO2 Canilang), a member of the PNP

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[4] Records (Crim. Case No. 2008-0225-D), p. 1.

[5] Records (Crim. Case No. 2008-0226-D), p. 1.

Dagupan City Police Station, who prepared the certification for the police blotter entries pertaining to the buy-bust operation.

Upon the admission of Malazo's counsel that (1) Police Senior Inspector Myrna C. Malojo (P/SInsp. Malojo) is an expert witness and was the forensic chemist who received and examined the specimen submitted to their office, and who prepared a report indicating that the seized items yielded a positive result for shabu; and (2) Police Officer 3 Christian Carvajal (PO3 Carvajal) submitted the confiscated items to the chemical laboratory for examination, the testimonies of these two witnesses were dispensed with.[6]

The defense adduced in evidence Malazo's own testimony and that of her mother, Marcelina Doria.

Version of the Prosecution

On 28 April 2008, P/Insp. Cabaddu received a report from a civilian asset that Malazo and her mother were drug peddlers. A buy-bust team was then formed with P/Insp. Cabaddu as leader and some police officers of the Dagupan City Police Station as other team members. The buy-bust team prepared, recorded, and photocopied five One Hundred Peso bills with serial numbers LD138437, TY181177, NS59446, UG357642, and CJ951433 to be used in the operation.

At around 4:00 in the afternoon on the same date, P/Insp. Cabaddu together with the confidential asset arrived in front of Malazo's house in Pantal District, Dagupan City. Thereafter, the confidential asset approached Malazo and told Malazo that P/Insp. Cabaddu wanted to buy some shabu. Malazo immediately brought out one (1) heat-sealed plastic sachet and handed the same to P/Insp. Cabaddu. In exchange, P/Insp. Cabaddu gave Malazo the marked five pieces of One Hundred Peso bills.

After the transaction was consummated, P/Insp. Cabaddu dialed the cellphone number of Police Inspector Leo Llamas (P/Insp. Llamas), the head of the Dagupan Police Station, as

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[6] *Rollo*, p. 4.

this was their pre-arranged signal. P/Insp. Cabaddu proceeded to arrest Malazo, but Malazo tried to escape by running towards her house. P/Insp. Cabaddu chased Malazo and upon getting hold of her, P/Insp. Cabaddu searched Malazo's pockets, and he found and confiscated three more heat-sealed plastic sachets of shabu.

After the arrest, P/Insp. Cabaddu prepared a Confiscation Receipt with a note that states that Malazo and her mother refused to sign the same. P/Insp. Cabaddu marked the confiscated items. The confiscated items, Malazo, her mother, and a barangay kagawad were all photographed.

Subsequently, Malazo and her mother were brought to the police station where P/Insp. Cabaddu immediately prepared the affidavit of arrest, the letter to the Dangerous Drugs Board and the letter-request to the crime laboratory upon arrival. P/Insp. Cabaddu personally turned over the confiscated items to PO3 Carvajal and instructed PO3 Carvajal to submit the same to the crime laboratory for examination.

P/SInsp. Malojo, the forensic chemist, confirmed that the substance was indeed Methamphetamine Hydrochloride or shabu, a dangerous drug. This was shown in Chemistry Report No. D-027-08L P/SInsp. Malojo prepared.

Version of the Defense

On 28 April 2008 at around 4:00 in the afternoon, Malazo was with two of her children and her mother in their carinderia, a small store which was part of their kitchen. Malazo saw four men alight from a tricycle. One of them was Lucas Salonga (Salonga), a police officer.

Salonga entered Malazo's carinderia and asked her what her name was. Malazo retorted, asking Salonga what he wanted from her. Salonga told her to remain seated.

Afterwards, the police officers instructed Malazo to get a basin. When Malazo returned with the basin, he saw that her mother was in an argument with the police officers. One of the men placed her mother's wallet inside the basin.

The police officers asked Malazo to come with them to the police station. Malazo refused the invitation as she alleged that she had not done anything wrong. She was thereafter handcuffed and was made to board the police vehicle, together with her mother. They were both brought to the police station.

At the police station, the police officers photocopied some pieces of peso bills, crumpled them and thew a piece of paper in the garbage can.

According to Malazo, the police officers were only making fun of her and there was no buy-bust operation. Malazo added that the police officers were only retaliating against her because she had once turned down a previous request of P/Insp. Llamas. She further went on to allege that there was an incident where P/Insp. Llamas served her with a fake warrant of arrest just to harass her and force her to divulge the names of big-time drug pushers in their area.

Malazo's testimony was corroborated by her mother who likewise narrated that on even date, Police Officer Salonga and other men wearing civilian clothes and Muslim hats alighted from a tricycle in front of their house. The men proceeded to their house and instructed them to stay put while they waited for P/Insp. Llamas.

When P/Insp. Llamas arrived, he asked Malazo's mother what was inside her pocket. Malazo's mother answered that it was money that she collected. Malazo's mother was ordered to put all her money inside a basin. Her money amounting to PhP 1,150.00 consisted of the following: two Five Hundred Peso (PhP 500.00) bills; one One Hundred Peso (PhP 100.00) bill; and coins totalling ₱50.00. The police officers compared the confiscated bills from Malazo's mother with the photocopied bills and confirmed that they matched.

Malazo and her mother were then dragged to the police station and when Malazo resisted, stating that nothing was confiscated from her, the police officers pointed a gun at her and her child.

At the police station, the police officers crumpled a piece of paper which was the photocopy of the bills and threw it afterwards

in the garbage can. As a replacement, the confiscated bills from Malazo's mother were reproduced.

Malazo's mother alleged that P/Insp. Llamas was implicating them in the crime merely because they refused to cooperate when P/Insp. Llamas asked them to give the names of the big-time drug pushers in their area.

The Ruling of the RTC

In its Joint Decision dated 3 November 2011, the RTC found Malazo guilty beyond reasonable doubt of violating Sections 5 and 11 of Article II of RA 9165. The dispositive portion reads:

> WHEREFORE, judgement is hereby rendered in:
>
> 1. Crim. Case No. 2008-0225[-D] finding accused Rodelina Malazo y Doria GUILTY beyond reasonable doubt with Violation of Art. [II], Sec. 5 of RA 9165 otherwise known as the Dangerous Drugs Act of 2002 and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of Five Hundred Thousand (PhP 500,000.00) Pesos; and,
>
> 2. Crim. Case No. 2008-0226[-D] finding accused Rodelina Malazo y Doria GUILTY beyond reasonable doubt with Violation of Art. [II], Sec. 11 of RA 9165 otherwise known as the Dangerous Drugs Act of 2002 and is hereby sentenced to suffer imprisonment ranging from twelve (12) years and one (1) [day] to twenty (20) years and a fine of Three Hundred Thousand Pesos (PhP 300,000.00).
>
> The subject four (4) plastic sachets of shabu are hereby ordered disposed of in accordance with law.
>
> SO ORDERED.[7]

The RTC held that the prosecution, through the testimony of P/Insp. Cabaddu, was able to establish positively the events that took place on 28 April 2008. Furthermore, the qualitative examination conducted by P/SInsp. Malojo on the contents of the subject four heat-sealed plastic sachets "gave POSITIVE results to the tests for the presence of Methamphetamine

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[7] CA *rollo*, p. 16.

Hydrochloride, a dangerous drug."[8] Between P/Insp. Cabaddu's positive testimony and Malazo's bare denial, the RTC found the former more credible.

As for Malazo's mother, Marcelina Doria, she admitted during her testimony that she was acquitted in the first case in the sale and delivery of dangerous drugs. In the second case, regarding the possession of dangerous drugs, the case was dismissed by the Office of the Prosecutor.

The Ruling of the Court of Appeals

In its Decision dated 27 January 2014, the Court of Appeals held that the elements of sale and delivery of dangerous drugs under Section 5, Article II of RA 9165, and possession of dangerous drugs under Section 11, Article II of the same law were duly established by the evidence offered and submitted by the prosecution.

Furthermore, the Court of Appeals held that the procedural rule laid down in Section 21 of RA 9165 is not an iron-clad rule and that non-observance of the said rule does not automatically translate into an acquittal. The Court of Appeals held:

> An astute perusal of the records of the instant case would affirm that there was substantial compliance with the law and the integrity of the drug seized from accused-appellant was preserved. Contrary to accused- appellant's claim, there was no broken chain in the custody of the seized item, found to be shabu, from the time when P/Insp. Cabaddu seized the shabu up to the time when it was turned over to the Forensic Chemist of the PNP Crime Laboratory Office for laboratory examination.[9]

The dispositive portion of the Court of Appeals' Decision reads:

> WHEREFORE, in view of the foregoing premises, judgement is hereby rendered by us DENYING the appeal filed in this case. The

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[8] *Id*. at 15.

[9] *Rollo*, p. 14.

Joint Decision dated November 3, 2011 rendered by Branch 44 of the Regional Trial Court in Dagupan City in Criminal Case Nos. 2008-0225-D and 2008-0226-D is hereby AFFIRMED.

SO ORDERED.[10]

The Issue

Whether or not Malazo is guilty of violating Sections 5 and 11, Article II of RA 9165.

The Ruling of this Court

The appeal is meritorious. The prosecution failed to prove the guilt of Malazo beyond reasonable doubt.

Malazo alleged that the Court of Appeals "failed to take into account the glaring lapses which the prosecution witnesses committed from the time the alleged illegal drugs were seized from [Malazo] up to the time the same were presented in court, thereby resulting in a broken chain of custody."[11]

The recent case of *People v. Lim*[12] discussed the importance of the chain of custody rule which adheres to the principle that "real evidence must be authenticated prior to its admission into evidence."[13] This is in accordance with Section 21(1), Article II of RA 9165, as amended by Section 1 of Republic Act No. 10640.[14] However, the original provision of Section 21(1) still applies to this case because the alleged crime was committed in 2008 prior to the amendment of the law in 2014. Section 21(1) thus reads:

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[10] *Id*. at 16.

[11] CA *rollo*, p. 64.

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

[13] *People v. Lim*, *id*., citing *United States v. Rawlins*, 606 F.3d 73 (2010).

[14] 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."

Section 21. x x x.

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

Section 21(a) of the Implementing Rules and Regulations (IRR) of RA 9165 reads:

Section 21. x x x.

> (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 personls 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 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;

The original provision of Section 21(1) enumerates the four persons who need to be present during the physical inventory and taking of photograph of the drugs after the apprehending team seizes and confiscates the same. These are: (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel; (2) a representative from the media; (3) a representative from the DOJ; and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. The presence of these persons will guarantee "against planting of evidence and

frame up." They are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[15]

In the present case, P/Insp. Cabaddu testified that the seized illegal drugs were physically inventoried and photographed in the presence of Malazo and an elected public official at the place of arrest. However, there were no representatives from the media and the DOJ, and the elected public official failed to sign the copies of the inventory, in this case the confiscation receipt, and was not given copies thereof, as required by Section 21 of RA 9165 and its IRR. The absence of these requirements is glaring from the testimony of P/Insp. Cabaddu when he was questioned in court by Public Prosecutor Julie Namoro:

Q: After you have arrested the two (2) accused Rodelina Malazo and Marcelina Doria, what did you do next?
A: I prepared the confiscation receipt.

x x x x x x x x x

Q: After you have prepared the confiscation receipt, what else did you do, if there was any?
A: We brought the suspect [to] the Dagupan City Police Station to conduct another investigation and prepare the filing of these cases.

x x x x x x x x x

Q: And, with the items which you said that you were in possession [of], what did you do with those items?
A: After preparing all the documents, [I gave the case folder] to PO2 Carvajal to bring the items to the crime laboratory.

Q: Before giving [them] to PO2 Carvajal what did you do with the items recovered from the accused and the one [which is] the subject matter of the filing, if there was any?
A: I [took a picture of] the items, ma'am.

x x x x x x x x x

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[15] *People v. Señeres*, G.R. No. 231008, 5 November 2018, citing *People v. Sagana*, G.R. No. 208471, 2 August 2017, 834 SCRA 225.

Q: You also mention[ed] the pictures, whose pictures [are you] referring to?
A: The pictures of the suspect, witness Kagawad and the items seized.

x x x x x x x x x

Q: You said that after you have prepared the documents, you turned over the items subject matter of these cases to PO2 Carvajal, why did you turn over the same to PO2 Carvajal?
A: I assigned him to bring the items to the crime laboratory for laboratory examination, Your Honor.[16]

According to Section 21(a) of the IRR, non-compliance with the procedure shall not render void and invalid the seizure and custody of the drugs only when: (1) such non-compliance was under justifiable grounds; and (2) the integrity and the evidentiary value of the seized items are properly preserved by the apprehending team.

After a perusal of the records of this case, we find that the apprehending team not only failed to secure the attendance of persons from the media and the DOJ, and to secure the signature of the elected public official on the copies of the inventory, the prosecution also failed to state the justification for non-compliance and the explanation that the integrity and evidentiary value of the seized items were properly preserved by the apprehending team. Although P/Insp. Cabbadu and the rest of the apprehending team were not directly questioned about the initial control and custody of the seized drugs, we can infer from the testimony above that the apprehending team failed to follow the requirements under Section 21(1) of RA 9165 and Section 21(a) of the IRR. On this ground, we have no recourse but to reverse the Court of Appeals since the seizure and custody of the drugs were void and invalid.

As a final reminder, we laid down guidelines in *People v. Lim*[17] that must be followed in order that the provisions of

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[16] TSN, 24 August 2010, pp. 7-8, 11-12.

[17] *Supra* note 12.

Section 21 of RA 9165, as amended, be well-enforced and duly proven in courts:

1. In the sworn statements/affidavits, the apprehending/seizing officers must state their compliance with the requirements of Section 21(1) of R.A. No. 9165, as amended, and its IRR.
2. In case of non-observance of the provision, the apprehending/seizing officers must state the justification or explanation therefor as well as the steps they have taken in order to preserve the integrity and evidentiary value of the seized/confiscated items.
3. If there is no justification or explanation expressly declared in the sworn statements or affidavits, the investigating fiscal must not immediately file the case before the court. Instead, he or she must refer the case for further preliminary investigation in order to determine the (non) existence of probable cause.
4. If the investigating fiscal filed the case despite such absence, the court may exercise its discretion to either refuse to issue a commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Section 5, Rule 112, Rules of Court.

It must be noted that the above-mentioned guidelines are prospective in nature. This was explained in the Court's Resolution, dated 13 November 2018, in *People v. Lim*. The Court stated:

x x x. Thus, in order to weed out early on from the courts' already congested docket any orchestrated or poorly built up drug-related cases, the following should **henceforth** be enforced as a mandatory policy:

x x x x x x x x x

Synonymous to "henceforth" are "from now on," "from this point forward," "henceforward," "afterward," "later," "subsequently," "hereupon" or "thereupon." **Without doubt, the mandatory policy in *Lim* is applicable only to drug cases under R.A. No. 9165, as amended by R.A. No. 10640, filed in court after the promulgation of *Lim* on September 4, 2018.**

x x x. Such policy does not apply to cases filed before the promulgation of *Lim* where the accused has already been arraigned and is undergoing continuous trial, because the justifiable reasons for non-compliance with Section 21, R.A. No. 9165, as amended by R.A. No. 10640, can still be established during trial. Non-compliance with the policy in *Lim* is not a ground for acquittal based on reasonable doubt or violation of the chain of custody rule, which can only be decreed after trial, or pursuant to a demurrer to evidence under Section 23, Rule 119 of the Rules of Court.[18] (Emphasis supplied)

Recent jurisprudence has expounded on the policy by consistently ruling that the prosecution must at least adduce a justifiable reason for non-observance of the rules or show a genuine and sufficient effort to secure the required witnesses, in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also **clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item**. We reiterate that a stricter adherence to this rule is required especially when the quantity of the illegal drugs is miniscule since it is highly susceptible to planting, tampering, and alteration.[19] The apprehending team may, but is not limited to, use any of the following reasons for failing to obtain the required witnesses, as held in *People v. Sipin*:[20]

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official[s] themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts

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[18] *Id*.

[19] *People v. Señeres*, G.R. No. 231008, 5 November 2018, citing *People v. Saragena*, G.R. No. 210677, 23 August 2017, 837 SCRA 529 and *People v. Abelarde*, G.R. No. 215713, 22 January 2018.

[20] G.R. No. 224290, 11 June 2018.

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.

There being no justifiable reason for the non-compliance with Section 21, RA 9165, we find it necessary to acquit Malazo for failure of the prosecution to prove Malazo's guilt beyond reasonable doubt.

WHEREFORE, the Decision dated 27 January 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05371, affirming the 3 November 2011 Joint Decision of the Regional Trial Court, Dagupan City, Branch 44 in Criminal Case Nos. 2008-0225-D and 2008-0226-D finding appellant Rodelina Malazo *y* Doria guilty of violating Sections 5 and 11, Article II of Republic Act No. 9165, is **REVERSED and SET ASIDE**. Appellant Malazo is **ACQUITTED** for failure of the prosecution to prove her guilt beyond reasonable doubt. She is ordered **IMMEDIATELY RELEASED** from detention, unless she is confined for any other lawful case.

Let a copy of this Decision be furnished the Superintendent of the Correctional Institution for Women in Mandaluyong City, for immediate implementation. Said Superintendent is ordered to report to this Court within five (5) working days from receipt of this Decision the action she has taken.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Hernando*,[*] *JJ.*, concur.

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[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

SECOND DIVISION

[G.R. No. 228718. January 7, 2019]

EDWIN FUENTES *y* GARCIA @ "KANYOD," *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND/OR POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY TO ESTABLISH THE IDENTITY OF THE DANGEROUS DRUG WITH MORAL CERTAINTY. — In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal. To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires that the apprehending team, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media *AND* the Department of Justice (DOJ), and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

2. ID.; ID.; ID.; ID.; RULE IN CASE OF NON-COMPLIANCE.— [T]he Court has recognized that due to varying field conditions,

strict compliance with the chain of custody procedure may not always be possible. As such, deviations from the procedure may be allowed, 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. x x x [I]nsofar as an actual court proceeding is concerned, it is the compliance with the chain of custody procedure, or the presence of justifiable reasons for non-compliance, which must be proved; in this relation, it is the *procedure of proving the same* which is prescribed in the ordinary rules of evidence, which is, on the other hand, what our courts have discretion over. Thus, when a court finds that non-compliance with the chain of custody rule is allowable, it does not exercise its discretion to relax a Court-issued rule; rather, it determines that the prosecution was able to prove that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. In so doing, the court only applies the saving-clause found in the law.

3. **REMEDIAL LAW; CRIMINAL PROCEDURE; EFFECT OF APPEAL BY ANY OF SEVERAL ACCUSED. —** [I]t must be pointed out that although petitioner's co-accused, Calotes, no longer joined in filing the instant petition, the Court nevertheless deems it proper to likewise acquit him of the crime charged. This is because the criminal case against Calotes arose from the same set of facts as the case against petitioner and that such acquittal is definitely favorable and beneficial to him. Section 11 (a), Rule 122 of the Revised Rules on Criminal Procedure states that: Section 11. *Effect of appeal by any of several accused.*– (a) An appeal taken by one or more of several accused shall not affect those who did not appeal, **except insofar as the judgment of the appellate court is favorable and applicable to the latter**.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated April 15, 2016 and the Resolution[3] dated December 9, 2016 of the Court of Appeals (CA) in CA G.R. CR No. 36556, which affirmed the Judgment[4] dated March 13, 2014 of the Regional Trial Court of Muntinlupa City, Branch 204 (RTC) in Criminal Case Nos. 06-789 and 06-790 finding petitioner Edwin Fuentes *y* Garcia @ "Kanyod" (petitioner) and Nicky Calotes *y* Valenzuela @ "Jojo" (Calotes) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[6] filed before the RTC separately charging petitioner and Calotes with Illegal Possession of Dangerous Drugs.[7]

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[1] Dated February 3, 2017. *Rollo*, pp. 10-31.

[2] *Id*. at 33-45. Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Ramon M. Bato, Jr. and Manuel M. Barrios, concurring.

[3] *Id*. at 47-50.

[4] *Id*. at 65-76. Penned by Presiding Judge Juanita T. Guerrero.

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

[6] See Informations in Criminal Case No. 06-789 charging petitioner with violation of Section 11, Article II of RA 9165 (records, p. 1) and in Criminal Case No. 06-780 charging Calotes with violation of Section 11, Article II of RA 9165 (*id*. at 2).

[7] See *rollo*, pp. 34-35.

The prosecution alleged that at around 2:30 in the afternoon of August 25, 2006, Police Officer 1 Mark Sherwin Forastero (PO1 Forastero), Senior Police Officer 1 Benjamin Madriaga (SPO1 Madriaga), and several other members[8] of the Station Anti-Illegal Drugs-Special Operations Task Force (SAID-SOTF) of the Philippine National Police (PNP), after coordination with the Philippine Drug Enforcement Agency,[9] went to Barangay Bayanan, Muntinlupa to conduct a surveillance on certain persons suspected of illegal drug peddling, including herein petitioner.[10] Upon arrival at the area, PO1 Forastero and SPO1 Madriaga entered an alley near the Philippine National Railways (PNR) site, where they saw Calotes in the act of handing petitioner what appeared to be a plastic sachet containing white crystalline substance. Immediately, PO1 Forastero grabbed Calotes and confiscated a plastic sachet from him while SPO1 Madriaga apprehended petitioner from whom he recovered two (2) more plastic sachets. They then proceeded to the SAID-SOTF headquarters in Muntinlupa City,[11] where PO1 Forastero and SPO1 Madriaga marked the seized plastic sachets, and conducted an inventory thereof in the presence of Nestor T. Gianan (Gianan), the City Architect of Muntinlupa City.[12] After preparing a request for laboratory examination[13] of the seized items, PO1 Forastero together with SPO1 Madriaga[14] brought the said request and the seized items to the crime laboratory,[15] where a qualitative examination conducted by Police Inspector May Andrea A.

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[8] The other members were: SPO1 Joel Dela Vega as the team leader, PO3 Felix Paor, PO3 Marimel Tan, PO1 Nomer Mendoza, PO1 Joey Tan, PO1 Rondivar Hernaez, and PO1 Glen Gonzalez (see Pre-Operation Report/ Coordination Sheet dated August 25, 2006; records, p. 8).

[9] See Certificate of Coordination dated August 25, 2006; records, p. 9.

[10] See *rollo*, p. 35.

[11] See *rollo*, pp. 35-36.

[12] See Certificate of Inventory dated August 25, 2006; records, p. 7.

[13] Dated August 25, 2006. *Id*. at 12.

[14] See TSN, March 22, 2007, p. 14 and TSN, September 20, 2007, p. 20.

[15] See *rollo*, p. 36.

Bonifacio (P/Insp. Bonifacio) on the specimens yielded positive for methamphetamine hydrochloride or "*shabu*," a dangerous drug.[16]

In defense, petitioner and Calotes denied the charges against them and claimed that the seized drugs were planted evidence. Although they admitted being at the PNR site at the time and date alleged by the arresting officers, they, however, denied engaging in any illegal activity and instead, averred that petitioner was merely paying off his debt to Calotes when the police apprehended them. They maintained that the police recovered nothing from them when they were bodily searched. Nonetheless, they were brought to the police station, made to undergo a drug test, and charged with violation of Section 11, Article II of RA 9165.[17]

The RTC Ruling

In a Judgment[18] dated March 13, 2014, the RTC found petitioner and Calotes guilty beyond reasonable doubt of violation of Section 11, Article II of RA 9165 and sentenced each of them to suffer the penalty of imprisonment for twelve (12) years and one (1) day as minimum to fourteen (14) years as maximum and to pay a fine in the amount of ₱300,000.00.[19] Citing Section 5 (a),[20] Rule 113 of the Rules of Court, the RTC found

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[16] See Physical Science Report No. D-577-06S dated August 25, 2006; records, p. 11. The contents of the marked plastic sachets are as follows: "EF-1" contained 0.02 gram; "EF-2" contained 0.03 gram; and "NC" contained 0.03 gram.

[17] See *id*. at 36-37.

[18] *Id*. at 65-76.

[19] *Id*. at 76.

[20] Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure reads:

Section 5. *Arrest without warrant; when lawful.* – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense[.]

that the warrantless arrest of petitioner and Calotes was valid, and as such, the plastic sachets seized from them were admissible in evidence.[21] Further, the RTC held that the prosecution was able to establish all the elements of the crime charged, and the arresting officers — pursuant to Section 21 (a) of RA 9165. and its Implementing Rules and Regulations (IRR) — took the necessary steps to preserve the integrity of the seized items.[22] Aggrieved, petitioner and Calotes appealed to the CA.

The CA Ruling

In a Decision[23] dated April 15, 2016, the CA denied petitioner and Calotes' appeal and affirmed their conviction,[24] sustaining the RTC's finding that all the elements of the crime charged had been established by the prosecution. It likewise upheld the validity of their warrantless arrest, and further found that the integrity of the seized items had been preserved as the chain of custody thereof had been observed despite their marking at the police station. Likewise, the specimens were brought to the crime laboratory and examined on the same date.[25]

Dissatisfied, petitioner and Calotes moved for reconsideration,[26] which was, however, denied in a Resolution[27] dated December 9, 2016; hence, this petition filed only by petitioner.[28]

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[21] See *rollo*, pp. 72-74.

[22] See *id*. at 74-76.

[23] *Id*. at 33-45.

[24] *Id*. at 44.

[25] See *id*. at 41-43.

[26] Dated May 13, 2016; *id*. at 87-96.

[27] *Id*. at 47-50.

[28] *Id*. at 10-31.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA correctly upheld petitioner's conviction for the crime of Illegal Possession of Dangerous Drugs.

The Court's Ruling

The petition is meritorious.

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165,[29] 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.[30] 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.[31]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link

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[29] 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]).

[30] 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).

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

of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[32] As part of the chain of custody procedure, the law requires that the apprehending team, immediately after seizure and confiscation, conduct a physical inventory and photograph the seized items 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";[33] or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service *OR* the media."[34] 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."[35]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[36] As such, deviations from the procedure may be allowed, 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.[37] The foregoing is based

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[32] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 29; *People v. Sanchez*, *supra* note 29; *People v. Magsano*, *supra* note 29; *People v. Manansala*, *supra* note 29; *People v. Miranda*, *supra* note 29; and *People v. Mamangon*, *supra* note 29. See also *People v. Viterbo*, *supra* note 31.

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

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

[35] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

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

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

on the saving clause found in Section 21 (a),[38] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[39]

At this juncture, the Court takes this opportunity to clarify that compliance with the chain of custody rule is not a mere technical rule of procedure that courts may, in their discretion, opt to relax. In the first place, the chain of custody procedure is embodied in statutory provisions which were "crafted by Congress as safety precautions to address potential police abuses [in drugs cases], especially considering that the penalty imposed may be life imprisonment."[40] It is not a Supreme Court - issued rule of procedure created under its constitutional authority to "[p]romulgate rules concerning the protection and enforcement of constitutional rights, pleading, practice, and procedure in all courts." Rather, it is an administrative protocol that law enforcement officers and operatives are enjoined to implement as part of their police functions. Indeed, while the chain of custody rule is "procedural" in the sense that it sets a step-by-step process that must be followed, it is *by no means remedial in nature* since it is not, properly speaking, a requirement or process that pertains to court litigation.

At most, insofar as an actual court proceeding is concerned, it is the compliance with the chain of custody procedure, or the presence of justifiable reasons for non-compliance, which must be proved; in this relation, it is the *procedure of proving*

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[38] 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**."

[39] Section 1 of RA 10640 pertinently states: "***Provided, finally*, That non-compliance 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**."

[40] *People v. Umipang*, *supra* note 31, at 1038.

the same which is prescribed in the ordinary rules of evidence, which is, on the other hand, what our courts have discretion over. Thus, when a court finds that non-compliance with the chain of custody rule is allowable, it does not exercise its discretion to relax a Court-issued rule; rather, it determines that the prosecution was able to prove that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[41] In so doing, the court only applies the saving-clause found in the law.[42]

It deserves pointing out that the mandatory nature of the chain of custody rule traces its roots to, as earlier stated, the peculiarity of drugs cases in that the seized drugs constitute the "body of the crime." The chain of custody rule is the administrative mechanism established by legislature to ensure an acceptable level of certainty with respect to the drugs' integrity and evidentiary value. Hence, failure to comply or failure to justify non-compliance means that this level of certainty has not been satisfied, and as a result, conjures reasonable doubt on an indispensable element of the crime. This is the reason why the law states "non-compliance with the requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items," which inversely stated, effectively means that the seizure and custody over the items are rendered void and invalid by the non-compliance with

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[41] See *People v. Almorfe*, *supra* note 37, at 59-60.

[42] Notably, RA 9165 did not originally contain the above-stated saving clause (see *supra* note 38) as the same was only introduced in Section 21 (a), Article II of RA 9165's IRR. Nevertheless, it is well-settled that "[a]dministrative regulations enacted by administrative agencies to implement and interpret the law which they are entrusted to enforce have the force of law and are entitled to respect. Such rules and regulations partake of the nature of a statute and are just as binding as if they have been written in the statute itself" (*ABAKADA Guro Party List v. Purisima*, 584 Phil. 246, 283 [2008]). As it now stands, however, the saving clause has been crystallized into statutory law when it was adopted into the text of RA 9165 pursuant to its amendment by RA 10640.

these requirements, *unless* the non-compliance is under justifiable grounds, and that the integrity and the evidentiary value of the seized items are properly preserved. Overall, it may therefore be said that the foundational bearings of the chain of custody rule, owing to the peculiar treatment of the *corpus delicti* in drugs cases, hearken to the accused's presumption of innocence,[43] and thus, flesh out safeguards therefor. It is this signification that firmly confirms the nature of the chain of custody rule as a matter of substantive law, and not a mere technical rule of court procedure.

In this case, petitioner is charged with Illegal Possession of Dangerous Drugs. However, records disclose glaring and unjustifiable deviations from the chain of custody procedure, as follows:

First, prosecution witnesses PO1 Forastero[44] and SPO1 Madriaga[45] both testified that they were in possession of the plastic sachets confiscated from petitioner and Calotes, with SPO1 Madriaga keeping in his possession the two (2) plastic sachets seized from petitioner. They likewise testified[46] that they marked the seized items in the police station and after a request for laboratory examination had been prepared, both of

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[43] Section 14 (2), Article III of the 1987 Constitution states:

Section 14. x x x

(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

[44] See TSN, March 22, 2007, pp. 9-10.

[45] See TSN, September 20, 2007, p. 13.

[46] See TSN, March 22,2007, p. 11 and TSN, September 20, 2007, pp. 15-17.

them went to the PNP Crime Laboratory to deliver the said request and the seized items.

Unfortunately, PO1 Forastero and SPO1 Madriaga failed to identify *who* received the request for laboratory examination and the seized items at the crime laboratory. Records show that before the specimens were handled by and subjected to qualitative examination by P/Insp. Bonifacio, the forensic chemist, the items were received by a certain "Relos," as clearly reflected on the lower left hand portion[47] of the request for laboratory examination. Neither has it been established who handled the same before and after P/Insp. Bonifacio rendered her findings until the same had been presented in court as evidence for purposes of identification.

Second, although the arresting officers prepared a Certificate of Inventory at the police station immediately after the arrest, the records are bereft of evidence showing that the seized items were photographed, much more in the presence of petitioner, or his representative or counsel, as well as the witnesses required by law.

And finally, there was also a deviation from the witness requirement as the conduct of inventory was not witnessed by an *elected* public official, a DOJ representative, and a media representative. This may be gleaned from the Certificate of Inventory which shows that the same was witnessed only by City Architect Gianan, who is not considered as an *elected* public official. This fact is further confirmed by SPO1 Madriaga, who testified that:

[Atty. Balbaguio]: Did you conduct an inventory, Mr. Witness?

[SPO1 Madriaga]: Yes, ma'am.

Q: Who were present?

A: The accused, the witness and other operatives.

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[47] Records, p. 12.

Q: There was no elected official present?

A: None, ma'am.

x x x x x x x x x

[Fiscal Baybay]: What about the inventory[,] why did you not have it signed by a barangay official or elected official?

[SPO1 Madriaga]: No available official at that time only the city architect of the City Government of Muntinlupa.

x x x x x x x x x[48]

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.[49] As the Court sees it, the prosecution did not faithfully comply with these standards and unfortunately, failed to justify non-compliance. As such, the Court is constrained to conclude that the integrity and evidentiary value of the seized drugs have been compromised, which perforce warrants petitioner's acquittal.

As a final note, it must be pointed out that although petitioner's co-accused, Calotes, no longer joined in filing the instant petition, the Court nevertheless deems it proper to likewise acquit him of the crime charged. This is because the criminal case against Calotes arose from the same set of facts as the case against petitioner and that such acquittal is definitely favorable and beneficial to him.[50] Section 11 (a), Rule 122 of the Revised Rules on Criminal Procedure states that:

Section II. *Effect of appeal by any of several accused.* –

(a) An appeal taken by one or more of several accused shall not affect those who did not appeal, **except insofar as the judgment of**

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[48] TSN, February 14, 2008, pp. 8-9.

[49] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018.

[50] See *People v. Lidasan*, G.R. No. 227425, citing *People v. Valdez*, 703 Phil. 519, 528-530 (2013).

the appellate court is favorable and applicable to the latter. (Emphasis supplied)

WHEREFORE, the petition is **GRANTED**. The Decision dated April 15, 2016 and the Resolution dated December 9, 2016 of the Court of Appeals in CA G.R. CR No. 36556 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Edwin Fuentes *y* Garcia @ "Kanyod" and Nicky Calotes *y* Valenzuela @ "Jojo" 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,[*] *Acting C.J.* (*Chairperson*), *Caguioa, Reyes, J. Jr.*, and *Hernando,*[**] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 233883. January 7, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARK VINCENT CORRAL *y* BATALLA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL SALE AND/OR ILLEGAL POSSESSION

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[*] Designated Acting Chief Justice per Special Order No. 2631 dated December 28, 2018.

[**] Designated Additional Member per Special Order No. 2629 dated December 18, 2018.

OF DANGEROUS DRUGS; IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY.— In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.

2. ID.; ID.; ID.; CHAIN OF CUSTODY; PROCEDURE. — 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 Department of Justice (DOJ), and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service ***or*** the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; ID.; STRICT COMPLIANCE REQUIRED; RULE IN CASE OF NON-COMPLIANCE. — 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.; ID.; NON-COMPLIANCE OF WITNESS REQUIREMENT MAY BE PERMITTED IF GENUINE AND SUFFICIENT EFFORTS WERE EXERTED TO SECURE THE PRESENCE OF SUCH WITNESSES ALBEIT 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.

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 April 21, 2017 of the Court of Appeals (CA) in CA-G.R. CR HC No. 08296, which affirmed the Judgment[3] dated March 31, 2016 of the Regional Trial Court of Calamba City, Branch 37 (RTC) in Criminal Case Nos. 21304-2013-C, 21305-2013-C, and 21306-2013-C finding accused-appellant Mark Vincent Corral *y* Batalla (accused-appellant) 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."

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[1] See Notice of Appeal dated May 4, 2017; *rollo,* 19-21.

[2] *Id*. at 2-18. Penned by Associate Justice Magdangal M. De Leon with Associate Justices Elihu A. Ybañez and Carmelita A. Salandanan Manahan, concurring.

[3] CA *rollo,* pp. 47-61. Penned by Presiding Judge Caesar C. Buenagua.

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

The Facts

This case stemmed from three (3) Informations[5] filed before the RTC charging accused-appellant of the crimes of Illegal Sale of Dangerous Drugs and Illegal Possession of Drugs and of Drug Paraphernalia. The prosecution alleged that at around 6:30 p.m. of August 24, 2013, members of the Calamba City Police Station successfully conducted a buy-bust operation against accused-appellant, during which a small plastic sachet containing 0.03 gram of white crystalline substance[6] was recovered from him. When accused-appellant was frisked after his arrest, SPO1 Lorenzo Colinares (SP01 Colinares) was able to seize another plastic sachet containing 0.18 gram of white crystalline substance[7] from his possession. SPOl Colinares likewise recovered a crumpled aluminum foil strip and a glass tooter on the table inside accused-appellant's house.[8] The police officers then took accused-appellant and the seized items to the barangay hall, where the marking, inventory, and photography were conducted in the presence of Barangay Captain Antonino P. Trinidad (Trinidad).[9] Thereafter, accused- appellant and the seized items were brought to the police station, and eventually, said items were brought to the crime laboratory, which, after examination, tested positive for the presence of methamphetamine hydrochloride or *shabu,* a dangerous drug.[10]

For his part, accused-appellant claimed that at around six (6) o'clock in the evening of August 24, 2013, he was at home

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[5] See Information in Crim. Case No. 21306-13-C dated August 27, 2013, records (Crim. Case No. 21306-13-C), p. 1; Information in Crim. Case No. 21305-2013-C dated August 27, 2013, records (Crim. Case No. 21305-2013-C), p. 1; Information in Crim. Case No. 21304-13-C dated August 27, 2013, records (Crim. Case No. 21304-13-C), p. 1.

[6] See Chemistry Report No. D-599-13 dated August 25, 2013; records, p. 18. See also TSN, January 23, 2015, p.10.

[7] *Id*. See also TSN, January 23, 2015, pp. 10-11.

[8] TSN, January 23, 2015, p. 11.

[9] *Id*. at 14.

[10] Records, 18.

taking care of his children when, suddenly, police officers barged into his house and asked if he was Mark Vincent Batalla. When he answered in the affirmative, the police officers punched him on his side, searched the premises, took his wallet and cellular phone, brought him outside, and thereafter, ordered him to board a vehicle. Inside the vehicle, he was directed to tell the whereabouts of another person. When he failed to disclose such details, he was detained at the police station.[11]

In a Decision[12] dated March 31, 2016, the RTC found accused-appellant guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs, and accordingly, sentenced him to suffer the penalty of life imprisonment, and to pay a fine of ₱500,000.00.[13] However, he was acquitted of Illegal Possession of Dangerous Drugs and of Drug Paraphernalia for failure of the prosecution to prove his guilt beyond reasonable doubt.[14] As for his conviction, the RTC ruled that the prosecution was able to establish that accused-appellant was engaged in the sale of illegal drugs through a buy-bust operation, and that the integrity of the items seized, marked, identified, examined, and presented in evidence was preserved.[15] Aggrieved, accused-appellant appealed[16] to the CA.

In a Decision[17] dated April 21, 2017, the CA affirmed the RTC ruling. It agreed with the trial court's finding that there was substantial compliance with the chain of custody requirement since the inventory and photography of the seized items were witnessed by accused-appellant and a barangay official. It

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[11] *Rollo,* pp. 8-9.

[12] CA *rollo,* pp. 47-61.

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

[14] See *id*. at 57-60.

[15] *Id*. at 52-57.

[16] See Notice of Appeal dated April 8, 2016; *id*. at 15. See also Order dated April 13, 2016; *id*. at 16.

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

likewise gave credence to the testimonies of the police officers which have in their favor the presumption of regularity in the performance of their official duties, and hence, should prevail over accused-appellant's defenses of frame-up and denial.[18] Dissatisfied, accused-appellant filed the instant appeal.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly upheld accused-appellant's 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,[19] 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.[20] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove

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[18] *Id.* at 11-17.

[19] 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]).

[20] 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).

the guilt of the accused beyond reasonable doubt and, hence, warrants an aquittal.[21]

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.[22] 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."[23] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[24]

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

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

[22] See *People v. Ano,* G.R. No. 230070, March 14, 2018; *People v. Crispo, supra* note 19; *People v. Sanchez, supra* note 19; *People v. Magsano, supra* note 19; *People v. Manansala, supra* note 19; *People v. Miranda, supra* note 19; and *People v. Mamangon, supra* note 19. See also *People v. Viterbo, supra* note 20.

[23] *People v. Mamalumpon,* 767 Phil. 845, 855 (2015), citing *lmson v. People,* 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia,* 718 Phil. 330, 348 (2013), citing *People v. Resurreccion,* 618 Phil. 520, 532 (2009).

[24] See *People v. Tumulak,* 791 Phil. 148, 160-161 (2016); and *People v. Rollo,* 757 Phil. 346, 357 (2015).

prior to the amendment of RA 9165 by RA 10640,[25] a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official;[26] 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.[27] 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."[28]

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."[29] 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."[30]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[31] As such, the failure of the apprehending team to strictly comply with the same would

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

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

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

[28] See *People v. Miranda, supra* note 19. See also *People v. Mendoza,* 736 Phil. 749, 764 (2014).

[29] 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 21, at 1038.

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

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

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.[32] The foregoing is based on the saving clause found in Section 21 (a),[33] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[34] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[35] 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.[36]

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.[37] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses,

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

[33] 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."**

[34] 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."**

[35] *People v. Almorfe, supra* note 32.

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

[37] See *People v. Manansala, supra* note 19.

are unacceptable as justified grounds for non-compliance.[38] 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.[39]

Notably, the Court, in *People v. Miranda*,[40] 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."[41]

After the 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 items were not conducted in the presence of the representatives from the media and DOJ. This lapse is made evident by the Receipt of Physical Inventory,[42] which only confirms the presence of Trinidad (an elected public official), and further confirmed by the testimonies of the poseur-buyer, SPOl Colinares, and a back-up officer, PO2 Renato Cuevas (PO2 Cuevas), to wit:

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[38] See *People v. Gamboa, supra* note 21, citing *People v. Umipang, supra* note 21, at 1053.

[39] See *People v. Crispo, supra* note 19.

[40] *Supra* note 19.

[41] See *id*.

[42] Dated August 24, 2013; records, p. 14.

SPO1 LORENZO COLINARES

[Atty. Beverly Anne Quintos]: At the Barangay Hall, you said you conducted Inventory, correct?
[SPO1 Colinares]: Yes, ma'am.

Q: You conducted Inventory after you marked the specimen, correct?
A: Yes, ma'am.

Q: And according to the Inventory you made, you failed to indicate the markings of the said specimen?
A: Yes, ma'am. No markings.

Q: Despite testifying that you already marked the said specimen you did not indicate the markings on your inventory?
A: Yes, ma'am.

Q: You have all the time in the world in your police station to actually get the signature of the accused as well as the DOJ representative and the media representative but still you failed to do that, correct?
A: Yes, ma'am.

Q: You failed to comply with the provisions of Sec. 21, correct?
A: Yes, ma'am. There is no signature ofthe media representative and the DOJ representative but the Barangay Official there was[43]

PO2 RENATO CUEVAS

[Atty. Beverly Anne Quintos]: Would you agree with me that you made this inventory without the presence of a DOJ representative, the media representative, and the accused in this case?
[PO2 Cuevas]: Yes, ma'am.

Q: And this in turn violates the provision of Sec. 21, Art. 11 of RA 9165, correct?
A: Yes, ma'am.[44]

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

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[43] TSN, October 7, 2015, p. 12.

[44] TSN, February 3, 2016, p. 14.

and sufficient efforts were exerted by the police officers to secure their presence. Here, while the prosecution witnesses acknowledged the absence of the representatives from the media and DOJ in the aforesaid conduct, they failed to provide any justification for said absence. Worse, there is no showing that they even tried to contact said witnesses. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from accused-appellant were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated April 21, 2017 of the Court of Appeals in CA-G.R. CR HC No. 08296 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Mark Vincent Corral *y* Batalla 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,[*] *Acting C.J.* (*Chairperson*), *Caguioa, Reyes, J. Jr.,* and *Hernando,*[**] *JJ.,* concur.

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[*] Designated Acting Chief Justice per Special Order No. 2631 dated December 28, 2018.

[**] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

THIRD DIVISION

[G.R. No. 234156. January 7, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EMMANUEL OLIVA *y* JORJIL, BERNARDO BARANGOT *y* PILAIS and MARK ANGELO MANALASTAS *y* GAPASIN,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— Under Section 5, Article II of R.A. No. 9165 or illegal sale of prohibited drugs, in order to be convicted of the said violation, the following must concur: (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor. In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.— [U]nder Section 11, Article II of R.A. No. 9165 or illegal possession of dangerous drugs, the following must be proven before an accused can be convicted: [1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.

3. ID.; ID.; SECTION 21 THEREOF; CHAIN OF CUSTODY RULE; THE ILLEGAL DRUG MUST BE PRODUCED BEFORE THE COURT AS EXHIBIT AND THAT WHICH WAS EXHIBITED MUST BE THE VERY SAME SUBSTANCE RECOVERED FROM THE SUSPECT.— In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges. In *People v. Gatlabayan*, the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must

be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect. Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."

4. ID.; ID.; ID; ID.; REQUIREMENTS OF PHYSICAL INVENTORY AND TAKING OF PHOTOGRAPH OF THE SEIZED ITEMS; THREE-WITNESS RULE; NOT COMPLIED WITH.— Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physically inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity." Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof. In this case, the absence of a representative of the National Prosecution Service or the media during the inventory of the seized items was not justifiably explained by the prosecution. A review of the Transcript of Stenographic Notes does not yield any testimony from the arresting officers as to the reason why there was no representative from the DOJ or the media. The only one present to witness the inventory and the marking was an elected official, *Barangay* Captain Evelyn Villamor. Neither was there any testimony to show that any attempt was made to secure the presence of the required witness.

5. ID.; ID.; ID.; ID.; ID.; JUSTIFIABLE GROUNDS FOR NON-COMPLIANCE WITH THE REQUIRED WITNESSES.— In *People v. Angelita Reyes, et al.*, this Court enumerated certain instances where the absence of the required witnesses may be justified, thus: x x x It must be emphasized that the prosecution must able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165. The above-ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro*, thus: The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area; (2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal Could prove futile through no fault of the arresting officers, who face the threat of being charged with arbitrary detention; or (5) time constraints and urgency of the anti-drug operations, which often rely on tips of confidential assets, prevented the law enforcers from obtaining the presence of the witnesses even before the offenders could escape.

6. ID.; ID.; ID.; ID.; ID.; THE FAILURE OF THE PROSECUTION TO FOLLOW THE MANDATED PROCEDURE MUST BE ADEQUATELY EXPLAINED AND MUST BE PROVEN AS A FACT IN ACCORDANCE WITH THE RULES ON EVIDENCE.— Certainly, the

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

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This is an appeal from the Court of Appeals (*CA*) Decision[1] dated May 31, 2017 dismissing Emmanuel Oliva y Jorjil, Bernardo Barangot y Pilais and Mark Angelo Manalastas y Gapasin's appeal, and affirming the Decision[2] dated October 28, 2015 of the Regional Trial Court (*RTC*), Branch 65, Makati City, convicting appellants of Violation of Sections 5 and 11, Article II of Republic Act (*R.A.*) No. 9165.

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[1] Penned by Associate Justice Danton Q. Bueser with Associate Justices Apolinario D. Bruselas, Jr. and Marie Christine Azcarraga-Jacob, concurring; *rollo*, pp. 2-14.

[2] Penned by Presiding Judge Edgardo M. Caldona; CA *rollo*, pp. 17-25.

The facts follow.

The Chief of Station Anti-Illegal Drugs — Special Operations Task Group (*SAID-SOTG*), on January 23, 2015, received a report regarding the sale of dangerous drugs by a certain "Manu" in *Barangay* Cembo, Makati City and its nearby areas. As such, a buy-bust operation was planned and after coordination with the Philippine Drug Enforcement Agency (*PDEA*), a buy-bust team was formed wherein Police Officer 3 (*PO3*) Luisito Marcelo was designated as the poseur-buyer and given a ₱500.00 bill as marked money, and PO1 Darwin Catabay as back-up. Thereafter, the buy-bust team proceeded to the exact location of "Manu" after it was confirmed by the confidential informant.

When they arrived at the target area, the confidential informant pointed to appellant Oliva as "Manu," the seller of dangerous drugs; thus, PO3 Marcelo and the confidential informant approached the said appellant. PO3 Marcelo was introduced by the confidential informant to appellant Oliva as a buyer who wanted to buy ₱500.00 worth of *shabu*. PO3 Marcelo handed appellant Oliva the marked money after the latter demanded payment. Appellant Oliva then showed PO3 Marcelo four (4) transparent plastic sachets with white crystalline substance and asked the latter to choose one. Meanwhile, two (2) other persons, appellants Barangot and Manalastas were also at the target area to buy *shabu*. Appellants Barangot and Manalastas, and PO3 Marcelo each took one sachet from the four sachets that appellant Oliva showed.

Upon receiving the dangerous drug, PO3 Marcelo immediately scratched his chin, which is the pre-arranged signal to his back-up that the transaction has been completed. Subsequently, PO3 Marcelo grabbed appellants Oliva and Barangot and, thereafter, PO1 Catabay appeared and arrested appellant Manalastas.

The police officers conducted a body search on appellant Oliva and it yielded another sachet containing white crystalline substance, the marked money and two (2) more pieces of ₱500.00 bills. Eventually, appellants Oliva, Barangot and Manalastas were arrested and brought to the *barangay* hall where an inventory was conducted and on the basis thereof, an inventory

report was prepared. The confiscated items were then marked and photographed, and a request for laboratory examination was accomplished and the seized items were submitted to the PNP Crime Laboratory. The substance found inside the sachets were all tested positive for the presence of methamphetamine hydrochloride, a dangerous drug.

Thus, an Information for violation of Section 5, Article II of R.A. No. 9165 was filed against appellant Oliva, that reads as follows:

> On the 24th day of January 2015, in the City of Makati, Philippines, accused, not being authorized by law and without the corresponding license and prescription, did then and there willfully, unlawfully and feloniously sell, deliver and distribute zero point six (0.06) gram of white crystalline substance containing methamphetamine hydrochloride (shabu), a dangerous drug, contained in one (1) small transparent plastic sachet, in consideration of Php500.00.
>
> CONTRARY TO LAW.[3]

Also, in three informations, appellants Oliva, Barangot and Manalastas were separately charged with violation of Section 11 of the said law, thus:

> Crim. Case No. 15-196
> (against appellant Oliva)
>
> On the 24th day of January 2015, in the City of Makati, the Philippines, accused, not being authorized by law to possess or otherwise use any dangerous drug and without the corresponding prescription, did then and there willfully, unlawfully and feloniously have in his possession zero point ten (0.10) gram of white crystalline substance containing methamphetamine hydrochloride (shabu), a dangerous drug.
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> CONTRARY TO LAW.[4]

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

[4] *Id.* at 14.

Crim. Case No. 15-197
(against appellant Barangot)

On the 24th day of January 2015, in the City of Makati, the Philippines, accused, not being authorized by law to possess or otherwise use any dangerous drug and without the corresponding prescription, did then and there willfully, unlawfully and feloniously have in his possession zero point five (0.05) gram of white crystalline substance containing methamphetamine hydrochloride (shabu), a dangerous drug.

CONTRARY TO LAW.[5]

Crim. Case No. 15-198
(against appellant Manalastas)

On the 24th day of January 2015, in the City of Makati, the Philippines, accused, not being authorized by law to possess or otherwise use any dangerous drug and without the corresponding prescription, did then and there willfully, unlawfully and feloniously have in his possession zero point three (0.03) gram of white crystalline substance containing methamphetamine hydrochloride (shabu), a dangerous drug.

CONTRARY TO LAW.[6]

Upon arraignment, appellants, with the assistance of counsel, entered pleas of "not guilty" on all charges.

All appellants used denial as a defense.

According to appellant Oliva, on January 21, 2015, around 10:30 in the evening, he was in front of a neighbor's house when several armed men, riding in motorcycles, stopped by and invited him to go with them. When he refused to go, one of the armed men pointed a gun at him, handcuffed him, and forcibly took him to the SAID-SOTG office where he was detained.

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[5] *Id.* at 15.

[6] *Id.* at 16.

On the other hand, appellant Barangot maintained that on January 22, 2015, around 2:30 in the morning, he was having a drinking spree with one Mel and Nonoy when several men barged inside the house and arrested them. They were then brought to the SAID-SOTG office where they were detained, and subsequently, freed after Mel and Noy paid the police officers for their release.

Appellant Manalastas also denied committing the offense charged against him and claimed that on the same date, he was inside his room sleeping, when he was suddenly roused by loud noises causing him to go outside and check the commotion. He saw armed men inside his house and, thereafter, the latter took him, his mother, a certain Bong, Ronald, Abby and two (2) boarders to the SAID-SOTG office where they were all detained.

The RTC found appellants guilty beyond reasonable doubt of the offenses charged against them and were sentenced as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered as follows:

> 1. In Criminal Case No. 15-195, the court finds the accused, Emmanuel Oliva y Jorjil, GUILTY beyond reasonable doubt of the crime of violation of Section 5, Article II, R.A. No. 9165 and sentences each of them to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00).
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> 2. In Criminal Case Nos. 15-196 to 15-198, the court finds the accused, Emmanuel Oliva y Jorjil, Bernardo Barangot y Pilais and Mark Angelo Manalastas y Gapasin, GUILTY beyond reasonable doubt of the crime of violation of Section 11, Article II, RA. No. 9165 and sentences each of them to suffer the penalty of imprisonment of twelve (12) years and one (1) day, as minimum, to fourteen (14) years and eight (8) months, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00).
>
> The period of detention of the accused should be given full credit.
>
> Let the dangerous drugs subject matter of these cases be disposed of in the manner provided by law.

The Branch Clerk of Court is directed to transmit the plastic sachets containing shabu subject matter of these cases to the PDEA for said agency's appropriate disposition.

SO ORDERED.[7]

The RTC ruled that the prosecution was able to prove beyond reasonable doubt the guilt of the appellants.

The CA affirmed the Decision of the RTC *in toto*, thus:

WHEREFORE, the appeal is hereby DENIED.

IT IS SO ORDERED.[8]

The CA ruled that the prosecution was able to establish the key elements for illegal possession and sale of dangerous drugs, and that the bare denials of the appellants cannot prevail over the positive testimonies of the police officers. It also held that the failure of the prosecution to show that the police officers conducted the required physical inventory and take the photograph of the objects confiscated does not *ipso facto* render inadmissible in evidence the items seized.

Hence, the present appeal.

Appellants assigned the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE PROSECUTION WITNESSES' INCREDULOUS TESTIMONIES.

II.

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

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[7] *Id.* at 25.

[8] *Rollo*, p. 13.

III.
THE TRIAL COURT GRAVELY ERRED IN ADMITTING THE ALLEGEDLY SEIZED DRUGS DESPITE THE POLICE OFFICERS' FLAWED MANNER IN THE CONDUCT OF INVENTORY AND MARKING THE SAME.

IV.
THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANTS DESPITE THE PROSECUTION'S FAILURE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY OF THE ALLEGEDLY SEIZED ITEMS.[9]

Appellants argue that it is difficult to believe the testimonies of the police officers because it is impossible for appellants to engage in drug transactions in the middle of the street, under broad daylight, and in the presence of strangers. They also claim that the arresting officers failed to immediately conduct a physical inventory of the seized items and photograph the same in the presence of the accused, their representative or counsel, a representative of the media and the Department of Justice (*DOJ*), and any elected public official who are required to sign the copies of the inventory. Thus, according to appellants, the prosecution failed to establish every link in the chain of custody of the seized items.

The appeal is meritorious.

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

> (1) the identity of the buyer and the seller, the object of the sale and its consideration; and (2) the delivery of the thing sold and the payment therefor.[10]

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[9] CA *rollo*, pp. 85-86.

[10] *People v. Ismael*, G.R. No. 208093, February 20, 2017, 818 SCRA 122, 131-132.

In illegal sale of dangerous drugs, it is necessary that the sale transaction actually happened and that "the [procured] object is properly presented as evidence in court and is shown to be the same drugs seized from the accused."[11]

Also, under Section 11, Article II of R.A. No. 9165 or illegal possession of dangerous drugs the following must be proven before an accused can be convicted:

[1] the accused was in possession of dangerous drugs; [2] such possession was not authorized by law; and [3] the accused was freely and consciously aware of being in possession of dangerous drugs.[12]

In both cases involving illegal sale and illegal possession, the illicit drugs confiscated from the accused comprise the *corpus delicti* of the charges.[13] In *People v. Gatlabayan*,[14] the Court held that it is of paramount importance that the identity of the dangerous drug be established beyond reasonable doubt; and that it must be proven with certitude that the substance bought during the buy-bust operation is exactly the same substance offered in evidence before the court. In fine, the illegal drug must be produced before the court as exhibit and that which was exhibited must be the very same substance recovered from the suspect.[15] Thus, the chain of custody carries out this purpose "as it ensures that unnecessary doubts concerning the identity of the evidence are removed."[16]

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

(1) The apprehending team having in trial custody and control of the drugs shall, immediately after seizure and confiscation, physically

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[11] *Id.* at 132.

[12] *Id.*

[13] *Id.*

[14] 699 Phil. 240, 252 (2011).

[15] *People v. Mirondo*, 771 Phil. 345, 356-357 (2015).

[16] See *People v. Ismael, supra* note 10, at 132.

inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof.

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

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided*, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items[.]

On July 15, 2014, R.A. No. 10640[17] was approved to amend R.A. No. 9165. Among other modifications, it essentially incorporated the saving clause contained in the IRR, thus:

(1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence

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[17] *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."*

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

In her Sponsorship Speech on Senate Bill No. 2273, which eventually became R.A. No. 10640, Senator Grace Poe admitted that "while Section 21 was enshrined in the Comprehensive Dangerous Drugs Act to safeguard the integrity of the evidence acquired and prevent planting of evidence, the application of said Section resulted in the ineffectiveness of the government's campaign to stop increasing drug addiction and also, in the conflicting decisions of the courts."[18] Specifically, she cited that "compliance with the rule on witnesses during the physical inventory is difficult. For one, media representatives are not always available in all corners of the Philippines, especially in more remote areas. For another, there were instances where elected *barangay* officials themselves were involved in the punishable acts apprehended."[19] In addition, "[t]he requirement that inventory is required to be done in police station is also very limiting. Most police stations appeared to be far from locations where accused persons were apprehended."[20]

Similarly, Senator Vicente C. Sotto III manifested that in view of the substantial number of acquittals in drug-related

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

[19] *Id.*

[20] *Id.*

cases due to the varying interpretations of the prosecutors and the judges on Section 21 of R.A. No. 9165, there is a need for "certain adjustments so that we can plug the loopholes in our existing law" and "ensure [its] standard implementation."[21] In his Co-Sponsorship Speech, he noted:

> Numerous drug trafficking activities can be traced to operations of highly organized and powerful local and international syndicates. The presence of such syndicates that have the resources and the capability to mount a counter-assault to apprehending law enforcers makes the requirement of Section 21(a) impracticable for law enforcers to comply with. It makes the place of seizure extremely unsafe for the proper inventory and photograph of seized illegal drugs.
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> x x x x x x x x x
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> Section 21(a) of RA 9165 needs to be amended to address the foregoing situation. We did not realize this in 2002 where the safety of the law enforcers and other persons required to be present in the inventory and photography of seized illegal drugs and the preservation of the very existence of seized illegal drugs itself are threatened by an immediate retaliatory action of drug syndicates at the place of seizure. The place where the seized drugs may be inventoried and photographed has to include a location where the seized drugs as well as the persons who are required to be present during the inventory and photograph are safe and secure from extreme danger.
>
> It is proposed that the physical inventory and taking of photographs of seized illegal drugs be allowed to be conducted either in the place of seizure or at the nearest police station or office of the apprehending law enforcers. The proposal will provide effective measures to ensure the integrity of seized illegal drugs since a safe location makes it more probable for an inventory and photograph of seized illegal drugs to be properly conducted, thereby reducing the incidents of dismissal of drug cases due to technicalities.
>
> Non-observance of the prescribed procedures should not automatically mean that the seizure or confiscation is invalid or illegal, as long as the law enforcement officers could justify the same and could prove that the integrity and the evidentiary value of the seized items are not tainted. This is the effect of the inclusion in the proposal

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[21] *Id.* at 349.

to amend the phrase "justifiable grounds." There are instances wherein there are no media people or representatives from the DOJ available and the absence of these witnesses should not automatically invalidate the drug operation conducted. Even the presence of a public local elected official also is sometimes impossible especially if the elected official is afraid or scared.[22]

The foregoing legislative intent has been taken cognizance of in a number of cases. Just recently, This Court opined in *People v. Miranda*:[23]

The Court, however, clarified that under varied field conditions, strict compliance with the requirements of Section 21 of RA 9165 may not always be possible. In fact, the Implementing Rules and Regulations (IRR) of RA 9165 – which is now crystallized into statutory law with the passage of RA 10640 – provide that the said inventory and photography may be conducted at the nearest police station or office of the apprehending team in instances of warrantless seizure, and that non-compliance with the requirements of Section 21 of RA 9165 – under justifiable grounds – will not render void and invalid the seizure and custody over the seized items so long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer or team. Tersely put, the failure of the apprehending team to strictly comply with the procedure laid out in Section 21 of RA 9165 and the IRR does not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (a) there is justifiable ground for non-compliance; and (b) the integrity and evidentiary value of the seized items are properly preserved. In *People v. Almorfe*, the Court stressed that for the above-saving clause to apply, the prosecution must explain the reasons behind the procedural lapses, and that the integrity and value of the seized evidence had nonetheless been preserved. Also, in *People v. De Guzman*, it was emphasized that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[24]

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

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

[24] See also *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; *People v. Jugo*, G.R.

Under the original provision of Section 21, after seizure and confiscation of the drugs, the apprehending team was required to immediately conduct a physically inventory and photograph of the same in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) a representative from the media **and** (3) the DOJ, and (4) any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof. It is assumed that the presence of these three persons will guarantee "against planting of evidence and frame up," *i.e.*, they are "necessary to insulate the apprehension and incrimination proceedings from any taint of illegitimacy or irregularity."[25] Now, the amendatory law mandates that the conduct of physical inventory and photograph of the seized items must be in the presence of (1) the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, (2) with an elected public official, and (3) a representative of the National Prosecution Service **or** the media who shall sign the copies of the inventory and be given a copy thereof.

In this case, the absence of a representative of the National Prosecution Service or the media during the inventory of the seized items was not justifiably explained by the prosecution. A review of the Transcript of Stenographic Notes does not yield any testimony from the arresting officers as to the reason why there was no representative from the DOJ or the media. The only one present to witness the inventory and the marking was an elected official, *Barangay* Captain Evelyn Villamor. Neither was there any testimony to show that any attempt was made to secure the presence of the required witness.

No. 231792, January 29, 2018; *People v. Calibod*, G.R. No. 230230, November 20, 2017: *People v. Ching*, G.R. No. 223556, October 9, 2017; *People v. Geronimo*, G.R. No. 225500, September 11, 2017; *People v. Ceralde*, G.R. No. 228894, August 7, 2017; and *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 820 SCRA 204.

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

In *People v. Angelita Reyes, et al.*,[26] this Court enumerated certain instances where the absence of the required witnesses may be justified, thus:

x x x It must be emphasized that the prosecution must able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Article 125[27] of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Section 21 of R.A. 9165.

The above-ruling was further reiterated by this Court in *People v. Vicente Sipin y De Castro*,[28] thus:

The prosecution never alleged and proved that the presence of the required witnesses was not obtained for any of the following reasons, such as: (1) their attendance was impossible because the place of arrest was a remote area;·(2) their safety during the inventory and photograph of the seized drugs was threatened by an immediate

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[26] G.R. No. 219953, April 23, 2018.

[27] Article 125. *Delay in the delivery of detained persons to the proper judicial authorities*. – The penalties provided in the next preceding article shall be imposed upon the public officer or employee who shall detain any person for some legal ground and shall fail to deliver such person to the proper judicial authorities within the period of; twelve (12) hours, for crimes or offenses punishable by light penalties, or their equivalent; eighteen (18) hours, for crimes or offenses punishable by correctional penalties, or their equivalent and thirty·six (36) hours, for crimes, or offenses punishable by afflictive or capital penalties, or their equivalent. In every case, the person detained shall be informed of the cause of his detention and shall be allowed upon his request, to communicate and confer at any time with his attorney or counsel. (As amended by E.O. Nos. 59 and 272, Nov. 7, 1986 and July 25, 1987, respectively).

[28] G.R. No. 224290, June 11, 2018.

retaliatory action of the accused or any person/s acting for and in his/her behalf; (3) the elected official themselves were involved in the punishable acts sought to be apprehended; (4) earnest efforts to secure the presence of a DOJ or media representative and elected public official within the period required under Article 125 of the Revised Penal 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.

Certainly, the prosecution bears the burden of proof to show valid cause for non-compliance with the procedure laid down in Section 21 of R.A. No. 9165, as amended.[29] It has the positive duty to demonstrate observance thereto in such a way that, during the proceedings before the trial court, it must initiate in acknowledging and justifying any perceived deviations from the requirements of the law.[30] Its failure to follow the mandated procedure must be adequately explained and must be proven as a fact in accordance with the rules on evidence. The rules require that the apprehending officers do not simply mention a justifiable ground, but also clearly state this ground in their sworn affidavit, coupled with a statement on the steps they took to preserve the integrity of the seized item.[31] A stricter adherence to Section 21 is required where the quantity of illegal drugs seized is miniscule since it is highly susceptible to planting, tampering, or alteration.[32]

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[29] See *People v. Macapundag, supra* note 16, at 214.

[30] See *People v. Miranda*, G.R. No. 229671, January 31, 2018; *People v. Paz*, G.R. No. 229512, January 31, 2018; *People v. Mamangon*, G.R. No. 229102, January 29, 2018; and *People v. Jugo*, G.R. No. 231792, January 29, 2018.

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

[32] See *People v. Abelarde*, G.R. No. 215713, January 22, 2018; *People v. Macud*, G.R. No. 219175, December 14, 2017; *People v. Arposeple*, G.R. No. 205787, November 22, 2017; *Aparente v. People*, G.R. No. 205695, September 27, 2017; *People v. Cabellon*, G.R. No. 207229, September 20,

Thus, this Court finds it appropriate to acquit the appellants in this case as their guilt has not been established beyond reasonable doubt. The resolution of the other issues raised by appellants is no longer necessary.

WHEREFORE, premises considered, the Decision dated May 31, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08121 dismissing appellants' appeal and affirming the Decision dated October 28, 2015 of the Regional Trial Court, Branch 65, Makati City is **REVERSED AND SET ASIDE**. Appellants Emmanuel Oliva y Jorjil, Bernardo Barangot y Pilais, Mark Angelo Manalastas y Gapasin are **ACQUITTED** for failure of the prosecution to prove their guilt beyond reasonable doubt. They are **ORDERED IMMEDIATELY RELEASED** from detention, unless they are confined for any other lawful cause. Let entry of final judgment be issued immediately.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections and the Superintendent of the New Bilibid Prisons, for immediate implementation. Said Director and Superintendent are **ORDERED** to **REPORT** to this Court within five (5) working days from receipt of this Decision the action he/she has taken.

SO ORDERED.

Leonen, Hernando, and *Carandang*,[*] *JJ.*, concur.

Reyes, A. Jr., J., on leave.

2017; *People v. Saragena*, G.R. No. 210677, August 23, 2017; *People v. Saunar*, G.R. No. 207396, August 9, 2017; *People v. Sagana*, G.R. No. 208471, August 2, 2017; *People v. Segundo*, G.R. No. 205614, July 26, 2017; and *People v. Jaafar*, G.R. No. 219829, January 18, 2017, 815 SCRA 19, 33.

[*] Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

THIRD DIVISION

[G.R. No. 234323. January 7, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JORDAN BATALLA *y* AQUINO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION AND CONCLUSION ON THE CREDIBILITY OF WITNESSES IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, AND AT TIMES EVEN FINALITY, AND THAT ITS FINDINGS ARE BINDING AND CONCLUSIVE ON THE APPELLATE COURT, UNLESS THERE IS A CLEAR SHOWING THAT IT WAS REACHED ARBITRARILY OR IT APPEARS FROM THE RECORDS THAT CERTAIN FACTS OR CIRCUMSTANCES OF WEIGHT, SUBSTANCE OR VALUE WERE OVERLOOKED, MISAPPREHENDED OR MISAPPRECIATED BY THE LOWER COURT AND WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULT OF THE CASE. — After a careful review of the records and the parties' submissions, the Court finds no cogent reason to reverse the judgment of conviction. There is no showing that the RTC or the CA committed any error in the findings of fact and the conclusions of law. Settled is the rule that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Indeed, trial judges are in the best position to assess whether the witness is telling

a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.

2. ID.; ID.; ID.; DELAY IN REVEALING THE COMMISSION OF RAPE DOES NOT NECESSARILY RENDER SUCH CHARGE UNWORTHY OF BELIEF; ONLY WHEN THE DELAY IS UNREASONABLE OR UNEXPLAINED MAY IT WORK TO DISCREDIT THE COMPLAINANT.— x x x [T]he fact that AAA failed to shout for help and to immediately report the rape incident does not affect her case. Settled is the rule that delay in reporting the incident does not weaken AAA's testimony especially in view of the threats Batalla made to kill her. Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.

3. CRIMINAL LAW; RAPE; ABSENCE OF PHYSICAL INJURIES OR FRESH LACERATIONS DOES NOT NEGATE THE RAPE, AND ALTHOUGH MEDICAL RESULTS MAY NOT INDICATE PHYSICAL ABUSE, RAPE CAN STILL BE ESTABLISHED SINCE MEDICAL FINDINGS OR PROOF OF INJURIES ARE NOT ESSENTIAL ELEMENTS IN THE PROSECUTION FOR RAPE.— x x x [I]t is settled that the absence of physical injuries or fresh lacerations asserted by Batalla does not negate the rape, and although medical results may not indicate physical abuse, rape can still be established since medical findings or proof of injuries are not among the essential elements in the prosecution for rape. Thus, Batalla may still be convicted of the crime charged even in the absence of physical injuries sustained by AAA.

4. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; INHERENTLY WEAK DEFENSES WHICH CANNOT PREVAIL OVER THE POSITIVE AND CREDIBLE TESTIMONY OF THE PROSECUTION WITNESS THAT THE ACCUSED COMMITTED THE CRIME.— With respect to Batalla's defenses of denial and alibi, We have pronounced time and again that both denial and

alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail.

5. ID.; ID.; DEFENSE OF ALIBI; TO PROSPER, ALIBI MUST BE SUFFICIENTLY CONVINCING AS TO PRECLUDE ANY DOUBT ON THE PHYSICAL IMPOSSIBILITY OF THE PRESENCE OF THE ACCUSED AT THE *LOCUS CRIMINIS* OR ITS IMMEDIATE VICINITY AT THE TIME OF THE INCIDENT.— For the defense of alibi to prosper, it must be sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident. In the case at hand, Batalla insists that he was at the birthday party of his mother which was held at their house, attending to the guests all night long. It bears stressing, however, that said house is only two (2) blocks away from the house where AAA was allegedly raped and can be traversed by foot in just five (5) minutes. Unfortunately for Batalla, therefore, he was clearly in the immediate vicinity of the *locus criminis* at the time of the commission of the crime.

6. ID.; ID.; CREDIBILITY OF WITNESSES; WHEN THE TRIAL COURT'S FINDINGS HAVE BEEN AFFIRMED BY THE APPELLATE COURT, SAID FINDINGS ARE GENERALLY BINDING UPON THE COURT, UNLESS THERE IS A CLEAR SHOWING THAT THEY WERE REACHED ARBITRARILY OR IT APPEARS FROM THE RECORDS THAT CERTAIN FACTS OF WEIGHT, SUBSTANCE, OR VALUE ARE OVERLOOKED, MISAPPREHENDED OR MISAPPRECIATED BY THE LOWER COURT WHICH, IF PROPERLY CONSIDERED, WOULD ALTER THE RESULT OF THE CASE.— Indeed, when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case. After a circumspect study of the records,

the Court sees no compelling reason to depart from the foregoing principle.

7. CRIMINAL LAW; RAPE; PROPER IMPOSABLE PENALTY.— As for the penalty imposed, the Court notes that pursuant to the A.M. No. 15-08-02-SC, in cases where death penalty is not warranted, such as this case, there is no need to qualify the sentence of *reclusion perpetua* with the phrase "without eligibility for parole," it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole. Moreover, pursuant to *People v. Jugueta*, the amount of exemplary damages awarded by the trial court should be increased to ₱75,000.00.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

On appeal is the May 31, 2017 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 08314 which affirmed the Decision[2] dated February 26, 2016 of the Regional Trial Court (*RTC*) of Camiling, Tarlac, Branch 68, finding appellant Jordan Batalla y Aquino guilty beyond reasonable doubt of the crime of rape committed against AAA, a 14-year-old minor.[3]

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[1] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Jose C. Reyes, Jr. (now a member of this Court) and Nina G. Antonio-Valenzuela, concurring; *rollo*, pp. 2-14.

[2] Penned by Judge Jose S. Vallo; CA *rollo*, pp. 11-25.

[3] Pursuant to R.A. No. 7610, "An Act Providing for Stronger Deterrence and Special Protection against Child Abuse, Exploitation and Discrimination, and for Other Purposes;" R.A. No. 9262, "An Act Defining Violence against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes;" Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence against Women and Their Children," effective November 15, 2004; and *People v. Cabalquinto*,

The antecedent facts are as follows.

On September 12, 2011, an Information was filed against Batalla for the crime of rape under Article 266-A, paragraph 1(a) of the Revised Penal Code (*RPC*), in relation to Republic Act (*R.A.*) No. 7610, the accusatory portion of which reads:

> That on or about August 5, 2011, around 11:00 PM in the Municipality of XXX, Philippines and within the jurisdiction of this Honorable Court, the above-named accused by means of threat and intimidation, did then and there wilfully, unlawfully and feloniously succeeded in having sexual intercourse with AAA, a minor, 14 years old, against her will and without her consent.
>
> CONTRARY TO LAW.[4]

During arraignment, Batalla, assisted by counsel, pleaded not guilty to the charge. Subsequently, trial on the merits ensued. Presented as witnesses for the prosecution were AAA, the victim, BBB, the father of AAA, Special Police Officer 4 (*SPO4*) Jo-Ann Casipit, and Dr. Dalisay Tangonan. Thereafter, the defense presented as witnesses Batalla, his mother, Hilda Batalla, and a certain Ma. Clara Vincecruz.

According to AAA, she is a resident and citizen of the United States, and was on vacation in Camiling, Tarlac, to acquaint herself with her local relatives. She stayed in the house of her aunt Corazon De Mayo. Around 11 o'clock in the evening of August 5, 2011, she was already asleep on a bed in the living room when she was awakened by loud knocks on the door made by her cousin Meco De Mayo. She opened the door and went back to sleep. After a while, she was again awakened as she felt compressed by the weight of a person on top of her. When

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533 Phil. 703 (2006), the real name of the rape victim is withheld and, instead, fictitious initials are used to represent her. Also, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well as those of her immediate family or household members, is not disclosed (*People v. CCC*, G.R. No. 220492, July 11, 2018).

[4] *Rollo*, p. 3.

she opened her eyes, she was surprised to see Batalla, whom she had known to be the friend of her cousin, Meco. She could not push him away as he was too strong. AAA narrated that Batalla started to kiss her and warned her not to shout. She became really scared when Batalla threatened to kill her. Thereafter, Batalla rolled up her shirt and mashed her breast. He pulled her pants off, spread her legs apart, and inserted his penis into her vagina, and penetrated her for about 10 minutes. After the incident, AAA recounted that Batalla slept in a sofa near her while she laid exhausted in bed suffering pain in her entire body. After about 30 minutes, Batalla raped her again which caused her to pass out. The following day, AAA noticed blood stains on her bed and panty. Due to fear, however, she did not say a word to anyone. But a few days after, or on August 11, 2016, her mother confronted her about the incident after having read her diary's entry that she had lost her virginity to Batalla. Consequently, her mother brought her to the Camiling Police Station to report the crime. There, she executed her sworn statement before SPO4 Casipit. On the same day, she was examined by Dr. Tangonan, who found an old hymenal laceration at the 5 o'clock position.[5]

In his defense, Batalla testified that he arrived home from work at around 5:30 p.m. on August 5, 2011. He briefly ate a meal and helped his mother, Hilda, and his eldest sibling in the preparations for Hilda's birthday party that day. Thereafter, Batalla joined the guests and had videoke until past midnight.

Batalla's testimony was corroborated by Hilda and Ma. Clara Vincecruz. Hilda confirmed that Batalla was at her birthday party until its end at past midnight. Vincecruz, likewise, testified that she attended the party and saw Batalla there. She left the same at around 7:00 p.m., but went back at around 10:00 p.m. According to her, Batalla was attending to the guests until she left at midnight.[6]

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

[6] *Id.* at 5.

On February 26, 2016, the RTC rendered its Decision finding Batalla guilty of the crime charged, disposing of the case as follows:

> WHEREFORE, accused Jordan Batalla y Aquino is hereby found guilty beyond reasonable doubt of the offense of rape in relation to RA 7610 and hereby sentences him to a penalty of *reclusion perpetua* without eligibility of parole.
>
> Accused Batalla is likewise ordered to pay private complainant the amount of Php75,000.00 as moral damages, another amount of Php75,000.00 as civil indemnity, and still another amount of Php30,000.00 as exemplary damages in line with prevailing jurisprudence. All the damages awarded shall earn interest at the rate of 6% per annum from the date of finality of judgment until fully paid.
>
> SO ORDERED.[7]

The RTC found that AAA vividly and straightforwardly recounted the sufficient details of the rape incident. When a woman, especially a minor says that she has been raped, she says in effect all that is necessary to show that rape was committed. The fact that AAA did not report the incident is of no moment in view of settled jurisprudence that delay in the filing is not an indication of falsehood. The trial court added that the fact that the sexual assault was committed in a room adjacent to AAA's aunt and cousins does not make her claim any less credible. Neither does the fact that she failed to shout for help during the rape for as AAA stated, she was afraid of Batalla's threats. As regards the absence of external signs of physical injuries as well as the non-presentation of AAA's bloodied underwear and diary, the RTC held that proof of the same is not an element of rape nor are they indispensable to the conviction of the accused. Finally, the trial court rejected Batalla's defenses of denial and alibi. According to the RTC, it is unbelievable for his mother Hilda to have kept an eye on him throughout her birthday party since she was too busy

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[7] CA *rollo*, p. 25.

entertaining her guests. The same is true with Vincecruz who admitted that she was focused on the videoke. As for his alibi that he was not present at the scene of the crime since he was at his mother's birthday party in their house, the RTC ruled that the distance between his house and the house where AAA was at was only two (2) blocks away and could be negotiated in just a five (5)-minute walk.[8]

In a Decision dated May 19, 2017, the CA affirmed the judgment of conviction *in toto*. According to the appellate court, there was no reason to reverse the findings of the RTC who had the opportunity to observe the conduct of the witnesses.

Now before Us, Batalla manifested that he would no longer file a Supplemental Brief as he has exhaustively discussed the assigned errors in his Appellant's Brief.[9] The Office of the Solicitor General (*OSG*) similarly manifested that it had already discussed its arguments in its Appellee's Brief.[10]

After a careful review of the records and the parties' submissions, the Court finds no cogent reason to reverse the judgment of conviction. There is no showing that the RTC or the CA committed any error in the findings of fact and the conclusions of law. Settled is the rule that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of

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[8] *Id.* at 15-24.

[9] *Rollo*, p. 31.

[10] *Id.* at 25.

credibility. Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.[11]

In the instant case, the RTC aptly found that the prosecution sufficiently established the presence of the elements of rape under Article 266-A, paragraph 1(a) of the RPC.[12] During the trial, AAA vividly gave a detailed narration of what transpired in the evening of August 5, 2011. In a sincere and convincing manner, AAA painstakingly recounted how she was suddenly awakened by Batalla who was on top her, how he kissed her very hard, spread her legs, and took away her virginity by inserting his private organ into hers. She re-lived that time when she had to keep the harrowing experience to herself in fear of the threats made to her by Batalla, *viz.*:

Q: Ms. Witness, so you were awakened by the weight of Jordan on top of you. What happened after you were awakened by the weight of Jordan on top of you?
A: He started kissing me very hard.

Q: Other than started kissing you very hard, what happened next?
A: I could not breathe because I was suffocating under the... because I am claustrophobic sometimes and tired so I can't really breathe. I was trying to breathe through my nose. I was trying to push him away but I guess he did not feel it because he was strong.

Q: So you were pushing him back?
A: Yes.

Q: Were you able to successfully push him back?
A: No.

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[11] *People v. Matutina*, G.R. No. 227311, September 26, 2018.

[12] Article 266-A of the RPC provides that a rape is committed:

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a) Through force, threat or intimidation;

Q: After you failed to push him back, what happened next?
A: I was trying to make sound but he told me to be quiet.

Q: You are trying to make a sound?
A: Yes, I was trying to make a sound but he told me to be quiet.

Q: When you said you kept silent, do you recall if those words were made in English or in any language?
A: Made in English.

Q: What did he say to you?
A: Be quiet in a harsh voice. He did not want anyone to hear.

Q: It was a harsh word in saying be quiet?
A: Yes.

Q: What did you feel when this person told you to be quiet when he is on top of you?
A: I was scared.

Q: What do you feel when you say I was scared?
A: I feel restricted to move, I feel restricted to talk, I did not want to.

Q: Is my understanding correct that you were not able to move or you were not able to talk because of fear?
A: Yes.

Q: While you were not able to move and talk because of fear, what did this Jordan do?
A: He then proceeded to open my ___, rolled up my shirt and placed his hand on my left shoulder.

Q: When you said he placed his hand over your shoulder, you felt pressure?
A: Yes.

Q: When you felt pressure, what did you do, if any?
A: I was still scared, you know.

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b) When the offended party is deprived of reason or is otherwise unconscious;

c) By means of fraudulent machination or grave abuse of authority;

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

Q: When he was able to pin you as you claimed you were scared, what happened next?
A: He rolled up my shirt and he placed his right hand on my left shoulder with pressure and I was so scared you know. I am trying to fight back. When I fall asleep, I usually don't come back with conscience a while after so I am still a kind of sleepy, trying to push him away and then he rolled up my shirt and he started kissing and squeezing on my breast. It was very painful. It hurt a lot. I was trying to stop him but he did not hear me. He doesn't want to.

Q: What happened next?
A: He proceeded to take off his pants and my other arm was trying to pull my pants because he was trying to pull my pants and I guess it slipped out of my hand and from then he went to lock my knees into the bed and he started going and I was already exhausted and tired. I was afraid to make a sound. He kept telling me to be quiet in a harsh voice. I was scared to move. Maybe he might hurt me and from then he got up and then went away and went to go to sleep at the sofa and I was there lying down and I was trying to put my pants but I could not because I have so much pain in my body. I felt the pain is unbearable and excruciating.

x x x x x x x x x

Q: You were still afraid at that time?
A: Very afraid.

Q: Can you talk during that time or did you bother to make a sound?
A: I was too scared.

Q: While your legs were spread, what did the accused do to you?
A: He abused my femininity and he took away my virginity.

Q: When you say he took away your virginity, he inserted his private organ to your private organ?
A: Yes.

Q: What did you feel when the accused has inserted his private organ to your private organ?
A: So much pain. It hurt so much.

x x x x x x x x x

PROS. GUARDIANO:

Q: Do you remember if there were any tears that flowed from your eyes at that time because you claimed you tried to make a sound but you cannot because you were too scared?

A: Yes, sir.

Q: Despite the fact that you tried to fight back and resisted the advances of the accused and the accused was able to penetrate your private organ with his private organ, do you recall how long the incident lasted?

A: Maybe ten (10) minutes.

Q: Meaning from the start that you were pinned down or you were awaken by the weight on top of your body?

A: From the start, for half an hour.

x x x x x x x x x

PRO. GUARDIANO:

Q: After the accused has successfully abused your femininity as you claimed, what did the accused do?

A: He went back to sleep on the sofa above me and from then I tried to pull my pants. I could not move. I tried but I have so much pain in my body and then as much pain that I was in he got up maybe three minutes after he did the same thing again. For a short amount of time he went back to sleep. I have so much pain and I passed out.

Q: Passed out?

A: Yes.

Q: You mean to say that after the sexual abuse, the accused repeated to sexually abuse you until you passed out?

A: Yes.

x x x x x x x x x

Q: When you woke up, what did you see, if any, in your bed?

A: Well, I went to the bathroom. I feel a lot of pain. I was so limping and I saw a lot of blood stains in my panty. I was so afraid, why is it like this, so I washed and I went back to bed and there is a lot of blood there and I was so shocked.

Q: Did you bother to report that matter to anybody on that morning or the following day?
A: No. I did not.

Q: Will you tell us the reason why did you not report?
A: I was scared.

Q: Why were you still scared after the incident?
A: He threatened to kill me.[13]

Apart from the reliability of the foregoing account, the Court finds that the RTC and the CA duly rejected Batalla's claims and defenses. *First* of all, the fact that AAA failed to shout for help and to immediately report the rape incident does not affect her case. Settled is the rule that delay in reporting the incident does not weaken AAA's testimony especially in view of the threats Batalla made to kill her. Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief. This is because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant.[14]

Second, it is settled that the absence of physical injuries or fresh lacerations asserted by Batalla does not negate the rape, and although medical results may not indicate physical abuse, rape can still be established since medical findings or proof of injuries are not among the essential elements in the prosecution for rape.[15] Thus, Batalla may still be convicted of the crime charged even in the absence of physical injuries sustained by AAA.

Third, with respect to Batalla's defenses of denial and alibi, We have pronounced time and again that both denial and alibi are inherently weak defenses which cannot prevail over the positive and credible testimony of the prosecution witness that

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[13] *Rollo*, pp. 7-10.

[14] *People v. YYY*, G.R. No. 234825, September 5, 2018.

[15] *People v. Lagbo*, 780 Phil. 834, 846 (2016).

the accused committed the crime. Thus, as between a categorical testimony which has a ring of truth on one hand, and a mere denial and alibi on the other, the former is generally held to prevail. For the defense of alibi to prosper, it must be sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident.[16] In the case at hand, Batalla insists that he was at the birthday party of his mother which was held at their house, attending to the guests all night long. It bears stressing, however, that said house is only two (2) blocks away from the house where AAA was allegedly raped and can be traversed by foot in just five (5) minutes. Unfortunately for Batalla, therefore, he was clearly in the immediate vicinity of the *locus criminis* at the time of the commission of the crime. As the RTC observed, moreover, the testimonies of his mother and a guest at the party cannot save his case for it is rather unbelievable for them to have kept an eye on him the entire night. Seeing him at one point in the party does not automatically mean that he was there from beginning until the end of the four (4) to five (5)-hour event. Thus, his defense of alibi must necessarily fail.

Indeed, when the trial court's findings have been affirmed by the appellate court, said findings are generally binding upon the Court, unless there is a clear showing that they were reached arbitrarily or it appears from the records that certain facts of weight, substance, or value are overlooked, misapprehended or misappreciated by the lower court which, if properly considered, would alter the result of the case. After a circumspect study of the records, the Court sees no compelling reason to depart from the foregoing principle.[17]

As for the penalty imposed, the Court notes that pursuant to the A.M. No. 15-08-02-SC,[18] in cases where death penalty is

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[16] *People v. Cataytay*, 746 Phil. 185, 195 (2014).

[17] *People v. Macapagal*, G.R. No. 218574, November 22, 2017.

[18] Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible Penalties, August 4, 2015.

not warranted, such as this case, there is no need to qualify the sentence of *reclusion perpetua* with the phrase "without eligibility for parole," it being understood that convicted persons penalized with an indivisible penalty are not eligible for parole. Moreover, pursuant to *People v. Jugueta*,[19] the amount of exemplary damages awarded by the trial court should be increased to ₱75,000.00.

WHEREFORE, premises considered, the appeal is **DENIED**. The assailed Decision dated May 31, 2017 of the Court of Appeals is **AFFIRMED** with **MODIFICATION**. Appellant Jordan Batalla y Aquino is hereby sentenced to suffer the penalty of *reclusion perpetua* and is **ORDERED** to **PAY** AAA the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱75,000.00 as exemplary damages. In addition, six percent (6%) interest *per annum* is imposed on all the amounts awarded reckoned from the date of finality of this Decision until fully paid.

SO ORDERED.

Leonen, Hernando, and *Carandang*,[*] *JJ.*, concur.

Reyes, A. Jr., J., on leave.

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[19] 783 Phil. 806 (2016).

[*] Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

THIRD DIVISION

[G.R. No. 235071. January 7, 2019]

EVANGELINE PATULOT *y* GALIA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (REPUBLIC ACT NO. 7610); ACTS CONSTITUTING "CHILD ABUSE"; TERMS "CHILD ABUSE" AND "PHYSICAL INJURY," DEFINED.— Under Section 3(b) of R.A. No. 7610, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes *any of the following*: (1) psychological and *physical abuse*, neglect, cruelty, sexual abuse and emotional maltreatment; (2) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; (3) unreasonable deprivation of his basic needs for survival, such as food and shelter; *or* (4) failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death. x x x. Section 2 of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases defines the term "child abuse" as the infliction of *physical* or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child. In turn, the same Section defines "physical injury" as those that include but are not limited to lacerations, fractured bones, *burns*, internal injuries, severe injury or serious bodily harm suffered by a child.

2. ID.; ID.; ACTS PUNISHABLE UNDER R.A. NO. 7610, DISCUSSED.— [T]he Court, in *Araneta v. People*, discussed the distinct acts punishable under R.A. No. 7610, *to wit*: As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, *i.e.*, (a) *child abuse*, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately

defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an act prejudicial to the development of the child is different from the former acts. Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase "be responsible for other conditions prejudicial to the child's development" supposes that there are four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal. It is, therefore, clear from the foregoing that when a child is subjected to physical abuse or injury, the person responsible therefor can be held liable under R.A. No. 7610 by establishing the essential facts above.

3. ID.; ID.; ID.; ACCUSED'S ACT OF POURING HOT OIL ON THE VICTIMS CONSTITUTES CHILD ABUSE; A PERSON INCURS CRIMINAL LIABILITY ALTHOUGH THE WRONGFUL ACT DONE BE DIFFERENT FROM THAT WHICH HE INTENDED.— Neither can Patulot argue that in the absence of intention on her part to harm AAA and BBB, she cannot be convicted of child abuse because she merely intended on committing physical injuries against CCC. x x x. Patulot's criminal intent is not wanting for as she expressly admitted, she intended on pouring hot cooking oil on CCC. As such, even granting that it was not her intention to harm AAA and BBB, she was performing an unlawful act when she threw the hot oil from her casserole on CCC. She cannot, therefore, escape liability from the same in view of the settled doctrine mentioned in *Mabunot* that a person incurs criminal liability

although the wrongful act done be different from that which he intended. As defined in the law, child abuse charged against Patulot is physical abuse of the child, whether the same is habitual or not. To the Court, her act of pouring hot oil on AAA and BBB falls squarely within this definition. Thus, in view of the fact that her acts were proven to constitute child abuse under the pertinent provisions of the law, she must be held liable therefor.

4. **ID.; ID.; PURPOSE OF R.A. NO. 7610.—** Indeed, it cannot be denied that AAA and BBB are children entitled to protection extended by R.A. No. 7610. Time and again, the Court has stressed that R.A. No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that "[t]he State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development." This piece of legislation supplies the inadequacies of existing laws treating crimes committed against children, namely, the RPC and Presidential Decree No. 603 or The Child and Youth Welfare Code. As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and exploitation, the law has stiffer penalties for their commission, and a means by which child traffickers could easily be prosecuted and penalized. Also, the definition of child abuse is expanded to encompass not only those specific acts of child abuse under existing laws but includes also "other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development."

5. **ID.; ID.; PROPER IMPOSABLE PENALTY.—** As regards the penalties imposed by the courts *a quo*, we find no compelling reason to modify the same for being within the allowable range. To conform to recent jurisprudence, however, the Court deems it proper to impose an interest of six percent (6%) per annum on the actual damages in the amount of Three Thousand Seven Hundred Two Pesos (₱3,702) and moral damages in the amount of Ten Thousand Pesos (₱10,000), to be computed from the date of the finality of this Decision until fully paid.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated July 13, 2017 and the Resolution[2] dated September 25, 2017 of the Court of Appeals (*CA*) in CA-G.R. CR No. 37385 which affirmed with modification the Decision[3] dated November 19, 2014 of the Regional Trial Court (*RTC*) of Pasig City, Branch 163, Taguig City Station, finding Evangeline Patulot y Galia guilty beyond reasonable doubt of two (2) charges of child abuse.

The antecedent facts are as follows.

In two (2) separate Informations, Patulot was charged with child abuse, defined and penalized under Republic Act (*R.A.*) No. 7610, otherwise known as the Special Protection of Children Against Abuse, Exploitation and Discrimination Act,[4] the accusatory portions of which read:

(Criminal Case No. 149971)

That on or about the 14th day of November 2012 in the City of Taguig, Philippines, and within the jurisdiction of this Honorable

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[1] *Rollo*, pp. 32-41. Penned by Associate Justice Ricardo R. Rosario, with the concurrence of Associate Justices Edwin D. Sorongon and Maria Filomena D. Singh.

[2] *Id.* at 53.

[3] *Id.* at 73-79. Penned by Judge Leili Cruz Suarez.

[4] An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes (approved on June 17, 1992).

Court, the above-named accused, did, then and there wilfully, unlawfully, and feloniously commit acts of child abuse upon one AAA,[5] a three (3) year old minor, by throwing on him a boiling oil, thereby inflicting upon said victim-minor physical injuries, which acts are inimical and prejudicial to the child's normal growth and development.

CONTRARY TO LAW.

(Criminal Case No. 149972)

That on or about the 14th day of November 2012, in the City of Taguig, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did, then and there wilfully, unlawfully and feloniously commit acts of child abuse upon one BBB, a two (2) month old baby, by throwing on her a boiling oil, thereby inflicting upon said victim-minor physical injuries, which acts are inimical and prejudicial to the child's normal growth and development.

CONTRARY TO LAW.[6]

During arraignment, Patulot, assisted by counsel, pleaded not guilty to the charges. Subsequently, trial on the merits ensued wherein the prosecution presented CCC, mother of minors AAA and BBB, three (3) years old and two (2) months old, respectively; DDD, father of the minors; and Dr. Francis Jerome Vitales as

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[5] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to R.A. No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; R.A. No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the "Rule on Violence Against Women and Their Children," effective November 5, 2004; *People v. Cabalquinto*, 533 Phil. 703, 709 (2006); and Amended Administrative Circular No. 83-2015 dated September 5, 2017, 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.

[6] *Rollo*, pp. 32-33.

its witnesses and offered documentary evidence[7] to establish the following facts:

At around 2:00 p.m. of November 14, 2012, CCC gathered clothes from the clothesline outside her house. As she was about to enter the house, she was surprised to see Patulot who was holding a casserole. Without warning, Patulot poured the contents of the casserole – hot cooking oil – on her. CCC tried to dodge, but to no avail. AAA and BBB, who were nearby, suddenly cried because they were likewise hit by the hot cooking oil. CCC hurriedly brought AAA and BBB to her three neighbors who volunteered to bring the children to the Polyclinic at South Signal, Taguig City, for treatment. She then went to the barangay hall also at South Signal, Taguig City, to report the incident. Accompanied by barangay personnel, she went to Patulot's house, but Patulot was not there. She instead returned to her children at the Polyclinic. While there, she learned from a neighbor that Patulot had been arrested. Consequently, having been assured that her children were all right and that medication had already been given, they returned to the barangay hall, where DDD met them. At the barangay hall, CCC noticed that her children were shivering. Thus, she asked her neighbors to bring them to Pateros-Taguig District Hospital while she stayed behind to give her statement. Afterwards, she proceeded to the hospital where she was likewise treated for injuries. While she and BBB were able to go home, AAA needed to be confined but was discharged the next morning. Before going home, however, CCC proceeded to the Taguig Police Station where she executed her *Sinumpaang Salaysay*.[8]

Subsequently, Dr. Vitales of the Pateros-Taguig District Hospital, who examined and treated CCC and her children, testified that the injuries suffered by AAA and BBB would

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[7] *Id.* at 33. Salaysay of CCC; Sinumpaang Salaysay ng Pag-aresto; Certificates of Live Birth of BBB and AAA; Medico-Legal Certificate of CCC, BBB, and AAA; photographs of BBB and AAA; and medical receipts (cited in the CA Decision).

[8] *Id.* at 33-34.

heal for an average period of thirty (30) days. Next, DDD testified that he incurred ₱7,440.00 in medical expenses for his wife and children.[9]

Solely testifying in her defense, Patulot denied the allegations against her. She recounted that prior to the alleged incident, she was on her way to the market to sell her merchandise when CCC bumped her on the arm, uttering foul words against her. Due to the impact, Patulot's merchandise fell. Because of this, she cursed CCC back who, in turn, merely laughed and repeated the invectives as she moved away. Then, from 11:00 a.m. to 2:30 p.m. on November 14, 2012, she was repacking black pepper at her house when she heard CCC taunt her in a loud voice, "*Bakit hindi ka pa sumama sa asawa mo? Dapat sumama ka na para pareho kayong paglamayan*." Because of this, Patulot proceeded to Barangay Central Signal, Taguig City, to file a complaint against CCC, but she was ignored. So she went instead to the Barangay South Signal, Taguig City. But upon reaching said location, she was apprehended by the Barangay Tanod and brought to the Barangay Hall of South Signal, Taguig City for questioning.[10]

On November 19, 2014, the RTC found Patulot guilty of child abuse and disposed of the case as follows:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> 1) In Criminal Case No. 149971, the Court finds accused Evangeline Patulot y Galia GUILTY beyond reasonable doubt of the offense charged and hereby sentences her to suffer the indeterminate penalty of six (6) years and one (1) day of *pris[i]on mayor*, as minimum, to seven (7) years and four (4) months of *pris[i]on mayor*, as maximum. Accused is further ordered to pay the offended party the amount of Three Thousand Seven Hundred Two Pesos (₱3,702), as actual damages, and Ten Thousand Pesos (₱10,000) by way of moral damages;

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[9] *Id.* at 34.

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

2) In Criminal Case No. 149972, the Court finds accused Evangeline Patulot y Galia GUILTY beyond reasonable doubt of the offense charged and hereby sentences her to suffer the indeterminate penalty of six (6) years and one (1) day of *pris[i]on mayor*, as minimum, to seven (7) years and four (4) months of *pris[i]on mayor*, as maximum. Accused is further ordered to pay the offended party the amount of Three Thousand Seven Hundred Two Pesos (₱3,702), as actual damages, and Ten Thousand Pesos (₱10,000) by way of moral damages; and

3) Finally, accused is ordered to pay a fine of Five Thousand Pesos (₱5,000) in each case, conformably with Section 31 (f) of R.A. 7610.

SO ORDERED.[11] (Italics supplied.)

The RTC found that while Patulot may not have intended to cause harm on AAA and BBB, her negligence nonetheless caused injury on them, which left visible scars that are most likely to stay on their faces and bodies for the rest of their lives. Besides, the trial court added that R.A. No. 7610 is a special law such that intent is not necessary for its violator to be liable.[12]

In a Decision dated July 13, 2017, the CA affirmed Patulot's conviction, but modified the penalty imposed by the RTC in the following wise:

WHEREFORE, the 19 November 2014 Decision of the Regional Trial Court of Pasig City, Branch 163 (Taguig City Station) is AFFIRMED with the MODIFICATION that:

1) in Criminal Case No. 149971, Evangeline Patulot y Ga1ia is SENTENCED to suffer the indeterminate penalty of four (4) years, nine (9) months, and eleven (11) days of *prision correccional*, as minimum[,] to seven (7) years and four (4) months of *prision mayor*, as maximum; and

2) in Criminal Case No. 149972, Evangeline Patulot y Galia is SENTENCED to suffer the indeterminate penalty of four

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[11] *Id.* at 79.

[12] *Id.* at 78.

> (4) years, nine (9) months, and eleven (11) days of *prision correccional*, as minimum[,] to seven (7) years and four (4) months of *prision mayor*, as maximum.

SO ORDERED.[13] (Italics supplied, underscoring in the original.)

According to the appellate court, there was no reason to deviate from the trial court's findings of guilt for it had the unique opportunity to observe the demeanor of the witnesses and their deportment on the witness stand. It, however, ruled that the RTC was amiss in finding it unnecessary to determine intent merely because the act for which Patulot stood charged is punishable by a special law. The CA clarified that the index of whether a crime is *malum prohibitum* is not its form, that is, whether or not it is found in the Revised Penal Code (*RPC*) or in a special penal statute, but the legislative intent. Nevertheless, this reasoning still cannot help Patulot's case because even if she did not intend on inflicting harm on the children, there was still intent to harm CCC. Thus, criminal liability is incurred although the wrongful act done be different from that which Patulot intended. For the same reason, the mitigating circumstance of "no intention to commit so grave a wrong as that committed" cannot be appreciated in Patulot's favor. Thus, Patulot must still be held guilty of the offense charged.[14]

Aggrieved by the CA's denial of her Motion for Reconsideration, Patulot filed the instant petition on January 4, 2018, invoking the following arguments:

I.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN AFFIRMING THE PETITIONER'S CONVICTION OF VIOLATING SEC. 10(A) R.A. 7610 DESPITE THE FACT THAT SHE HAD NO INTENT TO DEGRADE AND DEMEAN THE INTRINSIC WORTH AND DIGNITY OF THE PRIVATE COMPLAINANT'S CHILDREN.

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

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

II.

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPLY ARTICLE 49 OF THE REVISED PENAL CODE WITH REGARD TO THE IMPOSITION OF THE PENALTY.[15]

According to Patulot, she can only be convicted of physical injuries and not child abuse. Citing our pronouncement in *Bongalon v. People*,[16] she submits that not every instance of laying hands on a child constitutes the crime of child abuse under Section 10(a) of R.A. No. 7610. Only when the laying of hands is shown to be intended to debase, degrade, or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse. Otherwise, it is punished under the RPC. Thus, in the absence of such intention on the part of Patulot, her true intention being to pour hot oil only on CCC with AAA and BBB being merely accidentally hit, she cannot be convicted of child abuse.

Patulot adds that even considering her to have committed child abuse, the CA erred in determining the imposable penalty for failing to apply Article 49[17] of the RPC. According to Patulot,

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[15] *Id.* at 19.

[16] 707 Phil. 11 (2013).

[17] Article 49 of the RPC provides:

Art. 49. Penalty to be imposed upon the principals when the crime committed is different from that intended. – In cases in which the felony committed is different from that which the offender intended to commit, the following rules shall be observed:

1. If the penalty prescribed for the felony committed be higher than that corresponding to the offense which the accused intended to commit, the penalty corresponding to the latter shall be imposed in its maximum period.

2. If the penalty prescribed for the felony committed be lower than that corresponding to the one which the accused intended to commit, the penalty for the former shall be imposed in its maximum period.

3. The rule established by the next preceding paragraph shall not be applicable if the acts committed by the guilty person shall also constitute an attempt or frustration of another crime, if the law prescribes a higher

there was error *in personae* as the oil that was intended for CCC accidentally hit the children. She intended to commit physical injuries, but ended up committing child abuse. Applying Article 49, since the penalty of the intended crime (physical injuries) is less than the crime committed (child abuse), the imposable penalty is that which refers to physical injuries, in its maximum period. As to the extent of the physical injuries intended, based on the finding of Dr. Vitales that the injuries suffered by AAA and BBB would heal for an average period of thirty (30) days, the offense Patulot intended to commit is only Less Serious Physical Injuries under the first paragraph of Article 265[18] of the RPC. Thus, the proper penalty should only be *arresto mayor* in its maximum or four (4) months and one (1) day to six (6) months for each count.[19]

We deny the petition.

Under Section 3(b) of R.A. No. 7610, "child abuse" refers to the maltreatment, whether habitual or not, of the child which includes *any of the following*: (1) psychological and *physical abuse*, neglect, cruelty, sexual abuse and emotional maltreatment; (2) any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being; (3) unreasonable deprivation of his basic needs for survival, such as food and shelter; *or* (4) failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

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penalty for either of the latter offenses, in which case the penalty provided for the attempted or the frustrated crime shall be imposed in its maximum period.

[18] Art. 265. Less serious physical injuries. – Any person who shall inflict upon another physical injuries not described in the preceding articles, but which shall incapacitate the offended party for labor for ten days or more, or shall require medical assistance for the same period, shall be guilty of less serious physical injuries and shall suffer the penalty of *arresto mayor*. (Italics supplied.)

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

In conjunction with this, Section 10(a) of the same Act provides:

> SECTION 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.–
>
> (a) Any person who shall commit any other acts of *child abuse*, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. (Italics supplied.)

Corollarily, Section 2 of the Rules and Regulations on the Reporting and Investigation of Child Abuse Cases defines the term "child abuse" as the infliction of *physical* or psychological injury, cruelty to, or neglect, sexual abuse or exploitation of a child. In turn, the same Section defines "physical injury" as those that include but are not limited to lacerations, fractured bones, *burns*, internal injuries, severe injury or serious bodily harm suffered by a child.

In view of these provisions, the Court, in *Araneta v. People*,[20] discussed the distinct acts punishable under R.A. No. 7610, *to wit*:

> As gleaned from the foregoing, the provision punishes not only those enumerated under Article 59 of Presidential Decree No. 603, but also four distinct acts, i.e., (a) *child abuse*, (b) child cruelty, (c) child exploitation and (d) being responsible for conditions prejudicial to the child's development. The Rules and Regulations of the questioned statute distinctly and separately defined child abuse, cruelty and exploitation just to show that these three acts are different from one another and from the act prejudicial to the child's development. Contrary to petitioner's assertion, an accused can be prosecuted and be convicted under Section 10(a), Article VI of Republic Act No. 7610 if he commits any of the four acts therein. The prosecution need not prove that the acts of child abuse, child cruelty and child exploitation have resulted in the prejudice of the child because an

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[20] 578 Phil. 876 (2008).

act prejudicial to the development of the child is different from the former acts.

Moreover, it is a rule in statutory construction that the word "or" is a disjunctive term signifying dissociation and independence of one thing from other things enumerated. It should, as a rule, be construed in the sense which it ordinarily implies. Hence, the use of "or" in Section 10(a) of Republic Act No. 7610 before the phrase "be responsible for other conditions prejudicial to the child's development" supposes that there are four punishable acts therein. First, the act of child abuse; second, child cruelty; third, child exploitation; and fourth, being responsible for conditions prejudicial to the child's development. The fourth penalized act cannot be interpreted, as petitioner suggests, as a qualifying condition for the three other acts, because an analysis of the entire context of the questioned provision does not warrant such construal.[21] (Italics supplied, citations omitted.)

It is, therefore, clear from the foregoing that when a child is subjected to physical abuse or injury, the person responsible therefor can be held liable under R.A. No. 7610 by establishing the essential facts above. Here, the prosecution duly proved the following allegations in the Information charging Patulot of child abuse: (1) the minority of both AAA and BBB; (2) the acts committed by Patulot constituting physical abuse against AAA and BBB; and (3) the fact that said acts are punishable under R.A. No. 7610. In particular, it was clearly established that at the time of the incident, AAA and BBB were merely three (3) years old and two (2) months old, respectively; that Patulot consciously poured hot cooking oil from a casserole on CCC, consequently injuring AAA and BBB; and that said act constitutes physical abuse specified in Section 3(b)(1) of R.A. No. 7610.

On this score, Patulot contends that on the basis of our pronouncement in *Bongalon*, she cannot be convicted of child abuse because it was not proven that she intended to debase, degrade, or demean the intrinsic worth and dignity of AAA

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[21] *Id.* at 333-335.

and BBB as human beings. Her reliance on said ruling, however, is misplaced. In *Bongalon*, the Information specifically charged George Bongalon, petitioner therein, of committing acts which "are prejudicial to the child's development and which demean the intrinsic worth and dignity of the said child as a human being."[22] Thus, we ruled that he can only be held liable for slight physical injuries instead of child abuse in the absence of proof that he intended to humiliate or "debase the 'intrinsic worth and dignity'"[23] of the victim.

A cursory review of the Informations in the instant case, however, reveals no similar allegation that Patulot's acts debased, degraded, or demeaned the intrinsic worth and dignity of AAA and BBB as human beings. Instead, they charged Patulot for willfully committing acts of child abuse on AAA and BBB "by throwing on [them] a (sic) boiling oil, thereby inflicting upon said victim-minor physical injuries, which acts are inimical and prejudicial to the child's normal growth and development."[24] Accordingly, the RTC and the CA duly found that this allegation in the Informations was adequately established by the prosecution. It bears stressing that Patulot did not even deny the fact that she threw boiling oil on CCC which likewise fell on AAA and BBB. Clearly, her actuations causing physical injuries on babies, who were merely three (3) years old and two (2) months old at the time, are undeniably prejudicial to their development. In the words of the trial court, Patulot's acts, which practically burned the skin of AAA and BBB, left visible scars that are most likely to stay on their faces and bodies for the rest of their lives. She cannot, therefore, be allowed to escape liability arising from her actions.

Neither can Patulot argue that in the absence of intention on her part to harm AAA and BBB, she cannot be convicted of child abuse because she merely intended on committing physical

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[22] *Bongalon v. People, supra* note 16, at 15.

[23] *Id.* at 20.

[24] *Rollo*, pp. 32-33.

injuries against CCC. Our pronouncement in *Mabunot v. People*[25] is squarely on point. There, petitioner Jester Mabunot accidentally shoved a female minor child consequently fracturing her rib while he was engaged in a fistfight with another boy. But he points out that the injury sustained by the minor victim was unintentional. Thus, according to Mabunot, this single and unintended act of shoving the child while trading punches with another can hardly be considered as within the definition of child abuse under Section 10(a) of R.A. No. 7610. Assuming, therefore, that he was the cause of the injury, Mabunot insists that he should only be held liable for slight physical injuries under Article 265 of the RPC. The Court, however, rejected Mabunot's contention and held him liable not for slight physical injuries, but for child abuse. We explained:

> The petitioner also posits that since he and Dennis were exchanging punches then, he could not have made a deliberate design to injure Shiva. Without intent to harm Shiva, the petitioner insists that he deserves an acquittal.
>
> The foregoing argument is untenable.
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> "When the acts complained of are inherently immoral, they are deemed *mala in se*, even if they are punished by a special law. Accordingly, criminal intent must be clearly established with the other elements of the crime; otherwise, no crime is committed."
>
> The petitioner was convicted of violation of Section 10(a), Article VI of R.A. No. 7610, a special law. However, physical abuse of a child is inherently wrong, rendering material the existence of a criminal intent on the part of the offender.
>
> In the petitioner's case, criminal intent is not wanting. Even if the Court were to consider for argument's sake the petitioner's claim that he had no design to harm Shiva, when he swang his arms, he was not performing a lawful act. He clearly intended to injure another person. However, it was not Dennis but Shiva, who ended up with a fractured rib. Nonetheless, the petitioner cannot escape liability for his error. Indeed, criminal liability shall be incurred by any person

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[25] 795 Phil. 453 (2016).

committing a felony (*delito*) although the wrongful act done be different from that which he intended.[26] (Citations omitted.)

Similarly, in the instant case, Patulot's criminal intent is not wanting for as she expressly admitted, she intended on pouring hot cooking oil on CCC. As such, even granting that it was not her intention to harm AAA and BBB, she was performing an unlawful act when she threw the hot oil from her casserole on CCC. She cannot, therefore, escape liability from the same in view of the settled doctrine mentioned in *Mabunot* that a person incurs criminal liability although the wrongful act done be different from that which he intended. As defined in the law, child abuse charged against Patulot is physical abuse of the child, whether the same is habitual or not. To the Court, her act of pouring hot oil on AAA and BBB falls squarely within this definition. Thus, in view of the fact that her acts were proven to constitute child abuse under the pertinent provisions of the law, she must be held liable therefor.

Indeed, it cannot be denied that AAA and BBB are children entitled to protection extended by R.A. No. 7610. Time and again, the Court has stressed that R.A. No. 7610 is a measure geared towards the implementation of a national comprehensive program for the survival of the most vulnerable members of the population, the Filipino children, in keeping with the Constitutional mandate under Article XV, Section 3, paragraph 2, that "[t]he State shall defend the right of the children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development."[27] This piece of legislation supplies the inadequacies of existing laws treating crimes committed against children, namely, the RPC and Presidential Decree No. 603 or The Child and Youth Welfare Code. As a statute that provides for a mechanism for strong deterrence against the commission of child abuse and

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[26] *Id.* at 463-464.

[27] *Torres v. People*, 803 Phil. 480, 490, citing *Araneta v. People, supra* note 20.

exploitation, the law has stiffer penalties for their commission, and a means by which child traffickers could easily be prosecuted and penalized. Also, the definition of child abuse is expanded to encompass not only those specific acts of child abuse under existing laws but includes also "other acts of neglect, abuse, cruelty or exploitation and other conditions prejudicial to the child's development."[28]

As regards the penalties imposed by the courts *a quo*, we find no compelling reason to modify the same for being within the allowable range. To conform to recent jurisprudence, however, the Court deems it proper to impose an interest of six percent (6%) per annum on the actual damages in the amount of Three Thousand Seven Hundred Two Pesos (₱3,702) and moral damages in the amount of Ten Thousand Pesos (₱10,000), to be computed from the date of the finality of this Decision until fully paid.[29]

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Decision dated July 13, 2017 and Resolution dated September 25, 2017 of the Court of Appeals in CA-G.R. CR No. 37385 are **AFFIRMED** with **MODIFICATION** that the ₱3,702.00 actual damages and ₱10,000.00 moral damages awarded in each Criminal Case No. 149971 and Criminal Case No. 149972 shall be subject to an interest of six percent (6%) per annum reckoned from the finality of this Decision until full payment.

SO ORDERED.

Leonen, Hernando, and *Carandang*,[*] *JJ.*, concur.

Reyes, A. Jr., J., on leave.

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[28] *Araneta v. People, id.* at 884.

[29] *Mabunot v. People, supra* note 25.

[*] Designated as additional member per Special Order No. 2624 dated November 28, 2018.

SECOND DIVISION

[G.R. No. 241017. January 7, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BRENDA CAMIÑAS *y* AMING,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE SUPREME COURT WILL NOT DEVIATE FROM THE FACTUAL FINDINGS OF THE COURTS *A QUO* WHERE THERE IS NO INDICATION THAT THE SAID COURTS MISUNDERSTOOD, OR MISAPPLIED THE SURROUNDING FACTS AND CIRCUMSTANCES OF THE CASE.— Here, the courts *a quo* correctly found that Camiñas committed the crime of Illegal Sale of Dangerous Drugs, as the records clearly show that she was caught *in flagrante delicto* selling *shabu* to the poseur-buyer, PO2 Trinidad, during a legitimate buy-bust operation conducted by the DAID-SOTG. Since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); CHAIN OF CUSTODY RULE; THE IDENTITY OF THE DANGEROUS DRUG MUST BE ESTABLISHED WITH MORAL CERTAINTY, CONSIDERING THAT THE DANGEROUS DRUG ITSELF FORMS AN INTEGRAL PART OF THE

***CORPUS DELICTI* OF THE CRIME.—** The Court notes that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165. In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. 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.

4. ID.; ID.; ID.; THE MARKING, PHYSICAL INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS MUST BE CONDUCTED IMMEDIATELY AFTER SEIZURE AND CONFISCATION OF THE SAME AND 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; COMPLIED WITH.— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, a representative from the media *AND* the Department of Justice (DOJ), and any elected public official; or (*b*) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media. The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

5. ID.; ID.; CHAIN OF CUSTODY RULE; SUFFICIENTLY COMPLIED WITH; CONVICTION OF THE ACCUSED

AFFIRMED AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE *CORPUS DELICTI* HAVE BEEN PRESERVED.— In this case, it is glaring from the records that after Camiñas was arrested, the buy-bust team immediately took custody of the seized items. They likewise conducted the marking, inventory, and photography of the seized items at the place of arrest in the presence of an elected public official, *i.e.*, Kagawad Chico and a media representative, *i.e.*, Oresto, in conformity with the amended witness requirement under RA 10640. PO2 Trinidad then secured the seized items and personally delivered the same to PCI Bacani of the Quezon City Police District Crime laboratory for laboratory examination, who in turn, brought the specimen to Evidence Custodian Ducad for safekeeping. In view of the foregoing, the Court holds that there is sufficient compliance with the chain of custody rule and, thus, the integrity and evidentiary value of the *corpus delicti* have been preserved. Perforce, Camiñas's conviction must stand.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this ordinary appeal[1] is the Decision[2] dated January 30, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 09056, which affirmed the Judgment[3] dated February 20, 2017 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Criminal Case No. R-QZN-14-11237-CR finding accused-appellant Brenda Camiñas *y* Aming (Camiñas) guilty

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[1] See Notice of Appeal dated January 9, 2018; *id*. at 8-10.

[2] *Id*. at 2-7. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Rodil V. Zalameda and Renato C. Francisco, concurring.

[3] CA *rollo*, pp. 40-49. Penned by Presiding Judge Nadine Jessica Corazon J. Fama.

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

The Facts

This case stemmed from an Information[5] filed before the RTC charging Camiñas with the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of RA 9165. The prosecution alleged that on the evening of November 4, 2014, operatives of the District Anti-Illegal Drugs Special Operation Task Group of the Quezon City Police District (DAID-SOTG), in coordination with the Philippine Drug Enforcement Agency, conducted a buy-bust operation against Camiñas, during which ten (10) plastic sachets containing a total of 43.34 grams[6] of white crystalline substance were recovered from her. Afterwards, they immediately marked, inventoried, and photographed the seized items at the place of arrest in the presence of Camiñas, Barangay Kagawad Dennis Chico (Kagawad Chico), and Media Representative Alfred Oresto (Oresto). The seized items were then brought to the crime laboratory, where, after examination,[7] the contents thereof yielded positive for the presence of methamphetamine hydrochloride or *shabu*, a dangerous drug.[8]

In defense, Camiñas denied the charges against her, claiming that on the date of the incident, she bought a cellular phone at

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

[5] Dated November 6, 2014. Records, pp. 1-2.

[6] See Chemistry Report No. D-554-14 and Initial Laboratory Report both dated November 5, 2014 and examined by PCI Bacani; records, pp. 112 (including dorsal portion) and 113, respectively.

[7] See *id*.

[8] See *rollo*, pp. 3-4. See also CA *rollo*, pp. 41-42.

SM North, and while waiting for a taxi going to Greenhills, San Juan, two (2) men who identified themselves as policemen forcibly boarded her in a vehicle. They then brought her to Jollibee, where she was shown the items allegedly confiscated from her. Afterwards, the policemen demanded the amount of ₱180,000.00 for her immediate release; otherwise, a case would be filed against her. They likewise confiscated her bag which contained her personal belongings and some cash. Thereafter, she was brought to the DAID-SOTG, where she was detained for two (2) days without food.[9]

In a Judgment[10] dated February 20, 2017, the RTC found Camiñas guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced her to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.[11] It ruled that the prosecution was able to establish all the elements of the crime of Illegal Sale of Dangerous Drugs, and that the integrity and evidentiary value of the seized items were preserved.[12] Aggrieved, Camiñas appealed[13] to the CA.

In a Decision[14] dated January 30, 2018, the CA affirmed the RTC ruling.[15] It ruled that the integrity of the seized items remained unscathed since PO2 Jeriel Jarez Trinidad (PO2 Trinidad) was in custody of the seized items from the time it was recovered from Camiñas up to the time it was delivered to Police Chief Inspector Anamelisa Sebido Bacani (PCI Bacani), Forensic Chemist, for laboratory examination, who, in turn, delivered the seized items to Evidence Custodian Junia Ducad (Evidence Custodian Ducad) for safekeeping.[16]

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[9] See *rollo*, pp. 4-5.

[10] CA *rollo*, pp. 40-49.

[11] *Id*. at 48.

[12] See *id*. at 45-48.

[13] See Notice of Appeal dated February 21, 2017; *id*. at 11.

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

[15] *Id*. at 7.

[16] See *id*. at 5-7.

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

The Court's Ruling

The appeal is without merit.

The elements of Illegal Sale of Dangerous Drugs under Section 5, Article II of RA 9165 are: (*a*) the identity of the buyer and the seller, the object, and the consideration; and (*b*) the delivery of the thing sold and the payment.[17] Here, the courts *a quo* correctly found that Camiñas committed the crime of Illegal Sale of Dangerous Drugs, as the records clearly show that she was caught *in flagrante delicto* selling *shabu* to the poseur-buyer, PO2 Trinidad, during a legitimate buy-bust operation conducted by the DAID-SOTG. Since there is no indication that the said courts overlooked, misunderstood, or misapplied the surrounding facts and circumstances of the case, the Court finds no reason to deviate from their factual findings. In this regard, it should be noted that the trial court was in the best position to assess and determine the credibility of the witnesses presented by both parties.[18]

Further, the Court notes that the buy-bust team had sufficiently complied with the chain of custody rule under Section 21, Article II of RA 9165.

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the

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[17] See *People v. Crispo*, G.R. No. 230065, March 14, 2018; *People v. Sanchez*, G.R. No. 231383, March 7, 2018; *People v. Magsano*, G.R. No. 231050, February 28, 2018; *People v. Manansala*, G.R. No. 229092, February 21, 2018; *People v. Miranda*, G.R. No. 229671, January 31, 2018; and *People v. Mamangon*, G.R. No. 229102, January 29, 2018; all cases citing *People v. Sumili*, 753 Phil. 342, 348 (2015) and *People v. Bio*, 753 Phil.730, 736 (2015).

[18] *Cahulogan v. People*, G.R. No. 225695, March 21, 2018, citing *Peralta v. People*, G.R. No. 221991, August 30, 2017, further citing *People v. Matibag*, 757 Phil. 286, 293 (2015).

dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[19] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[20]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[21] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[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,

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[19] See *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; *People v. Mamangon*, *supra* note 17. See also *People v. Viterbo*, 739 Phil. 593, 601 (2014).

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

[21] 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 19.

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

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]

In this case, it is glaring from the records that after Camiñas was arrested, the buy-bust team immediately took custody of the seized items. They likewise conducted the marking, inventory,[27] and photography[28] of the seized items at the place of arrest in the presence of an elected public official, *i.e.*, Kagawad Chico and a media representative, *i.e.*, Oresto, in conformity with the amended witness requirement under RA 10640. PO2 Trinidad then secured the seized items and personally delivered the same to PCI Bacani of the Quezon City Police District Crime laboratory for laboratory examination, who in turn, brought the specimen to Evidence Custodian Ducad for safekeeping.[29] In view of the foregoing, the Court holds that there is sufficient compliance with the chain of custody

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[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 and its Implementing Rules and Regulations.

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

[26] See *People v. Miranda*, *supra* note 17. See also *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[27] See Inventory Receipt of Personal Items; records, pp. 155-156, including dorsal portions.

[28] See *id*. at 158 and 160-162.

[29] See Chain of Custody of Evidence; *id*. at 159. See also *id*. at 80.

rule and, thus, the integrity and evidentiary value of the *corpus delicti* have been preserved. Perforce, Camiñas's conviction must stand.

WHEREFORE, the appeal is **DISMISSED**. The Decision dated January 30, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 09056 is hereby **AFFIRMED**. Accused-appellant Brenda Camiñas *y* Aming is found **GUILTY** beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. 9165, as amended by Republic Act No. 10640, and accordingly, sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.

SO ORDERED.

Carpio,[*] *Acting C.J.* (*Chairperson*), *Caguioa, Reyes, J. Jr.*, and *Hernando*,[**] *JJ.*, concur.

EN BANC

[A.C. No. 12063. January 8, 2019]

EVERDINA C. ANGELES, *complainant, vs.* **ATTY. WILFREDO B. LINA-AC,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIPS; UPON PURSUING HIS CLIENT'S

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[*] Designated Acting Chief Justice per Special Order No. 2631 dated December 28, 2018.

[**] Designated Additional Member per Special Order No. 2629 dated December 18, 2018.

CAUSE, THE DEGREE OF SERVICE EXPECTED OF A LAWYER AS AN ADVOCATE IS HIS ENTIRE DEVOTION TO THE INTEREST OF THE CLIENT, WARM ZEAL IN THE MAINTENANCE AND DEFENSE OF HIS RIGHTS AND THE EXERTION OF HIS UTMOST LEARNING AND ABILITY; STANDARD REQUIRED.— Upon pursuing his client's cause, respondent Atty. Lina-ac became duty bound to protect complainant Angeles' interests. The degree of service expected of him as an advocate was his "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability[.]" The high degree of service required of a lawyer is brought about by the lawyer's fiduciary duty toward the client, with their relationship marked "with utmost trust and confidence." The Code of Professional Responsibility likewise imposes an exacting standard and requires lawyers to serve their clients with competence, fidelity, and diligence: CANON 17 -A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him. 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. RULE 18.04 A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information. Respondent fell short of the standard required of him as complainant's legal counsel when he failed to serve her with competence and diligence.

2. **ID.; ID.; ID.; RULE 1.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHALL NOT ENGAGE IN UNLAWFUL, DISHONEST, IMMORAL, OR DECEITFUL CONDUCT; VIOLATED.—** Complainant engaged respondent's services to secure a declaration nullifying her marriage with her husband. However, despite complainant's considerable efforts at coming up with the cash for respondent's professional fees, respondent did not reciprocate with similar diligence toward her case. Further, instead of filing an actual petition for the nullity of complainant's marriage, he attempted to hoodwink complainant by furnishing her a copy of a Complaint with a fraudulent received stamp from the Regional Trial Court. x x x. Respondent's deceitful conduct violates Rule 1.01 of the Code of Professional Responsibility, which provides, "A

lawyer shall not engage in unlawful, dishonest, immoral[,] or deceitful conduct."

3. ID.; ID.; ID.; A LAWYER'S REPEATED DUPLICITY TOWARD HIS CLIENT REFLECTS HIS LACK OF INTEGRITY, AND CONSTITUTES A VIOLATION OF THE LAWYER'S OATH.— Worse, even after their attorney-client relationship was severed, respondent filed a second Complaint in a blatant attempt to cover up his earlier negligence and thwart complainant's efforts to recover the money she paid him. Respondent's repeated duplicity toward complainant reflects his lack of integrity, and is a clear violation of the oath he took before becoming a lawyer, as correctly found by the Investigating Commissioner: Very clearly, respondent violated his oath as he was not forthright and honest in his dealings with the complainant. He engaged in deceitful conduct by presenting a bogus complaint allegedly bearing the stamp of the court. Consequently, he must bear the consequence of his own wrongdoing.

4. ID.; ID.; ID.; AN OFFICER OF THE COURT IS REQUIRED TO STRICTLY ADHERE TO THE RIGID STANDARDS OF MENTAL FITNESS, MAINTENANCE OF THE HIGHEST DEGREE OF MORALITY, AND FAITHFUL COMPLIANCE WITH THE RULES OF THE LEGAL PROFESSION.— *Del Mundo v. Atty. Capistrano* emphasized the exacting standards expected of law practitioners: To stress, *the practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality, including honesty, integrity[,] and fair dealing.* They must perform their fourfold duty to society, the legal profession, the courts[,] and their clients, in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility. Falling short of this standard, the Court will not hesitate to discipline an erring lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion in consideration of the surrounding facts. This Court expects an officer of the court to strictly adhere to the "rigid standards of mental fitness, maintenance of the highest degree of morality[,] and faithful compliance with the rules of the legal profession[.]" Undoubtedly, respondent lacks the essential requirements of "probity and moral fiber," which are needed for his continued membership in the legal profession.

5. ID.; ID.; ADMINISTRATIVE CHARGES; PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW INSTEAD OF THE PENALTY OF DISBARMENT IMPOSED FOR VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY.— [T]his Court takes judicial notice that respondent will be about 78 years old by the time this Resolution is promulgated. In light of his advanced age, this Court deems it proper to temper justice with mercy and mete out a penalty of two (2) years of suspension instead of the ultimate penalty of disbarment. Ours is a court of law, but it is our humane compassion that strengthens us as an institution and cloaks us "with a mantle of respect and legitimacy."

R E S O L U T I O N

LEONEN, *J.*:

The practice of law is a privilege, and lawyers who fail to meet the strict standards of legal proficiency, morality, and integrity will have their names stricken out of the Roll of Attorneys.[1]

This resolves the Administrative Complaint[2] filed by Everdina C. Angeles (Angeles) against Atty. Wilfredo B. Lina-ac (Atty. Lina-ac) for his negligence in performing his duties as legal counsel, and for committing a fraudulent act to cover up his negligence.

Sometime in February 2010, Angeles engaged the services of Atty. Lina-ac to file a petition for the nullity of her marriage with her husband. She paid him his professional fee in several tranches, for a total of ₱50,000.00, which was paid by May 2010.[3]

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[1] *Del Mundo v. Atty. Capistrano,* 685 Phil. 687, 693 (2012) [Per *J.* Perlas-Bernabe, Third Division].

[2] *Rollo,* pp. 3-4.

[3] *Id.* at 3.

Angeles repeatedly followed up with Atty. Lina-ac on the status of her case. In October 2010,[4] he sent her a copy of a Complaint,[5] which bore the "received" stamp of the Regional Trial Court Branch 11, Manolo Fortich, Bukidnon. The complaint was supposedly docketed as Civil Case No. 10-3-35.

Angeles brought up an error in the Complaint with Atty. Lina-ac, who promised to rectify it. Months passed, yet her counsel failed to provide her a copy of the corrected Complaint, despite her repeated follow-ups. Fed up with his excuses, Angeles verbally asked Atty. Lina-ac in the second week of May 2011 to return the ₱50,000.00 she paid him.[6]

On May 25, 2011, Angeles went to the Regional Trial Court to inquire about her case status, and was shocked to discover that there was no pending petition for the nullity of her marriage, and that the stamp used in the Complaint provided by Atty. Lina-ac was not official.[7] The Regional Trial Court certified[8] that there was no Civil Case No. 10-3-35 pending in its docket.

Angeles confronted Atty. Lina-ac about this, to which he admitted that he never filed her Complaint. He also promised to return the money she paid him.[9]

Despite their agreement to sever their attorney-client relationship, Atty. Lina-ac on June 16, 2011 filed a Complaint[10] before the Regional Trial Court for the nullity of Angeles' marriage. It was docketed as Civil Case No. 11-06-79.

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[4] *Id*.

[5] *Id*. at 8-10.

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

[7] *Id*. at 4.

[8] *Id*. at 7.

[9] *Id*. at 6.

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

In its June 27, 2011 Order,[11] the Regional Trial Court directed Angeles to file the necessary motion to serve summons on her husband through publication.[12]

On June 29, 2011, Angeles sent Atty. Lina-ac a Demand Letter[13] for the immediate return of ₱110,000.00, representing all the money she paid him for the two (2) cases he was handling. She expressed her dismay at how he swindled her and deliberately went against their agreement by filing the second Complaint without her consent. She then informed him that she would file the appropriate criminal and administrative cases against him.[14]

On July 6, 2011, Atty. Lina-ac sent Angeles a copy of the June 27, 2011 Order, and asked her to submit an affidavit with information on her husband's whereabouts.[15] He then filed a Motion for Extension of Time[16] to file the motion for service of summons through publication, which the Regional Trial Court granted in its July 22, 2011 Order.[17]

Angeles did not provide Atty. Lina-ac the requested affidavit; yet, on August 4, 2011, Atty. Lina-ac still filed a Motion with Leave of Court for Service of Summons through Publication.[18]

In its August 10, 2011 Order,[19] the Regional Trial Court denied the Motion for failure to attach Angeles' affidavit. Atty. Lina-ac then provided Angeles a copy of it.[20]

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[11] *Id*. at 13.

[12] *Id*.

[13] *Id*. at 6.

[14] *Id*.

[15] *Id*. at 30.

[16] *Id*. at 31.

[17] *Id*. at 32.

[18] *Id*. at 33.

[19] *Id*. at 34.

[20] *Id*. at 35.

In its September 6, 2011 Order,[21] the Regional Trial Court dismissed the second Complaint for Angeles' failure to comply with the requirements of filing the Motion. Again, Atty. Lina-ac provided Angeles a copy of the Order.[22]

On May 17, 2012, Angeles filed before the Provincial Prosecutor a Complaint[23] for estafa against Atty. Lina-ac, and forwarded the same Complaint to the Integrated Bar of the Philippines Misamis Oriental Chapter.[24]

On May 30, 2012, Angeles sent Atty. Lina-ac another Demand Letter[25] for the return of her money, and threatened to file a disbarment proceeding against him.

On July 9, 2012, Atty. Lina-ac filed his Comment[26] before the Integrated Bar of the Philippines Misamis Oriental Chapter. He denied defrauding Angeles and claimed that he did not know who placed the fake stamp on the first Complaint. He further claimed that the first Complaint was just a draft, and that Angeles' sister-in-law requested for copy of it.[27]

Atty. Lina-ac also pointed out that he filed a petition for the nullity of Angeles' marriage, and that the petition was dismissed because Angeles failed to provide the necessary affidavit for the summons on her husband to be served through publication.[28]

On April 26, 2013, the Investigating Commissioner directed both parties to attend a mandatory conference on July 25, 2013 at the Integrated Bar of the Philippines Building in Pasig City.[29]

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[21] *Id*. at 36.

[22] *Id*. at 37.

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

[24] *Id*. at 2.

[25] *Id*. at 5.

[26] *Id*. at 17-19.

[27] *Id*. at 19.

[28] *Id*. at 17-18.

[29] *Id*. at 39.

Atty. Lina-ac, who was 72 years old,[30] moved for the postponement[31] of the mandatory conference because his condition of Type 2 Diabetes made it difficult for him to travel from Bukidnon to Pasig City.

The Investigating Commissioner canceled[32] the scheduled mandatory conference and reset[33] it to August 29,2013. Atty. Lina-ac moved[34] to transfer the venue of the mandatory conference to the Integrated Bar of the Philippines Misamis Oriental/Cagayan De Oro chapter because of his ailment.

The mandatory conference was reset one last time. When both parties still failed to appear, the Investigating Commissioner terminated the mandatory conference, denied Atty. Lina-ac's motions to transfer venue, and directed the parties to submit their position papers.[35]

In his Position Paper,[36] Atty. Lina-ac denied that he swindled Angeles and emphasized that he fulfilled his duties as her counsel. On the other hand, Angeles failed to file her position paper.[37]

On January 29, 2014, the Investigating Commissioner recommended[38] that Atty. Lina-ac be suspended from the practice of law for one (1) year for his negligence and deceitful conduct.

In its September 27, 2014 Resolution,[39] the Integrated Bar of the Philippines Board of Governors modified the Investigating

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[30] *Id*. at 43.

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

[32] *Id*. at 41.

[33] *Id*. at 46.

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

[35] *Id*. at 53.

[36] *Id*. at 54-56.

[37] *Id*. at 79.

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

[39] *Id*. at 78. The Resolution was docketed as Resolution No. XXI-2014-586 in CBD Case No. 12-3662.

Commissioner's recommendation by increasing the penalty of suspension to two (2) years and ordering Atty. Lina-ac to return ₱50,000.00 to Angeles:

> *RESOLVED to ADOPT and APPROVE, as it is hereby ADOPTED and APPROVED,* ***with modification,*** *the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and considering that Respondent was remiss of his obligation and even deceived Complainant in violation of Rule 18.03 of the Code of Professional Responsibility, Atty. Wilfreda B. Linaac is hereby* ***SUSPENDED from tlte practice of law for two (2) years and Ordered to Return to Complainant the amount of Fifty Thousand (₱50,000.00) Pesos.***[40] (Emphasis in the original)

On April 29, 2015, Atty. Lina-ac moved for reconsideration[41] of the Resolution against him.

In its June 17, 2017 Resolution, the Board of Governors partially granted[42] Atty. Lina-ac's Motion and downgraded the penalty of suspension to reprimand, in recognition of his belated filing of the petition for annulment.

This Court modifies the findings of the Board of Governors.

Upon pursuing his client's cause, respondent Atty. Lina-ac became duty bound to protect complainant Angeles' interests. The degree of service expected of him as an advocate was his "entire devotion to the interest of the client, warm zeal in the maintenance and defense of his rights and the exertion of his utmost learning and ability[.]"[43] The high degree of service required of a lawyer is brought about by the lawyer's fiduciary duty toward the client, with their relationship marked "with utmost trust and confidence."[44]

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[40] *Id*.

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

[42] *Id*. at 86.

[43] CANONS OF PROFESSIONAL ETHICS, no. 15.

[44] *Caranza Vda. de Saldivar v. Atty. Cabanes, Jr.*, 713 Phil. 530, 537 (2013) [Per J. Perlas-Bernabe, Second Division].

The Code of Professional Responsibility likewise imposes an exacting standard and requires lawyers to serve their clients with competence, fidelity, and diligence:

> CANON 17 - A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.
>
> 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.
>
> RULE 18.04 A lawyer shall keep the client informed of the status of his case and shall respond within a reasonable time to the client's request for information.

Respondent fell short of the standard required of him as complainant's legal counsel when he failed to serve her with competence and diligence.

Complainant engaged respondent's services to secure a declaration nullifying her marriage with her husband. However, despite complainant's considerable efforts at coming up with the cash for respondent's professional fees, respondent did not reciprocate with similar diligence toward her case. Further, instead of filing an actual petition for the nullity of complainant's marriage, he attempted to hoodwink complainant by furnishing her a copy of a Complaint with a fraudulent received stamp from the Regional Trial Court. As the Investigating Commissioner found:

> A painstaking review of the case shows that respondent was negligent enough in his obligation as counsel despite having received the amount of FIFTY THOUSAND (₱50,000) PESOS from the complainant. He was remised (*sic*) in his obligation when he failed to file the petition for annulment of marriage despite the lapse of reasonable period of time. Worse, he deceived complainant by showing a copy of the petition with a stamp of the court in order to make her believe that it was already filed when in truth, there was no such case filed by him. His belated filing of the petition in (*sic*) June 27,

2011 will not exculpate him from any administrative liability under Rule 18.03 of the CPR which states: ***"a lawyer shall not neglect a legal matter entrusted to him and his negligence in connection therewith shall render him liable.***[45] (Emphasis in the original)

Respondent's deceitful conduct violates Rule 1.01 of the Code of Professional Responsibility, which provides, "A lawyer shall not engage in unlawful, dishonest, immoral[,] or deceitful conduct."

Worse, even after their attorney-client relationship was severed, respondent filed a second Complaint in a blatant attempt to cover up his earlier negligence and thwart complainant's efforts to recover the money she paid him. Respondent's repeated duplicity toward complainant reflects his lack of integrity, and is a clear violation of the oath he took before becoming a lawyer, as correctly found by the Investigating Commissioner:

> Very clearly, respondent violated his oath as he was not forthright and honest in his dealings with the complainant. He engaged in deceitful conduct by presenting a bogus complaint allegedly bearing the stamp of the court. Consequently, he must bear the consequence of his own wrongdoing.[46]

Del Mundo v. Atty. Capistrano[47] emphasized the exacting standards expected of law practitioners:

> To stress, *the practice of law is a privilege given to lawyers who meet the high standards of legal proficiency and morality, including honesty, integrity[,] and fair dealing.* They must perform their fourfold duty to society, the legal profession, the courts[,] and their clients, in accordance with the values and norms of the legal profession as embodied in the Code of Professional Responsibility. Falling short of this standard, the Court will not hesitate to discipline an erring lawyer by imposing an appropriate penalty based on the exercise of sound judicial discretion in consideration of the surrounding facts.[48] (Emphasis supplied, citations omitted)

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[45] *Rollo,* p. 80.

[46] *Id*. at 80.

[47] 685 Phil. 687 (2012) [Per *J*. Perlas-Bernabe, Third Division].

[48] *Id*. at 693.

This Court expects an officer of the court to strictly adhere to the "rigid standards of mental fitness, maintenance of the highest degree of morality[,] and faithful compliance with the rules of the legal profession[.]"[49] Undoubtedly, respondent lacks the essential requirements of "probity and moral fiber,"[50] which are needed for his continued membership in the legal profession.[51]

Nonetheless, this Court takes judicial notice that respondent will be about 78 years old by the time this Resolution is promulgated. In light of his advanced age, this Court deems it proper to temper justice with mercy and mete out a penalty of two (2) years of suspension instead of the ultimate penalty of disbarment. Ours is a court of law, but it is our humane compassion that strengthens us as an institution and cloaks us "with a mantle of respect and legitimacy."[52]

WHEREFORE, respondent Atty. Wilfredo B. Lina-ac is **SUSPENDED** from the practice of law for two (2) years. He is **ORDERED** to return to complainant Everdina C. Angeles the amount of Fifty Thousand Pesos (₱50,000.00) with interest at the rate of six percent (6%) per annum from the date of promulgation of this Resolution until fully paid.[53] He is likewise **DIRECTED** to submit to this Court proof of payment of the amount within ten (10) days from payment.

Let copies of this Resolution be furnished to: (1) the Office of the Court Administrator, to disseminate it to all courts throughout the country for their information and guidance; (2) the Integrated Bar of the Philippines; and (3) the Office of

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[49] *Bernardo v. Atty. Mejia,* 558 Phil. 398, 402 (2007) [Per *J*. Nachura, *En Banc*].

[50] *Plumptre v. Atty. Rivera,* 792 Phil. 626, 632 (2016) [*Per Curiam*, *En Banc*].

[51] *Id*.

[52] *J* . Leonen, Dissenting Opinion in *Narag v. Atty. Narag,* 730 Phil. 1, 7 (2014) [*Per Curiam*, *En Banc*].

[53] *Nacar v. Gallery Frames,* 716 Phil. 267 (2013) [Per *J*. Peralta, *En Banc*].

the Bar Confidant, to append it to respondent's personal record as a member of the Bar.

SO ORDERED.

Carpio, Acting C.J., Peralta, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Gesmundo, Reyes, J. Jr., Hernando, and *Carandang, JJ.,* concur.

Bersamin, C.J., on official business.

Reyes, A. Jr., J., on leave.

EN BANC

[G.R. No. 210683. January 8, 2019]

DR. CONSOLACION S. CALLANG, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI*; FORM AND CONTENTS OF THE PETITION; GUIDELINES ON RELAXATION OF THE RULES WHERE THE PETITIONER FAILED TO ATTACH COPIES OF DOCUMENTS RELEVANT TO ITS PETITION.— Section 5, Rule 64 of the Rules of Court requires that petitions for *certiorari* must be accompanied by a clearly legible duplicate original or certified true copy of the judgment, final order or resolution subject thereof, together with certified true copies of such material portions of the record as referred to therein and other documents relevant and pertinent thereto. x x x. In *Magsino v. De Ocampo*, the Court reiterated the guidelines to be observed in deciding whether the rules should be relaxed in cases where the petitioner failed to attach copies of documents relevant to its petition, to wit: *First*, not all

pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition. *Second*, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [sic] found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached. *Third*, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE (P.D.) NO. 1445, OTHERWISE KNOWN AS THE GOVERNMENT AUDITING CODE OF THE PHILIPPINES; ACCOUNTABLE OFFICERS ARE STILL LIABLE FOR THE FUNDS UNDER THEIR CUSTODY EVEN IF THE LOSS WAS CAUSED BY *FORCE MAJEURE* SHOULD THEIR OWN NEGLIGENCE, CONTRIBUTE TO IT; CONCEPT OF NEGLIGENCE, EXPOUNDED; NEGLIGENCE OF PETITIONER, NOT PROVED.— Section 105 of Presidential Decree (P.D.) No. 1445 provides that officers accountable for government property or funds shall be liable in case of its loss, damage or deterioration occasioned by negligence in the keeping or use thereof. Absent any showing that the accountable officer acted negligently in the handling of government funds, he or she is not liable for its value and should be relieved from any accountability. Stated otherwise, accountable officers are still liable for the funds under their custody even if the loss was caused by *force majeure* should their own negligence contribute to it. In *Bintudan v. Commission on Audit*, the Court expounded that negligence is a fluid concept highly dependent on the surrounding circumstances, to wit: Negligence is the omission to do something that a reasonable man, guided upon those considerations which

> ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and [a] reasonable man could not do. Stated otherwise, negligence is want of care required by the circumstances. **Negligence is, therefore, a relative or comparative concept. Its application depends upon the situation the parties are in, and the degree of care and vigilance which the prevailing circumstances reasonably require.** Conformably with this understanding of negligence, the diligence the law requires of an individual to observe and exercise varies according to the nature of the situation in which she happens to be, and the importance of the act that she has to perform. x x x. A careful review of the records, however, would show that there is no substantial evidence to support Callang's alleged negligence.

APPEARANCES OF COUNSEL

Desiderio A. Perez for petitioner.
The Solicitor General for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

Before this Court is a petition for *certiorari* under Rule 64 of the Revised Rules of Court which seeks to reverse and set aside the November 20, 2013 Decision No. 2013-199 of the Commission on Audit (COA).[1]

Factual background

On November 17, 2005, petitioner Dr. Consolacion S. Callang (Callang) encashed various checks in the total amount of ₱987,027.50 for the payment of the 2005 Year-End Bonus and Cash Gift of the teaching and non-teaching personnel of Bambang District I, Bayombong, Nueva Vizcaya. She was then a District

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[1] Concurred in by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Rowena V. Guanzon; *rollo*, pp. 17-22.

Supervisor of Bambang District I, Bayombong, Nueva Vizcaya, Department of Education (DepEd).[2]

After her transaction at the Land Bank of the Philippines, Solano Branch, Callang, together with other principals from Bambang District Schools, had their lunch at a nearby fast-food restaurant. Then, she returned to her office to personally distribute the bonuses to the concerned personnel — only ₱449,573.00 of the total amount was handed out because not all personnel were present. Callang wanted to entrust the remaining cash of ₱537,454.50 to Rizalino Lubong (Lubong), the District Statistician, for safekeeping, but the latter refused, prompting her to bring the money home instead.[3]

On November 18, 2005, Callang first went to the Saint Mary's University to bring snacks to her granddaughter before heading for her office. While she was on board a jeepney, one of her co-passengers declared a robbery while the vehicle was traversing the National Highway in Macate, Bambang, Nueva Vizcaya. The robber took the bag of money Callang was carrying as well as her personal belongings. The passengers of the robbed jeepney immediately reported the incident to the authorities. In the same vein, Callang notified the Schools Division Superintendent (SDS) volunteering to be submitted for inquiry.

In a letter dated November 18, 2005, the SDS reported the robbery to the Audit Team Leader (ATL), Bambang District I, DepEd, Nueva Vizcaya. Likewise, in a letter dated November 24, 2005, Callang informed the ATL regarding the robbery and asked for assistance to support her request for relief from money accountability.[4]

In his January 17, 2011 Memorandum,[5] the ATL opined that Callang was not negligent in the loss of funds and her request

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[2] *Id*. at 17.

[3] *Id*.

[4] *Id*. at 19.

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

for Relief of Cash Accountability should be granted. It explained that Callang had no other choice but to bring home the money she had encashed. The ATL noted that there had been at least four previous burglary incidents in her office and that there was no safety vault in her office but only a wooden cabinet and a steel cabinet. It posited that the loss of money was beyond her control and had exercised sufficient diligence in safeguarding the funds. Meanwhile, in its March 17, 2011 Indorsement[6] to the COA Adjudication and Settlement Board (COA-ASB), the Supervising Auditor (SA) agreed with the ATL's findings that there was no negligence on the part of Callang for the loss of money as it was caused by the robbery incident.

However, the Officer-in-Charge-Regional Director (OIC-RD) of COA Regional Office No. 2, Tuguegarao City opined that Callang was negligent in handling the funds as an accountable officer. The same was affirmed by the COA-ASB in its September 29, 2011 Decision[7] finding negligence on the part of Callang and that her request for relief was filed beyond the reglementary period of 30 days reckoned from the occurrence of the loss.

Aggrieved, Callang filed a petition for review before the COA.

Assailed COA Decision

In its November 20, 2013 Decision, the COA affirmed the COA-ASB Decision. Although it found that Callang's request for relief was timely filed, it agreed that her request should be denied on account of her negligence. The COA explained that Callang failed to provide adequate precautionary and safety measures to protect government funds under her custody. It pointed out that she took great risk when she took her lunch at a fast-food restaurant instead of returning immediately to the school. The COA also highlighted that negligence can be

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[6] *Id*. at 122-123.

[7] Not attached in the *rollo*.

attributed to Callang due to the fact that she opted to bring the money home even if there was a safety deposit box in her office. The COA Decision read:

> WHEREFORE, there being no new and material evidence presented that would warrant the reversal of the assailed decision, the instant Petition of Dr. Consolacion S. Callang is hereby DENIED for lack of merit. Accordingly, the Adjudication and Settlement Board Decision No. 2011-136 dated September 29, 2011 is hereby AFFIRMED.[8]

Hence, this present petition, raising:

ISSUE

WHETHER OR NOT RESPONDENT COMMISSION ON AUDIT COMMITTED GRAVE ABUSE OF DISCRETION AND GRAVE ERROR IN ISSUING THE DECISION FINDING PETITIONER NEGLIGENT IN THE LOSS OF THE AMOUNT OF ₱537,454.50 THROUGH ROBBERY AND THEREBY DENYING PETITIONER'S RELIEF FROM ACCOUNTABILITY THROUGH THE SAID LOSS.[9]

Callang argued that the COA flip-flopped in handling her request for release from liability considering that the ATL and the SA initially found that she was at no fault for the loss. She also assailed that the findings of the ATL and the SA should have been given more weight than the opinion of the OIC-RD considering that they were more familiar with the situation in the field.

Callang bewailed that the COA nitpicked the facts when it rendered the assailed decision to make it appear that she was indeed negligent. She countered that: it was not a unilateral decision to bring home the money as it was due to the fact that Lubong was apprehensive in having custody over it; the Bambang District Office itself cannot afford to pay for security or a service vehicle to be used by accountable officers; she had lunch at a fast-food restaurant to start distributing the money to other school

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[8] *Rollo*, pp. 20-21.

[9] *Id*. at 5.

principals in the area; and the school of her granddaughter was just near her house and it was best to continue with her daily routine in bringing snacks to her as not to arouse suspicion.

In its Comment[10] dated April 8, 2014, the COA countered that Callang failed to allege any grave abuse of discretion considering that the weight and sufficiency of evidence are not assessed in *certiorari* proceedings. It disagreed that it flip-flopped in its Decision because the reversal of the findings of the ATL and the SA is nothing more but the exercise of its quasi-judicial power. In addition, the COA assailed that Callang's petition should be dismissed for its failure to attach the decisions or recommendations relevant in the determination whether it indeed acted with grave abuse of discretion in denying her claim for relief. Likewise, it asserted that it had thoroughly considered all the circumstances before arriving at its decision.

The COA maintained that Callang was negligent when she opted to bring the money home instead of putting it in the safety deposit box in her office. It pointed out that Lubong merely refused to be entrusted with the money because he was not used to handle such substantial amount and that there was no mention whether it was risky to place the money inside the safety cabinet. Moreover, the COA noted that Callang failed to prove that her office had been pilfered in the past.

In her Reply[11] dated March 9, 2017, Callang explained that while she may have failed to attach the findings of the ATL and the SA, their recommendations that there was no negligence on her part can be found in the COA Decision. In addition, she pointed out that these documents were basically in COA's possession considering that they were prepared by its own personnel.

On the other hand, Callang insisted that she had no choice but to bring the money home because Lubong, who had custody of the safety cabinet, did not want the money to be deposited

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[10] *Id*. at 47-58.

[11] *Id*. at 110-118.

therein. Further, she explained that it was unsafe to leave the money inside the office because there was only a steel cabinet, not a safety vault, and it had been subject to numerous burglaries in the past.

The Court's Ruling

The petition is meritorious.

Section 5, Rule 64 of the Rules of Court requires that petitions for *certiorari* must be accompanied by a clearly legible duplicate original or certified true copy of the judgment, final order or resolution subject thereof, together with certified true copies of such material portions of the record as referred to therein and other documents relevant and pertinent thereto. The COA argues that Callang's petition for *certiorari* should have been dismissed outright because it failed to attach the decision or memorandum of the ATL and the SA. It assails that these documents are relevant in the determination whether it had acted with grave abuse of discretion.

In *Magsino v. De Ocampo*,[12] the Court reiterated the guidelines to be observed in deciding whether the rules should be relaxed in cases where the petitioner failed to attach copies of documents relevant to its petition, to wit:

> *First*, not all pleadings and parts of case records are required to be attached to the petition. Only those which are relevant and pertinent must accompany it. The test of relevancy is whether the document in question will support the material allegations in the petition, whether said document will make out a *prima facie* case of grave abuse of discretion as to convince the court to give due course to the petition.
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> *Second*, even if a document is relevant and pertinent to the petition, it need not be appended if it is shown that the contents thereof can also [sic] found in another document already attached to the petition. Thus, if the material allegations in a position paper are summarized in a questioned judgment, it will suffice that only a certified true copy of the judgment is attached.

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[12] 741 Phil. 394, 402 (2014), citing *Galvez v. Court of Appeals*, 708 Phil. 9, 20 (2013).

Third, a petition lacking an essential pleading or part of the case record may still be given due course or reinstated (if earlier dismissed) upon showing that petitioner later submitted the documents required, or that it will serve the higher interest of justice that the case be decided on the merits.

It is beyond cavil that the decision or recommendation of the ATL and the SA are relevant in the determination of whether the COA acted with grave abuse of discretion in denying Callang's request for relief from accountability. Here, Callang ascribes grave abuse of discretion on the part of the COA for disregarding the findings of the ATL and the SA, which were in a better position to be knowledgeable of the present conditions in the field.

In the assailed COA Decision, it stated that the ATL and the SA both opined that Callang was faultless or that she was not negligent in the loss of the funds under her custody. Thus, even without the ATL and the SA's Memoranda, it can be ascertained from the COA Decision attached in Callang's petition that they had recommended for the approval of Callang's request — unfortunately it was reversed by the COA-ASB and affirmed by the COA.

Further, even assuming that indeed the copies of the ATL and SA's Memoranda were indispensible, Callang's failure to initially append them to her petition for *certiorari* is excusable. The findings of the ATL and the SA were subsequently attached in her Reply. In addition, substantial justice dictates that the rules be relaxed in the present case so that the same could be resolved based on the merits.

Negligence depends on the factual circumstances of the case.

Section 105 of Presidential Decree (P.D.) No. 1445 provides that officers accountable for government property or funds shall be liable in case of its loss, damage or deterioration occasioned by negligence in the keeping or use thereof. Absent any showing that the accountable officer acted negligently in the handling

of government funds, he or she is not liable for its value and should be relieved from any accountability.[13] Stated otherwise, accountable officers are still liable for the funds under their custody even if the loss was caused by *force majeure* should their own negligence contribute to it.

In *Bintudan v. Commission on Audit*,[14] the Court expounded that negligence is a fluid concept highly dependent on the surrounding circumstances, to wit:

> Negligence is the omission to do something that a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or the doing of something which a prudent man and [a] reasonable man could not do. Stated otherwise, negligence is want of care required by the circumstances. **Negligence is, therefore, a relative or comparative concept. Its application depends upon the situation the parties are in, and the degree of care and vigilance which the prevailing circumstances reasonably require.** Conformably with this understanding of negligence, the diligence the law requires of an individual to observe and exercise varies according to the nature of the situation in which she happens to be, and the importance of the act that she has to perform. (Emphasis supplied)

In ascribing negligence on Callang, the COA noted that she: (1) opted to have her lunch at a fast-food restaurant instead of going back directly to her school; (2) brought home the money in spite of the existence of a safety cabinet in her office; and (3) stopped by her granddaughter's school before going to her office the following day. A careful review of the records, however, would show that there is no substantial evidence to support Callang's alleged negligence.

The Court agrees that Callang was not negligent in deciding to have her lunch at a fast-food restaurant after she had encashed the check instead of immediately returning to her office. It is noteworthy that she was in the fast-food chain not only to have

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[13] *Cruz v. Hon. Gangan*, 443 Phil. 856, 865 (2003).

[14] G.R. No. 211937, March 21, 2017, 821 SCRA 211, 221.

lunch but also to meet the principals from the other school districts so she could start distributing the funds allocated for the Year-End Bonus and Cash Gift of concerned employees in other school districts. Further, the loss did not occur while Callang was at the fast-food restaurant and it was far removed from the robbery incident such that any negligence which may be present during that time cannot be attributed or related to the loss due to the robbery.

In addition, Callang was not negligent when she passed by her granddaughter's school to bring her snacks to her. Her house and her granddaughter's school were in the same neighborhood and were close to each other. Meanwhile, the robbery incident occurred while Callang was commuting from her granddaughter's school to her office. Considering the proximity of the school and her house, her route could not have been materially different had she decided to go straight to her office. Thus, Callang would have taken the same jeepney trip even if she did not pass by her granddaughter's school.

It readily becomes apparent that the root of the controversy is Callang's decision to bring home the money instead of leaving it in her office. It started the chain of event which eventually led to the point where she was robbed while on her way to work.

The COA finds Callang's choice to bring home the money to be negligent falling below the standard of diligence to be observed on such occasion. Its conclusion that Callang was negligent is primarily due to the fact that she was aware of the presence of a safety deposit box inside the office and still decided to bring the money home.

Nevertheless, a thorough review of the records yields no other conclusion but that Callang exercised sufficient diligence in deciding to bring the money home instead of leaving it in the office. As found by the ATL, Callang's office had been the subject of numerous burglaries in the past. In addition, Lubong did not recommend that the money be placed inside the safety cabinet in the office because of the substantial amount involved.

Based on the circumstances, Callang cannot be faulted when she believed that it was safer to bring the money home where she could always keep a vigilant eye in safekeeping. It can be reasonably seen that she was dissuaded to leave the money in the office because of the past break-ins and the apprehension of his colleague to place a substantial amount of money in the safety cabinet.

The COA maintains that Callang cannot rely on the past burglaries to justify her action because she failed to substantiate the same with sufficient proof. Even assuming that the past incidents of burglaries were not proven, still, she acted diligently in bringing home the money instead of leaving it in the office. In Lubong's Affidavit,[15] he mentioned a "safety cabinet" not a steel or safety vault. Further, an inventory of the office verified that there was no safety vault but only a wooden cabinet and a steel cabinet.[16] In *Gutierrez v. Commission on Audit*,[17] the Court recognized that the safety of money cannot be ensured if it is deposited in enclosures other than a safety vault. Thus, Callang's office had no suitable compartments where the funds could have been safely deposited.

Contrary to the COA's position, the present case is similar with the circumstances in *Hernandez v. Chairman, Commission on Audit*[18] in that in both cases, the accountable officer was faced with a dilemma on how to handle government funds — with each option having its own pros and cons. Here, Callang was faced to decide whether to leave the money in the office, aware of the past burglaries, and that the office only had a steel cabinet accessible by anyone, or bring the money home where she could fully monitor the funds.

It is true that had Callang did not bring the money home, government funds would not have been lost on account of the

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[15] *Rollo*, p. 23.

[16] *Id*. at 120.

[17] 750 Phil. 413, 433 (2015).

[18] 258-A Phil. 604 (1989).

robbery she encountered. Nevertheless, the Court disagrees that she was negligent in bringing the money home because prudence dictated her to keep the money with her at all times instead of leaving the same in the office without adequate protection. In the discerning words of the Court in *Hernandez*, while it is easy to pass judgment with the benefit of foresight, an individual cannot be faulted in failing to predict every outcome of one's action, to wit:

> Hindsight is a cruel judge. It is so easy to say, after the event, that one should have done this and not that or that he should not have acted at all, or else this problem would not have arisen at all. That is all very well as long as one is examining something that has already taken place. One can hardly be wrong in such a case. But the trouble with this retrospective assessment is that it assumes for everybody an uncanny prescience that will enable him by some mysterious process to avoid the pitfalls and hazards that he is expected to have foreseen. It does not work out that way in real life. For most of us, all we can rely on is a reasoned conjecture of what might happen, based on common sense and our own experiences, or our intuition, if you will, and without any mystic ability to peer into the future. So it was with the petitioner.[19]

To emphasize, Callang's choice of bringing the money home was not fraught with negligence. In fact, it is not hard to fathom that a reasonable and diligent person would have acted the same way as Callang did under the present circumstances. Her office had been subjected to numerous burglaries in the past and it was not equipped with an adequate compartment where the money can be safely stored until the following day.

Taken in isolation, the fact that Callang brought the money home under her custody would appear to be a negligent act rendering her liable for the loss due to the robbery. However, when the surrounding circumstances are considered, Callang acted prudently when she decided against leaving the money in her office and instead bring the funds home. In fact, she would have been negligent had she opted to leave the money

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[19] *Id*. at 610.

in the office knowing that it had no safety vault but only a steel cabinet. In *Leano v. Hon. Domingo*,[20] the Court agreed that a steel cabinet is an inadequate storage for government funds, to wit:

> In addition, it was found that the use of the steel cabinet was not a wise and prudent decision. The steel cabinet, even when locked, at times could be pulled open, thus it can be surmised that even without the use of a key, the robbery could be committed once the culprits succeed in entering the room (Progress Report of the Police dated February 28, 1985). Moreover, the original key of the steel cabinet was left inside a small wooden box placed near the steel cabinet; it is therefore highly possible that the said steel cabinet was opened with the use of its original key (Police Alarm Report).

In the present case, Callang had sufficient reason not to leave the money inside the steel cabinet in her office. This is especially true considering that her office had been victimized by burglars in the past. Without a safety vault, a would – be intruder would not find it difficult to force open the steel cabinet and steal the money deposited therein. Consequently, Callang's decision to bring the money home was the reasonable and responsible choice given the situation. The fact that she was robbed on her way to work the following day was beyond her control.

It is unfortunate that the path Callang took to avoid the loss of the money in her hands ultimately led her to it. Nonetheless, she cannot be faulted for not having prescience as all that is expected of her is to exercise the necessary diligence based on existing conditions. Leaving the money in her office would have rendered it more susceptible to loss in light of the situation of her office at the time of the incident. In addition, it is noteworthy that Callang actively pursued the case against the robbers as she initiated the complaint which eventually led to a Resolution[21] from the Office of the Provincial Prosecutor recommending the filing of an Information against the culprits.

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[20] 275 Phil. 887, 893 (1991).

[21] *Rollo*, pp. 36-37.

WHEREFORE, the November 20, 2013 Decision No. 2013-199 of the Commission on Audit is **REVERSED** and **SET ASIDE**. The Request for Relief from Money Accountability of petitioner Dr. Consolacion S. Callang is **GRANTED**.

SO ORDERED.

Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Caguioa, Gesmundo, Hernando, and *Carandang, JJ.*, concur.

Bersamin, C.J., on official business.

Jardeleza, J., no part, in view of prior participation as Solicitor General.

Reyes, A. Jr., J., on leave.

SECOND DIVISION

[G.R. No. 187262. January 10, 2019]

ENGINEERING GEOSCIENCE, INC., *petitioner, vs.* **PHILIPPINE SAVINGS BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; A PETITION FOR REVIEW UNDER RULE 45 OF THE RULES OF COURT SHOULD COVER ONLY QUESTIONS OF LAW; EXCEPTIONS.— As a general rule, a petition for review on *certiorari* under Rule 45 of the Rules of Court should cover only questions of law. x x x The general rule admits of exceptions: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting;

(6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties.

2. **MERCANTILE LAW; CORPORATION CODE; BOARD OF DIRECTORS; THE GENERAL RULE IS THAT, IN THE ABSENCE OF AUTHORITY FROM THE BOARD OF DIRECTORS, NO PERSON, NOT EVEN ITS OFFICERS, CAN VALIDLY BIND A CORPORATION.—** A corporation, as a juridical entity, acts through its board of directors. The board exercises almost all corporate powers, lays down all corporate business policies, and is responsible for the efficiency of management. The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.

3. **CIVIL LAW; AGENCY; DOCTRINE OF APPARENT AUTHORITY; ACTS AND CONTRACTS OF THE AGENT, AS ARE WITHIN THE APPARENT SCOPE OF AUTHORITY CONFERRED ON HIM, ALTHOUGH NO ACTUAL AUTHORITY TO DO SUCH ACTS OR MAKE SUCH CONTRACTS HAS BEEN CONFERRED, BIND THE PRINCIPAL; CASE AT BAR.—** [T]he records of the case show no evidence that EGI authorized Santos to file a Complaint and enter into a Compromise Agreement on its behalf. Neither was there any showing that EGI's By-Laws authorize its President to do such acts. EGI's grant of authority to Santos, however, falls under the doctrine of apparent authority. Under this doctrine, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. Furthermore, the principal's liability is limited only to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none was actually given. Apparent authority is determined only by the acts of the principal and not by the acts of the agent.

APPEARANCES OF COUNSEL

Nemesio R. Briones & Pacito Pineda, Jr. for petitioner.

Ysmael Salgado Masangya Gordove Avila and Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 187262 is a petition[1] filed by Engineering Geoscience, Inc. (EGI) against Philippine Savings Bank (PSBank) assailing the Decision[2] promulgated on 13 November 2008 and the Resolution[3] promulgated on 19 March 2009 by the Court of Appeals (CA) in CA-G.R. SP No. 102885.

The CA granted PSBank's petition for certiorari and prohibition, and annulled and set aside the Orders dated 24 August 2007[4] and 23 January 2008[5] of Branch 80, Regional Trial Court, Quezon City (trial court) in Civil Case No. Q-91-9150. Accordingly, the CA reinstated the trial court's Decision dated 12 January 1993.[6]

The Facts

The present case has been before the CA twice. The CA summarized the events which occurred before PSBank filed a petition for certiorari and prohibition before it:

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 44-74. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia concurring.

[3] *Id*. at 76-78. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia concurring.

[4] *Id*. at 331-333. Penned by Pairing Judge Ma. Theresa Dela Torre-Yadao.

[5] *Id*. at 990-991. Penned by Judge Charito B. Gonzales.

[6] *Id*. at 139-142. Penned by Judge Efren N. Ambrosio.

The present action stemmed from a *Complaint With Prayer For Writ Of Preliminary Injunction And Restraining Order* instituted by private respondent Engineering Geoscience, Inc. (EGI) against petitioner [PSBank] together with Metropolitan Bank & Trust Co., Inc. (MBTC), Manuela F. Lorenzo, Marino V. Cachero and Silverio P. Bernas, which seeks the annulment of its loan contract with [PSBank].

It appears that EGI obtained a loan from [PSBank] in the principal amount of Twenty Four Million Sixty Four Thousand (Php24,064,000.00) Pesos as evidenced by a Promissory Note dated February 14, 1990. To secure the loan, EGI, through its President, Jose Rolando Santos, executed a Real Estate Mortgage on February 13, 1990 in favor of [PSBank] over two parcels of land, more particularly described and covered by Transfer Certificate of Title Nos. 292874 and 249866. As agreed by the parties, the schedule of payment for said loan shall be as follows: (a) Php1,443,840.00 representing interest for two (2) quarters commencing on May 14, 1990 and three months thereafter; (b) Php1,850,626.00 (Principal and interest) quarterly for twenty six (26) quarters starting November 14, 1990 and every three (3) months thereafter.

EGI was only able to make partial payments on its loan as it fell due based on the above schedule of payment, and after paying a total amount of only Php3,223,192.91 or only half of the amortizations due amounting to Php6,588,932.00, EGI made no further payments to [PSBank] after its last payment made on November 29, 1990 in the amount of Php 160,000.00. Thus, [PSBank] invoked the acceleration clause under the promissory note and sent a demand letter dated February 11, 1991 demanding full payment of its loan obligation.

[PSBank's] demand letter went unheeded, prompting [PSBank] to file a petition for extra-judicial foreclosure of mortgage under Act No. 135 on May 21, 1991, with the Office of the Ex-Officio Sheriff, Regional Trial Court of Quezon City. The foreclosure sale was set on June 26, 1991 but the same did not push through on account of the *Complaint With Prayer For Writ Of Preliminary Injunction and Restraining Order* filed by EGI before the [trial court]. The [trial court] issued an *Order* dated August 26, 1991 granting EGI's prayer for issuance of writ of preliminary injunction and effectively enjoined [PSBank] from proceeding with the foreclosure sale.

Before the case materialized into a full-blown trial, [PSBank] and EGI submitted a *Joint Motion For Approval Of Compromise Agreement* dated December 29, 1992, which was approved by the [trial court] in a Decision dated January 12, 1993, whereby the parties agreed as follows:

> 1). Plaintiff (EGI) expressly and unconditionally acknowledges its loan obligation to defendant Philippine Savings Bank (PABank) [sic] under the Promissory Note, Annex C-Complaint, which loan obligation is duly secured by a real estate mortgage on two (2) parcels of land, together with the improvements thereon, covered by Transfer Certificate of Title (TCT) Nos. 292874 and 249866 issued by the Register of Deeds of Quezon City as evidenced by the Real Estate Mortgage, Annex A-Complaint.
>
> 2). In full and final settlement of plaintiff's aforesaid obligation, plaintiff undertakes to pay PSBank the amount of Thirty Eight Million Two Thousand One Hundred Eighty-Two Pesos and Fifty Six Centavos (₱38,002,182.56). This amount of ₱38,002,182.56 is payable, in full, without interest, on or before 31 December 1993, subject to the provision of paragraph 4 below.
>
> 3). (a) In the event that the partial payments made by plaintiff should not reach the amount of ₱26,376,000.00 by 31 December 1993, the deadline for the payment of the obligation as stated in the preceding paragraph 2, plaintiff shall execute in favor of PSBank a Deed of Absolute Sale for the transfer and conveyance of the properties covered by TCT Nos. 292874 and 249866 for the amount of ₱26,376,000.00 as the agreed consideration.
>
> (b) To implement the foregoing sale, plaintiff irrevocably constitutes and appoints the Branch Clerk of Court, Regional Trial Court of Quezon City, Branch 80, as its attorney-in-fact to execute and deliver to PSBank the corresponding Deed of Absolute Sale and such other deeds as are necessary for the transfer in the name of PSBank of the titles to the properties now covered by TCT Nos. 292874 and 249866 as fully to all intents and purposes as if the deeds were directly executed and delivered by plaintiff.

(c) With respect to the amount of ₱11,626,182.56 representing the net obligation of plaintiff, PSBank shall be entitled to the issuance of a writ of execution for the collection of the balance.

4). (a) In the event, however, that plaintiff's partial payment up to 31 December 1993 would reach the amount of ₱26,376,000.00, the period for the payment of the balance of ₱11,626,182.56 shall be automatically extended up to 31 December 1995 and this balance shall be payable under the following terms:

(i). The balance of ₱11,626,182.56 shall earn a fixed rate of interest of eighteen percent (18%) per annum;

(ii). The balance, together with the agreed interest, shall be payable in two (2) equal installments, the first installment amounting to ₱5,813,091.28 (principal) plus ₱2,092,712.86 (interest) or a total amount of ₱7,905,804.14 to be due and payable on 31 December 1994, and the second installment amounting to ₱5,812,091.28 (principal) plus ₱1,046,356.43 (interest) or a total amount of ₱6,859,447.71, to be due and payable on 31 December 1995.

(b) If the balance or any portion thereof be not paid when due, the parties agrees [sic] that the properties covered by TCT Nos. 292874 and 249866 shall be sold to public auction, for which purposes the parties authorize the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Quezon City to conduct a public auction for the sale of these properties.

(c) If the properties are sold at public auction for an amount which is less than the full amount of the obligation of ₱38,002,182.56, PSBank shall be entitled to recover the deficiency by means of writ of execution.

(d) If the properties are sold and PSBank is declared as the higest bidder, PSBank shall also be entitled to the issuance of a writ of possession without bond.

(5). In the event plaintiff defaults in the payment of the entire obligation or any of the installments indicated above, and a Deed of Absolute Sale over the properties is executed by plaintiff in favor of PSBank, plaintiff agrees to pay to the latter transfer and registration expenses in the amount of ₱1,900,000.00.

(6). During the implementation of this Compromise Agreement and until one (1) year from the registration of the Certificate of Sale of the properties pursuant to par. 4(b) in favor of PSBank, the President of plaintiff corporation, Jose Rolando Santos, his immediate family and relatives, may continue to occupy, use and possess the properties without having to pay rentals or other charges to PSBank on account of such occupation, use and possession. In the event, however, that the said occupants refuse and fail to vacate the properties after the expiration of the one year period indicated above, PSBank is entitled to the issuance of a writ of possession to eject them and place PSBank in physical possession of the properties.

(7). Plantiff agrees to pay PSBank and Metrobank, by way of attorney's fees, the amount of ₱50,000.00 each through postdated checks.

(8). Upon complete payment and full compliance by plaintiff [with] all the terms and conditions herein agreed upon, defendant shall immediately return to plaintiff, after the payment of the last installment herein stipulated, the owner's duplicate of TCT Nos. 292874 and 249866, together with the corresponding Release or Cancellation of Real Estate Mortgage.

(9). In consideration of the parties' mutual covenants and undertakings, the parties agree to waive, abandon, and renounce their respective claims and counterclaims against each other in the above-captioned case.

(10). The parties' representatives signing this Compromise Agreement expressly warrant that they have been duly authorized to represent and bind their respective corporations.

Notwithstanding the above court-approved compromise agreement, EGI still failed to comply with the terms and conditions thereof. Thus, petitioner [PSBank] was constrained to file a *Motion for Execution* of the [trial court's] *Decision* on their compromise agreement. Accordingly, a *Writ of Execution* dated July 18, 1994 was issued in favor of [PSBank]. However, before the same could be served, the [trial court] issued an *Order* dated August 31, 1994, stating:

> Considering that the Court needs to be enlightened and clarified on certain matters relative to the Writ of Execution, meanwhile, let the implementation of the same be held in abeyance until further orders from this Court.

> In the meanwhile, set this case for conference on SEPTEMBER 14, 1994 at 8:30 a.m. Notify all the parties and their counsels.
>
> SO ORDERED.

In turn, [PSBank] filed an urgent motion to set aside the above Order, arguing that the terms and conditions of the parties' compromise agreement as contained in the *Decision* dated January 12, 1993 [are] clear, and that [PSBank] is entitled to the satisfaction of the said *Decision* in its favor as the same states that it is final and executory and to delay its execution unjustifiably prejudices [PSBank].

Thus, finding [PSBank's] argument to be well-founded, the [trial court] subsequently issued an *Order* dated December 12, 1994 reinstating the writ of execution for the implementation of its *Decision*. Accordingly, a Deed of Absolute Sale dated February 27, 1995 was executed by Branch Clerk of Court Atty. Amador Pineda, as attorney-in-fact of EGI, in favor of [PSBank] over EGI's mortgaged properties covered by TCT Nos. 292874 and 249866 in accordance with the terms set in the *Decision*. Thereafter, TCT Nos. 292874 and 249866 were cancelled and replaced by TCT Nos. N-136360 and N-136261, respectively. After the properties were registered under its name, [PSBank] filed an *Ex-Parte Motion For The Issuance Of A Writ Of Possession*, which was granted by the [trial court] in an *Order* dated February 1, 1996.

However, EGI filed an *Urgent Motion For Reconsideration Of The Order Dated February 1, 1996*, alleging that under paragraph (6), they still have one (1) year from registration of the sale of the mortgaged properties within which to vacate the properties and it is only after the lapse of such period that [PSBank] may move for issuance of a writ of possession. The motion was denied by the [trial court] in an *Order* dated June 4, 1996.

After the denial of its urgent motion, EGI challenged the said *Order* before this Court by way of a *Petition* under Rule 45 of the Rules of Court, docketed as CA-G.R. SP No. 41348. The Third Division of this Court rendered a *Decision* dated February 27, 2004 dismissing EGI's petition, the same being the wrong remedy. The same Division further held that the issuance of the writ of possession is a ministerial duty of the [trial court] for purposes of implementing the parties' compromise agreement as contained in the *Decision* dated January 12, 1993, which has long become final and executory.

EGI's petition having been dismissed, [PSBank] filed a *Motion For Issuance Of Writ Of Possession* before the [trial court], alleging that with the dismissal of EGI's petition before this Court and with the properties having been transferred under its name, [PSBank] is now entitled to the issuance of the writ as a matter of right. The same was granted in an *Order* dated March 17, 2005 and a *Notice To Vacate* was subsequently served on EGI.

At this juncture, Attys. Nemesio R. Briones and Pacito M. Pineda, Jr. filed their *Entry of Appearance* with the [trial court] as collaborating counsels for EGI and subsequently filed an *Urgent Motion For Reconsideration*, alleging that it never received a copy of [PSBank's] motion for issuance of writ of possession and that it would have contested the motion had it known about the same, and invoked its right to due process. [PSBank] filed its Opposition to EGI's motion, reiterating its argument for the issuance of the writ of possession.

In an *Order* dated April 29, 2005, the [trial court] denied EGI's urgent motion for reconsideration, stating that the record of the case shows that EGI's counsel of record, Atty. Ambrosio Garcia, was duly served a copy of the Order dated November 12, 2004 directing counsel to file a comment/opposition to [PSBank's] motion. However, the [trial court] noted that no such comment/opposition was filed nor any justification given for failing to do so.

EGI filed a *Reply with Urgent Motion To Recall Order Dated April 29, 2005*, alleging that it was denied the right to contest each and every point raised by [PSBank] in its opposition, and claiming that it had until May 13, 2005 within which to file its Reply thereto. **It was only at that point that EGI raised for the first time the alleged lack of authority of its former president, Jose Rolando Santos, to enter into the compromise agreement reduced in the Decision dated January 12, 1993.**

[PSBank] filed its *Rejoinder With Opposition*, arguing that EGI is now estopped from assailing the authority of Atty. Ambrosio Garcia and EGI's former president Jose Rolando Santos, which they could have interposed when they filed their motion for reconsideration of the order granting the issuance of the writ of possession. Thus, [PSBank] prayed for the denial of EGI's motion for lack of merit.

While the incidents were still pending resolution before the [trial court], EGI filed a *Petition For Annulment* before this Court, docketed as CA-G.R. SP No. 90134, praying that the *Decision* dated January 12, 1993 be set aside and declared unenforceable or null and void, and

all court processes issued by virtue thereof be recalled and also declared null and void. The then Tenth Division of the Court issued a *Resolution* dated July 6, 2005, noting therein that EGI's pending *Reply With Urgent Motion To Recall The Order Dated April 29, 2005* still to be resolved by the [trial court] is the proper remedy as the allegations therein, if found to be true, would cause the setting aside of the compromise agreement and equally the Decision rendered by virtue thereof; and if denied, would give EGI the remedy of appeal. Thus, in dismissing EGI's petition, the then Tenth Division cited *Cruz vs. Intermediate Appellate Court, viz*:

> It is hornbook knowledge that a judgment on compromise [agreement] has the effect of res judicata on the parties and should not be disturbed except for vices of consent or forgery. To challenge the same, a party must move in the trial court to set aside the said judgment and also to annul the compromise agreement itself, before he can appeal from that judgment. Definitely, the petitioners have ignored these remedial avenues.

The Court also found EGI guilty of forum shopping for the precipitate filing of the petition, notwithstanding the pendency of its motions before [the trial court], prompting EGI to file a *Manifestation* explaining therein that the filing of the petition while it has a pending incident before the [trial court] is a remedy allowed under the Rules and does not constitute forum shopping. Thus, following the appropriate remedial measure pointed out in the Resolution of the Tenth Division, EGI returned to the [trial court] and filed a *Motion To Set Aside Judgment Based On a Compromise Agreement,* alleging in the main:

> 5. Plaintiff EGI thus respectfully moves that the Decision dated January 12, 1993 approving the Compromise Agreement entered into by Mr. Santos with defendants PSBank and Metrobank be set aside. The alleged Compromise Agreement entered into by Mr. Santos without the knowledge of and the proper authority from plaintiff EGI is not legally binding and not enforceable against plaintiff EGI. Consequently, any order, resolution, decision or writ rendered by virtue of said Compromise Agreement shall not be legally binding against plaintiff EGI. The Decision dated January 12, 1993 approving the same therefore [should] be set aside.

On the other hand, [PSBank] filed its *Counter-Manifestation* before the then Tenth Division, alleging that it recently received the above

motion of EGI which is merely asking the [trial court] to rule on issues already passed upon by this Court that rendered an opinion adverse to EGI, which has already been found guilty of forum-shopping. Thereafter, [PSBank] filed its *Opposition* to EGI's Motion to set aside the *Decision* dated January 12, 1993 and the compromise agreement, arguing that the dismissal of its petition for annulment of judgment and the subsequent filing of said motion constitutes forum shopping.

[PSBank] countered further that the failure of EGI's counsel of record, Atty. Ambrosio Garcia, nor of its former president, Jose Rolando Santos, to produce the requisite special power of attorney (SPA) to enter into a compromise agreement does not mean that they were not authorized to do so as the pre-trial and subsequent proceedings could not have proceeded in the absence thereof. [PSBank] added that even if that is the case, EGI is now estopped from assailing the compromise agreement and the *Decision* dated January 12, 1993 as it never asserted the same. [PSBank] pointed [out] further that more than twelve (12) years have already lapsed from the rendition of the *Decision* and as a consequence, EGI is now barred by laches.

EGI subsequently filed a *Motion to Set [Aside] Compromise Agreement And Reply In Connection With The Motion To Set Aside Judgment Based on Compromise Agreement*, alleging that the [trial court] must decide on the basis of the record of the case and not merely on reasonable inference as what [PSBank] would want to happen with respect to the authority of its former president and Atty. Garcia to enter into a compromise agreement, stressing that the record will bear out that EGI never gave both a special power of attorney to do so. EGI also pointed out that its act of abandoning the petition for annulment of judgment erases all doubts that it is guilty of forum shopping.

In the midst of this exchange of pleadings between [PSBank] and EGI, the [trial court] issued an *Order* dated August 31, 2005 denying EGI's *Urgent Motion To Recall Order Dated April 29, 2005, Urgent Motion To Suspend Proceedings* and *Motion To Set Aside Judgment*, for lack of merit.

Thereafter, [PSBank] filed its *Comment/Opposition to the Motion To Set [Aside] Compromise Agreement And Reply In Connection With The Motion To Set Aside Judgment Based On Compromise Agreement.*

Meanwhile, EGI filed a *Motion For Reconsideration* of the *Order* dated August 31, 2005, arguing that it has yet to file its reply to [PSBank's] Opposition and was, thus, deprived of due process. EGI also echoed its argument that in the absence of an SPA authorizing its former president Jose Rolando Santos and counsel of record Atty. Ambrosio Garcia, it cannot be bound under the compromise agreement subject of the *Decision* dated January 12, 1993. Accordingly, EGI argued that estoppel by laches will not hold under the premises.

[PSBank] filed its *Comment/Opposition* to EGI's motion for reconsideration, alleging that the same is pro forma and a mere continuation of EGI's obstinate resort to forum shopping as found by the then Tenth Division of this Court in the *Resolution* dated July 6, 2005, of which EGI did not file any motion for reconsideration. Citing Section 5, Rule 7 of the Rules of Court, [PSBank] contended that deliberate resort to forum shopping merits the sanction of dismissal.

Respondent Pairing Judge Ma. Theresa Dela Torre-Yadao issued an *Order* dated February 15, 2007, denying EGI's motion for reconsideration for lack of merit. Equally denied in the same *Order* were EGI's *Motion to Set Aside Compromise Agreement And Its Reply In Connection With the Motion To Set Aside Judgment Based on Compromise Agreement and Motion For Reconsideration* of the Order dated August 30, 2005 filed by third-party claimant Frederick Gerard Q. Santos.

EGI filed a *Motion for Reconsideration* of the afore-cited *Order*, alleging that it is merely following the opinion of the Tenth Division of this Court in the *Resolution* dated July 6, 2005 that it avail[ed] of the proper remedy in seeking to set aside the compromise agreement pending at the time of the filing of the petition before this Court, docketed as CA-G.R. SP No. 90134. Thus, EGI posited that the [trial court] should take a second look at the glaring error of the previous presiding judge of approving a compromise agreement that is allegedly highly inequitable in its stipulations and worse, entered by Jose Rolando Santos without any authority and who intentionally and deliberately concealed the same from EGI.

[PSBank] filed its *Opposition* to the said motion, arguing in the main that the issues raised therein are a mere rehash of the various pleadings already filed by EGI and that the then Third Division of this Court has already held in its *Decision* dated February 27, 2004 in CA-G.R. SP No. 41348 that the Decision dated January 12, 1993 is already final and executory and has also already declared the

compromise agreement sought to be set aside as having the force of law between the parties.

Issues joined, **respondent Pairing Judge Ma.Theresa Dela Torre-Yadao issued the now challenged *Order* dated August 24, 2007 reversing the trial court's earlier *Order* dated February 25, 2007 and declaring the Compromise Agreement dated December 29, 1992 as null and void**, citing *Rivero vs. Court of Appeals*, in support thereof declaring:

> x x x, a compromise agreement executed by one in behalf of another, who is not duly authorized to do so by the principal, is void and has no legal effect, and the judgment based on such compromise agreement is null and void and vests no right and holds no obligation to any party.

The tables having been turned against [PSBank], it then filed a *Motion for Reconsideration*, stating that the [trial court] had unwittingly condoned the procedurally proscribed practice of reversing final and executory decisions as in the present case, considering that this Court has already held in CA-G.R. SP No. 41348 that the *Decision* dated January 12, 1993 is already final and executory. [PSBank] contended that the present compromise agreement is stamped with judicial approval and thus its nature is different from an ordinary compromise agreement, citing *Ynson vs. Court of Appeals*, thus:

> Furthermore, the compromise agreement entered into by the parties had the force of law and was conclusive between them. A judicial compromise, once stamped with judicial approval, becomes more than a mere contract binding upon the parties, and having the sanction of the court and entered as its determination of the controversy, it has the force and effect of any other judgment. In their compromise agreement, the parties unequivocally stipulated that 'the fair market value of the shares of stock owned by Felipe Yulienco and Emerita M. Salva as determined and/or fixed by AEA Development Corporation shall be final, irrevocable and binding upon the parties and non-appealable. There being no fraud in the appraisal of the shares of stock, the valuation thereof is binding and conclusive upon the parties.

EGI filed its *Opposition*, stating that no judicial imprimatur should be accorded to a compromise agreement when the parties thereto are not duly and validly clothed with the requisite authority to represent

an alleged principal and therefore, the court acquires no jurisdiction. EGI pointed out further that the Verification of the original complaint signed by its former president shows that it does not contain any averment that the latter was authorized by its board to cause the filing of the present action.

Thereafter, EGI filed a *Supplemental Opposition With Motion To Strike Out Defendant Philippine Savings Bank's Motion For Reconsideration Dated September 25, 2007*, alleging that [PSBank's] notice of hearing violated Section 5, Rule 15 of the Rules of Court as the date set therein was beyond ten (10) days from date of filing as mandated in the rules.

[PSBank] countered EGI's allegations in its *Consolidated Reply* to which EGI filed a *Rejoinder and Reply*. **Respondent Judge Charito B. Gonzales issued the second challenged *Order* dated January 23, 2008 denying [PSBank's] motion for reconsideration for alleged contravention of Section 5, Rule 15 of the Rules**.[7] (Boldfacing and underscoring supplied)

The CA's Ruling

In its annulment of the trial court's Orders dated 24 August 2007 and 23 January 2008, the CA appreciated the facts differently from the trial court.

The CA concluded that the 24 August 2007 Order was issued with grave abuse of discretion amounting to lack or excess of jurisdiction. The CA was not inclined to believe that Jose Rolando Santos (Santos), EGI's former president, had no special power of attorney or secretary's certificate attesting to his authority to represent EGI. Neither was the CA inclined to believe that Santos filed the complaint without any authority from EGI's Board of Directors. The CA further stated that laches had set in against EGI as 12 years had lapsed from the date of execution of the compromise agreement. Thus, EGI can no longer invoke the lack of knowledge of its Board of Directors.

The CA also concluded that the 23 January 2008 Order was issued with grave abuse of discretion amounting to lack or excess

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[7] *Id*. at 45-59.

of jurisdiction. The CA stated that even if the hearing date exceeded the ten-day period, it would cause no injury to EGI.

The dispositive portion of the CA's decision reads as follows:

> WHEREFORE, the present petition is hereby GRANTED and the challenged *Orders* dated August 24, 2007 and January 23, 2008 are hereby ANNULLED and SET ASIDE. Accordingly, the *Decision* dated January 12, 1993, is REINSTATED.
>
> SO ORDERED.[8]

In a Resolution promulgated on 19 March 2009, the CA denied EGI's motion for reconsideration. The CA stated:

> It bears noting, as [EGI] may have missed the point, that Pairing Judge Ma. Theresa Dela Torre-Yadao's challenged *Order* dated August 24, 2007 set aside the compromise agreement and ultimately the *Decision* dated January 12, 1993, which the Third Division of this Court already declared final and executory in the *Decision* dated February 27, 2004 in CA-G.R. SP No. 41348. It is evident from these facts alone that respondent Judges [Presiding Judge Charito B. Gonzales and Pairing Judge Ma. Theresa Dela Torre-Yadao] acted without or in excess of their jurisdiction for they not only overturned the decision of a co-equal body but also of this Court as well which affirmed the same.
>
> WHEREFORE, the motion for reconsideration is hereby DENIED.
>
> SO ORDERED.[9]

EGI filed the present petition on 8 April 2009.

The Issue

Petitioner EGI raised only one issue before this Court:

> Whether the [CA] erred in annulling and setting aside the Orders dated 24 August 2007 and 23 January 2008 issued by the [trial court] thereby reinstating the Decision dated 12 January 1993 which approved an alleged Compromise Agreement entered into between PSBank

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[8] *Id*. at 73.

[9] *Id*. at 77.

and the former President of EGI without the knowledge, consent and authority of the latter.[10]

The Court's Ruling

We deny the petition.

We underscore that EGI' s petition hinges on a ruling on a finding of fact: that is, whether Santos entered into a Compromise Agreement with PSBank without the knowledge, consent, and authority of EGI and its Board of Directors. Determination of this fact will, in turn, be determinative of which among the subsequent rulings should be upheld.

As a general rule, a petition for review on certiorari under Rule 45 of the Rules of Court should cover only questions of law. Section 1 of Rule 45 provides:

> Section 1. *Filing of petition with Supreme Court*. – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. **The petition shall raise only questions of law which must be distinctly set forth.** (Emphasis supplied)

The general rule admits of exceptions: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings

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[10] *Id*. at 20.

are contrary to the admissions of both parties.[11] We find that none of the exceptions apply in the present case.

After a careful review of each party's submissions, we agree with EGI that there is nothing in the records that shows that Santos had the express authority to represent EGI in filing a complaint before the trial court, or even enter into any compromise agreement on behalf of EGI. Aside from its bare allegations, PSBank was not able to present any evidence which would show that Santos indeed had the authority to represent EGI. PSBank was not able to show any evidence of a board authority, a special power of attorney, or even a secretary's certificate that EGI issued in favor of Santos. Neither was PSBank able to show that it was not necessary for Santos to present a Board Resolution that authorizes him to file the Complaint and enter into the Compromise Agreement because EGI's By-Laws expressly authorize him to do so.[12]

However, in its eagerness to repudiate Santos' acts, EGI failed to substantiate how and when Santos lost his status as Company President, and how Santos was able to proceed with his misrepresentations before the Board of Directors regarding the payment of the loan obligation. The promissory notes from 1984 to 1990 were all signed by Santos as EGI's President. EGI did not bother to inform PSBank about the change in Santos' status despite previously holding him out as a person with authority to transact in its name. EGI also did not address how it will comply with the terms of the loan obligation. Moreover, in the same manner that EGI has been decrying the lack of explicit authority from its Board of Directors, we also expect nothing less than minutes of a Board Meeting, or even a Board Resolution, which removed Santos as Company President, or denounced his lack of authority to act in EGI's name.

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[11] *Republic of the Philippines v. Belmonte*, 719 Phil. 393, 400 (2013).

[12] See *Cebu Mactan Members Center, Inc. v. Tsukahara*, 610 Phil. 586 (2009).

The CA clearly showed EGI's duplicity and eagerness to utilize a measure that will delay fulfillment of its obligation to PSBank:

In EGI's *Reply With Urgent Motion to Recall Order Dated April 29, 2005*, it alleged under paragraph (10) thereof:

> 10. Plaintiff EGI would like to make it of record that its corporate officers were stunned and appalled by the notice to vacate the property, **as the corporation is not aware of the developments in the instant case.**

It appears from the wordings thereof that what EGI was not aware of were the developments in the case before the [trial court] and not of the case itself. Nonetheless, EGI is now estopped from questioning the jurisdiction of the [trial court] after it had actively participated in the proceedings before it, and in fact was able to obtain relief therefrom.

This Court also notes that the representative of EGI in the filing of its *Petition for Annulment* before this Court and who signed the Verification and Certification of Non-Forum Shopping, Imelda Q. Santos, appears to be the same Imelda Santos who signed the Promissory Note together with Jose Rolando Santos in favor of [PSBank] and also included as mortgagor in the Real Estate Mortgage executed also in favor of [PSBank].

Furthermore, EGI never denies the fact that [PSBank] already formally demanded payment of the loan obligation. Under this circumstance where EGI's present representative has knowledge of the loan obligation with [PSBank] and the mortgage executed to secure the same, and is in fact a party thereto, it puzzles this Court why EGI and its board of directors are totally unaware of the proceedings before the [trial court] when its present representative is a party to the loan with [PSBank] and which standing loan obligation's regular amortization is not being paid as it fell due, as in fact, demand has already been made earlier for its full payment. The foregoing clearly indicates that EGI is not complying with the terms and conditions under the promissory note executed by its former president and its current representative nor is it maintaining any communication with [PSBank] regarding the same transaction.

Without actually accusing its former president of fraud, EGI would want to impress upon the courts that its former president acted fraudulently in filing the complaint against [PSBank] before the [trial

court] and in subsequently entering into the compromise agreement without proper authorization from EGI's board of directors. Thus, it is EGI's theory that the [trial court] never acquired jurisdiction over it.

However, it must be borne in mind that he who alleges fraud must prove it for basic is the rule that *actori incumbit onus probandi*. It is an aged-old rule in civil cases that he who alleges a fact has the burden of proving it and a mere allegation is not evidence. Fraud is never presumed, but must be established by clear and convincing evidence. Outside its bare allegation of fraud and the absence of a special power of attorney and/or secretary's certificate, EGI never advanced any evidence to show how and why its former president deliberately concealed from its board of directors the complaint filed before the[trial court] and the subsequent compromise agreement.

It bears stressing that EGI has been insisting that the board of directors has the sole power and responsibility to bind the corporation in transacting business or in the performance of any act binding on the corporation. It is evident that EGI is aware of its loan obligation with [PSBank] and the terms thereof under the Promissory Note dated February 14, 1990 which its former president executed together with its present representative, Imelda Santos, and secured by a Real Estate Mortgage also executed by both individuals, by virtue of the Resolution of EGI's board of directors dated January 28, 1990. Absent from the records is any allegation on the part of EGI as to what action it has taken in order to comply with the terms of the promissory note under pain of losing its property nor to the demand sent by [PSBank] after it failed to comply therewith. Added to the same is the lack of any allegation by EGI that its former president made any representations or misrepresentations before the board regarding the status and/or payment of said loan obligation.

From the foregoing, it is readily apparent that EGI's board of directors failed to exercise the requisite diligence of a good father of a family in handling its affairs, specifically its loan obligation with [PSBank] which it is very much aware of. Also, there is no allegation as to whether the board of directors at the time of the execution of the compromise agreement is the same board of directors which is now claiming that its former president intentionally concealed and withheld the said complaint and compromise agreement.

Be that as it may, [PSBank] has no reason to doubt the authority of Jose Rolando Santos to enter into a compromise agreement with

[PSBank], the former being the president of EGI at the time of its execution. Both parties are presumed to be acting in good faith and with honesty of intention, free from knowledge of circumstances which ought to put one upon inquiry. (PSBank] would have no reason to doubt the authority of EGI's former president, having dealt with him before in the granting of EGI's loan and in the execution of the mortgage over the disputed properties to secure the same.

Furthermore, paragraph 10 of the Compromise Agreement dated December 29, 1992 and adopted in the Decision dated January 12, 1993 provides:

> 10. The parties['] representatives signing this Compromise Agreement expressly warrant that they have been duly authorized to represent and bind their respective corporations.

Even assuming that EGI's former president, Jose Rolando Santos, was indeed never authorized to file the original complaint before the [trial court] such that all proceedings therein are to be nullified, including the writ of preliminary injunction issued against [PSBank] enjoining it from proceeding with the extrajudicial foreclosure of the mortgaged properties, the same would only serve to revert the right of [PSBank] to proceed with the extrajudicial foreclosure of said mortgaged properties absent any proof that EGI has already settled its long outstanding obligation. However, to do so would be inequitous, considering that EGI has long benefitted from the proceeds of the loan which it obtained from [PSBank] and which loan remains unpaid for more than a decade now. It is but proper, therefore, that the rights of the parties now present be adjudicated as justice and equity dictate the same.[13] (Boldfacing and underscoring in the original)

A corporation, as a juridical entity, acts through its board of directors. The board exercises almost all corporate powers, lays down all corporate business policies, and is responsible for the efficiency of management. The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.[14] Section 23 of the Corporation Code of the Philippines provides:

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[13] *Rollo*, pp. 63-67.

[14] See *Cebu Mactan Members Center, Inc. v. Tsukahara*, *supra* note 12.

SEC. 23. *The Board of Directors or Trustees*. Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x.

x x x x x x x x x

As mentioned above, the records of the case show no evidence that EGI authorized Santos to file a Complaint and enter into a Compromise Agreement on its behalf. Neither was there any showing that EGI's By-Laws authorize its President to do such acts.

EGI's grant of authority to Santos, however, falls under the doctrine of apparent authority. Under this doctrine, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. Furthermore, the principal's liability is limited only to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none was actually given. Apparent authority is determined only by the acts of the principal and not by the acts of the agent.[15]

EGI does not repudiate the act of Santos in signing the Promissory Notes; in fact, EGI made partial payments, offering the authority of Santos to borrow and sign the Promissory Notes. EGI, however, repudiates the act of Santos in entering into the Compromise Agreement extending the repayment of the loan under the Promissory Notes, which extension is actually beneficial to EGI. In fact, the Compromise Agreement bought time for EGI to pay the loan under the Promissory Notes but EGI still failed to pay. Having availed of benefits under the Compromise Agreement, EGI is estopped from repudiating it.

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[15] See *Banate v. Philippine Countryside Rural Bank (Liloan, Cebu), Inc.*, 639 Phil. 35 (2010).

Since EGI's Board of Directors questioned Santos' authority to enter into a Compromise Agreement only after 12 years, laches had already set in.

The CA's decision in CA-G.R. SP No. 41438, promulgated on 27 February 2004,[16] has long become final and executory. RTC Judge Yadao's Order of 24 August 2007, which declared the Compromise Agreement null and void, cannot review the aforementioned CA decision.

> x x x. While the power and responsibility to decide whether the corporation should enter into a contract that will bind the corporation is lodged in its board of directors, subject to the articles of incorporation, by-laws, or relevant provisions of law, yet, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees, or agents. The authority of such individuals to bind the corporation is generally derived from law, corporate by-laws, or authorization from the board, either expressly or impliedly by habit, custom, or acquiescence in the general course of business. Apparent authority, is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words, the apparent authority to act in general, with which it clothes him; or (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, whether within or beyond the scope of his ordinary powers.
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> x x x. It is a familiar doctrine that if a corporation knowingly permits one of its officers or any other agent to act within the scope of an apparent authority, it holds him out to the public as possessing the power to do those acts; thus, the corporation will, as against anyone who has in good faith dealt with it through such agent, be estopped from denying the agent's authority.[17]

PSBank has framed the present case as a debtor's abuse of the judicial process to evade the payment of its just and valid obligations. Indeed, EGI still has not fully paid the loan obligation

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[16] *Rollo*, pp. 733-743.

[17] *Lipat v. Pacific Banking Corp.*, 450 Phil. 401, 414-415 (2003).

that it originally obtained on 15 March 1984.[18] EGI, on the other hand, has framed it as a denial of due process. However, EGI's contemporaneous acts contradict its arguments.

WHEREFORE, the petition is **DENIED** for lack of merit. The Court of Appeals' Decision promulgated on 13 November 2008 and Resolution promulgated on 19 March 2009 in CA-G.R. SP No. 102885 are **AFFIRMED**.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Hernando,*[*] *JJ.*, concur.

FIRST DIVISION

[G.R. No. 215904. January 10, 2019]

EDGAR L. TORILLOS, *petitioner, vs.* **EASTGATE MARITIME CORPORATION, F.J. LINES, INC., PANAMA, and EMMANUEL L. REGIO,** *respondents.*

[G.R. No. 216165. January 10, 2019]

EASTGATE MARITIME CORPORATION, F.J. LINES, INC., PANAMA, and EMMANUEL L. REGIO, *petitioners, vs.* **EDGAR L. TORILLOS,** *respondent.*

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[18] *Rollo*, p. 90.

[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; HEALTH, SAFETY AND SOCIAL WELFARE BENEFITS; DISABILITY BENEFITS; THE AWARD OF DISABILITY BENEFITS UNDER THE CBA HAS NO BASIS WHEN THE EMPLOYEE FAILED TO PROVE BY SUBSTANTIAL EVIDENCE THAT HIS DISABILITY WAS CAUSED BY AN ACCIDENT.— Torillos based his claim for total and permanent disability benefits under the CBA. He maintained that his disability was caused by an accident that happened on board the vessel while performing his duties as chief cook. We are not convinced as there was no evidence to show that Torillos met an accident on board the vessel that caused his injury. There was no accident report or any medical report issued indicating that Torillos figured in an accident while on board. x x x Hence, Torillos' claim that he met an accident on board was based on pure allegations. It is basic that Torillos must prove his own assertions and his failure to discharge the burden of proving that he was covered by the CBA militates against his entitlement to any of its benefits. x x x The grant of disability benefits under the IBF JSU/AMOSUP-IMMAJ CBA is confined only to "*xxx accident whilst in the employment of the Company regardless of fault, including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to willful acts, x x x.*" As discussed, Torillos failed to prove by substantial evidence that his disability was caused by an accident, hence, there is no basis in awarding him disability benefits under the CBA. As we find the CBA inapplicable, Torillos' entitlement to disability benefits is therefore governed by the POEA-SEC and relevant labor laws which are deemed written in the contract of employment with Eastgate.

2. REMEDIAL LAW; EVIDENCE; WHERE THE FACTUAL FINDINGS OF THE LABOR TRIBUNALS OR AGENCIES CONFORM TO, AND ARE AFFIRMED BY THE COURT OF APPEALS, THE SAME ARE ACCORDED RESPECT AND FINALITY AND ARE BINDING UPON THE SUPREME COURT; CASE AT BAR.— The NLRC affirmed this finding by holding that his illness was aggravated by his work as chief cook whose duties involved heavy manual labor such as carrying the heavy provisions of the ship, preparation and serving of all meals

for the entire crew of the vessel, cleaning of dining, kitchen and work areas and of utensils. It further ruled that while Torillos' lumbar spondylosis may be degenerative, there was sufficient basis to rule that his condition was aggravated by the nature of his work. The CA then fully concurred with this and ultimately ruled that there was a reasonable connection between Torillos' illness and the nature of his job, which aggravated any pre-existing condition Torillos might have. The Court is not inclined to depart from these findings of the Labor Arbiter, the NLRC, and the CA. "[W]here the factual findings of the labor tribunals or agencies conform to, and are affirmed by the CA, the same are accorded respect and finality and are binding upon this Court." We sustain the uniform findings of the Labor Arbiter, the NLRC, and the CA that Torillos' illness is work-related and compensable.

3. LABOR AND SOCIAL LEGISLATION; POEA-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); TOTAL AND PERMANENT DISABILITY BENEFITS; CONDITIONS WHEN A SEAFARER MAY HAVE BASIS TO PURSUE AN ACTION FOR TOTAL AND PERMANENT DISABILITY BENEFITS; CITED.— In the case of *C.F. Sharp Crew Management, Inc. v. Taok*, a seafarer may have basis to pursue an action for total and permanent disability benefits in any of the following conditions: (a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lape of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days; (b) 240 days had lapsed without any certification being issued by the company-designated physician; (c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-8(3) of the POEA-SEC are of a contrary opinion; (d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well; (e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading; (f) the company-designated physician determined that

his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work; (g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and (h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.

4. **CIVIL LAW; DAMAGES; ATTORNEY'S FEES; IN LABOR CASES, ATTORNEY'S FEES ARE AWARDED WHEN THERE IS UNLAWFUL WITHHOLDING OF WAGES OR BENEFITS DUE, FORCING THE EMPLOYEE TO LITIGATE; NOT PRESENT IN CASE AT BAR.—** In labor cases, attorney's fees are awarded when there is unlawful withholding of wages or benefits due, forcing the employee to litigate. In the present case, there was no unlawful withholding of benefits to speak of. As discussed, Torillos filed a case against Eastgate while he was still undergoing treatment and without yet a final disability assessment from the company-designated physician. His act was premature which stripped him of entitlement to attorney's fees.

APPEARANCES OF COUNSEL

R. Go Jr. Law Office for Edgar Torillos.

Nolasco & Associates Law Offices for Eastgate Maritime Corporation, *et al.*

D E C I S I O N

DEL CASTILLO, *J.*:

Before the Court are two consolidated Petitions for Review on *Certiorari*,[1] docketed as G.R. Nos. 215904 and 216165,

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[1] *Rollo* (G.R. No. 215904, Vol. I), pp. 30-64; *Rollo* (G.R. No. 216165, Vol. I), pp. 56-94.

both seeking the reversal of the April 1, 2014 Decision[2] and December 15, 2014 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 130976, which awarded Edgar L. Torillos (Torillos) permanent and total disability benefits in the amount of US$60,000.00 and attorney's fees of US$6,000.00.

Antecedent Facts

For a period of 15 years, Eastgate Maritime Corporation (Eastgate), for and on behalf of its foreign principal, F.J. Lines, Inc., Panama, continuously hired Torillos under various contracts. His last contract of employment[4] dated November 3, 2010 on board the vessel MV Corona Lions as Chief Cook was duly approved by the Philippine Overseas Employment Administration (POEA) and was covered by the International Bargaining Forum All Japan Seamen's Union/Associated Marine Officers' and Seamen's Union of the Philippines-International Mariners Management Association of Japan (IBF JSU/AMOSUP-IMMAJ) Collective Bargaining Agreement (CBA).[5] Torillos underwent the requisite Pre-Employment Medical Examination (PEME) and was found fit for sea duty.[6]

Torillos boarded the vessel on December 4, 2010. Sometime in November 2011, while in the performance of his duties, Torillos experienced pain in his right leg radiating to his lower extremities. He reported the matter to the Master of the vessel who, in turn, brought him to a hospital in Reihoku, Japan on November 14, 2011. There, he was diagnosed to be suffering from urinary stone in his right urinary tract and was prescribed pain reliever drugs.[7] Due to persistent back and leg pains, he was again

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[2] *Id*. at 68-81; *id*. at 98-111; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Noel G. Tijam (retired Supreme Court Associate Justice) and Priscilla J. Baltazar-Padilla.

[3] *Id*. at 83-87; *id*. at 113-117.

[4] *Id*. at 112 and 219; *id*. at 232 and 305.

[5] *Id*. at 113-150 and 229-265; *id*. at 233-270 and 306-351.

[6] *Id*. at 151-152; *id*. at 271-272.

[7] Medical Report dated November 14, 2011, *id*. at 267; *id*. at 353.

taken to a hospital in Newcastle, England on December 16, 2011 where the doctor recommended his repatriation for further management and treatment.[8]

Upon arrival in Manila on December 20, 2011, Torillos was referred to the company-designated physicians of NGC Medical Specialist Clinic, Inc., headed by Dr. Nicomedes G. Cruz (Dr. Cruz), for medical evaluation, examination and treatment. He was seen by a urology specialist who recommended Magnetic Resonance Imaging (MRI) of his lumbrosacral spine. The MRI conducted on February 9, 2012 revealed that Torillos was suffering from *Lumbar Spondylosis; L4-L5 Diffuse Bulge with Resultant Bilateral Neural Foraminal Stenosis; L5-S1 Diffuse Disc Bulge with Radial Tear; and L5-S1 Disc Desiccation.*[9] Upon recommendation of an orthopedic specialist, Torillos underwent knee X-ray on March 5, 2012, which showed degenerative changes on his left knee.[10] Thus, Torillos was referred to and evaluated by a rehabilitation specialist.[11] He was advised to undergo physical therapy to address his medical condition.

On April 19, 2012, Dr. Cruz issued a Medical Report with the following findings:

1. Lumbar spondylosis is a disorder in which discs and vertebrae degenerate. With aging, the bone of the spine overgrows and narrows the spinal canal.
2. It is degenerative in nature and most likely pre-existing.
3. The estimated length of further treatment is 2-4 weeks.
4. The estimated cost of further treatment is ₱5,000.00.

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[8] Medical Report dated December 16, 2011, *id*. at 153-155 and 269; *id*. at 273-275 and 355.

[9] Radiography Report dated February 9, 2012, *id*. at 157; *id*. at 277.

[10] Radiography Report dated March 5, 2012, *id*. at 158; *id*. at 278.

[11] Medical Report dated February 13, 2012, March 5, 2012 and March 12, 2012, *id*. at 276-278; *id*. at 362-364.

5. The interim disability grading under the POEA schedule of disabilities is Grade 8 – moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk.[12]

Torillos continued with his physical therapy as well as occupational therapy with the company-designated physicians. However, despite continued therapy sessions, he filed on May 8, 2012 a complaint[13] with the National Labor Relations Commission (NLRC) against Eastgate for payment of permanent total disability benefits, medical expenses, sickness allowance, damages and attorney's fees.

On July 9, 2012, Torillos consulted an independent orthopedic surgeon, Dr. Marcelino T. Cadag (Dr. Cadag), who declared him unfit for sea duty with the following diagnosis and findings:

Diagnosis: Lumbar Spondylosis; Neural Foraminal Stenosis, L4-L5; Degenerative Disc Disease, L5-S1

Given the amount of pain he is experiencing on his lower back and legs, and the associated weakness of his toe flexors, which is essential in the gait cycle, I advise the patient against heavy manual labor, especially lifting heavy objects. In my professional opinion, it would take at least 6 months of regular physiotherapy before the patient can have, if any, improvement in terms of pain relief and motor function of his toes. Physical therapy is further recommended. His present medical condition will prevent him from performing his duties as a seafarer (chief cook). He is therefore deemed not fit for sea duty, or work aboard any seafaring vessel.[14]

Proceedings before the Labor Arbiter

In his position paper, Torillos claimed for permanent total disability benefits in the sum of US$118,800.00 under the CBA since, according to him, his illness was a result of an accident that occurred while he was performing his duties as chief cook. He narrated that sometime in October 2011, he fell down on

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[12] *Id*. at 284; *id*. at 370.

[13] *Rollo* (G.R. No. 215904, Vol. I), pp. 88-89.

[14] *Id*. at 161; *rollo* (G.R. No. 216165, Vol. I), p. 281.

the floor after losing balance while carrying a sack of rice weighing 25 kilos. This caused his work-related injury that has rendered him incapable of returning to his sea duties, as confirmed and attested by the medical findings of his own physician, Dr. Cadag.

Eastgate, on the other hand, denied Torillos' entitlement to permanent total disability benefits under the CBA as Torillos' condition was not a result of an accident to be entitled to the benefits thereunder. Neither is Torillos entitled to the maximum disability benefits under the POEA-SEC since his condition was diagnosed to be pre-existing and degenerative by Dr. Cruz who made an extensive evaluation of his condition. At the most, Torillos is only entitled to the benefits corresponding to Grade 8 disability under the POEA-SEC, as assessed by Dr. Cruz.

In a Decision[15] dated October 29, 2012, the Labor Arbiter found Torillos entitled to permanent total disability benefits under the CBA amounting to US$118,800.00. The dispositive portion of the Decision reads:

> WHEREFORE, foregoing premises considered, respondents CORDIAL SHIPPING, INC. and CAPT. DEVER BESANA are hereby directed to pay jointly and severally complainant ANANIAS F. DANAY the amount of ONE HUNDRED EIGHTEEN THOUSAND AND EIGHT HUNDRED US DOLLARS (US$118,800.00) representing permanent total disability benefits, or its peso equivalent at the time of actual payment.
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> SO ORDERED.[16]

Eastgate appealed to the NLRC. In its Memorandum of Appeal,[17] Eastgate, among others, emphasized that the case was decided based on facts and evidence pertaining to another case as revealed by the Labor Arbiter's erroneous citation of

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[15] *Id*. at 311-316; *id*. at 470-475; penned by Labor Arbiter Corazon C. Borbolla.

[16] *Id*. at 316; *id*. at 475.

[17] *Id*. at 317-354; *id*. at 430-465.

the parties' names in the dispositive portion of the decision. Subsequently, the Labor Arbiter corrected the disparity by issuing a new Decision[18] dated January 3, 2013, which reflected the correct names of the parties in the decretal portion thereof. Thus:

> WHEREFORE, foregoing premises considered, respondents EASTGATE MARITIME CORPORATION and/or EMMANUEL L. REGIO are hereby directed to pay jointly and severally complainant EDGAR L. TORILLOS the amount of ONE HUNDRED EIGHTEEN THOUSAND AND EIGHT HUNDRED US DOLLARS (US$118,800.00) representing permanent total disability benefits, or its peso equivalent at the time of actual payment.
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> SO ORDERED.[19]

Proceedings before the National Labor Relations Commission

From the Labor Arbiter's Decision dated January 3, 2013, Torillos filed a Memorandum of Partial Appeal[20] with the NLRC, questioning the Labor Arbiter's failure to award him attorney's fees.

In its Comment,[21] Eastgate moved for the denial of Torillos' partial appeal, contending that it was filed out of time. It argued that the period for filing the appeal should be reckoned from the date of receipt of the October 29, 2012 Decision and not from the date of receipt of the January 3, 2013 Decision.

In a Decision[22] dated February 28, 2013, the NLRC dismissed Eastgate's appeal and found Torillos' appeal meritorious. The

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[18] *Id*. at 357-362; *rollo* (G.R. No. 216165, Vol. II), pp. 563-568; penned by Labor Arbiter Corazon C. Borbolla.

[19] *Id*. at 362; *id*. at 568.

[20] *Id*. at 363-370; *id*. at 574-597.

[21] *Rollo* (G.R. No. 216165, Vol. III), pp. 1233-1248.

[22] *Rollo* (G.R. No. 215904, Vol. I), pp. 401-408; *rollo* (G.R. No. 216165, Vol. I), pp. 20-27; penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez.

NLRC agreed with the Labor Arbiter that Torillos indeed suffered an accident, holding that "the suddenness of the injury as well as the nature of his work convinces us that his medical condition was caused by his having slipped and fallen while carrying heavy provisions on board the vessel." The NLRC further ruled that while lumbar spondylosis may be degenerative, such illness can be aggravated by the nature of the work of the seafarer, as what happened in the case of Torillos. The NLRC then awarded Torillos' claim for attorney's fees, ruling that Eastgate's refusal to settle the claims for disability compensation prompted Torillos to file a suit and incur expenses to protect his interest. It, thus, awarded Torillos permanent and total disability benefits in the amount of US$118,800.00 as stipulated by the parties in the CBA plus attorney's fees, thus:

> WHEREFORE, premises considered, Respondents appeal is hereby DISMISSED for lack of merit and the Decision of the Labor Arbiter dated October 29, 2012, as corrected under the Decision dated January 3, 2013 is AFFIRMED with MODIFICATION in that the respondents are further ordered to pay the complainant attorney's fees in the amount equivalent to ten percent (10%) of the total monetary award or the amount of US$11,880.00 in its Philippine peso equivalent at the time of payment.
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> SO ORDERED.[23]

Eastgate filed a motion for reconsideration.[24] This motion was, however, denied in the Resolution[25] dated April 30, 2013 of the NLRC.

Proceedings before the Court of Appeals

Eastgate filed a Petition for *Certiorari* with Urgent Application for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction[26] to enjoin the enforcement of the

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[23] *Id*. at 408; *id*. at 27.

[24] *Id*. at 409-423; *rollo* (G.R. No. 216165, Vol. III), pp. 1362-1373.

[25] *Id*. at 425-426; *rollo* (G.R. No. 216165, Vol. I), pp. 29-30.

[26] *Id*. at 428-470; *rollo* (G.R. No. 216165, Vol. II), pp. 726-765.

NLRC Decision. Eastgate attributed grave abuse of discretion on the NLRC in awarding permanent total disability compensation in accordance with the provisions of the CBA despite absence of evidence that Torillos was involved in an accident and despite Dr. Cruz's medical opinion that Torillos' condition was degenerative and pre-existing, not to mention the Grade 8 disability assessment. Eastgate likewise asserted that Torillos was not entitled to attorney's fees for his failure to timely question the October 29, 2012 Decision of the Labor Arbiter denying such claim as well as absence of bad faith on their part.

The CA, on April 1, 2014, rendered a Decision[27] affirming, albeit with modification the Decision of the NLRC. It disallowed the award of US$118,800.00 under the CBA and ruled that Torillos failed to prove that his disability was caused by an accident. The CA, nonetheless, held that Torillos can recover the maximum disability benefits under the POEA-SEC, finding that Torillos' disability was work-related because his job as chief cook has exposed him to heavy manual labor that caused back strain and injury to his lumbar vertebrae. The CA concluded that Torillos is considered permanently and totally disabled since his disability incapacitated him to perform his customary work as a cook. The CA then affirmed the award of attorney's fees. The dispositive portion of the CA Decision is as follows:

> WHEREFORE, premises considered, the assailed Decision dated February 28, 2013 of the NLRC is AFFIRMED with MODIFICATION. The disability benefit awarded to private respondent Edgar L. Torillos is reduced to US$60,000.00 in accordance with Section 20 (B)(6) and Section 32 of the 2000 Philippine Overseas Employment Administration Standard Terms and Conditions Governing the Employment of Seafarers on Board Ocean Going Vessels and the award of attorney's fees is correspondingly reduced to US$6,000.00.
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> SO ORDERED.[28]

Both parties filed their respective motions for reconsideration.

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[27] *Id*. at 68-8l; *Rollo* (G.R. No. 216165, Vol. I), pp. 98-111.

[28] *Id*. at 81; *id*. at 111.

Eastgate maintained that Torillos' lumbar spondylosis was pre-existing that did not entitle him to permanent disability compensation. Torillos, for his part, sought reconsideration of the CA's reduction of the award of permanent total disability. He insisted that his disability was caused by an accident on board the vessel thus the CBA should have been applied.

Both motions for reconsideration were denied by the CA in its Resolution[29] of December 15, 2014. Hence, both Torillos and Eastgate filed separate Petitions for Review on *Certiorari*,[30] which were consolidated by this Court.

Issues

G.R. No. 215904 (Torillos' Petition)

1) WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN ITS APPRECIATION OF EVIDENCE IN REDUCING THE AWARD OF PERMANENT TOTAL DISABILITY BENEFITS TO SEAMAN TORILLOS.

2) WHETHER OR NOT THE HONORABLE COURT OF APPEALS ACTED IN A WAY NOT IN ACCORD WITH THE DECISIONS OF THE HONORABLE SUPREME COURT IN NOT APPLYING THE RULING IN THE CASE OF *NFD INTERNATIONAL MANNING AGENTS, INC./BARBER SHIP MANAGEMENT LTD. V. ESMERALDO C. ILLESCAS* (G.R. NO. 183054, SEPTEMBER 29, 2010).

3) WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN REDUCING THE AWARD OF ATTORNEY'S FEES IN FAVOR OF SEAMAN TORILLOS.[31]

Torillos insists that he is entitled to compensation under the parties' CBA because his illness was brought about by an accident

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[29] *Id*. at 83-87; *id*. at 113-117.

[30] Torillos' Petition, *id*. at 30-64; Eastgate's Petition, *id*. at 56-92.

[31] See Memorandum for Edgar L. Torillos, *rollo* (G.R. No. 215904, Vol. II), p. 780.

that happened while in the performance of his duties on board the vessel. He further opines that assuming his condition was not the result of an accident, he is still entitled to permanent total disability compensation under the permanent medical unfitness clause of the CBA.

G.R. No. 216165 (Eastgate's Petition)

A.
IS [TORILLOS] ENTITLED TO TOTAL PERMANENT DISABILITY UNDER THE POEA-SEC?

B.
IS [TORILLOS] ENTITLED TO ATTORNEY'S FEES?[32]

Eastgate, on the other hand, argues that Torillos is not entitled to total and permanent disability benefits under the CBA which covers injuries arising only from accident. Neither is Torillos entitled to total and permanent disability compensation under the POEA-SEC since his illness was determined to be degenerative and pre-existing by the company-designated physician. Besides, even if Torillos' illness was considered work-related, he is only entitled to compensation equivalent to Grade 8 disability, as assessed by the company-designated physician, which was an accurate reflection of Torillos' degree of disability. Eastgate also contends that the CA erred in awarding attorney's fees. According to Eastgate, Torillos failed to timely question the decision of the Labor Arbiter denying such claim, and since there was no showing that it acted in bad faith, Torillos' claim for attorney's fees should be denied.

Our Ruling

We grant Eastgate's Petition. Torillos' Petition is without merit.

The parties' CBA is inapplicable.

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[32] See Eastgate's Memorandum of Arguments, *rollo* (G.R. No. 216165, Vol. III), p. 1569.

Torillos based his claim for total and permanent disability benefits under the CBA. He maintained that his disability was caused by an accident that happened on board the vessel while performing his duties as chief cook.

We are not convinced as there was no evidence to show that Torillos met an accident on board the vessel that caused his injury. There was no accident report or any medical report issued indicating that Torillos figured in an accident while on board. Moreover, the Medical Report[33] dated December 16, 2011 issued by the physician who attended Torillos in Newcastle, England did not mention that his injury was caused by an accident on board but instead noted that the primary cause of the injury was: "*Pain occurred at his right leg up to his pelvis during standing for a long period of time*." Hence, Torillos' claim that he met an accident on board was based on pure allegations. It is basic that Torillos must prove his own assertions and his failure to discharge the burden of proving that he was covered by the CBA militates against his entitlement to any of its benefits.[34]

Torillos' reliance on the Court's ruling in *NFD Int'l Manning Agents, Inc./Barber Ship Mgmt. Ltd. v. Illescas*[35] is misplaced. In the *Illescas* case, the Court held that Illescas' disability, while not caused by an accident, was still compensable under the CBA as the CBA contained a permanent medical unfitness clause which stated that a seafarer who becomes disabled *as a result of any injury* shall be entitled to compensation. This is not the case here. As aptly observed by the CA, there was no similar provision in the IBF JSU/AMOSUP-IMMAJ, which is the CBA effective at the time of Torillos' employment with Eastgate. The grant of disability benefits under the IBF JSU/AMOSUP-IMMAJ CBA is confined only to "*xxx accident whilst in the employment of the Company regardless of fault,*

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[33] *Rollo* (G.R. No. 215904, Vol. I), pp. 153-155 and 269; *rollo* (G.R. No. 216165, Vol. I), pp. 273-275 and 355.

[34] *North Sea Marine Services Corporation v. Enriquez*, G.R. No. 201806, August 14, 2017, 837 SCRA 98, 108.

[35] 646 Phil. 244 (2010).

including accidents occurring while travelling to or from the ship, and whose ability to work as a seafarer is reduced as a result thereof, but excluding permanent disability due to willful acts, x x x."[36] As discussed, Torillos failed to prove by substantial evidence that his disability was caused by an accident, hence, there is no basis in awarding him disability benefits under the CBA.

As we find the CBA inapplicable, Torillos' entitlement to disability benefits is therefore governed by the POEA-SEC and relevant labor laws which are deemed written in the contract of employment with Eastgate.

Torillos suffers from a work-related and compensable illness.

Eastgate, anchors its claim against the compensability of the illness of Torillos on the finding of Dr. Cruz in his Medical Report[37] dated April 19, 2012, that Torillos' condition is degenerative and pre-existing. This argument is untenable. Such medical report did not make any categorical declaration and definite conclusion that Torillos' medical condition is not work-related. Dr. Cruz merely opined that the illness, lumbar spondylosis, is "*most likely pre-existing*". Dr. Cruz even gave an interim disability assessment of Grade 8 — moderate rigidity of two thirds (2/3) loss of motion or lifting power of the trunk under the POEA schedule of disabilities. If at all, this interim assessment bolstered the fact that Torillos suffered a work-related illness.

Moreover, the Labor Arbiter based his finding that Torillos' illness is work-related on the PEME conducted on Torillos which found him fit to work. The NLRC affirmed this finding by holding that his illness was aggravated by his work as chief cook whose duties involved heavy manual labor such as carrying the heavy

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[36] See IBF JSU/AMOSUP-IMMAJ CBA, *rollo* (G.R. No. 215914, Vol. I), p. 128.

[37] *Id.* at 284.

provisions of the ship, preparation and serving of all meals for the entire crew of the vessel, cleaning of dining, kitchen and work areas and of utensils. It further ruled that while Torillos' lumbar spondylosis may be degenerative, there was sufficient basis to rule that his condition was aggravated by the nature of his work. The CA then fully concurred with this and ultimately ruled that there was a reasonable connection between Torillos' illness and the nature of his job, which aggravated any pre-existing condition Torillos might have. The Court is not inclined to depart from these findings of the Labor Arbiter, the NLRC, and the CA. "[W]here the factual findings of the labor tribunals or agencies conform to, and are affirmed by the CA, the same are accorded respect and finality and are binding upon this Court."[38] We sustain the uniform findings of the Labor Arbiter, the NLRC, and the CA that Torillos' illness is work-related and compensable.

Torillos' complaint for total and permanent disability benefits was premature.

As aforementioned, Torillos' entitlement to disability benefits is governed not by the parties' CBA but by the POEA-SEC and relevant labor laws.

Article 192(c)(1) of the Labor Code provides that:

Art. 192. Permanent total disability. – x x x

(c) The following disabilities shall be deemed total and permanent:

(1) Temporary total disability lasting continuously for more than one hundred twenty days, except as otherwise provided for in the Rules

x x x x x x x x x

Meanwhile, Rule X, Section 2 of the Amended Rules on Employees Compensation provides:

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[38] *Superior Packaging Corp. v. Balagsay*, 697 Phil. 62, 68-69 (2012).

RULE X
Temporary Total Disability

x x x x x x x x x

Sec. 2. Period of entitlement.– (a) The income benefit shall be paid beginning on the first day of such disability. If caused by an injury or sickness it shall not be paid longer than 120 consecutive days except where such injury or sickness still requires medical attendance beyond 120 days but not to exceed 240 days from onset of disability in which case benefit for temporary total disability shall be paid. However, the System may declare the total and permanent status at anytime after 120 days of continuous temporary total disability as may be warranted by the degree of actual loss or impairment of physical or mental functions as determined by the System.

Thus, the company-designated physician must arrive at a definite assessment of the seafarer's fitness to work or degree of disability within the period of 120 days, which was further extended to 240 days.[39] In *Vergara v. Hammonia Maritime Services, Inc.*,[40] the Court pronounced that a temporary total disability becomes permanent when so declared by the company-designated physician within the period allowed, or upon expiration of the maximum 240-day medical treatment period in case of absence of a declaration of fitness or permanent disability. In the case of *C.F. Sharp Crew Management, Inc. v. Taok*,[41] a seafarer may have basis to pursue an action for total and permanent disability benefits in any of the following conditions:

(a) the company-designated physician failed to issue a declaration as to his fitness to engage in sea duty or disability even after the lape of the 120-day period and there is no indication that further medical treatment would address his temporary total disability, hence, justify an extension of the period to 240 days;

(b) 240 days had lapsed without any certification being issued by the company-designated physician;

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[39] *Centennial Transmarine, Inc. v. Quiambao*, 763 Phil. 411, 426 (2015).

[40] 588 Phil. 895 (2008).

[41] 691 Phil. 521 (2012).

(c) the company-designated physician declared that he is fit for sea duty within the 120-day or 240-day period, as the case may be, but his physician of choice and the doctor chosen under Section 20-B(3) of the POEA-SEC are of a contrary opinion;

(d) the company-designated physician acknowledged that he is partially permanently disabled but other doctors who he consulted, on his own and jointly with his employer, believed that his disability is not only permanent but total as well;

(e) the company-designated physician recognized that he is totally and permanently disabled but there is a dispute on the disability grading;

(f) the company-designated physician determined that his medical condition is not compensable or work-related under the POEA-SEC but his doctor-of-choice and the third doctor selected under Section 20-B(3) of the POEA-SEC found otherwise and declared him unfit to work;

(g) the company-designated physician declared him totally and permanently disabled but the employer refuses to pay him the corresponding benefits; and

(h) the company-designated physician declared him partially and permanently disabled within the 120-day or 240-day period but he remains incapacitated to perform his usual sea duties after the lapse of the said periods.[42]

Upon his repatriation on December 19, 2011, Torillos was given medical attention by the company-designated physicians. He was subjected to rigorous medical examinations, was prescribed medications and was put on therapy to address his condition. On April 19, 2012, Dr. Cruz issued a medical opinion stating, among others, that Torillos' lumbar spondylosis will require further treatment. As such, he gave an interim assessment of Grade 8. Thereafter, Torillos continuously received medical treatment from the company-designated physicians. However, on May 8, 2012, or 141 days since repatriation, Torillos filed a complaint for total and permanent disability benefits. Evidently,

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[42] *Id*. at 538-539.

it was premature for him at this time to invoke his claim for total and permanent disability inasmuch as the 240-day period had not yet lapsed. At the time he filed his complaint, he was still under temporary total disability. Instead of continuing his treatment which is still within the 240-day period allowed for the company-designated physician to evaluate his condition, he filed a case for total and permanent disability benefits despite the absence of a definite finding from the company-designated physician. He was armed only with the interim assessment of the company-designated physician which did not give him the cause of action for his claim. It was only after the filing of such complaint or on July 9, 2012 that he sought the opinion of his own physician, Dr. Cadag. As such, the complaint should have been dismissed for lack of cause of action.[43]

From the foregoing, Torillos had no cause of action for total and permanent disability claim. At most, he is only qualified to claim partial permanent disability benefits equivalent to Grade 8 disability rating under the POEA-SEC, as reflected in Dr. Cruz' last assessment report.

Torillos is not entitled to attorney's fees.

In labor cases, attorney's fees are awarded when there is unlawful withholding of wages or benefits due,[44] forcing the employee to litigate.[45] In the present case, there was no unlawful withholding of benefits to speak of. As discussed, Torillos filed a case against Eastgate while he was still undergoing treatment and without yet a final disability assessment from the company-designated physician. His act was premature which stripped him of entitlement to attorney's fees.

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[43] *TSM Shipping Phils., Inc. v. Patiño*, G.R. No. 210289, March 20, 2017, 821 SCRA 70, 84-85.

[44] *G.J.T. Rebuilders Machine Shop v. Ambos*, 752 Phil. 166, 183-184 (2015).

[45] *Montierro v. Rickmers Marine Agency Phils., Inc.*, 750 Phil. 937, 948 (2015).

Besides, Torillos was already barred from claiming attorney's fees for his failure to timely file an appeal from the October 29, 2012 Decision of the Labor Arbiter which did not award attorney's fees in his favor. In his Memorandum of Partial Appeal, Torillos alleged that he timely filed his appeal within the prescriptive period from his receipt of the January 3, 2013 Decision of the Labor Arbiter. However, the reglementary period should be counted from the receipt of the October 29, 2012 Decision and not from the January 3, 2013 Decision. The January 3, 2013 Decision was only an amendment to the October 29, 2012 Decision to correct a mere clerical error, *i.e.*, to correct the names of the parties in the dispositive portion of the decision, and thus, was not a new judgment.[46] As such, the period for filing the appeal should still be counted from the receipt of the original judgment.[47]

WHEREFORE, the assailed April 1, 2014 Decision and December 15, 2014 Resolution of the Court of Appeals in CA-G.R. SP No. 130976 are **REVERSED** and **SET ASIDE**. A new judgment is rendered finding Edgar L. Torillos entitled to disability benefits corresponding only to Grade 8. Eastgate Maritime Corporation, F.J. Lines, Inc., Panama, and Emmanuel L. Regio are ordered to jointly and solidarily pay Edgar L. Torillos US$16,795.00 (US$50,000.00 x 33.59%) or its equivalent amount in Philippine currency at the time of payment.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

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[46] *De Grano v. Lacaba*, 607 Phil. 122, 130 (2009).

[47] *Id.*

SECOND DIVISION

[A.C. No. 9917. January 14, 2019]

NORBERTO S. COLLANTES, *complainant, vs.* **ATTY. ANSELMO B. MABUTI,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; 2004 RULES ON NOTARIAL PRACTICE (A.M. NO. 02-8-13-SC, JULY 6, 2004); NOTARIES PUBLIC; NOTARIZATION IS INVESTED WITH SUBSTANTIVE PUBLIC INTEREST, SUCH THAT ONLY THOSE WHO ARE QUALIFIED OR AUTHORIZED MAY ACT AS NOTARIES PUBLIC; ELUCIDATED.—** Notarization by a notary public converts a private document into a public document making it admissible in evidence without further proof of its authenticity. A notarial document is, by law, entitled to full faith and credit, and as such, notaries public are obligated to observe with utmost care the basic requirements in the performance of their duties. For these reasons, notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. As a corollary to the protection of that interest, those not qualified or authorized to act must be prevented from imposing upon the public, the courts, and the administrative offices in general. The requirements for the issuance of a commission as a notary public must not be treated as a mere casual formality. Where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, an act which the Court has characterized as reprehensible, constituting as it does, not only malpractice, but also the crime of falsification of public documents, the offender may be subjected to disciplinary action. Jurisprudence provides that without a commission, a lawyer is unauthorized to perform any of the notarial acts. A lawyer who performs a notarial act without such commission violates the lawyer's oath to obey the laws, more specifically, the Notarial Rules.

2. **ID.; ID.; ID.; A LAWYER WHO NOTARIZES A DOCUMENT WITHOUT A PROPER COMMISSION VIOLATES HIS LAWYER'S OATH TO OBEY THE LAW.—** It should be emphasized that respondent's transgressions of the Notarial Rules also have a bearing on his standing as a lawyer. In *Virtusio v. Virtusio*, the Court observed that "[a] lawyer who

notarizes a document without a proper commission violates his lawyer's oath to obey the law. He makes it appear that he is commissioned when he is not. He thus indulges in deliberate falsehood that the lawyer's oath forbids. This violation falls squarely under Rule 1.01 of Canon 1 of the Code of Professional Responsibility and Canon 7 as well."

3. ID.; ID.; ID.; ID.; FINDINGS AND RECOMMENDATIONS OF THE IBP ARE RECOMMENDATORY, SUBJECT TO REVIEW BY THE SUPREME COURT; IMPOSABLE PENALTY IN CASE AT BAR.— Notably, while the Court agrees with the IBP's findings as regards respondent's administrative liability, the Court, however, cannot adopt the recommendation of the IBP Board of Governors to increase the penalty against respondent to "[*p*]*erpetual* [*d*]*isqualification from being commissioned as* [a] [*n*]*otary* [*p*]*ublic*" in view of an alleged earlier infraction for which he was found guilty of violating the Notarial Rules by the IBP in CBD Case No. 11-3036. After an examination of respondent's personal record as a member of the Bar, it has been ascertained that the resolution of the IBP in the said case has yet to be forwarded to the Court for its approval. As case law explains, the "[f]actual findings and recommendations of the [IBP] Commission on Bar Discipline and the Board of Governors x x x are recommendatory, subject to review by the Court." x x x Thus, pending approval by the Court, the findings and resolution in CBD Case No. 11-3036 are only recommendatory, and hence (**1**) fail to establish the fact that respondent has already been held liable for a prior offense, and (**2**) cannot consequently serve to aggravate the penalty in this case. In fine, consistent with prevailing jurisprudence, respondent is meted with the following: (***a***) suspension from the practice of law for one (1) year; (***b***) immediate revocation of his notarial commission, if any; and (***c***) disqualification from being commissioned as a notary public for a period of one (1) year only.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from a complaint affidavit,[1] executed on May 10, 2013, filed by complainant Norberto S.

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[1] *Rollo*, pp. 1-4. Docketed as CBD Case No. 16-5078.

Collantes (complainant) before the Office of the Bar Confidant, Supreme Court, against respondent Atty. Anselmo B. Mabuti (respondent) for violation of the 2004 Rules on Notarial Practice (Notarial Rules)[2] and of his duties as a lawyer.[3]

The Facts

Complainant alleged that on October 10, 2009, respondent notarized a document entitled "Memorandum of Agreement"[4] in the City of Manila. Upon verification, however, he discovered that respondent was not commissioned as a notary public in the City of Manila for the years 2008- 2009. In support thereof, complainant attached a Certification[5] dated February 27, 2012 issued by the Notarial Section of the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Manila attesting to the same.

In his Comment[6] dated January 15, 2014, respondent denied the allegations and claimed that the signature in the "Memorandum of Agreement" is not his. Respondent questioned complainant's motives for filing the present case against him, claiming that the latter has pending cases for *Estafa* filed against him.[7] Finally, he prayed for the dismissal of the complaint on the ground of double jeopardy.[8] In this regard, he pointed out that the present case is based on the same cause of action subject of an earlier complaint, filed by a certain Mina S. Bertillo before the Integrated Bar of the Philippines (IBP), docketed as CBD Case No. 11-3036, for which he was disqualified from being commissioned as a notary public for two (2) years.[9] In support

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[2] A.M. No. 02-8-13-SC, July 6, 2004.

[3] See *rollo*, p. 2.

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

[5] *Id*. at 8. Signed by Assistant Clerk of Court Clemente M. Clemente.

[6] See Comment/ Answer/ Motion to Dismiss; *id*. at 25-26.

[7] See *id*. at 25.

[8] See *id*. at 26.

[9] *Id*. at 25.

thereof, he attached a copy of the Commissioner's Report[10] dated August 3, 2012 and the IBP Board of Governor's Resolution[11] dated March 21, 2013 in CBD Case No. 11-3036.

The complaint was thereafter referred to the IBP for investigation, report, and recommendation.[12]

The IBP's Report and Recommendation

In a Report and Recommendation[13] dated December 7, 2016, the IBP Investigating Commissioner (IBP-IC) found respondent administratively liable for failure to comply with the Notarial Rules, and accordingly, recommended that he be suspended from the practice of law for a period of two (2) years.

The IBP-IC found the evidence convincing that respondent was indeed not commissioned as a notary public at the time the subject "Memorandum of Agreement" was notarized.[14] Corollary thereto, the IBP-IC brushed aside respondent's claim of double jeopardy, pointing out that the present administrative action concerns an act that is entirely different from the act for which he was found guilty of violation of the Notarial Rules in CBD Case No. 11-3036, *i.e.*, for notarizing a letter dated December 28, 2010 when he was likewise not commissioned as a notary public.

In a Resolution[15] dated August 31, 2017, the IBP Board of Governors adopted the above findings and recommendation with modification, increasing the recommended penalty to: (*a*) perpetual disqualification from being commissioned as a

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[10] *Id*. at 29-31. Penned by Commissioner Jose I. De La Rama, Jr.

[11] See Notice of Resolution in Resolution No. XX-2013-369 signed by then IBP National Secretary Nasser A. Marohomsalic; *id*. at 27.

[12] See Court's Resolution dated June 13, 2016; *id*. at 37.

[13] *Id*. at 46-47. Penned by Commissioner Eduardo R. Robles.

[14] *Id*. at 46.

[15] See Notice of Resolution in Resolution No. XXIII-2017-034 signed by Assistant National Secretary Doroteo B. Aguila; *id*. at 44-45.

Notary Public since this is respondent's second offense; (*b*) revocation of his notarial commission, if subsisting; and (*c*) suspension for two (2) years from the practice of law.

The Issue Before the Court

The issue for the Court's resolution is whether or not the IBP correctly found respondent liable for violation of the 2004 Notarial Rules.

The Court's Ruling

The Court affirms the findings and adopts with modification the recommendations of the IBP Board of Governors.

The Court has emphatically stressed that notarization is not an empty, meaningless, routinary act. Notarization by a notary public converts a private document into a public document making it admissible in evidence without further proof of its authenticity.[16] A notarial document is, by law, entitled to full faith and credit,[17] and as such, notaries public are obligated to observe with utmost care the basic requirements in the performance of their duties.[18]

For these reasons, notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public.[19] As a corollary to the protection of that interest, those not qualified or authorized to act must be prevented from imposing upon the public, the courts,

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[16] See *Mariano v. Echanez*, A.C. No. 10373, May 31, 2016, 791 SCRA 509, 514; *Spouses Gacuya v. Solbita*, A.C. No. 8840, March 8, 2016, 785 SCRA 590, 595; and *Gaddi v. Velasco*, A.C. No. 8637, September 15, 2014, 735 SCRA 74, 79.

[17] See *Mariano v. Echanez, id*.; *Spouses Gacuya v. Solbita*, *id*.; and *Gaddi v. Velasco*, *id*.

[18] See *Mariano v. Echanez*, *id*.; *Spouses Gacuya v. Solbita*, *id*.; and *Uy v. Saño*, 586 Phil. 383, 388 (2008).

[19] See *Villaflores-Puza v. Arellano*, A.C. No. 11480, June 20, 2017, 827 SCRA 515, 517-518, citing *Mariano v. Echanez*, *id*. See also *Spouses Gacuya v. Solbita*, *id*.

and the administrative offices in general.[20] The requirements for the issuance of a commission as a notary public must not be treated as a mere casual formality.[21] Where the notarization of a document is done by a member of the Philippine Bar at a time when he has no authorization or commission to do so, an act which the Court has characterized as reprehensible, constituting as it does, not only malpractice, but also the crime of falsification of public documents, the offender may be subjected to disciplinary action.[22] Jurisprudence provides that without a commission, a lawyer is unauthorized to perform any of the notarial acts.[23] A lawyer who performs a notarial act without such commission violates the lawyer's oath to obey the laws, more specifically, the Notarial Rules.[24]

In this case, the IBP found that respondent notarized the subject document, "Memorandum of Agreement," without being commissioned as a notary public at the time of notarization. This fact has been duly certified to by none other than the Notarial Section of the Office of the Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Manila.[25] Thus, by knowingly performing notarial acts at the time when he was not authorized to do so, respondent clearly violated the Notarial Rules and in consequence, should be held administratively liable.

It should be emphasized that respondent's transgressions of the Notarial Rules also have a bearing on his standing as a

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[20] See *Maniquiz v. Emelo*, A.C. No. 8968, September 26, 2017; and *Saquing v. Mora*, 535 Phil. 1, 7 (2006), citing *Nunga v. Viray*, 366 Phil. 155, 161 (1991).

[21] See *Uy v. Saño*, *supra* note 18, at 388 (2008).

[22] See *Maniquiz v. Emelo*, *supra* note 20; *Saquing v. Mora*, *supra* note 20, at 7, citing *Nunga v. Viray*, *supra* note 20, at 161. See also *Spouses Gacuya v. Solbita*, *supra* note 16, at 596; and *Uy v. Saño*, *id*. at 389.

[23] See *Miranda, Jr. v. Alvarez, Sr.*, A.C. No. 12196, September 3, 2018.

[24] See *Maniquiz v. Emelo*, *id*.; and *Saquing v. Mora*, *id*., citing *Nunga v. Viray*, *id*.

[25] *Rollo*, p. 8.

lawyer.[26] In *Virtusio v. Virtusio*,[27] the Court observed that "[a] lawyer who notarizes a document without a proper commission violates his lawyer's oath to obey the law. He makes it appear that he is commissioned when he is not. He thus indulges in deliberate falsehood that the lawyer's oath forbids. This violation falls squarely under Rule 1.01 of Canon 1 of the Code of Professional Responsibility and Canon 7 as well,"[28] to wit:

> CANON 1 – A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.
>
> Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> CANON 7 – A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the integrated bar.

Notably, while the Court agrees with the IBP's findings as regards respondent's administrative liability, the Court, however, cannot adopt the recommendation of the IBP Board of Governors to increase the penalty against respondent to "[*p*]*erpetual* [*d*]*isqualification from being commissioned as* [a] [*n*]*otary* [*p*]*ublic*"[29] in view of an alleged earlier infraction for which he was found guilty of violating the Notarial Rules by the IBP in CBD Case No. 11-3036. After an examination of respondent's personal record as a member of the Bar, it has been ascertained that the resolution of the IBP in the said case has yet to be forwarded to the Court for its approval. As case law explains, the "[f]actual findings and recommendations of the [IBP] Commission on Bar Discipline and the Board of Governors

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[26] *Miranda, Jr. v. Alvarez, Sr.*, A.C. No. 12196, September 3, 2018.

[27] 694 Phil. 148 (2012).

[28] *Id.* at 157.

[29] *Id.* at 44.

x x x are recommendatory, subject to review by the Court."[30] In *Torres v. Dalangin*:[31]

> It is the Supreme Court, not the IBP, which has the constitutionally mandated duty to discipline lawyers. The factual findings of the IBP can only be recommendatory. Its recommended penalties are also, by their nature, recommendatory.[32]

Thus, pending approval by the Court, the findings and resolution in CBD Case No. 11-3036 are only recommendatory, and hence (**1**) fail to establish the fact that respondent has already been held liable for a prior offense, and (**2**) cannot consequently serve to aggravate the penalty in this case.

In fine, consistent with prevailing jurisprudence,[33] respondent is meted with the following: (***a***) suspension from the practice of law for one (1) year; (***b***) immediate revocation of his notarial commission, if any; and (***c***) disqualification from being commissioned as a notary public for a period of one (1) year only.

WHEREFORE, the Court hereby finds respondent Atty. Anselmo B. Mabuti **GUILTY** of violation of the 2004 Rules on Notarial Practice and of Rule 1.01, Canon 1 and Canon 7 of the Code of Professional Responsibility. Accordingly, effective immediately, the Court: **SUSPENDS** him from the practice of law for one (1) year; **REVOKES** his incumbent commission as a notary public, if any; and **PROHIBITS** him from being commissioned as a notary public for one (1) year. He is **WARNED** that a repetition of the same offense or similar acts in the future shall be dealt with more severely.

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[30] See *Torres v. Dalangin,* A.C. No. 10758, December 5, 2017, citing *Vasco-Tamaray v. Daquis,* A.C. No. 10868, January 26, 2016, 782 SCRA 44, 65.

[31] See *id*.

[32] See *id*.

[33] See *Virtusio v. Virtusio*, *supra* note 27, 158.

The suspension in the practice of law, revocation of notarial commission, and disqualification from being commissioned as a notary public shall take effect immediately upon receipt of this Resolution by respondent. He is **DIRECTED** to immediately file a Manifestation to the Court that his suspension has started, copy furnished all courts and quasi-judicial bodies where he has entered his appearance as counsel.

Let copies of this Resolution be furnished the Office of the Bar Confidant to be appended to respondent's personal record as an attorney; the Integrated Bar of the Philippines for its information and guidance; and the Office of the Court Administrator for circulation to all courts in the country.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 205282. January 14, 2019]

STEAG STATE POWER, INC. (FORMERLY STATE POWER DEVELOPMENT CORPORATION), *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; TAX CODE; REFUNDS OR TAX CREDITS OF INPUT TAX; PRESCRIPTIVE PERIODS FOR JUDICIAL CLAIM. —

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[*] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

The issue on the timeliness of respondent's filing of judicial claim is anchored on the nature of the prescriptive periods under Section 112 of the Tax Code: SECTION 112. Refunds or Tax Credits of Input Tax. – .... (D) Period within which Refund or Tax Credit of Input Taxes shall be Made. – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof. In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, *the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals*. A plain reading of this provision reveals that a taxpayer may appeal the Commissioner's denial or inaction only within 30 days when the decision that denies the claim is received, or when the 120-day period given to the Commissioner to decide on the claim expires. In *Aichi Forging Company of Asia, Inc.*, this Court applied the plain text of the law and declared that the observance of the 120+30-day periods is crucial in filing an appeal before the Court of Tax Appeals.

APPEARANCES OF COUNSEL

Salvador & Associates for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

LEONEN, *J.*:

In its June 5, 2013 Minute Resolution,[1] this Court denied the Petition for Review on Certiorari[2] filed by Steag State Power, Inc. (Steag State Power) for its failure to show any reversible

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[1] *Rollo*, pp. 163-164.

[2] *Id*. at 53-96.

error in the July 19, 2012 Decision[3] and December 20, 2012 Resolution[4] of the Court of Tax Appeals in CTA EB No. 710. Thus, Steag State Power filed a Motion for Reconsideration, asking this Court to set its Minute Resolution aside and give due course to the Petition. After studying the Motion for Reconsideration, this Court still firmly believes that the Petition should be denied for lack of merit.

Steag State Power is a domestic corporation primarily engaged in power generation and sale of electricity to the National Power Corporation under a Build, Operate, Transfer Scheme.[5] It is registered with the Bureau of Internal Revenue as a value-added tax taxpayer with Tax Identification No. 004-626-938-000.[6]

In 2003, Steag State Power started building its power plant inside the PHIVIDEC Industrial Estate-Misamis Oriental. The construction was completed on November 15, 2006.[7]

During the construction period, Steag State Power filed its quarterly value-added tax returns from the first to fourth quarters of 2004 on April 26, 2004, July 26, 2004, October 25, 2004, and January 25, 2005. It later filed amended value-added tax returns for the taxable quarters on December 16, 2004 and April 22, 2005.[8]

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[3] *Id*. at 106-124. The Decision was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Pabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas of the *En Banc*, Court of Tax Appeals, Quezon City.

[4] *Id*. at 126-130. The Resolution was penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Associate Justices Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Pabon-Victorino, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas of the *En Banc*, Court of Tax Appeals, Quezon City.

[5] *Id*. at 107-108.

[6] *Id*. at 107.

[7] *Id*. at 108.

[8] *Id*.

Likewise, for the taxable quarters of 2005, Steag State Power filed its quarterly value-added tax returns on April 22, 2005, July 26, 2005, October 25, 2005, and January 25, 2006.[9]

Steag State Power filed before the Bureau of Internal Revenue District Office No. 50, South Makati administrative claims for refund of its allegedly unutilized input value-added tax payments on capital goods in the total amount of ₱670,950,937.97:

Date of Application	**Period Covered**	**Amount of Claim**
June 30, 2005	January 1, 2004 to May 31, 2005	₱408,768,002.82
August 31, 2005	June 1, 2005 to August 31, 2005	162,274,183.32
October 28, 2005	September 1, 2005 to October 31, 2005	44,988,727.50
December 19, 2005	October 2005	54,920,024.33
TOTAL		**₱670,950,937.97**[10]

Due to the Commissioner of Internal Revenue's (Commissioner) inaction on its administrative claims, Steag State Power filed a Petition for Review on Certiorari[11] before the Court of Tax Appeals on April 20, 2006, elevating its claim for refund for the taxable year 2004. Through another Petition,[12] filed on December 27, 2006, it sought judicial recourse involving its claim for refund for the taxable year 2005. Eventually, the Petitions were consolidated.[13]

In its August 27, 2009 Decision,[14] the Court of Tax Appeals First Division denied the Petitions due to insufficiency of evidence.

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[9] *Id*.

[10] *Id*. at 109.

[11] *Id*. at 135. Docketed as CTA Case No. 7458.

[12] *Id*. at 135. Docketed as CTA Case No. 7554.

[13] *Id*.

[14] *Id*. at 132-142. The Decision was penned by Presiding Justice Ernesto D. Acosta and concurred in by Associate Justices Lovell R. Bautista and Caesar A. Casanova of the First Division, Court of Tax Appeals, Quezon City.

It held that the appeals for the administrative claims for refund of input taxes for January 2004 to May 2005, or the first judicial claim, were filed late.[15] Meanwhile, the appeal of the refund claim of input taxes for June 2005 to October 2005, or the second judicial claim, was prematurely filed.[16] Nonetheless, the Court of Tax Appeals First Division denied the second judicial claim for Steag State Power's failure to prove that its purchases and importations related to the claimed input tax payments were treated as capital goods in its books of accounts and were subjected to depreciation.[17]

On September 22, 2009, Steag State Power filed its Motion for Reconsideration (with Motion to Submit Supplemental Evidence).[18] The Motion was partially granted by the Court of Tax Appeals First Division in its January 5, 2010 Resolution.[19]

The dispositive portion of the Resolution read:

WHEREFORE, petitioner's *Motion for Reconsideration (With Motion to Submit Supplemental Evidence)* is hereby **PARTIALLY GRANTED**. Accordingly, let this case be set for hearing for the presentation of Annexes "A" and "A-1" (inclusive of sub-markings [Exhibits EEE to ZZZ], inclusive of sub-markings) on **January 29, 2010** at **9:00 a.m.**

Meanwhile, the resolution of petitioner's *Motion for Reconsideration* with regard to the issue of whether petitioner was able to substantiate its claim for a refund or tax credit in the total amount of PhP670,950,937.97, allegedly representing its unutilized input tax paid on purchases and importations of capital goods from January 1, 2004 to October 31, 2005, is **HELD IN ABEYANCE** pending the formal offer of said Annexes. Thereafter, the *Motion* shall be deemed submitted for resolution.

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[15] *Id*. at 138.

[16] *Id*.

[17] *Id*. at 140-141.

[18] *Id*. at 110.

[19] *Id*.

Furthermore, respondent's *Motion to Admit/Opposition* is hereby **GRANTED** and his *Comment/Opposition* is hereby **ADMITTED**.

SO ORDERED.[20] (Emphasis in the original)

A hearing was conducted on January 29, 2010. Later, Steag State Power filed its supplemental formal offer of evidence, which was admitted by the Court of Tax Appeals Special First Division on April 26, 2010.[21]

Meanwhile, the Commissioner, dissatisfied with the January 5, 2010 Resolution, filed a Motion for Reconsideration on February 10, 2010. It was also submitted for resolution on Apri1 26, 2010.[22]

In its December 6, 2010 amended Decision, the Court of Tax Appeals Special First Division dismissed the consolidated cases for lack of jurisdiction.[23]

On Steag State Power's appeal, the Court of Tax Appeals En Banc affirmed the dismissal of the cases in its July 19, 2012 Decision.[24] Relying upon *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc.*,[25] it denied the appeal for having been filed late.[26]

Steag State Power filed a Motion for Reconsideration, which was denied by the Court of Tax Appeals En Banc in its December 20, 2012 Resolution.[27]

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

[21] *Id*. at 111.

[22] *Id*.

[23] *Id*.

[24] *Id*. at 106-124.

[25] 646 Phil. 710 (2010) [Per *J*. Del Castillo, First Division].

[26] *Rollo*, pp. 116 and 120.

[27] *Id*. at 126-130.

Thus, Steag State Power filed before this Court a Petition for Review on Certiorari,[28] assailing the Court of Tax Appeals En Banc Decision and Resolution. As already mentioned, this Court denied the Petition for failure to show any reversible error in the challenged Decision and Resolution of the Court of Tax Appeals En Banc.[29]

Hence, petitioner filed this Motion for Reconsideration.[30] It urges this Court "to re-study the judicial nuance"[31] of *Commissioner of Internal Revenue v. San Roque Power Corporation*[32] as applied to its claims. Alternatively, it requests that the case be referred to the En Banc, if necessary, for its resolution.[33]

Petitioner insists that its claims are timely. It argues that, although the claims were filed beyond the 120+30-day periods under Section 112 of the National Internal Revenue Code, as amended (Tax Code), they were nonetheless filed within the two (2)-year period under Section 229 of the same law.[34] It contends that the timing was in accordance with Revenue Regulation No. 7-95, which establishes that appeals before the Court of Tax Appeals may be made after the 120-day period and before the lapse of the two (2)-year period.[35]

Petitioner avers that noncompliance with the 120+30-day periods is not a jurisdictional defect, but only a case of a "lack of cause of action,"[36] which may be subject to the equitable

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[28] *Id*. at 53-96. The Petition was posted on March 7, 2013, the last day of the 30-day extended period.

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

[30] *Id*. at 206-233.

[31] *Id*. at 208.

[32] 703 Phil. 310 (2013) [Per *J*. Carpio, *En Banc*].

[33] *Rollo*, p. 227.

[34] *Id*. at 214.

[35] *Id*. at 217.

[36] *Id*. at 223.

principle of waiver.[37] Moreover, since respondent admitted in the consolidated cases that the Petitions were filed within the allowable period, she cannot claim otherwise. Consequently, the Court of Tax Appeals En Banc erred when it still passed upon the issue of the appeals' timeliness.[38]

Petitioner further asserts that the window created in *San Roque Power Corporation* by BIR Ruling No. DA-489-03, which excludes from the 120+30-day periods prematurely filed judicial claims from December 10, 2003 to October 6, 2010 — when *Aichi Forging Company of Asia, Inc.* was promulgated — should also extend to claims belatedly filed.[39] It reasons that taxpayers were misled by respondent's pronouncement in the BIR Ruling that they had the full two (2)-year period to file their Petitions before the Court of Tax Appeals.[40] Even so, it contends that *Aichi Forging Company of Asia, Inc.* and *San Roque Power Corporation* cannot be applied retroactively, as doing so will impair petitioner's substantive rights and deprive it of its right to a refund.[41]

This Court denies the Motion for Reconsideration for its lack of substantial argument to warrant a reversal of the Minute Resolution.

The issue on the timeliness of respondent's filing of judicial claim is anchored on the nature of the prescriptive periods under Section 112 of the Tax Code:

SECTION 112. Refunds or Tax Credits of Input Tax. —

. . . . . .

(D) Period within which Refund or Tax Credit of Input Taxes shall be Made. — In proper cases, the Commissioner shall grant a refund

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[37] *Id.*

[38] *Id.* at 214-215.

[39] *Id.* at 220.

[40] *Id.* at 221.

[41] *Id.* at 223-224 and 226.

or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, *the taxpayer affected may, within thirty (30) days.from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals*. (Emphasis supplied)[42]

A plain reading of this provision reveals that a taxpayer may appeal the Commissioner's denial or inaction only within 30 days when the decision that denies the claim is received, or when the 120-day period given to the Commissioner to decide on the claim expires.

In *Aichi Forging Company of Asia, Inc.*,[43] this Court applied the plain text of the law and declared that the observance of the 120+30-day periods is crucial in filing an appeal before the Court of Tax Appeals. This Court also declared that, following *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*,[44] claims for refund or tax credit of excess input tax are governed not by Section 229, but by Section 112 of the Tax Code.

These doctrines were reiterated in *San Roque Power Corporation*,[45] where this Court stressed that Section 112, in providing the 120+30 day periods to appeal before the Court of Tax Appeals, "must be applied exactly as worded since it is clear, plain, and unequivocal."[46]

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[42] Now Sec. 112(C), per the amendments introduced by Rep. Act No. 9337 on May 24, 2005.

[43] 646 Phil. 710 (2010) [Per *J*. Del Castillo, First Division].

[44] 586 Phil. 712 (2008) [Per *J*. Velasco, Jr., Second Division].

[45] 703 Phil. 310 (2013) [Per *J*. Carpio, *En Banc*].

[46] *Id*. at 360.

Petitioner's claim that it filed its judicial claims under Revenue Regulation No. 7-95, which supposedly allowed claims for refund filed after the 120-day period but before the lapse of the two (2)-year period, is untenable.

First, petitioner's judicial claims were filed on April 20, 2006 and December 27, 2006;[47] hence, they were governed by the Tax Code, which clearly provided: (1) 120 days for the Commissioner to act on a taxpayer's claim; and (2) 30 days for the taxpayer to appeal either from the Commissioner's decision or from the expiration of the 120-day period in case of the Commissioner's inaction.

Moreover, Revenue Regulation No. 16-2005,[48] not Revenue Regulation No. 7-95, was the prevailing rule when petitioner filed its judicial claims. Its Section 4.112-1 faithfully reflected Section 112 of the Tax Code, as amended by Republic Act No. 9337:

> SEC. 4.112-1. Claims for Refund/Tax Credit Certificate of Input Tax. —
>
> . . . . . .
>
> (d) Period within which refund or tax credit certificate/refund of input taxes shall be made
>
> In proper cases, the Commissioner of Internal Revenue shall grant a tax credit certificate/refund for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with subparagraph (a) above.
>
> In case of full or partial denial of the claim for tax credit certificate/refund as decided by the Commissioner of Internal Revenue, the taxpayer may appeal to the Court of Tax Appeals (CTA) within thirty (30) days from the receipt of said denial, otherwise the decision shall become final. However, *if no action on the claim for tax credit*

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[47] *Rollo*, p. 135.

[48] Consolidated Value-Added Tax Regulations of 2005, November 1, 2005, *available at* <https://www.bir.gov.ph/images/bir_files/old_files/pdf/26116rr16-2005.pdf> (last accessed on January 16, 2019).

certificate/refund has been taken by the Commissioner of Internal Revenue after the one hundred twenty (120) day period from the date of submission of the application with complete documents, the taxpayer may appeal to the CTA within 30 days from the lapse of the 120-day period. (Emphasis supplied)

It is misleading for petitioner to raise its supposed reliance in good faith on Revenue Regulation No. 7-95, when the rule had already been superseded and revoked by the time it filed its judicial claims.

Second, under Section 112 of the Tax Code, only the administrative claim for refund of input value-added tax must be filed within the two (2)-year prescriptive period, the judicial claim need not be.

Section 112(A) states that:

(A) Zero-rated or Effectively Zero-rated Sales. — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, *within two (2) years* after the close of the taxable quarter when the sales were made, *apply for the issuance of a tax credit certificate or refund* of creditable input tax due or paid attributable to such sales[.] (Emphasis supplied)

In *Aichi Forging Company of Asia, Inc.* and *San Roque Power Corporation*, the phrase "within two (2) years ... apply for the issuance of a tax credit certificate or refund" refers to administrative claims for refund or credit filed with the Commissioner of Internal Revenue, not to appeals made before the Court of Tax Appeals.

This is apparent in Section 112(D), Paragraph 1 of the Tax Code, which gives the Commissioner "[120] days from the date of submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which he or she can decide on the claim. On the other hand, Section 112(D), Paragraph 2 provides a 30-day period within which one may appeal a judicial claim before the Court of Tax Appeals.

Reading together Subsections (A) and (D), *San Roque Power Corporation* declared that the 30-day period does not have to

fall within the two (2)-year prescriptive period, as long as the administrative claim is filed within the two (2)-year prescriptive period.

Third, the right to appeal before the Court of Tax Appeals, being a statutory right, can be invoked only under the requisites provided by law.[49] Section 11 of Republic Act No. 1125,[50] or the Court of Tax Appeals Charter, provides a 30-day period of appeal either from receipt of the Commissioner's adverse decision or from the lapse of the period fixed by law for action. Thus:

> SEC. 11. *Who May Appeal; Mode of Appeal; Effect of Appeal*. — Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue ... may *file an appeal with the CTA within thirty (30) days after the receipt of such decision or ruling or after the expiration of the period fixed by law for action* as referred to in Section 7(a)(2) herein.
>
> (B) Appeal shall be made by filing a petition for review under a procedure analogous to that provided for under Rule 42 of the 1997 Rules of Civil Procedure with the CTA *within thirty (30) days from the receipt of the decision or ruling or in the case of inaction as herein provided, from the expiration of the period fixed by law to act thereon*. (Emphasis supplied)

In turn, Section 7(a)(2) of the Court of Tax Appeals Charter, as amended, reads:

> Sec. 7. *Jurisdiction*. — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
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> . . . .
>
> (A) (2) *Inaction by the Commissioner of Internal Revenue in cases involving* disputed assessments, *refunds of internal*

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[49] See *Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 310 (2013) [Per *J.* Carpio, *En Banc*].

[50] Amended by Rep. Act No. 9282 (2004), Sec. 9.

> *revenue taxes*, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, *where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a* ***denial***[.] (Emphasis supplied)

Under the Court of Tax Appeals Charter, the Commissioner's inaction on a claim for refund is considered a "denial" of the claim, which may be appealed before the Court of Tax Appeals within 30 days from the expiration of the period fixed by law for action.

Here, since petitioner filed its judicial claims way beyond the 30-day period to appeal, the Court of Tax Appeals lost its jurisdiction over the Petitions. This Court has held that "[j]urisdiction over the subject matter is fundamental for a court to act on a given controversy."[51] Moreover, it "cannot be waived ... and is not dependent on the consent or objection or the acts or omissions"[52] of any or both parties.[53] Contrary to petitioner's stance, the Court of Tax Appeals is not precluded to pass on this issue *motu proprio*,[54] regardless of any purported stipulation made by the parties.

Further, this Court is not convinced by petitioner's claim that BIR Ruling No. DA-489-03 should cover both prematurely and belatedly filed claims for tax refund. The query interposed by the One Stop Shop Inter-Agency Tax Credit and Duty Drawback Center – Department of Finance in BIR Ruling No. DA-489-03[55] specifically pertained to the process in cases

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[51] *Commissioner of Internal Revenue v. Villa*, 130 Phil. 3, 4 (1968) [Per *J*. Bengzon, *En Banc*].

[52] *Nippon Express (Philippine) Corporation v. Commissioner of Internal Revenue*, 706 Phil. 442, 450-451 (2013) [Per *J*. Mendoza, Third Division].

[53] *Id*.

[54] *See Ker & Company, Ltd. v. Court of Tax Appeals*, G.R. No. L-12396, January 31, 1962, 4 SCRA 160, 163 [Per *J*. Paredes, *En Banc*].

[55] *Rollo*, pp. 152-154.

where a taxpayer did not wait for the lapse of the 120-day period.[56] BIR Ruling No. DA-489-03 expressly states that the "taxpayer-claimant need not wait for the lapse of the 120-day period before it could seek judicial relief with the [Court of Tax Appeals] by way of Petition for Review."[57] Consequently, San Roque Power Corporation recognized the BIR Ruling, being a general interpretative rule, as an exception to the strict construction of any claim for tax exemption or refund on equitable estoppel.

There is nothing in the same BIR Ruling that states, expressly or impliedly, that late filings of judicial claims are acceptable.

Similarly, in *Commissioner of Internal Revenue v. Mindanao II Geothermal Partnership*,[58] Mindanao II Geothermal Partnership filed its claim 138 days after the lapse of the 30-day period. This Court held that while BIR Ruling No. DA-489-03 was in effect when it filed its claim, the rule nonetheless cannot be properly invoked because it contemplates *premature* filing, not *late* filing. This Court further emphasized that late filing, or beyond the 30-day period, is absolutely prohibited, even when BIR Ruling No. DA-489-03 was in force.

Likewise, this Court rejects petitioner's claim that *Aichi Forging Company of Asia, Inc.* and *San Roque Power Corporation* should be applied prospectively because it would be unjust to the other claimants who relied on the old rule, under which both administrative and judicial claims should be filed before the lapse of the two (2)-year period.

Interpretations of law made by courts "necessarily always have a retroactive effect."[59] This Court, in construing the law,

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[56] See *Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 310, 376 (2013) [Per *J.* Carpio, *En Banc*].

[57] *Rollo*, p. 153.

[58] 724 Phil. 534 (2014) [Per *C.J.* Sereno, First Division].

[59] See *J.* Leonen, Concurring and Dissenting Opinion in *Commissioner of Internal Revenue v. San Roque Power Corporation*, 719 Phil. 137, 167-168 (2013) [Per *J.* Carpio, *En Banc*].

merely declares what a particular provision has always meant. It does not create new legal obligations.

In *Aichi Forging Company of Asia, Inc.*, this Court first squarely addressed the issue on prematurity of a judicial claim based on its interpretation of the language of the Tax Code. In that case, this Court did not defer application of the doctrine laid down. Rather, it ordered the Court of Tax Appeals to dismiss Aichi Forging Company of Asia, Inc.'s appeal as it prematurely filed its claim for refund/credit of input value-added tax. *Aichi Forging Company of Asia, Inc.'s* claim was filed prior to this case.

San Roque Power Corporation dealt with judicial claims that were either prematurely filed or already prescribed. In one (1) of the consolidated cases, G.R. No. 197156, the taxpayer, Philex Mining Corporation (Philex), filed its judicial claim beyond the 30-day period to appeal as in this case. This Court rejected the judicial claim of Philex due to late filing, explaining that:

> Unlike San Roque and Taganito, Philex's case is not one of premature filing but of late filing. Philex did not file any petition with the CTA within the 120-day period. Philex did not also file any petition with the CTA within 30 days after the expiration of the 120-day period. Philex filed its judicial claim *long after* the expiration of the 120-day period, in fact 426 days after the lapse of the 120-day period. *In any event, whether governed by jurisprudence before, during, or after the Atlas case, Philex's judicial claim will have to be rejected because of late filing.* Whether the two-year prescriptive period is counted from the date of payment of the output VAT following the *Atlas* doctrine, or from the close of the taxable quarter when the sales attributable to the input VAT were made following the *Mirant* and *Aichi* doctrines, Philex's judicial claim was indisputably filed late.
>
> The *Atlas* doctrine cannot save Philex from the late filing of its judicial claim. The *inaction* of the Commissioner on Philex's claim during the 120-day period is, by express provision of law, "deemed a denial" of Philex's claim. Philex had 30 days from the expiration of the 120-day period to file its judicial claim with the CTA. Philex's failure to do so rendered the "deemed a denial" decision of the Commissioner final and inappealable. The right to appeal to the CTA from a decision or "deemed a denial" decision of the Commissioner is merely a statutory privilege, not a constitutional right. The exercise

of such statutory privilege requires strict compliance with the conditions attached by the statute for its exercise. Philex failed to comply with the statutory conditions and must thus bear the consequences.[60] (Emphasis in the original, citation omitted)

Since then, the 120+30-day periods have been applied to pending cases[61] resulting in the denial of taxpayers' claims due to late filing. This Court finds no reason to make an exception here.

A claim for unutilized input value-added tax is in the nature of a tax exemption. Thus, strict adherence to the conditions prescribed by the law is required of the taxpayer.[62] Refunds need to be proven and their application raised in the right manner as required by law. Here, noncompliance with the 120+30-day periods is fatal to the taxpayer's judicial claim.

Hence, the Court of Tax Appeals En Banc properly sustained the Special First Division's dismissal of the Petition for lack of jurisdiction.

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[60] *Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 310, 362-363 (2013) [Per *J.* Carpio, *En Banc*].

[61] See *Commissioner of Internal Revenue v. Toledo Power Company*, 766 Phil. 20 (2015) [Per *C.J.* Sereno, First Division]; *CE Casecnan Water and Energy Company, Inc. v. Commissioner of Internal Revenue*, 764 Phil. 595 (2015) [Per *J.* Leonen, Second Division]; *Silicon Philippines, Inc. v. Commissioner of Internal Revenue*, 757 Phil. 54 (2015) [Per *J.* Leonardo-De Castro, First Division]; *Northern Mindanao Power Corporation v. Commissioner of Internal Revenue*, 754 Phil. 146 (2015) [Per *C.J.* Sereno, First Division]; *Rohm Apollo Semiconductor Philippines v. Commissioner of Internal Revenue*, 750 Phil. 624 (2015) [Per *C.J.* Sereno, First Division]; *CBK Power Company Limited v. Commissioner of Internal Revenue*, 724 Phil. 686 (2014) [Per *C.J.* Sereno, First Division]; *Commissioner of Internal Revenue v. Dash Engineering Philippines, Inc.*, 723 Phil. 433 (2013) [Per *J.* Mendoza, Third Division]; and *Mindanao II Geothermal Partnership v. Commissioner of Internal Revenue*, 706 Phil. 48 (2013) [Per *J.* Carpio, Second Division].

[62] *Applied Food Ingredients Company, Inc. v. Commissioner of Internal Revenue*, 720 Phil. 782, 789 (2013) [Per *C.J.* Sereno, First Division] and *Commissioner of Internal Revenue v. San Roque Power Corporation*, 703 Phil. 310 (2013) (Per *J.* Carpio, *En Banc*].

The Motion for Reconsideration is, thus, **DENIED**.

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr., Hernando*, and *Carandang, JJ.*, concur.

SECOND DIVISION

[G.R. No. 209116. January 14, 2019]

DANNY BOY C. MONTERONA, JOSELITO S. ALVAREZ, IGNACIO S. SAMSON, JOEY P. OCAMPO, ROLE R. DEMETRIO,[*] and ELPIDIO P. METRE, JR.,[**] *petitioners, vs.* **COCA-COLA BOTTLERS PHILIPPINES, INC. and GIOVANNI ACORDA,[***]** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; TWO CONCEPTS, DISTINGUISHED.— *Res judicata* means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit. The doctrine of *res judicata* embodied in Section 47, Rule 39

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[*] Referred as Demetrio Role in some parts of the *rollo*.

[**] Also referred to as Elpedio P. Metre, Jr. in some parts of the *rollo*.

[***] Also referred to as "Giovanni Accorda" in some parts of the *rollo*.

of the Rules of Court x x x embraces two concepts of *res judicata*: (1) bar by prior judgment as enunciated in Rule 39, Section 47(b); and (2) conclusiveness of judgment in Rule 39, Section 47(c). *Oropeza Marketing Corporation v. Allied Banking Corporation* differentiated between the two rules of *res judicata*: 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. x x x 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."

2. **ID.; ID.; ID.; ID.; 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. x x x 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.

3. **ID.; ID.; ID.; ID.; WHEN THE SAME FACTS OR EVIDENCE WOULD SUPPORT BOTH ACTIONS, THEN THEY ARE CONSIDERED THE SAME, AND A JUDGMENT IN THE FIRST CASE WOULD BE A BAR TO THE SUBSEQUENT ACTION.—** In *Yap v. Chua*, the Court held that the test to determine whether the causes of action are identical is to ascertain whether the same evidence would support both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would support both actions, then they are considered the same; and a judgment in the first case would be a bar to the subsequent action. Here, the two cases involve the same cause of action, *i.e.*, respondents'

act of terminating petitioners' employment. The facts in the two cases are identical and petitioners presented the same evidence to prove their claims in both cases. *Res judicata* requires that stability be accorded to judgments. Controversies once decided on the merits shall remain in repose for there should be an end to litigation which, without the doctrine, would be endless.

APPEARANCES OF COUNSEL

Ruel E. Asubar for petitioners.
Laguesma Magsalin Consulta & Gastardo for respondents.

D E C I S I O N

REYES, J. JR., *J.*:

Assailed in this petition for review on *certiorari* are the August 30, 2012 Decision[1] and September 3, 2013 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 116519 which affirmed the June 16, 2010 Decision[3] and the July 30, 2010 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 05-001038-10, a case for illegal dismissal.

The Antecedents

In September 2003, petitioners Danny Boy C. Monterona (Monterona), Joselito S. Alvarez (Alvarez), Ignacio S. Samson (Samson), Joey P. Ocampo (Ocampo), Role R. Demetrio (Demetrio), Elpidio P. Metre, Jr. (Metre) and their co-employees filed before the Labor Arbiter (LA) a complaint for illegal dismissal

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[1] Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Stephen C. Cruz and Myra V. Garcia-Fernandez, concurring; *rollo*, pp. 65-74.

[2] *Id*. at 93-94.

[3] Penned by Presiding Commissioner Alex A. Lopez, with Commissioner Gregorio O. Bilog III, concurring; Commissioner Pablo C. Espiritu, Jr., on leave; *id*. at 194-203.

[4] *Id*. at 204-206.

with prayer for reinstatement and payment of backwages, damages and attorney's fees (first illegal dismissal case) against respondents Coca-Cola Bottlers Philippines, Inc. (Coca-Cola) and its officer, Giovanni Acorda. They alleged that they were hired by Coca-Cola on various dates from 1986 to 2003. Coca-Cola, however, terminated their employment in August 2003.

In a Decision[5] dated August 30, 2004, the LA dismissed the complaint on the ground of lack of jurisdiction. The LA ruled that no employer-employee relationship existed between Coca-Cola and the complainants because the latter were hired by Genesis Manpower and General Services, Inc. (Genesis), a legitimate job contractor and it was Genesis which exercised control over the nature, extent and degree of work to be performed by the complainants.

On appeal, the NLRC affirmed the LA's Decision.[6] The complainants moved for reconsideration, but the same was denied by the NLRC in a Resolution[7] dated November 29, 2005.

Then, the complainants, except petitioners Monterona, Alvarez, Samson, Ocampo Demetrio and Metre, filed a petition for *certiorari* before the CA. Thereafter, Demetrio was ordered dropped from the case for failure to sign the verification and certification of non-forum shopping despite the appellate court's order.[8] In a Decision[9] dated December 11, 2006, the CA reversed the ruling of the NLRC and held that there was an employer-employee relationship between the parties. It declared that respondents failed to prove that Genesis had sufficient capital

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[5] Penned by Labor Arbiter Jose G. De Vera; *rollo*, pp. 130-142.

[6] Penned by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino, concurring; Commissioner Angelita A. Gacutan, on leave; *id*. at 143-150.

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

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

[9] Penned by Associate Justice Juan Q. Enriquez, Jr., with Presiding Justice Ruben T. Reyes and Associate Justice Vicente S.E. Veloso, concurring; *id*. at 158-166.

and equipment for the conduct of its business and that the complainants' jobs as route salesmen, drivers and helpers were necessary and desirable in the usual trade or business of Coca-Cola. When respondents moved for reconsideration, the CA denied the motion and further ruled that petitioners Monterona, Alvarez, Samson, Ocampo and Metre should not benefit from the decision because they were not impleaded as petitioners in the petition for *certiorari*. It likewise stated that Demetrio was dropped from the case for not having signed the verification and certification of non-forum shopping, and thus, should not also benefit from the Decision.[10]

Thereafter, respondents filed a petition for review with the Supreme Court but it was denied for being the wrong mode of appeal and for failure to show any reversible error in the assailed Decision.[11] The Resolution denying the appeal became final and executory on July 28, 2008.[12]

Subsequently, on July 14, 2009, petitioners filed before the LA a complaint for illegal dismissal with prayer for reinstatement, payment of backwages, separation pay, service incentive leave pay, 13th month pay, damages and attorney's fees (second illegal dismissal case) against respondents.

The LA Ruling

In an Order[13] dated February 16, 2010, the LA dismissed the complaint on the ground of prescription and *res judicata*. The LA found that Monterona was dismissed from service in May 2002, Metre in February 2003, and Alvarez, Samson, Ocampo and Demetrio in August 2003; thus, four years had elapsed when they filed the case in July 2009. The LA further opined that the second complaint for illegal dismissal and other

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[10] *Id*. at 167-170.

[11] *Id*. at 171-172.

[12] *Id*. at 174.

[13] Penned by Executive Labor Arbiter Fatima Jambaro Franco; *id*. at 183-191.

monetary claims could no longer be entertained on the ground of *res judicata* considering that the first illegal dismissal case had long attained finality. It disposed the case in this wise:

> WHEREFORE, premises considered, the Motion to Dismiss is granted. The instant Complaint is hereby dismissed with prejudice.
>
> SO ORDERED.[14]

Aggrieved, petitioners elevated an appeal to the NLRC.

The NLRC Ruling

In a Decision dated June 16, 2010, the NLRC affirmed the ruling of the LA but only on the ground of *res judicata*. It held that petitioners were among the original complainants in the first illegal dismissal case and the second illegal dismissal case involved the same cause of action and relief as the first case. The *fallo* reads:

> WHEREFORE, the appeal filed by complainants is hereby DENIED for lack of merit. The decision dated 16 February 2010 is AFFIRMED.
>
> SO ORDERED.[15]

Petitioners moved for reconsideration but the same was denied by the NLRC in a Resolution[16] dated July 30, 2010.

The CA Ruling

In a Decision dated August 30, 2012, the CA dismissed the appeal on the ground of laches and estoppel. It noted that when a petition for *certiorari* involving the first case was filed, Demetrio was ordered dropped from the case because he did not sign the verification and certification of non-forum shopping. But he did not act on it by seeking reconsideration of the court's order. The appellate court further observed that when the other

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[14] *Id*. at 191.

[15] *Id*. at 202.

[16] *Id*. at 204-206.

petitioners were excluded from the petition for *certiorari* because they were not impleaded as petitioners, no action was taken by any of them. It added that if petitioners were really interested in the outcome of the first illegal dismissal case, they should have acted at the earliest opportunity, *i.e.*, when they were declared dropped or excluded from the case. The CA likewise pronounced that petitioners did not attempt to seek relief from the Supreme Court. The *fallo* reads:

> **WHEREFORE**, the petition is **DISMISSED**. The assailed Decision and Resolution promulgated on June 16, 2010 and July 30, 2010, respectively, of the National Labor Relations Commission in NLRC CA NO. 041888-04 are **AFFIRMED**.
>
> **SO ORDERED.**[17]

Petitioners moved for reconsideration, but the same was denied by the CA in a Resolution[18] dated September 3, 2013. Hence, this petition for review on *certiorari* wherein petitioners raised the following issue:

> THE HONORABLE COURT OF APPEALS ERRED IN DISMISSING THE PETITION ON THE GROUND OF LACHES AND ESTOPPEL.[19]

Petitioners argue that *res judicata* is not applicable because the Decision on the first illegal dismissal case could not be considered as judgment on the merits as it merely dropped them as parties to the case on the basis of failure to sign the verification and certification of non-forum shopping; that their interest in pursuing the case is shown by their act of filing the second complaint for illegal dismissal on July 14, 2009, less than a year after the Decision on the first illegal dismissal case attained finality on July 28, 2008; and that their substantial rights should not be sacrificed in favor of technicalities.[20]

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[17] *Id*. at 74.

[18] *Id*. at 93-94.

[19] *Id*. at 13.

[20] *Id*. at 9-23.

In their Comment,[21] respondents counter that petitioners did not raise any objection when they were excluded from the proceedings in the first illegal dismissal case; that petitioners failed to present any valid reason for the long delay in prosecuting their cause; and that their inaction is graver than mere lack of vigilance and the CA had clear legal and factual bases for the dismissal of the petition on the ground of laches and estoppel.

In their Reply,[22] petitioners contend that *res judicata* is not applicable because there was no identity of parties considering that there were only six complainants in the second case; that they are also entitled to the monetary award had they not been dropped from the case; and that since rules of procedure are mere tools designed to facilitate the attainment of justice, their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice must always be avoided.

The Court's Ruling

The petition lacks merit.

Res judicata means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It lays the rule that an existing final judgment or decree rendered on the merits, without fraud or collusion, by a court of competent jurisdiction, upon any matter within its jurisdiction, is conclusive of the rights of the parties or their privies, in all other actions or suits in the same or any other judicial tribunal of concurrent jurisdiction on the points and matters in issue in the first suit.[23]

The doctrine of *res judicata* embodied in Section 47, Rule 39 of the Rules of Court provides:

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[21] *Id*. at 113-126.

[22] *Id*. at 234-246.

[23] *Spouses Selga v. Brar*, 673 Phil. 581, 591 (2011).

SEC. 47. *Effect of judgments or final orders*.—

The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:

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(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been [missed] in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

The above-quoted provision embraces two concepts of *res judicata*: (1) bar by prior judgment as enunciated in Rule 39, Section 47(b); and (2) conclusiveness of judgment in Rule 39, Section 47(c). *Oropeza Marketing Corporation v. Allied Banking Corporation*[24] differentiated between the two rules of *res judicata*:

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. Otherwise put, the judgment or decree of the court of competent jurisdiction on the merits concludes the litigation between the parties, as well as their privies, and constitutes a bar to a new action or suit involving the same cause of action before the same or any other tribunal.

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

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[24] 441 Phil. 551, 564 (2002).

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 claim, demand, purpose, or subject matter of the two actions is the same.

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. x x x 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.[25]

The Court finds that the subject case satisfies all the requisites of *res judicata* under the first concept of bar by prior judgment.

The first illegal dismissal case, which was decided in favor of petitioners' co-employees, attained finality on July 28, 2008.[26] As regards petitioners Monterona, Alvarez, Samson, Ocampo and Metre, the case became final when they failed to file a petition for *certiorari* before the CA to assail the NLRC Decision.[27] With respect to petitioner Demetrio, the case attained finality when he failed to comply with the order of the CA to sign the verification and certification against forum shopping.[28]

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[25] *Id*. at 564-565.

[26] *Rollo*, pp. 174-175.

[27] *Id*. at 169.

[28] *Id*. at 157.

It must be emphasized that failure on the part of the plaintiff to comply with any order of the court will result in dismissal which shall have the effect of an adjudication on the merits.[29]

It is likewise beyond dispute that the judgment on the first illegal dismissal case has been rendered by a court having jurisdiction over the subject matter as well as over the parties and it was a judgment on the merits. Further, there can be no question as to the identity of the parties. Petitioners were among the complainants in the first illegal dismissal case which was instituted against the same respondents.

The subject matters and causes of action of the two cases are also identical. A subject matter is the item with respect to which the controversy has arisen, or concerning which the wrong has been done, and it is ordinarily the right, the thing, or the contract under dispute.[30] In the case at bar, both the first and second actions involve petitioners' right to security of tenure. Meanwhile, Section 2, Rule 2 of the Rules of Court defines a cause of action as "the act or omission by which a party violates a right of another." In *Yap v. Chua*,[31] the Court held that the test to determine whether the causes of action are identical is to ascertain whether the same evidence would support both actions, or whether there is an identity in the facts essential to the maintenance of the two actions. If the same facts or evidence would support both actions, then they are considered the same; and a judgment in the first case would be a bar to the subsequent action. Here, the two cases involve the same cause of action, *i.e.*, respondents' act of terminating petitioners' employment. The facts in the two cases are identical and petitioners presented the same evidence to prove their claims in both cases.

Res judicata requires that stability be accorded to judgments. Controversies once decided on the merits shall remain in repose

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[29] RULES OF COURT, Rule 17, Section 3.

[30] *Presidential Commission on Good Government v. Sandiganbayan*, 556 Phil. 664, 676 (2007).

[31] 687 Phil. 392, 401 (2012).

for there should be an end to litigation which, without the doctrine, would be endless.[32] As the Court declared in *Camara v. Court of Appeals*,[33] both concepts of *res judicata* are:

> [F]ounded on the principle of estoppel, and are based on the salutary public policy against unnecessary multiplicity of suits. Like the splitting of causes of action, *res judicata* is in pursuance of such policy. Matters settled by a Court's final judgment should not be litigated upon or invoked again. Relitigation of issues already settled merely burdens the Courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier causes. As the Roman maxim goes, *Non bis in edem*.

In fine, while the Court commiserates with petitioners' predicament, it cannot sanction the setting aside of a doctrine so well-settled as *res judicata*. Petitioners' complaint in NLRC NCR Case No. 07-10297-09 is rightfully dismissed for being barred by prior judgment.

WHEREFORE, the petition is **DENIED**. The August 30, 2012 Decision and the September 3, 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 116519 are **AFFIRMED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[****] *JJ.*, concur.

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[32] *Nacuray v. National Labor Relations Commission*, 336 Phil. 749, 757 (1997).

[33] 369 Phil. 858, 865 (1999).

[****] Additional Member per S.O. No. 2630 dated December 18, 2018.

SECOND DIVISION

[G.R. No. 211289. January 14, 2019]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **LA FLOR DELA ISABELA, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; THE FAILURE OF THE COUNSEL TO INDICATE IN HIS/HER PLEADINGS THE NUMBER AND DATE OF ISSUE OF HIS/HER MANDATORY CONTINUING LEGAL EDUCATION (MCLE) CERTIFICATE OF COMPLIANCE WILL NO LONGER RESULT IN THE DISMISSAL OF THE CASE, AND EXPUNCTION OF THE PLEADINGS FROM THE RECORDS, BUT WILL SUBJECT THE LAWYER TO THE PRESCRIBED FINE AND/OR DISCIPLINARY ACTION.— In *People v. Arrojado*, the Court had already clarified that failure to indicate the number and date of issue of the counsel's MCLE compliance will no longer result in the dismissal of the case, to wit: In any event, to avoid inordinate delays in the disposition of cases brought about by a counsel's failure to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance, this Court issued an *En Banc* Resolution, dated January 14, 2014 which amended B.M. No. 1922 by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action." Thus, under the amendatory Resolution, the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case and expunction of the pleadings from the records. Nonetheless, such failure will subject the lawyer to the prescribed fine and/or disciplinary action.

2. ID.; ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FAILURE TO NUMBER THE PARAGRAPHS DOES NOT JUSTIFY ITS OUTRIGHT

DISMISSAL; COURTS MUST STRIVE TO RESOLVE CASES ON THEIR MERITS, RATHER THAN SUMMARILY DISMISS THEM ON TECHNICALITIES, SPECIALLY WHEN THE ALLEGED PROCEDURAL RULES VIOLATED DO NOT PROVIDE ANY SANCTION AT ALL OR WHEN THE TRANSGRESSION THEREOF DOES NOT RESULT IN A DISMISSAL OF THE ACTION.— [E]ven La Flor recognizes that Section 2, Rule 7 of the Rules of Court does not provide for any punishment for failure to number the paragraphs in a pleading. In short, the perceived procedural irregularities in the petition for review on *certiorari* do not justify its outright dismissal. Procedural rules are in place to facilitate the adjudication of cases and avoid delay in the resolution of rival claims. In addition, courts must strive to resolve cases on their merits, rather than summarily dismiss them on technicalities. This is especially true when the alleged procedural rules violated do not provide any sanction at all or when the transgression thereof does not result in a dismissal of the action.

3. TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); WITHHOLDING TAX SYSTEM; WITHHOLDING TAXES ARE INTERNAL REVENUE TAXES COLLECTED BY WITHHOLDING AGENT FROM THE INCOME EARNED BY THE TAXPAYER/ PAYEE, AND REMITTED TO THE GOVERNMENT; THUS, COVERED BY SECTION 203 OF THE NIRC.— It is true that withholding tax is a method of collecting tax in advance and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee. Nonetheless, the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC. The CIR cites *National Development Company v. Commissioner of Internal Revenue* as basis that withholding taxes are only penalties imposed on the withholding agent x x x. A careful analysis of the x x x decision, however, reveals that the Court did not equate withholding tax assessments to the imposition of civil penalties imposed on tax deficiencies. The word "penalty" was used to underscore the dynamics in the withholding tax

system that it is the income of the payee being subjected to tax and not of the withholding agent. It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes, especially considering that income taxes are the ones withheld by the withholding agent. Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent.

4. **ID.; ID.; ID.; ID.; LIABILITY OF WITHHOLDING AGENT FOR FAILURE TO COLLECT AND REMIT TAXES; THE LIABILITY OF THE WITHHOLDING AGENT IS DISTINCT AND SEPARATE FROM THE TAX LIABILITY OF THE INCOME EARNER, SUCH THAT, THE WITHHOLDING AGENT SHALL BE LIABLE FOR DEFICIENCY TAXES AND APPLICABLE PENALTIES IF IT FAILS TO DEDUCT THE REQUIRED AMOUNT FROM ITS PAYMENT TO THE PAYEE.—** The liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. Should the withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties. In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation* the Court explained: It thus becomes important to note that under Section 53 (c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "*personally liable for such tax*" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. **The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.** x x x. Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation

of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code.

5. ID.; ID.; ID.; ID.; ID.; THE "PENALTIES" IMPOSED UPON THE WITHHOLDING AGENT FOR FAILURE TO WITHHOLD AND REMIT INTERNAL REVENUE TAXES ARE AMOUNTS COLLECTED ON TOP OF THE DEFICIENCY TAX ASSESSMENTS INCLUDING DEFICIENCY WITHHOLDING TAX ASSESSMENTS.— Section 247(b) of the NIRC provides: SEC. 247. *General Provisions*. — x x x (b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation, the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein. On the other hand, Section 251 of the Tax Code reads: SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax*. — Any person required to withhold, account for and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted. Based on the above-cited provisions, it is clear to see that the "penalties" are amounts collected on top of the deficiency tax assessments including deficiency withholding tax assessments. Thus, it was wrong for the CIR to restrict the EWT and WTC assessments against La Flor as only for the purpose of imposing penalties and not for the collection of internal revenue taxes.

6. ID.; ID.; PRESCRIPTIVE PERIOD FOR THE ASSESSMENT AND COLLECTION OF TAXES; WAIVERS EXTENDING THE PRESCRIPTIVE PERIOD OF TAX ASSESSMENTS MUST INDICATE THE SPECIFIC TAX INVOLVED AND THE EXACT AMOUNT OF THE TAX TO BE ASSESSED

OR COLLECTED, AS THERE CAN BE NO TRUE AND VALID AGREEMENT BETWEEN THE TAXPAYER AND THE COMMISSIONER OF INTERNAL REVENUE (CIR) ABSENT THESE INFORMATION.— In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc*., the Court had ruled that waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due, to wit: **These requirements are mandatory and must strictly be followed.** x x x. In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — the assessments had prescribed as there was no valid waiver.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Ponferrada Orbe & Altubar Law Office for respondent.

D E C I S I O N

REYES, J. 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 September 30, 2013 Decision[1] and the February 10, 2014

[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Roman G. del Rosario and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, and Ma. Belen M. Ringpis-Liban, concurring; *rollo*, pp. 39-56.

Resolution[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 951, which affirmed the August 3, 2012 Decision[3] and the October 5, 2012 Resolution of the CTA Third Division (CTA Division).

Factual background

Respondent La Flor dela Isabela, Inc. (La Flor) is a domestic corporation duly organized and existing under Philippine Law. It filed monthly returns for the Expanded Withholding Tax (EWT) and Withholding Tax on Compensation (WTC) for calendar year 2005.[4]

On September 3, 2008, La Flor, through its president, executed a Waiver of the Statute of Limitations (Waiver)[5] in connection with its internal revenue liabilities for the calendar year ending December 31, 2005. On February 16, 2009, it executed another Waiver[6] to extend the period of assessment until December 31, 2009.

On November 20, 2009, La Flor received a copy of the Preliminary Assessment Notice for deficiency taxes for the taxable year 2005. Meanwhile, on December 2, 2009, it executed another Waiver.[7]

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[2] Penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban, concurring. Presiding Justice Roman G. del Rosario with a Separate Concurring Opinion and Associate Justice Cielito N. Mindaro-Grulla, on leave; *id*. at 57-63.

[3] Penned by Associate Justice Lovell R. Bautista, with Associate Justices Olga Palanca-Enriquez and Amelia R. Cotangco-Manalastas, concurring; *id*. at 76-101.

[4] *Id*. at 11.

[5] *Id*. at 72.

[6] *Id*. at 73.

[7] *Id*. at 74.

On January 7, 2010, La Flor received the following Formal Letter of Demand and Final Assessment Notices (FANs): (1) LTEADI-II CP-05-00007 for penalties for late filing and payment of WTC; (2) LTADI-II CP 05-00008 for penalties for late filing and payment of EWT; (3) LTADI-II WE-05-00062 for deficiency assessment for EWT; and (4) LTEADI-II WC-05-00038 for deficiency assessment for WTC. The above-mentioned assessment notices were all dated December 17, 2009 and covered the deficiency taxes for the taxable year 2005.[8]

On January 15, 2010, La Flor filed its Letter of Protest contesting the assessment notices. On July 20, 2010, petitioner Commissioner of Internal Revenue (CIR) issued the Final Decision on Disputed Assessment (FDDA) involving the alleged deficiency withholding taxes in the aggregate amount of ₱6,835,994.76. Aggrieved, it filed a petition for review before the CTA Division.

CTA Division Decision

In its August 3, 2012 Decision, the CTA Division ruled in favor of La Flor and cancelled the deficiency tax assessments against it. It noted that based on the dates La Flor had filed its returns for EWT and WTC, the CIR had until February 15, 2008 to March 1, 2009 to issue an assessment pursuant to the three-year prescriptive period under Section 203 of the National Internal Revenue Code (NIRC). The CTA Division pointed out that the assessment was issued beyond the prescriptive period considering that the CIR issued the FANs only on December 17, 2009. Thus, it posited that the assessment was barred by prescription.

On the other hand, the CTA Division ruled that the Waivers entered into by the CIR and La Flor did not effectively extend the prescriptive period for the issuance of the tax assessments. It pointed out that only the February 16, 2009 Waiver was stipulated upon and the Waivers dated September 3, 2008 and December 2, 2009 were never presented or offered in evidence.

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[8] *Id*. at 12.

In addition, the CTA Division highlighted that the Waiver dated February 16, 2009 did not comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90 because it failed to state the nature and amount of the tax to be assessed.

Thus, it disposed:

> WHEREFORE, the Petition for Review is hereby GRANTED. Accordingly, the Formal Letter of Demand, with Final Assessment Notices LTEADI-WC-05-00038, LTEADI-WE-05-00062, LTEADI-CP-05-00007, LTEADI-CP-05-00008, all dated December 17, 2009 are hereby CANCELLED and SET ASIDE.
>
> SO ORDERED.[9]

The CIR moved for reconsideration but it was denied by the CTA Division in its October 5, 2012 Resolution.[10] Undeterred, it filed a Petition for Review[11] before the CTA *En Banc*.

CTA En Banc Decision

In its September 30, 2013 Decision, the CTA *En Banc* affirmed the Decision of the CTA Division. The tax court agreed that the EWT and WTC assessments were barred by prescription. It explained that the Waivers dated September 3, 2008 and December 2, 2009 were inadmissible because they were never offered in evidence. The CTA *En Banc* added that these documents were neither incorporated in the records nor duly identified by testimony. It also elucidated that the Waiver dated February 16, 2009 was defective because it failed to comply with RMO No. 20-90 as it did not specify the kind and amount of tax involved. As such, the CTA *En Banc* concluded that the prescriptive period for the assessment of EWT and WTC for 2005 was not extended in view of the inadmissibility and

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[9] *Id*. at 99-100.

[10] Penned by Associate Justice Lovell R. Bautista, with Associate Justice Olga Palanca-Enriquez, concurring. Associate Justice Amelia R. Cotangco-Manalastas, on official leave; *id*. at 102-104.

[11] *Id*. at 105-130.

invalidity of the Waivers between the CIR and La Flor. Thus, it disposed:

> WHEREFORE, premises considered, the assailed Decision dated August 3, 2012 and the Resolution dated October 5, 2012 are AFFIRMED. The Petition for Review is hereby DISMISSED.
>
> SO ORDERED.[12]

The CIR moved for reconsideration, but it was denied by the CTA *En Banc* in its February 10, 2014 Resolution.

Hence, this present petition raising the following:

Issues

I

WHETHER THE PRESCRIPTIVE PERIOD UNDER SECTION 203 OF THE NIRC APPLIES TO EWT AND WTC ASSESSMENTS; and

II

WHETHER LA FLOR'S EWT AND WTC ASSESSMENTS FOR 2005 WERE BARRED BY PRESCRIPTION.

The CIR argued that the prescriptive period under Section 203 of the NIRC does not apply to withholding agents such as La Flor. It explained that the amount collected from them is not the tax itself but rather a penalty. The CIR pointed out that the provision of Section 203 of the NIRC only mentions assessment of taxes as distinguished from assessment of penalties. It highlighted that La Flor was made liable for EWT and WTC deficiencies in its capacity as a withholding agent and not in its personality as a taxpayer.

On the other hand, the CIR maintained that even applying the periods set in Section 203 of the NIRC, the EWT and WTC assessment of La Flor had not yet prescribed. It pointed out that La Flor had executed three Waivers extending the

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[12] *Id*. at 55.

prescriptive period under the NIRC. The CIR lamented that the CTA erred in disregarding them because evidence not formally offered may be considered if they form part of the records. It noted that in the Answer it filed before the CTA Division, the subject Waivers were included as annexes. In addition, the CIR assailed that failure to comply with RMO No. 20-90 does not invalidate the Waivers.

In its Comment[13] dated August 15, 2014, La Flor countered that the CIR's petition for review should be denied outright for procedural infirmities. It pointed out that the petition failed to comply with Bar Matter (B.M.) No. 1922 because the date of issue of the Mandatory Continuing Legal Education (MCLE) compliance of the counsels of the CIR was not indicated. In addition, La Flor noted that the petition for review did not observe Section 2, Rule 7 of the Rules of Court requiring the paragraphs to be numbered. Further, it asserted that the assessment of the EWT and WTC had prescribed because it went beyond the prescriptive period provided under Section 203 of the NIRC. La Flor also assailed that the Waivers should not be considered because they were neither offered in evidence nor complied with the requirements under RMO No. 20-90.

In its Reply[14] dated February 18, 2015, the CIR brushed aside the allegations of procedural infirmities of its petition for review. It elucidated that failure to indicate the date of issue of the MCLE compliance is no longer a ground for dismissal and that it had stated the MCLE certificate compliance numbers of its counsels. The CIR posited that the Rules of Court does not penalize the failure to number the paragraphs in pleadings.

The Court's Ruling

Other than challenging the merits of the CIR's petition, La Flor believes that the former's petition for review on *certiorari* should be dismissed outright on procedural grounds. It points

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[13] *Id*. at 144-157.

[14] *Id*. at 170-173.

out that failure to include the date of issue of the MCLE compliance number of a counsel in a pleading is a ground for dismissal. Further, La Flor highlights that the paragraphs in the CIR's petition for review on *certiorari* were not numbered.

In *People v. Arrojado*,[15] the Court had already clarified that failure to indicate the number and date of issue of the counsel's MCLE compliance will no longer result in the dismissal of the case, to wit:

> In any event, to avoid inordinate delays in the disposition of cases brought about by a counsel's failure to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance, this Court issued an En Banc Resolution, dated January 14, 2014 which amended B.M. No. 1922 by repealing the phrase "Failure to disclose the required information would cause the dismissal of the case and the expunction of the pleadings from the records" and replacing it with "Failure to disclose the required information would subject the counsel to appropriate penalty and disciplinary action." Thus, under the amendatory Resolution, the failure of a lawyer to indicate in his or her pleadings the number and date of issue of his or her MCLE Certificate of Compliance will no longer result in the dismissal of the case and expunction of the pleadings from the records. Nonetheless, such failure will subject the lawyer to the prescribed fine and/or disciplinary action.

On the other hand, even La Flor recognizes that Section 2, Rule 7 of the Rules of Court does not provide for any punishment for failure to number the paragraphs in a pleading. In short, the perceived procedural irregularities in the petition for review on *certiorari* do not justify its outright dismissal. Procedural rules are in place to facilitate the adjudication of cases and avoid delay in the resolution of rival claims.[16] In addition, courts must strive to resolve cases on their merits, rather than summarily dismiss them on technicalities.[17] This is especially true when the alleged procedural rules violated do not provide any sanction

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[15] 772 Phil. 440, 448-449 (2015).

[16] *Curammeng v. People*, 799 Phil. 575, 581 (2016).

[17] *Ching v. Cheng*, 745 Phil. 93, 117 (2014).

at all or when the transgression thereof does not result in a dismissal of the action.

Nevertheless, the Court finds no reason to reverse the CTA in invalidating the assessments against La Flor.

Withholding taxes are internal revenue taxes covered by Section 203 of the NIRC.

Section 203 of the NIRC provides for the ordinary prescriptive period for the assessment and collection of taxes, to wit:

> SEC. 203. *Period of Limitation Upon Assessment and Collection*. — Except as provided in Section 222, **internal revenue taxes** shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day. (Emphasis supplied)

On the other hand, Section 222(a)[18] of the NIRC provides for instances where the ordinary prescriptive period of three years for the assessment and collection of taxes is extended to 10 years, *i.e.*, false return, fraudulent returns, or failure to file a return. In short, the relevant provisions in the NIRC concerning the prescriptive period for the assessment of internal revenue taxes provide for an ordinary and extraordinary period for assessment.

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[18] SEC. 222(a) – In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

The CIR, however, forwards a novel theory that Section 203 is inapplicable in the present assessment of EWT and WTC deficiency against La Flor. It argues that withholding taxes are not contemplated under the said provision considering that they are not internal revenue taxes but are penalties imposed on the withholding agent should it fail to remit the proper amount of tax withheld.

In *Chamber of Real Estate and Builders' Associations, Inc. v. Hon. Executive Secretary Romulo*,[19] the Court had succinctly explained the withholding tax system observed in our jurisdiction, to wit:

> We have long recognized that the method of withholding tax at source is a procedure of collecting income tax which is sanctioned by our tax laws. The withholding tax system was devised for three primary reasons: first, to provide the taxpayer a convenient manner to meet his probable income tax liability; second, to ensure the collection of income tax which can otherwise be lost or substantially reduced through failure to file the corresponding returns and third, to improve the government's cash flow. This results in administrative savings, prompt and efficient collection of taxes, prevention of delinquencies and reduction of governmental effort to collect taxes through more complicated means and remedies.

Under the existing withholding tax system, the withholding agent retains a portion of the amount received by the income earner. In turn, the said amount is credited to the total income tax payable in transactions covered by the EWT. On the other hand, in cases of income payments subject to WTC and Final Withholding Tax, the amount withheld is already the entire tax to be paid for the particular source of income. Thus, it can readily be seen that the payee is the taxpayer, the person on whom the tax is imposed, while the payor, a separate entity, acts as the government's agent for the collection of the tax in order to ensure its payment.[20]

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[19] 628 Phil. 508, 536 (2010).

[20] *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue*, 749 Phil. 155, 181 (2014).

As a consequence of the withholding tax system, two distinct liabilities arise — one for the income earner/payee and another for the withholding agent. In *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue*,[21] the Court elaborated:

> It is, therefore, indisputable that the withholding agent is merely a tax collector and not a taxpayer, as elucidated by this Court in the case of *Commissioner of Internal Revenue v. Court of Appeals*, to wit:
>
> > In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer — he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him — he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:
> >
> > > "the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and not upon the taxpayer."

Based on the foregoing, the liability of the withholding agent is independent from that of the taxpayer. The former cannot be made liable for the tax due because it is the latter who earned the income subject to withholding tax. The withholding agent is liable only insofar as he failed to perform his duty to withhold the tax and remit the same to the government. The liability for the tax, however, remains

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[21] 672 Phil. 514, 528-529 (2011).

with the taxpayer because the gain was realized and received by him. (Citations omitted)

It is true that withholding tax is a method of collecting tax in advance[22] and that a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer/payee.[23] Nonetheless, the Court does not agree with the CIR that withholding tax assessments are merely an imposition of a penalty on the withholding agent, and thus, outside the coverage of Section 203 of the NIRC.

The CIR cites *National Development Company v. Commissioner of Internal Revenue*[24] as basis that withholding taxes are only penalties imposed on the withholding agent, to wit:

> The petitioner also forgets that it is not the NDC that is being taxed. The tax was due on the interests earned by the Japanese shipbuilders. It was the income of these companies and not the Republic of the Philippines that was subject to the tax the NDC did not withhold.
>
> In effect, therefore, the imposition of the deficiency taxes on the NDC is a *penalty* for its failure to withhold the same from the Japanese shipbuilders. Such liability is imposed by Section 53(c) of the Tax Code, thus:
>
> > Section 53(c). *Return and Payment*. — Every person required to deduct and withhold any tax under this section shall make return thereof, in duplicate, on or before the fifteenth day of April of each year, and, on or before the time fixed by law for the payment of the tax, shall pay the amount withheld to the officer of the Government of the Philippines authorized to receive it. Every such person is made personally liable for such tax, and is indemnified against the claims and demands of any person for the amount of any payments made in accordance with the

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[22] *Filipinas Synthetic Fiber Corporation v. Court of Appeals*, 374 Phil. 835, 841 (1999).

[23] *Philippine National Bank v. Commissioner of Internal Revenue*, 562 Phil. 575, 582 (2007).

[24] 235 Phil. 477, 485-486 (1987).

provisions of this section. (As amended by Section 9, R.A. No. 2343.)

In *Philippine Guaranty Co. v. The Commissioner of Internal Revenue and the Court of Tax Appeals*, the Court quoted with approval the following regulation of the BIR on the responsibilities of withholding agents:

> In case of doubt, a withholding agent may always protect himself by withholding the tax due, and promptly causing a query to be addressed to the Commissioner of Internal Revenue for the determination whether or not the income paid to an individual is not subject to withholding. In case the Commissioner of Internal Revenue decides that the income paid to an individual is not subject to withholding, the withholding agent may thereupon remit the amount of tax withheld. (2nd par., Sec. 200, Income Tax Regulations).
>
> "Strict observance of said steps is required of a withholding agent before he could be released from liability," so said Justice Jose P. Bengson, who wrote the decision. "Generally, the law frowns upon exemption from taxation; hence, an exempting provision should be construed *strictissimi juris*."

The petitioner was remiss in the discharge of its obligation as the withholding agent of the government and so should be held liable for its omission.

A careful analysis of the above-quoted decision, however, reveals that the Court did not equate withholding tax assessments to the imposition of civil penalties imposed on tax deficiencies. The word "penalty" was used to underscore the dynamics in the withholding tax system that it is the income of the payee being subjected to tax and not of the withholding agent. It was never meant to mean that withholding taxes do not fall within the definition of internal revenue taxes, especially considering that income taxes are the ones withheld by the withholding agent. Withholding taxes do not cease to become income taxes just because it is collected and paid by the withholding agent.

The liability of the withholding agent is distinct and separate from the tax liability of the income earner. It is premised on its duty to withhold the taxes paid to the payee. Should the

withholding agent fail to deduct the required amount from its payment to the payee, it is liable for deficiency taxes and applicable penalties. In *Commissioner of Internal Revenue v. Procter & Gamble Philippine Manufacturing Corporation*[25] the Court explained:

> It thus becomes important to note that under Section 53 (c) of the NIRC, the withholding agent who is "required to deduct and withhold any tax" is made "*personally liable for such tax*" and indeed is indemnified against any claims and demands which the stockholder might wish to make in questioning the amount of payments effected by the withholding agent in accordance with the provisions of the NIRC. **The withholding agent, P&G-Phil., is directly and independently liable for the correct amount of the tax that should be withheld from the dividend remittances. The withholding agent is, moreover, subject to and liable for deficiency assessments, surcharges and penalties should the amount of the tax withheld be finally found to be less than the amount that should have been withheld under law.**
>
> A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer." The terms "liable for tax" and "subject to tax" both connote legal obligation or duty to pay a tax. It is very difficult, indeed conceptually impossible, to consider a person who is statutorily made "liable for tax" as *not* "subject to tax." By any reasonable standard, such a person should be regarded as a party in interest, or as a person having sufficient legal interest, to bring a suit for refund of taxes he believes were illegally collected from him. (Emphasis supplied)

Thus, withholding tax assessments such as EWT and WTC clearly contemplate deficiency internal revenue taxes. Their aim is to collect unpaid income taxes and not merely to impose a penalty on the withholding agent for its failure to comply with its statutory duty. Further, a holistic reading of the Tax Code reveals that the CIR's interpretation of Section 203 is erroneous. Provisions of the NIRC itself recognize that the tax assessment for withholding tax deficiency is different and

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[25] 281 Phil. 425, 441-442 (1991), as cited in *Commissioner of Internal Revenue v. Smart Communication, Inc*., 643 Phil. 550, 561-562 (2010).

independent from possible penalties that may be imposed for the failure of withholding agents to withhold and remit taxes. For one, Title X, Chapter I of the NIRC provides for additions to the tax or deficiency tax and is applicable to all taxes, fees and charges under the Tax Code.

In addition, Section 247(b) of the NIRC provides:

SEC. 247. *General Provisions.* —

x x x x x x x x x

(b) If the withholding agent is the Government or any of its agencies, political subdivisions or instrumentalities, or a government-owned or controlled corporation the employee thereof responsible for the withholding and remittance of the tax shall be personally liable for the additions to the tax prescribed herein.

On the other hand, Section 251 of the Tax Code reads:

SEC. 251. *Failure of a Withholding Agent to Collect and Remit Tax.* — Any person required to withhold, account for and remit any tax imposed by this Code or who willfully fails to withhold such tax, or account for and remit such tax, or aids or abets in any manner to evade any such tax or the payment thereof, shall, in addition to other penalties provided for under this Chapter, be liable upon conviction to a penalty equal to the total amount of the tax not withheld, or not accounted for and remitted.

Based on the above-cited provisions, it is clear to see that the "penalties" are amounts collected on top of the deficiency tax assessments including deficiency withholding tax assessments. Thus, it was wrong for the CIR to restrict the EWT and WTC assessments against La Flor as only for the purpose of imposing penalties and not for the collection of internal revenue taxes.

The CIR further argues that even if Section 203 of the NIRC was applicable, the assessments against La Flor had yet to prescribe. It points out that La Flor had executed three Waivers to extend the statutory prescriptive period. The CIR insists that the Waivers should have been considered even if they were not offered in evidence because the CTA is not strictly governed

by technical rules of evidence. It adds that the requirements under RMO No. 20-90 are not mandatory.

In *Commissioner of Internal Revenue v. Systems Technology Institute, Inc.*,[26] the Court had ruled that waivers extending the prescriptive period of tax assessments must be compliant with RMO No. 20-90 and must indicate the nature and amount of the tax due, to wit:

> **These requirements are mandatory and must strictly be followed.** To be sure, in a number of cases, this Court did not hesitate to strike down waivers which failed to strictly comply with the provisions of RMO 20-90 and RDAO 05-01.
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> x x x x x x x x x
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> The Court also invalidated the waivers executed by the taxpayer in the case of *Commissioner of Internal Revenue v. Standard Chartered Bank*, because: (1) they were signed by Assistant Commissioner-Large Taxpayers Service and not by the CIR; (2) the date of acceptance was not shown; (3) they did not specify the kind and amount of the tax due; and (4) the waivers speak of a request for extension of time within which to present additional documents and not for reinvestigation and/or reconsideration of the pending internal revenue case as required under RMO No. 20-90.
>
> Tested against the requirements of RMO 20-90 and relevant jurisprudence, the Court cannot but agree with the CTA's finding that the waivers subject of this case suffer from the following defects:
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> x x x x x x x x x
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> 3. Similar to *Standard Chartered Bank*, the waivers in this case did not specify the kind of tax and the amount of tax due. It is established that a waiver of the statute of limitations is a bilateral agreement between the taxpayer and the BIR to extend the period to assess or collect deficiency taxes on a certain date. **Logically, there can be no agreement if the kind and amount of the taxes to be assessed or collected were not indicated.** Hence, specific information in the waiver is necessary for its validity. (Emphasis supplied)

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[26] G.R. No. 220835, July 26, 2017, 833 SCRA 285, 296-298.

In the present case, the September 3, 2008, February 16, 2009 and December 2, 2009 Waivers failed to indicate the specific tax involved and the exact amount of the tax to be assessed or collected. As above-mentioned, these details are material as there can be no true and valid agreement between the taxpayer and the CIR absent these information. Clearly, the Waivers did not effectively extend the prescriptive period under Section 203 on account of their invalidity. The issue on whether the CTA was correct in not admitting them as evidence becomes immaterial since even if they were properly offered or considered by the CTA, the same conclusion would be reached — the assessments had prescribed as there was no valid waiver.

WHEREFORE, the petition is **DENIED**. The September 30, 2013 Decision and the February 10, 2014 Resolution of the Court of Tax Appeals *En Banc* in CTA EB No. 951 are **AFFIRMED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[*] *JJ*., concur.

FIRST DIVISION

[G.R. No. 232060. January 14, 2019]

VIRGILIA T. AQUINO, NAZARIA T. AQUINO, AVELINA A. RONQUILLO, PATROCINIO T. AQUINO, and RAMONCITO T. NEPOMUCENO, *petitioners, vs.* **ESTATE OF TOMAS B. AGUIRRE,** *respondent.*

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[*] Additional Member per S.O. No. 2630 dated December 18, 2018.

SYLLABUS

1. **CIVIL LAW; PROPERTY; LAND REGISTRATION; IN CASE TWO CERTIFICATES OF TITLE PURPORT TO INCLUDE THE SAME LAND, THE EARLIER IN DATE PREVAILS; CASE AT BAR.—** In this jurisdiction, it is settled that in the case of two certificates of title purporting to include the same land, the earlier in date prevails. x x x By respondent's own admission, its title is subordinate to petitioners'. In fact, it is patently null and void on its face, because it could not have acquired title upon land already earlier registered in the name of another. *Primus tempore, potior jure* – first in time, stronger in right. For this reason, respondent has no right – and no personality – to intervene in the reconstitution proceedings instituted by the petitioners. It was evident from respondent's own pleadings filed with the courts that its purported rights to the property were non-existent, having for their basis a title that was issued upon property that was already previously registered in the name of another. Indeed, respondent has no conceivable right to the property, having for its basis a void title that came after the same property was already transferred to and owned by another - in this case, the petitioners' predecessor-in-interest Basilio Aquino.

2. **ID.; ID.; ID.; RECONSTITUTION OF TITLE; SERVICE OF NOTICE OF THE PETITION FOR RECONSTITUTION FILED UNDER R.A. 26 (AN ACT PROVIDING FOR A SPECIAL PROCEDURE FOR THE RECONSTITUTION OF TORRENS CERTIFICATE OF TITLE LOST OR DESTROYED) TO THE OCCUPANTS OF THE PROPERTY, OWNERS OF THE ADJOINING PROPERTIES, AND ALL PERSONS WHO MAY HAVE ANY INTEREST IN THE PROPERTY IS NOT REQUIRED IF THE PETITION IS BASED ON THE OWNER'S DUPLICATE CERTIFICATE OF TITLE OR ON THAT OF THE CO-OWNER'S, MORTGAGEE'S, OR LESSEE'S; SUSTAINED.—** As for the sufficiency of the petition for reconstitution, the Court agrees with petitioners' argument that, since the source of reconstitution is the owner's duplicate copy, there is no need to give notice to other parties. "[T]he service of notice of the petition for reconstitution filed under R.A. 26 to the occupants of the property, owners of the adjoining

properties, and all persons who may have any interest in the property is not required if the petition is based on the owner's duplicate certificate of title or on that of the co-owner's, mortgagee's, or lessee's." x x x The first sentence of Section 13 provides that the requirements therein pertain only to petitions for reconstitution filed under 'the preceding section,' Section 12, which in tum governs those petitions based on specified sources. x x x In other words, the requirements under Sections 12 and 13 do not apply to *all* petitions for judicial reconstitution, but only to those based on any of the sources specified in Section 12; that is, 'sources enumerated in Section 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of this Act.' x x x In the present case, the source of the Petition for the reconstitution of title was petitioner's duplicate copies of the two TCTs mentioned in Section 3(a). Clearly, the Petition is governed, not by Sections 12 and 13, but by Section 10 of RA 26. x x x Nothing in this provision requires that notices be sent to owners of adjoining lots. Verily, that requirement is found in Section 13, which does not apply to petitions based on an existing owner's duplicate TCT.

APPEARANCES OF COUNSEL

Natebb Law Offices for petitioners.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the December 7, 2015 Decision[2] and May 15, 2017 Resolution[3] of the Court of Appeals (CA) in CA-G.R SP No. 136103, which respectively granted the herein respondent's Petition for

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[1] *Rollo*, pp. 3-38.

[2] *Id*. at 103-118; penned by Associate Justice Socorro B. Inting and concurred in by Associate Justices Mario V. Lopez and Elihu A. Ybañez.

[3] *Id*. at 39-46; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez.

Annulment of Judgment and thus nullified, reversed, and set aside the March 21, 2014 Order[4] and all other orders of the Bacoor, Cavite Regional Trial Court (RTC), Branch 19 in LRC Case No. 8843-2009-59 and denied herein petitioners' Motion for Reconsideration.[5]

Factual Antecedents

In 2009, petitioners Virgilia Aquino, Nazaria Aquino, Avelina Ronquillo, Patrocinio Aquino, Manuela Aquino, Lucita Bamba, Ramoncito Nepomuceno, and Domingo Manimbao filed LRC Case No. 8843-2009-59 for reconstitution of the lost Cavite Registry of Deeds copy of Transfer Certificate of Title (TCT) No. T-3269 registered in the name of their deceased parents.

On March 21, 2014, the RTC issued an Order, decreeing as follows:

> x x x [I]t has been established that petitioners are the children of deceased Spouses Basilio A. Aquino and Ambrosia Tantay. The deceased spouses left a parcel of land located at Bacoor, Cavite, containing an area of Three Hundred Thousand Eight Hundred Twenty Four (300,824) square meters, covered by and embraced in Transfer Certificate of Title No. T-3269, as evidenced by the owner's duplicate copy of the title, which has been presented to the Branch Clerk of Court for comparison with the xerox copy submitted to the Land Registration Authority. The subject property has been declared for taxation purposes in the name of the Spouses Basilio [A Aquino] and Ambrocia Tantay under Tax Declaration No. 238-0015-125611 and the realty tax thereto had been paid until the year 2014. Petitioners and their predecessors-in-interest have been in possession of the subject property since the year 1930's up to the present. That upon verification with the Office of the Registry of Deeds for the Province of Cavite, where the original copy of the said title is supposedly on file, the said title is allegedly not existing and does not form part of their records. However, a Report dated March 5, 2014 issued by the Land Registration Authority, states that:

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[4] *Id*. at 61-63; penned by Presiding Judge Matias M. Garcia II.

[5] *Id*. at 119-147.

'(2) The entire Imus Friar Land Estate of which Lot 5800 is a portion, appears in the records of this Office to have been applied for registration of title in LRC (CLR) Record No. 8843 for which Decree No. 101200 was issued on August 8, 1921.

(3) The technical description of Lot No. 5800 of the Imus Friar Land Estate, appearing on the reproduction of Transfer Certificate of Title No. T-3269 was found correct after examination and due computation. Said technical description when plotted on the Municipal Index Sheet Nos. 9421, 12834, 17787 and 11772, does not appear to overlap previously plotted/decreed properties in the area;'

The Government did not adduce any contrary evidence.

Considering the finding of the LRA that the technical description on TCT No. T-3269 was found correct and does not overlap with other properties in the area, the petition is granted.

WHEREFORE, premises considered, the Office of the Registry of Deeds for the Province of Cavite is hereby ordered to reconstitute the original copy of Transfer Certificate of Title No. T-3269, registered in the name of Basilio Aquino married to Ambrocia Tantay, using as basis the owner's duplicate copy of the title, upon payment of the corresponding legal fees.

SO ORDERED.[6]

On the claim that the property subject of the petition for reconstitution is covered by another existing title – TCT No. T-6874 – respondent Estate of Tomas B. Aguirre filed an Urgent Motion to Lift Order of General Default with Motion to Admit Attached Opposition,[7] which the trial court denied in a May 22, 2014 Order.[8] Respondent filed a Motion for Reconsideration.[9]

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[6] *Id*. at 61-63.

[7] *Id*. at 64-76.

[8] *Id*. at 77-80.

[9] *Id*. at 81-83.

Ruling of the Court of Appeals

However, before the above motion for reconsideration of the RTC's May 22, 2014 Order could be resolved, respondent filed a Petition for Annulment of Judgment[10] with prayer for injunctive relief before the CA.

On December 7, 2015, the CA issued the assailed Decision, decreeing as follows:

Petitioner[11] asserts that there was extrinsic fraud committed in obtaining the assailed trial court's order in the reconstitution proceedings because petitioner never had knowledge of the same or that petitioner was kept ignorant of the suit. Thus, petitioner [claims] it was deprived of its day in court to oppose the petition.

Petitioner contends that the trial court lacked jurisdiction over the subject matter of the case because private respondents[12] failed to state the jurisdictional facts in their petition as required under Republic Act No. 26.[13]

THIS COURT'S RULING

The issue to be resolved before us is whether or not the trial court's order directing the Office of the Register of Deeds of the Province of Cavite to reconstitute the original copy of Transfer Certificate of Title No. T-3269, registered in the name of Basilio Aquino married to Ambrocia Tantay, should be annulled.

We rule in the affirmative.

Under Rule 47, Section 1 of the Rules of Civil Procedure, a party may file an action with the Court of Appeals to annul judgments or final orders and resolutions of Regional Trial Courts in civil actions. This remedy is only available if 'the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer

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[10] *Id.* at 84-100.

[11] Herein respondent.

[12] Herein petitioners.

[13] An Act Providing a Special Procedure For The Reconstitution of Torrens Certificate of Title Lost or Destroyed.

available through no fault of the petitioner.' Here, the remedies of new trial, appeal, petition for relief are not available to petitioner without its fault because it was not made a party to the reconstitution proceedings. Thus, the only remedy left to petitioner in this case is a petition for annulment of judgment under Rule 47, which it, in fact, filed.

x x x x x x x x x

Petitioner invoked both grounds of extrinsic fraud and lack of jurisdiction to support its petition.

x x x x x x x x x

There are badges of fraud present in the case at bar which are committed by private respondents, such as: 1) they never made petitioner estate a party to the reconstitution proceedings; 2) they never mentioned that they were not in possession of the subject property; 3) they never divulged to the court that it was petitioner estate who is presently occupying and in open, exclusive and adverse possession of the subject property; and 4) they never stated that there are other persons claiming rights over the property subject of their reconstitution proceedings. All these tactics were employed by private respondents, not only to induce the trial court in approving their petition, but also to prevent petitioner from participating in the proceedings or opposing the petition. Here, petitioner estate was kept away from the reconstitution proceedings, was ignorant thereof, and had no knowledge of the suit until 7 April 2014. These circumstances warrant the granting of the petition.

We disagree with the contentions of private respondents that this petition is premature and that petitioner is guilty of forum shopping. Petitioner need not await the resolution of its motion for reconsideration because it is not a condition precedent in filing a petition for annulment.
x x x

x x x The present petition for annulment is also based on lack of jurisdiction over the subject matter.

x x x x x x x x x

The governing law for judicial reconstitution of title is R.A. No. 26. Section 15 thereof provides when an order for reconstitution shall issue, as follows:

x x x x x x x x x

From the foregoing, the following must be present for an order for reconstitution to issue: (a) that the certificate of title had been lost or destroyed; (b) that the documents presented by petitioner are sufficient and proper to warrant the reconstitution of the lost or destroyed certificate of title; (c) that the petitioner is the registered owner of the property or had an interest therein; (d) that the certificate of title was in force at the time it was lost and destroyed; and (e) that the description, area and boundaries of the property are substantially the same as those contained in the lost or destroyed certificate of title.

In reconstitution proceedings, the Supreme Court has repeatedly ruled that before jurisdiction over the case can be validly acquired, it is a condition *sine qua non* that the certificate of title has not been issued to another person. If a certificate of title has not been lost but is in fact in the possession of another person, the reconstituted title is void and the court rendering the decision has not acquired jurisdiction over the petition for issuance of new title. x x x The existence of a prior title *ipso facto* nullifies the reconstitution proceedings. The proper recourse is to assail directly in a proceeding before the regional trial court the validity of the Torrens title already issued to the other person.

In the case at bench, the RTC lacked jurisdiction to order the reconstitution of the original copy of TCT No. T-3269 registered in the name of Basilio Aquino, there being another certificate of title, TCT No. T-6874, covering the subject property in this case in the name of a different owner, registered in the name of Tomas Aguirre. This was indicated in the Register of Deeds' Manifestation dated 1 April 2014 which was filed before the trial court.

x x x Accordingly, the RTC never acquired jurisdiction over the same, and its judgment rendered thereafter is null and void, which may be attacked anytime.

Section 12 of R.A. No. 26 provides for the contents of the petition for reconstitution, while Section 13 provides for the statements which shall be indicated in the notice of the petition.

The petition of private respondents failed to state the following: 1) the location, area and boundaries of the property; 2) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; 3) the names and

addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and all persons who may have any interest in the property; and 4) a statement that no deeds or other instruments affecting the property have been presented for registration.

It is noteworthy that during the Clarificatory Hearing before this Court held last 4 February 2014, the following were established and admitted: 1) petitioner made improvement on the subject property, put up a fence, and assigned security guards thereat; 2) petitioner is in possession of the subject property; and 3) Transfer Certificate of Title No. T-3269 being reconstituted, is actually covered by, identical to and/or the same as the real property covered by TCT No. T-6874 registered in the name of Tomas Aguirre.

Similarly, the notice of hearing failed to state the following: 1) the names of the occupants or persons in possession of the property; 2) the owners of the adjoining properties; 3) all other interested parties [including herein petitioner]; 4) the location, area and boundaries of the property. No proof was presented that the adjoining owners and actual occupants of the subject property were notified of the hearing.

In *Director of Lands vs. Court of Appeals, et al.*, the Supreme Court ruled that the requirements of Section 12 and Section 13 of R.A. No. 26 are mandatory and jurisdictional and non-compliance therewith would render all proceedings utterly null and void. The Highest Court reiterated this rule in *Tahanan Development Corp. vs. Court of Appeals, et al.*, and re-affirmed said doctrine in *MWSS vs. Sison, et al.*, as follows, to wit:

x x x x x x x x x

x x x Thus, the RTC lacked jurisdiction in the reconstitution proceedings. Its orders were null and void.

It need not be emphasized that the RTC hastily acted on the petition tor reconstitution because it did not act on the Register of Deeds' Manifestation dated 1 April 2014 informing the Court of the existence of TCT No. T-6874 registered in the name of Tomas Aguirre married to Adelita C. Aguirre, which also covers the same property covered by TCT No. T-3269 in the name of Basilio Aquino married to Ambrocia Tantay. x x x The validity of the certificate of title can be threshed out only in a direct proceeding filed for the purpose. A Torrens title cannot be attacked collaterally.

It is also a well-known doctrine that the issue as to whether the title was procured by falsification or fraud can only be raised in an action expressly instituted for the purpose. x x x

Indeed, the reconstitution proceeding constituted a collateral attack on the Torrens title of Tomas Aguirre. The proper recourse of the private respondents to contest the validity of the certificate of title is not through the subject petition tor reconstitution, but in a proper proceeding instituted for such purpose.

The conflict between the two sets of titles has to be resolved. The present standoff cannot remain indefinitely under a titling system that assures the existence of only one valid title for every piece of registered land.

Based on the foregoing, the petition for annulment is warranted.

There is no need to rule upon the other incidents in this case. The injunctive reliefs prayed for were already denied by this Court during the Clarificatory Hearing held on 4 February 201[4].

WHEREFORE, premises considered, the Petition for Annulment of Judgment is hereby GRANTED. The assailed Order dated 21 March 2014 and all other orders issued by the Regional Trial Court Branch 19, City of Bacoor, Cavite, in LRC Case No. 8843-2009-59 are REVERSED and SET ASIDE for being NULL and VOID. Accordingly, the Petition for Reconstitution of Transfer Certificate of Title (TCT) No. T-3269 is DISMISSED. Costs against private respondents.

SO ORDERED.[14] (Citations omitted)

Petitioners moved to reconsider, but in a May 15, 2017 Resolution, the CA held its ground. Hence, the present Petition.

Issues

Petitioners submit the following issues to be resolved:

I.

THE MISAPPREHENSION OF FACTS BY THE HONORABLE COURT OF APPEALS IN ITS DECISION AND RESOLUTION

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[14] *Rollo*, pp. 108-117.

COMPELLED HEREIN PETITIONERS X X X TO PRAY FOR THE HONORABLE SUPREME COURT TO EXERCISE ITS POWER TO REVIEW FACTUAL FINDINGS OF APPELLATE COURTS.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN GRANTING THE PETITION FOR ANNULMENT OF JUDGMENT DESPITE NON-COMPLIANCE WITH THE REQUIREMENTS SET FORTH UNDER RULE 47 IN ORDER FOR THE PETITION TO PROSPER.

III.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN NOT HOLDING RESPONDENT GUILTY OF FORUM SHOPPING.

IV.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT SECTIONS 12 AND 13 OF R.A. NO. 26 ARE APPLICABLE IN THE PRESENT CASE.

V.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN HOLDING THAT THE RECONSTITUTION PROCEEDINGS CONSTITUTED A COLLATERAL ATTACK AGAINST THE ALLEGED TITLE OF TOMAS AGUIRRE.

VI.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN OPTING NOT TO MAKE A RULING ON THE UNLAWFUL PARTICIPATION OF THE FIRM M.A AGUINALDO & ASSOCIATES AND THEIR USURPATION OF THE UNDERSIGNED LAW FIRM'S AUTHORITY TO REPRESENT THE PETITIONERS.[15]

Petitioners' Arguments

Petitioners contend that under Section 1 of Rule 47 of the 1997 Rules of Civil Procedure,[16] the remedy of annulment of

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

[16] RULE 47 – ANNULMENT OF JUDGMENTS OR FINAL ORDERS AND RESOLUTIONS

judgment is available only when the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the party seeking annulment; that the CA erred in granting respondent's petition for annulment of judgment as it was not without other appropriate remedies which it could have availed of, such as its pending motion for reconsideration of the May 22, 2014 Order which it filed and remains pending before the RTC, as well as the availability of the remedy of appeal in the event of denial of the said motion for reconsideration; that respondent pre-empted the ruling of the RTC; that its petition for annulment of judgment was thus premature; that their title (TCT No. T-3269) actually exists under the name of their parents, based on Patent No. 47326 which was awarded by the government in favor of Basilio Aquino pursuant to Decree No. 101200 issued on August 8, 1921 as per LRC (CLR) Record No. 8843, and as such, they had the right to rely on their title and claim that no other individual had an interest in the property covered thereby; that the Land Registration Authority (LRA) itself confirmed that the subject property was indeed registered in the name of their father and the technical description thereof did not overlap with any other titled properties; that the LRA issued a Certification[17] to the effect that respondent's title (TCT No. T-6874) did not exist and did not form part of the records within LRA's registry, and for this reason, respondent could not have any interest in petitioners' title; that they complied with the requirements prescribed by law for the proper prosecution of their petition for reconstitution; that respondent was guilty of forum shopping for not declaring in its CA petition for annulment that its motion for reconsideration was still pending with the RTC; that in petitions for reconstitution of title where

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

[17] *Rollo*, p. 148.

the source is the owner's duplicate copy – such as in this case – there is no need for the petitioner to notify the occupant and/or the adjoining landowners of the petition; and that it was erroneous for the CA to rule that their petition for reconstitution constituted a collateral attack on respondent's TCT No. T-6874, for in the first place, their title was registered prior to respondent's supposed title, and second, said respondent's title did not actually exist or formed part of the records of LRA's registry.

Petitioners thus pray that the assailed dispositions be annulled; and in lieu thereof, the respondent's CA petition for annulment of judgment be dismissed.

Respondent's Arguments

Respondent, on the other hand, failed to file its written comment to the Petition despite directives issued by this Court.[18]

Our Ruling

The Petition is granted.

In its Urgent Motion to Lift Order of General Default with Motion to Admit Attached Opposition filed before the RTC, respondent alleged and admitted that its title – TCT No. T-6874 – was derived from the same Original Certificate of Title No. 1002, pursuant to the same Decree No. 101200, and was issued from the same LRC Record No. 8843 as petitioners' title, TCT No. T-3269. The only difference is that its TCT No. T-6874 was entered only on March 21, 1963, while petitioners' TCT No. T-3269 was entered on March 21, 1956, or much earlier.

On its face, therefore, respondent's title – TCT No. T-6874 – is null and void, for it was issued upon land that had been earlier titled in the name of another, namely, Basilio Aquino – petitioners' supposed predecessor-in-interest.

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[18] *Id*. at 190, Resolution of August 16, 2017, as well as the Court's June 6, 2018 Resolution granting respondent additional time within which to file comment.

In this jurisdiction, it is settled that in the case of two certificates of title purporting to include the same land, the earlier in date prevails.

In *Degollacion v. Register of Deeds of Cavite* we held that if two certificates of title purport to include the same land, whether wholly or partly, the better approach is to trace *the original certificates* from which the certificates of title were derived. Citing our earlier ruling in *Mathay v. Court of Appeals* we declared:

> x x x where two *transfer* certificates of title have been issued on different dates, to two different persons, for the same parcel of land even if both are presumed to be title holders in good faith, *it does not necessarily follow that he who holds the earlier title should prevail*. On the assumption that there was regularity in the registration leading to the eventual issuance of subject transfer certificates of title, the better approach is *to trace* the *original* certificates from which the certificates of title in dispute were derived. Should there be only one common original certificate of title, x x x, the *transfer* certificate issued on an earlier date along the line must prevail, absent any anomaly or irregularity tainting the process of registration.[19] (Citations omitted)

By respondent's own admission, its title is subordinate to petitioners'. In fact, it is patently null and void on its face, because it could not have acquired title upon land already earlier registered in the name of another. *Primus tempore, potior jure* – first in time, stronger in right. For this reason, respondent has no right – and no personality – to intervene in the reconstitution proceedings instituted by the petitioners.

It was evident from respondent's own pleadings filed with the courts that its purported rights to the property were non-existent, having for their basis a title that was issued upon property that was already previously registered in the name of another. Indeed, respondent has no conceivable right to the property, having for its basis a void title that came after the

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[19] *Top Management Programs Corporation v. Fajardo*, 667 Phil. 144, 162 (2011).

same property was already transferred to and owned by another – in this case, the petitioners' predecessor-in-interest Basilio Aquino.

As for the sufficiency of the petition for reconstitution, the Court agrees with petitioners' argument that, since the source of reconstitution is the owner's duplicate copy, there is no need to give notice to other parties. "[T]he service of notice of the petition for reconstitution filed under R.A. 26 to the occupants of the property, owners of the adjoining properties, and all persons who may have any interest in the property is not required if the petition is based on the owner's duplicate certificate of title or on that of the co-owner's, mortgagee's, or lessee's."[20]

Respondent and the CA contend that notices to owners of adjoining lots are mandatory in the judicial reconstitution of a title. They cite as authority Section 13 of Republic Act No. 26, which we reproduce hereunder:

> 'SEC. 13. The Court shall cause a notice of the petition, filed under the preceding section, to be published at the expense of the petitioner, twice in successive issues of the Official Gazette, and to be posted on the main entrance of the provincial building and of the municipal building of the municipality or city in which the land is situated, at least thirty days prior to the date of hearing. The court shall likewise cause a copy of the notice to be sent, by registered mail or otherwise, at the expense of the petitioner, to every person named therein whose address is known, at least thirty days prior to the date of hearing. Said notice shall state, among other things, the number of the lost or destroyed certificate of title, if known, the name of the registered owner, the names of the occupants or persons in possession of the property, the owners of the adjoining properties and all other interested parties, the location, area and boundaries of the property, and the date on which all persons having any interest therein must appear and file their claim or objections to the petition. The petitioner shall, at the hearing, submit proof of the publication, posting and service of the notice as directed by the court.'

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[20] *Republic v. Sanchez*, 527 Phil. 571, 585 (2006).

The clear language of the law militates against the interpretation of respondent and the appellate court. The first sentence of Section 13 provides that the requirements therein pertain only to petitions for reconstitution filed under 'the preceding section,' Section 12, which in turn governs those petitions based on specified sources. We quote Section 12 below:

> 'SEC. 12. Petition for reconstitution from sources enumerated in Section 2(c), 2(d), 2(e), 2(t), 3(c), 3(d), 3(e), and/or 3(f) of this Act, shall be filed with the proper Court of First Instance, by the registered owner, his assigns, or any person having an interest in the property. The petition shall state or contain, among other things, the following: (a) that the owner's duplicate of the certificate of title had been lost or destroyed; (b) that no co-owner's, mortgagee's[,] or lessee's duplicate had been issued, or, if any had been issued, the same had been lost or destroyed; (c) the location area and boundaries of the property; (d) the nature and description of the buildings or improvements, if any, which do not belong to the owner of the land, and the names and addresses of the owners of such buildings or improvements; (e) the name and addresses of the occupants or persons in possession of the property, of the owners of the adjoining properties and of all persons who may have interest in the property; and (g) a statement that no deeds or other instruments affecting the property have been presented for registration, or, if there be any, the registration thereof has not been accomplished, as yet. All the documents, or authenticated copies thereof, to be introduced in evidence in support to the petition for reconstitution shall be attached thereto and filed with the same: Provided, That in case the reconstitution is to be made exclusively from sources enumerated in Section 2(f) or 3(f) of this Act, the petition shall be further accompanied with a plan and technical description of the property duly approved by the Commissioner of Land Registration, or with a certified copy of the description taken from a prior certificate of title covering the same property.'

In other words, the requirements under Sections 12 and 13 do not apply to *all* petitions for judicial reconstitution, but only to those based on any of the sources specified in Section 12; that is, 'sources enumerated in Section 2(c), 2(d), 2(e), 2(f), 3(c), 3(d), 3(e), and/or 3(f) of this Act.'

Sections 2 and 3 of RA 26 provide as follows:

'SEC. 2. Original certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) The owner's duplicate of the certificate of title;

(b) The co-owner's, mortgagee's, or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) An authenticated copy of the decree of registration or patent, as the case may be, pursuant to which the original certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property, the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other document which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.

'SEC. 3. Transfer certificates of title shall be reconstituted from such of the sources hereunder enumerated as may be available, in the following order:

(a) *The owner's duplicate of the certificate of title*;

(b) The co-owner's, mortgagee's or lessee's duplicate of the certificate of title;

(c) A certified copy of the certificate of title, previously issued by the register of deeds or by a legal custodian thereof;

(d) The deed of transfer or other document on file in the registry of deeds, containing the description of the property, or an authenticated copy thereof, showing that its original had been registered, and pursuant to which the lost or destroyed transfer certificate of title was issued;

(e) A document, on file in the registry of deeds, by which the property the description of which is given in said document, is mortgaged, leased or encumbered, or an authenticated copy of said document showing that its original had been registered; and

(f) Any other documents which, in the judgment of the court, is sufficient and proper basis for reconstituting the lost or destroyed certificate of title.' (Italics supplied)

In the present case, the source of the Petition for the reconstitution of title was petitioner's duplicate copies of the two TCTs mentioned in Section 3(a). Clearly, the Petition is governed, not by Sections 12 and 13, but by Section 10 of RA 26. We quote said Section 10 in full:

> 'SEC. 10. Nothing hereinabove provided shall prevent any registered owner or person in interest from filing the petition mentioned in Section Five of this Act directly with the proper Court of First Instance, *based on sources enumerated in Section 2(a), 2(b), 3(a), 3(b), and/or 4(a) of this Act*: Provided, however, That the Court shall cause a notice of the petition, before hearing and granting the same, to be published in the manner stated in Section Nine hereof: And provided, further, That certificates of title reconstituted pursuant to this section shall not be subject to the encumbrance referred to in Section Seven of this Act.'

Nothing in this provision requires that notices be sent to owners of adjoining lots. Verily, that requirement is found in Section 13, which does not apply to petitions based on an existing owner's duplicate TCT.[21]

Having disposed of the relevant issues in the foregoing manner, the Court finds it unnecessary to delve into the other allegations in the Petition. They are irrelevant to a complete and effective determination of the case.

WHEREFORE, the Petition is **GRANTED**. The assailed December 7, 2015 Decision and May 15, 2017 Resolution of the Court of Appeals in CA-G.R. SP No. 136103 are **REVERSED and SET ASIDE**. The March 21, 2014 Order and all other orders of the Bacoor, Cavite Regional Trial Court, Branch 19 in LRC Case No. 8843-2009-59 are **REINSTATED**.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo, and *Carandang*, *JJ.*, concur.

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[21] *Puzon v. Sta. Lucia Realty and Development, Inc.*, 406 Phil. 263, 271-274 (2001).

SECOND DIVISION

[G.R. No. 232940. January 14, 2019]

DENNIS LOAYON *y* LUIS, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (REPUBLIC ACT NO. 9165); ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; THE IDENTITY OF THE DANGEROUS DRUG MUST 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 PROCEDURE; MARKING OF THE SEIZED ITEMS; 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.— 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.

3. **ID.; ID.; ID.; PHYSICAL INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS; WITNESS REQUIREMENT; RATIONALE.—** The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: *(a)* if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official"; or *(b)* if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service ***or*** the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

4. **ID.; ID.; ID.; ID.; ID.; COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE IS STRICTLY ENJOINED, BUT THE FAILURE OF THE APPREHENDING TEAM TO STRICTLY COMPLY WITH THE SAME WOULD NOT *IPSO FACTO* RENDER THE SEIZURE AND CUSTODY OVER THE ITEMS AS VOID AND INVALID, PROVIDED THAT THE PROSECUTION SATISFACTORILY PROVES THAT THERE IS A JUSTIFIABLE GROUND FOR NON-COMPLIANCE, AND THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

5. ID.; 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, ALBEIT THEY EVENTUALLY FAILED TO APPEAR, BUT MERE STATEMENTS OF UNAVAILABILITY, ABSENT ACTUAL SERIOUS ATTEMPTS TO CONTACT THE REQUIRED WITNESSES, ARE UNACCEPTABLE AS JUSTIFIED GROUNDS FOR NON-COMPLIANCE.— 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.

6. ID.; ID.; ID.; UNJUSTIFIED DEVIATION FROM THE CHAIN OF CUSTODY RULE COMPROMISED THE INTEGRITY AND EVIDENTIARY VALUE OF THE ITEM PURPORTEDLY SEIZED FROM THE ACCUSED, WARRANTING HIS ACQUITTAL.— [I]t is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, while PO2 De Vera acknowledged the absence of representatives from the DOJ and the media during the conduct of inventory and photography, he merely offered the perfunctory explanation that "no one was available" without showing whether the buy-bust team exerted earnest efforts to secure their attendance therein. 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 Loayon was compromised, which consequently warrants his acquittal.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 6, 2017 and the Resolution[3] dated

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[1] *Rollo,* pp. 13-32.

[2] *Id*. at 34-43. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Edwin D. Sorongon and Marie Christine Azcarraga-Jacob, concurring.

[3] *Id*. at 45.

July 13, 2017 of the Court of Appeals (CA) in CA-G.R. CR No. 37683, which affirmed the Decision[4] dated June 16, 2015 of the Regional Trial Court of Quezon City, Branch 227 (RTC) in Criminal Case No. Q-10-163024, finding petitioner Dennis Loayon *y* Luis (Loayon) guilty beyond reasonable doubt of violating Section 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC accusing Loayon of the crime of Illegal Possession of Dangerous Drugs. The prosecution alleged that at around 5 o'clock in the afternoon of February 24, 2010, a buy-bust team composed of police officers from the Quezon City Police District Station 9 (QCPD Station 9) went to Barangay Pansol to conduct a buy-bust operation against a certain "Awang." However, before the sale transaction between Awang and the poseur-buyer took place, Awang's companion, later identified as Loayon, shouted *"Pulis yan!"* after recognizing the poseur-buyer as a policeman, which prompted Awang and Loayon to run away in different directions. While Awang was able to elude the buy-bust team, one of the policemen, Police Officer 2 Raymund De Vera (PO2 De Vera), was able to corner Loayon, resulting in the latter's arrest. He likewise recovered the plastic sachet containing white crystalline substance thrown away by Loayon during the chase. Thereafter, the buy-bust team, together with Loayon, went to QCPD Station 9 where, *inter alia,* the seized item was marked, photographed, and inventoried in the presence of Barangay Kagawad Rommel Asuncion (Brgy.

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[4] *Id*. at 64-69. Penned by Presiding Judge Elvira D.C. Panganiban.

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

[6] Records, pp. 1 and 2.

Kagawad Asuncion). The seized plastic sachet was then brought to the crime laboratory where, after examination,[7] the contents thereof yielded positive for 0.03 gram of methamphetamine hydrochloride, or *shabu,* a dangerous drug.[8]

In defense, Loayon denied the charges against him, claiming instead, that he just got out of his house to look for his wife when he saw policemen chasing some people. Suddenly, one of the policemen apprehended him and remarked, *"Pong ka na, Awang!"* He was then taken to QCPD Station 9, where he was detained until the instant criminal charge was filed against him.[9]

In a Decision[10] dated June 16, 2015, the RTC found Loayon guilty beyond reasonable doubt of the crime charged, and accordingly, sentenced him to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine in the amount of ₱300,000.00.[11] The RTC found that the prosecution had established all the elements of the crime charged, noting that the policemen had no ill motive to inculpate Loayon and build a trumped-up charge against him. It also found that the policemen substantially complied with the chain of custody rule, thereby preserving the integrity and evidentiary value of the item seized from Loayon.[12] Aggrieved, Loayon appealed to the CA.

In a Decision[13] dated March 6, 2017, the CA affirmed the RTC ruling. It held that the policemen's positive identification

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[7] See Chemistry Report No. D-81-10 dated February 25, 2010; *id*. at 6.

[8] *Id*.

[9] *Rollo*, p. 36.

[10] *Id*. at 64-69.

[11] *Id*. at 68.

[12] See *id*. at 68.

[13] *Id*. at 34-43.

of Loayon as the possessor of the seized plastic sachet, which he threw away while he was being chased, shall prevail over the latter's bare denials, which was uncorroborated by other evidence. Moreover, it observed that the prosecution was able to prove the crucial links in the chain of custody of the seized item.[14]

Undaunted, Loayon moved for reconsideration,[15] but the same was denied in a Resolution[16] dated July 13, 2017; hence, this petition.[17]

The Court's Ruling

The petition is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[18] 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.[19] Failing to prove the integrity of the *corpus*

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[14] See *id*. at 40-42.

[15] CA *rollo,* pp. 130-135.

[16] *Rollo,* p. 45.

[17] *Id*. at 13-28.

[18] 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]).

[19] 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).

delicti renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt, and hence, warrants an acquittal.[20]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[21] As part of the chain of custody procedure, the law requires, *inter alia,* that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same.[22] 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."[23] Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.[24]

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

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

[21] 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 19.

[22] See *People v. Tumulak,* 791 Phil. 148, 160-161 (2016); and *People v. Rollo,* 757 Phil. 346, 357 (2015).

[23] *People v. Mamalumpon,* 767 Phil. 845, 855 (2015), citing *Imson v. People,* 669 Phil. 262, 270-271 (2011). See also *People v. Ocfemia,* 718 Phil. 330, 348 (2013), citing *People v. Resurreccion,* 618 Phil. 520, 532 (2009).

[24] See *People v. Tumulak, supra* note 22; and *People v. Rollo, supra* note 22.

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";[25] or *(b)* if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service ***or*** the media."[26] 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."[27]

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."[28] 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."[29]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[30] 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;

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

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

[27] See *People v. Bangalan,* G.R. No. 232249, September 3, 2018, citing *People v. Miranda, supra* note 18.

[28] See *People v. Miranda, supra* note 18. See also *People v. Macapundag,* G.R. No. 225965, March 13, 2017, citing *People v. Umipang, supra* note 19, at 1038.

[29] See *People v. Segundo,* G.R. No. 205614, July 26, 2017, citing *People v. Umipang, supra* note 19.

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

and *(b)* the integrity and evidentiary value of the seized items are properly preserved.[31] The foregoing is based on the saving clause found in Section 21 (a),[32] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[33] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[34] 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.[35]

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.[36] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[37] These

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

[32] 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[.|"**

[33] 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."**

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

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

[36] See *People v. Manansala, supra* note 18.

[37] See *People v. Gamboa, supra* note 20, citing *People v. Umipang, supra* note 20, at 1053.

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.[38]

Notably, the Court, in *People v. Miranda*,[39] 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.[40]

In this case, there was a deviation from the witness requirement as the conduct of inventory and photography was not witnessed by representatives from the DOJ and the media. This may be easily gleaned from the Inventory of Seized Properties/Items[41] dated February 24, 2010, which only confirms the presence of an elected public official, *i.e.,* Brgy. Kagawad Asuncion. Such finding is confirmed by the testimony of the poseur-buyer, PO2 De Vera on direct and cross-examination, to wit:

Direct Examination

[Fiscal Bacolor]: In connection with this case, [M]r. [W]itness, did you conduct [a] Physical Inventory of that item recovered from the accused?

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[38] See *People v. Crispo, supra* note 18.

[39] *Supra* note 18.

[40] See *id*.

[41] Records, p. 9.

[PO2 De Vera]: Yes, sir.

Q: Who personally conduct[ed] the inventory?
A: Our [i]nvestigator, Barangay Kagawad, and in my presence.

Q: Who prepared the Inventory Receipt?
A: PO3 Crisologo Laggui.

Q: You said you were present during the conduct and the preparation of the [i]nventory, I'm showing to you a document entitled Inventory of Seized Property marked as Exhibit "F", will you please examine that document, and tell us if the same has any relation with that [i]nventory prepared by PO3 Crisologo Laggui?
A: Yes sir, this is the same inventory.

Q: You said Brgy. Kagawad was present during the inventory?
A: Yes, sir.

Q: Do you have proof?
A: Yes, sir.

Q: Where is that?
A: He signed the inventory, sir.

Q: Will you please examine again the [i]nventory, and point to us the said witness, Brgy. Kagawad[?]
A: Yes sir, this is the signature of Brgy. Kagawad, Rommel Asuncion.[42]

Cross-Examination

[Atty. Mallabo]: Likewise, in preserving the integrity of the evidence that you confiscated, you are required by law[,] particularly Sec. 21, R.A. 9165, to prepare an inventory. [I]n this case, did you prepare an inventory?
[PO2 De Vera]: Yes, sir.

Q: It was the investigator, who prepared the [i]nventory?
A: In my presence.

Q: But there was no representative from the Department of Justice?
A: Yes, sir.

Q: Why?
A: There is no available representative.

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[42] TSN, April 11, 2012, pp. 15-16, records, pp. 124-125.

Q: You are trying to tell us that here in Quezon City, drivers within 24 hrs of call and there are vehicles on duty, you don't tell us that the Fiscal is not available, likewise, there was a representative from media?
A: There was no available media at that time.

Q: Even if it was 5:00 o'clock as you claimed?
A: None, sir.[43]

As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, while PO2 De Vera acknowledged the absence of representatives from the DOJ and the media during the conduct of inventory and photography, he merely offered the perfunctory explanation that "no one was available" without showing whether the buy-bust team exerted earnest efforts to secure their attendance therein. 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 Loayon was compromised, which consequently warrants his acquittal.

WHEREFORE, the petition is **GRANTED**. The Decision dated March 6, 2017 and the Resolution dated July 13, 2017 of the Court of Appeals in CA-G.R. CR No. 37683 are hereby **REVERSED** and **SET ASIDE**. Accordingly, petitioner Dennis Loayon *y* Luis 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, J. Jr.,* and *Hernando,*[*] *JJ.,* concur.

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[43] TSN, February 6, 2013, pp. 8-9, records, pp. 147-148.

[*] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

SECOND DIVISION

[G.R. No. 233336. January 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* DON EMILIO CARIÑO *y* AGUSTIN *a.k.a.* "DON EMILIO CARIÑOAGUSTIN,[*]" *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY PROCEDURE; REQUIREMENT ON MARKING, PHYSICAL INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS.— 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 Department of Justice

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[*] Also referred as "Don Emelio Cariño Agustin" in some parts of the records.

(DOJ), and any elected public official"; or (*b*) if after the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service ***or*** the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

2. ID.; ID.; ID.; ID.; AS A RULE; COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE IS STRICTLY ENJOINED; NON-COMPLIANCE THEREWITH UNDER JUSTIFIABLE GROUNDS, PROVEN AS FACTS, WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law." This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment." Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIRED WITNESSES RULE MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE

APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORT TO SECURE THE REQUIRED WITNESSES, ALBEIT THEY EVENTUALLY FAILED TO APPEAR.— Anent the 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.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Raul Panfilo R. Cariño 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 March 17, 2017 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01818 which affirmed the Decision[3] dated February 25, 2014 and Order[4] dated March 20, 2014 of the Regional Trial Court of Dumaguete City, Branch 36 (RTC) in Criminal Case Nos. 21107 and 21108, finding accused-appellant Don Emilio Cariño *y* Agustin *a.k.a.* "Don Emilio Cariño Agustin" (Cariño) guilty beyond reasonable doubt of violating Sections

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[1] See Notice of Appeal dated April 16, 2017; *rollo*, pp. 30-31.

[2] *Id*. at 4-29. Penned by Associate Justice Gabriel T. Robeniol with Associate Justices Gabriel T. Ingles and Pablito A. Perez, concurring.

[3] CA *rollo*, pp. 66-97. Penned by Judge Joseph A. Elmaco.

[4] *Id*. at 98.

5 and 11, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[6] filed before the RTC accusing Cariño of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs. The prosecution alleged that on April 24, 2012, policemen of the Special Operations Group of the Negros Oriental Police Provincial Office successfully conducted a buy-bust operation against a certain "Dondon," later identified as Cariño, during which one (1) plastic sachet containing white crystalline substance was recovered from him. When Cariño was searched incidental to his arrest, the policemen recovered another plastic sachet containing the same aforesaid substance from him. While waiting for the arrival of the witnesses – namely, Barangay Kagawad Chona Merced (Kagawad Merced), Department of Justice (DOJ) Representative Ramonito Astillero (DOJ Representative Astillero) and Media Representative Juancho Gallarde (Media Representative Gallarde) policemen then conducted the marking and inventory at the place of arrest in Cariño's presence.[7] Upon the witnesses' arrival thereat, the policemen presented the Inventory/Receipt of Property Seized[8] to them and they signed the same. Thereafter, Cariño and the seized items were taken to the police headquarters where the necessary paperworks for examination were prepared. The seized

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

[6] The Information dated July 25, 2012 in Criminal Case No. 21107 was for violation of Section 5, Article II of RA 9165; records (Criminal Case No. 21107), p. 3; while the Information dated April 25, 2012 in Criminal Case No. 21108 was for violation of Section 11, Article II of RA 9165; records (Criminal Case No. 21108), p. 3.

[7] *Rollo*, p. 8.

[8] Dated April 24, 2012, records (Criminal Case No. 21108), p. 12.

items were then brought to the crime laboratory where, after examination,[9] the contents thereof yielded positive for 0.09 and 0.04 gram, respectively, of methamphetamine hydrochloride or *shabu*, a dangerous drug.[10]

In defense, Cariño denied the charges against him, claiming instead, that he was a former asset of the policemen who arrested him, and that they framed him up after he begged to be excused from a surveillance task assigned to him.[11]

In a Decision[12] dated February 25, 2014, the RTC found Cariño guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: (*a*) in Criminal Case No. 21107, he was sentenced to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00; and (*b*) in Criminal Case No. 21108, he was sentenced to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years, and one (1) day, as minimum, to twelve (12) years, ten (10) months, and one (1) day, as maximum, and to pay a fine in the amount of ₱300,000.00.[13] The RTC found that the prosecution had established beyond reasonable doubt that Cariño was arrested after he was caught *in flagrante delicto* to be selling *shabu*, and that after his arrest, another sachet containing *shabu* was recovered from him.[14] Cariño moved for reconsideration but the same was denied in an Order[15] dated March 20, 2014. Aggrieved, he appealed[16] to the CA.

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[9] See Chemistry Report No. D-067-12 dated April 24, 2012; *id*. at 15.

[10] *Rollo*, pp. 5-9.

[11] *Id*. at 9-10.

[12] CA *rollo*, pp. 66-97.

[13] *Id*. at 96-97.

[14] *Id*. at 90-96.

[15] *Id*. at 98.

[16] See Notice of Appeal dated March 24, 2014; records, p. 297.

In a Decision[17] dated March 17, 2017, the CA affirmed the RTC ruling. It held that the prosecution had established beyond reasonable doubt all the elements of the crimes charged against Cariño, and that the conduct of inventory *prior* to the arrival of the witnesses, among others, did not tarnish the integrity and evidentiary value of the seized items.[18]

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

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[19] 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.[20] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove

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[17] *Rollo*, pp. 4-29.

[18] *Id.* at 12-27.

[19] 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]).

[20] 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).

the guilt of the accused beyond reasonable doubt and, hence, warrants an acquittal.[21]

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.[22] 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.[23] 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."[24] 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

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

[22] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 19; *People v. Sanchez*, *supra* note 19; *People v. Magsano*, *supra* note 19; *People v. Manansala*, *id*.; *People v. Miranda*, *supra* note 19; and *People v. Mamangon*, *supra* note 19. See also *People v. Viterbo*, *supra* note 20.

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

[24] *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).

of the apprehending team is sufficient compliance with the rules on chain of custody.[25]

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";[26] or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service ***or*** the media."[27] 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."[28]

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."[29] 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."[30]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody

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[25] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

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

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

[28] See *People v. Mendoza*, 736 Phil. 749, 764 (2014).

[29] See *People v. Miranda*, *id*. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 21, at 1038.

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

procedure may not always be possible.[31] 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.[32] The foregoing is based on the saving clause found in Section 21 (a),[33] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[34] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[35] 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.[36]

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

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

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

[33] 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.**"

[34] Section 1 of RA 10640 pertinently states: "***Provided, finally*, That non-compliance 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.**"

[35] *People v. Almorfe*, *supra* note 32.

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

given circumstances.[37] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[38] 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.[39]

Notably, the Court, in *People v. Miranda*,[40] 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."[41]

In this case, it would initially appear that the apprehending policemen complied with the witness requirement, considering that the Inventory/Receipt of Property Seized[42] contains the signatures of the required witnesses, *i.e.*, Kagawad Merced, DOJ Representative Astillero, and Media Representative Gallarde. However, a more circumspect examination of the records would show that these witnesses arrived ***after*** the

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[37] See *People v. Manansala*, *supra* note 19.

[38] See *People v. Gamboa*, *supra* note 21, citing *People v. Umipang*, *supra* note 21, at 1053.

[39] See *People v. Crispo*, *supra* note 19.

[40] *Supra* note 19.

[41] See *id*.

[42] Dated April 24, 2012, records, p. 12.

apprehending policemen had already completed the inventory, and that they were merely asked to sign the aforesaid inventory form. The respective testimonies of the aforesaid witnesses are revelatory, to wit:

Testimony of Kagawad Merced

[Pros. Zerna]: And when you arrived at that place where the arrest was made, what was it that you were able to observe?
[Kagawad Merced]: When I arrived there, the suspected items were already there.

Q: Where did you particularly see these items that you said were suspected to have been confiscated?
A: When I arrived there, it was already placed on the table[.]

Q: And what did you do when you arrive (*sic*) there?
A: Somebody told me that these are the items that were recovered and I inspected the items and compared it with what was listed and I signed it.[43]

Testimony of DOJ Representative Astillero

[Atty. Cariño]: You mean to say that when you arrived at that time the inventory sheet was already prepared?
[DOJ representative Astillero]: Yes, sir.

Q: Was it already signed by somebody else?
A: When I signed it there were other signatures.

x x x x x x x x x

Q: You already testified that you have not witnessed the time on the fact of the confiscation of these items?
A: No more, when I arrived there, there was already an inventory on the confiscated items.[44]

Testimony of Media Representative Gallarde

[Atty. Cariño]: How would you considered (*sic*) then that there was indeed or it was true the (*sic*) conduct of an inventory?

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[43] TSN, October 29, 2012, p. 4.

[44] TSN, September 6, 2012, pp. 20 and 23.

[Media Representative Gallarde]: My purpose is to observe and witness the inventory I don't have personal knowledge how (*sic*) the alleged buy bust and alleged confiscation of the items.

Q: And you also do not have any personal knowledge of the conduct of the inventory?
A: Yes, sir.

Q: You only have actual knowledge as to the fact that when you arrived at the place [of the arrest] you signed the inventory sheet?
A: Yes, sir.

Q: And when you arrived you also noticed that the inventory sheet was already signed by the two (2) Kagawads which you already mentioned[?]
A: Yes, sir.

Q: And it was already signed by a certain Astillero?
A: Yes, sir.[45]

As may be gleaned from the testimonies of the required witnesses themselves, the inventory was ***not*** conducted in their presence as the apprehending policemen already prepared the Inventory/Receipt of Property Seized when they arrived at the scene of arrest and only made them sign the same. As discussed, the witness requirement mandates the presence of the witnesses ***during*** the conduct of the inventory, so as to ensure that the evils of switching, planting, or contamination of evidence will be adequately prevented. Hence, non-compliance therewith puts the onus on the prosecution to provide a justifiable reason therefor, especially considering that the rule exists to ensure that protection is given to those whose life and liberty are put at risk.[46] Unfortunately, no such explanation was proferred by the prosecution to justify this glaring procedural lapse. In view of this unjustified deviation from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Cariño were compromised, which consequently warrants his acquittal.

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[45] TSN, November 5, 2012, pp. 8-9.

[46] See *People v. Jugo*, G.R. No. 231792, January 29, 2018.

WHEREFORE, the appeal is **GRANTED**. The Decision dated March 17, 2017 of the Court of Appeals in CA-G.R. CR-H.C. No. 01818 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Don Emilio Cariño *y* Agustin a.k.a. "Don Emilio Cariño Agustin" is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 237809. January 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSALINA AURE *y* ALMAZAN and GINA MARAVILLA *y* AGNES,**[*] *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE/POSSESSION OF DANGEROUS DRUGS, IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL

[**] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

[*] "Agned" in some parts of the records.

CERTAINTY, CONSIDERING THAT THE 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 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. The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640, "a representative from the media ***and*** the Department of Justice (DOJ), and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service ***or*** the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. **ID.; ID.; ID.; ID.; 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.

5. **ID.; ID.; ID.; WHILE THE NON-PRESENTATION OF THE POSEUR-BUYER IS NOT NECESSARILY FATAL TO THE CAUSE OF THE PROSECUTION, THERE MUST BE AT LEAST SOMEONE ELSE WHO IS COMPETENT TO TESTIFY AS TO THE FACT THAT THE SALES TRANSACTION INDEED OCCURRED BETWEEN THE POSEUR-BUYER AND THE ACCUSED, OTHERWISE, THE TESTIMONIES OF THE OTHER WITNESSES REGARDING THE MATTER BECOME HEARSAY, AND THUS INADMISSIBLE; APPLICATION IN CASE AT BAR.—** In *People v. Bartolini* (*Bartolini*), the Court explained that while the non-presentation of the poseur-buyer is, *per se*, not necessarily fatal to the cause of the prosecution, there must be at least someone else who is competent to testify as to the fact that the sale transaction indeed occurred between the poseur-buyer and the accused. Otherwise, the testimonies of the other witnesses regarding the matter become hearsay, and thus, inadmissible in evidence, to wit: x x x In this case, the sole witness for the prosecution, PO3 Salonga, was a back-up arresting officer positioned inside a car 10-15 meters away from where the supposed sale transaction between PO3 Cordero and accused-appellants took place. Clearly, similar to the lone witness in *Bartolini*, PO3 Salonga could not competently testify on the fact of the sale as he was in no position to overhear the conversation between the transacting parties and only relied on PO3 Cordero's pre-arranged signal to effect the arrest of accused-appellants.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Gil Valera 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 August 24, 2017 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08065, which affirmed the Judgment[3]dated November 16, 2015 and the Order[4] dated January 5, 2016 of the Regional Trial Court of Quezon City, Branch 79 (RTC) in Crim. Case No. Q-14-00697, finding accused-appellants Rosalina Aure *y* Almazan (Rosalina) and Gina Maravilla *y* Agnes (Gina; collectively, accused-appellants) guilty beyond reasonable doubt of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of Republic Act No. (RA) 9165,[5] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from an Information[6] filed before the RTC charging accused-appellants of violating Section 5, Article II of RA 9165. The prosecution alleged that at around one (1) o'clock in the afternoon of January 15, 2014, a team composed of members from the District Anti-Illegal Drugs – Special Operation Task Group (DAID-SOTG) of the Quezon City Police District conducted a buy-bust operation against

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[1] See Notice of Appeal dated September 19, 2017; *rollo*, p. 17.

[2] *Id*. at 2-16. Penned by Associate Justice Japar B. Dimaampao with Associate Justices Amy C. Lazaro-Javier and Pedro B. Corales, concurring.

[3] CA *rollo*, pp. 36-47. Penned by Presiding Judge Nadine Jessica Corazon J. Fama.

[4] *Id*. at 48-52.

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

[6] Dated January 17, 2014. Records, pp. 1-2.

accused-appellants during which one (1) plastic sachet containing white crystalline substance was recovered from them. After marking the plastic sachet at the place of arrest, the apprehending officers, together with accused-appellants, then proceeded to the DAID-SOTG headquarters in Camp Karingal, Quezon City, where the seized item was inventoried and photographed in the presence of a media representative. Thereafter, the seized item was brought to the crime laboratory where, upon examination,[7] the contents thereof yielded positive for 4.75 grams of methamphetamine hydrochloride or *shabu*, a dangerous drug.[8]

In defense, accused-appellants denied the charges against them, claiming instead, that they were just going about their personal matters when two (2) men suddenly grabbed them, and thereafter, dragged them to their vehicle and took them to Camp Karingal. Thereat, the men demanded ₱150,000.00 for their release, but since they could not produce the said amount, the instant criminal charge was filed against them. Notably, accused-appellants maintained that they only saw each other for the first time in Camp Karingal and that it was only during trial when they first laid their eyes on the plastic sachet purportedly seized from them.[9]

In a Judgment[10] dated November 16, 2015, 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 in the amount of ₱500,000.00.[11] The RTC found that the prosecution, through the testimony of the back-up arresting officer, Police Officer 3 Fernando Salonga (PO3 Salonga), had established the fact that

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[7] See Chemistry Report No. D-27-14 dated January 15, 2014, *id*. at 12.

[8] See *rollo*, pp. 2-5. See also CA *rollo*, pp. 37-38.

[9] See *rollo*, pp. 5-6. See also CA *rollo*, pp. 38-39.

[10] CA *rollo*, pp. 36-47.

[11] *Id*. at 47.

accused-appellants indeed sold *shabu* to the poseur-buyer, Police Officer 3 Miguel Cordero (PO3 Cordero). In this regard, the RTC opined that the failure to present the testimony of PO3 Cordero is not indispensable to accused-appellants' conviction as PO3 Salonga attested to his knowledge of the afore-described transaction.[12] Aggrieved, accused-appellants separately moved for reconsideration,[13] which were, however, denied in an Order[14] dated January 5, 2016, thus, they appealed[15] to the CA.

In a Decision[16] dated August 24, 2017, the CA affirmed the RTC ruling. It held that despite the absence of the testimony of PO3 Cordero, the prosecution was nevertheless able to prove accused-appellants' commission of the crime charged through the testimony of another member of the buy-bust team, PO3 Salonga, who was inside a car just 10-15 meters away from where the sale transaction occurred. Further, the CA ruled that the police officers substantially complied with Section 21, Article II of RA 9165 even though PO3 Cordero was not able to testify as to the links of the chain of custody of the confiscated drug and in spite of the absence of the Department of Justice (DOJ) representative and the elected public official during the inventory.[17]

Hence, this appeal seeking that the conviction of accused-appellants be overturned.

The Court's Ruling

The appeal is meritorious.

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[12] See *id*. at 39-47.

[13] See motion for reconsideration of Rosalina dated November 24, 2015 (records, pp. 248-253); and motion for reconsideration of Gina dated November 26, 2015 (records, pp. 262-273).

[14] CA *rollo*, pp. 48-52.

[15] See Notice of Appeal of Rosalina dated January 27, 2016 (*id*. at 12); and Notice of Appeal of Gina dated February 5, 2016 (*id*. at 13-14).

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

[17] See *id*. at 8-15.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[18] 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.[19] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[20]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[21] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and

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[18] 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].)

[19] 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).

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

[21] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 18; *People v. Sanchez*, *supra* note 18; *People v. Magsano*, *supra* note 18; *People v. Manansala*, *supra* note 18; *People v. Miranda*, *supra* note 18; and *People v. Mamangon*, *supra* note 18. See also *People v. Viterbo*, *supra* note 19.

confiscation of the same.[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]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded

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

[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 18. See also *People v. Mendoza,* 736 Phil. 749, 764 (2014).

"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 that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[33]

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[27] See *People v. Miranda*, *id*. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 20, 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.**"

[33] *People v. Almorfe*, *supra* note 30.

and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[34]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[35] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[36] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[37]

Notably, the Court, in *People v. Miranda*,[38] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit

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

[35] See *People v. Manansala*, *supra* note 18.

[36] See *People v. Gamboa, supra* note 20, citing *People v. Umipang*, *supra* note 19, at 1053.

[37] See *People v. Crispo*, *supra* note 18.

[38] *Supra* note 18.

the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[39]

In this case, a perusal of the Inventory of Seized/Confiscated Item/Property[40] dated January 15, 2014 readily reveals that while the inventory of the plastic sachet purportedly seized from accused-appellants was conducted in the presence of a media representative, it was nevertheless done ***without*** the presence of any elected public official and DOJ representative, contrary to the afore-described procedure. When asked about this deviation from procedure, PO3 Salonga offered the following justification:

> [Public Prosecutor Alexis G. Bartolome]: Mr. Witness, there are signatures appearing in this inventory receipt, there is a signature above the name PO3 Cordero, whose signature is this?
> [PO3 Salonga]: That is the signature of PO3 Miguel Cordero, sir.
>
> Q: How did you know that this is the signature of PO3 Cordero?
> A: Because I was present when he signed it, sir.
>
> Q: There is also a signature of Rey Argana of Police Files Tonite, whose signature is this?
> A: That is the signature of Rey Argana from Police Files Tonite, sir.
>
> x x x x x x x x x
>
> **Q: It appears, Mr. Witness, that there is no signature from the representative of the Department of Justice and elected barangay official where the accused was arrested, why?**
> **A: Our team leader tried to get a representative from the barangay official and other representative, but according to our team leader, they failed to appear in our invitation to be our witness.**
>
> x x x x x x x x x[41]
> (Emphasis and underscoring supplied)

As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable

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[39] See *id*.

[40] Records, p. 18.

[41] TSN, February 24, 2015, pp. 15-16.

reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, PO3 Salonga tried to justify their deviation from procedure by offering the perfunctory excuse that their team leader tried to invite the required witnesses but to no avail, without really expounding on the same. Neither did the prosecution press on PO3 Salonga to determine how such earnest efforts were exerted, or even attempt to call the buy-bust team leader to the witness stand to determine whether or not earnest efforts were really done in order to ensure the required witnesses' presence during the inventory.

Moreover, the Court notes that PO3 Cordero was not presented as a witness during trial. In *People v. Bartolini*[42] (*Bartolini*), the Court explained that while the non-presentation of the poseur-buyer is, *per se*, not necessarily fatal to the cause of the prosecution, there must be at least someone else who is competent to testify as to the fact that the sale transaction indeed occurred between the poseur-buyer and the accused. Otherwise, the testimonies of the other witnesses regarding the matter become hearsay, and thus, inadmissible in evidence, to wit:

> Aside from the points raised by Bartolini on the chain of custody and *corpus delicti*, we find that the first element of the crime involving the sale of illegal drugs – that the transaction or sale took place – was also not sufficiently proven by the prosecution. The non-presentation of the poseur-buyer was fatal to the prosecution as nobody could competently testify on the fact of sale between Bartolini and the poseur-buyer. In this case, SPO4 Larot admitted that he did not hear the conversation between the poseur-buyer and Bartolini, and that he only saw the pre-arranged signal before apprehending Bartolini:
>
> x x x x x x x x x
>
> As SPO4 Larot could not hear the conversation between Bartolini and the poseur-buyer, his testimony was mere hearsay and thus the prosecution failed to prove the fact of the transaction. The non-presentation of the poseur-buyer was fatal to the prosecution x x x
>
> x x x x x x x x x

[42] 791 Phil. 626 (2016).

While there have been instances where the Court affirmed the conviction of an accused notwithstanding the non-presentation of the poseur-buyer in a buy-bust operation, this is only when the testimony of such poseur-buyer is merely corroborative, and another eyewitness can competently testify on the sale of the illegal drug. In this case however, the lone witness for the prosecution was not competent to testify on the sale of the illegal drug as he merely relied on the pre-arranged signal to apprehend Bartolini.[43]
(Emphasis and underscoring supplied)

In this case, the sole witness for the prosecution, PO3 Salonga, was a back-up arresting officer positioned inside a car 10-15 meters away from where the supposed sale transaction between PO3 Cordero and accused-appellants took place.[44] Clearly, similar to the lone witness in *Bartolini*, PO3 Salonga could not competently testify on the fact of the sale as he was in no position to overhear the conversation between the transacting parties and only relied on PO3 Cordero's pre-arranged signal to effect the arrest of accused-appellants.

In view of the following circumstances, namely: (*a*) the unjustified deviation from the chain of custody rule which compromised the integrity and evidentiary value of the item purportedly seized from accused-appellants; and (*b*) the prosecution's failure to prove an essential element of the crime charged, *i.e.*, that a sale transaction involving drugs indeed occurred between PO3 Cordero and accused-appellants, the acquittal of accused-appellants is warranted.

WHEREFORE, the appeal is **GRANTED**. The Decision dated August 24, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08065 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellants Rosalina Aure *y* Almazan and Gina Maravilla *y* Agnes 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.

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[43] *Id.* at 640-642; citations omitted.

[44] See TSN, February 24, 2015, pp. 10-11.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 238176. January 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RAMON BAY-OD,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE ASSESSMENT OF THE TRIAL COURT IN MATTERS PERTAINING THERETO, ESPECIALLY WHEN AFFIRMED BY AN APPELLATE COURT, IS ACCORDED GREAT RESPECT; EXCEPTION.— It is elementary that the assessment of a trial court in matters pertaining to the credibility of witnesses, especially when already affirmed by an appellate court on appeal, are accorded great respect — if not binding significance — on further appeal to this Court. The rationale of this rule is the recognition of the trial court's unique and distinctive position to be able to observe, first hand, the demeanor, conduct and attitude of the witness whose credibility has been put in issue. While conformity to the foregoing rule is concededly *not* absolute, it must be underscored that any deviation therefrom had only been allowed in light of highly meritorious circumstances, such as when it is clearly shown

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[**] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

that the trial court had "*overlooked certain facts of substance and of value which, if considered, might affect the outcome of the case*."

2. **CRIMINAL LAW; RAPE; THE MEDICAL FINDING THAT THE VICTIM HAS NO INJURY IN HER HYMEN IS NOT FATAL TO THE ACCUSATION OF RAPE.—** The medical finding of Dr. Bentrez that AAA has no injury in her hymen is not fatal to the accusation of rape against the appellant. x x x Indeed We, in not a few cases already, have affirmed convictions for rape despite the absence of injury on the victim's hymen in view of the **medical possibility for a hymen to remain intact despite history of sexual intercourse**. x x x Moreover, in *People v. Pamintuan*, We recognized that the absence of injuries in a rape victim's hymen could also be **attributed to a variety of factors that do not at all discount the fact that rape has been committed**. x x x Accordingly, We find the medical finding of Dr. Bentrez regarding the absence of laceration in AAA's hymen to be, by itself, insufficient to disprove AAA's claim of rape against the appellant. The absence of laceration or injury to AAA's hymen during the time she was examined may have been caused by a number of reasons — none of which, however, would have any definitive bearing on whether appellant had carnal knowledge of AAA or not. It should be emphasized at this point that carnal knowledge, as an element of rape under Article 266-A(1) of the RPC, is not synonymous to sexual intercourse in its ordinary sense; it implies neither the complete penetration of the vagina nor the rupture of the hymen. Indeed, jurisprudence has held that even the slightest penetration of the victim's genitals — *i.e.*, the "*touching*" by the penis of the vagina's *labia* — is enough to satisfy the element. x x x Here, the fact that the appellant had carnal knowledge of AAA had been clearly established by the latter's testimony. Such testimony stands independently of the medical findings of Dr. Bentrez.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

At bench is an appeal[1] from the Decision[2] dated October 20, 2017 of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 08666, which affirmed *in toto* the conviction of herein appellant Ramon Bay-od for qualified statutory rape.

The antecedents:

On April 11, 2014, a criminal information for statutory rape under Article 266-A(1)(d)[3] as qualified by item 5 of the fifth paragraph of Article 266-B[4] of the Revised Penal Code (*RPC*),

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[1] By way of an ordinary appeal pursuant to Section 13(c) of Rule 124 of the Rules of Court, as amended by A.M. No. 00-5-03-SC.

[2] Penned by Associate Justice Marlene B. Gonzales-Sison for the 15th Division of the CA, with Associate Justices Socorro B. Inting and Rafael Antonio M. Santos concurring; *rollo*, pp. 2-14.

[3] Article 266-A. *Rape: When And How Committed*. – Rape is committed:

1) **By a man who shall have carnal knowledge of a woman under any of the following circumstances:**

a) x x x x x x x x x x x x.

d) **When the offended party is under twelve (12) years of age** or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x x x x.
(Emphasis supplied).

[4] The pertinent portion of Article 266-B of the RPC, as amended, provides:

Article 266-B. *Penalty*. x x x.

x x x x x x x x x x x x.
The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:
1.) x x x x x x x x x x x x.
x x x x x x x x x x x x
5) **When the victim is a child below seven (7) years old.**
x x x x x x x x x x x x.
(Emphasis supplied).

as amended, was filed against the appellant before the Regional Trial Court (*RTC*) of Lagawe, Ifugao. The Information accused the appellant of having carnal knowledge of AAA,[5] a lass then only six (6) years old:

> That on or about the year 2011, at CCC, hence within the jurisdiction of this Honorable Court, the [appellant], DID then and there willfully, unlawfully and feloniously, have carnal knowledge of AAA, a minor, 6 years of age at the time, by inserting his penis into the vagina of the victim.
>
> CONTRARY TO LAW and to the damage and prejudice of the victim.[6]

The Information was raffled to Branch 14 of the Lagawe RTC and was docketed as Criminal Case No. 2224.

After being apprised of the accusation against him, the appellant entered a plea of not guilty. During the pre-trial conference, the prosecution and the defense stipulated on the fact that AAA was only 6 years old in 2011— the year when the supposed rape took place. Trial thereafter ensued.

The prosecution mainly hinged their cause on the testimonies of AAA and the latter's mother, BBB. The prosecution's version, as culled from said testimonies, were summarized by the CA as follows:

> Sometime in the year 2011, AAA, who was then 6 years old, was looking for playmates along their neighborhood when [appellant] called her to go inside the latter's house at "CCC". Once inside, [appellant] forcibly had sex with AAA by removing the latter's clothes and by inserting his penis into AAA's vagina. AAA felt pain and cried and so [appellant] stopped. Afterwards, AAA put on her clothes and went

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[5] The victim's name and personal circumstances, as well as the names of the victim's immediate family or household members, are withheld and replaced with fictitious initials pursuant to Section 44 of Republic Act No. 9262 and Section 40 of A.M. No. 04-10-11-SC or the Rule on Violence Against Women and their Children. See *People v. Cabalquinto*, 533 Phil. 703 (2006).

[6] *Rollo*, p. 3.

home but decided not to tell her parents about the incident because she was afraid of the [appellant] who warned her not [to] tell the incident to anybody. However, she told her brother about what [appellant] did to her.

Sometime in October 2013, while AAA and her brother were having an argument, BBB, the victim's mother, heard her son teasing AAA saying "*op-opya ah te iniyut da-ah eh Lamon*," which means "*shut up because you were sexually abused by Lamon*." Upon hearing such words, BBB immediately confronted AAA about the veracity of her brother's statement to which AAA confessed that she was indeed raped by the [appellant].[7]

Aside from the testimonies of AAA and BBB, the prosecution also called to the witness stand one Dr. Florilyn Joyce Bentrez (*Dr. Bentrez*) — the medical officer who conducted a physical examination on AAA on November 15, 2013 and who also issued a corresponding medical certificate detailing the results of such examination. The CA captured the substance of Dr. Bentrez's testimony in this wise:

On November 15, 2013, [Dr. Bentrez], medical officer of the Municipal Health Office of Lagawe, Ifugao, conducted a physical examination on AAA and issued a medical certificate attesting that upon examination of the victim, she found no noted laceration, hematoma and bleeding on the victim's genital area. Nevertheless, she testified that despite the absence of laceration on the victim's vagina and that even if the vagina remains intact, it is still possible that AAA was raped because not all patients have the same shape of hymen and not all penetrations injure the hymen.[8]

The defense, on the other hand, relied on the sole testimony of the appellant. The appellant flat out denied having raped AAA. He claims that the charge against him was merely fabricated by the family of AAA — his distant relatives — out of envy.

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[7] *Id.* at 3-4. (Citations omitted)

[8] *Id.* at 4. (Citations omitted)

Ruling of the RTC

On July 1, 2016, the RTC issued a Decision[9] finding the appellant guilty of qualified statutory rape as charged. In so finding, the RTC accorded full weight and credence on the version of the prosecution, as relayed by the testimonies of AAA and BBB.

The RTC noted that, given the particular nature of the rape for which he was convicted, the appellant would have merited the death penalty under Article 266-B of the RPC. The trial court, however, was quick to observe that the imposition of the death penalty is presently outlawed by virtue of Republic Act (*R.A.*) No. 9346.[10]

Hence, instead of meting the death sentence, the RTC imposed upon the appellant the penalty of *reclusion perpetua*, without eligibility for parole, pursuant to Sections 2(a) and 3 of R.A. No. 9346.[11] With respect to the appellant's civil liabilities, on the other hand, the RTC directed the appellant to pay the following amounts to AAA: (a) ₱100,000.00 by way of civil indemnity, (b) ₱100,000.00 by way of moral damages, (c) ₱100,000.00 by way of exemplary damages and (d) interest on the said monetary obligations at the rate of 6% *per annum* from the finality of the decision until satisfaction. The dispositive part of the decision of the RTC accordingly reads:

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[9] Penned by Presiding Judge Romeo U. Habbiling; CA *rollo*, pp. 39-47.

[10] *See* Section 1 of R.A. No. 9346.

[11] Sections 2 (a) and 3 of R.A. No. 9346 reads:

SEC. 2. In lieu of the death penalty, the following shall be imposed.
(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
(b) x x x x x x x x x.

SEC. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

WHEREFORE, in view of the foregoing, this [C]ourt finds [appellant] **GUILTY** beyond reasonable doubt of the crime of rape defined in paragraph 1(d), Article 266-A and penalized under Article 266- B of the [RPC], as amended by [R.A.] 8353, and hereby sentenced [appellant] to suffer the penalty of imprisonment of ***reclusion perpetua* [*without eligibility for parole*], *in lieu of the death penalty***, pursuant to [RA] 9346. The [appellant] is, likewise, ordered to pay [AAA] the amount of One Hundred Thousand ([₱]100,000.00) Pesos as moral damages, One Hundred Thousand ([₱]100,000.00) Pesos as exemplary damages and One Hundred Thousand ([₱]100,000.00) Pesos as civil indemnity with an interest of six percent (6%) per annum from the finality of this Decision until satisfaction of the award.

SO ORDERED.[12]

Aggrieved, the appellant filed an appeal with the CA.

Ruling of the Court of Appeals

On October 20, 2017, the Court of Appeals rendered a Decision dismissing the appellant's appeal and affirming *in toto* the decision of the RTC. Thus:

WHEREFORE, in light of the foregoing, the appeal is **DISMISSED** and the Decision dated July 1, 2016 of the [RTC] of Lagawe, Ifugao, Branch 14, in Criminal Case No. 2224 is hereby **AFFIRMED** *in toto*.

SO ORDERED.[13]

Undeterred, appellant filed the present appeal before this Court.

The Present Appeal

The appellant claims that the RTC and the CA erred in according full weight and credence to the version of the prosecution, particularly to the accusation of rape by AAA. He argues that such accusation was actually disproved by the results of the medical examination conducted by Dr. Bentrez on AAA.

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[12] CA *rollo*, pp. 46-47.

[13] *Rollo*, p. 13.

The appellant points out that AAA's hymen was medically found to be still intact. On this end, he relies on and cites Dr. Bentrez's testimony wherein the latter stated that she, in her medical examination of AAA, found no laceration or scar in the latter's hymen.[14] Such findings, the appellant posits, are actually inconsistent with the conclusion that he had carnal knowledge of AAA and, hence, should be considered fatal to the charge of statutory rape.

In view of the apparent incredibility of AAA's testimony, the appellant, thus, urges this Court to instead give recognition to his alternate version of the events as the truth of what happened in this case and, ultimately, to acquit him of the crime charged.

Our Ruling

We deny the appeal.

It is elementary that the assessment of a trial court in matters pertaining to the credibility of witnesses, especially when already affirmed by an appellate court on appeal, are accorded great respect — if not binding significance — on further appeal to this Court.[15] The rationale of this rule is the recognition of the trial court's unique and distinctive position to be able to observe, first hand, the demeanor, conduct and attitude of the witness whose credibility has been put in issue.[16]

While conformity to the foregoing rule is concededly *not* absolute, it must be underscored that any deviation therefrom had only been allowed in light of highly meritorious circumstances, such as when it is clearly shown that the trial court had "*overlooked certain facts of substance and of value which, if considered, might affect the outcome of the case*."[17]

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[14] CA *rollo*, p. 33.

[15] *People v. Piosang*, 710 Phil. 519, 526 (2013).

[16] *People v. Costelo*, 375 Phil. 381 (1999).

[17] *People v. Realon*, 187 Phil. 765, 787 (1980), citing *People v. Repato*, 180 Phil. 388 (1979) and *People v. Espejo, et al.*, 146 Phil. 894 (1970). See also *People v. Laganzon*, 214 Phil. 294, 307 (1984), citing *People v. Surban*,

The appellant, in this appeal, insists that such a circumstance obtains in this case. He, in essence, claims that the RTC and the CA had overlooked the significance of the testimony of Dr. Bentrez that, if considered, would cast serious doubt on the veracity of AAA's accusation of rape. In this context, the appellant urges this Court to take a second look at the testimony of AAA and recalibrate the weight accorded it by the RTC and the CA.

We do not agree.

AAA's Claim of Rape Not Negated By Medical Finding that Her Hymen is Intact

The medical finding of Dr. Bentrez that AAA has no injury in her hymen is not fatal to the accusation of rape against the appellant. AAA's narration that appellant had intercourse with her is not, in and of itself, inconsistent with such finding. Indeed We, in not a few cases already, have affirmed convictions for rape despite the absence of injury on the victim's hymen in view of the **medical possibility for a hymen to remain intact despite history of sexual intercourse**.[18] In *People v. Opong*,[19] We ran down some of these cases:

> In *People v. Gabayron*, we sustained the conviction of accused for rape even though the victim's hymen remained intact after the incidents because **medical researches show that negative findings of lacerations are of no significance, as the hymen may not be torn despite repeated *coitus*. It was noted that many cases of pregnancy had been reported about women with unruptured hymens, and that there could still be a finding of rape even if, despite repeated intercourse over a period of years, the victim still retained an intact hymen without signs of injury.**

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123 SCRA 232-233; *People v. Balmaceda*, 87 SCRA 94; *People v. Cunanan*, 75 SCRA 15; *People v. Ancheta*, 60 SCRA 333; *People v. Geronimo*, 53 SCRA 246; *People v. Abboc*, 53 SCRA 54.

[18] See *People v. Lagbo*, 780 Phil. 834 (2016).

[19] 577 Phil. 571 (2008).

In *People v. Capt. Llanto*, citing *People v. Aguinaldo*, we likewise affirmed the conviction of the accused for rape despite the absence of laceration on the victim's hymen since **medical findings suggest that it is possible for the victim's hymen to remain intact despite repeated sexual intercourse. We elucidated that the strength and dilatability of the hymen varies from one woman to another, such that it may be so elastic as to stretch without laceration during intercourse; on the other hand, it may be so resistant that its surgical removal is necessary before intercourse can ensue.**

In *People v. Palicte* and in *People v. Castro*, the rape victims involved were minors. The medical examination showed that their hymen remained intact even after the rape. Even then, we held that such fact is not proof that rape was not committed.[20]

Moreover, in *People v. Pamintuan*,[21] We recognized that the absence of injuries in a rape victim's hymen could also be **attributed to a variety of factors that do not at all discount the fact that rape has been committed**. As *Pamintuan* observed:

The presence or absence of injuries would depend on different factors, such as the forcefulness of the insertion, the size of the object inserted, the method by which the injury was caused, the changes occurring in a female child's body, and the length of healing time, if indeed injuries were caused. Thus, the fact that AAA did not sustain any injury in her sex organ does not *ipso facto* mean that she was not raped.[22]

Accordingly, We find the medical finding of Dr. Bentrez regarding the absence of laceration in AAA's hymen to be, by itself, insufficient to disprove AAA's claim of rape against the appellant. The absence of laceration or injury to AAA's hymen during the time she was examined may have been caused by a number of reasons — none of which, however, would have any definitive bearing on whether appellant had carnal knowledge of AAA or not.

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[20] *Id.* at 592-593. (Citations omitted, emphasis supplied).

[21] 710 Phil. 414 (2013).

[22] *Id*. at 426. (Emphasis supplied).

It should be emphasized at this point that carnal knowledge, as an element of rape under Article 266-A(1) of the RPC, is not synonymous to sexual intercourse in its ordinary sense; it implies neither the complete penetration of the vagina nor the rupture of the hymen.[23] Indeed, jurisprudence has held that even the slightest penetration of the victim's genitals — *i.e.*, the "*touching*" by the penis of the vagina's *labia* — is enough to satisfy the element.[24] As *People v. Bormeo*[25] held:

> Carnal knowledge has been defined as the act of a man having sexual bodily connections with a woman; sexual intercourse. An essential ingredient thereof is the penetration of the female sexual organ by the sexual organ of the male. **In cases of rape, however, mere proof of the entrance of the male organ into the labia of the pudendum or lips of the female organ is sufficient to constitute a basis for conviction.**[26]

And in *People v. Quiñanola*:[27]

> In the context it is used in the Revised Penal Code, carnal knowledge, unlike its ordinary connotation of sexual intercourse, does not necessarily require that the vagina be penetrated or that the hymen be ruptured. **The crime of rape is deemed consummated even when the man's penis merely enters the labia or lips of the female organ or, as once so said in a case, by the *mere touching* of the external genitalia by a penis capable of consummating the sexual act.**[28]

Here, the fact that the appellant had carnal knowledge of AAA had been clearly established by the latter's testimony. Such testimony stands independently of the medical findings of Dr. Bentrez.

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[23] *People v. Dimanawa*, 628 Phil. 678, 690 (2010).

[24] *People v. Campuhan*, 385 Phil. 912, 920 (2000).

[25] 292-A Phil. 691 (1993).

[26] *Id*. at 704. (Citations omitted, emphasis supplied).

[27] 366 Phil. 390 (1999).

[28] *Id*. at 410. (Citations omitted, emphasis supplied).

AAA's Testimony is Credible and AAA is a Credible Witness; Appellant's Denial is Unavailing

Our review of AAA's testimony revealed the same to be a clear and categorical account of how the appellant had carnal knowledge of her. AAA bluntly recalled:

PROS. TILAN ON DIRECT EXAMINATION:

Q: What did [the appellant] do to you?
A: He forcibly had sex with me.

Q: Could you describe to the court how [the appellant] had sex with you.
A: He removed m[y] upper garment and panty and he undress himself.

Q: Prior to that, he removed your garment and your clothes, what did he do?
A: He inserted his penis into my vagina.

Q: When he inserted his penis into your vagina, what did you feel?
A: Painful, so I cried.[29]

It must also be considered that AAA was only six (6) years old when she was raped and only nine (9) years old when she took the witness stand. In *People v. Piosang*,[30] We held that testimonies of child victims, such as AAA, are in general ought to be accorded full weight and credit:

Testimonies of child-victims are normally given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. **When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter**

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[29] CA *rollo*, p. 43.

[30] *Supra* note 15. (Citations omitted, emphasis supplied).

to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity.

Though the appellant tried to cast aspersions on the motives of AAA in testifying so — the former claiming that AAA was just influenced by her family who, in turn, was only envious of him — the same falls flat for being utterly unsubstantiated. In this regard, We agree with the CA in dismissing such aspersions in light of the failure of the appellant to adduce any evidence supporting the same:

> [Appellant] attributes ill motive against AAA's family and claims that they are envious of him although he does not know of any reason why they should envy him. However, as the OSG correctly observed, [appellant] did not adduce any evidence on record showing any ill-motive on the part of AAA and her family as to why she would testify adversely against him. In a litany of cases, it has been ruled that — "when there is no showing of any improper motive on the part of the victim to testify falsely against the accused or to falsely implicate the latter in the commission of the crime, the logical conclusion is that no such improper motive exists, and that the testimony is worthy of full faith and credence." Stated otherwise, where no compelling and cogent reason[s] [are] established that would explain why the complainant was so driven as to blindly implicate an accused, the testimony of a young girl of having been the victim of a sexual assault cannot be discarded.[31]

All in all, We found no error on the part of the RTC and the CA in according AAA's testimony full weight and credence. The testimony is categorical and, in conjunction with the other evidence on record, positively establishes the guilt of the appellant for the crime charged. Against such testimony, the unsubstantiated denial of the appellant must certainly fail.[32]

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The Decision dated October 20, 2017 of the Court of Appeals in CA-G.R. CR-HC No. 08666 is hereby **AFFIRMED *in toto***.

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[31] *Rollo*, pp. 10-11. (Citations omitted).

[32] *People v. Del Castillo*, 584 Phil. 721 (2008).

SO ORDERED.

Leonen, Reyes, A. Jr., Hernando, and *Carandang*,* *JJ.*, concur.

SECOND DIVISION

[G.R. No. 239471. January 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOSEPH CINCO ARCIAGA *a.k.a.* "JOSEPHUS CINCO ARCIAGA,"** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY PROCEDURE; REQUIREMENT ON MARKING, PHYSICAL INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS.— To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime. As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. It is well to clarify, however, that under Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640, the foregoing procedures may instead be

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* Designated Additional Member per Special Order No. 2624 dated November 28, 2018.

conducted at the place where the arrest or seizure occurred, at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in instances of warrantless seizures – such as in buy-bust operations. In fact, case law recognizes that "***marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team***." Hence, the failure to immediately mark the confiscated items at the place of arrest neither renders them inadmissible in evidence nor impairs the integrity of the seized drugs, as the conduct of marking at the nearest police station or office of the apprehending team is sufficient compliance with the rules on chain of custody.

2. ID.; ID.; ID.; ID.; AS A RULE; COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE IS STRICTLY ENJOINED; NON-COMPLIANCE THEREWITH UNDER JUSTIFIABLE GROUNDS, PROVEN AS FACTS, WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.— As 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." x x x 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 IRR of RA 9165, which was adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIRED WITNESSES RULE MAY BE PERMITTED

IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORT TO SECURE THE REQUIRED WITNESSES, ALBEIT THEY EVENTUALLY FAILED TO APPEAR.— Anent the required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance. These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

This is an ordinary appeal[1] from the Decision[2] dated January 29, 2018 of the Court of Appeals (CA) in CA-G.R.

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[1] See Entry of Appearance with Notice of Appeal dated March 2, 2018; *rollo*, pp. 28-30.

[2] *Id*. at 4-27. Penned by Associate Justice Geraldine C. Fiel-Macaraig with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol, concurring.

CR-HC No. 02215, which affirmed the Omnibus Decision[3] dated August 10, 2015 of the Regional Trial Court of Cebu City, Branch 57 (RTC) in Criminal Case Nos. CBU-96423 and CBU-96424, finding accused-appellant Joseph Cinco Arciaga *a.k.a.* "Josephus Cinco Arciaga" (Arciaga) guilty beyond reasonable doubt for violating Sections 5 and 11, Article II of Republic Act No. (R.A.) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC charging Arciaga with the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around four (4) o'clock in the afternoon of June 26, 2012, a team of officers from the Philippine Drug Enforcement Agency Regional Office 7 (PDEA-RO 7) conducted a buy-bust operation against Arciaga at his house, during which one (1) heat-sealed plastic sachet containing suspected *shabu* weighing 0.03 gram was recovered from him. Consequently, a search incidental to his arrest yielded three (3) more heat-sealed plastic sachets containing suspected *shabu* weighing 0.04 gram each. As the team noticed that a crowd was already forming outside Arciaga's house, they, together with Arciaga, proceeded to the PDEA-RO 7 Office where the

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[3] CA *rollo*, pp. 12-22. Penned by Acting Presiding Judge James Stewart Ramon E. Himalaloan.

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

[5] The Information in Criminal Case No. CBU-96423 was for Section 5, Article II of RA 9165 (see *rollo*, p. 5 and records, p. 1); while the Information in Criminal Case No. CBU-96424 was for Section 11, Article II of RA 9165 (see *rollo*, pp. 5-6).

seized items were marked, photographed, and inventoried[6] in the presence of Barangay Captain Jerome B. Lim and media personnel Virgilio T. Salde, Jr. of DYMF Bombo Radyo. Thereafter, the seized items were brought to the crime laboratory for examination and tested positive[7] for Methamphetamine Hydrochloride or *shabu*, a dangerous drug.[8]

For his part, Arciaga denied the charges against him and claimed that on the said date, he was taking a nap at the second floor of his house when suddenly, several armed men barged inside. Upon seeing him, the armed men ordered him to lie face down on the floor, handcuffed him, and searched his body, as well as his house. When the armed men did not find anything, he was then taken to the PDEA-RO 7 Office.[9]

In an Omnibus Decision[10] dated August 10, 2015, the RTC found Arciaga guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: *(a)* In Criminal Case No. CBU- 96423, to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00; and *(b)* in Criminal Case No. CBU-96424, to suffer the penalty of imprisonment for an indeterminate period of twelve (12) years and one (1) day to twelve (12) years and one (1) month, and to pay a fine of ₱300,000.00.[11] The RTC found that the prosecution sufficiently established all the elements of the aforesaid crimes as it was able to prove that: (*a*) Arciaga indeed sold a plastic sachet containing *shabu* to the poseur-buyer during a legitimate buy-bust operation; and (*b*) subsequent to his arrest, more plastic sachets containing *shabu* were recovered from him. The RTC further observed that the integrity and evidentiary value of the seized items had been preserved, considering that

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[6] See Certificate of Inventory dated June 26, 2012; records, p. 13.

[7] See Chemistry Report No. D-624-2012 dated June 27, 2012; *id*. at 12.

[8] See *rollo*, pp. 6-9. See also CA *rollo*, pp. 12-15.

[9] See *id*. at 9-10.

[10] CA *rollo*, pp. 12-22.

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

the buy-bust team sufficiently complied with the chain of custody rule.[12]

In a Decision[13] dated January 29, 2018, the CA affirmed the RTC ruling, holding that all the elements of the crimes of Illegal Sale and Illegal Possession of Dangerous Drug were present and that the chain of custody rule was duly complied with.[14]

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

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Possession of Dangerous Drugs under RA 9165,[15] 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.[16] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt

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[12] See *id*. at 18-21.

[13] *Rollo*, pp. 4-27.

[14] See *id*. at 16-27.

[15] 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]).

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

of the accused beyond reasonable doubt and hence, warrants an acquittal.[17]

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.[18] As part of the chain of custody procedure, the law requires, *inter alia*, that the marking, physical inventory, and photography of the seized items be conducted immediately after seizure and confiscation of the same. It is well to clarify, however, that under Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640,[19] the foregoing procedures may instead be conducted at the place where the arrest or seizure occurred, at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in instances of warrantless seizures – such as in buy-bust operations. In fact, case law recognizes that "***marking upon immediate confiscation contemplates even marking at the nearest police station or office of the apprehending team***."[20] Hence, the failure to immediately mark the confiscated items at the place of arrest

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

[18] See *People v. Año*, G.R. No. 230070, March 14, 2018; *People v. Crispo*, *supra* note 15; *People v. Sanchez*, *supra* note 15; *People v. Magsano*, *supra* note 15; *People v. Manansala*, *id*.; *People v. Miranda*, *supra* note 15; and *People v. Mamangon*, *supra* note 15. See also *People v. Viterbo*, *supra* note 16.

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

[20] *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).

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 Department of Justice (DOJ), and any elected public official";[23] or (*b*) if **after** the amendment of RA 9165 by RA 10640, "[a]n elected public official and a representative of the National Prosecution Service (NPS) *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 substantive law."[26] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police

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[21] See *People v. Tumulak*, 791 Phil. 148, 160-161 (2016); and *People v. Rollo*, 757 Phil. 346, 357 (2015).

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

[23] 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. Mendoza*, 736 Phil. 749, 764 (2014).

[26] See *People v. Miranda*, *supra* note 15. See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, citing *People v. Umipang*, *supra* note 17, at 1038.

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 IRR of RA 9165, which was 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 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 required witnesses rule, non-compliance may be permitted if the prosecution proves that the apprehending officers

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[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.

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

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 the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[38]

In this case, while the Court agrees with the courts *a quo* that the buy-bust team was justified in conducting the marking, inventory, and photography at the PDEA-RO 7 Office due to

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[34] See *People v. Manansala*, *supra* note 15.

[35] See *People v. Gamboa*, *supra* note 17, citing *People v. Umipang*, *supra* note 17, at 1053.

[36] See *People v. Crispo*, *supra* note 15.

[37] *Supra* note 15.

[38] See *id*.

security reasons, *i.e.*, a crowd was already forming at the place of Arciaga's arrest, it is nevertheless apparent that, as seen in the Certificate of Inventory[39] dated June 26, 2012, the inventory of the seized items was ***not*** conducted in the presence of a DOJ representative, contrary to the afore-described procedure.[40] This was confirmed by no less than the poseur-buyer, Intelligence Officer I Edd Ryan Dayuha (IO1 Dayuha), in his testimony during cross-examination, to wit:

[Atty. Ungab]: Who were the witnesses when you conducted the inventory and the markings, Mr. Witness?

[IO1 Dayuha]: There was one from the media DYMF Bombo Radyo Virgilio Salde. The barangay captain was there also but I forgot his name sir.[41]

Neither do the records reflect that such witness was present during the photography of the seized items, which process is usually conducted contemporaneously with the inventory thereof. As earlier stated, it is incumbent upon 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. While IO1 Dayuha implicitly acknowledged the absence of a DOJ representative during the conduct of inventory and photography, records are bereft of any reason and/or justification therefor. Thus, in view of these unjustified deviations from the chain of custody rule, the Court is constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Arciaga had been compromised, which consequently warrants his acquittal.

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[39] Records, p. 13.

[40] To note, the buy-bust operation against Arciaga was done on June 26, 2012, or before the passage of RA 10640. As such, the inventory and photography must be witnessed by an elected public official, a media representative, ***AND*** a DOJ representative.

[41] TSN, April 22, 2013, p. 14.

WHEREFORE, the appeal is **GRANTED**. The Decision dated January 29, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 02215 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Joseph Cinco Arciaga a.k.a. "Josephus Cinco Arciaga" is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 241091. January 14, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LITO PAMING *y* JAVIER,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE AND/OR ILLEGAL POSSESSION OF DANGEROUS DRUGS; CHAIN OF CUSTODY PROCEDURE; REQUIREMENT ON MARKING, PHYSICAL INVENTORY AND PHOTOGRAPHY OF THE SEIZED ITEMS.— 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

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[*] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

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.

2. **ID.; ID.; ID.; ID.; AS A RULE; COMPLIANCE WITH THE CHAIN OF CUSTODY PROCEDURE IS STRICTLY ENJOINED; NON-COMPLIANCE THEREWITH UNDER JUSTIFIABLE GROUNDS, PROVEN AS FACTS, WILL NOT RENDER VOID AND INVALID THE SEIZURE AND CUSTODY OVER THE SEIZED ITEMS SO LONG AS THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PROPERLY PRESERVED.—** As 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." x x x Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved. The foregoing is based on the saving clause found in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640. It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses, and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.

3. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE REQUIRED WITNESSES RULE MAY BE PERMITTED IF THE PROSECUTION PROVES THAT THE APPREHENDING OFFICERS EXERTED GENUINE AND SUFFICIENT EFFORTS TO SECURE THE REQUIRED WITNESSES, ALBEIT 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.

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 January 16, 2018 of the Court of Appeals (CA) in CA-G.R.

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[1] See Notice of Appeal dated January 29, 2018; *rollo,* pp. 19-21.

[2] *Id*. at 2-18. Penned by Associate Justice Renato C. Francisco with Associate Justices Japar B. Dimaampao and Rodil V. Zalameda, concurring.

CR HC No. 07676, which affirmed the Joint Decision[3] dated August 26, 2014 of the Regional Trial Court of Daet, Camarines Norte, Branch 39 (RTC) in Criminal Case Nos. 14502 and 14503 finding accused-appellant Lito Paming *y* Javier (Paming) guilty beyond reasonable doubt of violating Sections 5 and 11, Article II of Republic Act No. (RA) 9165,[4] otherwise known as the "Comprehensive Dangerous Drugs Act of 2002."

The Facts

This case stemmed from two (2) Informations[5] filed before the RTC accusing Paming of the crimes of Illegal Sale and Illegal Possession of Dangerous Drugs, respectively defined and penalized under Sections 5 and 11, Article II of RA 9165. The prosecution alleged that at around 12:30 in the morning of September 14, 2010, members of the Paracale Municipal Police Station, with a civilian informant, successfully implemented a buy-bust operation against Paming, during which one (1) heat-sealed transparent plastic sachet containing 0.03 gram of white crystalline substance was recovered from him. When Paming was searched after his arrest, the police officers were able to seize a matchbox holding twenty-eight (28) more heat-sealed transparent plastic sachets containing a combined weight of 0.85 gram of white crystalline substance from his possession. The police officers then took Paming to a nearby billiard hall for marking of the confiscated drugs, but due to the increasing number of people, they transferred to the police station to continue the marking. At the police station, the seized

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[3] CA *rollo,* pp. 103-111. 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," approved on June 7, 2002.

[5] Both dated October 29, 2010. Criminal Case No. 14503 is for violation of Section 5, Article II of RA 9165 (records [Crim. Case No. 14503], pp. 1-2), while Criminal Case No. 14502 is for violation of Section 11, Article II of RA 9165 (records [Crim. Case No. 14502], pp. l-2).

items were turned over to the Desk Officer and the Investigator, who instructed the poseur-buyer to put markings on the items. Thereafter, the seized items were brought to the crime laboratory where, after examination, the contents thereof yielded positive for methamphetamine hydrochloride or *shabu,* a dangerous drug.[6]

In defense, Paming denied the charges against him, claiming instead, that he was having a drinking spree with friends when he was approached by one Gil alias "Tatong" who told him that he wanted to "score." When he replied that he did not know what that meant, five men suddenly ganged up on him and dragged him to a nearby billiard hall where they took from his possession ₱5,000.00, one-half (1/2) *bahay* of gold and two (2) ₱20.00 bills. Tatong then shouted: *"Sir, nandito po sa posporo,"* and handed a matchbox to Police Officer 2 Jason R. Poot (PO2 Poot), who pocketed it. Paming was then brought to the police station where he was detained for two days, and was later made to sign a piece of paper purportedly containing an inventory of the seized items.[7]

In a Joint Decision[8] dated August 26, 2014, the RTC found Paming guilty beyond reasonable doubt of the crimes charged, and accordingly, sentenced him as follows: *(a)* in Criminal Case No. 14502, to suffer the penalty of imprisonment of twelve (12) years and one (1) day, and to pay a fine in the amount of ₱400,000.00; and *(b)* in Criminal Case No. 14503, to suffer the penalty of life imprisonment and to pay a fine in the amount of ₱500,000.00.[9] The RTC found that the prosecution, through the testimonial and documentary evidence it presented, had established beyond reasonable doubt that Paming indeed sold one (1) heat-sealed transparent plastic sachet containing dangerous drugs to the poseur-buyer, resulting in his arrest,

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[6] See *rollo,* pp. 4-6; and CA *rollo,* pp. 103-106. See also Chemistry Report No. D-50-2010 dated September 14, 2010; records, p. 15.

[7] See *rollo,* p. 6. See also CA *Rollo,* p. 107.

[8] CA *rollo,* pp. 103-111.

[9] *Id*. at 111.

and that during the search incidental thereto, he was discovered to be in possession of a matchbox holding twenty-eight (28) more heat-sealed transparent plastic sachets of dangerous drugs. It likewise held that, notwithstanding the procedural lapses of the buy-bust team in complying with Section 21, Article II of RA 9165, the integrity and evidentiary value of the illegal drugs were duly preserved under the chain of custody rule. On the other hand, the RTC found untenable Paming's defense of a self-serving unsubstantiated denial or claim of frame-up due to his failure to allege, much less prove, any ill motive on the part of the buy-bust team.[10] Aggrieved, Paming appealed[11] to the CA.

In a Decision[12] dated January 16, 2018, the CA affirmed the RTC ruling.[13] It held that the prosecution had established beyond reasonable doubt all the elements of the crimes charged against Paming, and that the integrity and evidentiary value of the seized items have been preserved due to the arresting officers' substantial compliance with the chain of custody rule.[14]

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

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[15] it is essential that the identity of the

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[10] See *id.* at 107-111.

[11] See Notice of Appeal dated October 21, 2014; records (Crim. Case. No. 14503), p. 110.

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

[13] *Id*. at 17.

[14] See *id.* at 12-15.

[15] 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

dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[16] 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.[17]

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.[18] 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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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]).

[16] 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).

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

[18] See *People v. Año,* G.R. No. 230070, March 14, 2018; *People v. Crispo, supra* note 15; *People v. Sanchez, supra* note 15; *People v. Magsano, supra* note 15; *People v. Manansala, supra* note 15; *People v. Miranda, supra* note 15; and *People v. Mamangon, supra* note 15. See also *People v. Viterbo, supra* note 16.

team."[19] 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.[20]

The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (*a*) if **prior** to the amendment of RA 9165 by RA 10640,[21] a representative from the media *AND* the Department of Justice (DOJ), and any elected public official;[22] or (b) if **after** the amendment of RA 9165 by RA 10640, an elected public official and a representative of the National Prosecution Service *OR* the media.[23] The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[24]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded

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[19] *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).

[20] See *People v. Tumulak,* 791 Phil. 148, 160-161 (2016); and *People v. Rollo,* 757 Phil. 346, 357 (2015).

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

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

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

[24] See *People v. Miranda, supra* note 15. See also *People v. Mendoza,* 736 Phil. 749, 764 (2014).

"not merely as a procedural technicality but as a matter of substantive law."[25] This is because "[t]he law has been 'crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment.'"[26]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[27] As such, the failure of the apprehending team to strictly comply with the same would not ipso facto render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: *(a)* there is a justifiable ground for non-compliance; and *(b)* the integrity and evidentiary value of the seized items are properly preserved.[28] The foregoing is based on the saving clause found in Section 21 (a),[29] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later adopted into the text of RA 10640.[30] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[31] and that

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[25] 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 17, at 1038.

[26] See *People v. Segundo,* G.R. No. 205614, July 26, 2017, 833 SCRA 16, 44, citing *People v. Umipang*, *id*.

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

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

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

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

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

the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[32]

Anent the 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.[33] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[34] These considerations arise from the fact that police officers are ordinarily given sufficient time — beginning from the moment they have received the information about the activities of the accused until the time of his arrest — to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[35]

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

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

[33] See *People v. Manansala, supra* note 15.

[34] See *People v. Gamboa, supra* note 17, citing *People v. Umipang, supra* note 17, at 1053.

[35] See *People v. Crispo, supra* note 15.

[36] *Supra* note 15.

the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[37]

In this case, there appears to be an absence of the required inventory-taking in the presence of the accused, or his representative, and the required witnesses, *i.e.,* the elected public official and representatives from the media and the DOJ. A thorough examination of the records of this case reveals that no physical inventory report was submitted as evidence before the lower court. Although photographs were offered, there was no proof that these were done in the presence of the accused, or the required witnesses. This was also confirmed by the testimony of the arresting officer, PO2 Poot on cross-examination, to wit:

Cross-Examination

[Atty. Fernando F. Dialogo]: And when you arrived at the Police Station, what happened to the shabu?
[PO2 Poot]: It was marked in the investigation room, sir.

x x x x x x x x x

Q: When the markings were made, was there any local officials at your station during that time?
A: None, sir.

Q: How about any representative from the media, Mr. Witness?
A: None, sir.

Q: How about the PDEA representative, Mr. Witness?
A: None, sir.

x x x x x x x x x

Q: Mr. Witness, was there an inventory made on this item that was allegedly recovered from the accused?
A: Yes, sir.

Q: Were you present when the inventory was made, Mr. Witness?
A: Yes, sir.

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[37] See *id*.

Q: Where was the accused when the inventory was made?
A: In the investigation room, sir.

Q: And where was the exact place when the inventory was made?
A: At the Police Station because during that time the place of operation was dark. So we brought it to the Police Station.

x x x x x x x x x

Q: You said there was an inventory report made.
A: Yes, sir.

Q: Who signed the inventory report?
A: The Investigation, sir.

Q: Are you referring to the Investigator?
A: Yes, sir.

Q: He was the only person who signed that inventory report?
A: Yes, sir.

Q: Where were you when the inventory was conducted by the Investigator?
A: I was inside the Police Station, sir.

Q: You were not at the investigation room, Witness?
A: Yes, sir.[38]

As earlier stated, it is incumbent upon the prosecution to prove that there was an actual inventory and photography done, and that it was conducted in the presence of the accused **and** the required witnesses. While PO2 Poot claimed that there was a purported inventory report, none was offered in evidence. This raises serious doubts as to its existence. Even assuming that there was such a report, PO2 Poot likewise confirmed that only the Investigator signed the same. In fact, the accused was in the investigation room while the alleged inventory was conducted. Furthermore, none of the required witnesses were present, and no justifiable reason was offered nor was there a showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. In view of

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[38] TSN, October 23, 2012, pp. 18-26.

these unjustified deviations from the chain of custody rule, the Court is therefore constrained to conclude that the integrity and evidentiary value of the items purportedly seized from Paming were compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated January 16, 2018 of the Court of Appeals in CA-G.R. CR-H.C. No. 07676 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Lito Paming *y* Javier is **ACQUITTED** of the crimes charged. The Director of the Bureau of Corrections is ordered to cause his immediate release, unless he is being lawfully held in custody for any other reason.

SO ORDERED.

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

EN BANC

[A.M. No. 2014-16-SC. January 15, 2019]

RE: COMPLAINT AGAINST MR. RAMDEL REY M. DE LEON, EXECUTIVE ASSISTANT III, OFFICE OF ASSOCIATE JUSTICE JOSE P. PEREZ, ON THE ALLEGED DISHONESTY AND DECEIT IN SOLICITING MONEY FOR INVESTMENTS

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; PRIVATE ACTS MAY BE REVIEWED BY

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[*] Designated Additional Member per Special Order No. 2629 dated December 18, 2018.

THE COURT. — In this case, the acts complained of were not related to or have no direct relation to respondent's work, official duties and functions. Nevertheless, respondent's private acts may still be reviewed by the Court because every court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the judiciary for the very image of the latter is necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.

2. ID.; ID.; DISHONESTY; CLASSIFICATION; SERIOUS DISHONESTY AND LESS SERIOUS DISHONESTY. — Dishonesty, is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray." Dishonesty is classified as serious when any of the attendant circumstances under CSC Resolution No. 06-0538 is present. On the other hand, dishonest acts are less serious if: a) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify under the immediately preceding classification; b) the respondent did not take advantage of his/her position in committing the dishonest act, and; c) other analogous circumstances.

3. ID.; ID.; CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES (RA 6713); CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE. — Conduct is prejudicial to the public service if it violates the norm of public accountability and diminishes — or tends to diminish — the people's faith in the Judiciary. The word "prejudicial" means "detrimental or derogatory to a party; naturally, probably or actually bringing about a wrong result. Time and again, this Court has pronounced that any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced. Public office is a public trust. Public officers must at all times be accountable to the people, serve them with utmost degree of responsibility,

integrity, loyalty and efficiency. In *Largo v. Court of Appeals*, it was stated that if an employee's questioned conduct tarnished the image and integrity of his public office, he was liable for conduct prejudicial to the best interest of the service. The basis for his liability was Republic Act (*R.A.*) No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. x x x Section 4(c), [thereof] commands that public officials and employees shall at all times respect the rights of others, and shall refrain from doing acts contrary to public safety and public interest.

4. ID.; ID.; ID.; ID.; CASE AT BAR. — [There is] sufficient evidence to find that respondent had some involvement in the business of rediscounting checks as a "recruiter of third-party investors." As correctly found by the OAS, if not through respondent's enticements, offers, assurances and facilitations, complainants would not be persuaded in placing their money in the investment scheme. x x x Indeed, the transactions happened within the premises of the Court, in the duration of respondent's employment with the OAJ Perez and it placed the image of the Judiciary, of which he is part, in a bad light. The acts of respondent deviated from the norm of conduct required of a court employee, and constitutive of conduct prejudicial to the best interest of service. The said administrative offense need not be related or connected to the public officer's official functions. As long as the questioned conduct tarnished the image and integrity of his public office, the corresponding penalty may be meted on the erring public officer or employee. In addition, respondent committed other violations of various administrative rules. Respondent's conduct of business during office hours violated Sec. 1, Canon IV of the Code of Conduct for Court Personnel. It mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours. x x x The acts of respondent are also in violation of Sec. 5, Canon III of the same code, which provides that the full-time position in the Judiciary of every court personnel shall be the personnel's primary employment. Further, the recruitment of third-party investors to the check-rediscounting business likewise constitutes violation of the SC-A.C. No. 5-88.

5. ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE (RRACCS); LESS SERIOUS

DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PENALTIES; DISCUSSED. — [R]espondent committed less serious dishonesty, punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense, and conduct prejudicial to the best interest of the service, punishable by suspension of six (6) months and one (1) day to one (1) year if committed for the first time. In addition, respondent also violated several administrative rules, particularly: violation of SC-A.C. No. 5-88; and violations of Sec. 5 of Canon III (Conflict of Interest), and Sec. 1 of Canon IV (Performance of Duties) of the Code of Conduct for Court Personnel. x x x [R]espondent, [as] a court personnel, shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. Consequently, the provisions of CSC Resolution No. 1101502, or the Revised Rules on Administrative Cases in the Civil Service (*RRACCS*) are applicable herein. As provided under *Boston Finance and Investment Corp. v. Gonzalez*, Sec. 50 of the RRACCS states that 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. Sec. 48 of the same rules also provides that in the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered.

6. **ID.; ID.; ID.; ID.; ID.; CASE AT BAR. —** Here, the penalty for the most serious charge of less serious dishonesty is suspension for six (6) months and one (1) day to one (1) year. The following are the mitigating circumstances; a) first infraction; and b) more than ten (10) years in service. On the other hand, the following are the aggravating circumstances: a) conduct prejudicial to the best interest of service; b) violation of SC-A.C. No. 5-88 and; c) violations of Sec. 5 of Canon III (Conflict of Interest), and Sec. 1 of Canon IV (Performance of Duties) of the Code of Conduct for Court Personnel. Considering these circumstances, the Court imposes the penalty of one (1) year suspension from office. However, since respondent is no longer in service as he resigned from the position of Executive Assistant III in OAJ Perez, effective April 30, 2015, the penalty of suspension cannot be meted. In lieu thereof, the Court imposes against respondent the penalty of a fine of one (1) year's salary

at the time of his resignation, which amount is to be deducted from whatever benefits, if any, that he is still entitled to receive after his resignation. In *Reyes, Jr. v. Belisario, et al.*, the Court stated that if the respondent is no longer in the service, then the suspension should automatically take the form of a fine equivalent to the respondent's one (1) year salary at the time of his separation from service.

D E C I S I O N

GESMUNDO, *J.*:

Before this Court is an Administrative Complaint[1] dated November 3, 2014 filed with the Office of Administrative Services (*OAS*) by Judge Vivencio Gregorio G. Atutubo III (*Judge Atutubo*), former Court Attorney VI in the Office of Associate Justice Jose P. Perez (*OAJ Perez*), and now Judge of the Regional Trial Court of Pili, Camarines Sur (*RTC*); Atty. Teresita A. Tuazon (*Atty. Tuazon*), Deputy Division Clerk of Court, Second Division; Attys. Delight Aissa A. Salvador (*Atty. Salvador*) and Joevanni A. Villanueva (*Atty. Villanueva*), both Court Attorneys VI of OAJ Perez (*collectively referred to as complainants*), against Ramdel Rey M. De Leon (*respondent*), Executive Assistant III of OAJ Perez for alleged dishonesty and deceit in soliciting money for investments.

The Antecedents

Complainants' Version

In their November 3, 2014 Complaint,[2] complainants alleged that respondent perpetrated a scam to the prejudice of several court employees, including complainants. From 2010 to 2013, on different dates and occasions, and in the course of their employment in the Supreme Court, particularly in the OAJ Perez, the parties became acquainted.

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[1] *Rollo*, pp. 444-451.

[2] *Id*.

In the latter half of 2012 respondent, taking advantage of his close friendship and trust with complainants, enticed them into parting with their money and investing in his alleged business transactions. Respondent and his brother Rammyl Jay De Leon (*Rammyl*), on their own and in partnership with a certain Ferdinand John Mendoza (*Mendoza*), had a business network of suppliers of San Miguel Corporation (*SMC*).

In soliciting money for the investment, respondent weaved a story that Rammyl, a branch manager of Bank of the Philippine Islands (*BPI*), Capitol Hills, Quezon City, had clients and contacts who supplied certain requirements and needs of SMC. After delivery and performance, the suppliers were paid by SMC. Respondent, Rammyl, and Mendoza provided cash requirements for the suppliers as they needed continuous liquidity to be able to meet the demands of SMC.

Complainants alleged that respondent offered "solid and risk-free" investment business venture because it was handled by his brother who dealt directly with the suppliers. As for the participation of Mendoza in the transaction, respondent guaranteed that his brother, Rammyl, in his capacity as bank manager, would be able to monitor the financial transactions of Mendoza, including any suspicious withdrawal, because the latter maintained an account with the said branch. Respondent claimed that Mendoza had his own set of investors and his participation as partner was only to pool monies of investors to facilitate the funding of huge blocks/openings of the cash requirements for SMC suppliers.[3]

Complainants also asserted that they had no reason to think that respondent might only be deceiving them given the elaborate explanation and specificity of respondent's claims on the investment that he and his brother were supposedly handling. Consequently, they decided to invest in the purported business transactions of respondent and his brother. In the OAJ Perez,

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[3] *Id*. at 445.

the investment transactions were referred to as "*Investment sa kapatid ni Ramdel*."[4]

The respective allegations of complainants are summarized as follow:

(1.) Judge Atutubo and Atty. Tuazon started investing in respondent and his brother's alleged business transactions in [the last quarter of] 2012 and [the second quarter of] 2013, respectively. The solicitation, physical turnover of cash and checks for deposit and the issuance of the checks covering their investment were all facilitated and handled by respondent. They alleged that respondent continued to solicit from them by texting for new openings. Each time Judge Atutubo visited Manila, respondent would talk to him and to Atty. Tuazon about maintaining their respective investments and possibility of adding to it. [As] respondent continued to project a profitable, safe and risk-free enterprise, it prompted them to keep and renew their investments with respondent in 2014. For their respective renewals, Judge Atutubo and Atty. Tuazon received checks from respondent issued by his brother, Rammyl.

(2.) For Atty. Salvador, she alleged that respondent approached her in her cubicle and offered openings in the investment block where she could join. During the period that Atty. Salvador did not invest, respondent continued to message her[,] soliciting investments. She alleged that respondent claimed to her that he and his brother Rammyl, along with Mendoza, continued to rediscount checks of SMC suppliers and that their business was doing well. It was in the second quarter of 2013 when Atty. Salvador finally joined in the investment after she spoke to respondent's brother[,] Rammyl[,] on several occasion[s] who confirmed the existence and legitimacy of their purported business transactions. Atty. Salvador, however, no longer renewed her investments when it matured in August 2013 because she needed the money then. But before maturity, respondent inquired whether she will renew her investment with them. Respondent told her to inform him at once of her non-renewal so they can fill up

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[4] *Id*.

her slot in the investment. As friends, she shared with respondent her financial goals, such as buying real property of her own. On the part of respondent, he claimed that his investment had funded his purchase of a new house and enabled him to provide his family with a comfortable lifestyle. Atty. Salvador, nonetheless, renewed her investment with respondent[,] in February 2014[,] relying heavily on the trust and confidence established between her and respondent. She was informed that the same arrangement she made before will apply, i.e. online funds transfer, and that upon confirmation of the credit of monies, respondent will hand to Atty. Salvador the checks covering her investment. It was respondent's brother Rammyl who issued the checks covering her investment. Upon inquiry on why his brother now solely issued checks to cover the investors' monies, respondent simply shrugged his shoulders, dismissed the query and categorically said that the transactions for all complainants' investments were for his and his brother's direct business transactions with the suppliers of SMC and were separate from Mendoza's transactions.

(3.) Atty. Villanueva joined the OAJ Perez in June 2013 and became fast friends with respondent as they shared a common interest in basketball, the two being part of the same team that plays in the Court's sportsfest. During the course of 2013, respondent persistently and aggressively solicited investment from Atty. Villanueva, weaving the same tale and story he had told to other complainants and investors. Respondent also claimed that [his] investment transaction[, together with] his brother Rammyl[,] was more profitable than the dividends being offered by the Supreme Court Savings and Loan Association (*SCSLA*). That Atty. Villanueva would be able to fund his planned US trip in December 2014 if he will invest in their business transaction a substantial amount. To further lend credibility and x x x convince Atty. Villanueva to invest, respondent told him that the other complainants and other lawyers, for a minimum of [Five hundred thousand pesos] (₱500,000.00)[,] and for almost two (2) years, had already invested with him and his brother. Atty. Villanueva also alleged the same story on how the said investment [has] helped him and his family. Having no reason to think that respondent was deceiving him and possibly concocting a story about his and his brother's investment

> transactions with suppliers of SMC, and relying heavily on the trust and confidence established between him and respondent, Atty. Villanueva finally invested monies with respondent in January 2014. As proof thereto is a check issued by Atty. Villanueva to respondent's brother Rammyl and credited it to the latter's account which checks were received and acknowledged by respondent bearing a notation that it was for investment. Thereafter, respondent handed to Atty. Villanueva a Banco De Oro (BDO) check issued by Rammyl to cover his investment.[5]

Complainants further alleged that as of the date of filing of the administrative complaint, they still have neither met nor spoken to Mendoza. Respondent never referred to Mendoza as being the head of their purported business transactions. Also, respondent was the one who answered all complainants' queries and explained the details of the supposed business transactions. He received checks from complainants purportedly for the investment business transaction. Respondent, in turn, delivered to complainants the checks covering their earned interest and capital.

More so, respondent continued to solicit investment from complainants and other court employees at the start of January 2014. Atty. Villanueva and Atty. Salvador trusted and believed the story of respondent as to the legitimacy of the business transaction, and told him the possibility of making further investments.[6]

Thereafter, respondent stepped up his solicitation and insisted on additional investment ahead of schedule because of the supposed openings in other investment blocks with the suppliers of SMC. Thus, Atty. Salvador and Atty. Villanueva made further investments for the months of March, April, and May 2014, with the assurance that their monies were safe in his and his brother's business transactions. Further, complainants claimed that there was never an instance wherein respondent mentioned

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[5] *Id*. at 2-4.

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

difficulties and problems regarding the investment. During those times, respondent continued to project a solid business endeavor.

In June 2014, respondent told complainants that Mendoza had gone missing allegedly taking all the monies with him, and was nowhere to be found. Confronted by Attys. Salvador and Villanueva, respondent categorically admitted his liability and committed to return all of complainants' investment and even promised to use his savings deposit to pay them. Respondent continued telling stories about Mendoza, who was allegedly in hiding because he was kidnapped by an investor who suddenly wanted to withdraw his money. However, respondent failed to give an explanation as to how the absence of Mendoza would affect his or his brother's business transactions.[7]

In August 2014, respondent and Rammyl had a meeting with Judge Atutubo and Atty. Salvador, at Greenhills Shopping Center. They continued to hedge about their claimed business transactions with the suppliers of SMC, but were very vague on their answers as to the effect of the absence of Mendoza in their supposed business. Respondent and Rammyl then asked for some time to return the money claiming that Rammyl will receive his separation pay from BPI in two months.[8]

In subsequent conversations of the parties, complainants claimed that the lies and deceit slowly unravelled, as follows: 1) respondent and Rammyl neither have a business transaction on their own nor have a direct contact with SMC suppliers; 2) unknown to complainants, respondent, Rammyl and their other brothers had their own respective "set of investors" from whom they solicited investments which, they, in turn, invested solely with Mendoza; 3) using complainants' monies, respondent and Rammyl personally profited by just "riding" on whatever business transactions Mendoza had; 4) to earn further from complainants' investments, respondent and Rammyl put these at risk with Mendoza; 5) respondent aggressively solicited investments

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[7] *Id*. at 448.

[8] *Id*. at 448-449.

because he benefited therefrom by earning a certain percentage even without shelling out his own money; and 6) respondent and Rammyl had close ties and remained in contact with Mendoza even though the latter went missing with their investments.

Thereafter, respondent began to distance himself from the investment business and started pointing to Mendoza as the one responsible for complainants' investments. Respondent and Rammyl belatedly and reluctantly filed a criminal complaint against Mendoza.[9]

In September 2014, complainants reiterated their demand to provide a payment scheme, or just pay all of complainants' capital on installment basis. However, respondent neither approached Atty. Salvador nor Atty. Villanueva even though they were officemates. Complainants' oral demands remained unheeded prompting them to send a written demand letter to respondent, Rammyl, and Mendoza. After the BDO checks issued to complainants were dishonored due to insufficiency of funds, signature differs and account closed, they formally notified respondent of the dishonored checks,[10] *viz*:

Name	Check No.	Date	Amount
Judge Vivencio Gregorio Atutubo III	200859	07/02/14	₱5,000.00
	200891	07/11/14	₱15,000.00
	200762	07/14/14	₱10,000.00
	200888	07/22/14	₱300,000.00
	190869	07/28/14	₱200,000.00
	200860	07/30/14	₱5,000.00
	200889	08/08/14	₱15,000.00
	200808	08/13/14	₱100,000.00[11]

[9] *Id*. at 449.

[10] *Id*. at 458-460.

[11] *Id*. at 458.

Name	Check No.	Date	Amount
Atty. Teresita A. Tuazon	190776	06/24/14	₱5,000.00
	200968	06/27/14	₱25,000.00
	200759	07/15/14	₱5,000.00
	200969	07/25/14	₱25,000.00
	200970	08/22/14	₱25,000.00
	200896	09/05/14	₱500,000.00[12]

Name	Check No.	Date	Amount
Atty. Joevanni A. Villanueva	190656	06/20/14	₱400,000.00
	187858	06/24/14	₱25,000.00
	190853	07/09/14	₱20,000.00
	190887	07/15/14	₱15,000.00
	187859	07/22/14	₱25,000.00
	190831	07/23/14	₱400,000.00
	190876	07/29/14	₱300,000.00
	186315	08/05/14	₱500,000.00[13]

Name	Check No.	Date	Amount
Atty. Delight Aissa A. Salvador	190657	06/20/14	₱350,000.00
	170048	06/24/14	₱27,500.00
	200826	07/01/14	₱10,000.00
	170049	07/22/14	₱27,500.00
	200827	07/29/14	₱10,000.00
	186313	08/05/14	₱550,000.00
	200803	08/12/14	₱200,000.00[14]

[12] *Id*. at 458-459.

[13] *Id*. at 459.

[14] *Id*.

Respondent refused to sign the demand letter, and only his brother Rammyl signed and received the same. Such act was considered by complainants as proof of his evident dishonesty, bad faith, and increased attempts to distance himself from the investments he solicited.[15]

Hence, this instant administrative complaint against respondent for dishonesty and deceit through his aggressive solicitation and for falsely representing his business transactions. Complainants stated that they were fully aware that the Honorable Court is not a collection agency and that their proper recourse for payment lies elsewhere. However, they believe that it is their duty to inform the Court of respondent's dishonesty to deter him from further perpetuating lies and deceit designed to trick court employees into trusting him and parting with their hard earned monies for a non-existent investment transaction. Complainants emphasized that respondent is a court employee who should abide by the Code of Conduct for Employees of the Judiciary, Civil Service Rules and Regulations, and exhibit exemplary behavior in both aspects of his life, work, and personal.[16]

Respondent's Version

In his December 23, 2014 Comment,[17] respondent denied the allegations against him. He claimed that complainants were the ones who approached and initiated the communications and dealings with intent to gain additional income. Respondent explained that sometime in July 2011, Rammyl asked respondent if he was interested in an "investment" that Mendoza was offering. Respondent knew Mendoza personally, the latter being a long-time friend of Rammyl.

Respondent then inquired as to the nature of the "investment," and found that Mendoza was into check-rediscounting with

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[15] *Id*. at 450.

[16] *Id*. at 451.

[17] *Id*. at 309-333.

suppliers/contractors of SMC. It was explained that SMC paid the suppliers of raw materials or other products after ninety (90) days from the date the contract was awarded and/or upon compliance/completion of the contract. These suppliers/ contractors would then approach the agents of Mendoza for them to liquidate or sell the value of their contracts at a discounted price, so that they would be liquid and compliant with SMC's requirements. Thereafter, Mendoza would contact Rammyl and other people willing to pool in cash to accommodate said contracts. After pooling the cash, Mendoza would then issue post-dated checks as advance payments for their capital contributions and earned interest.

For all the capital investments, Mendoza would issue three (3) post-dated checks — the first check to cover the principal, which would run and mature after sixty (60) days, and the two (2) subsequent checks to cover the five percent (5%) interest per month. The placement will then run for sixty (60) days or two (2) months, with the first post-dated check covering the first tranche of the five percent (5%) interest, payable after fourteen (14) days from placement, and the second check for the interest payable after twenty-eight (28) days.

In August 2011, respondent first placed an investment in the amount of One hundred thousand pesos (₱100,000.00) as capital in the "investment" business. It was said that respondent could earn interest of Five thousand pesos (₱5,000.00) per month or five percent (5%) of the One hundred thousand pesos (₱100,000.00) he initially placed as capital.[18] Respondent's placements were all covered by Mendoza's checks, to which respondent did not encounter any problem in encashing or depositing. Eventually, the capital contribution of respondent already amounted to One million sixty-five thousand pesos (₱1,065,000.00).

Respondent admitted that sometime in 2013, respondent and his family planned to buy a house. With respondent's interest

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[18] *Id*. at 310.

earnings from his investment, he was able to purchase a townhouse.[19]

Respondent met Judge Atutubo only in the course of their employment in the OAJ Perez. In a conversation between respondent and a friend, Judge Atutubo overheard about the investment business. He became interested about the investment, what the rates were, where it is placed, who manages the placement, and how it earns. Respondent was then hesitant to tell him about the investment because he did not want to handle money not his own.[20]

According to respondent, Judge Atutubo was persistent and continued to prod him regarding the investment. Respondent then made it clear where he was placing the money and who manages it. Thereafter, Judge Atutubo inquired if he can place an investment in the initial amount of Fifty thousand pesos (₱50,000.00) to Eighty thousand pesos (₱80,000.00). Respondent informed Judge Atutubo that he still needed to ask Rammyl whether Mendoza accepted placement from a third party.[21]

After Judge Atutubo placed his money and was already earning five percent (5%) interest per month, he started to increase his capital placement. After a few months, he placed around Three hundred thousand pesos (₱300,000.00) earning five percent (5%) interest per month. Respondent alleged that at times, Judge Atutubo would ask a favor to deposit his cash investment in Mendoza's account. The deposit slips were then returned to Judge Atutubo, to show that respondent indeed deposited the money in Mendoza's account. Unfortunately, respondent did not keep any copy of these transaction receipts.

Judge Atutubo's total placement amounted to a total of Six hundred thousand pesos (₱600,000.00) which has been earning interest of five percent (5%) or Thirty thousand pesos

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[19] *Id*. at 311.

[20] *Id*. at 312.

[21] *Id*. at 312-313.

(₱30,000.00) a month since 2013. Contrary to Judge Atutubo's claim, respondent asserted that he never told him that he and Rammyl were in partnership with Mendoza.[22]

With regard to Atty. Salvador, respondent alleged that she was an officemate from the OAJ Perez. She learned about respondent's business through their former officemate, Judge Atutubo. Respondent recalled that Atty. Salvador also inquired from him as to where the money was placed, how much it was earning and who managed the business, among others. He claimed that Atty. Salvador rigorously inquired about the business and, after she spoke with Rammyl over the phone, she placed her investment therein.[23]

Atty. Salvador initially invested an amount of One hundred thousand pesos (₱100,000.00). However, before she could place money, respondent had to wait for Rammyl's confirmation of the openings available from Mendoza. The capital investment of Atty. Salvador reached between Six hundred thousand pesos (₱600,000.00) to Eight hundred thousand pesos (₱800,000.00), earning five percent (5%) interest per month or Thirty thousand pesos (₱30,000.00) to Forty thousand pesos (₱40,000.00) a month. After ten (10) months of rolling her capital, Atty. Salvador withdrew all her placements by simply depositing the checks issued by Mendoza to her personal account.

On or about the last part of 2013, Atty. Salvador again made investments in Mendoza's business venture. Like all her previous placements, she simply transferred the money directly by online banking to Mendoza's BPI account. Before making the fund transfer, Atty. Salvador would inform respondent of her intention to make an investment or placement. Respondent would then contact Rammyl, who, in turn, would ask Mendoza about the available slots.[24]

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[22] *Id*. at 314.

[23] *Id*. at 314-315.

[24] *Id*. at 315.

Respondent claimed that Atty. Salvador neither asked nor requested to meet Mendoza or Rammyl. He believed that as long as she was earning, it did not really matter. The total investment of Atty. Salvador amounted to One million one hundred thousand pesos (₱1,100,000.00).[25]

Atty. Tuazon, on the other hand, contacted respondent sometime in 2012. Unlike the three (3) other complainants, Atty. Tuazon and respondent were not officemates because she was already the Assistant Clerk of Court of the Second Division. Respondent recalled that he was surprised to receive a phone call from Atty. Tuazon. The latter told respondent that she learned about his investment business from her friend Judge Atutubo.[26]

Respondent was hesitant to discuss the said investment business because he did not want the venture to be commercialized. Although worried, respondent nonetheless answered her queries. After some time, Atty. Tuazon was able to place an initial amount of Five hundred thousand pesos (₱500,000.00). With an earning interest of five percent (5%) a month, Atty. Tuazon had monthly income of Twenty-five thousand pesos (₱25,000.00). Eventually, she added to her capital an amount of Two hundred thousand pesos (₱200,000.00) on different dates.

Respondent alleged that Atty. Tuazon's bank deposits for her capital were under the account of Mendoza, and that the deposit slips were given to her, to prove that the money was indeed deposited. Unfortunately, respondent did not keep a photocopy or record of the bank transactions.[27] Atty. Tuazon's total placement amounted to Seven hundred thousand pesos (₱700,000.00).[28]

Atty. Villanueva was the last among complainants to place his money with Mendoza's business venture. When the OAJ

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[25] *Id*. at 316.

[26] *Id*. at 316-317.

[27] *Id*. at 317.

[28] *Id*.

Perez transferred to its new office around September 2013, respondent and Atty. Villanueva shared the same room. In one of their conversations, Atty. Villanueva mentioned to him that his investment with BPI was not earning anymore. He convinced respondent to call Rammyl regarding his BPI investment. During Atty. Villanueva's conversation with Rammyl, respondent heard him asking about the "investment" with Mendoza. Thereafter, Atty. Villanueva asked respondent if he could be accommodated in Mendoza's business venture.[29]

Respondent told him that he had to ask his brother first if there were available slots for placement. After a week, respondent informed Atty. Villanueva of the available slots. However, Atty. Villanueva told respondent that he would not join in the meantime, and would wait for Atty. Salvador so they could place their money at the same time.

Atty. Villanueva eventually placed an amount of Three hundred thousand pesos (₱300,000.00) and rolled it for two months at five percent (5%) interest per month or Fifteen thousand pesos (₱15,000.00) a month. Atty. Villanueva confided to respondent that he placed his investment because he wanted to recover the payments for tickets he purchased for his family's vacation trip to the United States.[30]

In the early months of 2014, Atty. Villanueva kept adding to his placements and rolling the matured ones. In most of the transactions, it was Atty. Villanueva who would personally go to the bank and deposit the same. His total investment amounted to One million six hundred thousand pesos (₱1,600,000.00) which earned five percent (5%) interest per month.

On June 18, 2014, respondent averred that Rammyl broke to him the news that Mendoza was already missing and nowhere to be found. Immediately thereafter, respondent called Atty. Salvador and Atty. Villanueva to seek help with the problem. Complainants told respondent and Rammyl that they should

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[29] *Id*. at 319-320.

[30] *Id*. at 320.

act quickly to recover the money and to pay them first. They also advised respondent to keep it among themselves for the meantime and gather all the available details first.

Rammyl mentioned to them that he went to the office of Mendoza in Libis, Quezon City in the afternoon of June 18, 2014 and found other people also looking for Mendoza. However, on said date, only Mendoza's counsels appeared and made arrangements to meet the following day, June 19, 2014.[31]

On June 19, 2014, the supposed meeting did not materialize as no lawyer from Mendoza's camp appeared. Instead, a lawyer called and asked to reschedule the meeting again on June 20, 2014. On the same day, respondent met with Attys. Salvador and Villanueva. They demanded payments from respondent and Rammyl, thus, the latter told complainants to wait until the end of June because all his savings were also with Mendoza.[32]

On June 20, 2014, respondent texted Attys. Salvador and Villanueva to attend the meeting with the lawyers of Mendoza, but they declined. On the scheduled meeting, Mendoza's lawyers showed up but claimed that they were there only to get the names, claims, and contact numbers of the investors involved.[33]

For Judge Atutubo, respondent alleged that he called him over the weekend and informed him about the problem and of Mendoza's disappearance. Judge Atutubo assured respondent that it was okay and that he should keep him posted for any development as he was then preparing for his US vacation.

On the other hand, Atty. Tuazon was informed about the problem on June 23, 2014. Respondent alleged that he personally went to her office and told her about the meetings with Mendoza's lawyers. She was depressed and frustrated about the news but Atty. Tuazon understood and even offered to help recover her placement.

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[31] *Id*. at 321.

[32] *Id*. at 322.

[33] *Id*. at 323.

In August 2014, Rammyl called respondent about Mendoza's statement issued through his lawyer. Respondent forwarded the said statement through email to Attys. Salvador and Villanueva. Respondent and Atty. Villanueva read Mendoza's statement together and they both found the explanation unacceptable. He heard Atty. Villanueva's disgust and frustrations over the matter to which respondent replied that he will relay it to Rammyl so that he can voice it out during the meeting with Mendoza's lawyers.[34]

In the last part of August 2014, respondent's brother Rammyl went to Max's Restaurant, Orosa Branch and had a meeting with some of the investors. However, only Atty. Tuazon, among complainants, attended. In that meeting, Rammyl informed them about the statement and promises of Mendoza's lawyers.[35]

Respondent further averred that it took a while before Mendoza finally communicated with Rammyl. According to Mendoza, the reason why he left the country was because of alleged death threats he received and that somebody tried to kidnap him. Respondent added that his brother gave Mendoza more than enough time to return all their money, but all of Mendoza's promises did not materialize. This eventually led to the filing of the Criminal Complaint[36] for estafa against Mendoza before the Prosecutor's Office of Quezon City (*Prosecutor's Office*).[37]

It was around August 2014 that respondent and Rammyl met with Judge Atutubo and Atty. Salvador in Greenhills, San Juan. Complainants insisted that the purported business was a loan in partnership among respondent, Rammyl and Mendoza. Respondent and Rammyl denied all of complainants' allegations and further clarified that it was just Mendoza who had all the connections with SMC.[38]

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[34] *Id*.

[35] *Id*. at 323-324.

[36] *Id*. at 400-406.

[37] *Id*. at 324.

[38] *Id*.

In September 2014, Attys. Salvador and Villanueva confronted respondent wherein Atty. Salvador asked "*Asan na pera namin, di ba may utang ka sa amin?*" Before respondent could reply, Atty. Villanueva stated "*Oo nga, umamin ka na. Umamin ka na na may utang ka sa amin. Di ba may utang ka sa amin? Umamin ka na.*" Respondent replied that it was neither a debt nor a loan and they both knew where their money was placed.

In October 2014, Rammyl informed respondent that he will be at Max's restaurant, Orosa Branch around lunchtime to meet the investors again. There, Judge Atutubo, Attys. Salvador and Villanueva arrived with a demand letter. Although Rammyl was hesitant to sign the said demand letter, he nonetheless, signed it because Atty. Salvador was already making a scene at the restaurant. Respondent also arrived at Max's restaurant around 1:30 p.m. He read complainants' demand letter, which included his wife in complainants' legal actions. Respondent, Rammyl, and complainants met again around 3:00p.m. at the office of Atty. Tuazon. The latter told respondent that he should apologize to them. Respondent did not get the point of apologizing to anyone during the meeting. Complainants then furnished respondent a copy of the demand letter. He told them to mail it but complainants took it as a sign of bad faith.[39]

Respondent claimed that out of the eleven (11) people from the Supreme Court who invested in the business venture, only the four (4) complainants claimed and weaved stories that no investment transaction existed. Further, he contended that complainants were the ones who decided whether to place their capital or not, renew or roll their existing placements or pull out their capital.[40] Respondent denied the accusation that he painted a picture of a "solid and risk-free" investment. Besides, had respondent or Rammyl known that there was a problem, or that Mendoza would run and disappear, he would not have placed Five hundred thousand pesos (₱500,000.00) in the last week of May 2014. Likewise, respondent and Rammyl would have

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[39] *Id*. at 327-328.

[40] *Id*. at 329.

withdrawn all their capital and all of the capital of the concerned individuals to protect their placements.

Finally, respondent alleged that in his more than ten (10) years in the Supreme Court, he has neither been charged with or involved in any dishonest conduct in relation to his employment or to his personal affairs. Respondent points that complainants are also employees of the Court. They should also not engage in any unlawful, dishonest, immoral, or deceitful conduct; that they should conduct themselves at all times with courtesy, fairness, and candor toward their professional colleagues; and they should exemplify a behavior above the norms and standards as expected of them because of their status and standing in the community.

Complainants' Reply;
Respondent's Rejoinder,
Complainants' Sur-rejoinder

In their January 29, 2015 Consolidated Reply,[41] complainants countered that respondent indeed committed dishonesty. They averred that respondent's lies and trickery were all done only to profit from their hard- earned money.[42] Complainants explained that the reason for the filing of the complaint was to vindicate their rights which have been violated by respondent. Also, they claimed that the lies and deceits became evident when they found out that the actual earnings of the investment through Mendoza's scheme was six to eight percent (6-8%) monthly interest as stated in Rammyl's amended complaint-affidavit. Respondent made complainants and the other investors at the OAJ Perez believe that the interest rate was only five percent (5%) a month.[43] Thus, there is a discrepancy of one to three percent (1 to 3%) earned interest, which were pocketed by respondent and Rammyl for recruiting "third-party" investors.[44]

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[41] *Id*. at 177-204.

[42] *Id*. at 177.

[43] *Id*. at 178-179.

[44] *Id*. at 179.

Complainants underscored that in January 2014, despite respondent's knowledge of Mendoza's default in payment of Rammyl's investment and an unpaid interest of Nine million two hundred one thousand six hundred pesos (₱9,201,600.00), respondent still continued to solicit and accept the monies of complainants. He even asked for referrals during the months of January to May 2014, without disclosing to complainants about Mendoza's default.[45]

Complainants belied respondent's claim that they had knowledge of Mendoza's participation in the transactions. All the complainants and investors from the Supreme Court were not able to meet or talk to Mendoza. While respondent and Rammyl narrated to them the rediscounting business of Mendoza, complainants were not informed that their placements were only a "rider" on Rammyl's placement with Mendoza. The true and actual rate of interest being paid by Mendoza were also not disclosed.[46]

They also alleged that respondent took advantage of their close friendship in order to convince them to invest in the said business transactions. As it turned out, respondent, Rammyl, and the rest of their family were simply "recruiters" for Mendoza's own fraudulent scheme. With their respective set of "third party" recruits/investors, they earned from the monies of others without having to shell out their own. Complainants added that although respondent categorically denied benefitting from their investments, his denial is betrayed by the fact that he never turned down any of the investments of complainants or other investors. Respondent did not tell them at the very start that he and Rammyl had no check rediscounting business with SMC suppliers.[47]

Lastly, complainants argued that if respondent was simply accommodating them in accepting their investments, he could

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

[46] *Id*. at 187-188.

[47] *Id*. at 190.

have easily told them about Mendoza's default to Rammyl beginning January 2014. They underscored that respondent never mentioned such default even though Attys. Villanueva and Salvador only started investing in January and February 2014. Respondent continued accepting new investments from them, which for complainants, were acts that demonstrate respondent's clear interest to benefit and earn from their monies despite of the faltering investment scheme with their creditor, Mendoza.

In his Rejoinder[48] dated March 9, 2015, respondent pointed out the following: he denied the allegation on his active participation in the alleged solicitation, acceptance and facilitation of complainants' monies for investment; he denied the allegation that complainants' monies were coursed through respondent only; he clarified the issuance of checks by his brother and by Mendoza; he underscored that the information given by Mendoza's counsel were immediately relayed to complainants; he denied the alleged attempt to waylay the administration of justice by refusing to acknowledge receipt of the demand letter; that he and Rammyl were also victims of Mendoza; and that complainants harassed him.[49]

In their Consolidated Sur-Rejoinder[50] dated March 30, 2015, complainants reiterated respondent's conduct and handling of the entire affair were far from being exemplary, clearly lacking forthrightness from the onset, from non-disclosure of the actual interest rates to the actual participation of Mendoza in respondent's solicited investment transactions. They contended that respondent's bare assertions and general denials cannot overcome the substantial evidence they have established.

During the pendency of this case, respondent tendered his resignation from the service effective April 30, 2015. The Court approved respondent's resignation, but without prejudice to

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[48] *Id*. at 47-90.

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

[50] *Id*. at 35-39.

the outcome of this case and subject to the usual clearance requirements.[51]

Report and Recommendation

In its Memorandum[52] dated May 19, 2015, the OAS found no evidence proving respondent was indeed in partnership with his brother Rammyl and Mendoza in the check-rediscounting business venture. Nonetheless, it was established that respondent was a mere recruiter of Rammyl for Mendoza's investment scheme.[53] It also found that respondent actively participated in the series of transactions and dealings with complainants with regards the check-rediscounting business.[54] Substantial evidence therefore exists to hold respondent guilty of engaging directly in the private business of check-rediscounting as recruiter of third-party investors.

The OAS observed that respondent violated Supreme Court Administrative Circular (*SC-A.C.*) No. 5-88 dated October 4, 1988, which prohibits officials and employees of the Judiciary from engaging in any private business or activity even when undertaken outside office hours. In doing so, respondent has also violated the Code of Conduct for Court Personnel, particularly Sec. 5 of Canon III (Conflict of Interest) and Sec. 1 of Canon IV (Performance of Duties).[55]

The OAS respectfully submitted for consideration the following recommendations:

a. That Ramdel Rey M. De Leon, former Executive Assistant III, Office of Associate Justice Jose P. Perez, be found guilty of simple dishonesty in his dealings with the complainants, and conduct prejudicial to the best interest of the service for violating Administrative Circular No. 5, dated October 4,

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[51] *Id*. at 25.

[52] *Id*. at 1-32.

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

[54] *Id*. at 27.

[55] *Id*.

1988, and the Code of Conduct for Court Personnel, particularly Section 5 of Canon III (Conflict of Interest), and Section 1 of Canon IV (Performance of Duties);

b. That in lieu of the penalty of suspension on respondent as he has already resigned from office, a fine in the amount equivalent to the monetary value of his terminal leave pay be imposed upon him; and

c. That complainants be directed to proceed with the filing of appropriate civil and/or criminal case against respondent in the proper forum.[56]

Issue

WHETHER RESPONDENT SHOULD BE HELD ADMINISTRATIVELY LIABLE FOR DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE.

The Court's Ruling

The Court modifies the findings and recommendations of the OAS.

In this case, the acts complained of were not related to or have no direct relation to respondent's work, official duties and functions. Nevertheless, respondent's private acts may still be reviewed by the Court because every court personnel are enjoined to conduct themselves toward maintaining the prestige and integrity of the judiciary for the very image of the latter is necessarily mirrored in their conduct, both official and otherwise. They must not forget that they are an integral part of that organ of the government sacredly tasked in dispensing justice. Their conduct and behavior, therefore, should not only be circumscribed with the heavy burden of responsibility but at all times be defined by propriety and decorum, and above all else beyond any suspicion.[57]

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[56] *Id.* at 32.

[57] *Hernando v. Bengson*, 662 Phil. 1, 8-9 (2011).

Less Serious Dishonesty

Dishonesty, is defined as the "disposition to lie, cheat, deceive, or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[58] Dishonesty is classified as serious when any of the attendant circumstances under CSC Resolution No. 06-0538 is present.[59] On the other hand, dishonest acts are less serious if: a) the dishonest act caused damage and prejudice to the government which is not so serious as to qualify under the immediately preceding classification; b) the respondent did not take advantage

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[58] *Anonymous Complaint against Ofelia Lyn G. Maceda*, 730 Phil. 401, 412 (2014).

[59] Section 3. Serious Dishonesty. — The presence of any one of the following attendant circumstances in the commission of the dishonest act would constitute the offense of Serious Dishonesty:

a. The dishonest act caused serious damage and grave prejudice to the Government;
b. The respondent gravely abused his authority in order to commit the dishonest act;
c. Where the respondent is an accountable officer, the dishonest act directly involves property, accountable forms or money for which he is directly accountable and the respondent shows an intent to commit material gain, graft and corruption;
d. The dishonest act exhibits moral depravity on the part of the respondent;
e. The respondent employed fraud and/or falsification of official documents in the commission of the dishonest act related to his/her employment;
f. The dishonest act was committed several times or in various occasions;
g. The dishonest act involves a Civil Service examination irregularity or fake Civil Service eligibility such as, but not limited to impersonation, cheating and use of crib sheets;
h. Other analogous circumstances. (*Re: Anonymous Letter Complaint v. Judge Samson, et al*., A.M. No. MTJ-16-1870, June 6, 2017; *Atty. Frades v. Gabriel*, A.M. No. P-16-3527, November 21, 2017).

of his/her position in committing the dishonest act, and; c) other analogous circumstances.[60]

Here, respondent is guilty of less serious dishonesty because he had not been honest in his dealings with complainants and he violated the trust reposed in him. In Rammyl's Amended Complaint-Affidavit[61] against Mendoza, it was admitted that Mendoza had been defaulting in the payment of Rammyl's investment as early as January 2014. Respondent and Rammyl also had a meeting with Mendoza on May 12, 2014 to discuss their investments.[62] Considering that respondent and Rammyl are brothers, it was improbable that the two would not share such crucial information regarding the failing investment business. Moreover, respondent had all the means to know of the doubtful transactions because, as represented to complainants, Rammyl was able to monitor the financial transactions of Mendoza, including any suspect withdrawal, as the latter maintained an account with the BPI.[63]

In spite of the knowledge regarding the collapsing investments and suspicious default payments of Mendoza, respondent continued to accommodate and accept the investments of complainants up to May 2014.[64] If respondent was truly concerned for complainants' investments, he should have immediately disclosed the truth about the suspicious transactions at the very first instance and he should not have received any additional investments from complainants anymore. Instead, respondent turned a blind eye to the suspicious circumstances regarding Mendoza's payments, which eventually lead to the disappearance of complainants' investments.

Further, respondent committed another dishonesty when he did not truthfully disclose the actual rate of interest earned from

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[60] *LRTA v. Salvaña*, 736 Phil. 123, 157 (2014).

[61] *Rollo*, pp. 400-406.

[62] *Id*. at 30.

[63] *Id*. at 445.

[64] *Id*. at 448.

the rediscounting business of Mendoza as stated in Rammyl 's complaint-affidavit, to wit:

> 5. The investment plan, as presented by [Mendoza] was as follows: [Mendoza], through his network of agents, sources out receivables from prime corporations like San Miguel Corporation (SMC), Universal Robina Corporation (URC) and Petron. These receivables come in the form of Purchase orders from the suppliers of the said corporations. Initially, [Mendoza] presented documents to support these transactions (Deed of Assignment and MOA). In return for financing or advancing these receivables, the amount of the stated contract or purchase order is bought at a discounted rate. [Mendoza offered] me **6-8% per month** for the money I would invest with [him] for this. The interest is paid in advance, two weeks after date of placement/investment. Terms usually range from one month to 6 months depending on the available contracts he has. x x x.[65] (emphasis supplied)

Respondent admitted that complainants only received 5% interest per month from their investments. Glaringly, respondent did not divulge to complainants where the remaining 1-3% of the interests went. It goes to show that respondent is not truly straightforward regarding the interest earned in the said anomalous rediscounting business. Complainants went further by stating that the said remaining 1-3% interests were pocketed by respondent and Rammyl as their commission for the investment transactions. In any case, it is clear that respondent did not honestly deal with complainants regarding their hard-earned monies. The OAS correctly observed the following:

> x x x. By "riding-on" to his brother's placements with Mendoza's check[-]rediscounting business, respondent used and employed this method of recruiting "third-party" investors. This is a classic, easy money-making scheme to earn profit from other people's money. Respondent, in this case, supposedly placed the money of complainants and his other recruits in the Supreme Court (who comprised his own network) to the business scheme on an agreed interest yields per month. But unknown to complainants, he only passed on and gave lower interest rates to his recruits as compared to the true and actual yields to be earned from the investment x x x money, without having

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[65] *Id*. at 401.

to shell out of his own funds. The more investors he brought in the investment, the bigger was his commission as an agent. Certainly, respondent by taking advantage of this profitable opportunity, will not tell this to his recruits.[66]

Respondent committed dishonesty as he failed to live up to the high ethical standards required of court employees. In this case, considering the two acts of dishonesty committed by respondent against the four complainants were made by taking advantage of the trust and confidence reposed upon him, the same can be considered as an analogous circumstance that would constitute the offense of less serious dishonesty. Nevertheless, there is no attending circumstance that would qualify the dishonesty committed as serious. It must be emphasized that respondent is only a recruiter; he is not the author of the check-rediscounting scheme. Thus, respondent is administratively guilty of committing less serious dishonesty.

Conduct Prejudicial to the Best Interest of Service; other violations of respondent

Further, the Court finds that respondent committed conduct prejudicial to the best interest of service. Conduct is prejudicial to the public service if it violates the norm of public accountability and diminishes — or tends to diminish — the people's faith in the Judiciary.[67] The word "prejudicial" means "detrimental or derogatory to a party; naturally, probably or actually bringing about a wrong result.[68] Time and again, this Court has pronounced that any act which falls short of the exacting standards for public office, especially on the part of those expected to preserve the image of the judiciary, shall not be countenanced. Public office is a public trust. Public officers must at all times be accountable

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[66] *Id.* at 28.

[67] *Leave Division – O.A.S., Office of the Court Administrator v. Sarceno*, 754 Phil. 1, 9 (2015).

[68] *Office of the Court Administrator v. Corea*, 772 Phil. 277, 289-290 (2015).

to the people, serve them with utmost degree of responsibility, integrity, loyalty and efficiency.[69]

In *Largo v. Court of Appeals*,[70] it was stated that if an employee's questioned conduct tarnished the image and integrity of his public office, he was liable for conduct prejudicial to the best interest of the service. The basis for his liability was Republic Act (*R.A.*) No. 6713 or the Code of Conduct and Ethical Standards for Public Officials and Employees. x x x Section 4(c), [thereof] commands that public officials and employees shall at all times respect the rights of others, and shall refrain from doing acts contrary to public safety and public interest.[71]

In *Anonymous Letter-Complaint against Atty. Morales, etc.*,[72] the employee therein was found administratively guilty for conduct prejudicial to the best interest of service engaging in the business of lending and rediscounting of checks, to wit:

> The Court agrees with the OCA that Siwa should be **administratively disciplined for engaging in the business of lending and rediscounting checks.**
>
> Siwa admits engaging in the business of lending and rediscounting checks, claiming that it was a legitimate endeavor needed to augment her meager income as a court employee; that she is not aware of any rule prohibiting her from engaging in the business of rediscounting checks; that there are other employees engaged in the same business; and that she employs her own staff to do the encashment of the checks as she always attends to and never neglects her duties as a stenographer.
>
> Siwa is clearly mistaken.
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> **Officials and employees of the judiciary are prohibited from engaging directly in any private business, vocation, or profession even outside office hours to ensure that full-time officers of the**

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[69] *Judge Loyao, Jr. v. Manatad*, 387 Phil. 337, 344 (2000).

[70] 563 Phil. 293, 305 (2007).

[71] *Consolacion v. Gambito*, 690 Phil. 44, 55 (2012).

[72] 592 Phil. 102 (2008).

court render full-time service so that there may be no undue delay in the administration of justice and in the disposition of cases.[73] **The nature of work of court employees requires them to serve with the highest degree of efficiency and responsibility and the entire time of judiciary officials and employees must be devoted to government service to ensure efficient and speedy administration of justice.**[74] **Indeed, the Court has always stressed that court employees must strictly observe official time and devote every second moment of such time to public service.**[75] **And while the compensation may be meager, that is the sacrifice judicial employees must be willing to take.**[76] (emphases supplied)

In this case, although no direct evidence proved that he was in absolute partnership with his brother Rammyl and Mendoza, there is still basis to hold respondent administratively liable. In Mendoza's check-rediscounting business venture, it was established that respondent was a "recruiter" thereof. Indubitably, respondent actively participated in the series of transactions and dealings with complainants, from the time he accepted all the monies and placed it in the account of Mendoza. This constitutes as sufficient evidence to find that respondent had some involvement in the business of rediscounting checks as a "recruiter of third-party investors."[77]

As correctly found by the OAS, if not through respondent's enticements, offers, assurances and facilitations, complainants would not be persuaded in placing their money in the investment scheme. Respondent should have refrained from engaging in such activity, particularly with employees of the Court who have reposed trust and confidence in him. He kept prodding complainants to invest their money in the rediscounting business

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[73] *Benavidez v. Vega*, 423 Phil. 437, 441-442 (2001).

[74] *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.*, 302 Phil. 748, 753 (1994).

[75] *Anonymous v. Grande*, 539 Phil. 1, 8 (2006).

[76] *Anonymous Letter-Complaint against Atty. Morales*, *supra* note 72 at 122.

[77] *Rollo*, p. 27.

until the investment ballooned to millions, which was eventually misappropriated.[78]

Indeed, the transactions happened within the premises of the Court, in the duration of respondent's employment with the OAJ Perez and it placed the image of the Judiciary, of which he is part, in a bad light.[79] The acts of respondent deviated from the norm of conduct required of a court employee, and constitutive of conduct prejudicial to the best interest of service. The said administrative offense need not be related or connected to the public officer's official functions.[80] As long as the questioned conduct tarnished the image and integrity of his public office, the corresponding penalty may be meted on the erring public officer or employee.

In addition, respondent committed other violations of various administrative rules. Respondent's conduct of business during office hours violated Sec. 1, Canon IV of the Code of Conduct for Court Personnel. It mandates that court personnel shall commit themselves exclusively to the business and responsibilities of their office during working hours. As a court employee, he should have exercise at all times a high degree of professionalism and responsibility, as service in the Judiciary is not only a duty; it is a mission.[81] The acts of respondent are also in violation of Sec. 5, Canon III of the same code,[82] which provides that the full-time position in the Judiciary of every court personnel shall be the personnel's primary employment.

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[78] *Id*. at 30-31.

[79] *Supra* note 72 at 123.

[80] *Supra* note 70 at 305.

[81] *Anonymous v. Namol*, A.M. No. P-16-3614, June 20, 2017.

[82] Section 5. The full time position in the Judiciary of every court personnel shall be the personnel's primary employment. For purposes of this Code, "primary employment" means the position that consumes the entire normal working hours of the court personnel and requires the personnel's exclusive attention in performing official duties.

Further, the recruitment of third-party investors to the check-rediscounting business likewise constitutes violation of the SC-A.C. No. 5-88, which provides:

> In line with Section 12, Rule XVIII of the Revised Civil Service Rules, the Executive Department issued Memorandum Circular No. 17 dated September 4, 1986 authorizing heads of government offices to grant their employees permission to engage directly in any private business, vocation or profession x x x outside office hours.
>
> However, in its En Banc Resolution dated October 1, 1987, denying the request of Atty. Froilan L. Valdez of the Office of Associate Justice Ameurfina Melencio-Herrera, to be commissioned as a Notary Public, the Court expressed the view that **the provisions of Memorandum Circular No. 17 of the Executive Department are not applicable to officials or employees of the courts considering the express prohibition in the Rules of Court and the nature of their work which requires them to serve with the highest degree of efficiency and responsibility, in order to maintain public confidence in the Judiciary.** The same policy was adopted in Administrative Matter No. 88-6-002-SC, June 21, 1988, where the court denied the request of Ms. Esther C. Rabanal, Technical Assistant II, Leave Section, Office of the Administrative Services of this Court, to work as an insurance agent after office hours including Saturdays, Sundays and holidays. **Indeed, the entire time of Judiciary officials and employees must be devoted to government service to insure efficient and speedy administrative of justice.**
>
> ACCORDING[LY], **all officials and employees of the Judiciary are hereby enjoined from being commissioned as insurance agents or <u>from engaging in any such related activities</u>**, and, to immediately desist therefrom if presently engaged thereat.[83] (emphases and underscoring supplied)

It must be emphasized that all court employees, being public servants in the Judiciary, must always act with a high degree of professionalism and responsibility. Their conduct must not only be characterized by propriety and decorum, but must also be in accordance with the law and court regulations. To maintain

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[83] *Gasulas v. Maralit*, 305 Phil. 636, 638-639 (1994).

the people's respect and faith in the Judiciary, they should be upright, fair and honest. Respondent should avoid any act or conduct that tends to diminish public trust and confidence in the courts.[84]

Nonetheless, the Court takes note that at the time Mendoza absconded, respondent informed complainants about the problem. He updated the parties involved with all the pieces of information he had and even set-up meetings for the parties to discuss the situation, thus, showing good faith in dealing with the issue. Respondent was also a victim of Mendoza. All the monies invested in Mendoza's check-rediscounting business, including respondent's money, were not recovered. Likewise, this is the first offense of respondent in his more than ten (10) years of service in the Judiciary.

Proper Penalty

As discussed-above, respondent committed less serious dishonesty, punishable by suspension of six (6) months and one (1) day to one (1) year for the first offense,[85] and conduct prejudicial to the best interest of the service, punishable by suspension of six (6) months and one (1) day to one (1) year if committed for the first time.[86]

In addition, respondent also violated several administrative rules, particularly: violation of SC-A.C. No. 5-88; and violations of Sec. 5 of Canon III (Conflict of Interest), and Sec. 1 of Canon IV (Performance of Duties) of the Code of Conduct for Court Personnel.

In the recent case of *Boston Finance and Investment Corp. v. Judge Gonzalez*,[87] the Court differentiated the imposition of

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[84] *Release of Compulsory Retirement Benefits Under R.A. No. 8291 of Mr. Isidro P. Austria, etc.*, 744 Phil. 526, 539 (2014).

[85] Section 2 (b) of CSC Resolution No. 06-0538; eventually incorporated as Rule 10, Section 46 (B) (1) of the Revised Rules on Administrative Cases in the Civil Service, promulgated on November 18, 2011.

[86] *Supra* note 70 at 306.

[87] A.M. No. RTJ-18-2520, October 9, 2018.

administrative penalties between justices and judges, and court personnel where multiple offenses are committed, to wit:

In its present form, Rule 140 of the Rules of Court is entitled "Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan." As its titular heading denotes, Rule 140 was crafted to specifically govern the discipline of judges and justices of the lower courts, providing therein not only a distinct classification of charges but also the applicable sanctions. A perusal of the offenses listed therein shows that they are broad enough to cover all kinds of administrative charges related to judicial functions, as they even include violations of the codes of conduct for judges, as well as of Supreme Court directives. It is likewise apparent that the list of offenses therein includes even violations of the civil service rules, such as acts of dishonesty, gambling in public, and engaging in partisan political activities. The Court therefore holds that violations of civil service laws and rules are subsumed under the charges enumerated in Rule 140 of the Rules of Court. x x x

x x x x x x x x x

Hence, in resolving administrative cases against judges or justices of the lower courts, reference need only be made to Rule 140 of the Rules of Court as regards the charges, as well as the imposable penalties. **If the respondent judge or justice is found liable for two (2) or more charges, separate penalties shall be imposed on him/her such that Section 50 of the [Revised Rules on Administrative Cases in the Civil Service (RRACCS)] shall have no application in imposing sanctions.**

On the other hand, as regards other court personnel who are not judges or justices, the [Code of Conduct for Court Personnel] governs the Court's exercise of disciplinary authority over them. x x x.

x x x x x x x x x

Consistent with these cases, the Court resolves that **in administrative cases wherein the respondent court personnel commits multiple administrative infractions, the Court, adopting Section 50 of the RRACCS, shall impose the penalty corresponding to the most serious charge, and consider the rest as aggravating circumstances.**

Thus, to summarize the foregoing discussion, the following guidelines shall be observed:

(a) Rule 140 of the Rules of Court shall exclusively govern administrative cases involving judges or justices of the lower courts. If the respondent judge or justice of the lower court is found guilty of multiple offenses under Rule 140 of the Rules of Court, the Court shall impose separate penalties for each violation; and

(b) The administrative liability of court personnel (who are not judges or justices of the lower courts) shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. **If the respondent court personnel is found guilty of multiple administrative offenses, the Court shall impose the penalty corresponding to the most serious charge, and the rest shall be considered as aggravating circumstances.**[88] (emphases supplied)

In this case, respondent is a court personnel, thus, he shall be governed by the Code of Conduct for Court Personnel, which incorporates, among others, the civil service laws and rules. Consequently, the provisions of CSC Resolution No. 1101502, or the Revised Rules on Administrative Cases in the Civil Service (*RRACCS*) are applicable herein.

As provided under *Boston Finance and Investment Corp. v. Gonzalez*, Sec. 50 of the RRACCS states that 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.[89] Sec. 48 of the same rules also provides that in the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered.[90]

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[88] *Id*.

[89] **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.

[90] **SECTION 48. Mitigating and Aggravating Circumstances.** — In the determination of the penalties to be imposed, mitigating and/or aggravating circumstances attendant to the commission of the offense shall be considered.

Here, the penalty for the most serious charge of less serious dishonesty is suspension for six (6) months and one (1) day to one (1) year. The following are the mitigating circumstances; a) first infraction; and b) more than ten (10) years in service. On the other hand, the following are the aggravating circumstances: a) conduct prejudicial to the best interest of service; b) violation of SC-A.C. No. 5-88 and; c) violations of Sec. 5 of Canon III (Conflict of Interest), and Sec. 1 of Canon IV (Performance of Duties) of the Code of Conduct for Court Personnel. Considering these circumstances,[91] the Court imposes the penalty of one (1) year suspension from office.

The following circumstances shall be appreciated:

a. Physical illness;
b. Good faith;
c. Malice;
d. Time and place of offense;
e. Taking undue advantage of official position;
f. Taking undue advantage of subordinate;
g. Undue disclosure of confidential information;
h. Use of government property in the commission of the offense;
i. Habituality;
j. Offense is committed during office hours and within the premises of the office or building;
k. Employment of fraudulent means to commit or conceal the offense;
l. First offense;
m. Education;
n. Length of service; or
o. Other analogous circumstances.

In the appreciation thereof, the same must be invoked or pleaded by the proper party, otherwise, said circumstances will not be considered in the imposition of the proper penalty. The disciplining authority, however, in the interest of substantial justice may take and consider these circumstances *motu proprio*.

[91] **SECTION 49.** ***Manner of Imposition.*** — When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

a. The *minimum* of the penalty shall be imposed where only mitigating and no aggravating circumstances are present.
b. The *medium* of the penalty shall be imposed where no mitigating and aggravating circumstances are present.
c. The *maximum* of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

However, since respondent is no longer in service as he resigned from the position of Executive Assistant III in OAJ Perez, effective April 30, 2015, the penalty of suspension cannot be meted. In lieu thereof, the Court imposes against respondent the penalty of a fine of one (1) year's salary at the time of his resignation, which amount is to be deducted from whatever benefits, if any, that he is still entitled to receive after his resignation.[92] In *Reyes, Jr. v. Belisario, et al.*,[93] the Court stated that if the respondent is no longer in the service, then the suspension should automatically take the form of a fine equivalent to the respondent's one (1) year salary at the time of his separation from service.[94]

WHEREFORE, respondent Ramdel Rey M. De Leon is **GUILTY** of less serious dishonesty, conduct prejudicial to the best interest of the service, violations of Supreme Court Administrative Circular No. 5-88, and Section 5 of Canon III (Conflict of Interest) and Section 1 of Canon IV (Performance of Duties) of the Code of Conduct for Court Personnel. He is hereby meted with a **FINE** in the amount equivalent to his salary for one (1) year in the service to be deducted from whatever benefits he may be entitled to.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Reyes, J. Jr., Hernando, and *Carandang, JJ.*, concur.

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d. Where aggravating and mitigating circumstances are present, paragraph [a] shall be applied where there are more mitigating circumstances present; paragraph [b] shall be applied when the circumstances equally offset each other; and paragraph [c] shall be applied when there are more aggravating circumstances. (Revised Uniform Rules on Administrative Cases in the Civil Service, CSC Resolution No. 1101502, November 8, 2011).

[92] *Cf. Orfila v. Arellano*, 517 Phil. 481, 502 (2006).

[93] 612 Phil. 936 (2009).

[94] *Id*. at 964.

EN BANC

[A.M. No. P-19-3911. January 15, 2019]
(Formerly OCA IPI No. 13-4159-P)

RURAL BANK OF TALISAY (CEBU), INC., represented by its President, ADELE V. VILLO, *complainant, vs.* **MANUEL H. GIMENO, Sheriff IV, Branch 19, Regional Trial Court, Cebu City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; COURT PERSONNEL ARE EXPECTED TO NOT ONLY DEVIATE FROM ENGAGING IN ANY MISCONDUCT, BUT ALSO TO PRESERVE THEIR IMAGE OF INTEGRITY; ANY IMPRESSION OF IMPROPRIETY, MISDEED OR NEGLIGENCE IN THE PERFORMANCE OF THEIR OFFICIAL FUNCTIONS MUST BE AVOIDED.— In *Executive Judge Rojas, Jr. v. Mina*, the Court reminds court personnel of the extreme burden and duty attached to their roles as officers of the Court, to wit: The Code of Conduct for Court Personnel stresses that employees of 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. No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary. Thus, the failure of judicial employees to live up to their avowed duty constitutes a transgression of the trust reposed in them as court officers and inevitably leads to the exercise of disciplinary authority. Much is demanded from court personnel in that they are expected to not only deviate from engaging in any misconduct, but also to preserve their image of integrity. Any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided.

2. ID.; ID.; ID.; ID.; GRAVE MISCONDUCT; DEFINED; CORRUPTION AS AN ELEMENT OF GRAVE MISCONDUCT CONTEMPLATES A SCENARIO WHERE

PUBLIC OFFICIALS UNLAWFULLY AND WRONGFULLY USE THEIR POSITION TO PROCURE SOME BENEFIT FOR THEMSELVES, CONTRARY TO THE RIGHTS OF OTHERS; CASE AT BAR.— Grave misconduct is the intentional wrongdoing or deliberate violation of a rule of law or standard of behavior attended with corruption or a clear intent to violate the law, or flagrant disregard of established rule. Corruption as an element of grave misconduct contemplates a scenario where public officials unlawfully and wrongfully use their position to procure some benefit for themselves, contrary to the rights of others. In the case at bench, respondent's actions were clearly tainted with corruption as he received money from complainant in his capacity as sheriff for the RTC. He, however, appropriated the funds for himself instead of using it to pay for the publication cost for Notice of Extrajudicial Foreclosure Sale. Even if it were true that respondent only used it to pay for the hospital funds of his mother, it cannot be gainsaid that he used his position as sheriff to obtain funds from private persons for his own benefit and to the detriment of the latter.

3. **ID.; ID.; ID.; ID.; LENGTH OF SERVICE DOES NOT *IPSO FACTO* WARRANT THE IMPOSITION OF A LESSER PENALTY AS IT IS AN ALTERNATIVE CIRCUMSTANCE WHICH MAY SERVE AS AN AGGRAVATING OR MITIGATING CIRCUMSTANCE DEPENDING ON THE FACTUAL MILIEU OF EACH CASE; PENALTY IN CASE AT BAR.—** Grave misconduct is a serious offense which could lead to dismissal from the service of the errant employee. Respondent, however, pleads that his length of service be considered in the imposition of the penalty considering that this is his first offense. It is true that in several instances, the Court had reduced the penalty of dismissal on account of length of service and other present mitigating circumstances. Nevertheless, length of service does not *ipso facto* warrant the imposition of a lesser penalty as it is an alternative circumstance which may serve as an aggravating or mitigating circumstance depending on the factual milieu of each case. In the present case, respondent's length of service does not justify the imposition of a penalty lesser than dismissal from service. The length of service had been taken against the erring public official, even if it is for the first offense, in cases involving serious offense

such as grave misconduct. In addition, he failed to exhibit that his contrition was genuine. x x x Respondent, having been previously dropped from the rolls for being on absence without leave, renders the penalty of dismissal from service is inapplicable. Nevertheless, the penalty should be enforced in full by imposing the administrative disabilities attendant thereto.

APPEARANCES OF COUNSEL

Ordiniza & Cusap Law Offices for complainant.

D E C I S I O N

***PER CURIAM*:**

Subject of this Decision is the complaint filed by the Rural Bank of Talisay (Cebu), Inc., represented by its president Adele V. Villo (complainant), seeking the dismissal from service of Manuel H. Gimeno, Sheriff IV, Branch 19, Regional Trial Court, Cebu City (respondent).

Factual Antecedents

On November 23, 2007, Arnie A. Cabanero (Cabanero) obtained a credit accommodation for a principal amount of ₱150,000.00 from complainant. The obligation was secured by a real estate mortgage over a parcel of land registered under Transfer Certificate of Title No. 161323. Complainant sent a demand letter to Cabanero requiring him to settle his overdue account, exclusive of interest and penalties. After he failed to timely settle his account, the bank filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage. The said complaint for extrajudicial foreclosure was raffled to respondent, as sheriff designate of the Regional Trial Court, Branch 19, Cebu City (RTC).[1]

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[1] *Rollo*, pp. 3-4.

On December 8, 2011, respondent brought a copy of the December 8, 2011 Notice of Extrajudicial Foreclosure Sale, together with an undated bill for his services in the foreclosure proceedings including the cost of publication of the notice in a newspaper of general circulation to complainant. The bank's representative paid him the amount of ₱10,000.00 as cost for publication. The December 2011 Notice indicated that the public auction was to be held on January 25, 2012.[2]

In January 2012, Cebu Daily News (CBN), a newspaper of general circulation, called complainant asking for the payment for the publication so that it can publish the December 2011 Notice. The bank claimed that it had given the payment for publication to respondent but CBN denied receiving the same.[3]

On January 12, 2012, complainant's officers visited respondent in his office seeking an explanation regarding the unpaid publication cost. He, however, merely prepared a Second Amended Notice of Extrajudicial Foreclosure Sale setting the Public Auction on February 16, 2012. Respondent assured complainant that he would take care of the payment with CBN.[4]

During the February 16, 2012 public auction, complainant placed a bid price of ₱350,000.00. After the public sale, it asked for the sheriff's certificate of sale for annotation on the title from respondent but the latter failed to do so. Complainant eventually learned that the January 2012 Notice was also not published in CBN. This prompted complainant to report the matter to the Executive Judge of the RTC, who directed the clerk of court to conduct an investigation.[5]

In its August 10, 2012 Report,[6] the Office of the Clerk of Court of the RTC (OCC) recommended the imposition of the

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[2] *Id*. at 4.

[3] *Id*.

[4] *Id*. at 5.

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

[6] *Id*. at 30-31.

appropriate administrative sanction against respondent. It pointed out that respondent did not deny receiving the ₱10,000.00 as publication cost from complainant, but was not able to use it as he paid it for the hospital expenses of his mother. The OCC stated that respondent promised that the Notice of Extrajudicial Foreclosure would be published on July 27, 2012, but up until its report was made, no publication ever took place.

Meanwhile, the RTC Executive Judge forwarded complainant's letter to the Office of the Court Administrator (OCA). The OCA informed complainant that there must be a formal complaint under oath filed against respondent before the said office could act on the matter.[7] Thus, it filed the present complaint against respondent. In his Comment,[8] respondent admitted receiving the ₱10,000.00 as publication cost from complainant but was unable to use it for the said purpose as he used the same to pay his mother's hospital bills. He explained that if not for his ailing mother, he would have used the said amount to pay for the publication cost as he was only compelled by dire needs to act as he did. Respondent highlighted that in his 22 years of service, this is the first and only complaint against him as he had worked in accordance with ethical standards.

OCA Report and Recommendation

In its April 6, 2017 Report and Recommendation,[9] the OCA ruled that respondent should be dismissed from service for gross misconduct and dishonesty. It noted that respondent tarnished the reputation of the judiciary after he appropriated for himself the money given to him by complainant as payment for publication cost. The OCA also highlighted that it took two years for respondent to answer the complaint against him and only after he was dropped from the rolls and while he was processing his early retirement benefits.

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[7] *Id*. at 32.

[8] *Id*. at 51-52.

[9] *Id*. at 53-57.

The Court's Ruling

The Court concurs with OCA's Report and Recommendation.

In *Executive Judge Rojas, Jr. v. Mina*,[10] the Court reminds court personnel of the extreme burden and duty attached to their roles as officers of the Court, to wit:

> The Code of Conduct for Court Personnel stresses that employees of 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. No other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary. Thus, the failure of judicial employees to live up to their avowed duty constitutes a transgression of the trust reposed in them as court officers and inevitably leads to the exercise of disciplinary authority.

Much is demanded from court personnel in that they are expected to not only deviate from engaging in any misconduct, but also to preserve their image of integrity. Any impression of impropriety, misdeed or negligence in the performance of their official functions must be avoided.[11] In *Tolentino-Genilo v. Pineda*,[12] the Court emphasized that those tasked with the dispensation of justice should be beyond reproach, to wit:

> **There is no place in the judiciary for those who cannot meet the exacting standards of judicial conduct and integrity. This is because the image of a court of justice is necessarily mirrored in the conduct, official or otherwise, of the men and women who work thereat, from the judge to the least and lowest of its personnel.** Thus, it becomes the imperative sacred duty of each and every one in the court to maintain its good name and standing as a true temple of justice.
>
> Too, a public servant is expected to exhibit, at all times, the highest degree of honesty and integrity and should be made accountable to all those whom he serves.

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[10] 688 Phil. 241, 247 (2012).

[11] *Noces-De Leon v. Florendo*, 781 Phil. 334, 339 (2016).

[12] A.M. No. P-17-3756, October 10, 2017.

The Court succinctly stated in the case of *Araza v. Sheriffs Garcia and Tonga* that the conduct and behavior of every person connected with an office charged with the dispensation of justice, from the presiding judge to the lowest clerk, is circumscribed with a heavy burden of responsibility. **His conduct, at all times, must not only be characterized by propriety and decorum but also, and above all else, be above suspicion.** (Emphases and underscoring supplied)

Measured by the exacting standards imposed on court personnel, it is unquestionable that respondent severely failed to uphold what was expected of him. He readily admits that he appropriated for himself the money given to him by complainant as payment for publication costs. Respondent's liability is indubitable and the only genuine issue to be resolved is the penalty to be imposed for his transgressions.

Grave misconduct is the intentional wrongdoing or deliberate violation of a rule of law or standard of behavior attended with corruption or a clear intent to violate the law, or flagrant disregard of established rule.[13] Corruption as an element of grave misconduct contemplates a scenario where public officials unlawfully and wrongfully use their position to procure some benefit for themselves, contrary to the rights of others.[14]

In the case at bench, respondent's actions were clearly tainted with corruption as he received money from complainant in his capacity as sheriff for the RTC. He, however, appropriated the funds for himself instead of using it to pay for the publication cost for Notice of Extrajudicial Foreclosure Sale. Even if it were true that respondent only used it to pay for the hospital funds of his mother, it cannot be gainsaid that he used his position as sheriff to obtain funds from private persons for his own benefit and to the detriment of the latter.

In addition, respondent failed to exhibit contriteness after he continuously failed to make the necessary payments for publications in spite of demands or opportunities for him to

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[13] *Geronca v. Magalona*, 568 Phil. 564, 570 (2008).

[14] *Salazar v. Barriga*, 550 Phil. 44, 49 (2007).

correct his wrongdoings. *First*, he did not fulfill his promise that he would publish the Amended Notice of Extrajudicial Foreclosure when he was confronted by the complainant for the first time. *Second*, respondent twice assured the OCC that he would publish the Notice of Extrajudicial Foreclosure Sale,[15] but, again, remained unheeded. In addition, it is noteworthy that as pointed out by the OCA, he showed lack of interest in answering the accusations against him as it was only after he was already dropped from the rolls and was in the process of claiming his early retirement benefits that he found it worthwhile to submit his comment on the charges against him.

Grave misconduct is a serious offense which could lead to dismissal from the service of the errant employee. Respondent, however, pleads that his length of service be considered in the imposition of the penalty considering that this is his first offense. It is true that in several instances,[16] the Court had reduced the penalty of dismissal on account of length of service and other present mitigating circumstances. Nevertheless, length of service does not *ipso facto* warrant the imposition of a lesser penalty as it is an alternative circumstance which may serve as an aggravating or mitigating circumstance depending on the factual milieu of each case.[17]

In the present case, respondent's length of service does not justify the imposition of a penalty lesser than dismissal from service. The length of service had been taken against the erring public official, even if it is for the first offense, in cases involving serious offense such as grave misconduct.[18]

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[15] *Rollo*, p. 30.

[16] *Committee on Security and Safety, Court of Appeals v. Dianco*, 777 Phil. 16 (2016); *Apuyan, Jr. v. Sta. Isabel*, 474 Phil. 1 (2004); *In Re: Delayed Remittance of Collections of Odtuhan*, 445 Phil. 220 (2003); *Executive Judge Contreras-Soriano v. Salamanca*, 726 Phil. 355 (2014).

[17] *Civil Service Commission v. Cortez*, 474 Phil. 670, 685-686 (2004).

[18] *Gannapao v. Civil Service Commission*, 665 Phil. 60, 81 (2011).

In addition, he failed to exhibit that his contrition was genuine especially since he never actually published the notices for extrajudicial foreclosure in spite of previous promises or demands. Further manifesting respondent's lack of true remorse is the fact that he only bothered answering the charges against him when he was already in the process of claiming his early retirement benefits. Moreover, his act of appropriating the money given to him by complainant puts the Judiciary and its processes in a bad light. This gives an impression to the public that the courts and its personnel would not hesitate to shun their public duties in exchange for personal gain.

Respondent, having been previously dropped from the rolls for being on absence without leave,[19] renders the penalty of dismissal from service inapplicable. Nevertheless, the penalty should be enforced in full by imposing the administrative disabilities attendant thereto.[20]

WHEREFORE, Manuel H. Gimeno, Sheriff IV, Branch 19, Regional Trial Court, Cebu City, is **GUILTY** of Grave Misconduct and would have been **DISMISSED** from the service, had he not been earlier dropped from the rolls. Accordingly, his retirement and other benefits, except accrued leave credits, are hereby **FORFEITED** and he is **PERPETUALLY DISQUALIFIED** from re-employment in any branch or instrumentality of the government, including government-owned or controlled corporation.

SO ORDERED.

Bersamin, C.J., *Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando*, and *Carandang, JJ.*, concur.

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[19] *Rollo*, p. 55.

[20] *Judge Lagado v. Leonido*, 741 Phil. 102, 108 (2014).

EN BANC

[G.R. No. 231643. January 15, 2019]

CHRISTIAN C. HALILI, *petitioner, vs.* **COMMISSION ON ELECTIONS, PYRA LUCAS, and CRISOSTOMO GARBO,** *respondents.*

[G.R. No. 231657. January 15, 2019]

MARINO P. MORALES, *petitioner, vs.* **PYRA LUCAS and the COMMISSION ON ELECTIONS,** *respondents.*

CHRISTIAN C. HALILI and CRISOSTOMO GARBO, *respondents-intervenors.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE; ELECTIVE OFFICIALS; THREE-TERM LIMIT RULE; PURPOSE; NO LOCAL ELECTIVE OFFICIAL SHALL SERVE FOR MORE THAN THREE (3) CONSECUTIVE TERMS IN THE SAME POSITION; TWO (2) CONDITIONS THAT MUST CONCUR FOR THE APPLICATION OF THE DISQUALIFICATION OF A CANDIDATE BASED ON VIOLATION OF THE THREE-TERM LIMIT RULE; CASE AT BAR.— The intention behind the three-term limit rule is not only to abrogate the "monopolization of political power" and prevent elected officials from breeding "proprietary interest in their position" but also to "enhance the people's freedom of choice." There are two conditions which must concur for the application of the disqualification of a candidate based on violation of the three-term limit rule: (1) that the official concerned has been elected for three consecutive terms in the same local government post, and (2) that he has fully served three consecutive terms. In the present case, Morales admits that he has been elected and has served as mayor of Mabalacat, Pampanga for three consecutive terms: (1) 2007-2010; (2) 2010-2013; and (3) 2013-2016. However, Morales insists that his second term as mayor of the Municipality of Mabalacat was

interrupted by the conversion of the municipality into a component city. Morales claims that Mabalacat City is an entirely different political unit from the Municipality of Mabalacat, having an increased territory, income and population. We are not convinced. We have already ruled upon the same issue in the case of *Latasa v. COMELEC (Latasa)*, where we held that the conversion of a municipality into a city does not constitute an interruption of the incumbent official's continuity of service. We held that to be considered as interruption of service, the "law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit."

2. STATUTORY CONSTRUCTION; WHEN THE LAW IS CLEAR AND FREE FROM ANY DOUBT OR AMBIGUITY, THERE IS NO ROOM FOR CONSTRUCTION OR INTERPRETATION, BUT ONLY APPLICATION; CASE AT BAR.— When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, but only application. *Verba legis non est recedendum*, or from the words of a statute there should be no departure. Thus, contrary to Morales' arguments, the territorial jurisdiction of Mabalacat City is the same as that of the Municipality of Mabalacat. Also, the elective officials of the Municipality of Mabalacat continued to exercise their powers and functions until elections were held for the new city officials. Applying our ruling in *Latasa*, the provisions of RA 10164 mean that the delineation of the metes and bounds of Mabalacat City did not change even by an inch the land area previously covered by the Municipality of Mabalacat. Consequently, the inhabitants are the same group of voters who elected Morales to be their mayor for three consecutive terms, and over whom he held power and authority as their mayor. Accordingly, Morales never ceased from acting and discharging his duties and responsibilities as chief executive of Mabalacat, despite the conversion of the Municipality of Mabalacat into Mabalacat City.

3. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; PETITION TO DENY DUE COURSE TO OR CANCEL A CERTIFICATE OF CANDIDACY (COC); WHAT MUST BE ALLEGED IN THE PETITION;

CASE AT BAR.— In *Albania v. Commission on Elections*, we held that the COMELEC has the authority to examine the allegations of every pleading filed, obviously aware that its averments, rather than its title/caption, are the proper gauges in determining the true nature of the cases filed before it. Thus, the COMELEC aptly found that Lucas' petition contains the essential allegations of a "Section 78" petition, namely: (1) the candidate made a representation in his COC; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate; and (3) the candidate made a false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible.

4. ID.; ID.; ID.; ID.; IF THE DISQUALIFICATION OR COC CANCELLATION/DENIAL IS NOT RESOLVED BEFORE THE ELECTION DAY, THE PROCEEDINGS SHALL CONTINUE EVEN AFTER THE ELECTION AND THE PROCLAMATION OF THE WINNER; THE COMMISSION ON ELECTION'S (COMELEC'S) JURISDICTION CONTINUES EXCEPT IF THE CASE INVOLVES CONGRESSIONAL OR SENATORIAL CANDIDATE WHO HAS TAKEN HIS/HER OATH OF OFFICE, IN WHICH CASE, THE RESPECTIVE ELECTORAL TRIBUNAL ASSUMES JURISDICTION.— Contrary to Morales' argument that since he had been proclaimed and had assumed office as mayor in 2016, disputes as to his COC became moot and the proper remedy is to file a *quo warranto* proceeding questioning his eligibility, we held in *Velasco v. Commission on Elections* that the COMELEC's jurisdiction to deny due course to and cancel a COC continues, to wit: x x x. If the disqualification or COC cancellation/denial case is not resolved before election day, the proceedings shall continue even after the election and the proclamation of the winner. In the meanwhile, the candidate may be voted for and be proclaimed if he or she wins, but the COMELEC's jurisdiction to deny due course and cancel his or her COC continues. This rule applies even if the candidate facing disqualification is voted for and receives the highest number of votes, and even if the candidate is proclaimed and has taken his oath of office. The only exception to this rule is in the case of congressional or senatorial candidates

with unresolved disqualification or COC denial/cancellation cases after the elections. Pursuant to Section 17 of Article VI of the Constitution, the COMELEC *ipso jure* loses jurisdiction over these unfinished cases in favor of the respective Senate or the House of Representatives electoral tribunals after the candidates take their oath of office.

5. ID.; ID.; ID.; PETITION MUST BE FILED WITHIN TWENTY-FIVE (25) DAYS FROM THE TIME OF FILING OF THE CERTIFICATE OF CANDIDACY; CASE AT BAR.— Under Section 78, a petition to deny due course to or to cancel a COC must be filed within 25 days from the time of filing of the COC. Morales filed his COC on 8 December 2015. Thus, Lucas had until 2 January 2016 to file the petition under Section 78, but since 2 January 2016 fell on a Saturday, Lucas had until the next working day or 4 January 2016 to file the petition. We, thus, find that Lucas timely filed her petition on 4 January 2016 under Section 78 of the OEC.

6. ID.; CONSTITUTIONAL COMMISSIONS; COMELEC; RULES OF PROCEDURE ON CERTIFICATIONS OF NON-FORUM SHOPPING SHALL BE LIBERALLY CONSTRUED.— [C]ontrary to Morales' insistence, the COMELEC Rules of Procedure do not require that a certification of non-forum shopping be attached to the petition. At any rate, we held that the COMELEC's rules of procedure on certifications of non-forum shopping should be liberally construed, and COMELEC's interpretation of such rules in accordance with its constitutional mandate should carry great weight.

7. ID.; ID.; ID.; AS AN ADJUNCT TO ITS ADJUDICATORY POWER, COMELEC MAY INVESTIGATE FACTS OR ASCERTAIN THE EXISTENCE OF FACTS, HOLD HEARINGS, WEIGH EVIDENCE, AND DRAW CONCLUSIONS FROM THEM AS BASIS FOR THEIR OFFICIAL ACTION; NO PRIOR JUDGMENT RECOGNIZING A CANDIDATE'S SERVICE FOR THREE (3) CONSECUTIVE TERMS IS NECESSARY TO EFFECT THE CANCELLATION OF A COC.— We held in *Francisco v. Commission on Elections* that the COMELEC can be the proper body to make the pronouncement against which the truth or falsity of a material representation in a COC can be measured. The COMELEC, as an adjunct to its adjudicatory power, may

investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action. We upheld our ruling in *Aratea* that no prior judgment recognizing a candidate's service for three consecutive terms was necessary to effect the cancellation of his COC.

8. ID.; ELECTION LAWS; OMNIBUS ELECTION CODE; PETITION TO DENY DUE COURSE TO OR CANCEL A CERTIFICATE OF CANDIDACY (COC); SELF-EVIDENT FACTS OF UNQUESTIONED OR UNQUESTIONABLE VERACITY AND JUDICIAL CONFESSIONS ARE BASES EQUIVALENT TO PRIOR DECISIONS AGAINST WHICH THE FALSITY OF REPRESENTATION CAN BE DETERMINED; CASE AT BAR.— [W]e also held in *Poe* that self-evident facts of unquestioned or unquestionable veracity and judicial confessions are bases equivalent to prior decisions against which the falsity of representation can be determined. Since Morales admits having been elected and having served for three consecutive terms, his admission already served as basis against which the falsity of his representation can be determined. Knowing fully well that he had been elected and had fully served three consecutive terms for the same local government post, Morales' representation in his COC that he was eligible to run as mayor constitutes false material representation as to his qualification or eligibility for the office, which is a ground for a petition to deny due course to or cancel a COC. Accordingly, we find that Morales' COC is void *ab initio*, and he was never a candidate at all, and all votes for him were considered stray votes.

9. ID.; ID.; ID.; ID.; EFFECTS OF CANCELLATION OF A COC THAT IS VOID *AB INITIO*; CASE AT BAR.— A person whose COC had been denied due course and/or cancelled under Section 78 is deemed to have not been a candidate at all, because his COC is considered void *ab initio* and thus, cannot give rise to a valid candidacy and necessarily to valid votes. In *Jalosjos, Jr. v. Commission on Elections*, we explained that: x x x **If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the**

elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning. This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio* can operate to defeat one or more valid certificates of candidacy for the same position. The rule on succession under Section 44 of RA 7160, as espoused by Halili, would not apply if the permanent vacancy was caused by one whose COC was void *ab initio*. In case of vacancies caused by those with void *ab initio* COCs, the person legally entitled to the vacant position would be the candidate who garnered the next highest number of votes among those eligible. In this case, it is Garbo who is legally entitled to the position of mayor, having garnered the highest number of votes among the eligible candidates. Thus, the COMELEC correctly proclaimed Garbo as mayor of Mabalacat City.

10. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ARISES WHEN A COURT OR TRIBUNAL VIOLATES THE CONSTITUTION, THE LAW, OR EXISTING JURISPRUDENCE; NOT ESTABLISHED IN CASE AT BAR.— In a special civil action for *certiorari*, the burden rests on the petitioner to prove grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent in issuing the impugned order, decision or resolution. Grave abuse of discretion is such "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law." In short, grave abuse of discretion arises when a court or tribunal violates the Constitution, the law, or existing jurisprudence. In this case, the Court finds the COMELEC's disquisitions to be amply supported by the Constitution, law, and jurisprudence.

APPEARANCES OF COUNSEL

Jose C. Lachica, Jr., for petitioner Christian C. Halili.

Romulo B. Macalintal and *Antonio Carlos B. Bautista* for petitioner Marino P. Morales.

Magelio S. Arboladura for private respondent Crisostomo C. Garbo.

Saberon Perez-Quililan and Associates Law Offices for private respondent Pyra N. Lucas.

The Solicitor General for public respondent Commission on Elections.

D E C I S I O N

CARPIO, *J.*:

The Case

These two consolidated[1] petitions[2] seek to nullify and set aside the Resolution[3] dated 3 August 2016 of the Commission on Elections (COMELEC) First Division and the Resolution[4] dated 26 May 2017 of the COMELEC En Banc.

The Facts

Petitioner Marino P. Morales (Morales) was elected and served as Mayor of the Municipality of Mabalacat, Pampanga from 1 July 2007 to 30 June 2010. He was elected again as mayor during the 2010 elections. On 15 May 2012, or during Morales' second term, Congress passed Republic Act No. (RA) 10164,[5] converting the Municipality of Mabalacat into a

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[1] Resolution dated 11 July 2017. See *Rollo* (G.R. No. 231643), p. 154; *Rollo* (G.R. No. 231657), Vol. I, p. 456-A.

[2] *Rollo* (G.R. No 231643), pp. 3-17; *Rollo* (G.R. No. 231657), Vol. I, pp. 3-69. Under Rule 64 in relation to Rule 65 of the Rules of Court.

[3] *Rollo* (G.R No. 231657), Vol. I, pp. 293-302.

[4] *Id*. at 409-425.

[5] An Act Converting the Municipality of Mabalacat in the Province of Pampanga into a Component City to be Known as Mabalacat City.

component city. Thereafter a plebiscite was held. In the 2013 elections, Morales ran again and was elected as mayor of the new Mabalacat City. On 8 December 2015, Morales filed his Certificate of Candidacy[6] (COC) for the 2016 elections for the position of mayor of Mabalacat City, as substitute candidate for Wilfredo Feliciano of *Aksyon Demokratiko* Party.

On 4 January 2016, respondent Pyra Lucas (Lucas), also a candidate for the position of mayor of Mabalacat City, filed a Petition for Cancellation of the COC and/or Disqualification of Morales for the Mayoral Position of Mabalacat City,[7] docketed as SPA No. 16-001 (DC), before the COMELEC. Lucas alleged that Morales was disqualified to run for mayor, since he was elected and had served three consecutive terms prior to the 2016 elections. Lucas also alleged that the conversion of the Municipality of Mabalacat into Mabalacat City did not interrupt Morales' service for the full term for which he was elected.

On 25 January 2016, Morales filed his Verified Answer[8] alleging that Lucas' petition should be summarily dismissed for lack of certification against forum shopping, for being filed out of time, and for lack of jurisdiction and/or cause of action. Morales claimed that his candidacy did not violate the three-term limit rule, because the conversion of the Municipality of Mabalacat into Mabalacat City interrupted his term. According to him, his term as mayor of Mabalacat City is not a continuation of his term as mayor of the Municipality of Mabalacat.

On 10 May 2016, following the canvass of all election returns, the City Board of Canvassers of Mabalacat City proclaimed Morales as elected city mayor, and petitioner Christian C. Halili (Halili) as elected city vice mayor.

On 20 May 2016, respondent Crisostomo Garbo (Garbo), another candidate for the position of mayor of Mabalacat City,

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[6] *Rollo* (G.R. No. 231657), Vol. I, p. 91.

[7] *Id.* at 75-80.

[8] *Id.* at 98-120.

filed a Motion for Leave To Intervene and To Admit Attached Petition-in-Intervention[9] alleging that he was interested in the outcome of the case, since he obtained the second highest number of votes and he should be proclaimed as mayor of Mabalacat City should Morales' COC be cancelled.

On 28 June 2016, Halili also filed a Verified Motion for Leave to Intervene (as Respondent) and Admit Attached Answer-in-Intervention[10] alleging that, as incumbent vice mayor of Mabalacat City, he should be proclaimed as mayor of Mabalacat City should Morales' COC be cancelled pursuant to the rule on succession under Section 44 of RA 7160, or the Local Government Code.

On 16 December 2016, Morales filed an Opposition[11] to Garbo's Petition-in-Intervention and a Comment[12] to Halili's Answer-in-Intervention before the COMELEC, alleging that both pleadings are premature.

The Ruling of the COMELEC

In a Resolution dated 3 August 2016, the COMELEC First Division granted the petition, cancelled Morales' COC, and ordered the proclamation of the qualified mayoralty candidate with the next higher number of votes. The dispositive portion states:

> WHEREFORE, the Petition is GRANTED. Accordingly, the Certificate of Candidacy of MARINO P. MORALES is hereby CANCELLED. All votes cast in his favor are declared stray.
>
> The City Board of Canvassers of Mabalacat, Parnpanga is hereby ORDERED to RECONVENE, ANNUL the proclamation of MARINO P. MORALES, PROCLAIM the qualified candidate with the next highest number of votes, and EFFECT the necessary corrections in the Certificate of Canvass and Proclamation.

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[9] *Id*. at 269-280.

[10] *Id*. at 281-291.

[11] *Id*. at 390-396.

[12] *Id*. at 398-401.

SO ORDERED.[13]

The COMELEC First Division ruled that Lucas' petition was a petition for cancellation of COC under Section 78 of the Omnibus Election Code (OEC), and it was timely filed. The COMELEC First Division likewise held that Morales committed a material misrepresentation in his COC in stating that he is eligible to run as mayor of Mabalacat City, when in fact he is not eligible, because he violated the three-term limit rule after having served for the same local government post for three consecutive terms prior to the 2016 elections.

On 27 January 2017, the COMELEC En Banc granted the motions for leave to intervene filed by Garbo and Halili.

In a Resolution dated 26 May 2017, the COMELEC En Banc denied the motion for reconsideration filed by Morales for lack of merit, and affirmed the Resolution dated 3 August 2016 of the COMELEC First Division.[14] The COMELEC En Banc declared that Garbo, being the qualified mayoralty candidate with the highest number of votes, should be proclaimed.

On 1 June 2017, Lucas filed a Motion for Execution, and a subsequent Manifestation alleging the finality of the COMELEC En Banc Resolution dated 26 May 2017. Thereafter, Morales filed an Opposition to the Motion for Execution.

On 2 June 2017, Halili filed a Petition for Certiorari and Prohibition With Application for Temporary Restraining Order and/or *Status Quo Ante* Order[15] before us, docketed as G.R. No. 231643.

On 5 June 2017, Morales filed a Petition for Certiorari and Prohibition with Urgent Prayer for Issuance of Temporary Restraining Order and/or *Status Quo Ante* Order and/or

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[13] *Id*. at 302.

[14] *Id*. at 420.

[15] *Rollo* (G.R. No. 231643), pp. 3-17.

Writ of Preliminary Injunction with Motion for Special Raffle[16] before us, docketed as G.R. No. 231657.

On 8 June 2017, the COMELEC En Banc issued a Writ of Execution: (1) ordering Morales to cease and desist from performing the functions of mayor of Mabalacat City, Pampanga; (2) directing, after due notice to the parties, the Special City Board of Canvassers of Mabalacat City, Pampanga to convene on 27 June 2017, 3:00 p.m., at the COMELEC Session Hall, 8th Floor, Palacio del Gobernador Building, Intramuros, Manila and to proclaim Garbo, who garnered the highest number of votes of Seventeen Thousand Seven Hundred Ten (17,710) votes, as the duly elected mayor of Mabalacat City, Pampanga; and (3) directing the Special City Board of Canvassers of Mabalacat City, Pampanga to furnish a copy of the Certificate of Proclamation to the Department of Interior and Local Government, Secretary of the Sangguniang Panlungsod of Mabalacat City and affected parties.[17]

In two Resolutions both dated 11 July 2017, the Court *En Banc* resolved to consolidate G.R. No. 231643 with G.R. No. 231657, and to deny for lack of merit: (a) the Very Urgent Motion Reiterating the Issuance of Temporary Restraining Order and/or *Status Quo Ante* Order and Writ of Preliminary Injunction (as Respondent COMELEC Issued a Writ of Execution to Implement the Assailed Resolutions) dated 9 June 2017 filed by Morales;[18] (b) the Second Very Urgent Motion to Resolve Application for TRO and/or *Status Quo Ante* Order dated 21 June 2017 filed by Morales;[19] and (c) the Urgent Motion to Resolve Application for TRO/*Status Quo Ante* Order and/or Writ of Preliminary Injunction dated 9 June 2017 filed by Halili.[20]

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[16] *Rollo* (G.R. No. 231657), pp. 3-69.

[17] *Id*. at 436-439.

[18] *Rollo* (G.R. No. 231657), pp. 456-A-456-B.

[19] *Id*.

[20] *Rollo* (G.R. No. 231643), pp. 154-155.

The Issues

In G.R. No. 231643, Halili raised the following issues:

A. Whether or not the Honorable Commission on Elections committed grave abuse of discretion amounting to lack or excess of jurisdiction in considering the application of *Aratea vs. Comelec* case as basis in declaring that "the Petitioner-Intervenor [Crisostomo Garbo] being the qualified mayoral candidate with the highest number of votes should be proclaimed?"

B. Whether or not the Honorable Commission on Elections committed grave abuse of discretion amounting to lack or excess of jurisdiction in not declaring a permanent vacancy in the office of the Mayor of Mabalacat City pursuant to Section 4, R.A. 716[0] [Local Government Code of 1991] after it cancelled the COC of Marino P. Morales?

C. Whether or not the Honorable Commission on Elections committed grave abuse of discretion amounting to lack or excess of jurisdiction in ordering the reconvening of the 2016 Elections City Board of Canvassers of Mabalacat City to proclaim the qualified candidate with the next highest number of votes?[21]

In G.R. No. 231657, Morales raised the following issues:

a. Whether public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in arbitrarily treating the VERY VAGUE *Lucas Petition* as a Petition to Deny Due Course despite the fact that there is NOT a single statement or allegation in said Petition that petitioner committed "deliberate material misrepresentation";

   a.1. Whether public respondent should have DISMISSED the *Lucas Petition* OUTRIGHT for being defective because it is a Petition for Disqualification invoking a ground proper for a Petition to Deny Due Course, in violation of Section 1, Rule 25, COMELEC Resolution No. 9523;

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[21] *Id*. at 9.

b. Assuming *arguendo* that the *Lucas Petition* can be treated as a Petition to Deny Due Course, whether public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it failed to DISMISS OUTRIGHT the *Lucas Petition* for being filed out of time and for failure of private respondent to attach to said Petition a Certificat[ion] of Non-Forum Shopping, as required by the Rules;

c. Assuming *arguendo* that the *Lucas Petition* can be treated as a Petition to Deny Due Course, whether public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it did NOT dismiss the *Lucas Petition* despite the fact that there is no prior "authoritative ruling" yet on petitioner's eligibility by any competent court or tribunal, following the doctrine laid down by this Court in the case of *Poe vs. Comelec*. In a word, whether or not petitioner violated the three-term limit rule when he ran for Mayor of the newly created Mabalacat City in the May 9, 2016 elections;

d. Assuming *arguendo* that the *Lucas Petition* can be treated as a Petition to Deny Due Course, whether public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when [it] refused to dismiss the *Lucas Petition* on the basis of its Resolution in the *Castro Petition with practically the same issues herein*, which had already attained finality pending resolution of the *Lucas Petition*;

e. Whether public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction when it refused to dismiss the *Lucas Petition* despite the fact that it had already lost jurisdiction over the case since the petitioner had already been proclaimed and assumed office, similar or analogous to the ruling of this Court in various cases that "after the proclamation of the winning candidate, disputes as to his CoC become moot (and are taken out of COMELEC's jurisdiction) and the proper remedy is to file a *quo warranto* proceeding questioning the candidate's eligibility"; and

f. Public respondent committed grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that

the second placer in the subject contest should replace petitioner.[22]

The Ruling of the Court

The primordial issue to be resolved is whether or not the COMELEC gravely abused its discretion amounting to lack or excess of jurisdiction: (1) in finding that Morales committed a false material representation in his COC when he declared that he was eligible to run as mayor of Mabalacat City for the 2016 elections despite his violation of the three-term limit rule; and (2) in proclaiming Garbo as the duly elected mayor of Mabalacat City for being the qualified candidate with the highest number of votes.

We do not find merit in both petitions.

The three-term limit rule is embodied in Section 8, Article X of the 1987 Constitution, to wit:

Section 8. The term of office of elective local officials, except barangay officials, which shall be determined by law, shall be three years and no such official shall serve for more than three consecutive terms. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of his service for the full term for which he was elected.

It is restated in Section 43 of the Local Government Code, thus:

Section 43. Term of Office. — (a) x x x.

b) No local elective official shall serve for more than three (3) consecutive terms in the same position. Voluntary renunciation of the office for any length of time shall not be considered as an interruption in the continuity of service for the full term for which the elective official concerned was elected.

x x x x x x x x x

The intention behind the three-term limit rule is not only to abrogate the "monopolization of political power" and prevent

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[22] *Rollo* (G.R. No. 231657), pp. 22-25.

elected officials from breeding "proprietary interest in their position" but also to "enhance the people's freedom of choice."[23] There are two conditions which must concur for the application of the disqualification of a candidate based on violation of the three-term limit rule: (1) that the official concerned has been elected for three consecutive terms in the same local government post, and (2) that he has fully served three consecutive terms.[24]

In the present case, Morales admits that he has been elected and has served as mayor of Mabalacat, Pampanga for three consecutive terms: (1) 2007-2010; (2) 2010-2013; and (3) 2013-2016. However, Morales insists that his second term as mayor of the Municipality of Mabalacat was interrupted by the conversion of the municipality into a component city. Morales claims that Mabalacat City is an entirely different political unit from the Municipality of Mabalacat, having an increased territory, income and population.

We are not convinced.

We have already ruled upon the same issue in the case of *Latasa v. COMELEC (Latasa)*,[25] where we held that the conversion of a municipality into a city does not constitute an interruption of the incumbent official's continuity of service. We held that to be considered as interruption of service, the "law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit."[26]

In *Latasa*, petitioner was elected and served as mayor of the Municipality of Digos, Davao del Sur for terms 1992-1995,

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[23] *Abundo, Sr. v. Commission on Elections*, 701 Phil. 135 (2013), citing *Borja, Jr. v. Commission on Elections*, 356 Phil. 467 (1998).

[24] *Albania v. Commission on Elections*, G.R. No. 226792, 6 June 2017, 826 SCRA 191, 208, citing *Lonzanida v. Commission on Elections*, 370 Phil. 625 (1999).

[25] 463 Phil. 296 (2003).

[26] *Id*. at 312.

1995-1998, and 1998-2001. During petitioner's third term, Digos was converted into a component city. When Latasa filed his COC for the 2001 elections, we held that petitioner was disqualified to run as mayor of Digos City for violation of the three-term limit rule, with the following explanation:

> x x x Section 2 of the Charter of the City of Digos provides:
>
> Section 2. The City of Digos.— The Municipality of Digos shall be converted into a component city to be known as the City of Digos, hereinafter referred to as the City, which shall comprise the present territory of the Municipality of Digos, Davao del Sur Province. The territorial jurisdiction of the City shall be within the present metes and bounds of the Municipality of Digos. x x x.
>
> Moreover, Section 53 of the said Charter further states:
>
> Section 53. Officials of the City of Digos. — The present elective officials of the Municipality of Digos shall continue to exercise their powers and functions until such a time that a new election is held and the duly-elected officials shall have already qualified and assumed their offices. x x x.

As seen in the aforementioned provisions, this Court notes that the delineation of the metes and bounds of the City of Digos did not change even by an inch the land area previously covered by the Municipality of Digos. This Court also notes that the elective officials of the Municipality of Digos continued to exercise their powers and functions until elections were held for the new city officials.

True, the new city acquired a new corporate existence separate and distinct from that of the municipality. This does not mean, however, that for the purpose of applying the subject Constitutional provision, the office of the municipal mayor would now be construed as a different local government post as that of the office of the city mayor. As stated earlier, the territorial jurisdiction of the City of Digos is the same as that of the municipality. Consequently, the inhabitants of the municipality are the same as those in the city. These inhabitants are the same group of voters who elected petitioner Latasa to be their municipal mayor for three consecutive terms. These are also the same inhabitants over whom he held power and authority as their chief executive for nine years.

x x x x x x x x x

x x x. In the present case, petitioner, upon ratification of the law converting the municipality to a city, continued to hold office as chief executive of the same territorial jurisdiction. There were changes in the political and economic rights of Digos as local government unit, but no substantial change occurred as to petitioner's authority as chief executive over the inhabitants of Digos.[27]

Similarly, in *Laceda, Sr. v. Limena, (Laceda)*,[28] we held that the merger and conversion of the municipalities of Sorsogon and Bacon into Sorsogon City did not interrupt petitioner's term as Punong Barangay for three consecutive terms, to wit:

x x x [W]hile it is true that under Rep. Act No. 8806 the municipalities of Sorsogon and Bacon were merged and converted into a city thereby abolishing the former and creating Sorsogon City as a new political unit, it cannot be said that for the purpose of applying the prohibition in Section 2 of Rep. Act No. 9164, the office of *Punong Barangay* of Barangay Panlayaan, Municipality of Sorsogon, would now be construed as a different local government post as that of the office of *Punong Barangay* of Barangay Panlayaan, Sorsogon City. The territorial jurisdiction of Barangay PanJayaan, Sorsogon City, is the same as before the conversion. Consequently, the inhabitants of the barangay are the same. They are the same group of voters who elected Laceda to be their *Punong Barangay*for three consecutive terms and over whom Laceda held power and authority as their *Punong Barangay*. Moreover, Rep. Act No. 8806 did not interrupt Laceda's term.[29]

In the present case, RA 10164, or An Act Converting the Municipality of Mabalacat in the Province of Pampanga into a Component City to be Known as Mabalacat City, provides that:

x x x x x x x x x

Sec. 2. Mabalacat City. — The Municipality of Mabalacat shall be converted into a component city to be known as Mabalacat City,

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[27] *Id*. at 308-310.

[28] 592 Phil. 335 (2008).

[29] *Id*. at 340.

hereinafter referred to as the City. **The territorial jurisdiction of the City shall be within the present metes and bounds of the Municipality of Mabalacat, Province of Pampanga.**

The foregoing provision shall be without prejudice to the resolution by the appropriate agency or forum of any boundary dispute or case involving questions of territorial jurisdiction between Mabalacat City and the adjoining local government units.

x x x x x x x x x

Sec. 52. Officials of Mabalacat City. – **The present elective officials of the Municipality of Mabalacat shall continue to exercise their powers and functions** until such time that a new election is held and the duly-elected officials shall have already qualified and assumed their offices. Appointive officials and employees of the municipality shall likewise continue exercising their duties and functions and they shall be automatically absorbed by the city government of Mabalacat City. (Emphasis supplied)

When the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation, but only application. *Verba legis non est recedendum*, or from the words of a statute there should be no departure. Thus, contrary to Morales' arguments, the territorial jurisdiction of Mabalacat City is the same as that of the Municipality ofMabalacat. Also, the elective officials of the Municipality of Mabalacat continued to exercise their powers and functions until elections were held for the new city officials.

Applying our ruling in *Latasa*, the provisions of RA 10164 mean that the delineation of the metes and bounds of Mabalacat City did not change even by an inch the land area previously covered by the Municipality of Mabalacat. Consequently, the inhabitants are the same group of voters who elected Morales to be their mayor for three consecutive terms, and over whom he held power and authority as their mayor. Accordingly, Morales never ceased from acting and discharging his duties and responsibilities as chief executive of Mabalacat, despite the conversion of the Municipality of Mabalacat into Mabalacat City.

In insisting that Mabalacat City is an entirely different political unit as that of the Municipality of Mabalacat due to an alleged increased territory, income and population, Morales cites the second paragraph of Section 2, RA 10164 and presents a Political Boundary Map before us.

We find that Morales failed to substantiate his claim that Mabalacat City is an entirely different political unit as that of the Municipality of Mabalacat. In his Memorandum, Morales states that: "the Political Boundary Map just offered as EXHIBIT B **never made it to be released officially** by the Bureau of Land Management of the DENR and is **being used only in this case as a reference tool to designate the original and specific intent** of Congress when it passed into law RA 10164, the Charter of Mabalacat City. Though the political boundary map is complete for its intended purpose, respondent acknowledges that **it never got officially released** because of circumstances beyond anyone's control. The notable stumbling blocks against the release of this Political Boundary Map are the already **on-going litigations** among various claimants and the protestations of conflicting claims by would be stakeholders with the new added areas."[30]

Thus, Morales admits that there are on-going litigations, and there is no resolution by an appropriate agency on any boundary dispute, as required by the second paragraph of Section 2, RA 10164. The Political Boundary Map is merely offered to show the intent of Congress in passing RA 10164, when in fact, resort to intention is unnecessary when the law is clear. Accordingly, there is no factual or legal authority for Morales' claim that the territorial jurisdiction of Mabalacat City is different from that of the Municipality of Mabalacat.

Still, Morales insists that his declarations in his COC are material representations of his honest to goodness belief that he was eligible to run.

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[30] *Rollo* (G.R. No. 231657), Vol. I, p. 250.

In *Aratea v. Commission on Elections (Aratea)*,[31] we found that Lonzanida misrepresented his eligibility because he knew fully well that he had been elected, and had served, as mayor of San Antonio, Zambales for more than three consecutive terms, yet, he still certified that he was eligible to run for mayor for the next succeeding term. We held that such misrepresentation constitutes false material representation as to his qualification or eligibility for the office. We explained that:

> In a certificate of candidacy, the candidate is asked to certify under oath his or her eligibility, and thus qualification, to the office he [or she] seeks election. Even though the certificate of candidacy does not specifically ask the candidate for the number of terms elected and served in an elective position, such fact is material in determining a candidate's eligibility, and thus qualification for the office. **Election to and service of the same local elective position for three consecutive terms renders a candidate ineligible from running for the same position in the succeeding elections.**[32] (Emphasis supplied)

In the present case, Morales' alleged lack of knowledge or notice of ineligibility is negated by the previous cases involving the three-term limit rule and his eligibility to run, specifically *Rivera III v. Commission on Elections (Rivera)*[33] and *Dizon v. Commission on Elections (Dizon)*.[34]

In *Rivera*, Morales, the present petitioner, was elected mayor of the Municipality of Mabalacat, Pampanga for the following consecutive terms: 1995-1998, 1998-2001, and 2001-2004. In the 2004 elections, Morales ran again as mayor of the same town and was proclaimed elective mayor for the term commencing 1 July 2004 to 30 June 2007. A petition for *quo warranto* was later filed against Morales alleging that he was ineligible to run for a "fourth" term, having served as mayor

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[31] 696 Phil. 700 (2012).

[32] *Id*. at 738.

[33] 551 Phil. 37 (2007).

[34] 597 Phil. 571 (2009).

for three consecutive terms. Morales answered that his supposed 1998-2001 term could not be considered against him, because although he was proclaimed the elected mayor and discharged the duties of mayor from 1998 to 2001, his proclamation was later nullified by the Regional Trial Court of Angeles City (RTC) and his closest rival was proclaimed the duly elected mayor.

The Court found that Morales exceeded the three-term limit rule, because he was mayor for the entire period from 1998 to 2001, notwithstanding the decision of the RTC. The Court ruled that the fact of being belatedly ousted, which was after the expiry of his term, could not constitute an interruption in Morales' service of the full term, and Morales could not be considered as a mere "caretaker of the office" or "de facto officer" for purposes of applying the three-term limit rule. We held that "Section 8, Article X of the Constitution is violated and its purpose defeated when an official serves in the same position for three consecutive terms. Whether as 'caretaker' or 'de facto' officer, he exercises the powers and enjoys the prerequisites of the office which enables him 'to stay on indefinitely.'"[35]

In *Dizon*, Morales was a respondent in a disqualification proceeding when he ran again as a mayoralty candidate during the 2007 elections. This time, the Court ruled in his favor and held that for purposes of the 2007 elections, the three-term limit rule was no longer a disqualifying factor against Morales, to wit:

> Our ruling in the *Rivera* case served as Morales' involuntary severance from office with respect to the 2004-2007 term. Involuntary severance from office for any length of time short of the full term provided by law amounts to an interruption of continuity of service. Our decision in the Rivera case was promulgated on 9 May 2007 and was effective immediately. The next day, Morales notified the vice mayor's office of our decision. The vice mayor assumed the office of the mayor from 17 May 2007 up to 30 June 2007. The assumption by the vice mayor of the office of the mayor, no matter how short it

[35] *Supra* note 33, at 58.

may seem to Dizon, interrupted Morales' continuity of service. Thus, Morales did not hold office for the full term of 1 July 2004 to 30 June 2007.[36]

Accordingly, we find that Morales misrepresented his eligibility because he knew full well that he had been elected, and had served, as mayor of Mabalacat, Pampanga for three consecutive terms; yet, he still certified that he was eligible to run for mayor for the next succeeding term.

Morales, however, claims that the COMELEC En Banc should take judicial notice of the COMELEC Second Division Resolution, which dismissed Noelito Castro's Petition to Deny Due Course to or Cancel the COC and to Disqualify Morales for the Second Time as a Mayoralty Candidate of Mabalacat City filed on 10 December 2015 (Castro's Petition),[37] since it involves the same issue as the present petitions.

We do not find merit in such argument.

In the said Resolution[38] dated 14 September 2016, the COMELEC Second Division dismissed Castro's Petition due to the following procedural reasons: (1) the petition lacked verification required by both provisions of the OEC and the COMELEC Rules of Procedure; (2) Morales was not served with a copy of the petition; and (3) Castro failed to comply with Resolution No. 9576 requiring submission of soft copies of pleadings in MS Word and annexes in PDF format. The COMELEC Second Division further ruled that the petition was "dismissible" because the records of the case were bereft of any prior authoritative ruling that Morales already served as mayor of Mabalacat City for three consecutive terms, pursuant to *Poe-Llamanzares v. Commission on Elections (Poe)*.[39] Considering that no motion for reconsideration was filed, the COMELEC Second Division Resolution became final on 22

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[36] *Supra* note 34, at 578.

[37] *Rollo* (G.R. No. 231657), Vol. I, pp. 71-74.

[38] *Id*. at 359-368.

[39] 782 Phil. 292 (2016).

December 2016,[40] and the COMELEC En Banc has nothing to decide on Castro's Petition. Election cases shall be heard and decided in division, provided that motions for reconsideration of decisions shall be decided by the COMELEC En Banc.[41]

On the other hand, we find that in arguing that the COMELEC En Banc should consider the COMELEC Second Division Resolution on Castro's Petition because the "Castro Case is very similar to the instant Petition in that **both are petitions to deny due course and/or to cancel the Certificate of Candidacy** ("COC") of respondent for alleged violation of the three-term limit rule [and] x x x both Petitions arise from the same set of facts and **both availed of the same relief from this commission (Petition to Deny Due Course)**,"[42] Morales essentially admits that Lucas' petition is properly filed under Section 78 of the OEC, contrary to his argument that Lucas' petition is vague and wrongly construed by the COMELEC as a petition to deny due course.

In *Albania v. Commission on Elections*,[43] we held that the COMELEC has the authority to examine the allegations of every pleading filed, obviously aware that its averments, rather than its title/caption, are the proper gauges in determining the true nature of the cases filed before it. Thus, the COMELEC aptly found that Lucas' petition contains the essential allegations of a "Section 78" petition, namely: (1) the candidate made a representation in his COC; (2) the representation pertains to a material matter which would affect the substantive rights of the candidate; and (3) the candidate made a false representation with the intention to deceive the electorate as to his qualification for public office or deliberately attempted to mislead, misinform, or hide a fact which would otherwise render him ineligible.[44]

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[40] *Rollo* (G.R. No. 231657), pp. 369-371.

[41] 1987 Constitution, Article IX, Section 3.

[42] Motion to Admit the Herein Incorporated Reply in view of the Supervening Events; see *Rollo* (G.R. No. 231657), Vol. I, pp. 373-380.

[43] *Supra* note 24.

[44] *Fermin v. Commission on Elections*, 595 Phil. 449, 465 (2008).

Contrary to Morales' argument that since he had been proclaimed and had assumed office as mayor in 2016, disputes as to his COC became moot and the proper remedy is to file a *quo warranto* proceeding questioning his eligibility, we held in *Velasco v. Commission on Elections*[45] that the COMELEC's jurisdiction to deny due course to and cancel a COC continues, to wit:

> x x x. If the disqualification or COC cancellation/denial case is not resolved before election day, the proceedings shall continue even after the election and the proclamation of the winner. In the meanwhile, the candidate may be voted for and be proclaimed if he or she wins, but the COMELEC's jurisdiction to deny due course and cancel his or her COC continues. This rule applies even if the candidate facing disqualification is voted for and receives the highest number of votes, and even if the candidate is proclaimed and has taken his oath of office. The only exception to this rule is in the case of congressional or senatorial candidates with unresolved disqualification or COC denial/ cancellation cases after the elections. Pursuant to Section 17 of Article VI of the Constitution, the COMELEC *ipso jure* loses jurisdiction over these unfinished cases in favor of the respective Senate or the House of Representatives electoral tribunals after the candidates take their oath of office.[46]

Moreover, we held in *Fermin v. Commission on Elections*[47] that the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate.

Thus, Section 78 of the OEC states:

> Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. — A verified petition seeking to deny due course or to

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[45] 595 Phil. 1172 (2008).

[46] *Id*. at 1193-1194.

[47] *Supra*.

cancel a certificate of candidacy may be filed by the person exclusively on the ground that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before the election.

Under Section 78, a petition to deny due course to or to cancel a COC must be filed within 25 days from the time of filing of the COC. Morales filed his COC on 8 December 2015. Thus, Lucas had until 2 January 2016 to file the petition under Section 78, but since 2 January 2016 fell on a Saturday, Lucas had until the next working day or 4 January 2016 to file the petition. We, thus, find that Lucas timely filed her petition on 4 January 2016 under Section 78 of the OEC. Furthermore, contrary to Morales' insistence, the COMELEC Rules of Procedure do not require that a certification of non-forum shopping be attached to the petition.[48] At any rate, we held that the COMELEC's rules of procedure on certifications of non-forum shopping should be liberally construed, and

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[48] The COMELEC Rules of Procedure provide:

Part III - Rule 7

Sec. 3. Form of Pleadings, *etc*. –

a. All pleadings allowed by these Rules shall be printed, mimeographed or typewritten on legal size bond paper and shall be in English or Filipino.

b. Protests or petitions in ordinary actions, special actions, special cases, special reliefs, provisional remedies, and special proceedings, as well as counter-protests, counter-petitions, interventions, motions for reconsideration, and appeals from rulings of board of canvassers shall be verified. All answers shall be verified.

c. A pleading shall be verified only by an affidavit stating that the person verifying the same has read the pleading and that the allegations therein are true of his own knowledge. Verifications based on "information or belief" or upon "knowledge," "information" or "belief" shall be deemed insufficient.

d. Each pleading shall contain a caption setting forth the name of the Commission, the title of the case, the docket number and the designation of the pleading. When an action or proceeding has been assigned to a Division, the caption shall set forth the name of the Division.

COMELEC's interpretation of such rules in accordance with its constitutional mandate should carry great weight.[49]

We likewise find no merit in Morales' argument that a prior authoritative ruling is necessary pursuant to *Poe*.

We held in *Francisco v. Commission on Elections*[50] that the COMELEC can be the proper body to make the pronouncement against which the truth or falsity of a material representation in a COC can be measured. The COMELEC, as an adjunct to its adjudicatory power, may investigate facts or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them as basis for their official action. We upheld our ruling in *Aratea* that no prior judgment recognizing a candidate's service for three consecutive terms was necessary to effect the cancellation of his COC.

At any rate, we also held in *Poe* that self-evident facts of unquestioned or unquestionable veracity and judicial confessions are bases equivalent to prior decisions against which the falsity of representation can be determined.[51] Since Morales admits having been elected and having served for three consecutive terms, his admission already served as basis against which the falsity of his representation can be determined.

Knowing fully well that he had been elected and had fully served three consecutive terms for the same local government post, Morales' representation in his COC that he was eligible to run as mayor constitutes false material representation as to his qualification or eligibility for the office, which is a ground for a petition to deny due course to or cancel a COC. Accordingly, we find that Morales' COC is void *ab initio*, and he was never a candidate at all, and all votes for him were considered stray votes.

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[49] *Panlilio v. Commission on Elections*, 610 Phil. 551 (2009).

[50] G.R. No. 230249, 24 April 2018.

[51] *Poe-Llamanzares v. Commission on Elections*, *supra* note 39.

As we held in *Aratea*, a violation of the three-term limit rule is an ineligibility affecting the qualification of a candidate to elective office and the misrepresentation of such is a ground to grant the petition to deny due course to or cancel a COC.[52] A person whose COC had been denied due course and/or cancelled under Section 78 is deemed to have not been a candidate at all, because his COC is considered void *ab initio* and thus, cannot give rise to a valid candidacy and necessarily to valid votes.[53] In *Jalosjos, Jr. v. Commission on Elections*,[54] we explained that:

> Decisions of this Court holding that the second-placer cannot be proclaimed winner if the first-placer is disqualified or declared ineligible should be limited to situations where the certificate of candidacy of the first-placer was valid at the time of filing but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy. **If the certificate of candidacy is void *ab initio*, then legally the person who filed such void certificate of candidacy was never a candidate in the elections at any time. All votes for such non-candidate are stray votes and should not be counted. Thus, such non-candidate can never be a first-placer in the elections. If a certificate of candidacy void *ab initio* is cancelled on the day, or before the day, of the election, prevailing jurisprudence holds that all votes for that candidate are stray votes. If a certificate of candidacy void *ab initio* is cancelled one day or more after the elections, all votes for such candidate should also be stray votes because the certificate of candidacy is void from the very beginning.** This is the more equitable and logical approach on the effect of the cancellation of a certificate of candidacy that is void *ab initio*. Otherwise, a certificate of candidacy void *ab initio* can operate to defeat one or more valid certificates of candidacy for the same position.[55] (Emphasis supplied)

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[52] *Supra* note 31.

[53] *Ty-Delgado v. House of Representatives Electoral Tribunal*, 779 Phil. 268 (2016), citing *Aratea v. Commission on Elections*, *supra* note 31.

[54] 696 Phil. 601 (2012).

[55] *Id*. at 633-634.

The rule on succession under Section 44[56] of RA 7160, as espoused by Halili, would not apply if the permanent vacancy was caused by one whose COC was void *ab initio*. In case of vacancies caused by those with void *ab initio* COCs, the person legally entitled to the vacant position would be the candidate who garnered the next highest number of votes among those eligible.[57] In this case, it is Garbo who is legally entitled to the position of mayor, having garnered the highest number of votes among the eligible candidates. Thus, the COMELEC correctly proclaimed Garbo as mayor of Mabalacat City.

Where a material COC misrepresentation under oath is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws.[58] In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the will of the electorate.[59]

In a special civil action for *certiorari*, the burden rests on the petitioner to prove grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the public respondent

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[56] RA 7160, Section 44. Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor. – (a) If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking sanggunian member or, in case of his permanent inability, the second highest ranking sanggunian member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other sanggunian members according to their ranking as defined herein.

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[57] *Chua v. Commission on Elections*, 783 Phil. 876, 900 (2016), citing *Maquiling v. Commission on Elections*, 709 Phil. 408 (2013).

[58] *Velasco v. Commission on Elections*, *supra* note 45, at 1196.

[59] *Velasco v. Commission on Elections*, *supra* note 45, at 1196.

in issuing the impugned order, decision or resolution.[60] Grave abuse of discretion is such "capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction, or [an] exercise of power in an arbitrary and despotic manner by reason of passion or personal hostility, or an exercise of judgment so patent and gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined, or to act in a manner not at all in contemplation of law."[61] In short, grave abuse of discretion arises when a court or tribunal violates the Constitution, the law, or existing jurisprudence.[62] In this case, the Court finds the COMELEC's disquisitions to be amply supported by the Constitution, law, and jurisprudence.

WHEREFORE, we **DISMISS** the petitions for lack of merit and **AFFIRM** the assailed Resolution dated 3 August 2016 of the Commission on Elections First Division and the Resolution dated 26 May 2017 of the Commission on Elections En Banc.

SO ORDERED.

Bersamin, C.J., Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, and *Carandang, JJ.*, concur.

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[60] *Naval v. Commission on Elections*, 738 Phil. 506, 537 (2014).

[61] *Velasco v. Commission on Elections*, *supra* note 45, at 1183.

[62] *Naval v. Commission on Elections*, *supra* note 60, at 537.

SECOND DIVISION

[G.R. No. 199562. January 16, 2019]

BANK OF THE PHILIPPINE ISLANDS and ANA C. GONZALES, *petitioners vs.* **SPOUSES FERNANDO QUIAOIT and NORA L. QUIAOIT,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; BANKING; GENERAL BANKING ACT OF 2000; DEMANDS OF BANKS THE HIGHEST STANDARDS OF INTEGRITY AND PERFORMANCE; BANKS ARE REQUIRED TO EXERCISE THE HIGHEST DEGREE OF DILIGENCE IN ITS BANKING TRANSACTIONS; CASE AT BAR.— In *Spouses Carbonell v. Metropolitan Bank and Trust Company,* the Court emphasized that the General Banking Act of 2000 demands of banks the highest standards of integrity and performance. The Court ruled that banks are under obligation to treat the accounts of their depositors with meticulous care. The Court ruled that the bank's compliance with this degree of diligence has to be determined in accordance with the particular circumstances of each case. In this case, BPI failed to exercise the highest degree of diligence that is not only expected but required of a banking institution. x x x BPI insists that there is no law requiring it to list down the serial numbers of the dollar bills. However, it is well-settled that the diligence required of banks is more than that of a good father of a family. Banks are required to exercise the highest degree of diligence in its banking transactions. In releasing the dollar bills without listing down their serial numbers, BPI failed to exercise the highest degree of care and diligence required of it. BPI exposed not only its client but also itself to the situation that led to this case. Had BPI listed down the serial numbers, BPI's presentation of a copy of such listed serial numbers would establish whether the returned 44 dollar bills came from BPI or not.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PROXIMATE CAUSE; DEFINED AS THE CAUSE WHICH, IN NATURAL AND CONTINUOUS SEQUENCE, UNBROKEN BY ANY EFFICIENT INTERVENING

CAUSE, PRODUCES INJURY AND WITHOUT WHICH THE RESULT WOULD NOT HAVE OCCURRED; CASE AT BAR.— We agree with the Court of Appeals that the action of BPI is the proximate cause of the loss suffered by the spouses Quiaoit. Proximate cause is defined as the cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred. Granting that Lambayong counted the two bundles of the US$100 bills she received from the bank, there was no way for her, or for the spouses Quiaoit, to determine whether the dollar bills were genuine or counterfeit. They did not have the expertise to verify the genuineness of the bills, and they were not informed about the "chapa" on the bills so that they could have checked the same. BPI cannot pass the burden on the spouses Quiaoit to verify the genuineness of the bills, even if they did not check or count the dollar bills in their possession while they were abroad.

3. ID.; ID.; DOCTRINE OF LAST CLEAR CHANCE; THE NEGLIGENCE OF THE PLAINTIFF DOES NOT PRECLUDE A RECOVERY FOR THE NEGLIGENCE OF THE DEFENDANT WHERE IT APPEARS THAT THE DEFENDANT, BY EXERCISING REASONABLE CARE AND PRUDENCE, MIGHT HAVE AVOIDED INJURIOUS CONSEQUENCES TO THE PLAINTIFF NOTWITHSTANDING THE PLAINTIFF'S NEGLIGENCE; CASE AT BAR.— The Court has also applied the doctrine of last clear chance in banking transactions. In *Allied Banking Corporation v. Bank of the Philippine Islands,* the Court explained: The doctrine of last clear chance, stated broadly, is that the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence. The doctrine necessarily assumes negligence on the part of the defendant and contributory negligence on the part of the plaintiff, and does not apply except upon that assumption. x x x As pointed out by the Court of Appeals, BPI had the last clear chance to prove that all the dollar bills it issued to the spouses Quiaoit were genuine and that the counterfeit bills did not come from it if only it listed down the serial numbers of the bills. BPI's

lapses in processing the transaction fall below the extraordinary diligence required of it as a banking institution. Hence, it must bear the consequences of its action.

4. ID.; DAMAGES; AWARD OF MORAL DAMAGES AND ATTORNEY'S FEES, SUSTAINED IN CASE AT BAR.— We sustain the award of moral damages to the spouses Quiaoit. In *Pilipinas Bank v. Court of Appeals,* the Court sustained the award of moral damages and explained that while the bank's negligence may not have been attended with malice and bad faith, it caused serious anxiety, embarrassment, and humiliation to respondents. We apply the same in this case. In this case, it was established that the spouses Quiaoit suffered serious anxiety, embarrassment, humiliation, and even threats of being taken to police authorities for using counterfeit bills. Hence, they are entitled to the moral damages awarded by the trial court and the Court of Appeals. Nevertheless, we delete the award of exemplary damages since it does not appear that BPI's negligence was attended with malice and bad faith. We sustain the award of attorney's fees because the spouses Quiaoit were forced to litigate to protect their rights.

APPEARANCES OF COUNSEL

Benedicto and Burkley Law Offices for petitioners.
Joseph C. Cerezo for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on *certiorari*[1] assailing the 22 September 2011 Decision[2] and the 29 November 2011

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[1] Under Rule 45 of the Revised Rules of Court.

[2] *Rollo,* pp. 34-64. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Michael P. Elbinias and Elihu A. Ybañez, concurring.

Resolution[3] of the Court of Appeals in CA-G.R. CV No. 94141. The Court of Appeals affirmed the 15 May 2009 Decision[4] of the Regional Trial Court of Quezon City, Branch 100 in Civil Case No. Q-00-42619.

The Antecedent Facts

Fernando V. Quiaoit (Fernando) maintains peso and dollar accounts with the Bank of the Philippine Islands (BPI) Greenhills-Crossroads Branch (BPI Greenhills). On 20 April 1999, Fernando, through Merlyn Lambayong (Lambayong), encashed BPI Greenhills Check No. 003434 dated 19 April 1999 for US$20,000.

In a complaint filed by Fernando and his wife Nora L. Quiaoit (Nora) against BPI, they alleged that Lambayong did not count the US$20,000 that she received because the money was placed in a large Manila envelope. They also alleged that BPI did not inform Lambayong that the dollar bills were marked with its "chapa" and the bank did not issue any receipt containing the serial number of the bills. Lambayong delivered the dollar bills to the spouses Quiaoit in US$100 denomination in US$10,000 per bundle. Nora then purchased plane tickets worth US$13,100 for their travel abroad, using part of the US$20,000 bills withdrawn from BPI.

On 22 April 1999, the spouses Quiaoit left the Philippines for Jerusalem and Europe. Nora handcarried US$6,900 during the tour. The spouses Quiaoit alleged that on 19 May 1999, Nora was placed in a shameful and embarrassing situation when several banks in Madrid, Spain refused to exchange some of the US$100 bills because they were counterfeit. Nora was also threatened that she would be taken to the police station when she tried to purchase an item in a shop with the dollar bills.

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[3] *Id.* at 66-67. Penned by Associate Justice Remedios A. Salazar-Fernanda, with Associate Justices Jane Aurora C. Lantion and Elihu A. Ybañez, concurring.

[4] Petitioners did not attach a copy of the trial court's decision with the petition.

The spouses Quiaoit were also informed by their friends, a priest and a nun, that the US dollar bills they gave them were refused by third persons for being counterfeit. Their aunt, Elisa Galan (Galan) also returned, via DHL, the five US$100 bills they gave her and advised them that they were not accepted for deposit by foreign banks for being counterfeit.

On 21 May 1999, while the spouses Quiaoit were still abroad, they asked their daughter Maria Isabel, who was employed with BPI Makati, to relay their predicament to BPI Greenhills. However, Ana C. Gonzales[5] (Gonzales), branch manager of BPI Greenhills, failed to resolve their concern or give them a return call. When the spouses Quiaoit returned, they personally complained to Gonzales who went to Fernando's office with three bank personnel. Gonzales took from Fernando the remaining 44 dollar bills worth US$4,400 and affixed her signature on the photocopy of the bills, acknowledging that she received them. Chito Bautista (Bautista), a bank representative, and another bank employee informed the spouses Quiaoit that an investigation would be conducted but they were not furnished any report. They gathered from a telephone conversation with Clemente Banson (Banson), the bank-designated investigator, that the dollar bills came from BPI Vira Mall and were marked with "chapa" by the BPI Greenhills. On 9 June 1999, Fernando tried to submit to Banson the five US$100 bills returned by Galan but Banson refused to accept them because they were counterfeit. On 18 August 1999, Gonzales informed Fernando that the absence of the identification mark ("chapa") on the dollar bills meant they came from other sources and not from BPI Greenhills.

On 7 July 1999, Fernando withdrew the remaining balance of his account through his representative, Henry Mainot (Mainot). The dollar bills withdrawn by Mainot were marked and the serial numbers were listed. On 7 July 1999, Fernando's brother Edgardo encashed a US$500 check from BPI San Juan Branch and while the dollar bills were not marked, the serial numbers thereof were listed.

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[5] Also referred to in the records as "Ana C. Gonzalez."

The spouses Quiaoit alleged that Nora Cayetano, area manager of BPI San Juan, called up Fernando and promised to do something about the refund of the US$4,400 they surrendered to Gonzales. On 17 January 2000, the spouses Quiaoit demanded in writing for the refund of the US$4,400 from Gonzales. On 9 February 2000, BPI sent its written refusal to refund or reimburse the US$4,400.

The spouses Quiaoit alleged that BPI failed in its duty to ensure that the foreign currency bills it furnishes its clients are genuine. According to them, they suffered public embarrassment, humiliation, and possible imprisonment in a foreign country due to BPI's negligence and bad faith.

BPI countered that it is the bank's standing policy and part of its internal control to mark all dollar bills with "chapa" bearing the code of the branch when a foreign currency bill is exchanged or withdrawn. BPI alleged that any local or foreign currency bill deposited or withdrawn from the bank undergoes careful and meticulous scrutiny by highly-trained and experienced personnel for genuineness and authenticity. BPI alleged that the US$20,000 in US$100 bills encashed by Fernando through Lambayong were inspected, counted, personally examined, and subjected to a counterfeit detector machine by the bank teller under Gonzales' direct supervision. Gonzales also personally inspected and "piece-counted" the dollar bills which bore the identifying "chapa" and examined their genuineness and authenticity. BPI alleged that after its investigation, it was established that the 44 US$100 bills surrendered by the spouses Quiaoit were not the same as the dollar bills disbursed to Lambayong. The dollar bills did not bear the identifying "chapa" from BPI Greenhills and as such, they came from another source.

The Decisions of the Trial Court and the Court of Appeals

In its 15 May 2009 Decision, the Regional Trial Court of Quezon City, Branch 100 (trial court), ruled in favor of the spouses Quiaoit. The dispositive portion of the trial court's Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiffs and against the defendants.

Accordingly, defendants are ordered to pay jointly and severally the plaintiffs the following:

1. the amount of Four Thousand Four Hundred US Dollars (US$4,400) as and for actual damages;
2. the amount of Two Hundred Thousand Pesos (₱200,000.00) as and for moral damages;
3. the amount of Fifty Thousand Pesos (₱50,000.00) as and for exemplary damages;
4. the amount of Fifty Thousand Pesos (₱50,000.00) as and for attorney's fees.

SO ORDERED.[6]

In its 22 September 2011 Decision, the Court of Appeals affirmed the trial court's Decision. The Court of Appeals ruled that BPI did not follow the normal banking procedure of listing the serial numbers of the dollar bills considering the reasonable length of time from the time Fernando advised them of the withdrawal until Lambayong's actual encashment of the check. The Court of Appeals noted that BPI only listed down the serial numbers of the dollar bills when Fernando, through Edgardo, withdrew his remaining money from the bank. According to the Court of Appeals, BPI had been negligent in not listing down the serial numbers of the dollar bills. The Court of Appeals further ruled that, assuming BPI had not been negligent, it had the last clear chance or the last opportunity to avert the injury incurred by the spouses Quiaoit abroad. The Court of Appeals ruled that BPI was the proximate, immediate, and efficient cause of the loss incurred by the spouses Quiaoit.

The Court of Appeals noted that BPI failed to return the call and to attend to the needs of the spouses Quiaoit even when their daughter Maria Isabel called the attention of the bank about the incidents abroad. Gonzales also failed to disclose

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[6] *Rollo,* pp. 34-35.

to Fernando about the identifying "chapa" when she accepted the US$4,400 from him.

The dispositive portion of the Court of Appeals' Decision reads:

> WHEREFORE, premises considered, the Decision dated May 15, 2009 of the RTC, Branch 100, Quezon City in Civil Case No. Q-00-42619 is hereby AFFIRMED.
>
> SO ORDERED.[7]

BPI filed a motion for reconsideration. In its 29 November 2011 Resolution, the Court of Appeals denied the motion for lack of merit.

Thus, BPI came to this Court for relief.

BPI raised the following issues in its petition:

> A. The Court of Appeals erred in its legal conclusions in disregarding the preponderance of evidence showing no irreconcilable inconsistencies in the testimonies of the bank's witnesses. The "listing process" being imposed by the [court a quo] did not impeach the credibility of petitioner[s'] witnesses which proved that the 44 pieces of fake USD 100 dollar bills shown by Mr. [Quiaoit] could not have come from BPI Greenhills-Crossroads branch.
>
> B. The Court of Appeals erred in its legal conclusions by holding that there [was] "gross negligence amounting to bad faith" because petitioner bank, through its officers and employees[,] followed its [then] existing procedure in handling dollar withdrawals. Respondents' own negligence was the proximate cause of the loss.[8]

The Issues

Whether the counterfeit US dollar bills came from BPI;

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[7] *Id*. at 64.

[8] *Id*. at 18.

Whether BPI exercised due diligence in handling the withdrawal of the US dollar bills; and

Whether BPI is liable for damages.

The Ruling of this Court

We deny the petition.

BPI failed to exercise due diligence in the transaction

In *Spouses Carbonell v. Metropolitan Bank and Trust Company,*[9] the Court emphasized that the General Banking Act of 2000 demands of banks the highest standards of integrity and performance. The Court ruled that banks are under obligation to treat the accounts of their depositors with meticulous care.[10] The Court ruled that the bank's compliance with this degree of diligence has to be determined in accordance with the particular circumstances of each case.[11]

In this case, BPI failed to exercise the highest degree of diligence that is not only expected but required of a banking institution.

It was established that on 15 April 1999, Fernando informed BPI to prepare US$20,000 that he would withdraw from his account. The withdrawal, through encashment of BPI Greenhills Check No. 003434, was done five days later, or on 20 April 1999. BPI had ample opportunity to prepare the dollar bills. Since the dollar bills were handed to Lambayong inside an envelope and in bundles, Lambayong did not check them. However, as pointed out by the Court of Appeals, BPI could have listed down the serial numbers of the dollar bills and erased any doubt as to whether the counterfeit bills came from it. While BPI Greenhills marked the dollar bills with "chapa" to identify

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[9] G.R. No. 178467, 26 April 2017, 825 SCRA 1.

[10] *Id*.

[11] *Id*.

that they came from that branch, Lambayong was not informed of the markings and hence, she could not have checked if all the bills were marked.

BPI insists that there is no law requiring it to list down the serial numbers of the dollar bills. However, it is well-settled that the diligence required of banks is more than that of a good father of a family.[12] Banks are required to exercise the highest degree of diligence in its banking transactions.[13] In releasing the dollar bills without listing down their serial numbers, BPI failed to exercise the highest degree of care and diligence required of it. BPI exposed not only its client but also itself to the situation that led to this case. Had BPI listed down the serial numbers, BPI's presentation of a copy of such listed serial numbers would establish whether the returned 44 dollar bills came from BPI or not.

We agree with the Court of Appeals that the action of BPI is the proximate cause of the loss suffered by the spouses Quiaoit. Proximate cause is defined as the cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury and without which the result would not have occurred.[14] Granting that Lambayong counted the two bundles of the US$100 bills she received from the bank, there was no way for her, or for the spouses Quiaoit, to determine whether the dollar bills were genuine or counterfeit. They did not have the expertise to verify the genuineness of the bills, and they were not informed about the "chapa" on the bills so that they could have checked the same. BPI cannot pass the burden on the spouses Quiaoit to verify the genuineness of the bills, even if they did not check or count the dollar bills in their possession while they were abroad.

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[12] *Philippine National Bank v. Spouses Cheah,* 686 Phil. 760 (2012).

[13] *Id*.

[14] *Id*.

The Court has also applied the doctrine of last clear chance in banking transactions. In *Allied Banking Corporation v. Bank of the Philippine Islands,*[15] the Court explained:

> The doctrine of last clear chance, stated broadly, is that the negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence. The doctrine necessarily assumes negligence on the part of the defendant and contributory negligence on the part of the plaintiff, and does not apply except upon that assumption. Stated differently, the antecedent negligence of the plaintiff does not preclude him from recovering damages caused by the supervening negligence of the defendant, who had the last fair chance to prevent the impending harm by the exercise of due diligence. Moreover, in situations where the doctrine has been applied, it was defendant's failure to exercise such ordinary care, having the last clear chance to avoid loss or injury, which was the proximate cause of the occurrence of such loss or injury.[16]

As pointed out by the Court of Appeals, BPI had the last clear chance to prove that all the dollar bills it issued to the spouses Quiaoit were genuine and that the counterfeit bills did not come from it if only it listed down the serial numbers of the bills. BPI's lapses in processing the transaction fall below the extraordinary diligence required of it as a banking institution. Hence, it must bear the consequences of its action.

Respondents are entitled to moral damages and attorney's fees

We sustain the award of moral damages to the spouses Quiaoit.

In *Pilipinas Bank v. Court of Appeals,*[17] the Court sustained the award of moral damages and explained that while the bank's negligence may not have been attended with malice and bad

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[15] 705 Phil. 174 (2013).

[16] *Id*. at 182-183.

[17] 304 Phil. 601 (1994), citing *Bank of the Philippine Islands v. Intermediate Appellate Court*, 283 Phil. 331 (1992).

faith, it caused serious anxiety, embarrassment, and humiliation to respondents. We apply the same in this case. In this case, it was established that the spouses Quiaoit suffered serious anxiety, embarrassment, humiliation, and even threats of being taken to police authorities for using counterfeit bills. Hence, they are entitled to the moral damages awarded by the trial court and the Court of Appeals.

Nevertheless, we delete the award of exemplary damages since it does not appear that BPI's negligence was attended with malice and bad faith. We sustain the award of attorney's fees because the spouses Quiaoit were forced to litigate to protect their rights.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 22 September 2011 Decision and the 29 November 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 94141 with **MODIFICATION** by deleting the award of exemplary damages.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Hernando,*[*] *JJ.,* concur.

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[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

SECOND DIVISION

[G.R. No. 211449. January 16, 2019]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **TRANSFIELD PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. **TAXATION; TAX AMNESTY; CONCEPT; AMNESTY IS NEVER FAVORED NOR PRESUMED IN LAW, AND MUST BE CONSTRUED STRICTLY AGAINST THE TAXPAYER AND LIBERALLY IN FAVOR OF THE TAXING AUTHORITY.—** A tax amnesty operates as a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It is an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty is akin to a tax exemption; thus, it must be construed strictly against the taxpayer and liberally in favor of the taxing authority.

2. **ID.; ID.; TAX AMNESTY PROGRAM UNDER REPUBLIC ACT NO. 9480; A TAXPAYER WHO AVAILED ITSELF OF THE TAX AMNESTY AND HAS FULLY COMPLIED WITH ALL ITS REQUIREMENTS IS ENTITLED TO THE TAX AMNESTY BENEFITS UNDER THE LAW.—** On May 24, 2007, R.A. No. 9480 took effect and authorized the grant of a tax amnesty to qualified taxpayers for all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005. x x x. To implement R.A. No. 9480, the Department of Finance (DOF) issued DOF Department Order No. 29-07 (DO 29-07). Section 6 thereof outlines the method for availing a tax amnesty under R.A. No. 9480 x x x. In this case, it remains undisputed that respondent complied with all the requirements pertaining to its application for tax amnesty by submitting to the BIR a Notice of Availment of Tax Amnesty, Tax Amnesty Return, SALN as of December 31, 2005 and Tax Amnesty Payment Form. Further, it paid the

corresponding amnesty taxes. Hence, respondent has successfully availed itself of the tax amnesty benefits granted under R.A. No. 9480 which include immunity from "the appurtenant civil, criminal, or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years."

3. **ID.; ID.; ID.; ID.; THE EXCEPTION UNDER RMC NO. 19-2008 THAT THOSE WITH DELINQUENT ACCOUNTS OR ACCOUNTS RECEIVABLE BY THE BIR ARE DISQUALIFIED TO AVAIL OF THE TAX AMNESTY CANNOT BE GIVEN EFFECT; OTHERWISE, IT WOULD UNLAWFULLY CREATE A NEW EXCEPTION FOR AVAILING OF THE TAX AMNESTY PROGRAM UNDER R.A. NO. 9480; IN CASE THERE IS A DISCREPANCY BETWEEN THE LAW AND A REGULATION ISSUED TO IMPLEMENT THE LAW, THE LAW PREVAILS BECAUSE THE RULE OR REGULATION CANNOT GO BEYOND THE TERMS AND PROVISIONS OF THE LAW.—** The CIR, however, insists that respondent is still liable for deficiency taxes, contending that under RMC No. 19-2008, respondent is disqualified to avail of the tax amnesty because it falls under the exception of "delinquent accounts or accounts receivable considered as assets by the BIR or the Government, including self-assessed tax." In *Commissioner of Internal Revenue v. Philippine Aluminum Wheels, Inc.,* petitioner therein raised a similar argument which the Court did not sustain and instead ruled that "in case there is a discrepancy between the law and a regulation issued to implement the law, the law prevails because the rule or regulation cannot go beyond the terms and provisions of the law. x x x To give effect to the exception under RMC No. 19-2008 of delinquent accounts or accounts receivable by the BIR, as interpreted by the BIR, would unlawfully create a new exception for availing of the Tax Amnesty Program under [R.A. No.] 9480."

4. **ID.; ID.; ID.; ID.; IN IMPLEMENTING TAX AMNESTY LAWS, THE COMMISSIONER OF INTERNAL REVENUE CANNOT INSERT AN EXCEPTION WHERE THERE IS NONE UNDER THE LAW; THE RULE-MAKING POWER OF ADMINISTRATIVE AGENCIES CANNOT BE EXTENDED TO AMEND OR EXPAND STATUTORY REQUIREMENTS OR TO EMBRACE MATTERS NOT ORIGINALLY ENCOMPASSED BY THE LAW, AS**

ADMINISTRATIVE REGULATIONS SHOULD ALWAYS BE IN ACCORD WITH THE PROVISIONS OF THE STATUTE THEY SEEK TO IMPLEMENT, AND ANY RESULTING INCONSISTENCY SHALL BE RESOLVED IN FAVOR OF THE BASIC LAW.— It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the maxim *expressio unius est exclusio alterius.* In implementing tax amnesty laws, the CIR cannot now insert an exception where there is none under the law. Indeed, a tax amnesty must be construed strictly against the taxpayer and liberally in favor of the taxing authority. However, the rule-making power of administrative agencies cannot be extended to amend or expand statutory requirements or to embrace matters not originally encompassed by the law. Administrative regulations should always be in accord with the provisions of the statute they seek to implement, and any resulting inconsistency shall be resolved in favor of the basic law.

5. ID.; ID.; ID.; THE RECKONING POINT OF THE 30-DAY PERIOD TO APPEAL THE ASSESSMENTS IS IMMATERIAL AS THE TAXPAYER'S COMPLIANCE WITH THE REQUIREMENTS FOR TAX AMNESTY UNDER R.A. NO. 9480 EXTINGUISHES THE ASSESSMENTS.— As regards the issue on the propriety and timeliness of the petition for review, suffice it to say that in this case, the reckoning point of the 30-day period to appeal the assessments is immaterial because the assessments have already been extinguished by respondent's compliance with the requirements for tax amnesty under R.A. No. 9480. To sustain petitioner's contention that respondent should have elevated an appeal to the CTA when it received the Final Notice Before Seizure, or at most, when it received the July 10, 2008 Letter of the BIR, would lead to an absurd and unjust situation wherein the taxpayer avails of the benefits of a tax amnesty law, yet the BIR still issues a WDAL simply because the taxpayer did not appeal the assessment to the CTA. The requirement of filing an appeal with the CTA even after the taxpayer has already complied with the requirements of the tax amnesty law negates the amnesty granted to the taxpayer and creates a condition which is not found in the law. It is worthy to note that respondent filed a protest to the assessments, but because of the passage of R.A. No. 9480, it no longer pursued its legal remedies against the

assessments. Thus, respondent cannot be faulted for filing a petition for review with the CTA only upon receipt of the WDAL for it rightfully relied on the provision of R.A. No. 9480 that "those who availed themselves of the tax amnesty x x x, and have fully complied with all its conditions x x x shall be immune from the payment of taxes x x x."

6. ID.; ID.; ID.; TAXPAYERS MAY IMMEDIATELY ENJOY THE PRIVILEGES AND IMMUNITIES UNDER R.A. NO. 9480 AS SOON AS THEY FULFILL THE SUSPENSIVE CONDITION IMPOSED THEREIN.— [I]n CS *Garment, Inc. v. Commissioner of Internal Revenue,* the Court pronounced that taxpayers may immediately enjoy the privileges and immunities under R.A. No. 9480 as soon as they fulfill the suspensive condition imposed therein, *i.e.,* submission of 1) Notice of Availment of Tax Amnesty Form; 2) Tax Amnesty Return Form (BIR Form No. 2116); 3) SALN as of December 31, 2005; and 4) Tax Amnesty Payment Form (Acceptance of Payment Form or BIR Form No. 0617). In fine, the deficiency taxes for Fiscal Year July 1, 2001 to June 30, 2002 are deemed settled in view of respondent's compliance with the requirements for tax amnesty under R.A. No. 9480.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

Assailed in this petition for review on *certiorari* are the August 5, 2013 Decision[1] and the February 19, 2014 Resolution[2] of

[1] Penned by Associate Justice Cielito N. Mindaro-Grulla, with Presiding Justice Roman G. Del Rosario, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, Amelia R. Cotangco-Manalastas and Ma. Belen M. Ringpis-Liban, concurring; *rollo,* pp. 48-58.

[2] *Id.* at 59-68.

the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case No. 907 which affirmed the February 28, 2012 Amended Decision[3] and the May 14, 2012 Resolution[4] of the CTA First Division in CTA Case No. 7842.

The Antecedents

On May 30, 2007, respondent Transfield Philippines, Inc. (respondent) received copies of Final Assessment Notice (FAN) Nos. LTDO-122-IT-2002-00014, LTDO-122-WE-2002-00011, LTDO-122-VT-2002-00012, and LTDO-122-PEN-2002-00002 issued by petitioner Commissioner of Internal Revenue (CIR), through Nestor S. Valeroso, Officer-in-Charge, Assistant Commissioner for the Large Taxpayers Service.[5] Respondent was assessed the total sum of ₱563,168,996.70 for deficiency income tax, Expanded Withholding Tax (EWT), and Value-Added Tax (VAT), inclusive of interest and compromise penalties for the Fiscal Year July 1, 2001 to June 30, 2002. The details of the assessments are as follows:

Kind of Tax	Basic	Interest	Compromise	Total
Income Tax	291,320,169.28	271,335,605.67	25,000.00	562,680,774.95
EWT	66,497.56	69,996.28	14,000.00	150,493.84
VAT	147,156.30	164,071.61	24,500.00	335,727.91
VAT penalty			2,000.00	2,000.00
Total	291,533,823.14	271,569,673.56	65,500.00	563,168,996.70

[3] Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy, concurring; *id*. at 243-261.

[4] *Id*. at 280-286.

[5] *Id*. at 113-116.

On June 5, 2007, respondent filed a protest with the Bureau of Internal Revenue (BIR).[6] Without acting on respondent's protest, the BIR issued the First Collection Letter[7] dated August 3, 2007, demanding immediate payment of the assessments. Respondent received a copy of the First Collection Letter on August 28, 2007.

Then, on January 17, 2008, petitioner constructively served a Final Notice Before Seizure[8] dated December 20, 2007, to respondent's office.

On February 29, 2008, respondent availed of the benefits of Republic Act (R.A.) No. 9480 by submitting the following documents to the Development Bank of the Philippines (DBP), an authorized agent bank of the BIR: 1) Notice of Availment of Tax Amnesty; 2) Tax Amnesty Return (BIR Form No. 2116); 3) Statement of Assets, Liabilities and Net Worth (SALN) as of December 31, 2005; and 4) Tax Amnesty Payment Form (BIR Form No. 0617). On the same day, respondent paid the BIR, through DBP, an amnesty tax in the amount of ₱112,500.00. On April 23, 2008, respondent paid ₱2,000.00 to the BIR in relation to FAN No. LTDO-122-PEN-2002-00002 for compromise penalties on alleged failure to file summary of sales and purchase from the first and second quarters of 2002.

On May 5, 2008, respondent informed the BIR Large Taxpayers District Office (LTDO) of Makati City in a letter dated April 28, 2008, that it availed of the benefits of R.A. No. 9480 and furnished the LTDO with copies of the tax amnesty documents.[9] The said letter was received by the BIR LTDO of Makati City on the same day.

On July 10, 2008, petitioner wrote respondent, advising the latter that under Revenue Memorandum Circular (RMC)

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[6] *Id*. at 117.

[7] *Id*. at 118.

[8] *Id*. at 119.

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

No. 19-2008, those "with delinquent accounts/accounts receivable considered as assets of the BIR/Government, including self-assessed tax," are not allowed to avail of the benefits of R.A. No. 9480.[10]

On September 8, 2008, petitioner issued a Warrant of Distraint and/or Levy (WDAL) directing the seizure of respondent's goods, chattels or effects, and other personal properties, and/or levy of its real property and interest in/or rights to real property to the extent of ₱563,168,996.70.[11] A copy of the WDAL was constructively served on respondent's offices on September 11, 2008. On the same day, the Bank of the Philippine Islands (BPI) informed respondent that the latter's account was being put on hold because of the WDAL.

The CTA First Division Ruling

In an Amended Decision[12] dated February 28, 2012, the CTA First Division ruled that the CTA has jurisdiction not only over decisions or inactions of the CIR in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, but also over other matters arising under the National Internal Revenue Code (NIRC) or other laws administered by the BIR. It declared that petitioner is already barred from collecting from respondent the alleged tax liabilities because it is undisputed that respondent had complied with all the legal requirements pertaining to its application for tax amnesty by submitting to the BIR its Notice of Availment of Tax Amnesty, Tax Amnesty Return, SALN, and Tax Amnesty Payment Form together with the BIR Tax Payment Deposit Slip evidencing payment of amnesty tax amounting to ₱112,500.00. The CTA First Division added that when respondent complied with all the requirements of R.A. No. 9480, it is deemed to have settled in full all its tax liabilities for the years covered by the tax amnesty. It held

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[10] *Id*. at 122.

[11] *Id*. at 123.

[12] *Supra* note 3.

that the July 10, 2008 Letter of petitioner is void as it disqualifies respondent from availing of the immunity from payment of tax liabilities under R.A. No. 9480 on the ground that its account has been considered delinquent or receivable asset of the government, which reason is not in consonance with the provisions of R.A. No. 9480. The *fallo* reads:

> **WHEREFORE,** the Motion for Reconsideration (from the Decision dated 20 September 2011) dated October 11, 2011 filed by petitioner is hereby **GRANTED.**
>
> Consequently, the Warrant of Distraint and/or Levy dated September 08, 2008 is hereby declared **NULL and VOID** and of no legal effect. Respondent is now precluded from collecting the amount of ₱563,168,996.70, representing petitioner's tax liability for taxable year 2002, which is deemed settled.
>
> **SO ORDERED.**[13]

Petitioner moved for reconsideration, but the same was denied by the CTA First Division in a Resolution[14] dated May 14, 2012. Aggrieved, petitioner filed a petition for review before the CTA *En Banc.*

The CTA En Banc Ruling

In a Decision[15] dated August 5, 2013, the CTA *En Banc* opined that it has jurisdiction to rule on the petition because it is not an appeal of the disputed assessment which is subject to a reglementary period, but it is a case to determine whether the issuance of the WDAL is proper. It added that the issue to be addressed is not the timeliness of the protest, but rather, whether petitioner may validly collect taxes from respondent despite the latter having availed of the tax amnesty. The CTA *En Banc* concluded that respondent properly availed of the immunity from payment of taxes under R.A. No. 9480, and as such, the issuance of a WDAL was invalid, which justified the filing of

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[13] *Id*. at 260.

[14] *Id*. at 280-286.

[15] *Supra*, note 1.

a petition within 30 days from receipt of the warrant. It disposed the case in this wise:

> **WHEREFORE,** the petition is **DENIED.** The Amended Decision dated February 28, 2012, rendered by the First Division of this Court in CTA Case No. 7842, and its Resolution dated May 14, 2012 are **AFFIRMED.** No pronouncement as to costs.
>
> **SO ORDERED.**[16]

Petitioner moved for reconsideration, but the same was denied by the CTA *En Banc* on February 19, 2014. Hence, this petition for review on *certiorari,* wherein petitioner raises the following issues:

> I. WHETHER THE CTA COMMITTED REVERSIBLE ERROR WHEN IT ASSUMED JURISDICTION OVER THE CASE.
>
> II. WHETHER THE CTA COMMITTED REVERSIBLE ERROR WHEN IT RULED THAT RESPONDENT IS ENTITLED TO THE IMMUNITIES UNDER THE TAX AMNESTY PROGRAM PROVIDED IN REPUBLIC ACT NO. 9480.[17]

Petitioner argues that Section 9 of R.A. No. 9282 provides that a party adversely affected by a decision, ruling or inaction of the CIR may file an appeal with the CTA within 30 days after the receipt of such decision or ruling; that the 30-day period for filing an appeal with the CTA should be reckoned from respondent's receipt of the Final Notice Before Seizure, or at the latest, its receipt of the Letter dated July 10, 2008; that it is erroneous to consider receipt of the WDAL as the date of reckoning the period to file an appeal to the CTA because the WDAL is merely a means, an instrument, or a mechanism to implement the Final Notice Before Seizure, or at the latest, the July 10, 2008 Letter; that whatever decision, action, or ruling petitioner had with respect to respondent's claims and/

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[16] *Id*. at 56-57.

[17] *Id*. at 28.

or defenses was set forth in the aforementioned issuances and not in the WDAL; and that in providing for the exception that delinquent accounts, or accounts receivable considered assets of the government are not eligible under the tax amnesty program, RMC No. 19-2008 merely supplied the gap in the law where assessments have become final and incontestable upon the lapse of the reglementary period for appeal.[18]

In its Comment,[19] respondent counters that the CTA is vested with jurisdiction to determine whether a taxpayer is immune from the payment of taxes insofar as it is given the exclusive appellate jurisdiction to review by appeal matters arising from the laws administered by the BIR such as tax amnesty statutes; that in *Pantoja v. David,*[20] the Court ruled that petitions for the annulment of distraint orders of the BIR do not violate the prohibition against injunctions to restrain the collection of taxes because the proceedings were not directed against the right of the BIR to collect *per se,* but against the right of the BIR to do so by distraint and levy; that while it did not file any petition for review from its receipt of the Final Notice Before Seizure, or the July 10, 2008 Letter, it availed of the tax amnesty on February 29, 2008 by complying with the requirements of R.A. No. 9480; that in *CS Garment, Inc. v. Commissioner of Internal Revenue,*[21] the Court ruled that a taxpayer immediately enjoys the immunities granted by R.A. No. 9480 as soon as the taxpayer complies with the conditions under the law and the BIR may not prevent or delay a taxpayer from immediately enjoying immunity from the payment of taxes by making the tax amnesty application contingent on the BIR's confirmation or agreement; that in *Union Bank of the Philippines v. Commissioner of Internal Revenue,*[22] decided by the CTA, the latter held that Section 4 of R.A. No. 9480 limits petitioner's remedy to assailing the

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[18] *Id*. at 22-42.

[19] *Id*. at 297-327.

[20] 111 Phil. 197, 199-200 (1961).

[21] 729 Phil. 253 (2014).

[22] CTA Case No. 7874, March 29, 2011; *rollo,* p. 315.

taxpayer's SALN within a period of one year from the date of filing; that after the one-year period mandated by R.A. No. 9480, the tax amnesty could no longer be disputed by the BIR; and that to allow petitioner to enforce collection of assessments covered by the amnesty availed by respondent through the perfunctory and summary issuance of a WDAL would sanction a disregard of the law, and to punish respondent for its compliance therewith.

In its Reply,[23] petitioner contends that the July 10, 2008 Letter was the adverse decision or ruling appealable to the CTA and respondent's receipt of the letter is the proper reckoning point for filing a petition for review with the CTA; that respondent received the said letter on August 5, 2008, thus, it was already apprised of petitioner's adverse decision regarding its application for tax amnesty at that time; that respondent had until September 4, 2008 to appeal the decision, however, respondent's petition for review was filed with the CTA only on October 10, 2008; and that assessments which have become final and executory upon the taxpayer's failure to appeal therefrom are outside the coverage of R.A. No. 9480.

The Court's Ruling

I.

A tax amnesty operates as a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law. It is an absolute forgiveness or waiver by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored nor presumed in law. The grant of a tax amnesty is akin to a tax exemption; thus, it must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[24]

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[23] *Rollo,* pp. 337-343.

[24] *Commissioner of Internal Revenue v. Marubeni Corporation,* 423 Phil. 862, 874 (2001).

On May 24, 2007, R.A. No. 9480 took effect and authorized the grant of a tax amnesty to qualified taxpayers for all national internal revenue taxes for the taxable year 2005 and prior years, with or without assessments duly issued therefor, that have remained unpaid as of December 31, 2005.[25] The pertinent provisions of R.A. No. 9480 are:

> SEC. 1. *Coverage.* — There is hereby authorized and granted a tax amnesty which shall cover all national internal revenue taxes for the taxable year 2005 and prior years, **with or without assessments duly issued therefor,** That have remained unpaid as of December 31, 2005: *Provided, however,* that the amnesty hereby authorized and granted shall not cover persons or cases enumerated under Section 8 hereof.
>
> x x x x x x x x x
>
> SEC. 6. *Immunities and Privileges.* — Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:
>
> (a) **The taxpayer shall be immune from the payment of taxes,** as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years. (Emphases supplied)
>
> x x x x x x x x x

To implement R.A. No. 9480, the Department of Finance (DOF) issued DOF Department Order No. 29-07 (DO 29-07). Section 6 thereof outlines the method for availing a tax amnesty under R.A. No. 9480, *viz.:*

> SEC. 6. *Method of Availment of Tax Amnesty.*
>
> 1. *Forms/Documents to be filed.* — To avail of the general tax amnesty, concerned taxpayers shall file the following documents/requirements:

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[25] Republic Act No. 9480, Sec. 1.

a. Notice of Availment in such form as may be prescribed by the BIR;

b. Statement of Assets, Liabilities and Networth (SALN) as of December 31, 2005 in such [form], as may be prescribed by the BIR;

c. Tax Amnesty Return in such form as may be prescribed by the BIR.

2. *Place of Filing of Amnesty Tax Return.* — The Tax Amnesty Return, together with the other documents stated in Sec. 6 (1) hereof, shall be filed as follows:

a. Residents shall file with the Revenue District Officer (RDO)/ Large Taxpayer District Office of the BIR which has jurisdiction over the legal residence or principal place of business of the taxpayer, as the case may be.

b. Non-residents shall file with the office of the Commissioner of the BIR, or with the RDO.

c. At the option of the taxpayer, the RDO may assist the taxpayer in accomplishing the forms and computing the taxable base and the amnesty tax payable, but may not look into, question or examine the veracity of the entries contained in the Tax Amnesty Return, [SALN], or such other documents submitted by the taxpayer.

3. *Payment of Amnesty Tax and Full Compliance.* — Upon filing of the Tax Amnesty Return in accordance with Sec. 6 (2) hereof, the taxpayer shall pay the amnesty tax to the authorized agent bank or in the absence thereof, the Collection Agents or duly authorized Treasurer of the city or municipality in which such person has his legal residence or principal place of business.

The RDO shall issue sufficient Acceptance of Payment Forms, as may be prescribed by the BIR for the use of — or to be accomplished by — the bank, the collection agent or the Treasurer, showing the acceptance by the amnesty tax payment. In case of the authorized agent bank, the branch manager or the assistant branch manager shall sign the acceptance of payment form.

The Acceptance of Payment Form, the Notice of Availment, the SALN, and the Tax Amnesty Return shall be submitted to the RDO, which shall be received only after complete payment. **The completion of these requirements shall be deemed full compliance with the provisions of [R.A. No.] 9480.** x x x (Emphasis supplied)

In this case, it remains undisputed that respondent complied with all the requirements pertaining to its application for tax amnesty by submitting to the BIR a Notice of Availment of Tax Amnesty, Tax Amnesty Return, SALN as of December 31, 2005 and Tax Amnesty Payment Form. Further, it paid the corresponding amnesty taxes. Hence, respondent has successfully availed itself of the tax amnesty benefits granted under R.A. No. 9480 which include immunity from "the appurtenant civil, criminal, or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years."

II.

The CIR, however, insists that respondent is still liable for deficiency taxes, contending that under RMC No. 19-2008, respondent is disqualified to avail of the tax amnesty because it falls under the exception of "delinquent accounts or accounts receivable considered as assets by the BIR or the Government, including self-assessed tax." In *Commissioner of Internal Revenue v. Philippine Aluminum Wheels, Inc.*,[26] petitioner therein raised a similar argument which the Court did not sustain and instead ruled that "in case there is a discrepancy between the law and a regulation issued to implement the law, the law prevails because the rule or regulation cannot go beyond the terms and provisions of the law. x x x To give effect to the exception under RMC No. 19-2008 of delinquent accounts or accounts receivable by the BIR, as interpreted by the BIR, would unlawfully create a new exception for availing of the Tax Amnesty Program under [R.A. No.] 9480."[27]

Moreover, it must be noted that under Section 8 of R.A. No. 9480, only the following persons are disqualified from availing of the tax amnesty:

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[26] G.R. No. 216161, August 9, 2017, 836 SCRA 645.

[27] *Id*. at 656.

SEC. 8. *Exceptions.* — x x x

(a) Withholding agents with respect to their withholding tax liabilities;

(b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;

(c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;

(d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;

(e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and

(f) Tax cases subject of final and executory judgment by the courts.[28]

It is a basic precept of statutory construction that the express mention of one person, thing, act, or consequence excludes all others as expressed in the maxim *expressio unius est exclusio alterius.* In implementing tax amnesty laws, the CIR cannot now insert an exception where there is none under the law. Indeed, a tax amnesty must be construed strictly against the taxpayer and liberally in favor of the taxing authority. However, the rule-making power of administrative agencies cannot be extended to amend or expand statutory requirements or to embrace matters not originally encompassed by the law. Administrative regulations should always be in accord with the provisions of the statute they seek to implement, and any resulting inconsistency shall be resolved in favor of the basic law.[29]

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[28] Republic Act No. 9480, Section 8.

[29] *CS Garment, Inc. v. Commissioner of Internal Revenue, supra* note 21, at 275.

III.

As regards the issue on the propriety and timeliness of the petition for review, suffice it to say that in this case, the reckoning point of the 30-day period to appeal the assessments is immaterial because the assessments have already been extinguished by respondent's compliance with the requirements for tax amnesty under R.A. No. 9480. To sustain petitioner's contention that respondent should have elevated an appeal to the CTA when it received the Final Notice Before Seizure, or at most, when it received the July 10, 2008 Letter of the BIR, would lead to an absurd and unjust situation wherein the taxpayer avails of the benefits of a tax amnesty law, yet the BIR still issues a WDAL simply because the taxpayer did not appeal the assessment to the CTA. The requirement of filing an appeal with the CTA even after the taxpayer has already complied with the requirements of the tax amnesty law negates the amnesty granted to the taxpayer and creates a condition which is not found in the law. It is worthy to note that respondent filed a protest to the assessments, but because of the passage of R.A. No. 9480, it no longer pursued its legal remedies against the assessments. Thus, respondent cannot be faulted for filing a petition for review with the CTA only upon receipt of the WDAL for it rightfully relied on the provision of R.A. No. 9480 that "those who availed themselves of the tax amnesty x x x, and have fully complied with all its conditions x x x shall be immune from the payment of taxes x x x." Finally, in *CS Garment, Inc. v. Commissioner of Internal Revenue,*[30] the Court pronounced that taxpayers may immediately enjoy the privileges and immunities under R.A. No. 9480 as soon as they fulfill the suspensive condition imposed therein, *i.e.,* submission of 1) Notice of Availment of Tax Amnesty Form; 2) Tax Amnesty Return Form (BIR Form No. 2116); 3) SALN as of December 31, 2005; and 4) Tax Amnesty Payment Form (Acceptance of Payment Form or BIR Form No. 0617). In fine, the deficiency taxes for Fiscal Year July 1, 2001 to June 30, 2002 are deemed

[30] *Id*.

settled in view of respondent's compliance with the requirements for tax amnesty under R.A. No. 9480.

WHEREFORE, the petition is **DENIED**. The August 5, 2013 Decision and the February 19, 2014 Resolution of the Court of Tax Appeals in CTA EB Case No. 907 are **AFFIRMED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa,* and *Hernando,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 214906. January 16, 2019]

ABOSTA SHIPMANAGEMENT CORP., CIDO SHIPPING COMPANY LTD., and ALEX S. ESTABILLO, *petitioners, vs.* **DANTE C. SEGUI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED ONLY TO QUESTIONS OF LAW; THE ISSUE OF WHETHER THE COURT OF APPEALS COMMITTED SERIOUS ERROR IN AFFIRMING DISABILITY COMPENSATION ON THE BASIS OF AN UNPROVEN COLLECTIVE BARGAINING AGREEMENT IS FACTUAL IN NATURE AND NOT A PROPER SUBJECT OF A RULE 45 PETITION.— The Court has consistently held that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended. The Court is not a trier of facts and its jurisdiction is limited

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[*] Additional Member per S.O. No. 2630 dated December 18, 2018.

to errors of law. Here, the first ground, "*whether the CA committed serious and reversible error in affirming disability compensation on the basis of an unproven and unsubstantiated Collective Bargaining Agreement*" raised by petitioners is factual in nature and is not a proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended.

2. LABOR AND SOCIAL LEGISLATION; SEAFARERS; TOTAL AND PERMANENT DISABILITY BENEFITS; WHERE THE COMPANY-DESIGNATED PHYSICIAN FAILED TO ISSUE A MEDICAL ASSESSMENT WITHIN THE 120-DAY PERIOD AND THERE WAS NO SUFFICIENT JUSTIFICATION TO EXTEND SAID PERIOD TO 240 DAYS, SEAFARER'S DISABILITY BECOMES PERMANENT AND TOTAL WHICH ENTITLES HIM TO CORRESPONDING DISABILITY BENEFITS.— In the present case, the records reveal that from Segui's repatriation and immediate referral to the company-designated physician on December 2, 2010 until the 120-day period on March 31, 2011, the latter did not issue a medical assessment on Segui's disability grading. It was only on the 219th day or on July 8, 2011, when Segui reached the maximum medical cure, that the company-designated physician issued a disability rating of "*Grade 8 disability – moderate rigidity or 2/3 loss of motion or lifting power of the trunk*." Notably, the company-designated physician did not determine Segui's fitness to work. Clearly, there was non-compliance with Items 1 and 2 of the rules on claim for total and permanent disability benefits cited in the *Elburg* case. The company-designated physician failed to issue a medical assessment within the 120-day period from the time Segui reported to him, and there was no justifiable reason for such failure. Likewise, there was no sufficient justification to extend the 120-day period to 240 days. Thus, following the above rules, Segui's disability becomes permanent and total, and entitles him to permanent and total disability benefits under his contract and the collective bargaining agreement.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioners.
Panambo Law Office for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

This labor case is about a seaman's claim for a maximum benefit of permanent and total disability benefits, and attorney's fees.

The Facts of the Case

As narrated by Labor Arbiter (LA) Fatima Jambaro-Franco (LA Franco), the facts are the following:

> [Respondent Dante C. Segui] alleged that he was hired by the [petitioners Abosta Shipmanagement Corporation/Cido Shipping Company Ltd./Alex Estabillo] as an able seaman on board the vessel M/V Grand Quest with a salary of US$564.00 per month; that his employment was covered by an ITF IBF JSU Collective Bargaining Agreement (CBA); that prior to his deployment, he underwent the required pre-employment medical examination (PEME) of which he was declared fit to work and thereafter, boarded the vessel on June 16, 2009; that during his employment, he would be on duty more than 12 hours a day resulting in extreme fatigue and exhaustion; that on October 26, 2010, while on duty, he felt cramps followed by a severe back pain; that he informed the master who advised him to rest; that the next day, he was unable to stand and remained in his cabin for the rest of the voyage; that when the vessel arrived in South Africa, he was admitted to a medical facility and he underwent an x-ray of his back and injection on his left knee; that the same procedure was taken in Colombia and again in Panama where he was diagnosed with a lumbar disc problem and was recommended repatriation; that on December 2, 2010, he arrived in Manila and was referred to the Manila Doctors Hospital where a CT Scan showed he was suffering from "Circumferential Disc Bulge at L4-L5 with Posteromedial Herniation of the Nucleus Pulposus as well as associated Spinal Canal and Neuroforaminal Narrowings as described; Lumbar Spondylosis" x x x; that on December 14, 2010, he underwent Laminotomy and Discectomy at Level L4-L5 and was confined for 3 weeks; that he continued with his therapy but his condition did not improve; that despite the treatment, [Segui's] pain and discomfort persisted, thus, he sought another treatment and opinion from an independent doctor in the person of Dr. Nicanor Escutin; that after a thorough examination

and test, concluded that the nature and extent of [Segui's] injury rendered him permanently and totally unable to work as a seafarer, thus, [Segui] asked [petitioners] to pay his total and permanent disability; that [petitioners], however, refused. Hence, this complaint.

[Petitioners] Abosta Shipmanagement Corporation/Cido Shipping Company Ltd./Alex Estabillo [Abosta, et al.] do not dispute the circumstances of [Segui's] engagement and subsequent deployment to his assigned vessel, as well as his repatriation on medical grounds, but deny liability for the claims and aver: that following [Segui's] repatriation on December 2, 2010 he was immediately referred to the company-designated physician; that [Segui] was diagnosed with Lumbar Disc Herniation and was referred to an orthopedic surgeon and physiatrist x x x; that [Segui] underwent foraminotomy and discectomy of [L4-L5] and tolerated the procedure well; that he was placed on therapy for healing and possible fitness to work x x x; that unknown to the [petitioners], [Segui] stopped attending his medical appointments and instituted his complaint; that during the mandatory conferences, [petitioners] prevailed upon [Segui] to continue his treatment for the final disability assessment; that [Segui] returned to the company[-]designated physician on May 17, 2011 to continue treatment and obtain his final assessment x x x; that finding that [Segui] had reached maximum medical cure, the company-designated-physician assessed [him] with Grade 8 disability-moderate rigidity or 2/3 loss of motion of lifting power of the trunk x x x; that [Segui] is only entitled to the compensation corresponding to the assessment made by the company-designated physician; that there is no basis to claim permanent total disability compensation; that [Segui] failed to prove his entitlement to full disability compensation; and that the findings of the company-designated physician are binding on [Segui].[1]

The LA's Decision

On February 2, 2012, LA Franco rendered a Decision in favor of Segui.[2] The LA held that Segui is entitled to maximum disability benefit after finding that he suffered from a work-related illness/injury while on board the vessel, and applying the terms and conditions of the Philippine Overseas Employment

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[1] CA *rollo*, pp. 162-165.

[2] *Id*. at 170.

Administration-Standard Employment Contract (POEA-SEC), which is incorporated in his employment contract. Section 20.B of POEA-SEC provides that the employer shall be liable for disability compensation for work-related illness/injury sustained during the term of the contract.[3]

The LA found that Segui underwent treatment and therapy under the company-designated physician for almost eight months, after which, he was determined to have reached maximum medical cure as of July 8, 2011. However, during his check-up on June 22, 2011, or less than two weeks up to the time he was declared to have reached maximum medical cure, Segui was still assessed to have poor lifting capacity. The medical certificate and assessment dated July 8, 2011, however, made no reference to this medical observation. The LA construed that the July 8, 2011 certification is intended to comply with the 120/240-day period under current jurisprudence.[4]

The LA explained that the entitlement to disability benefits of seamen on overseas work is governed not only by the medical findings but by law (the Labor Code and its Implementing Rules) and contract. A seafarer who is medically repatriated is considered on temporary total disability if he is unable to work for 120 days, during which time he receives sickness wages and is provided medical attention. After the lapse of 120 days and no declaration of fitness or permanent disability is made, the temporary total disability may be extended up to a maximum of 240 days subject to the employer's right to declare that a partial permanent or total permanent disability already exists. After 240 days and without a declaration of fitness/disability, the disability is deemed total and permanent. The LA ruled that between the declaration of the company-designated physician and respondent Segui's own physician, the latter's medical certificate clearly detailing the nature of his disability and extent of incapacity should prevail.[5]

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[3] *Id*. at 165-166, 169.

[4] *Id*. at 168.

[5] *Id*. at 168-169.

The NLRC Decision

On appeal to the National Labor Relations Commission (NLRC), the commission affirmed the Decision of the LA on January 4, 2013.[6] The NLRC pronounced that since the International Transport Workers' Federation (ITF) Standard Agreement provides for higher disability compensation than the POEA-SEC, the former should prevail over the latter.[7]

The NLRC also ruled that while it is the company-designated physician who must declare that the seaman suffered permanent disability during employment, it does not deprive the seafarer of his right to seek a second opinion, which can then be used by the labor tribunals in awarding disability claims.[8]

The NLRC elucidated on the following findings of fact:

> In the case at bar, records show that on July 8, 2011, the company-designated physician issued a medical report, indicating that [Segui] had "reached maximum medical cure;" and that the "final disability grading under the POEA schedule of disabilities is Grade 8 — moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk" x x x. Inasmuch as [Segui] had already "reached maximum medical cure," it is indubitable that his disability of "moderate rigidity or two thirds (2/3) loss of motion or lifting power of the trunk" would remain, despite further medical treatment. Clearly, [Segui's] disability is already permanent.
>
> Significantly, the company-designated physician never mentioned in his medical report of July 8, 2011 that as of said date, [Segui] was already fit to work as seafarer in any capacity. Therefore, the declaration of the company-designated attending physician in Panama on November 18, 2010, that [Segui] was "Unfit for duty" x x x still stands.
>
> Notably, in his disability report dated June 4, 2011, the physician consulted by [Segui] already declared the latter's disability as permanent

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[6] Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go; *id*. at 39-55.

[7] *Id*. at 49.

[8] *Id*. at 50.

and that [Segui] is already "UNFIT TO WORK as a seaman in whatever capacity" x x x. Obviously, the findings of the company-designated physicians and [Segui's] appointed physician are the same in that, [Segui] is already permanently unfit for further sea service in any capacity.

Indeed, from his repatriation on December 2, 2010, up to this writing, or a period of more than one and a half (1½) years, which is definitely more than 240 days, there is no showing in the records that [Segui] was able to earn wages as seafarer, or in the same kind of work or work of a similar nature that he was trained for or accustomed to perform, or any kind of work which a person of his mentality and attainment can do. With [Segui's] permanent disability of "moderate rigidity or two thirds (2/3) loss of motion of lifting power of the trunk," it is without doubt that he would no longer be capable of performing the strenuous activities of a seafarer. Truly, no enterprising employer would ever employ, as seafarer, one who has lost two thirds (2/3) of the motion or lifting power of his trunk. Patently, [Segui] is already permanently and totally disabled from further working as a seafarer in any capacity.

In fact, even if the company-designated physician assessed [Segui's] disability at Grade 8 only, still, the latter is entitled to 100% compensation. This is in consonance with the provision of the ITF Standard Collective Agreement/CBA that "any Seafarer assessed at less than 50% disability under the attached Annex 4 but certified as permanently unfit for further sea service in any capacity by the Union's Doctor, shall also be entitled to 100% compensation." Undoubtedly then, [Segui] is entitled to total and permanent disability benefit or 100% compensation granted under the ITF Standard Collective Agreement/CBA.[9]

Abosta, *et al.* moved for reconsideration, which the NLRC denied in a Resolution dated March 26, 2013.[10]

The Court of Appeals Decision

Undaunted, Abosta, *et al.* elevated the case to the Court of Appeals (CA) through a petition for *certiorari* under Rule 65

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[9] *Id.* at 52-54.

[10] *Rollo*, p. 36.

of the Rules of Court, as amended. On July 31, 2014, the CA rendered a Decision dismissing the petition and affirming the NLRC's Decision.[11]

The CA resolved that the NLRC did not commit grave abuse of discretion in affirming the LA's award of permanent total disability benefits and maximum disability benefits to respondent Segui. The CA expounded that the disability is considered total if there is disablement of an employee to earn wages in the same kind of work of similar nature that he was trained for, or accustomed to perform, or any kind of work, which a person of his mentality and attainments could do. It does not mean absolute helplessness. The disability is considered permanent if there is inability of a worker to perform his job for more than 120 days, regardless of whether he loses the use of any part of his body. What determines entitlement to permanent disability benefits is the inability to work for more than 120 days.[12]

The CA's findings reveal that from the date of Segui's repatriation on December 2, 2010 up to his consultation with his physician of choice on June 4, 2011, more than 120 days have passed and the company-designated physician failed to give him a disability grading or declare him fit to work. The company-designated physician only gave him a disability grading when he had already reached a maximum medical cure and even then, Segui's condition had not improved. Although he was given a disability grading, the company-designated physician did not declare him fit for sea duty in any capacity. Thus, the CA determined that the NLRC was correct in affirming the LA's Decision in declaring his disability as total and permanent, and awarding maximum disability benefits to Segui.[13]

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[11] Penned by Associate Justice Fernanda Lampas Peralta, with Associate Justices Francisco P. Acosta and Myra V. Garcia-Fernandez, concurring; *id*. at 36-48a.

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

[13] *Id*. at 46-47.

Abosta, *et al.* moved for reconsideration, which the CA denied in a Resolution dated October 14, 2014.[14]

The Issues Presented

Unconvinced, petitioners Abosta, et al. filed a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended, before the Court, raising the following grounds:

I.

Whether the [CA] committed serious and reversible error in affirming disability compensation on the basis of an unproven and unsubstantiated Collective Bargaining Agreement.

II.

Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that disability compensation is determined not by the number of days of treatment but rather, by the disability grading issued by the company-designated physicians.

III.

Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that in the absence of evidence of bias, the findings of the company-designated physicians are entitled to great weight and respect.

IV.

Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that failure of a seafarer to refer the case to a third physician in the event of conflicting findings will result in the dismissal of the complaint.

V.

Whether the [CA] committed serious and reversible error in disregarding the uniformed decisional tenet in our jurisdiction that attorney's fees may not be awarded where there is no evidence of bad faith on the part of the party being held liable for the same.[15]

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[14] *Id*. at 73.

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

In his Comment, Segui alleges, among other points, that since his injury is undoubtedly work-related as the same occurred while on board performing his duties and responsibilities, and he has been incapacitated for more than 120 days, he has the right to be compensated total and permanent disability benefits.[16] Segui also avers that in case of conflict between the medical findings of the company-designated physician and his physician, the doubt should be resolved in his favor applying the principle of social justice.[17]

In their Reply, petitioners argue that Segui is not suffering from any permanent total disability, taking into consideration the disability grading given to him by the company-designated physician within the period provided by law. Petitioners also assert that Segui's failure to submit the conflicting medical assessments to an independent third doctor militates against his claim for disability benefits.[18]

The Court's Ruling

The petition is denied.

The Court has consistently held that only questions of law may be raised in a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended. The Court is not a trier of facts and its jurisdiction is limited to errors of law. Here, the first ground, "*whether the CA committed serious and reversible error in affirming disability compensation on the basis of an unproven and unsubstantiated Collective Bargaining Agreement*" raised by petitioners is factual in nature and is not a proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of Court, as amended. Moreover, the issue had been passed upon by the LA, NLRC, and the CA. The CA provided sufficient explanation against petitioners' argument, as follows:

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[16] *Id*. at 98-99.

[17] *Id*. at 108.

[18] *Id*. at 118.

To be sure, records bear that the vessel M/V Grand Quest which private respondent boarded and from which he was repatriated was "covered by ITF Agreement" from November 10, 2008 to November 9, 2012, encompassing the period when private respondent was employed by petitioners. Thus, there is no basis for petitioners' claim that the CBA was unproven. As correctly held by public respondent NLRC:

> We find untenable respondents' (petitioners') argument that the CBA under which the Executive Labor Arbiter based her award for disability benefits is unproven. It must be pointed out that the evidence attached by complainant as Annex "B" of his position paper shows that the vessel, Grand Quest, is covered by ITF Agreement from November 10, 2008 to November 9, 2012, x x x or during the period when complainant was employed by respondents as seafarer on board said vessel. Significantly, even as respondents insist that the CBA is unproven and unpresented, they never specifically denied or refuted the said evidence presented by complainant x x x. Hence, respondents are deemed to have admitted that the vessel, Grand Quest, is covered by ITF Agreement from November 10, 2008 to November 9, 2012. x x x[19]

The Court has consistently held that unanimous findings of fact of the lower courts, quasi-judicial agencies and appellate court are binding on the Court and will not be disturbed on appeal.

The rest of the grounds raised can be summarized into one: whether or not the CA committed a reversible error in affirming the NLRC Decision, which upheld the LA's Decision in awarding total and permanent disability benefits to Segui.

It is undisputed that Segui suffered work-related injuries while performing his duties and responsibilities as a seafarer. The only question left to be answered is whether he is entitled to a maximum benefit of permanent and total disability benefits.

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[19] *Id*. at 42.

In the case of *Elburg Shipmanagement Phils., Inc. v. Quiogue*,[20] the Court expounded and summarized the rule in awarding permanent and total disability benefits, as follows:

Harmonizing the decisions

An analysis of the cited jurisprudence reveals that the first set of cases did not award permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because (1) the company-designated physician opined that the seafarer required further medical treatment or (2) the seafarer was uncooperative with the treatment. Hence, in those cases, despite exceeding 120 days, the seafarer was still not entitled to permanent and total disability benefits. In such instance, Rule X, Section 2 of the IRR gave the company-designated physician additional time, up to 240 days, to continue treatment and make an assessment on the disability of the seafarer.

The second set of cases, on the other hand, awarded permanent and total disability benefits to seafarers whose medical treatment lasted for more than 120 days, but not exceeding 240 days, because the company-designated physician did not give a justification for extending the period of diagnosis and treatment. Necessarily, there was no need anymore to extend the period because the disability suffered by the seafarer was permanent. In other words, there was no indication that further medical treatment, up to 240 days, would address his total disability.

If the treatment of 120 days is extended to 240 days, but still no medical assessment is given, the finding of permanent and total disability becomes conclusive.

x x x x x x x x x

In summary, if there is a claim for total and permanent disability benefits by a seafarer, the following rules (*rules*) [sic] shall govern:

1. The company-designated physician must issue a final medical assessment on the seafarer's disability grading within a period of 120 days from the time the seafarer reported to him;

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[20] 765 Phil. 341 (2015).

2. If the company-designated physician fails to give his assessment within the period of 120 days, without any justifiable reason, then the seafarer's disability becomes permanent and total;

3. If the company-designated physician fails to give his assessment within the period of 120 days with a sufficient justification (*e.g.* seafarer required further medical treatment or seafarer was uncooperative), then the period of diagnosis and treatment shall be extended to 240 days. The employer has the burden to prove that the company-designated physician has sufficient justification to extend the period; and

4. If the company-designated physician still fails to give his assessment within the extended period of 240 days, then the seafarer's disability becomes permanent and total, regardless of any justification.

The Court is not unmindful of the declaration in *INC Shipmanagement* that "[t]he extent of his disability (whether total or partial) is determined, not by the number of days that he could not work, but by the disability grading the doctor recognizes based on his resulting incapacity to work and earn his wages." Indeed, the disability benefits granted to the seafarer are not entirely dependent on the number of treatment lapsed days. The treatment period can be extended to 240 days if the company-designated physician provided some sufficient justification. Equally eminent, however, is the Court's pronouncement in the more recent case of *Carcedo* that "*[t]he determination of the fitness of a seafarer for sea duty is the province of the company-designated physician, subject to the periods prescribed by law*."

Thus, to strike a balance between the two conflicting interests of the seafarer and its employer, the rules methodically took in consideration the applicability of both the 120-day period under the Labor Code and the 240-day period under the IRR. The medical assessment of the company-designated physician is not the alpha and the omega of the seafarer's claim for permanent and total disability. To become effective, such assessment must be issued within the bounds of the authorized 120-day period or the properly extended 240-day period.[21] (Emphases ours)

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[21] *Elburg Shipmanagement Phils., Inc. v. Quiogue*, *supra* note 20, at 361-364.

In the present case, the records reveal that from Segui's repatriation and immediate referral to the company-designated physician on December 2, 2010 until the 120-day period on March 31, 2011, the latter did not issue a medical assessment on Segui's disability grading. It was only on the 219th day or on July 8, 2011, when Segui reached the maximum medical cure, that the company-designated physician issued a disability rating of "*Grade 8 disability — moderate rigidity or 2/3 loss of motion or lifting power of the trunk*." Notably, the company-designated physician did not determine Segui's fitness to work. Clearly, there was non-compliance with Items 1 and 2 of the rules on claim for total and permanent disability benefits cited in the *Elburg* case. The company-designated physician failed to issue a medical assessment within the 120-day period from the time Segui reported to him, and there was no justifiable reason for such failure. Likewise, there was no sufficient justification to extend the 120-day period to 240 days. Thus, following the above rules, Segui's disability becomes permanent and total, and entitles him to permanent and total disability benefits under his contract and the collective bargaining agreement.

In contrast, Segui's own physician provided a detailed medical assessment dated June 4, 2011, which justified his disability rating.

> Based on the physical examination and supported by laboratory examination, he developed back problem while working. He had attack of leg cramps while on duty which [unabled him] to stand up. He had also attack of low back pain. He rested on his cabin for the rest of their trip. On two ports of call, he was examined in a medical facility but was only given pain medication. On the 3rd port of call in Panama, he was confine[d] and underwent several examinations. He was diagnosed to have lumbar disc problem and recommended for repatriation. In Manila Doctors [H]ospital, he underwent operation on his lumbar spine since it was found out that he has Slipped Disc. The Intervertebral Disc at level L4/L5 was pressing on his nerve root, so it was remove[d] during the operation. **Even though the disc was removed, he is still having low back pain with numbness. He has still having difficulty in lifting and carrying heavy objects. The prolong[ed] injury to his nerve roots causes non-repairable**

conditions to them. Nerve cells cannot repair itself, once injured, it becomes permanent. So even he underwent operation, he has still having pain and numbness. He is not expected to perform his previous active status. He is not capable of performing the strenuous activities of a seaman.

He is given a PERMANENT DISABILITY. He is UNFIT TO WORK as a seaman in whatever capacity.[22] (Emphasis ours)

The Court observed that the company-designated physician's medical reports for the month of June 2011 are consistent with the medical assessment of Segui's own physician, that is, he is unfit for sea duty in any capacity.

Medical Report dated June 1, 2011

x x x x x x x x x

At present, there is still note of low back pain accompanied by limited trunk mobility. There is radicular pain on his left lower extremity. He has poor walking tolerance.

Medical Report dated June 8, 2011

x x x x x x x x x

At present, there is temporary relief of low back pain. The range of motion is likewise getting better. There is numbness and weakness of the lower extremity.

Medical Report dated June 15, 2011

x x x x x x x x x

At present, he now complains of neck pain. The range of motion is full. There is still note of limited trunk mobility due to pain. There is decreased radicular pain on his lower extremity. He was advised to continue medications.

Medical Report dated June 22, 2011

x x x x x x x x x

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[22] CA *rollo*, p. 139.

At present, there is low back pain after prolonged sitting. The trunk flexion is functional. However, there is limited trunk extension. He has poor lifting capacity.[23]

Despite the lack of medical assessment from a third independent physician, the Court, on several occasions,[24] can determine which between the two medical findings has merit. Here, the records of the case are replete with support that Segui's injury is permanent and total, and that he is entitled to permanent and total disability benefits as unanimously declared by the LA, the NLRC and the CA.

On the issue of attorney's fees, the Court affirms the award by the LA, following the ruling in *Gomez v. Crossworld Marine Services, Inc.*,[25] which states that "*under Article 2208, paragraph 8 of the Civil Code, attorney's fees can be recovered in actions for indemnity under workmen's compensation and employer's liability laws.*"

In addition, pursuant to the case of *Nacar v. Gallery Frames*,[26] the Court imposes on the monetary award for permanent and total disability benefits an interest at the legal rate of 6% per annum from the date of finality of this judgment until full satisfaction.

WHEREFORE, premises considered, the Court of Appeals Decision dated July 31, 2014 and the Resolution dated October 14, 2014 in CA-G.R. SP No. 130277 are **AFFIRMED** with **MODIFICATION** in that legal interest at the rate of 6% per annum hereby imposed on the monetary award for permanent and total disability benefits due Dante C. Segui, be reckoned from the finality of this Decision until full satisfaction thereof.

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[23] *Id*. at 114-117.

[24] *HFS Philippines, Inc. v. Pilar*, 603 Phil. 309 (2009); *Career Philippines Ship Management, Inc. v. Acub*, G.R. No. 215595, April 26, 2017, 825 SCRA 174; *Gomez v. Crossworld Marine Services, Inc*., G.R. No. 220002, August 2, 2017, 834 SCRA 279.

[25] *Gomez v. Crossworld Marine Services, Inc*., *supra* note 24, at 303-304.

[26] *Nacar v. Gallery Frames*, 716 Phil. 267, 283 (2013).

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[*] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 217044. January 16, 2019]

SPOUSES RAINIER JOSE M. YULO and JULIET L. YULO, *petitioners, vs.* **BANK OF THE PHILIPPINE ISLANDS,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; PETITIONERS' ACCEPTANCE OF RESPONDENT'S CREDIT CARD BY USING IT TO PURCHASE GOODS AND SERVICES CREATED A CONTRACTUAL RELATIONSHIP BETWEEN THEM.— When petitioners accepted respondent's credit card by using it to purchase goods and services, a contractual relationship was created between them, "governed by the Terms and Conditions found in the card membership agreement. Such terms and conditions constitute the law between the parties."

2. ID.; ID.; ID.; ID.; WHERE RESPONDENT BANK FAILED TO PROVE PETITIONERS' CONFORMITY AND ACCEPTANCE OF THE TERMS AND CONDITIONS OF THEIR PRE-APPROVED CREDIT CARDS, THEY CANNOT BE BOUND BY IT; PETITIONERS MAY ONLY BE CHARGED WITH LEGAL INTEREST ON THEIR PURCHASES.— [W]ith respondent's failure to prove petitioner

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[*] Additional Member per S.O. No. 2630 dated December 18, 2018.

Rainier's conformity and acceptance of the Terms and Conditions, petitioners cannot be bound by its provisions. Nonetheless, petitioner Rainier admitted to receiving the Statements of Account from respondent, and was aware of the interest rate charges imposed by respondent. x x x This case thus falls squarely within *Alcaraz v. Court of Appeals* and *Ledda v. Bank of the Philippine Islands*, where the credit card provider also failed to prove the pre-screened client's consent to the credit card's terms and conditions. *Alcaraz* ruled that when the credit card provider failed to prove its client's consent, even if the latter did not deny availing of the credit card by charging purchases on it, the credit card client may only be charged with legal interest[.] x x x [S]ince petitioner Rainier did not consent to the Terms and Conditions governing his credit card, there is a need to modify the outstanding balance by removing the interests, penalties, and other charges imposed before and on the July 9, 2008 Statement of Account. x x x Thus, the finance charges, penalties, and interests amounting to ₱9,321.17 should be deducted from the outstanding balance of ₱229,378.68, leaving a new outstanding balance of ₱220,057.51. This outstanding balance shall then be subjected to 12% legal interest from November 11, 2008, the date of respondent's first extrajudicial demand until June 30, 2013, and six percent (6%) legal interest from July 1, 2013 until fully paid.

3. ID.; ID.; DAMAGES; AWARD OF ATTORNEY'S FEES IS DELETED FOR LACK OF FACTUAL AND LEGAL BASIS.— [T]he award of ₱15,000.00 as attorney's fees is deleted for lack of basis. It is well established that the trial court "must state the factual, legal[,] or equitable justification for the award of attorney's fees" in the body of its decision. The Metropolitan Trial Court failed to state the factual or legal justification for its award of attorney's fees in respondent's favor; instead, it merely declared that the award of ₱15,000.00 as attorney's fees was just and equitable. Hence, it must be deleted.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
M.C. Ramiro and Associates for respondent.

D E C I S I O N

LEONEN, *J.*:

When issuing a pre-screened or pre-approved credit card, the credit card provider must prove that its client read and consented to the terms and conditions governing the credit card's use. Failure to prove consent means that the client cannot be bound by the provisions of the terms and conditions, despite admitted use of the credit card.

This resolves the Petition for Review on Certiorari[1] filed by Spouses Rainier Jose M. Yulo (Rainier) and Juliet L. Yulo (Juliet), assailing the Court of Appeals February 20, 2015 Decision[2] in CA-G.R. SP No. 131192, which upheld the June 26, 2013 Decision[3] of the Regional Trial Court, Branch 62, Makati City.

On October 9, 2006,[4] the Bank of the Philippine Islands issued Rainier a pre-approved credit card. His wife, Juliet, was also given a credit card as an extension of his account. Rainier and Juliet (the Yulo Spouses) used their respective credit cards by regularly charging goods and services on them.[5]

The Yulo Spouses regularly settled their accounts with the Bank of the Philippine Islands at first, but started to be delinquent with their payments by July 2008. Their outstanding balance ballooned to ₱264,773.56 by November 29, 2008.[6]

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[1] *Rollo*. pp. 12-42.

[2] *Id*. at 44-52. The Decision was penned by Associate Justice Japar B. Dimaampao and concurred in by Associate Justices Franchito N. Diamante and Carmelita S. Manahan of the Tenth Division Court of Appeals, Manila.

[3] *Id*. at 72-75. The Decision, in the case docketed as Civil Case No. 12-945, was penned by Judge Selma Palacio Alaras of Branch 62, Regional Trial Court, Makati City.

[4] *Id*. at 84.

[5] *Id*. at 45.

[6] *Id*.

On November 11, 2008, the Bank of the Philippine Islands sent Spouses Yulo a Demand Letter[7] for the immediate payment of their outstanding balance of ₱253,017.62.

On February 12, 2009, the Bank of the Philippine Islands sent another Demand Letter[8] for the immediate settlement of their outstanding balance of ₱325,398.42.

On February 23, 2009, the Bank of the Philippine Islands filed a Complaint[9] before the Metropolitan Trial Court of Makati City for sum of money against the Yulo Spouses. This was initially raffled to the Metropolitan Trial Court Branch 67, Makati City, and was docketed as Civil Case No. 97470.

In their Answer,[10] the Yulo Spouses admitted that they used the credit cards issued by the Bank of the Philippine Islands but claimed that their total liability was only ₱20,000.00. They also alleged that the Bank of the Philippine Islands did not fully disclose to them the Terms and Conditions on their use of the issued credit cards.[11]

Several attempts at mediation[12] between the parties were unsuccessful; thus, the case was re-raffled to the Metropolitan Trial Court Branch 65, Makati City, and proceeded with both parties presenting their respective witnesses.[13]

On June 29, 2012,[14] the Metropolitan Trial Court, in its Decision,[15] ruled in favor of the Bank of the Philippine Islands

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[7] *Id*. at 94.

[8] *Id*. at 135.

[9] *Id*. at 77-81.

[10] *Id*. at 95-97.

[11] *Id*. at 96.

[12] *Id*. at 136.

[13] *Id*. at 136-139.

[14] Not June 29, 2011 as written in the Metropolitan Trial Court Decision.

[15] *Rollo*, pp. 136-140. The Decision, in the case docketed as Civil Case No. 97470, was penned by Presiding Judge Henry E. Laron of Branch 65, Metropolitan Trial Court, Makati City.

and ordered the Spouses Yulo to pay the bank the sum of ₱229,378.68.

The Metropolitan Trial Court found that the Bank of the Philippine Islands successfully proved by preponderance of evidence that the Yulo Spouses failed to comply with the Terms and Conditions of their contract. Nonetheless, it equitably reduced the monthly three percent (3%) interest and three percent (3%) penalty charged under the Terms and Conditions to one percent (1%) interest and one percent (1%) penalty, to be computed from demand.[16]

The dispositive portion of the Metropolitan Trial Court's June 29, 2012 Decision read:

> **WHEREFORE**, premises considered, judgment is hereby rendered ordering defendants **SPS. RAINER** (*sic*) **JOSE M. YULO** and **JULIET L. YULO**, jointly and severally, to pay plaintiff the amount of ₱229,378.68 plus 1% interest and 1% penalty per month from February 12, 2009 until the whole amount is fully paid and the amount of ₱15,000.00 as and by way of attorney's fees; and, the costs.
>
> **SO ORDERED.**[17] (Emphasis in the original, citation omitted)

The Yulo Spouses filed an Appeal, but it was dismissed on June 26, 2013[18] by the Regional Trial Court Branch 62, Makati City, which affirmed the Metropolitan Trial Court Decision.

The Regional Trial Court declared that when it comes to pre-approved credit cards, like those issued to the Yulo Spouses, the credit card provider had the burden of proving that the credit card recipient agreed to be bound by the Terms and Conditions governing the use of the credit card.[19]

The Regional Trial Court noted that the Bank of the Philippine Islands presented as evidence the Delivery Receipt for the credit

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[16] *Id*. at 139.

[17] *Id*. at 140.

[18] *Id*. at 72-75.

[19] *Id*. at 73.

card packet, which was signed by Rainier's authorized representative, Jessica Baitan (Baitan). It held that the Bank of the Philippine Islands successfully discharged its burden, as the signed Delivery Receipt and Rainier's use of credit card were proofs that Rainier agreed to be bound by its Terms and Conditions.[20]

The Regional Trial Court further ruled that the charge slips signed by the Yulo Spouses were the best evidence that they had indeed availed of the Bank of the Philippine Islands' credit accommodation. However, the facts established by the bank and the Yulo Spouses' failure to timely challenge the charges in the Statements of Account were sufficient evidence that the Yulo Spouses admitted the veracity of the Statements of Account.[21]

The dispositive portion of the Regional Trial Court's June 26, 2013 Decision read:

> **IN VIEW WHEREOF**, the appeals interposed by spouses Yulo is **DISMISSED** and the assailed decision dated June 29, 2011 (2012) of the Metropolitan Trial Court of Makati City Branch 65 is **AFFIRMED in toto**.
>
> **SO ORDERED.**[22] (Emphasis in the original)

The Yulo Spouses then filed a Petition for Review before the Court of Appeals.[23] On February 20, 2015, the Court of Appeals denied the Petition and affirmed the Regional Trial Court Decision.[24]

The Court of Appeals concurred with the Regional Trial Court's finding that Rainier, through his authorized representative, received the pre-approved credit card issued

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[20] *Id*. at 73-74.

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

[22] *Id*. at 75.

[23] *Id*. at 44.

[24] *Id*. at 44-52.

by the Bank of the Philippine Islands, and thus, agreed to be bound by its Terms and Conditions.[25]

Moreover, the Court of Appeals found that the Yulo Spouses' failure to contest the charges in the monthly Statements of Account signified that they accepted the veracity of the charges. It further noted that Rainier, an insurance underwriter, was familiar with contractual stipulations; hence, he could not feign ignorance over his own contractual obligation to the Bank of the Philippine Islands.[26]

The dispositive portion of the Court of Appeals' February 20, 2015 Decision read:

> **WHEREFORE**, the *Petition* is hereby **DENIED**. The *Decision* dated 26 June 2013 of the Regional Trial Court of Makati City, Branch 62, in Civil Case No. 12-945, is **AFFIRMED**.
>
> **SO ORDERED.**[27] (Emphasis in the original)

The Yulo Spouses then elevated the case to this Court through this Petition.

In their Petition for Review on Certiorari,[28] petitioners, the Yulo Spouses, contend that respondent Bank of the Philippine Islands failed to prove their liability. They claim that the only valid proofs that they availed of respondent's credit line were the transaction slips they signed after purchasing goods or services with their credit cards, not the Statements of Account respondent presented as evidence.[29] They also assert that the Terms and Conditions, which petitioner Rainier supposedly agreed to, was never presented as evidence. Moreover, respondent failed to substantiate its claim that he consented to the Terms and Conditions.[30]

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[25] *Id*. at 47-49.

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

[27] *Id*. at 52.

[28] *Id*. at 12-33.

[29] *Id*. at 23.

[30] *Id*. at 28.

Petitioners claim that respondent failed to prove that it ascertained the authority of Baitan, petitioner Rainier's purported authorized representative, before handing her the credit card packet.[31] They then assailed the Terms and Conditions for being "written in so fine prints and in breathlessly long sentences for the purpose of being ignored altogether, to the prejudice of the public."[32] They also claim that the imposed charges and penalties are "excessive and contrary to morals."[33]

Petitioners concede that the Court of Appeals did not err in striking down and replacing respondent's original charges and penalties for being usurious. However, they insist that the reckoning period of the lowered interest rates and penalties should be from March 9, 2008, when they were first in default, not from February 12, 2009, when a written demand was sent to them.[34]

In its Comment,[35] respondent underscores that the Petition raised purely questions of fact improper in a petition for review on certiorari. Further, respondent claims that petitioners brought up the same issues already ruled upon by the lower courts, making it a pro-forma petition, which should be outright denied.[36]

Respondent maintains that aside from petitioners' bare allegations that the charges against them were inaccurate, they have neither presented an alternative computation nor contested the supposed error in the billing statements.[37] Respondent also asserts that when petitioners used their credit cards, they bound themselves to its Terms and Conditions in the credit card packet's Delivery Receipt.[38]

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[31] *Id*. at 24.

[32] *Id*. at 25.

[33] *Id*. at 27.

[34] *Id*. at 29.

[35] *Id*. at 239-245.

[36] *Id*. at 239-240.

[37] *Id*. at 241.

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

Petitioners were directed[39] to reply to respondent's Comment, but they manifested[40] that they would no longer be filing their reply.

The sole issue for this Court's resolution is whether or not petitioners Rainier Jose M. Yulo and Juliet L. Yulo are bound by the Terms and Conditions on their use of credit cards issued by respondent.

When a credit card provider issues a credit card to a pre-approved or pre-screened client, the usual screening processes "such as the filing of an application form and submission of other relevant documents prior to the issuance of a credit card, are dispensed with and the credit card is issued outright."[41] As the recipient of an unsolicited credit card, the pre-screened client can then choose to either accept or reject it.[42]

The Regional Trial Court found that the credit card packet from respondent, which contained petitioner's pre-approved credit card and a copy of its Terms and Conditions, was duly delivered to petitioner Rainier through his authorized representative, Baitan, as shown in the Delivery Receipt:

> As record shows, [the Bank of the Philippine Islands] presented as evidence the Delivery Receipt marked in evidence as Exhibit "C". The [Bank of the Philippine Islands] credit card issued in favor [of] defendant-appellant Rainier Jose M. Yulo was received by his duly authorized representative, one Jessica Baitan. In fact, defendants-appellants admitted having made [use] and availed of the credits which plaintiff-appellees may have in its member establishments.[43]

This was affirmed by the Court of Appeals, which stated, "The [Bank of the Philippine Islands] credit card issued to

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[39] *Id*. at 247-1.

[40] *Id*. at 248-252.

[41] *Alcaraz v. Court of Appeals*, 529 Phil. 77, 86 (2006) [Per J. Puno, Second Division].

[42] *Id*.

[43] *Rollo*, p. 73.

petitioner Rainier was received by his authorized representative, a certain Jessica Baitan, as evidenced by a Delivery Receipt."[44]

As a pre-screened client, petitioner Rainier did not submit or sign any application form as a condition for the issuance of a credit card in his account. Unlike a credit card issued through an application form, with the applicant explicitly consenting to the Terms and Conditions on credit accommodation use, a pre-screened credit card holder's consent is not immediately apparent.

Thus, respondent, as the credit card provider, had the burden of proving its allegation that petitioner Rainier consented to the Terms and Conditions surrounding the use of the credit card issued to him.[45]

While the Delivery Receipt[46] showed that Baitan received the credit card packet for petitioner Rainier, it failed to indicate Baitan's relationship with him. Respondent also failed to substantiate its claim that petitioner Rainier authorized Baitan to act on his behalf and receive his pre-approved credit card. The only evidence presented was the check mark in the box beside "Authorized Representative" in the Delivery Receipt. This self-serving evidence is obviously insufficient to sustain respondent's claim.

A contract of agency is created when a person acts for or on behalf of a principal, with the latter's consent or authority.[47] Unless required by law, an agency does not require a particular form, and may be express or implied from the acts or silence

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[44] *Id*. at 47.

[45] *Alcaraz v. Court of Appeals*, 529 Phil. 77, 87 (2006) [Per J. Puno, Second Division].

[46] *Rollo*, p. 84.

[47] CIVIL CODE, Art. 1868 provides:

ARTICLE 1868. By the contract of agency a person binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter.

of the principal.[48] *Rallos v. Felix Go Chan & Sons Realty Corporation*[49] lays down the elements of agency:

> Out of the above given principles, sprung the creation an acceptance of the *relationship of agency* whereby one party, called the principal (*mandante*), authorizes another, called the agent (*mandatario*), to act for find (*sic*) in his behalf in transactions with third persons. The essential elements of agency are: (1) there is consent, express or implied, of the parties to establish the relationship; (2) the object is the execution of a juridical act in relation to a third person; (3) the agents (*sic*) acts as a representative and not for himself; and (4) the agent acts within the scope of his authority.[50] (Emphasis in the original, citation omitted)

Respondent fell short in establishing an agency relationship between petitioner Rainier and Baitan, as the evidence presented did not support its claim that petitioner Rainier authorized Baitan to act on his behalf. Without proof that petitioner Rainier read and agreed to the Terms and Conditions of his pre-approved credit card, petitioners cannot be bound by it.

Petitioners do not deny receiving and using the credit cards issued to them. They do, however, insist that respondent failed to establish their liability because the Statements of Account submitted into evidence "merely reflect [their] alleged incurred transactions[,]"[51] but are not the source of their obligation or liability.

Petitioners are mistaken.

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[48] CIVIL CODE, Art. 1869 provides:

> ARTICLE 1869. Agency may be express, or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency, knowing that another person is acting on his behalf without authority.
>
> Agency may be oral, unless the law requires a specific form.

[49] 171 Phil. 222 (1978) [Per *J.* Muñoz Palma, First Division].

[50] *Rallos v. Felix Go Chan & Sons Realty Corporation*, 171 Phil. 222, 226-227 (1978) [Per *J.* Muñoz Palma, First Division].

[51] *Rollo*, p. 23.

When petitioners accepted respondent's credit card by using it to purchase goods and services, a contractual relationship was created between them, "governed by the Terms and Conditions found in the card membership agreement. Such terms and conditions constitute the law between the parties."[52]

Under Payment of Charges in the Terms and Conditions, petitioners would be furnished monthly Statements of Account and would have a 20-day period from the statement date to settle their outstanding balance, or the minimum required payment.[53] However, with respondent's failure to prove petitioner Rainier's conformity and acceptance of the Terms and Conditions, petitioners cannot be bound by its provisions.

Nonetheless, petitioner Rainier admitted to receiving the Statements of Account from respondent, and was aware of the interest rate charges imposed by respondent.[54] In his testimony, he even categorically admitted that he was not disputing the transactions and purchases he made before his default in payment and his account's freezing:

ATTY. BAUTISTA:

But would you admit that before June 2008 you made purchases?

A

Yes, Ma'am.

Q

Would you admit that those purchases were reflected in the Statement of Account?

COURT:

Were there disputed purchases before June 2008?

ATTY. PUZON:

None, Your Honor.

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[52] *BPI Express Card Corporation v. Armovit*, 745 Phil. 31, 36 (2014) [Per J. Bersamin, First Division].

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

[54] *Id*. at 138.

COURT:

That is improper because they are not disputing the purchases or transactions as stated in the Statement of Account earlier identified by the witness.

ATTY. BAUTISTA:

Mr. Witness, did you receive the Statement of Account sent to you by the plaintiff?

ATTY. PUZON:

Not covered by direct examination, Your Honor.

ATTY. BAUTISTA:

I'm on cross-examination, Your Honor.

COURT:

What Statement of Account? Give certain period. Are you referring to the Statement of Account after the June 2008?

ATTY. BAUTISTA:

Before the June 2008, Your Honor.

COURT:

There is no dispute as to the obligation as of June 2008, so that would be improper.[55] (Emphasis supplied)

This case thus falls squarely within *Alcaraz v. Court of Appeals*[56] and *Ledda v. Bank of the Philippine Islands*,[57] where the credit card provider also failed to prove the pre-screened client's consent to the credit card's terms and conditions. *Alcaraz* ruled that when the credit card provider failed to prove its client's consent, even if the latter did not deny availing of the credit card by charging purchases on it, the credit card client may only be charged with legal interest:

As correctly pointed out by the Court of Appeals, *the petitioner should not be condemned to pay the interests and charges provided in the*

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[55] *Id*. at 192-194.

[56] 529 Phil. 77 (2006) [Per *J*. Puno, Second Division].

[57] 699 Phil. 273 (2012) [Per *J*. Carpio, Second Division].

Terms and Conditions on the mere claim of the private respondent without any proof of the former's conformity and acceptance of the stipulations contained therein. Even if we are to accept the private respondent's averment that the stipulation quoted earlier is printed at the back of each and every credit card issued by private respondent Equitable, such stipulation is not sufficient to bind the petitioner to the Terms and Conditions without a clear showing that the petitioner was aware of and consented to the provisions of this document. This, the private respondent failed to do.

It is, however, undeniable that petitioner Alcaraz accumulated unpaid obligations both in his peso and dollar accounts through the use of the credit card issued to him by private respondent Equitable. As such, petitioner Alcaraz is liable for the payment thereof. *Since the provisions of the Terms and Conditions are inapplicable to petitioner Alcaraz, the legal interest on obligations consisting of loan or forbearance of money shall apply*.[58] (Emphasis supplied, citation omitted)

The records reveal that as of the July 9, 2008 Statement of Account, petitioners had an outstanding balance of ₱229,378.68. The Metropolitan Trial Court stated:

As of Statement Date July 9, 2008, wherein defendants made their last payment, the outstanding balance is ₱110,778.49. However, there are still installments due on the account; thus, the following must be included in his obligation:

Establishment	Monthly Installment	No. of Installments Due	Amount Due
Automatic Centre	624.96	7	4,374.72
Abenson	961.11	5	4,805.55
Abenson	849.58	2	1,699.16
EBC	2,738.85	3	8,216.55
EBC	7,012.48	3	21,037.44
EBC	8,718.53	9	78,466.77
		TOTAL	**118,600.19**

[58] *Alcaraz v. Court of Appeals*, 529 Phil. 77, 88 (2006) [Per J. Puno, Second Division].

Thus, the amount of ₱118,600.19 must be added to ₱110,778.49, which would sum up to ₱229,378.68.[59] (Emphasis in the original, citation omitted)

The Metropolitan Trial Court ruling was affirmed by both the Regional Trial Court and the Court of Appeals. However, since petitioner Rainier did not consent to the Terms and Conditions governing his credit card, there is a need to modify the outstanding balance by removing the interests, penalties, and other charges imposed before and on the July 9, 2008 Statement of Account.

A careful review of the Statements of Account from March 2008 to July 2008[60] shows that respondent made the following charges on petitioner Rainier's account:

Statement Date	**Finance Charge**	**Penalties and Interests**
March 9, 2008	₱606.01[61]	
	641.11[62]	
	373.58[63]	
April 9, 2008	605.19[64]	
	431.69[65]	
	813.61[66]	

[59] *Rollo*, p. 139.

[60] *Id*. at 103-121.

[61] *Id*. at 103.

[62] *Id*. at 105.

[63] *Id*. at 106.

[64] *Id*. at 107.

[65] *Id*. at 109.

[66] *Id*.

May 11, 2008	0	
June 9, 2008	1,510.88[67]	
	21.28[68]	
July 9, 2008		1,777.55[69]
		338.28[70]
	2,121.10[71]	
		7.96[72]
	72.93[73]	
Sub-total	7,197.38	2,123.79
Total		**₱9,321.17**

Thus, the finance charges, penalties, and interests amounting to ₱9,321.17 should be deducted from the outstanding balance of ₱229,378.68, leaving a new outstanding balance of ₱220,057.51. This outstanding balance shall then be subjected to 12% legal interest from November 11, 2008,[74] the date of respondent's first extrajudicial demand[75] until June 30, 2013,

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[67] *Id*. at 118.

[68] *Id*.

[69] *Id*. at 119.

[70] *Id*.

[71] *Id*.

[72] *Id*. at 121.

[73] *Id*.

[74] *Id*. at 94.

[75] CIVIL CODE, Art. 1169 provides:

ARTICLE 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
However, the demand by the creditor shall not be necessary in order that delay may exist:
(1) When the obligation or the law expressly so declare; or
(2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the

and six percent (6%) legal interest from July 1, 2013 until fully paid.[76]

Finally, the award of ₱15,000.00 as attorney's fees[77] is deleted for lack of basis. It is well established that the trial court "must state the factual, legal[,] or equitable justification for the award of attorney's fees"[78] in the body of its decision. The Metropolitan Trial Court failed to state the factual or legal justification for its award of attorney's fees in respondent's favor; instead, it merely declared that the award of ₱15,000.00 as attorney's fees was just and equitable.[79] Hence, it must be deleted.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **PARTIALLY GRANTED**. The assailed Court of Appeals February 20, 2015 Decision in CA-G.R. SP No. 131192 is **MODIFIED**. Petitioners Rainier Jose M. Yulo and Juliet L. Yulo are **DIRECTED TO PAY** respondent Bank of the Philippine Islands the amount of Two Hundred Twenty Thousand Fifty-Seven Pesos and Fifty-One Centavos (₱220,057.51) plus twelve percent (12%) legal interest per annum from November 11, 2008 until June 30, 2013, and six percent (6%) legal interest per annum from July 1, 2013 until their entire obligation is fully paid.[80]

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service is to be rendered was a controlling motive for the establishment of the contract; or

(3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.

In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

[76] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*].

[77] *Rollo*, p. 140.

[78] *Ledda v. Bank of the Philippine Islands*, 699 Phil. 273, 283 (2012) [Per *J.* Carpio, Second Division].

[79] *Rollo*, p. 140.

[80] *Nacar v. Gallery Frames*, 716 Phil. 267 (2013) [Per *J.* Peralta, *En Banc*].

SO ORDERED.

Peralta (*Chairperson*), *Reyes, A. Jr., Hernando*, and *Carandang*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 225725. January 16, 2019]

LEPANTO CONSOLIDATED MINING COMPANY, *petitioner, vs.* **MAXIMO C. MAMARIL, EDUARDO C. FONTIVEROS, RICHARD PADONG, SHARWIN ESPIQUE, CLARITO ALBING, BALUDOY TOTANES, GERRY OLANIO, JOSEPH DUMANGENG, REYNALD MANUIT, NARDO SINGIT, MICHAEL PANGDA, BENJAMIN ASIDERA, ALVARO PATAGUE, JR., ANGELITO NAYRE, JR., JOSE MOJICA, and JOEL SILARAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; TO BE A VALID GROUND FOR DISMISSAL, THE LOSS OF TRUST AND CONFIDENCE MUST BE BASED ON A WILLFUL BREACH AND FOUNDED ON CLEARLY ESTABLISHED FACTS.— In dismissal cases, the burden of proof is on the employer to show that the employee was dismissed for a valid and just cause. Here, Lepanto dismissed Mamaril based on loss of trust and confidence. To be a valid ground for

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[*] Designated additional Member per Special Order No. 2624 dated November 28, 2018.

dismissal, the loss of trust and confidence must be based on a willful breach and founded on clearly established facts. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Loss of trust and confidence must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. The employer, thus, carries the burden of clearly and convincingly establishing the facts upon which loss of confidence in the employee may be made to rest.

2. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; BURDEN OF PROVING PAYMENT OF MONETARY CLAIMS RESTS ON THE EMPLOYER; CASE AT BAR.—** [W]e see no reason to overturn the rulings of the NLRC and the CA in awarding overtime pay, holiday pay, and rest day pay to the other respondents. x x x In *Damasco v. NLRC*, we held that an employer's formal admission that an employee worked beyond eight hours should entitle the employee to overtime compensation. In this case, such admissions, that respondents rendered overtime work and work during their holiday and rest days on the period specified therein, can be gleaned from the affidavits executed by Lepanto's managers, Atty. Weldy Manlong, and Capt. Edgar Langeg. Thus, respondents are clearly entitled to these benefits. This Court has repeatedly ruled that any doubt arising from the evaluation of evidence as between the employer and the employee must be resolved in favor of the latter. As an employer, it is incumbent upon Lepanto to prove payment. In *G & M (Phils.), Inc. v. Cruz*, we held that the burden of proving payment of monetary claims rests on the employer since the pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave, and other claims of workers have been paid — are not in the possession of the worker but in the custody and absolute control of the employer. Thus, the burden of showing with legal certainty that the obligation has been discharged with payment falls on the debtor, in accordance with the rule that one who pleads payment has the burden of proving it. In this case, Lepanto failed to discharge such burden of proof. Lepanto submitted daily time sheets showing that respondents rendered eight-hour work days, signed by respondents and countersigned by Col.

> Doromal as the Department Head. However, as found by the CA in its Decision dated 21 October 2015: Then again the daily time sheets presented by petitioner are not substantial proof that private respondents did not render overtime work. It can be plainly observed from these daily time sheets that the number of hours worked by private respondents were uniform and were written by the same hand. For this reason, these daily time sheets should be taken with [a] grain of salt x x x.

APPEARANCES OF COUNSEL

Vladimir B. Bumatay, Badr E. Salendab and *Marvin Lester N. De Paz* for petitioner.

Marita O. Maranan-Sandiego for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on certiorari[1] assailing the Decision dated 21 October 2015[2] and the Resolution[3] dated 28 June 2016 of the Court of Appeals (CA) in CA-G.R. SP No. 116677.

The Facts

Petitioner Lepanto Consolidated Mining Company (Lepanto) hired respondent Maximo C. Mamaril (Mamaril) as security guard on 14 November 2003. Mamaril was assigned to the Security Reaction Force (SRF), a group of security guards tasked

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[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 10-28. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Marlene Gonzales-Sison and Melchor Quirino C. Sadang, concurring.

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

to do special duties and one that would "react" accordingly in case of any eventuality without pulling out posted security guards which would create a vacuum in the said posts.[4] The SRF was created by retired Col. Wilhelm D. Doromal, Lepanto's Security Superintendent and Security and Communication Services Department Head, and composed of 14 members, who all used to be part of the military.

Due to the SRF's small number and highly sensitive and critical duties, the members were required to be on duty and on call for 24 hours, seven days a week. They were posted alternately to sensitive postings and were not allowed to go home except for their rest day. When not on duty, the SRF members were required to stay at Victoria Hill, the resting quarters of the SRF, and were on call when not assigned to a particular guard detail. As compensation, the SRF members received free rice supply and housing, an additional rate of ₱20 to their daily rate, and overtime pay equivalent to one hour of overtime work.

Every day, members of the SRF were assigned to different posts consisting of eight hour shifts, as well as to daily gravity production transports done twice daily, in the morning and afternoon. Also, twice a week, the SRF secured the airstrip during the arrival and departure of the company plane. When the members were not posted on roving or on escort duties, they would usually rest at Victoria Hill but were still on call in case there would be reports of infiltration from outsiders or "highgraders." Further, their movements were limited within company premises and they were not allowed to go home except on their scheduled rest days.

On 8 October 2006, at around 7:25 p.m., Lepanto Security Guard Intelligence Operatives Arthur Bangkilas (Bangkilas) and Romeo Velasco (Velasco) apprehended Eliseo Sumibang, Jr. (Sumibang), an employee of Lepanto Mine Division who worked as a mucker, for stealing skinned copper wires from

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[4] *Id*. at 261.

the Lepanto Mine Division located in Sapid, Mankayan, Benguet. Mamaril, the guard on duty at that time, was also apprehended since he was the one who allegedly opened the man door of the Tubo Collar gate and allegedly conspired with Sumibang so that the wires would be brought out and loaded into a tricycle. Thereafter, Sumibang and Mamaril[5] were both placed under preventive suspension by the company for qualified theft of skinned copper wires.

Bangkilas and Velasco executed a Spot Report[6] dated 10 October 2006 and a Joint-Affidavit[7] dated 16 October 2006 regarding the qualified theft. They narrated that they were instructed by their supervisor, Paul Pespes, to do surveillance work at the Tubo Collar area, particularly the shaft gate, due to reliable information that pilferage of copper wires from the Tubo Collar shops and underground, involving some shaft men and electricians in connivance with the assigned duty guard, was rampant. The information disclosed that the pilferage would happen between 7:00 to 8:00 in the evening and a tricycle would be used to transport the pilfered items. On the night of 8 October 2006, Bangkilas and Velasco were positioned at the back of the store located along the national road, which was more or less 40 meters from the Tubo Collar gate, when the incident occurred. At around 7:20p.m., they saw a person, later identified as Foreman Arceo Manginga, exit the man door. Then about five minutes later, Bangkilas and Velasco saw a tricycle, with two passengers onboard and with its headlights switched off, stop at the Tubo Collar gate. They saw that when the man door was opened by the assigned duty guard Mamaril, someone went out, and then something was loaded into the tricycle, which lasted for more or less a minute. Then Bangkilas and Velasco came out from hiding, tried to intercept, and chased the tricycle towards Tabbac Road. They caught up with the tricycle, with plate number AP-1586, and identified the passenger as Sumibang

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[5] *Id*. at 214.

[6] *Id*. at 210-211.

[7] *Id*. at 212-213.

and the driver, a certain Tony Mendoza. Several other security officers followed and the physical evidence recovered, consisting of skinned copper wires weighing 110.45 kilograms and wrapped in four separate muddy and wet burlap sheets, were brought to the Office of the Mankayan Police Station.

At the formal hearing[8] held on 16 October 2006, Mamaril stated that he was the 3rd shift guard assigned from 3:00 p.m. to 11:00 p.m. at the Tubo Collar gate, consisting of a butterfly gate for vehicles and a man door gate for employees. Mamaril was assigned not only to guard the Tubo Collar gate but also to patrol and inspect the adjacent buildings such as the compressor, lamp house, hoist room, shaft and perimeter fence, and the National Power Corporation (NPC) gate. Mamaril denied that he was involved or that he conspired with Sumibang in the alleged qualified theft. Mamaril claimed that on 8 October 2006 he was on roving patrol at the NPC station when the theft occurred. He narrated that about past 7:00 in the evening, he opened the man door and allowed Foreman Arceo Manginga to exit the premises. Afterwards, NPC Security Guard Salvador Macaraeg arrived and together they conducted a roving inspection of the NPC and the compressor compound. Mamaril admitted that he left the man door hooked on its barrel bolt but did not padlock it since the employees of the Diamond Drilling Corporation of the Philippines, who were underground at that time, might come out anytime. At the back of the shaft, Mamaril came upon Rogelio Gao-an (Gao-an), Marcial Grupo (Grupo), Jose Van Ngalew (Ngalew), Rommel Anongos (Anongos), Tony Sabino (Sabino), and Vincent Eckwey (Eckwey), all mechanics working for NPC, attending to their welding job. Suddenly, Mamaril heard somebody blew a whistle at the direction of the Tubo Collar gate. Immediately, he went to his post and saw some security men headed by Security Guard Ernesto Fagela so he unhooked the barrel bolt of the man door and allowed them to enter. Mamaril denied having knowledge and participation in the theft of the skinned copper wires. Mamaril

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[8] *Id*. at 215.

stated that his only fault, if any, was that he forgot to secure the man door. Padlocking the man door is a standard operating procedure of the company if the man door is not in use. Mamaril submitted the sworn affidavits of mechanics Gao-an, Grupo, Ngalew, Anongos, Sabino, and Eckwey, who all saw him on roving patrol, while the theft was taking place.

Tubo Electrical Foreman Andrew Dacyon also gave a statement.[9] Dacyon stated that they had no losses of power line stock at the Tubo Electrical storage and Tubo Collar compound. Dacyon surmised that the skinned copper wires recovered by the security men might have come from the abandoned places in the mine underground. Security Guard Salvador Macaraeg and miner Nelson Badua also gave their own recollection of the events on the date in question.[10]

After the investigation, Lepanto's Security Investigator Jose Albing, Jr. submitted an Investigation Report[11] dated 19 October 2006. It was mentioned in the report, among other things, that the estimated value of the stolen items was worth ₱16,898.85. Thereafter, Lepanto's Legal Office submitted a Resolution[12] dated 4 November 2006 finding Mamaril guilty of qualified theft for conspiring with Sumibang in pilfering or stealing skinned copper wires on the night of 8 October 2006. Lepanto dismissed Mamaril from employment for dishonesty and breach of trust and confidence.

On 21 November 2006, Mamaril filed a complaint[13] against Lepanto with the National Labor Relations Commission Regional Arbitration Branch – Cordillera Administrative Region (NLRC RAB-CAR) for illegal dismissal with claims for payment of

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[9] *Id*. at 219-A.

[10] Security Guard Salvador Macaraeg's statement, *id*. at 216-217; and miner Nelson Badua's statement, *id*. at 219.

[11] *Id*. at 218-220.

[12] *Id*. at 221-227.

[13] Docketed as NLRC Case No. RAB-CAR 11-0685-06.

his full backwages or in lieu thereof, payment of separation pay, overtime pay, rest day pay, damages and attorney's fees.

On 22 January 2007, several security guards of Lepanto and members of the SRF also filed a complaint[14] with the NLRC RAB-CAR for payment of overtime pay, rest day pay, night shift differentials, moral and exemplary damages, and attorney's fees. The security guards who filed the complaint were Eduardo Fontiveros, Sharwin Espique, Baludoy Totanes, Gerry Olanio, Joseph Dumangeng, Reynald Manuit, Nardo Singit, Michael Pangda, Richard Padong, and Clarito Albing. The basis of their complaint revolved on the strike made by members of the Lepanto Employees Union which occurred from 2 June to 11 September 2005. During this three-month period, the members of the SRF, including Mamaril, were ordered to be on duty around the clock, rendered overtime work, and were on call, even on holidays and rest days.

On 30 April 2007, more aggrieved members of the SRF, security guards Benjamin Asidera, Alvaro Patague, Jr., Angelito Nayre, Jr., Jose Mojica, and Joel Silaran, filed another complaint[15] against Lepanto with the NLRC RAB-CAR for payment of overtime pay, damages, and attorney's fees.

On 21 May 2007, the SRF was abolished and deactivated by Lepanto.

Upon motion of all the complainants, which Lepanto did not object to, the three separate cases were consolidated.

In its Answer, Lepanto declared that Mamaril was dismissed by the company for just and valid causes. Lepanto presented the Joint Affidavit of Bangkilas and Velasco who both positively identified Mamaril as the one who opened the man door for Sumibang and his companion. Lepanto asserted that Mamaril's infraction constituted dishonesty and breach of trust and confidence which are just causes for his termination. With regard

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[14] Docketed as NLRC Case No. RAB-CAR 03-0126-07.

[15] Docketed as NLRC Case No. RAB-CAR 05-0219-07.

to the monetary claims, Lepanto argued that complainants failed to establish that they rendered work (1) beyond the regular eight working hours a day, and (2) on holidays and rest days. Lepanto presented the daily time sheets, signed by respondents and countersigned by their supervisor, reflecting their hours worked, which they did not object to.

In a Joint Decision[16] dated 4 March 2008, the Labor Arbiter of the NLRC RAB-CAR ruled in favor of Lepanto. The Labor Arbiter declared that as a security guard in charge of the handling, custody, care, and protection of company property, Mamaril occupied a position of trust and confidence. Thus, he was terminated for a just cause. The Labor Arbiter gave credence to the testimonies of Bangkilas and Velasco and found the testimonies of Mamaril's witnesses, who did not have any knowledge of the fact of pilferage, as hearsay. With regard to the money claims, the Labor Arbiter declared that respondents failed to discharge the burden of proving that they are entitled to such money claims. The Labor Arbiter stated that (1) respondents did not specify the dates, months and years they rendered overtime services, as well as extra work during their holiday and rest days, and (2) the affidavit of their superior, retired Col. Wilhelm D. Doromal, failed to indicate that he had any authority to order respondents to render such overtime services. The dispositive portion states:

> WHEREFORE, premises considered, judgment is hereby rendered DISMISSING the instant complaints for lack of merit.
>
> Other claims and charges are likewise dismissed finding no legal and factual basis.
>
> SO ORDERED.[17]

The respondents filed an appeal to the NLRC. In a Resolution[18] dated 8 January 2010, the NLRC partially granted the appeal

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[16] *Rollo*, pp. 257-274.

[17] *Id*. at 274.

[18] *Id*. at 275-286.

and declared that the dismissal of Mamaril from the service was without any valid and just cause. The NLRC found the claim of Bangkilas and Velasco that they recognized Mamaril as the one who opened the man door to be physically impossible, improbable and contrary to human experience given that (1) it was dark and the light at the guard post was switched off, (2) Bangkilas and Velasco were positioned at the back of the store located along the national road which was more or less 40 meters away from the man door, (3) the only illumination came from a bulb post along the left perimeter fence road near the outside gate nearer to the two guards, and (4) the incident happened in more or less a minute. The NLRC added that there was no reason to doubt the alibi of Mamaril that he was on roving duty when the incident occurred and his admission that he had been lax in leaving his post, under pain of possible sanction, without padlocking the man door first. The NLRC declared that Mamaril was entitled to separation pay and full backwages. However, with regard to other respondents, the NLRC found that they failed to present sufficient evidence to prove that they are entitled to overtime pay, holiday pay, and rest day pay. The dispositive portion states:

> WHEREFORE, the appeal is PARTLY GRANTED. The assailed March 4, 2008 Decision of the Executive Labor Arbiter is AFFIRMED with MODIFICATION that the dismissal of complainant Maximo Mamaril from the service is illegal. And, accordingly, respondent Lepanto Consolidated Mining Co. is hereby ordered to pay complainant Mamaril the amount of ₱59,592.00 representing his separation pay; and, ₱480,149.87 representing his full backwages inclusive of allowances and other benefits.
>
> SO ORDERED.[19]

Both parties filed Partial Motions for Reconsideration. In a Resolution[20] dated 13 August 2010, the NLRC partly granted the motion for reconsideration filed by respondents and ordered

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[19] *Id*. at 285.

[20] *Id*. at 289-297.

Lepanto to pay them overtime pay, holiday pay, and rest day pay. The dispositive portion states:

> WHEREFORE, this Commission resolves to: (1) partly grant the motion for reconsideration filed by complainants and, thus, order the respondent to pay the following complainants in addition to the judgment awards as contained in our previous Resolution promulgated on January 8, 2010, to wit:
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> | | |
> |---|---|
> | 1. Eduardo Fontiveros: | ₱26,997.42 |
> | 2. Sharwin Espique: | ₱26,997.42 |
> | 3. Nardo Singit: | ₱26,997.42 |
> | 4. Michael Pangda: | ₱26,997.42 |
> | 5. Maximo Mamaril: | ₱30,888.94 |
> | 6. Benjamin Asidera: | ₱29,056.54 |
> | 7. Alvaro Patague, Jr.: | ₱29,056.54 |
> | 8. Angelito Nayre, Jr.: | ₱29,056.54 |
> | 9. Jose Mojica: | ₱29,056.54 |
>
> representing their overtime pay, rest day and holiday pays; and, (2) deny the motion for reconsideration of the respondent for lack of merit. The attached computation forms as an integral part hereof.
>
> SO ORDERED.[21]

Lepanto filed a petition for certiorari under Rule 65 with the CA. In a Decision dated 21 October 2015, the CA decided in favor of Mamaril and the other respondents. The dispositive portion of the decision states:

> WHEREFORE, in light of the foregoing disquisitions, We rule that–
>
> (1) The NLRC did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in ruling that private respondent Maximo Mamaril was not terminated for a just cause;
>
> (2) The following private respondents are entitled to the payment of their overtime pay for the overtime work they rendered while they were members of the Security Reaction Force:

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[21] *Id*. at 296.

(a) Eduardo Fontiveros
(b) Sharwin Espique
(c) Nardo Singit
(d) Michael Pangda
(e) Maximo Mamaril
(f) Richard Padong
(g) Clarito Albing
(h) Baludoy Totanes
(i) Gerry Olanio
(j) Joseph Dumangeng
(k) Reynald Manuit

(3) The following private respondents are entitled to the payment of their overtime pay and holiday for working beyond the regular eight working hours a day during the duration of the strike and holiday pay for working on June 12, 2005 (Independence Day), August 21, 2005 (Ninoy Aquino Day), and August 29, 2005 (National Heroes Day):

(a) Eduardo Fontiveros
(b) Sharwin Espique
(c) Nardo Singit
(d) Michael Pangda
(e) Maximo Mamaril
(f) Benjamin Asidera
(g) Alvaro Patague, Jr.
(h) Angelito Nayre, Jr.
(i) Jose Mojica
(j) Joel Silaran

The Computation and Research Unit (CRU) of the NLRC is hereby directed to compute the overtime pay and holiday pay of the private respondents.

SO ORDERED.[22]

Lepanto filed a Motion for Partial Reconsideration which was denied by the CA in a Resolution dated 28 June 2016.

Hence, this petition.

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[22] *Id*. at 25-26.

The Issue

Whether or not the appellate court committed reversible error in holding that (1) Mamaril was dismissed by Lepanto without a just and valid cause and thus entitled to separation pay and full backwages, and (2) Mamaril and the other respondents are entitled to be compensated for work rendered on overtime, holiday, and rest days.

The Court's Ruling

The petition lacks merit.

In dismissal cases, the burden of proof is on the employer to show that the employee was dismissed for a valid and just cause. Here, Lepanto dismissed Mamaril based on loss of trust and confidence. To be a valid ground for dismissal, the loss of trust and confidence must be based on a willful breach and founded on clearly established facts.[23] A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Loss of trust and confidence must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer. The employer, thus, carries the burden of clearly and convincingly establishing the facts upon which loss of confidence in the employee may be made to rest.[24]

Lepanto contends that Mamaril is not an ordinary outsourced security guard but an in-house security officer and a member of Lepanto's SRF, thus, holding a position of trust and confidence. Lepanto adds that Mamaril's duties and functions made him privy to company secrets and to confidential matters that are shared with management.

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[23] *Surigao del Norte Electric Cooperative v. National Labor Relations Commission*, 368 Phil. 537, 553 (1999).

[24] *Pilipinas Bank v. National Labor Relations Commission*, 290 Phil. 244, 251 (1992).

It is undisputed that Mamaril was hired by Lepanto as a security guard on 14 November 2003. He was assigned to the SRF, a group of security guards tasked to do special duties for the company. Lepanto asserts that as a member of the SRF, Mamaril was not an ordinary security guard but an in-house security officer privy to the workings of management, and thus, held a position of trust and confidence.

However, the records show that when the theft occurred on 8 October 2006, Mamaril was no longer a member of the SRF. Office Order No. 14-2005[25] dated 9 August 2005, attached to Mamaril's Position Paper filed with the NLRC, indicated that Mamaril and four other security guards were reassigned by Lepanto from the SRF to regular surface duty guards effective 20 August 2005. Thus, on the night in question, Mamaril was no longer a member of the SRF but was transferred to regular security duty in charge of securing the Tubo Collar gate as well as patrolling and inspecting adjacent buildings.

Also, even if Mamaril was occupying a position of trust as an ordinary security guard, to be a valid cause for termination of employment, the act or acts constituting breach of trust must have been done intentionally, knowingly, and purposely; and they must be founded on clearly established facts. In *Lopez v. Alturas Group of Companies and/or Uy*,[26] we held that loss of trust and confidence must be based on willful breach of the trust reposed in the employee by his employer and must be based on substantial evidence and not on the employer's whims or caprices or suspicions.

Here, Lepanto asserts that the dismissal of Mamaril due to loss of trust and confidence was justified since the Tubo Collar gate was lit and that guards Bangkilas and Velasco positively identified Mamaril as the one who opened the man door since they were familiar with Mamaril's face, being their co-security

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[25] *Rollo*, p. 395.

[26] 663 Phil. 121, 128 (2011).

guard. However, Lepanto relied heavily on the affidavit and report made by Bangkilas and Velasco. The two stated that while they were positioned at the back of a store along the national road about 40 meters away from the Tubo Collar gate, they saw Mamaril open the man door gate and then someone went out carrying something that was loaded into a tricycle, which lasted for more or less a minute.

We agree with the NLRC and the CA that this can hardly be believed as an accurate report or one founded on clearly established facts given that the incident occurred at night and the witnesses were at a considerable distance away from the man door. Also, the breach of trust was not shown to have been done intentionally, knowingly, and purposely. Here, Lepanto merely assumed that Sumibang, who was caught red-handed on the qualified theft of skinned copper wires, conspired with Mamaril to execute the wrongdoing. Aside from the report filed by Bangkilas and Velasco, Lepanto did not present an admission from Sumibang and his companion that Mamaril assisted them in any way to carry out their plan; neither did Lepanto produce any other evidence corroborating what Bangkilas and Velasco allegedly saw. Clearly, conspiracy cannot be readily presumed. It must be based on sufficient evidence to stand. As correctly observed by the CA in its Decision dated 21 October 2015:

> Another, the allegation of qualified theft as justification for the loss of confidence was not founded on clearly established facts. The theft happened at night. Based from the pictures of the man door and the spot where Arthur Bangkilas and Romeo Velasco were hiding, there is a considerable distance between the two. Moreover, Arceo Manginga testified that the area is not well-lighted at night. He had to stand close to Maximo Mamaril in order to recognize him. It is highly unlikely for Arthur Bangkilas and Romeo Velasco to positively identify Maximo Mamaril at such distance and with poor lighting conditions.
>
> Petitioner's argument that Maximo Mamaril was in cohorts with Eliseo Sumibang and his unidentified companion because he was on duty on the night of October 8, 2006 is speculative. As such, it deserves scant consideration. It has been consistently held that there must be proof of involvement in the events in question.

Maximo Mamaril's admission that he did not lock properly the man door before he went on his roving patrol does not also amount to a breach of trust and confidence. Such breach, to be a ground for termination, must be willful. That is, it must be done intentionally, knowingly, and purposely, without justifiable excuse as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[27]

Also, the NLRC, in its Resolution dated 8 January 2010, aptly gave a vivid observation of the conditions of the place on the night in question:

> Clearly, the testimony of the said witnesses could not be given any credence as it defies common human experience and observation, as it would, indeed, be physically impossible for the said witnesses to recognize complainant under the circumstances. Even the witnesses' allegation that the gate is well lighted is difficult to accept, as they did not elaborate the nature of the sources as well as the locations of the sources of the light that illuminate the place of the complainant. Nonetheless, available evidence established that the only source of light is a bulb on a long post along the left perimeter fence of the road which is already near the outside gate; meaning, the source of the light is located near the position of the witnesses in contrast to the location of the complainant, and as common experience would dictate, such makes the location of the complainant to appear even darker. It is obvious that their claim to have seen complainant open the man door is improbable and contrary to human experience.[28]

Thus, based on the findings of the NLRC and the CA, we find that Mamaril was dismissed without a just and valid cause and is thus entitled to be paid separation pay and full backwages, inclusive of allowances and other benefits.

Further, we see no reason to overturn the rulings of the NLRC and the CA in awarding overtime pay, holiday pay, and rest day pay to the other respondents. As enunciated by the NLRC in its Resolution dated 13 August 2010:

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[27] *Rollo*, pp. 19-20.

[28] *Id*. at 281.

However, after a re-examination of the records which includes the testimony of Col. Doromal, this Commission is convinced that his testimony should have been viewed under the context that complainants actually rendered overtime work after their tour of duty and should not have accentuated on his failure to mention the number of hours the complainants had spent in rendering their overtime work. It must be observed that Col. Doromal, on direct examination, clearly testified that during the strike, complainants were tasked to deliver food and other necessary supplies that would provide continuous mining operation; they were also tasked to escort the tankers and cargo trucks to penetrate the strike area, assist the army in the conduct of the security patrol in the Lepanto area, secure VIPs going in and out of Lepanto, and secure the gold bullion from the refinery to the airport. He also admitted that the foregoing tasks were performed by the complainants beyond their eight-hour shift duties.

In his Affidavit, Col. Doromal also attested that the members of the SRF, of which the complainants were assigned, were not allowed to go home even during their rest days and were also required to be on duty/on call for 24 hours. The fact that complainants performed the above-mentioned tasks during the strike was also attested to by employees of Lepanto, in an Affidavit executed by them on September 10, 2007.

Complainants, nevertheless, admitted that they were only paid for an hour's overtime work per day.

This Commission has no reason to doubt the above attestation of complainants' witnesses especially with respondent's failure to present evidence to disprove the veracity of the said statements. Respondent's defense that there was no approval for members of the SRF to render overtime work, except those that had been duly documented and paid for by the company, or for being on call for 24 hours cannot also be given any merit noting that when Col. Doromal was subjected to a not too searching a cross-examination, it was elicited from him that there was a verbal instruction from the resident manager directing him to order his men to be on call.

Likewise, the occurrence of the labor strike threatened the orderly business operation of the respondent as well as the safety of its properties and work premises. Col. Doromal, who was then the Security Superintendent and Head, Security and Communications Services Department, was, therefore, in a position to call on the members of the SRF to render overtime work in order to augment its security to

prevent any untoward incident that would hamper the operation of the respondent and to protect its properties and work premises as well. Thus, respondent cannot just disregard the services rendered by the complainants in overtime which undoubtedly benefited its business interest by simply invoking lack of authority, which respondent did not even [try] to prove.[29]

Also, the CA, in its Decision dated 21 October 2015, stated:

It appears uncontroverted that the members of the Lepanto Employees Union went on a strike from June 2, 2005 to September 11, 2005. Atty. Weldy U. Manlong, the Administrative Services Group Manager of petitioner and Capt. Edgar K. Langeg, the Assistant Security Superintendent of Security and Communications Services Department, both manifested in their respective affidavits that the strikers committed illegal acts during the strike. This can be considered as a special circumstance where private respondents, as security guards and members of the Security Reaction Force, may be ordered to render work in order to prevent loss of life and property.

We also note that both Atty. Weldy Manlong and Capt. Edgar Langeg hinted in their respective affidavits that private respondents were ordered to render overtime work and work during the holiday and their rest day. They pointed out that some of the security guards remained at their post beyond the regular eight working hours to keep an eye on the strikers. Capt. Edgar Langeg specifically stated that the overtime work that the security guards rendered during the duration of the strike was approved by the Administrative Group Manager and Resident Manager of petitioner. x x x.[30]

In *Damasco v. NLRC*,[31] we held that an employer's formal admission that an employee worked beyond eight hours should entitle the employee to overtime compensation. In this case, such admissions, that respondents rendered overtime work and work during their holiday and rest days on the period specified therein, can be gleaned from the affidavits executed by Lepanto's

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[29] *Id*. at 291-293.

[30] *Id*. at 21.

[31] 400 Phil. 568, 586 (2000).

managers, Atty. Weldy Manlong, and Capt. Edgar Langeg. Thus, respondents are clearly entitled to these benefits.

This Court has repeatedly ruled that any doubt arising from the evaluation of evidence as between the employer and the employee must be resolved in favor of the latter.[32] As an employer, it is incumbent upon Lepanto to prove payment. In *G & M (Phils.), Inc. v. Cruz*,[33] we held that the burden of proving payment of monetary claims rests on the employer since the pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave, and other claims of workers have been paid — are not in the possession of the worker but in the custody and absolute control of the employer. Thus, the burden of showing with legal certainty that the obligation has been discharged with payment falls on the debtor, in accordance with the rule that one who pleads payment has the burden of proving it.

In this case, Lepanto failed to discharge such burden of proof. Lepanto submitted daily time sheets showing that respondents rendered eight-hour work days, signed by respondents and countersigned by Col. Doromal as the Department Head. However, as found by the CA in its Decision dated 21 October 2015:

> Then again the daily time sheets presented by petitioner are not substantial proof that private respondents did not render overtime work. It can be plainly observed from these daily time sheets that the number of hours worked by private respondents were uniform and were written by the same hand. For this reason, these daily time sheets should be taken with [a] grain of salt x x x.
>
> x x x x x x x x x
>
> It is also noticeable that these daily time sheets are incomplete as these only covered the following periods:

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[32] *Marival Trading, Inc. v. National Labor Relations Commission*, 552 Phil. 762, 783 (2007).

[33] 496 Phil. 119, 124-125 (2005).

1. June 21 and 30, 2004
2. July 13 and 30, 2004
3. August 19, 2004
4. October 19, 2004
5. December 10, 2004
6. January 9, 2005
7. June 1-15, 2005
8. June 21, 2005 to August 20, 2005

Petitioner nonetheless insists that it paid private respondents' overtime pay and holiday pay. Hence, petitioner should have at least presented copies of its payroll or copies of the pay slips of respondents to show payment of these benefits. However, it failed to do so. Due to such failure of the petitioner, there arises a presumption that such evidence, if presented, would be prejudicial to it. Likewise, petitioner could be deemed to have waived its defense and admitted the allegations of the private respondents.[34]

In sum, we find that the appellate court did not commit any reversible error in holding that (1) Mamaril was dismissed by Lepanto without a just cause and is thus entitled to separation pay and full backwages, and (2) Mamaril and the other respondents are entitled to be compensated for the overtime, holiday and rest day work that they rendered during the period specified therein.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 21 October 2015 and the Resolution dated 28 June 2016 of the Court of Appeals in CA-G.R. SP No. 116677.

SO ORDERED.

Perlas-Bernabe, Caguioa, Reyes, J. Jr., and *Hernando,*[*] *JJ.*, concur.

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[34] *Rollo*, pp. 23-24.

[*] Designated additional member per Special Order No. 2630 dated 18 December 2018.

FIRST DIVISION

[G.R. No. 231122. January 16, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEX CASEMIRO and JOSE CATALAN, JR.,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; MURDER; ELEMENTS, CLEARLY ESTABLISHED.— To successfully prosecute the crime of murder under Article 248 of the Revised Penal Code (RPC), the following elements must be established: "(1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide." In this case, the prosecution was able to clearly establish that the victim was stabbed to death and accused-appellants were the perpetrators.

2. REMEDIAL LAW; EVIDENCE; SOLE TESTIMONY OF A WITNESS IS SUFFICIENT FOR CONVICTION; ALIBI AND DENIAL ARE OUTWEIGHED BY POSITIVE AND CATEGORICAL IDENTIFICATION OF A WITNESS.— This Court thus finds no error in the affirmance by the appellate court of the trial court's finding of conviction of accused-appellants based on the sole testimony of the prosecution witness. It is elementary that alibi and denial are outweighed by positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter. Aside from that, where there is the least possibility of the presence of the accused at the crime scene, the alibi will not hold water.

3. CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; CIRCUMSTANCES IN CASE AT BAR INDUBITABLY PROVE TREACHERY; EXECUTION OF THE ATTACK GAVE THE VICTIM NO OPPORTUNITY TO DEFEND HIMSELF OR TO RETALIATE AND THE MEANS ARE DELIBERATELY ADOPTED BY

ACCCUSED-APPELLANTS.— For this Court to appreciate treachery, it must be shown that offenders employed means, methods, or forms in the execution of the crime that tend directly and especially to ensure its execution without risk to themselves arising from the defense which the victim might make. In the instant case, the accused-appellants invited the victim under the pretense of butchering a duck and brought him to a place where there were no houses nearby in the middle of the night; the victim was unarmed while accused-appellants wielded a knife and an ice pick; the victim was stabbed multiple times on the chest, held by the arms by the other, and again stabbed multiple times on the back even after he had fallen down. These circumstances indubitably prove treachery; execution of the attack gave the victim no opportunity to defend himself or to retaliate, and said means of execution was deliberately adopted by accused-appellants.

4. ID.; ID.; MURDER; PENALTY AND CIVIL LIABILITY.— The crime of murder qualified by treachery is penalized under Article 248 of the RPC, as amended by Republic Act No. 7659, with *reclusion perpetua* to death. Accused-appellants were meted the penalty of *reclusion perpetua* by the trial court which the CA affirmed. This Court finds the imposition and subsequent affirmance thereof in order. As to the award of damages, prevailing jurisprudence directs the payment to the heirs of the victim the amounts of ₱75,000.00 as moral damages; ₱75,000.00 as civil indemnity; ₱75,000.00 as exemplary damages; and ₱50,000.00 as temperate damages, as well as the payment of interest at 6% *per annum* on all amounts from finality of the Decision until full payment. These amounts have been properly decreed by the appellate court when it affirmed the ruling of the trial court with modification. Thus, we see no reason to modify further the assailed ruling of the appellate court.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal[1] from the October 28, 2016 Decision[2] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02085 which affirmed with modification the May 26, 2015 Decision[3] of the Regional Trial Court (RTC) of Gandara, Samar, Branch 41 in Criminal Case No. 10-0474.

The Facts

Accused-appellants Alex Casemiro (accused-appellant Casemiro) and Jose Catalan, Jr. (accused-appellant Catalan) were charged with murder in an Information[4] which reads:

> That on or about the 16th day of April, 2010, at about 9:00 x x x in the evening in Barangay Catorse[5] de Agosto, Municipality of Gandara, Province of Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating together and mutually helping and aiding one another, without justifiable reason and with deliberate intent to kill and with treachery, which qualify the offense into Murder, did then and there willfully, unlawfully and feloniously attack, assault and took turn in stabbing one JEFFREY HERMO with the use of deadly weapons, which the accused had conveniently provided themselves for the purpose, thereby inflicting upon the victim serious and fatal stabbing wounds on the different parts of the victim's body which were the direct and immediate cause of his death.
>
> Contrary to law.[6]

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[1] *Rollo*, pp. 22-23.

[2] *Id*. at 4-21; penned by Associate Justice Marilyn B. Lagura-Yap and concurred in by Associate Justices Gabriel T. Ingles and Germano Francisco D. Legaspi.

[3] Records, pp. 242-254; penned by Presiding Judge Feliciano P. Aguilar.

[4] *Id*. at 13.

[5] Also spelled as Catorce in some parts of the records.

[6] *Id*.

When arraigned, accused-appellants pleaded not guilty.[7] After the conduct of pretrial, trial ensued.[8]

Version of the Prosecution

The evidence for the prosecution consisted of the testimonies of the victim's common-law wife, Mary Ann[9] Hermo (Mary Ann), and of the investigating officer, Police Officer 1 Christopher M. Prudenciado (PO1 Prudenciado).

Mary Ann claimed that, on April 16, 2010, at 9:00 p.m., accused-appellants went to their house in *Barangay* Catorse de Agosto and invited her husband to butcher a duck; that accused-appellant Casemiro was already drunk when he invited the victim; that 20 minutes later, she decided to look for her husband and asked her 14-year-old brother, Christopher Belino, to accompany her; that when they were in the nearby *Barangay* of Ngoso, she witnessed at a distance of 15 meters accused-appellant Casemiro stab her husband five times on the chest using a four-inch knife and accused-appellant Catalan held her husband's arms; that her husband fell down; that accused-appellant Catalan stabbed her husband eight times at the back using an ice pick; that the place was illuminated by a big bulb atop a Samar Electric Cooperative post located eight meters from where the stabbing took place; that she shouted for help to no avail because it was already nighttime and there were no houses nearby; that her brother also witnessed the incident but only cried because he was afraid; that she reported the incident to the police of Gandara, Samar; and that she could not recall any quarrel or misunderstanding between her husband and accused-appellant Casemiro.[10]

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[7] *Id*. at 71 (Order dated April 5, 2011) and 74 (Certificate of Arraignment).

[8] *Id*. at 84-88 (Pretrial Order dated April 18, 2011).

[9] Also referred to as Merean in some parts of the records.

[10] TSN, July 21, 2011, pp. 1-32.

PO1 Prudenciado, on the other hand, stated that items were found at the scene of the crime including a pair of black slippers identified as the victim's as well as an ice pick and a pair of white slippers both identified as accused-appellant Casemiro's; that the body of the victim was immediately brought to Gandara District Hospital for an autopsy; that accused-appellant Catalan was arrested; and that accused-appellant Casemiro voluntarily went to the police station.[11]

The Certificate of Death[12] and Autopsy Report[13] executed by Dr. Reynaldo D. Roldan of Gandara District Hospital were also offered in evidence to prove that the victim died of hemorrhagic shock secondary to massive blood loss due to stab wounds at the back and on the chest totaling 13. The testimony of Dr. Roldan was, however, dispensed with after the genuineness and due execution of the documents were admitted by the defense.[14]

Version of the Defense

Accused-appellants denied the allegations and interposed the defense of alibi.

Accused-appellant Catalan testified that he and Mary Ann were cousins; that he was a permanent resident of Catbalogan City and was merely on an extended vacation in Gandara after the 40-day *novena* of his deceased father in February; that he met the victim – his cousin's husband – only once and had no conflict with him; that he knew where the victim lived which was a mere five-minute walk from his aunt's house; that he was at his aunt's house that night watching a cartoon show until 2:00 a.m.; that Mary Ann told him about the death of her husband; that police officers fetched him and brought him to the station; that he told the police officers he did not know

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[11] TSN, June 22, 2011, pp. 1-17.

[12] Records, p. 118.

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

[14] TSN, July 21, 2011, p. 31.

anything about the stabbing incident; that he was allowed to go home; that later on, he was arrested and jailed; and that he was not in the habit of drinking.[15]

Meanwhile, accused-appellant Casemiro stated that he was with his mother and father at their house in *Barangay* Catorse de Agosto; that he slept at 9:00p.m. and woke up at 8:00 a.m.; that he used to see the victim because their houses were near each other; that when he found out that he was being suspected as the assailant of the victim, he went to the police station to clear his name and to state that he had done nothing wrong; that when he was at the police station, Mary Ann did not recognize him; that Mary Ann identified him as Alex Casemiro only the following day when she must have learned of his name from the people accusing him of having killed the victim; that he did not have any altercation with the victim or Mary Ann; that he could not think of any reason for Mary Ann to accuse him; and that he was not acquainted with accused-appellant Catalan and only met him in jail.[16]

Accused-appellant Catalan's cousin, Irene Mañozo Dalicano, also took the witness stand and stated that accused-appellant Catalan indeed went out briefly that night but came back immediately; that accused-appellant Catalan did not smell of alcohol or have a drinking spree with accused-appellant Casemiro; that accused-appellant Catalan watched television with other relatives from 7:00 p.m. until midnight; that at 5:00 a.m., Mary Ann went to their house and stated that accused-appellants killed her husband; and, that Mary Ann came back with police officers to arrest accused-appellant Catalan.[17]

Ruling of the Regional Trial Court

In its Decision dated May 26, 2015, the RTC of Gandara, Samar, Branch 41, found accused-appellants guilty of the

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[15] TSN, February 19, 2013, pp. 1-24.

[16] TSN, April 24, 2013, pp. 1-14.

[17] TSN, July 3, 2014, pp. 1-15.

charge.[18] The trial court ruled that accused-appellants' defense of alibi could not be given credence because the houses of accused-appellants and the victim were just near one another.[19] The trial court convicted accused-appellants with murder after finding that treachery and abuse of superior strength attended the commission of the crime.[20] The victim was unarmed and without any means to defend himself while accused-appellants held an ice pick and a knife.[21] The victim was likewise held by the arms while he was stabbed multiple times.[22]

The dispositive portion of the Decision reads:

> WHEREFORE, in view of all the foregoing considerations, the Court finds both above-named accused, Alex Casemiro and Jose Catalan, Jr., Guilty beyond reasonable doubt of the crime of Murder, qualified by treachery and abuse of superior strength, and sentences each accused Alex Casemiro and Jose Catalan, Jr., a penalty of Reclusion Perpetua and to pay the actual damages to the heirs of victim Jeffrey Hermo in the amount of FIFTY THOUSAND PESOS (Php50,000.00) and moral damages in the amount of TWENTY THOUSAND PESOS (Php20,000.00).
>
> The period of their provisional detention is deducted in full of the aforesaid penalty of Reclusion Perpetua if they abide with the rules and regulations of a convicted prisoner, otherwise only 4/5 shall be credited.
>
> SO ORDERED.[23]

Accused-appellants filed their appeal[24] assailing their conviction. They stated that the prosecution failed to prove

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[18] Records, p. 253.

[19] *Id*. at 252.

[20] *Id*. at 252-253.

[21] *Id*. at 253.

[22] *Id*.

[23] *Id*. at 253-254.

[24] *Id*. at 256.

their guilt beyond reasonable doubt.[25] They specifically assailed the testimony of Mary Ann which they claimed to be "unreliable, uncorroborated, and incredible."[26] They argued that when Mary Ann confronted accused-appellant Catalan, she was clueless as to who had killed her husband and when Mary Ann saw accused-appellant Casemiro, she initially did not recognize him and was able to pinpoint him as the culprit only the following day.[27] They also claimed that Mary Ann did not really witness the killing of her husband.[28] They stated that it was impossible for her to witness the killing due to the condition of visibility at the time of the incident.[29] They also questioned Mary Ann's reaction after the incident – she left her husband without even checking if he was still alive.[30] They also imputed error on the trial court in having qualified the crime as murder.[31]

The People of the Philippines, through the Office of the Solicitor General, on the other hand, posited that Mary Ann's positive identification of accused-appellants as the perpetrators, without any showing of ill motive to falsely testify against them, should prevail over accused-appellants' defense of denial and alibi.[32] Furthermore, accused-appellants were correctly pronounced guilty beyond reasonable doubt of the crime of murder because of the presence of treachery — they lured the victim to go with them to supposedly butcher a duck but ended up killing him in another *barangay* at an ungodly hour.[33]

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[25] CA *rollo*, pp. 38-39.

[26] *Id*. at 39.

[27] *Id*.

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

[29] *Id*.

[30] *Id*.

[31] *Id*. at 43.

[32] *Id*. at 77.

[33] *Id*. at 79.

The People also asked that the award of moral damages be increased to ₱75,000.00; in addition, the amounts of ₱75,000.00 as civil indemnity and ₱30,000.00 as exemplary damages be awarded; and interest at the legal rate of 6% *per annum* be imposed on all monetary awards from the date of finality of the resolution until fully paid.[34]

Ruling of the Court of Appeals

The appellate court affirmed the conviction of accused-appellants. It held that all the elements of the crime were proven by the prosecution.[35] It also held that treachery attended the commission of the crime.[36] It held that accused-appellants chose a strategic location, pretended that they would only be butchering a duck, and employed sudden attacks on the victim who was caught unaware of the impending danger to his life that fateful night.[37] However, it ruled that even if abuse of superior strength was proven, such could not be appreciated as a generic aggravating circumstance because it would only be absorbed by treachery.[38] The appellate court thus upheld the assailed ruling of the trial court subject only to minor modifications in the penalty as follows:

> WHEREFORE, the Judgment of the Regional Trial Court, Branch 41, Gandara, Samar dated May 26, 2015 finding accused-appellants Alex Casemiro and Jose Catalan Jr., guilty of Murder is AFFIRMED with MODIFICATION on the civil aspect. Accused-appellants are jointly and severally liable to pay the heirs of the victim, civil indemnity in the amount of ₱75,000.00, moral damages in the amount of ₱75,000.00, exemplary damages in the amount of ₱75,000.00, and temperate damages in the amount of ₱50,000.00. The award of actual damages is DELETED. Interest at 6% shall be imposed on the damages

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

[35] *Rollo*, p. 13.

[36] *Id*. at 15.

[37] *Id*.

[38] *Id*. at 16.

awarded to be reckoned from the time of finality of the Decision until fully paid.

SO ORDERED.[39]

Hence, the present appeal.[40]

After being required to file supplemental briefs if they so desired,[41] the parties instead submitted Manifestations[42] in which they stated that they were adopting their Briefs[43] submitted earlier before the appellate court and were dispensing with the filing of Supplemental Briefs.[44]

Our Ruling

There is no merit in the appeal.

To successfully prosecute the crime of murder under Article 248[45] of the Revised Penal Code (RPC), the following elements must be established: "(1) that a person was killed; (2) that the accused killed him or her; (3) that the killing was attended by any of the qualifying circumstances mentioned in Article 248 of the Revised Penal Code; and (4) that the killing is not parricide or infanticide."[46]

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[39] *Id*. at 20.

[40] *Id*. at 22.

[41] *Id*. at 27-28 (July 5, 2017 Resolution).

[42] *Id*. at 29-31 (Plaintiff-Appellee) and 40-41 (Accused-Appellants).

[43] CA *rollo*, pp. 32-47 (Brief for the Accused-Appellants) and 68-83 (Brief for the Appellee).

[44] *Rollo*, pp. 29 and 40.

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

1. With **treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity[.] (Emphasis supplied)

[46] *People v. Gaborne*, 791 Phil. 581, 592 (2016), citing *People v. Dela Cruz*, 626 Phil. 631, 639 (2010).

In this case, the prosecution was able to clearly establish that the victim was stabbed to death and accused-appellants were the perpetrators.

The witness for the prosecution, Mary Ann, categorically identified accused-appellants. Contrary to the protestations of accused-appellants that her testimony was "unreliable, uncorroborated, and incredible," the records disclose that it was clear and unwavering. In her direct examination, she stated as follows:

Q: And while you were looking for your husband what have you observed?
A: Jeffrey was stabbed by Alex Casemiro.

Q: How about the other accused Jose Catalan, Jr. what did he do with your husband?
A: He held Jeffrey.[47]

x x x x x x x x x

Q: So, what part of the body of your husband was being held by Jose Catalan, Jr. while he was being stabbed by Alex Casemiro?
A: He was holding both arms of my husband.

Q: Where did Jose Catalan, Jr. position himself in relation to your husband Jeffrey Hermo while holding the arms of your husband?
A: He was at the back of my husband.

Q: And how about this Alex Casemiro where was [his position] while he was stabbing your husband?
A: He was facing my husband.

Q: Was your husband hit by the stabbing blow by Alex Casemiro?
A: Yes, sir.

Q: Can you still recall what part of the body was hit?
A: He was hit on his chest.

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[47] TSN, July 21, 2011, p. 45.

Q: How many stabbing blows did your husband receive, if you know?
A: 5 stabbing blows.

Q: Are you sure of that?
A: Yes, sir.

Q: Now, what weapon was used by Alex Casemiro in stabbing your husband?
A: A knife locally known as "kutsilyo."

Q: Aside from holding your husband what did Jose Catalan, Jr. do, if you know?
A: He stabbed my husband on his back.

Q: Do you know what weapon was used by Jose Catalan, Jr. in stabbing your husband at his back?
A: Ice pick.[48]

When she was subjected to cross-examination, she was resolute and unwavering as follows:

Q: Who stabbed first your husband, was it Alex Casemiro or Jose Catalan, Jr.?
A: Alex stabbed first my husband.

Q: What happened to your husband after he was stabbed by Alex?
A: He fell down.

Q: But you said that while Alex was stabbing your husband, Jose was behind your husband who was at that time also stabbing your husband at his back, did [I] get you right?
A: Yes, Ma'am. Alex stabbed first.

Q: And after Alex stabbed your husband he fell on the ground?
A: My husband fell down after Alex and Jose stabbed him.[49]

This Court thus finds no error in the affirmance by the appellate court of the trial court's finding of conviction of accused-appellants based on the sole testimony of the prosecution

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[48] *Id*. at 47-49.

[49] *Id*. at 64-65.

witness. It is elementary that alibi and denial are outweighed by positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter.[50] Aside from that, where there is the least possibility of the presence of the accused at the crime scene, the alibi will not hold water.[51]

The arguments raised by accused-appellants which assail Mary Ann's testimony lack merit. They argued that, when Mary Ann saw accused-appellant Casemiro, she initially did not recognize him and was able to pinpoint him as the culprit only the following day. However, the claim that Mary Ann only positively identified them through what other people said was uncorroborated and self-serving.

The argument that Mary Ann could not have witnessed the incident likewise deserves scant consideration since no proof was shown that Mary Ann's vision was hindered by the lighting condition. There was no allegation that the vision of the eyewitness had been obstructed, or that her distance from the crime scene had effectively impaired her ability to identify the perpetrators.[52] Normally, where conditions of visibility are favorable and the witness does not appear to be biased, her assertion as to the identity of the malefactors should be accepted.[53] This is more so when the witness is a near relative because witnesses such as she usually strive to remember the faces of the assailants.[54]

Finally, their argument regarding Mary Ann's reaction after the incident — she left her husband without even checking if he was still alive — is similarly bereft of merit in light of the

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[50] *People v. Rarugal*, 701 Phil. 592, 600-601 (2013) citing *Malana v. People*, 573 Phil. 39, 53 (2008).

[51] *People v. Golidan*, G.R. No. 205307, January 11, 2018. Citation omitted.

[52] *People v. Alas*, G.R. Nos. 118335-36, June 19, 1997, 274 SCRA 310, 321-322.

[53] *Id*.

[54] *People v. Jacolo*, 290-A Phil. 422 (1992).

pronouncement of this Court that there is no standard behavior or reaction for people who witness traumatic events such as the death of a common-law husband, as in this case. For it is settled "that different people react differently to a given situation or type of situation, and there is no standard form of human behavioral response when one is confronted with a strange or startling or frightful experience."[55]

Accused-appellants also assail their conviction for murder after the lower courts found the qualifying circumstance of treachery.

For this Court to appreciate treachery, it must be shown that offenders employed means, methods, or forms in the execution of the crime that tend directly and especially to ensure its execution without risk to themselves arising from the defense which the victim might make.[56] In the instant case, the accused-appellants invited the victim under the pretense of butchering a duck and brought him to a place where there were no houses nearby in the middle of the night; the victim was unarmed while accused-appellants wielded a knife and an ice pick; the victim was stabbed multiple times on the chest, held by the arms by the other, and again stabbed multiple times on the back even after he had fallen down. These circumstances indubitably prove treachery; execution of the attack gave the victim no opportunity to defend himself or to retaliate, and said means of execution was deliberately adopted by accused-appellants.[57]

Meanwhile, the trial court made a pronouncement on the presence of abuse of superior strength. The CA also stated that there was abuse of superior strength but that this would only be absorbed by treachery. This Court finds the pronouncements unnecessary considering that abuse of superior strength was not even alleged in the Information. An aggravating circumstance, even if proven during trial, cannot affect an accused-appellant's

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[55] *People v. Mamaruncas*, 680 Phil. 192, 207 (2012).

[56] *People v. Japag*, G.R. No. 223155, July 23, 2018.

[57] *Id*.

liability when the Information fails to allege such circumstance.[58] Thus, it was not proper for the lower courts to make a pronouncement on the presence of the circumstance of abuse of superior strength. Be that as it may, the crime was already qualified by the circumstance of treachery which was alleged and proven by the prosecution.

The crime of murder qualified by treachery is penalized under Article 248 of the RPC, as amended by Republic Act No. 7659, with *reclusion perpetua* to death. Accused-appellants were meted the penalty of *reclusion perpetua* by the trial court which the CA affirmed. This Court finds the imposition and subsequent affirmance thereof in order.

As to the award of damages, prevailing jurisprudence[59] directs the payment to the heirs of the victim the amounts of ₱75,000.00 as moral damages; ₱75,000.00 as civil indemnity; ₱75,000.00 as exemplary damages; and ₱50,000.00 as temperate damages, as well as the payment of interest at 6% *per annum* on all amounts from finality of the Decision until full payment. These amounts have been properly decreed by the appellate court when it affirmed the ruling of the trial court with modification. Thus, we see no reason to modify further the assailed ruling of the appellate court.

WHEREFORE, the instant appeal is **DISMISSED** for lack of merit. The October 28, 2016 Decision of the Court of Appeals in CA-G.R. CR-HC No. 02085 is hereby **AFFIRMED *in toto***.

SO ORDERED.

Bersamin, C.J., Jardeleza, Gesmundo, and *Carandang, JJ.*, concur.

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[58] *People v. Tigle*, 465 Phil. 368, 383 (2004).

[59] *People v. Jugueta*, 783 Phil. 806 (2016).

SECOND DIVISION

[A.M. No. 18-08-69-MTC. January 21, 2019]

RE: DROPPING FROM THE ROLLS OF MR. STEVERIL[*] J. JABONETE, JR., Junior Process Server, Municipal Trial Court Pontevedra, Negros Occidental.

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CONTINUED ABSENCE FOR MORE THAN THIRTY (30) DAYS WITHOUT OFFICIAL LEAVE WARRANTS SEPARATION FROM THE SERVICE OR DROPPING FROM THE ROLLS; EFFECTS.— Jabonete should be separated from the service or dropped from the rolls in view of his continued absence since June 6, 2011. It should be stressed that a court personnel's conduct is circumscribed with the heavy responsibility of upholding public accountability and maintaining the people's faith in the judiciary. By failing to report for work since June 2011 up to the present, Jabonete grossly disregarded and neglected the duties of his office. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service. Nevertheless, as the OCA correctly pointed out, dropping from the rolls is non-disciplinary in nature, and thus, Jabonete's separation from the service shall neither result in the forfeiture of his benefits nor disqualification from reemployment in the government pursuant to Section 96, Rule 19 of the RRACCS.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative matter involves Steveril J. Jabonete, Jr. (Jabonete), Junior Process Server, Municipal Trial Court (MTC), Pontevedra, Negros Occidental.

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[*] "Stevebril" in some parts of the *rollo*.

The records of the Employees' Leave Division (ELD) of the Office of Administrative Services (OAS) – Office of the Court Administrator (OCA) show that Jabonete had an approved vacation and sick leave application until June 3, 2011. However, he has not reported back to work and has not submitted his Daily Time Record (DTR) since June 2011 up to the present. Neither has he submitted additional applications for leave. Thus, based on the records, Jabonete has been absent without official leave since June 6, 2011.[1]

On February 28, 2012, the ELD sent Jabonete a letter[2] directing him to submit his DTRs from June 6, 2011 up to said date; otherwise, his salaries would be recommended for withholding.[3]

The ELD further sent a letter[4] dated March 21, 2012 to Jabonete at his court station – MTC, Pontevedra, Negros Occidental – coursed through said court's Acting Presiding Judge George S. Patriarca (Judge Patriarca), reiterating the directive for the former to submit his DTRs from June 2011 up to said date, with a warning that continued non-compliance will constrain the Office to recommend that his name be dropped from the rolls.[5]

On June 4, 2012, the ELD received a letter[6] dated May 10, 2012 from Judge Patriarca, informing it that he has personally handed the March 21, 2012 letter to Jabonete.[7]

To date, the ELD has not received any compliance from Jabonete.[8] Thus, his salaries and other benefits were withheld

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[1] *Rollo*, p. 1.

[2] *Id.* at 3. Signed by Hermogena F. Bayani, SC Chief Judicial Staff Officer, Leave Division.

[3] *Id*. at 1.

[4] *Id*. at 4. Signed by Caridad A. Pabello, OCA Chief of Office, OAS.

[5] See *id*. at 1 and 4.

[6] See *id*. at 1 and 6.

[7] See *id*. The letter was signed "received" by Jabonete dated "5/10/12."

[8] See *id*. at 1.

pursuant to memorandum WSB No. 3d-2012 dated March 21, 2012.[9]

The OCA informed the Court of its findings based on the records of its different offices, namely: (*a*) Jabonete has no application for retirement; (*b*) he is still in the *plantilla* of court personnel, and thus, considered to be in active service; (*c*) no administrative case is pending against him; and (*d*) he is not an accountable officer.[10]

In its Report[11] dated July 24, 2018, the OCA recommended that: (*a*) Jabonete's name be dropped from the rolls effective June 6, 2011 for having been absent without official leave; (*b*) his position be declared vacant; and (*c*) he be informed of his separation from the service at Barangay RSB, La Carlota, Negros Occidental, his last known address appearing in his 201 file. The OCA added, however, that Jabonete is still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.[12]

The Court's Ruling

The Court agrees with the CA's recommendation.

Section 93 (a), Rule 19 of the Revised Rules on Administrative Cases in the Civil Service[13] (RRACCS) states:

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[9] See *id*. at 1 and 7. Signed by Caridad A. Pabello, OCA Chief of Office, OAS and approved by Court Administrator Jose Midas P. Marquez.

[10] *Id*. at 1-2 and 8-9.

[11] *Id*. at 1-2. Signed by Court Administrator Jose Midas P. Marquez, Deputy Court Administrator Jenny Lind R. Aldecoa-Delorino, and OCA Chief of Office, OAS Caridad A. Pabello.

[12] See *id*. at 2.

[13] CSC Resolution No. 1101502 dated November 18, 2011. Note that RRACCS was superseded by the 2017 Rules on Administrative Cases in the Civil Service (CSC Resolution No. 1701077) which took effect on August 17, 2017. However, since the instant case was instituted sometime in 2012, or during the effectivity of the RRACCS, the latter rule should apply in this case.

Rule 19
DROPPING FROM THE ROLLS

Section 93. *Grounds and Procedure for Dropping from the Rolls*. — Officers and employees who are either habitually absent or have unsatisfactory or poor performance or have shown to be physically or mentally unfit to perform their duties may be dropped from the rolls subject to the following procedures:

a. Absence Without Approved Leave

1. An officer or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days shall be separated from the service or dropped from the rolls without prior notice. He/she shall, however, be informed of his/her separation not later than five (5) days from its effectivity which shall be sent to the address appearing on his/her 201 files or to his/her last known address;

x x x x x x x x x (Underscoring supplied)[14]

Based on this provision, Jabonete should be separated from the service or dropped from the rolls in view of his continued absence since June 6, 2011.

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[14] See also Section 107 (a), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service, thus:

Rule 20
DROPPING FROM THE ROLLS

Section 107. *Grounds and Procedure for Dropping from the Rolls*. — Officers and employees who are absent without an approved leave, have unsatisfactory or poor performance, or have shown to be physically or mentally unfit to perform their duties may be dropped from the rolls within thirty (30) days from the time a ground therefor arises subject to the following procedures:

a. Absence Without Approved Leave

1. An official or employee who is continuously absent without official leave (AWOL) for at least thirty (30) working days may be dropped from the rolls without prior notice which shall take effect immediately.

   He/she shall, however, have the right to appeal his/her separation within fifteen (15) days from receipt of the notice of separation which must be sent to his/her last known address.

   x x x x x x x x x (Underscoring supplied)

It should be stressed that a court personnel's conduct is circumscribed with the heavy responsibility of upholding public accountability and maintaining the people's faith in the judiciary.[15] By failing to report for work since June 2011 up to the present, Jabonete grossly disregarded and neglected the duties of his office. Undeniably, he failed to adhere to the high standards of public accountability imposed on all those in the government service.[16]

Nevertheless, as the OCA correctly pointed out, dropping from the rolls is non-disciplinary in nature, and thus, Jabonete's separation from the service shall neither result in the forfeiture of his benefits nor disqualification from reemployment in the government pursuant to Section 96,[17] Rule 19 of the RRACCS.

WHEREFORE, Steveril J. Jabonete, Jr., Junior Process Server, Municipal Trial Court, Pontevedra, Negros Occidental is hereby **DROPPED** from the rolls effective June 6, 2011 and his position is declared **VACANT**. He is, however, still qualified to receive the benefits he may be entitled to under existing laws and may still be reemployed in the government.

Let a copy of this Resolution be served upon him at his address appearing in his 201 file pursuant to Section 93 (a) (1),

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[15] *Re: Dropping from the Rolls of Mr. Florante B. Sumangil*, A.M. No. 18-04-79-RTC, June 20, 2018.

[16] See *id*.

[17] Section 96. *Dropping From the Rolls; Non-Disciplinary in Nature.* – This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical or mental incapacity is non-disciplinary in nature and shall not result in the forfeiture of any benefit on the part of the official or employee or in disqualification from reemployment in the government.

See also Section 110, Rule 20 of the 2017 RACCS, which reads: Section 110. *Dropping From the Rolls; Non-disciplinary in Nature.* – This mode of separation from the service for unauthorized absences or unsatisfactory or poor performance or physical or mental disorder is non-disciplinary in nature and shall not result in the forfeiture of any benefit on the part of the official or employee or in disqualification from reemployment in the government.

Rule 19 of the Revised Rules on Administrative Cases in the Civil Service.[18]

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 228262. January 21, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOENIL PIN MOLDE,** *accused-appellant.*

SYLLABUS

CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED THEFT; ELEMENTS, NOT ESTABLISHED; PROSECUTION FAILED TO PROVE THE ELEMENTS OF *TAKING OF PERSONAL PROPERTY* WITH *INTENT TO GAIN* ON THE PART OF APPELLANT.— The elements of qualified theft are: "(*a*) taking of personal property; (*b*) that the said property belongs to 'another; (*c*) that the said taking be done with intent to gain; (*d*) that it be done without the owner's consent; (*e*) that it be accomplished without the use of violence or intimidation against persons, nor of force upon things; [and] (*f*) that it be done with grave abuse of confidence." x x x The totality of these circumstances leads us to inevitably conclude that the elements of *taking of personal property with intent to gain* were not proven beyond reasonable doubt. Absent any

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[18] See also Section 107 (a) (1), Rule 20 of the 2017 Rules on Administrative Cases in the Civil Service (CSC Resolution No. 1701077, effective on August 17, 2017).

[**] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

concrete proof that appellant indeed received: (*a*) cash collections of Sun Pride's sales agents; and/or (*b*) checks payable to cash or in appellant's name, he cannot be adjudged to have taken the same for his own personal gain.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

Assailed in this appeal is the October 30, 2015 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 06077 which affirmed the April 3, 2013 Decision[2] of the Regional Trial Court (RTC), Branch 197, Las Piñas City, finding Joenil Pin Molde (appellant) guilty beyond reasonable doubt of the crime of qualified theft.

The Antecedent Facts

Appellant was charged with the crime of qualified theft under Article 310, in relation to Article 308, of the Revised Penal Code (RPC) in an Information which reads:

That on or about the 26th day of May 2010, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above named accused, being then the former ACCOUNTING IN CHARGE of SUN PRIDE FOODS INC. Las Piñas City branch, herein represented by: complainant HENRY DY, and as such he has custody of all the cash collections and checks of the said company and enjoying the trust and confidence reposed upon him by said complainant, with intent to gain and without the knowledge and consent of the latter and with grave abuse of confidence, did then and there willfully,

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[1] *Rollo*, pp. 2-12; penned by Associate Justice Nina G. Antonio-Valenzuela and concurred in by Associate Justices Fernanda Lampas Peralta and Jane Aurora C. Lantion.

[2] CA *rollo*, pp. 20-37; penned by Judge Ismael T. Duldulao.

unlawfully and feloniously take, steal and carry away cash money amounting to Php1,149,960.56, belonging to the said SUN PRIDE FOODS INC. herein represented by: HENRY DY, to the damage and prejudice of the latter in the total amount of Php1,149,960.56.

CONTRARY TO LAW.[3]

During his arraignment on November 15, 2010, appellant entered a plea of not guilty.[4] Trial thereafter ensued.

Version of the Prosecution

The prosecution's version of the incident is as follows:

Appellant was hired as an office clerk by Sun Pride Foods, Inc. (Sun Pride) in 2006. In February 2008, he was assigned to the company's Las Piñas Branch as the "accounting-in-charge."[5] As such, appellant had custody over the cash and check collections of sales agents as well as the Weekly Remittance Transmittal Reports (WRTR) submitted by them.[6] In particular, he was in-charge of depositing the cash payments in Sun Pride's account with the Bank of the Philippine Islands (BPI), and sending the checks issued as payments for Sun Pride to its main office in Cebu City.[7]

Sometime in 2010, Grace Maquiling, the overall head of accounting of Sun Pride, ordered an investigation with regard the low cash remittances from the company's Las Piñas Branch. After the audit conducted by Mariano Victorillo (Victorillo), Sun Pride's internal auditor, it was discovered that the total amount unremitted to Sun Pride had ballooned to ₱1,149,960.56, comprising of ₱757,998.35 in cash and ₱391,962.21 in checks.[8]

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[3] Records, p. 1.

[4] See Certificate of Arraignment, *id*. at 137.

[5] CA *rollo*, p. 101.

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

[7] *Id*. at 102.

[8] *Id*.

After furnishing appellant with a copy of the audit report, Sun Pride sent two demand letters requiring the former to pay the total unremitted amount but to no avail. Sun Pride eventually suspended appellant from work pending investigation. For his part, appellant stopped reporting to work after tendering his letter of resignation despite Sun Pride's refusal to accept said letter.[9]

Version of the Defense

Appellant denied the allegations against him. He testified that:

> While [he] received check payments, the checks were payable to [Sun Pride] Foods, Inc., and he was not authorized to encash the same. Also, the BPI bank deposit slips he received were from the sales agents, who deposit their cash collections directly to the bank. Copies of the deposit slips were submitted to him to be attached to the WRTR.[10]

Ruling of the Regional Trial Court

In its Decision dated April 3, 2013, the RTC found appellant guilty beyond reasonable doubt of the crime of qualified theft.[11] It held that:

> [A]s Accounting-In-Charge of [Sun Pride) in its branch in Las Piñas City, [appellant] was authorized to receive collections and payments from sales agents and walk-in customers of [Sun Pride). [Appellant] was able to perpetrate the crime, using the trust and confidence reposed upon him by [Sun Pride], by his failure to remit all collections [that] he received. To reiterate, [the] audit report of [Sun Pride's] internal audit showed that [appellant] unlawfully took the amount of Php1,149,960.56 belonging to [Sun Pride.][12]

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[9] *Id*. at 102-103.

[10] *Id*. at 60.

[11] *Id*. at 37.

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

x x x x x x x x x

The defense of denial advanced by [appellant] that he did not receive cash collections from [Sun Pride's] sales agents cannot overcome the positive declaration of the prosecution[']s witnesses, particularly [S]ales [A]gents Remogat and Tigson that they directly remitted their cash collection to [appellant.] The audit report showing the unremitted amount supports and bolsters the claim of the sales agents. x x x[13]

Accordingly, the RTC sentenced appellant to suffer the penalty of *reclusion perpetua* and to pay Sun Pride the amounts of ₱1,149,960.56, representing the stolen funds, and ₱458,863.48 as attorney's fees and other litigation expenses.[14]

Appellant thereafter appealed the RTC Decision before the CA.

Ruling of the Court of Appeals

In its Decision dated October 30, 2015, the CA affirmed the assailed RTC Decision *in toto*. It upheld the RTC's findings that the prosecution was able to prove all the elements of the crime charged.[15]

The CA further noted that appellant's denial of the allegations against him was merely a desperate attempt to exculpate himself from liability, *viz*.:

Notably, initially[,] [appellant] on cross-examination x x x had acknowledged that he received the cash and checks. Later, [appellant] on cross-examination x x x claimed that he did not receive the cash collections and checks. This denial (after initially admitting receipt [thereof]) was a desperate attempt to exculpate himself from liability and an intrinsically weak defense which must be buttressed by strong evidence of non-culpability to merit credibility. [Appellant] did not adduce any such strong evidence to support his claim that he did not receive such cash collections and checks. Bare denials cannot overcome

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[13] *Id*. at 36.

[14] *Id*. at 37.

[15] *Rollo*, pp. 2-12.

the positive testimonies of private complainant Sun Pride's sales agents that they turned over the cash collections and checks to [appellant]. The defense that [appellant] did not receive the cash and checks was a mere afterthought, in a desperate attempt to escape criminal liability for the crime he committed.[16]

Aggrieved, appellant filed the present appeal.

The Issue

Appellant raises the sole issue of whether his guilt was proven beyond reasonable doubt, considering the prosecution's failure to present evidence that he indeed pocketed the missing cash and check remittances from Sun Pride in the total amount of ₱1,149,960.56.[17]

The Court's Ruling

The elements of qualified theft are: "(*a*) taking of personal property; (*b*) that the said property belongs to another; (*c*) that the said taking be done with intent to gain; (*d*) that it be done without the owner's consent; (*e*) that it be accomplished without the use of violence or intimidation against persons, nor of force upon things; [and] (*f*) that it be done with grave abuse of confidence."[18]

After a thorough review of the records, we find that the prosecution miserably failed to establish the elements of the crime of qualified theft. The prosecution failed to prove the crucial elements of *taking of personal property* and *intent to gain* on the part of appellant.

For one thing, the subject checks were issued *payable to Sun Pride*; hence, appellant could not have possibly presented said checks to the drawee bank for encashment for his own

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[16] *Id*. at 11.

[17] CA *rollo*, pp. 62-64.

[18] *People v. Cruz*, 786 Phil. 609, 618 (2016).

personal gain. This fact was confirmed by Sun Pride's own internal auditor, Victorillo, who testified that:

[ATTY. VICTOR REY BUENAVENTURA]

Q: The One Million something, did it consist [of cash or checks?]
A: It consist[ed] of cash and checks[,] sir.

x x x x x x x x x

Q: **The checks [were] payable to [appellant?]**
A: **Payable to Sun Pride[,] sir.**

Q: **He could not encash the check in his own initiative?**
A: **Yes[,] sir.**

Q: **[Was appellant] able to encash those checks?**
A: **Not yet[,] your honor.**

Q: Where are those checks now?
A: I don't know[,] your honor.[19] (Emphasis supplied)

For another, it appears that appellant, too, could not have taken the cash collections of Sun Pride's sales agents for his own personal gain, considering that what he actually received from said sales agents were only deposit slips of the cash payments, personally deposited by the sales agents themselves with the bank. This matter was exhaustively discussed by the defense during appellant's direct examination, *viz.*:

[ATTY. PERLITA DP DASING:]

Q: x x x [Y]ou said you also do collections from sales agents, x x x what specifically do you collect from sales agents?
A: I collected the Weekly Remittance and [sic] Transmittal Report with the acknowledgment receipts from the customers, official receipts, checks and deposit slips for the cash collections, ma'am.[20]

x x x x x x x x x

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[19] TSN, April 28, 2011, pp. 16-17.

[20] TSN, June 26, 2012, pp. 13-14.

Q: The deposit slips[,] what are these deposit slips that you are referring to?
A: Deposit slips [of] their cash,collections, ma'am.[21]

x x x x x x x x x

Q: How did the sales agents have deposit slips from banks x x x if you know?
A: They will deposit their cash collections directly to the bank then [we retain] two (2) copies of deposit slips[:] one mailed to Cebu and the other one left as attachment [on the WRTR], ma'am.[22]

x x x x x x x x x

Q: We go to Exhibit 'R' because it has here [a] different portion of a deposited amount. Exhibit 'R', [y]our Honor, is the WRTR by the name of Sonia M. Tigson [(one of Sun Pride's sales agents)] dated December 13, 2009 and [in] this WRTR[,] it has on the 'amount' portion, it has a figure there and for the record, [y]our Honor, is [₱]13,711.50, what does it show to us?

A: **That means Sonia Tigson deposited [the amount of [₱]13,711.50, ma'am.**[23] (Emphasis supplied)

x x x x x x x x x

Q: Why do you say that Sonia Tigson deposited the corresponding amount of [₱]13,711.50?

A: **Because it was indicated in the deposited amount together with the supporting documents coming from the bank as evidence that [she] deposited the amount, ma'am.**[24] (Emphasis supplied)

Notably, the prosecution *never* denied that the company policy mandated its sales agents to personally deposit their cash

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

[22] *Id*. at 15.

[23] *Id*. at 22. See also Exhibit "R", records, p. 354.

[24] *Id*.

collections to the bank.[25] It simply argued that the policy was suddenly changed for the months of November and December [2009] and January [2010] to accommodate the high sales during said period.[26] The documentary evidence, however, *negates* this assertion completely.

To illustrate, the WRTR of Sonia Tigson (Tigson) dated December 13, 2009 showed that ₱47,467.80 worth of cash collections for the period December 7 to 12, 2009 had been deposited by Tigson herself to Sun Pride's bank account.[27] Another WRTR dated December 13, 2009 similarly showed that cash collections for the same period in the sum of ₱95,850.37 was also deposited by Tigson to said bank account.[28]

Significantly, the prosecution failed to adduce any evidence that appellant had actually received the check and cash collections from the company's sales agents. The supposed acknowledgment receipts proving that appellant actually received cash and check remittances from Sun Pride's sales agents had mysteriously gone missing and could not be located in any of the company's offices. For clarity, the pertinent portion of Victorillo's testimony is quoted below:

COURT

Q: There was no document to show that indeed [appellant] received the remittances from the agents?
A: There was[,] your honor, but the same is missing in our office.

Q: Did you not ask the respective agents who [were] in possession of the documents that indeed the accused received the same?
A: I asked the agents, your honor[,] but their copies were missing in the office.

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[25] TSN, September 27, 2012, pp. 7-8.

[26] *Id*. at 9.

[27] Records, p. 354.

[28] *Id*. at 355.

Q: Why is it that they were missing in the office?
A: When I asked from the agent the WRTR (transmittal report) and they look[ed] [for] the same [inside] their drawers but the same was missing[,] your honor.

Q: Drawers of whom?
A: Of their own drawers[,] your honor.

Q: Drawers of the respective agents?
A: Yes[,] your honor.

Q: Those acknowledgment receipt[s] signed by [appellant] were lost while inside the respective drawers of the agents?
A: [Maybe,] your honor.

x x x x x x x x x

Q: **You just presumed about the allegation or claim of agents that they remitted the amount without proving that the [appellant] received the amount?**
A: **Yes[,] your honor.**[29] (Emphasis supplied)

The totality of these circumstances leads us to inevitably conclude that the elements of *taking of personal property with intent to gain* were not proven beyond reasonable doubt. Absent any concrete proof that appellant indeed received: (*a*) cash collections of Sun Pride's sales agents; and/or (*b*) checks payable to cash or in appellant's name, he cannot be adjudged to have taken the same for his own personal gain.

At this juncture, it bears to stress that the burden to overcome the presumption of innocence of the accused lies on the prosecution.[30] It is in this context that we have consistently ruled that "the evidence for the prosecution must stand or fall on its own weight and cannot be allowed to draw strength from the weakness of the defense."[31]

WHEREFORE, the appeal is **GRANTED**. The October 30, 2015 Decision of the Court of Appeals in CA-G.R. CR-HC

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[29] TSN, April 28, 2011, pp. 28-30.

[30] *People v. Dacuma*, 753 Phil. 276, 287 (2015).

[31] *Id*.

No. 06077 is **REVERSED** and **SET ASIDE**. Appellant Joenil Pin Molde is hereby **ACQUITTED** for insufficiency of evidence. His immediate **RELEASE** from detention is hereby ordered unless he is being held for another lawful cause.

Let a copy of this Decision be furnished the Director of the Bureau of Corrections, Muntinlupa City for immediate implementation, who is then also directed to report to this Court the action he has taken within five (5) days from his receipt of this Decision.

SO ORDERED.

Bersamin, C.J., Reyes, A. Jr.,[*] *Gesmundo*, and *Carandang, JJ.*, concur.

SECOND DIVISION

[G.R. No. 231459. January 21, 2019]

HEIRS OF PAULA C. FABILLAR, as represented by AUREO[*] FABILLAR, *petitioners, vs.* **MIGUEL M. PALLER, FLORENTINA P. ABAYAN, and DEMETRIA P. SAGALES,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE OF DECEASED PERSONS; THE DECLARATION OF HEIRSHIP CAN ONLY BE MADE IN A SPECIAL PROCEEDING INASMUCH AS WHAT IS SOUGHT IS THE ESTABLISHMENT OF A STATUS OR RIGHT, EXCEPT WHEN THE PARTIES IN

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[*] Per Raffle dated January 14, 2019, vice *J.* Jardeleza who recused due to prior action as Solicitor General.

[*] "Aureu" in the Petition (see *rollo*, p. 9).

THE CIVIL CASE HAD VOLUNTARILY SUBMITTED THE ISSUE TO THE TRIAL COURT AND ALREADY PRESENTED THEIR EVIDENCE REGARDING THE ISSUE OF HEIRSHIP; APPLICATION IN CASE AT BAR.— A special proceeding for declaration of heirship is not necessary in the present case, considering that the parties voluntarily submitted the issue of heirship before the trial court. Although the principal action in this case was for the recovery of ownership and possession of the subject land, it is necessary to pass upon the relationship of Ambrosio to Marcelino for the purpose of determining what legal rights he may have in the subject land which he can pass to his heirs, petitioners herein. Notably, the issue of whether or not Ambrosio is one of the children of Marcelino was squarely raised by *both* parties in their respective pre-trial briefs. Hence, insofar as the parties in this case are concerned, the trial court is empowered to make a declaration of heirship, if only to resolve the issue of ownership. To be sure, while the Court, in *Yaptinchay,* ruled that a declaration of heirship can only be made in a special proceeding inasmuch as what is sought is the establishment of a status or right, by way of exception, the Court, in *Heirs of Ypon v. Ricaforte,* declared that **"the need to institute a separate special proceeding for the determination of heirship may be dispensed with for the sake of practicality, as when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship," and "the [trial court] had consequently rendered judgment upon the issues it defined during the pre-trial,"** as in this case. Indeed, recourse to administration proceedings to determine who the heirs are is sanctioned only if there are good and compelling reasons for such recourse, which is absent herein, as both parties voluntarily submitted the issue of Ambrosio's heirship with Marcelino before the trial court and presented their respective evidence thereon. Thus, the case falls under the exception, and there is no need to institute a separate special proceeding for the declaration of Ambrosio's heirship.

2. **CIVIL LAW; FAMILY CODE; PROOF OF FILIATION; IT IS JURISPRUDENTIALLY SETTLED THAT A BAPTISMAL CERTIFICATE HAS EVIDENTIARY VALUE TO PROVE FILIATION ONLY IF CONSIDERED ALONGSIDE OTHER EVIDENCE OF FILIATION.—** In the absence of the record of birth and admission of legitimate filiation, Article 172 of

the Family Code (Code) provides that filiation shall be proved by any other means allowed by the Rules of Court and special laws. **Such other proof of one's filiation may be a baptismal certificate,** a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, the testimonies of witnesses, and other kinds of proof admissible under Rule 130 of the Rules of Court (Rules). Article 175 of the same Code also allows illegitimate children to establish their filiation in the same way and on the same evidence as that of legitimate children. However, **it is jurisprudentially settled that a baptismal certificate has evidentiary value to prove filiation only if considered alongside other evidence of filiation.** Because the putative parent has no hand in the preparation of a baptismal certificate, the same has scant evidentiary value if taken in isolation; while it may be considered a public document, "it can only serve as evidence of the administration of the sacrament on the date specified, but not the veracity of the entries with respect to the child's paternity." As such, a baptismal certificate alone is not sufficient to resolve a disputed filiation, and the courts must peruse other pieces of evidence instead of relying only on a canonical record.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Giogenes D. Inciso, Sr. for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated August 31, 2016 and the Resolution[3] dated March 10, 2017 of the Court of Appeals, Cebu City (CA) in

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[1] *Rollo,* pp. 9-26.

[2] *Id*. at 117-125. Penned by Associate Justice Germano Francisco D. Legaspi with Executive Justice Gabriel T. Ingles and Associate Justice Marilyn B. Lagura-Yap, concurring.

[3] *Id*. at 135-136.

CA-G.R. CEB-S.P. No. 08293, which affirmed the Decision on Appeal[4] dated January 17, 2014 of the Regional Trial Court of Balangiga, Eastern Samar, Branch 42 (RTC) in Civil Case No. 0114, declaring respondents Miguel M. Paller (Miguel), Florentina P. Abayan, and Demetria P. Sagales (Demetria; collectively, respondents) as the lawful owners of the subject land and ordering Antonio and Matilda Custodio (Spouses Custodio), and petitioners' predecessor-in-interest, Paula C. Fabillar (Paula), to surrender the ownership and physical possession of the land, and to pay actual damages, attorney's fees, and the costs of suit.

The Facts

The instant case stemmed from an Amended Complaint[5] for Recovery of Ownership, Possession, and Damages filed by respondents against Spouses Custodio and Paula (collectively, the Custodios), before the 9th Municipal Circuit Trial Court of Giporlos-Quinapondan, Eastern Samar (MCTC), docketed as Civil Case No. 273, involving a 3.1003-hectare parcel of agricultural coconut land situated in Sitio Cabotjo-an, Brgy. Parina, Giporlos, Eastern Samar, with an assessed value of ₱950.00 (subject land).[6]

Respondents claimed that the subject land was a portion of a bigger parcel of land originally owned by their grandfather, Marcelino Paller (Marcelino). After the latter's death, or sometime in 1929 or 1932, his children, Ambrosio Paller (Ambrosio),[7] Isidra Paller (Isidra), and Ignacia Paller (Ignacia),[8]

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[4] *Id*. at 106-115. Penned by Acting Presiding Judge Rolando M. Lacdo-o.

[5] Dated August 29, 2006. *Id*. at 61-65. Initially, respondents filed their complaint before the MCTC dated March 1, 2004 (see *id*. at 54-59).

[6] See *id*. at 61-62.

[7] "Ambrocio" in some portion of the records.

[8] "Inacia" in some portion of the records.

along several others,[9] orally partitioned his properties and took possession of their respective shares.

From Marcelino's estate, respondents' father, **Ambrosio,** was given about one (1) hectare of the subject land, in addition to a smaller property situated in Sitio Dungon, Brgy. 07; while **Isidra** was given two (2) hectares as her rightful share. After Isidra's death, her son, Juan Duevo (Juan), sold the two (2)-hectare land to Ambrosio's wife and respondents' mother, Sabina Macawile (Sabina). Through succession upon their parents' death, respondents alleged that the subject land was passed on to them.[10] On the other hand, the Custodios' predecessor-in-interest and petitioners' grandmother, **Ignacia,** was assigned two (2) parcels of land situated in Sitio Dungon, Brgy. 07 and Sitio Bangalog, Brgy. Parina as her share.[11]

In 1995, respondent Demetria, daughter of Ambrosio, mortgaged the subject land to Felix R. Alde with right to repurchase. Upon her return from Manila in 2000, she redeemed the same but discovered that the Custodios took possession of the land and refused to vacate therefrom despite demands; hence, the complaint.[12]

In their Answer,[13] the Custodios claimed to be legitimate and compulsory heirs of Marcelino who can validly and legally possess the subject land which has not been partitioned, and thus, commonly owned by his heirs. They further averred that Ambrosio is not a child of Marcelino and, as such, has no right to claim the subject land.[14]

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[9] Including Benita, Catalino, Eulalio, Regino, Magdalino, Arsenio, and Pedro (see amended complaint; records, p. 122). See also Pre-Trial Order dated May 22, 2006 (see *id.* at 86-89), wherein it was admitted that Marcelino had nine (9) children, namely: Catalino, Arsenio, Regino, Pedro, Magdalino, Benita, Isidra, Ignacia, and Eulalio.

[10] *Rollo,* pp. 61-62 and 93.

[11] *Id*. at 62-63 and 94.

[12] See *id*. at 63 and 94.

[13] See Answer with Affirmative Defenses dated December 22, 2004; *id*. at 67-70.

[14] See *id*. at 67-69.

To support respondents' claim that Ambrosio is a child of Marcelino and Susana Paller, they presented before the MCTC a copy of Ambrosio's baptismal certificate[15] indicating that his father was Marcelino;[16] however, his mother was reflected therein as "Talampona Duevo"[17] (Talampona). On the other hand, to establish their acquisition of the two (2)-hectare portion, they adduced a copy of the unnotarized deed of sale dated May 3, 1959 in *waray* dialect denominated as *"Documento Hin Pag Guibotongan Hin Cadayunan"*[18] (unnotarized deed of sale) purportedly covering the sale of the said portion by Juan to respondents' mother, Sabina, who, however, was described therein as married to "Marcos Paller" (Marcos),[19] not to Ambrosio. To explain the discrepancies in the names reflected in the above documents, Miguel explained that "Ambrosio" and "Talampona" are the real names, and that "Marcos" and "Susana" were mere aliases.[20]

Subsequently, the Custodios filed a Demurrer to Evidence[21] dated July 20, 2008, averring that respondents failed to establish their claim that Ambrosio is a son of Marcelino, pointing out: *(a)* the discrepancies in the names indicated in their pleadings and the documentary evidence they presented; and *(b)* the lack of documents/evidence other than Ambrosio's baptismal certificate to prove his filiation to Marcelino. Thus, they contended that respondents cannot claim to have lawfully and validly acquired the subject land by right of representation from Ambrosio. They further pointed[22] out that respondents' evidence

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[15] See Certificate of Baptism dated May 31, 2006; records, p. 226.

[16] See *id*.

[17] See *id*.

[18] *Id*. at 228.

[19] See *id*.

[20] See *rollo,* p. 86.

[21] *Id*. at 85-92.

[22] See Memorandum dated August 9, 2012; records, pp. 558-571.

failed to prove not only their ownership of the subject land, but likewise the identity of the land they seek to recover, considering the different boundaries reflected in the unnotarized deed of sale and the tax declarations (TD) they presented.[23]

However, the Demurrer to Evidence was denied in an Order[24] dated October 24, 2008, and the Custodios were allowed to present their evidence.

The MCTC Ruling

In a Decision[25] dated November 12, 2012, the MCTC declared respondents as the lawful owners of the subject land, and ordered the Custodios to surrender the ownership and physical possession of the subject land, and to pay actual damages, attorney's fees, and the costs of suit.[26] It gave weight to the baptismal certificate as sufficient and competent proof of Ambrosio's filiation with Marcelino which the Custodios failed to successfully overthrow. It further ruled that: *(a)* respondents' claim of oral partition was effectively admitted by Paula, who testified that her mother received her share of Marcelino's properties; and *(b)* respondents had duly established that they are the prior possessors of the subject land who had exercised acts of dominion over the same, and had paid the corresponding realty taxes therefor.[27]

Aggrieved, the Custodios appealed to the RTC.[28]

The RTC Ruling

In a Decision on Appeal[29] dated January 17, 2014, the RTC affirmed the MCTC ruling, considering the Custodios' failure

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[23] See *id*. at 565-568.

[24] *Id*. at 285-287. Issued by Presiding Judge Rebecca Gavan-Almeda.

[25] *Rollo,* pp. 93-100.

[26] See *id*. at 100.

[27] See *id*. at 96-99.

[28] See Notice of Appeal dated December 28, 2012 and Order dated January 18, 2013; records, pp. 585 and 589, respectively.

[29] *Rollo,* pp. 106-115.

to rebut: *(a)* Ambrosio's baptismal certificate indicating that his father is Marcelino, concluding the same to be proof of his pedigree;[30] and *(b)* respondents' possession in the concept of owner.[31]

Dissatisfied, Spouses Custodio and herein petitioners, heirs of Paula,[32] elevated the matter to the CA,[33] additionally raising[34] the defense of failure to state a cause of action for failure to declare heirship prior to the institution of the complaint in accordance with the case of *Heirs of Yaptinchay v. Hon. del Rosario (Yaptinchay)*.[35]

The CA Ruling

In a Decision[36] dated August 31, 2016, the CA affirmed the RTC Decision, finding Marcelino to be the father of Ambrosio, thereby declaring that respondents, as children of Ambrosio, have a right over the subject land. It rejected the Custodios' claim of lack of cause of action for failure to declare heirship prior to the institution of the complaint for having been raised only for the first time on appeal, and considering further the parties' active participation in presenting evidence to establish or negate respondents' filial relationship to Marcelino.[37]

Petitioners and Spouses Custodio filed their motion for reconsideration[38] which was denied in a Resolution[39]

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[30] See *id*. at 110-111.

[31] See *id*. at 114.

[32] See Notice of Death with Motion for Substitution of Parties dated April 2, 2014; CA *rollo*, pp. 8-11.

[33] See Petition for Review (under Rule 42) dated April 1, 2014; *id*. at 14-29.

[34] See *id*. at 19-23.

[35] 363 Phil. 393 (1999).

[36] *Rollo,* pp. 117-125.

[37] See *id*. at 123-124.

[38] Dated September 29, 2016. *Id*. at 126-133.

[39] *Id*. at 135-136.

dated March 10, 2017; hence, this petition solely filed by petitioners.

The Issue Before the Court

The essential issue in this case is whether or not the CA erred in holding that respondents' predecessor, Ambrosio, is a child of Marcelino and is entitled to inherit the subject land.

The Court's Ruling

In the present case, petitioners insist that the filiation of Ambrosio to Marcelino can only be successfully proved by virtue of a declaration of heirship by a competent court in a special proceeding, absent which, respondents cannot claim any right over the subject land.[40] Moreover, they insist that mere allegations in the complaint and the presentation of Ambrosio's baptismal certificate cannot be considered as competent proof of the claimed filiation.[41]

I. A special proceeding for declaration of heirship is not necessary in the present case, considering that the parties voluntarily submitted the issue of heirship before the trial court.

Although the principal action in this case was for the recovery of ownership and possession of the subject land, it is necessary to pass upon the relationship of Ambrosio to Marcelino for the purpose of determining what legal rights he may have in the subject land which he can pass to his heirs, petitioners herein. Notably, the issue of whether or not Ambrosio is one of the children of Marcelino was squarely raised by *both* parties in their respective pre-trial briefs.[42] Hence, insofar as the parties

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[40] See *id*. at 21.

[41] See *id*. at 18.

[42] See Plaintiffs' Pre-Trial Brief dated May 8, 2006 (records, p. 79), and Defendants' Pre-Trial Brief dated April 6, 2006 (*id.* at 67). The issue of whether or not Ambrosio is one of the children of Marcelino was included as one of the issues for resolution in the case. See Pre-Trial Order dated May 22, 2006; records, p. 89.

in this case are concerned, the trial court is empowered to make a declaration of heirship, if only to resolve the issue of ownership.

To be sure, while the Court, in *Yaptinchay,* ruled that a declaration of heirship can only be made in a special proceeding inasmuch as what is sought is the establishment of a status or right,[43] by way of exception, the Court, in *Heirs of Ypon v. Ricaforte,*[44] declared that **"the need to institute a separate special proceeding for the determination of heirship may be dispensed with for the sake of practicality, as when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship,"**[45] **and "the [trial court] had consequently rendered judgment upon the issues it defined during the pre-trial,"**[46] as in this case.[47] Indeed, recourse to administration proceedings to determine who the heirs are is sanctioned only if there are good and compelling reasons for such recourse,[48] which is absent herein, as both parties voluntarily submitted the issue of Ambrosio's heirship with Marcelino[49] before the trial court and presented their respective evidence thereon. Thus, the case falls under the exception, and there is no need to institute a separate special proceeding for the declaration of Ambrosio's heirship.

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[43] See *supra* note 35, at 398-399.

[44] 713 Phil. 570 (2013).

[45] *Id*. at 576-577.

[46] *Rebusquillo v. Spouses Gualvez,* 735 Phil. 434, 442 (2014).

[47] The issue of whether or not Ambrosio is one of the children of Marcelino was included as one of the issues for resolution in the case. See Pre-Trial Order dated May 22, 2006; records, p. 89.

[48] *Rebusquillo v. Spouses Gualvez, supra* note 46.

[49] The issue of whether or not Ambrosio is one of the children of Marcelino was included as one of the issues for resolution in the case. See Pre-Trial Order dated May 22, 2006; records, p. 89.

II. Ambrosio's baptismal certificate cannot be considered as competent proof of the claimed filiation with Marcelino.

In the absence of the record of birth and admission of legitimate filiation, Article 172[50] of the Family Code (Code) provides that filiation shall be proved by any other means allowed by the Rules of Court and special laws. **Such other proof of one's filiation may be a baptismal certificate,** a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, the testimonies of witnesses, and other kinds of proof admissible under Rule 130 of the Rules of Court (Rules).[51] Article 175[52] of the same Code also allows illegitimate children to establish their filiation in the same way and on the same evidence as that of legitimate children.

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[50] Article 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.

[51] See *Makati Shangri-La Hotel and Resort, Inc. v. Harper,* 693 Phil. 596, 615 (2012), citing *Heirs of Conti v. CA,* 360 Phil. 536, 548-549 (1998).

[52] Article 175. Illegitimate children may establish their illegitimate filiation in the same way and on the same evidence as legitimate children.

The action must be brought within the same period specified in Article 173, 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.** (Emphasis supplied)

However, **it is jurisprudentially settled that a baptismal certificate has evidentiary value to prove filiation only if considered alongside other evidence of filiation.**[53] Because the putative parent has no hand in the preparation of a baptismal certificate, the same has scant evidentiary value if taken in isolation;[54] while it may be considered a public document, "it can only serve as evidence of the administration of the sacrament on the date specified, but not the veracity of the entries with respect to the child's paternity."[55] As such, a baptismal certificate alone is not sufficient to resolve a disputed filiation, and the courts must peruse other pieces of evidence instead of relying only on a canonical record.[56]

In this case, the MCTC, the RTC, and the CA did not appreciate any other material proof related to the baptismal certificate of Ambrosio that would establish his filiation with Marcelino, whether as a legitimate or an illegitimate son. Contrary to the ruling of the said courts, the burden of proof is on respondents to establish their affirmative allegation that Marcelino is Ambrosio's father,[57] and *not for petitioners to disprove the same,* because a baptismal certificate is neither conclusive proof of filiation,p[58] parentage nor of the status of legitimacy or illegitimacy of the person baptized.[59] Consequently, while petitioners have admitted that Marcelino's heirs had

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[53] See *Heirs of Roldan v. Heirs of Roldan,* G.R. No. 202578, September 27, 2017, citing *Makati Shangri-La Hotel and Resort, Inc. v. Harper, supra* note 51, at 616.

[54] See *Heirs of Roldan v. Heirs of Roldan, id*., citing *Fernandez v. CA,* 300 Phil. 131, 137 (1994), which referred to the earlier ruling in *Berciles v. Government Service Insurance System,* 213 Phil. 48, 72-73 (1984).

[55] *Cabatania v. CA,* 484 Phil. 42, 51 (2004), citing *Macadangdang v. CA,* 188 Phil. 192, 201 (1980).

[56] *Heirs of Roldan v. Heirs of Roldan, supra* note 53.

[57] See *Go Kim Huy v. Go Kim Huy,* 417 Phil. 822, 832 (2001).

[58] *Heirs of Cabais v. CA,* 374 Phil. 681, 688 (1999).

[59] *Board of Commissioners v. dela Rosa,* 274 Phil. 1156, 1228-1229 (1991).

partitioned Marcelino's properties among them,[60] the Court finds respondents' evidence to be inadequate to prove the claimed filiation with the property owner, Marcelino, as to entitle Ambrosio and his successors-in-interest, herein respondents, to share in the properties left by Marcelino. However, it is well to point out that the portion of the property supposedly inherited by Ambrosio from Marcelino involved only a one (1)-hectare portion of the subject land.

III. Respondents failed to prove the identity of the land they are seeking to recover.

The Court finds that respondents failed to establish the identity of the land they were seeking to recover, in the first place. To support their claim over the remaining two (2)-hectare portion of the subject land, respondents presented: *(a)* the unnotarized deed of sale[61] by which Marcelino's grandson,[62] Juan, purportedly sold the said portion to respondents' mother, Sabina, who, however, was described therein as married to "Marcos Paller"; *(b)* Miguel's testimony that Ambrosio is the real name, and that "Marcos" was a mere alias;[63] and *(c)* Demetria's testimony as to the boundaries of the land they are seeking.[64] However, respondents' evidence are insufficient to warrant a conclusion that the two (2)-hectare parcel of land subject of the unnotarized deed of sale is indeed a portion of the subject land.

Firstly, the subject land is admittedly covered[65] by TD No. 6618[66] which remained in the name of Marcelino, but the

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[60] TSN (Vol. 2), July 13, 2009, p. 7.

[61] Records, p. 228.

[62] Juan is the son of Isidra (see *rollo,* p. 62), who is *admittedly* a child of Marcelino (see records, p. 87 and TSN [Vol. 1], January 22, 2007, p. 6).

[63] See TSN (Vol. 1), January 22, 2007, p. 19.

[64] See TSN (Vol. 1), April 28, 2008, p. 19.

[65] See Formal Offer of Plaintiffs' Documentary Exhibits; records, p. 239.

[66] *Id*. at 126 and 151.

unnotarized deed of sale[67] bears different boundaries[68] as TD No. 6618. Notably, the Municipal Assessor of Giporlos, Eastern Samar (Municipal Assessor) testified that the subject land was once part of a 37,904-square meter (sq. m.) tract of land declared in the name of Marcelino, and covered by TD No. 12864,[69] which was subsequently divided into two (2) parcels of land with two (2) different TDs,[70] *i.e.,* TD Nos. 2191[71] and 2192[72] with an area of 6,901 sq. m. and 31,003 sq. m., respectively, with the following boundaries:

Boundaries	**TD No. 2191**	**TD No. 2192**
North	Ambrosio Paller	Public Land
East	Pablo Pajarilla	Agaton Baldo
South	Juan Paller	Rafaella Paller
West	Ambrosio Paller	Quirina Paller

and that the said TDs underwent several revisions as follows:

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[67] *Id*. at 228.

[68] The respective boundaries are as follows:

TD No. 6618 (*id*. at 126 and 152)	**unnotarized deed of sale** (*id*. at 228)
North – Public Land	*Parte ha Amihanan – tuna ni* Agaton Baldo
East – Agaton Baldo	*Parte ha Senerangan – tuna ni* Agaton Baldo
South – Rafaela Paller	*Parte ha Salatanan – tuna ni* Marcos Paller
West – Quirina Paller	*Parte ha Natondanan – tuna ni* Marcos Paller

[69] Not attached to the records.

[70] See TSN (Vol. 2), July 26, 2010, pp. 8-9.

[71] Records, p. 365.

[72] *Id*. at 511. Effective 1949; see *id*., reverse portion.

TD No. 2191	Description	**TD No. 2192**	Description
TD No. 4139[73]	Same area/ boundaries	**TD No. 6618**[74]	Same area/ boundaries
TD No. 8220[75]	-do-	TD No. 373[76]	31,000 sq. m./ same boundaries
TD No. 08008 -00140[77]	-do-	TD No. 16361[78]	area was reduced to 27,125[79] sq. m. with the sale of 3,875 sq. m. to Federico Abayan/ same boundaries
		TD No. 00281[80]	-do-

The Municipal Assessor further stated that as of the time that he testified on July 26, 2010, TD No. 00281 has not been revised and was the latest tax declaration on file with their office.[81]

Secondly, other than respondents' self-serving claim,[82] no competent proof, testimonial or documentary, was presented

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[73] *Id*. at 517.

[74] *Id*. at 126 and 512. Effective 1974; see *id*., reverse portion.

[75] *Id*. at 518.

[76] *Id*. at 513. Effective 1980; see *id*., reverse portion.

[77] *Id*. at 519.

[78] *Id*. at 514. Effective 1985; see *id*., reverse portion.

[79] Erroneously reflected as 26,125 sq. m. in the TSN. See TSN (Vol. 2), July 26, 2010, p. 11.

[80] See TSN (Vol. 2), July 26, 2010, p. 10. Under general revision in 1993; see records, p. 514.

[81] See TSN (Vol 2), July 26, 2010, p. 10. See also TSN (Vol. 2), July 6, 2011, p. 3.

[82] See TSN (Vol. 1), January 22, 2007, p. 19.

by them to establish that Ambrosio and "Marcos" are one and the same person, nor was there any proof showing that "Marcos" was assumed as a pseudonym for literary purposes[83] or had been authorized by a competent court.[84] Even assuming that Ambrosio and "Marcos" are one and the same person, the boundaries identified by Demetria[85] do not coincide with the boundaries in TD No. 6618 and its subsequent revisions.

Thirdly, the receipts of the realty tax payments adduced were of relatively recent vintage[86] and were not shown to correspond to the subject land. Considering the admitted[87] fact that the subject land is covered by TD No. 6618, it devolved upon respondents (as plaintiffs *a quo)* to prove that the tax receipts they submitted correspond to the aforementioned TDs emanating from TD No. 2192, which was cancelled by TD No. 6618, and its succeeding revisions. However, a perusal of the

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[83] Demetria testified that "Ambrosio" is the real name, and that "Marcos" is the pen name; see TSN (Vol. 1), April 28, 2008, p. 18.

[84] Section 1 of Commonwealth Act No. 142, entitled "AN ACT TO REGULATE THE USE OF ALIASES" (November 7, 1936), provides:

> Section 1. Except as a pseudonym for literary purposes, no person shall use any name different from the one with which he was christened or by which he has been known since his childhood, or such substitute name as may have been authorized by a competent court. The name shall comprise the patronymic name and one or two surnames.

[85] Demetria testified that the land they are claiming has the following boundaries:

> North – Miguel Paller (not her brother but her cousin)
> East – Rafaela Paller
> South – Quirina Paller
> West – Agaton Baldo (see TSN [Vol. 1], April 28, 2008, p. 19)

[86] While the claimed acquisition (through the unnotarized deed of sale) was in 1959, the earliest tax receipt presented was Official Receipt (OR) No. 1283740 dated May 20, 1989, and pertained to tax payments for the years 1985 to 1986 of the property covered by TD No. 16360; see records, p. 224.

[87] See Formal Offer of Plaintiffs' Documentary Exhibits; *id*. at 239.

said tax receipts[88] reveals that none of them correspond to the said TDs, whether emanating from TD No. 2192 or TD No. 2191. Moreover, despite the opportunity given to them to present rebuttal evidence,[89] they opted to forego such presentation, and instead, submitted the case for decision.[90]

By virtue of the evidence presented by respondents, the lower courts could not have justly concluded that the two (2)-hectare parcel of land subject of the unnotarized deed of sale is indeed a portion of the subject land. Accordingly, the Court finds that a reversal of the assailed Decision is warranted.

WHEREFORE, the petition is **GRANTED.** The Decision dated August 31, 2016 and the Resolution dated March 10, 2017 of the Court of Appeals, Cebu City in CA-G.R. CEB-S.P. No. 08293 are hereby **REVERSED** and **SET ASIDE.** A new judgment is entered **DISMISSING** the Amended Complaint for Recovery of Ownership, Possession, and Damages filed by respondents Miguel M. Paller, Florentina P. Abayan, and Demetria P. Sagales before the 9th Municipal Circuit Trial Court of Giporlos-Quinapondan, Eastern Samar, docketed as Civil Case No. 273.

SO ORDERED.

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

Caguioa, J., see concurring opinion.

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[88] Notably, OR No. 1283740 dated May 20, 1989 for the years 1985 to 1986, and OR No. 1120774 dated January 20, 1992 for the years 1987 to 1991 pertained to payment for the property covered by TD No. 16360, not TD No. 16361 covering the subject land (see *id*. at 224-225). OR No. 5430039 dated February 26, 1996 for the year 1994 pertained to payment for the property covered by TD No. CN-160329 (see *id*. at 223). The payments for the years 2005, 2006, and 2007 were for the land covered by TD No. CN02-160229 (see *id*. at 220-222 and 229-230).

[89] See TSN (Vol. 2), January 11, 2012, p. 5.

[90] See TSN (Vol. 2), July 4, 2012, pp. 2-3.

[**] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

CONCURRING OPINION

CAGUIOA, *J.*:

I concur in the result.

Since the Court has ruled that the baptismal certificate of Ambrosio Paller (Ambrosio), respondents' father, cannot be considered by itself as competent proof of the claimed filiation with Marcelino Paller, respondents' alleged grandfather and Ambrosio's alleged father, and that respondents failed to prove the identity of the land they are seeking to recover, I take the view that the resolution of the issue of whether a special proceeding for declaration of heirship is necessary before the trial court can resolve the issue of ownership is superfluous.

I reserve my opinion on whether a declaration of heirship can only be made in a separate special proceeding is the rule. I submit that a review of relevant jurisprudence shows that the real rule is that the heirs' rights become vested without need for them to be declared as such in a separate special proceeding — pursuant to Article 777[1] of the Civil Code — which I will expound on more in an appropriate case wherein such issue is determinative of its disposition.

SECOND DIVISION

[G.R. No. 232806. January 21, 2019]

EDGARDO M. AGUILAR, *petitioner, vs.* **ELVIRA J. BENLOT and SAMUEL L. CUICO,** *respondents.*

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[1] Article 777 of the Civil Code provides: "The rights to the succession are transmitted from the moment of the death of the decedent."

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MODES OF SERVICE OF PLEADINGS; RELAXATION OF THE RULES IS WARRANTED IN VIEW OF THE *PRIMA FACIE* MERIT OF THE CASE.— We find that while the CA had good reason to find petitioner's belated explanation unsatisfactory, the present case merits the relaxation of the rules. This Court has often emphasized that the liberal interpretation of the rules applies only to justifiable causes and meritorious circumstances. As mandated by Section 11, Rule 13 of the Rules of Court, personal filing and personal service of pleadings remain the preferred mode. x x x Here, the CA had judicial notice of the proximity of the counsels' offices to the CA, to the Ombudsman, and with each other. It could not, thus, be faulted for not finding merit in petitioner's belated explanation. Nonetheless, the CA should have also considered the *prima facie* merit of petitioner's case. x x x In the exercise of the CA's discretion in such matters, it should have viewed petitioner's procedural blunder in conjunction with the *prima facie* merit of the case, disclosing as it does that a relaxation of the rules is warranted.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICIALS; GRAVE MISCONDUCT, COMMITTED; CONCERTED ACTIONS TO CIRCUMVENT THE LAW AND GIVE UNWARRANTED BENEFIT TO PETITIONER TO RETAIN POWER AS *PUNONG BARANGAY*, AMOUNT TO GRAVE MISCONDUCT.— It may be noted that the facts support the Ombudsman's conclusion that there was conspiracy among the three individuals who resigned and petitioner. The resignations are peculiar, undertaken as they were on the day immediately following Arias, Oralde, and Mancao's oaths of office. They wasted no time in filing their resignations and did not even serve a day in the positions they were elected for. Personal reasons were cited, which beg the question why these were not considered before they filed for candidacy and actively campaigned. Then, just barely a month after petitioner succeeded as *Punong Barangay*, Oralde and Mancao accepted appointments as *Barangay Kagawads in a surprising change of heart and despite personal reasons they invoked in their resignation letters*. Even Arias took a contractual position with the city government

despite the familial and personal limitations she cited in her resignation letter. We are, thus, not inclined to disregard as mere conjecture the Ombudsman's conclusion, that the resignations were concerted acts to give way to petitioner's appointment and enable him to circumvent the three-term limit. Conspiracy is sufficiently established when the concerted acts show the same purpose or common design and are united in its execution. Without a doubt, Arias, Oralde, and Mancao acted in concert to circumvent the law and give unwarranted benefit to the petitioner, to enable the latter to retain power which the law requires of him not to perpetuate. The concerted acts of petitioner, Arias, Oralde, and Mancao amount to Grave Misconduct.

3. ID.; ELECTIONS; DOCTRINE OF CONDONATION, APPLIED; IT IS NOT NECESSARY FOR THE OFFICIAL TO HAVE BEEN RE-ELECTED TO EXACTLY THE SAME POSITION; WHAT IS MATERIAL IS THAT HE WAS RE-ELECTED BY THE SAME ELECTORATE.— Even if we were to consider this Court's pronouncement that assumption of office by operation of law should not be counted for purposes of the three-term limit rule, this jurisprudential authority is based on the fact that running for an elective position presupposes voluntariness. To be counted as service for a full term for purposes of determining term limits, the elective official must have also been elected to the same position for the same number of times. Assumption of office by operation of law is generally involuntary because the elective official ran for a position different from that which he was subsequently called to serve. Granting that the petitioner was able to serve a fourth term as *Punong Barangay*, not by virtue of election, but by succession, the willful act of conspiring to circumvent our laws indicate voluntariness. It is as if petitioner himself had run for the position of *Punong Barangay*, instead of *Barangay Kagawad*. The foregoing issue is nonetheless mooted by the petitioner's re-election as *Punong Barangay*, an event which precludes the imposition of the penalty of dismissal, following the doctrine of condonation. In *Ombudsman Carpio Morales v. Court of Appeals*, this Court pronounced the abandonment of the doctrine of condonation for having no legal authority in this jurisdiction, but was also explicit that the ruling is prospective in its application. As the events in this case took place before *Ombudsman Carpio Morales*,

petitioner argued that he should benefit from the prospective application of the doctrine, such that his subsequent re-election precludes the imposition and execution of the penalty for Grave Misconduct. On the other hand, the Ombudsman and the respondents share the view that the condonation doctrine is inapplicable because petitioner was not elected for the same position in the 2010 and 2013 *barangay* elections. This Court had already clarified that the doctrine can be applied to a public officer who was elected to a different position provided that it is shown that the body politic electing the person to another office is *the same*. It is not necessary for the official to have been re-elected to exactly the same position; what is material is that he was re-elected by the same electorate.

APPEARANCES OF COUNSEL

The Adlawan Jugao-Adlawan Law Firm for petitioner.
P.B. Labrador & Partners for respondents.

D E C I S I O N

REYES, J. JR., *J.*:

For this Court's consideration is the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, assailing the Resolutions[2] of the Court of Appeals-Cebu City (CA) dated February 7, 2017 and June 14, 2017, respectively, in CA-G.R. SP No. 10219. The CA dismissed Edgardo M. Aguilar's appeal from the September 30, 2015 Order[3] of the Office of the Ombudsman-Visayas (Ombudsman) due to procedural infirmities, and subsequently denied reconsideration.

The facts follow.

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[1] *Rollo*, pp. 3-16.

[2] Penned by Associate Justice Pablito A. Perez, with Associate Justices Pamela Ann Abella Maxino and Gabriel T. Robeniol, concurring; *id*. at 20, 22-26.

[3] *Id.* at 78-85.

Edgardo M. Aguilar (petitioner) was elected and had served as *Punong Barangay* of *Barangay* Bunga, Toledo City, Cebu, for three consecutive terms prior to the October 25, 2010 barangay elections where he was elected *Barangay Kagawad* and ranked third. During the same elections, petitioner's sister, Emma Aguilar-Arias (Arias), was elected *Punong Barangay*, while Leonardo Oralde (Oralde) and Emiliana Mancao (Mancao) were elected *Barangay Kagawads* and ranked first and second, respectively.[4] They took their oaths of office on December 1, 2010.

On December 2, 2010, Arias, Oralde, and Mancao resigned from their respective positions, citing personal reasons and inability to concurrently fulfill official and familial obligations.[5] Their resignations were accepted and approved by the Mayor of Toledo City on the same day. Being third in rank, petitioner succeeded as *Punong Barangay*. Five days after, or on December 7, 2010, petitioner was re-elected as President of the Association of *Barangay* Captains of Toledo City, by which he once more earned a seat in the City Council.[6]

Subsequently, Oralde and Mancao were appointed back as *Barangay Kagawads* by the Mayor of Toledo City on January 1, 2011.[7] Arias, on the other hand, was hired as an employee of the city government after her resignation.[8]

Convinced that Arias, Oralde, and Mancao resigned from their respective positions to pave the way for petitioner's succession as *Punong Barangay*, Elvira J. Benlot and Samuel L. Cuico (herein respondents) filed a Complaint[9] on January 31, 2012 before the Ombudsman against the former for violation

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[4] *Id*. at 39.

[5] *Id.* at 41-43.

[6] *Id*. at 44.

[7] *Id.* at 46-49.

[8] *Id*. at 155.

[9] *Id.* at 27 and 36-38.

of Republic Act No. 6713 or *The Code of Conduct and Ethical Standards for Public Officials and Employees* and Dereliction of Duty. According to respondents, the concerted resignations were part of a ruse to enable petitioner to serve a fourth consecutive term in circumvention of the three-term limit. For this reason, petitioner was subsequently included as one of the respondents in the complaint.[10]

During the intervening October 28, 2013 *barangay* elections, petitioner was re-elected as *Punong Barangay*, while Arias and Oralde were re-elected as *Barangay Kagawads*. Treating this development as a condonation by the electorate of their previous misconduct, the Ombudsman, in a Decision[11] dated February 23, 2015, dismissed the administrative complaint against Arias, Oralde and petitioner for being moot and academic pursuant to the *Aguinaldo Doctrine*,[12] also known as the doctrine of condonation. The administrative case was dismissed for lack of jurisdiction as against Mancao, who was, by then, no longer in government service.

On motion by the respondents, the Ombudsman reconsidered its Decision through an Order[13] dated September 30, 2015. It reasoned that petitioner and Arias could not benefit from the condonation doctrine because they were not re-elected in 2013 to the same positions that they were elected for in the 2010 *barangay* elections. Petitioner and Arias were thus found liable for Grave Misconduct and meted the penalty of dismissal from the service, with forfeiture of benefits and perpetual disqualification to hold public office. As regards Oralde, however, the Decision was affirmed. The condonation doctrine was viewed as applicable to Oralde, who was elected as *Barangay Kagawad* and served as such in both the 2010 and 2013 elections.

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[10] *Id*. at 50-52.

[11] *Id*. at 71-77.

[12] *Aguinaldo v. Hon. Santos*, 287 Phil. 851 (1992).

[13] *Supra* note 3.

Petitioner and Arias separately moved for reconsideration of the adverse order. Through a Joint Order[14] on January 26, 2016, the Ombudsman denied the motions for failure to introduce any new issue or evidence.

When petitioner sought a review of his case before the CA, it dismissed the petition for failure to allege the date when the September 30, 2015 Order of the Ombudsman was received, as well as for lack of explanation why the petition was neither personally filed before the CA nor personally served to the parties.[15]

In his Motion for Reconsideration[16] before the CA, petitioner explained that another lawyer previously handled the case, and that there was no stamp as to petitioner's date of receipt on the certified true copy of the Ombudsman Order. Petitioner himself could not remember when he personally received a copy as it was just handed to him by a *barangay* staff. He further argued that the CA could infer that he received his copy of the Order on the same date as Arias did, and that the Ombudsman having jointly entertained their motions for reconsideration should be regarded in his favor on the matter of the timeliness of his appeal.

On his failure to explain why the petition was not personally filed and served, petitioner merely invoked honest mistake. Counsel's office messenger allegedly ran out of time, so the petitions were mailed, even though the affidavit accompanying the petition averred personal filing and service.

In the exercise of its discretion on procedural defects, the CA did not find the reasons advanced by the petitioner compelling, particularly the belated explanation why the petitions were mailed. The CA declared that personal filing and service would have been more practicable than mailing copies of the

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[14] *Rollo*, pp. 98-101.

[15] *Supra* note 2.

[16] *Rollo*, pp. 134-140.

petition, considering that the Ombudsman, the CA, and counsels of the parties all have offices in close proximity with each other within Cebu City.

Aggrieved, petitioner now seeks relief before this Court, raising three grounds:

A

The Honorable Court of Appeals gravely erred in dismissing outright the petition and in failing to decide the case on its merit.

B

The Office of the Ombudsman (Visayas) gravely erred in failing to apply the condonation doctrine.

C

The Office of the Ombudsman (Visayas) gravely erred in finding conspiracy to circumvent the three-term limit.[17]

On October 18, 2017, respondents filed their Comment[18] on the present petition, essentially echoing the rulings of the CA and the Ombudsman.

In response, petitioner filed a Reply[19] on November 7, 2017, arguing this time that he did not violate the three-term rule when he accepted his appointment and succeeded as *Punong Barangay* to serve a fourth term.

We resolve.

At the threshold is the CA's dismissal of petitioner's appeal based on procedural infirmities, which we address first.

In citing *Tible & Tible Company, Inc. v. Royal Savings and Loan Association*,[20] the petitioner essentially concedes that the

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[17] *Id*. at 8.

[18] *Id*. at 147-159.

[19] *Id*. at 163-167.

[20] 574 Phil. 20 (2008).

application of the rules must be upheld, and the suspension, or even mere relaxation of its application is the exception. Petitioner contends that his case falls within the exception.

We find that while the CA had good reason to find petitioner's belated explanation unsatisfactory, the present case merits the relaxation of the rules.

This Court has often emphasized that the liberal interpretation of the rules applies only to justifiable causes and meritorious circumstances.[21] As mandated by Section 11, Rule 13 of the Rules of Court, personal filing and personal service of pleadings remain the preferred mode. In *Aberca v. Ver*,[22] this Court reiterated *Domingo v. Court of Appeals*,[23] as follows:

Section 11, Rule 13 of the Rules of Court states:

SEC. 11. *Priorities in modes of service and filing.* Whenever practicable, the service and filing of pleadings and other papers shall be done personally. Except with respect to papers emanating from the court, a resort to other modes must be accompanied by a written explanation why the service or filing was not done personally. A violation of this Rule may be cause to consider the paper as not filed.

Section 11 is **mandatory**. In *Solar Team Entertainment, Inc. v. Judge Ricafort*, the Court held that:

Pursuant x x x to Section 11 of Rule 13, *service and filing of pleadings and other papers must, whenever practicable, be done personally; and if made through other modes, the party concerned must provide a written explanation as to why the service or filing was not done personally.* x x x

Personal service and filing are preferred for obvious reasons. Plainly, such should expedite action or resolution on a pleading, motion or other paper; and conversely, minimize, if not eliminate, delays likely to be incurred if service or filing is done by mail, considering the

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[21] *Turks Shawarma Company/Gem Zeñarosa v. Pajaron*, 803 Phil. 315, 317 (2017).

[22] 684 Phil. 207, 223-225 (2012).

[23] 625 Phil. 192, 203-204 (2010).

inefficiency of postal service. Likewise, personal service will do away with the practice of some lawyers who, wanting to appear clever, resort to the following less than ethical practices: (1) serving or filing pleadings by mail to catch opposing counsel off-guard, thus leaving the latter with little or no time to prepare, for instance, responsive pleadings or an opposition; or (2) upon receiving notice from the post office that the registered parcel containing the pleading of or other paper from the adverse party may be claimed, unduly procrastinating before claiming the parcel, or, worse, not claiming it at all, thereby causing undue delay in the disposition of such pleading or other papers.

If only to underscore the **mandatory nature** of this innovation to our set of adjective rules requiring personal service whenever practicable, Section 11 of Rule 13 then gives the court the discretion to consider a pleading or paper as not filed if the other modes of service or filing were resorted to and no written explanation was made as to why personal service was not done in the first place. The exercise of discretion must, necessarily, consider the practicability of personal service, for Section 11 itself begins with the clause "whenever practicable."

We thus take this opportunity to clarify that under Section 11, Rule 13 of the 1997 Rules of Civil Procedure, personal service and filing is the general rule, and resort to other modes of service and filing, the exception. Henceforth, whenever personal service or filing is practicable, in light of the circumstances of time, place and person, personal service or filing is **mandatory**. Only when personal service or filing is not practicable may resort to other modes be had, which must then be accompanied by a written explanation as. to why personal service or filing was not practicable to begin with. In adjudging the plausibility of an explanation, a court shall likewise consider the importance of the subject matter of the case or the issues involved therein, and the [*prima facie*] merit of the pleading sought to be expunged for violation of Section 11. This Court cannot rule otherwise, lest we allow circumvention of the innovation introduced by the 1997 Rules in order to obviate delay in the administration of justice.

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x x x [F]or the guidance of the Bench and Bar, **strictest compliance with Section 11 of Rule 13 is mandated**. (Emphases in the original; italics supplied)

Here, the CA had judicial notice of the proximity of the counsels' offices to the CA, to the Ombudsman, and with each other. It could not, thus, be faulted for not finding merit in petitioner's belated explanation. Nonetheless, the CA should have also considered the *prima facie* merit of petitioner's case. As it even pointed out in its challenged June 14, 2017 Resolution, citing *Pagadora v. Ilao*:[24]

> In adjudging the plausibility of an explanation, the court shall consider not only the circumstances, the time and the place but also the importance of the subject matter of the case or the issues involved therein, and the *prima facie* merit of the pleading involved.

In the exercise of the CA's discretion in such matters, it should have viewed petitioner's procedural blunder in conjunction with the *prima facie* merit of the case, disclosing as it does that a relaxation of the rules is warranted.

Petitioner is guilty of Grave Misconduct, but stood to benefit from the doctrine of condonation prevailing at that time.

Certainly, cases should be decided only after giving all parties the chance to argue their causes and defenses.[25] Technicality and procedural imperfection should not serve as basis of decisions.[26] Although petitioner's appeal should not have been dismissed outright on procedural grounds, petitioner cannot claim that it did not have ample opportunity to present evidence in the proceedings before the Ombudsman. The Ombudsman's September 30, 2015 Order even quoted and adopted the findings in the criminal aspect of the case (OMB-V-C-14-0333) as basis in finding petitioner and Arias guilty of Grave Misconduct.

In this regard:

> [I]t is settled that "findings of fact by the Office of the Ombudsman are conclusive when supported by substantial evidence" – or "such

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[24] 678 Phil. 208, 225 (2011).

[25] *Bank of the Philippine Islands v. Spouses Genuino*, 764 Phil. 642, 650 (2015).

[26] *Id*.

relevant evidence as a reasonable mind may accept as adequate to support a conclusion. The requirement is satisfied where there is reasonable ground to believe that the petitioner is guilty of the act or omission complained of, even if the evidence might not be overwhelming." On this note, it is well to emphasize that the Ombudsman's factual findings are generally accorded great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.[27]

Furthermore, in a petition for review under Rule 45 of the Rules of Court, only questions of law can be raised.[28] For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them.[29]

For a thorough disposition, however, it may be noted that the facts support the Ombudsman's conclusion that there was conspiracy among the three individuals who resigned and petitioner. The resignations are peculiar, undertaken as they were on the day immediately following Arias, Oralde, and Mancao's oaths of office. They wasted no time in filing their resignations and did not even serve a day in the positions they were elected for. Personal reasons were cited, which beg the question why these were not considered before they filed for candidacy and actively campaigned. Then, just barely a month after petitioner succeeded as *Punong Barangay*, Oralde and Mancao accepted appointments as *Barangay Kagawads in a surprising change of heart and despite personal reasons they invoked in their resignation letters*. Even Arias took a contractual position with the city government despite the familial and personal limitations she cited in her resignation letter. We are, thus, not inclined to disregard as mere conjecture the Ombudsman's conclusion, that the resignations were concerted acts to give way to petitioner's appointment and enable him to

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[27] *Office of the Deputy Ombudsman for Luzon v. Dionisio*, G.R. No. 220700, July 10, 2017, 830 SCRA 501, 514.

[28] *Office of the Ombudsman v. De Villa*, 760 Phil. 937, 949 (2015).

[29] *Id*.

circumvent the three-term limit. Conspiracy is sufficiently established when the concerted acts show the same purpose or common design and are united in its execution.[30]

Without a doubt, Arias, Oralde, and Mancao acted in concert to circumvent the law and give unwarranted benefit to the petitioner, to enable the latter to retain power which the law requires of him not to perpetuate. The concerted acts of petitioner, Arias, Oralde, and Mancao amount to Grave Misconduct. As defined:

> Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. To warrant dismissal from the service, the misconduct must be grave, serious, important, weighty, momentous, and not trifling. The misconduct must imply wrongful intention and not a mere error of judgment and must also have a direct relation to and be connected with the performance of the public officer's official duties amounting either to maladministration or willful, intentional neglect, or failure to discharge the duties of the office. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of established rule, must be manifest in the former.[31]

Calling the Court's attention to *Mayor Abundo, Sr. v. COMELEC*,[32] petitioner argues in his Reply that, because he was re-elected in 2010 as *Barangay Kagawad* and merely succeeded as *Punong Barangay* to fill the vacancy caused by the resignations, his serving a fourth term as *Punong Barangay* was not a violation of the three-term limit. This line of argument, however, overlooks the fact that petitioner was made to answer administratively for conspiring to make a mockery of our laws for his own benefit. This was not a disqualification case, to begin with.

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[30] *People v. Angelio*, 683 Phil. 99, 105 (2012).

[31] *Office of the Deputy Ombudsman for Luzon v. Dionisio*, *supra* note 27, at 514-515.

[32] 701 Phil. 135 (2013).

Even if we were to consider this Court's pronouncement that assumption of office by operation of law should not be counted for purposes of the three-term limit rule,[33] this jurisprudential authority is based on the fact that running for an elective position presupposes voluntariness. To be counted as service for a full term for purposes of determining term limits, the elective official must have also been elected to the same position for the same number of times.[34] Assumption of office by operation of law is generally involuntary because the elective official ran for a position different from that which he was subsequently called to serve. Granting that the petitioner was able to serve a fourth term as *Punong Barangay*, not by virtue of election, but by succession, the willful act of conspiring to circumvent our laws indicate voluntariness. It is as if petitioner himself had run for the position of *Punong Barangay*, instead of *Barangay Kagawad*.

The foregoing issue is nonetheless mooted by the petitioner's re-election as *Punong Barangay*, an event which precludes the imposition of the penalty of dismissal, following the doctrine of condonation. In *Ombudsman Carpio Morales v. Court of Appeals*,[35] this Court pronounced the abandonment of the doctrine of condonation for having no legal authority in this jurisdiction, but was also explicit that the ruling is prospective in its application.

As the events in this case took place before *Ombudsman Carpio Morales*, petitioner argued that he should benefit from the prospective application of the doctrine, such that his subsequent re-election precludes the imposition and execution of the penalty for Grave Misconduct. On the other hand, the Ombudsman and the respondents share the view that the condonation doctrine is inapplicable because petitioner was not elected for the same position in the 2010 and 2013 *barangay* elections.

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[33] *Borja, Jr. v. COMELEC*, 356 Phil. 467, 478 (1998).

[34] *Id*.

[35] 772 Phil. 672, 775 (2015).

This Court had already clarified that the doctrine can be applied to a public officer who was elected to a different position provided that it is shown that the body politic electing the person to another office is *the same*.[36] It is not necessary for the official to have been re-elected to exactly the same position; what is material is that he was re-elected by the same electorate.

WHEREFORE, the petition is **GRANTED**. The February 7, 2017 and June 14, 2017 Resolutions of the Court of Appeals in CA-G.R. SP No. 10219 are hereby **REVERSED** and **SET ASIDE**. The act committed by petitioner Edgardo M. Aguilar is deemed **CONDONED**.

SO ORDERED.

Carpio, S.A.J. (*Chairperson*), *Perlas-Bernabe, Caguioa*, and *Hernando*,[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 235873. January 21, 2019]

ENRIQUE MARCO G. YULO, *petitioner, vs.* **CONCENTRIX DAKSH SERVICES PHILIPPINES, INC.,**[*] *respondent.*

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[36] *Almario-Templonuevo v. Office of the Ombudsman*, G.R. No. 198583, June 28, 2017, 828 SCRA 283, 297.

[*] Additional Member per S.O. No. 2630 dated December 18, 2018.

[*] Formerly "IBM Daksh Business Process Services Philippines, Inc."

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; GROUNDS; REDUNDANCY. — Under Article 298 (formerly 283) of the Labor Code, redundancy is recognized as an *authorized cause* for dismissal, x x x Essentially, redundancy exists when an employee's position is superfluous, or an employee's services are in excess of what would reasonably be demanded by the actual requirements of the enterprise. Redundancy could be the result of a number of factors, such as the overhiring of workers, a decrease in the volume of business, or the dropping of a particular line or service previously manufactured or undertaken by the enterprise. In this relation, jurisprudence explains that the characterization of an employee's services as redundant, and therefore, properly terminable, is an exercise of management prerogative, considering that an employer has no legal obligation to keep more employees than are necessary for the operation of its business.

2. ID.; ID.; ID.; ID.; ID.; EMPLOYER MUST BE IN GOOD FAITH IN ABOLISHING THE REDUNDANT POSITIONS. — [C]ase law qualifies that the exercise of such prerogative "must not be in violation of the law, and must not be arbitrary or malicious." Thus, following Article 298 of the Labor Code as above cited, the law requires the employer to prove, *inter alia*, its ***good faith in abolishing the redundant positions***, and further, ***the existence of fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished***. "To exhibit its good faith and that there was a fair and reasonable criteria in ascertaining redundant positions, a company claiming to be over manned must produce adequate proof of the same." Thus, the Court has ruled that it is not enough for a company to merely declare that it has become overmanned. Rather, it must produce adequate proof of such redundancy to justify the dismissal of the affected employees, such as but not limited to the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring. Meanwhile, in *Golden Thread Knitting Industries, Inc. v. NLRC*, the Court explained that fair and reasonable criteria may include but are not limited to the following: "(*a*) less preferred status (*e.g.*, temporary employee); (*b*) efficiency; and (*c*) seniority. The presence of these criteria used by the employer shows good

faith on its part and is evidence that the implementation of redundancy was painstakingly done by the employer in order to properly justify the termination from the service of its employees."

3. ID.; ID.; ID.; ID.; ID.; AFFECTED WORKER ENTITLED TO SEPARATION PAY. — Article 298 states, "[i]n case of termination due to x x x redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher."

APPEARANCES OF COUNSEL

MRReyes & Associates for petitioner.
Alonso and Associates for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated August 17, 2017 and the Resolution[3] dated November 29, 2017 of the Court of Appeals (CA) in CA-G.R. SP No. 146840, which reversed and set aside the Decision[4] dated March 30, 2016 and the Resolution[5] dated May 30, 2016 of the National Labor Relations Commission (NLRC) in NLRC LAC No. 02-000614-16 declaring petitioner Enrique Marco G.

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[1] Dated January 22, 2018. *Rollo*, pp. 12-34.

[2] *Id*. at 36-44. Penned by Associate Justice Leoncia Real-Dimagiba with Associate Justices Apolinario D. Bruselas, Jr. and Henri Jean Paul B. Inting, concurring.

[3] *Id*. at 46-47. Penned by Associate Justice Leoncia Real-Dimagiba with Acting Chairman and Associate Justice Rodil V. Zalameda and Associate Justice Henri Jean Paul B. Inting, concurring.

[4] *Id*. at 103-113. Penned by Presiding Commissioner Grace M. Venus with Commissioners Bernardino B. Julve and Leonard Vinz O. Ignacio, concurring.

[5] *Id*. at 129-131.

Yulo (petitioner) to have been illegally dismissed, and thereby, ordering respondent Concentrix Daksh Services Philippines, Inc. (respondent) to reinstate petitioner to his former position without loss of seniority rights and to pay him backwages in the amount of ₱133,862.11, 13th month pay in the amount of ₱2,742.75, as well as moral and exemplary damages in the amount of ₱40,000.00 and ten percent (10%) attorney's fees in the sum of ₱17,660.48.

The Facts

Petitioner alleged that he was engaged[6] by respondent on March 26, 2014 as a Customer Care Specialist-Operations, with a basic monthly salary[7] of ₱12,190.00 and guaranteed allowance of ₱3,125.00. Thereafter, he was assigned to the account of Amazon.com, Inc.[8] (Amazon).[9]

On February 17, 2015, petitioner received a letter[10] from respondent informing him that Amazon intended to "right size the headcount of the account due to business exigencies/ requirements" and thus, he would be temporarily placed in the company's redeployment pool effective February 20, 2015. This notwithstanding, respondent promised petitioner that it would endeavor to deploy him in other accounts based on his skill set, with a caveat, however, that should he fail to get into a new account by March 22, 2015, he would be served with a notice of redundancy.[11]

As it turned out, petitioner was not re-assigned to other accounts as of the said date, and consequently, was terminated on the ground of redundancy. This prompted him to file a complaint[12]

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[6] See Appointment Letter dated March 26, 2014; *id*. at 54-61.

[7] See Compensation Sheet; *id*. at 60.

[8] Referred to as "Amazon" in the *rollo*.

[9] See *id*. at 37.

[10] *Id*. at 64.

[11] See *id*.

[12] Dated June 26, 2015. *Id*. at 66-67.

for constructive illegal dismissal, non-payment of salary/wages and 13th month pay, moral and exemplary damages, and attorney's fees with prayer for backwages and other benefits, before the NLRC, docketed as NLRC Case No. 06-07585-15.[13]

For its part, respondent contended that petitioner was legally terminated on the ground of redundancy, claiming compliance with the termination requirements provided in Article 283[14] of the Labor Code. It claimed to have notified petitioner of the implementation of the redundancy program on February 17, 2015 and subsequently submitted an establishment termination report on February 20, 2015 with the Department of Labor and

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[13] See *id*. at 37-38.

[14] Now Article 298, as renumbered pursuant to Section 5 of Republic Act No. (RA) 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011. See also Department Advisory No. 01, Series of 2015 of the Department of Labor and Employment entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED." The provision reads:

> Article 298 [283]. *Closure of establishment and reduction of personnel*. — The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

Employment (DOLE), attaching thereto a list of affected employees.[15] Further, it asserted that petitioner was among those selected to be redundated on March 22, 2015 due to his low performance and high negative response rate.[16]

The Labor Arbiter's (LA) Ruling

In a Decision[17] dated November 24, 2015, the LA found that respondent failed to comply with all the requisites for a valid redundancy program,[18] which therefore rendered petitioner's dismissal illegal. Accordingly, the LA ordered respondent to reinstate petitioner to his former position without loss of seniority rights, and to pay him the amount of ₱133,862.11 representing his backwages and ₱2,742.75 as his proportionate 13th month pay, as well as moral and exemplary damages in the amount of ₱40,000.00 and ten percent (10%) attorney's fees in the amount of ₱17,660.48.[19]

Aggrieved, respondent appealed[20] to the NLRC.

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[15] See *rollo*, pp. 37-38.

[16] See *id*. at 74.

[17] *Id*. at 70-80. Penned by Labor Arbiter Pablo A. Gajardo, Jr.

[18] For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the [DOLE] at least one month prior to the intended date of retrenchment; (2) payment of separation pay equivalent to at least one month pay or at least one month pay for every year of service, whichever is higher; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished. (See *Manggagawa ng Komunikasyon sa Pilipinas v. PLDT Company Incorporated*, G.R. Nos. 190389-90, April 19, 2017, citing *Asian Alcohol Corporation v. NLRC*, 364 Phil. 912, 930 [1999].)

[19] *Rollo*, p. 79.

[20] See Notice of Appeal and Memorandum on Appeal dated January 12, 2016; *id*. at 81-92.

The NLRC Ruling

In a Decision[21] dated March 30, 2016, the NLRC affirmed the LA's conclusion that respondent was illegally dismissed.[22] While the NLRC found that respondent did comply with the notice requirements of: (1) informing petitioner of his termination based on redundancy; and (2) sending a notice-report to the DOLE of the employees to be redundated within thirty (30) days prior to the effectivity of redundancy,[23] petitioner nonetheless failed to: (a) pay petitioner's separation pay; (b) exhibit good faith in terminating petitioner's employment; and (c) competently prove its criteria in ascertaining the redundant positions.[24]

Dissatisfied, respondent moved for reconsideration[25] but the same was denied in a Resolution[26] dated May 30, 2016. Hence, respondent elevated the matter to the CA via a petition for *certiorari*.[27]

The CA Ruling

In a Decision[28] dated August 17, 2017, the CA granted respondent's petition and set aside the ruling of the

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[21] *Id*. at 103-113.

[22] Citing *General Milling Corp. v. Viajar*, 702 Phil. 532, 545 (2013), the NLRC held that "while [respondent] had been harping that it was on a 'reduction mode' of its employees, it has not presented any evidence (such as new staffing pattern, feasibility studies or proposal, viability of newly created positions, job description and the approval of the management of the restructuring, audited financial documents like balance sheets, annual income tax returns and others) which could readily show that the company's declaration of redundant positions was justified. Such proofs, if presented, would suffice to show the good faith on the part of the employer or that this business prerogative was not whimsically exercised in terminating [petitioner]'s employment on the ground of redundancy." (*Rollo*, p. 109).

[23] See *id*. at 109-111.

[24] See *id*. at 110-111.

[25] See motion for reconsideration dated April 28, 2016; *id*. at 114-125.

[26] *Id*. at 129-131.

[27] Dated July 28, 2016. *Id*. at 132-147.

[28] *Id*. at 36-44.

NLRC.[29] It ruled that petitioner's dismissal was legal since respondent strictly complied with the procedural requirements in the implementation of a valid redundancy program, and that the same was implemented in good faith since respondent endeavored to fit petitioner to other positions but unfortunately failed to qualify for any other position in any other account. In addition, the CA noted that based on the company's records, petitioner's performance was below par, his attendance record was low, and he even had a high negative response rate;[30] thus, his dismissal was justified.

Petitioner moved for reconsideration[31] but the same was denied in a Resolution[32] dated November 29, 2017; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly ruled that petitioner was legally dismissed on the ground of redundancy.

The Court's Ruling

The petition is meritorious.

Under Article 298 (formerly 283) of the Labor Code, redundancy is recognized as an *authorized cause* for dismissal, *viz.*:

> Article 298 [283]. *Closure of Establishment and Reduction of Personnel.* – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, **redundancy**, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor

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[29] *Id.* at 44.

[30] See *id.* at 42-43.

[31] See undated motion for reconsideration; *id.* at 160-171.

[32] *Id.* at 46-47.

and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year. (Emphasis supplied)

Essentially, redundancy exists when an employee's position is superfluous, or an employee's services are in excess of what would reasonably be demanded by the actual requirements of the enterprise. Redundancy could be the result of a number of factors, such as the overhiring of workers, a decrease in the volume of business, or the dropping of a particular line or service previously manufactured or undertaken by the enterprise.[33] In this relation, jurisprudence explains that the characterization of an employee's services as redundant, and therefore, properly terminable, is an exercise of management prerogative,[34] considering that an employer has no legal obligation to keep more employees than are necessary for the operation of its business.[35]

Nevertheless, case law qualifies that the exercise of such prerogative "must not be in violation of the law, and must not be arbitrary or malicious."[36] Thus, following Article 298 of the Labor Code as above cited, the law requires the employer to prove, *inter alia*, its ***good faith in abolishing the redundant***

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[33] See *PNB v. Dalmacio*, G.R. No. 202308, July 5, 2017.

[34] See *General Milling Corporation v. Viajar*, *supra* note 21, at 543; citation omitted.

[35] See *Morales v. Metropolitan Bank and Trust Company*, 699 Phil. 129, 140 (2012); citations omitted.

[36] *General Milling Corporation v. Viajar*, *supra* note 21.

positions, and further, ***the existence of fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished***.

"To exhibit its good faith and that there was a fair and reasonable criteria in ascertaining redundant positions, a company claiming to be over manned must produce adequate proof of the same."[37]

Thus, the Court has ruled that it is not enough for a company to merely declare that it has become overmanned. Rather, it must produce adequate proof of such redundancy to justify the dismissal of the affected employees, such as but not limited to the new staffing pattern, feasibility studies/proposal, on the viability of the newly created positions, job description and the approval by the management of the restructuring.[38]

Meanwhile, in *Golden Thread Knitting Industries, Inc. v. NLRC*,[39] the Court explained that fair and reasonable criteria may include but are not limited to the following: "(*a*) less preferred status (*e.g.*, temporary employee); (*b*) efficiency; and (*c*) seniority. The presence of these criteria used by the employer shows good faith on its part and is evidence that the implementation of redundancy was painstakingly done by the employer in order to properly justify the termination from the service of its employees."[40]

In this case, the Court upholds the findings of the labor tribunals that respondent was not able to present adequate proof to show that it exhibited good faith, as well as employed fair and reasonable criteria in terminating petitioner's employment based on redundancy.

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[37] *Id*.

[38] See *id.* at 543-544.

[39] 364 Phil. 215 (1999).

[40] *Arabit v. Jardine Pacific Finance, Inc. (Formerly MB Finance)*, 733 Phil. 41, 58-59 (2014).

Particularly, respondent attempted to justify its purported redundancy program by claiming that on December 18, 2014, it received an e-mail from Amazon informing it of the latter's plans to "right size the headcount of the account due to business exigencies/requirements."[41] However, such e-mail — much less, any sufficient corroborative evidence tending to substantiate its contents — was never presented in the proceedings *a quo*. At most, respondent submitted, in its motion for reconsideration before the NLRC, an internal document,[42] which supposedly

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[41] See *rollo*, p. 64. See also Affidavit of respondent's Redeployment Lead, Sharon D. Mozo; *id*. at 177-178.

[42] *Id*. at 127. The text of the document is fully reproduced as follows:

Tower	CRM
Domain/ Account	Amazon
Requestor/ BU Head	Vivek Tiku
Target Effective Date	5-Jan-15
Business Case	
Narrative of the current situation of the business unit, what triggered the downsizing and what is the preferred outcome. Include artifact (e.g. email trails indicating reduced headcount from the client, approvals of proposed org chart changes, etc[.)]	We have just finished our seasonal ramp and would need to decrease our headcount due to low call volume based on the long term forecast provided by the client (Dec - Feb EOM LTF)
Business Case (Qualitative)	
Indicate the current headcount and target headcount[ ]which should correlate to the demands/volume of work	Current HC - 148 Required HC - 112 Required HC is based the number of agents needed to handle 110% of the LTF
Criteria for Ranking/ Selection	
Indicate measurable criteria like Service Years, SLA, Attendance, QA Result, PBC result, etc.	NRR Performance (CSAT metric)

explained Amazon's redundancy plans. However, the Court finds that this one (1)-page document hardly demonstrates respondent's good faith not only because it lacks adequate data to justify a declaration of redundancy, but more so, because it is clearly self-serving since it was prepared by one Vivek Tiku, the requestor/business unit head of respondent, and not by any employee/representative coming from Amazon itself. Notably, parallel to the entry "Narrative of the current situation of the business unit, what triggered the downsizing[,] and what is the preferred outcome," the requestor merely stated that "[w]e have just finished our seasonal ramp and would need to decrease our headcount due to low call volume based on the long term forecast by the client (Dec-Feb EOM LTF)." However, outside of this general conclusion, no evidence was presented to substantiate the alleged low call volume and the forecast from which it is based on so as to truly exhibit the business exigency of downsizing the business unit assigned to Amazon.

Aside from the lack of evidence to show respondent's good faith, respondent likewise failed to prove that it employed fair and reasonable criteria in its redundancy program. Respondent merely presented a screenshot of a table with names of the employees it sought to redundate based on their alleged poor performance ratings.[43] Indeed, while "efficiency" may be a proper standard to determine who should be terminated pursuant to a program of redundancy, said document does not convincingly show that fair and reasonable criteria was indeed employed by respondent. To reiterate, all that the screenshot contains is a list of employees with their concomitant performance ratings. As the LA pointed out, "[t]hough [respondent] incorporated in their Reply a screenshot of what appears to be a table containing the names of purported employees including their respective performance ratings, this Office cannot admit this at its face value in the absence of proof that would substantiate the same.[44] As earlier stated, the presence of these criteria is

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[43] See *id*. at 78 and 111.

[44] *Id*. at 78.

evidence that the implementation of redundancy was painstakingly done by the employer in order to properly justify the termination from the service of its employees. The aforesaid screenshot barely shows respondent's actual compliance with this standard.

Finally, it may not be amiss to point out that while respondent had duly notified petitioner that it was terminating him on the ground of redundancy, records are bereft of any showing that he was paid his separation pay, which is also a requisite to properly terminate an employee based on this ground. As Article 298 states, "[i]n case of termination due to x x x redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher."

In sum, the CA erred in ascribing grave abuse of discretion on the part of the NLRC. As the latter correctly ruled, respondent failed to validly terminate petitioner's employment in accordance with the requirements of Article 298 on redundancy; as such, he was illegally dismissed.

WHEREFORE, the petition is **GRANTED**. The Decision dated August 17, 2017 and the Resolution dated November 29, 2017 of the Court of Appeals in CA-G.R. SP No. 146840 are hereby **REVERSED** and **SET ASIDE**. The Decision dated March 30, 2016 and the Resolution dated May 30, 2016 of the National Labor Relations Commission in NLRC LAC No. 02-000614-16 are **REINSTATED**.

SO ORDERED.

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

[**] Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

SECOND DIVISION

[G.R. No. 240541. January 21, 2019]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **REY BARRION *y* SILVA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT (R.A. 9165); ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS; IT IS ESSENTIAL THAT THE IDENTITY OF THE DANGEROUS DRUG BE ESTABLISHED WITH MORAL CERTAINTY. —** In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165, it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime. Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY; PROCEDURE. —** 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 [DOJ], and any elected public official"; or (*b*) if **after** the amendment of RA 9165 by RA 10640, "an elected public official and a representative of the National Prosecution Service ***or*** the media." The law requires the presence of these witnesses primarily "to ensure the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."

3. ID.; ID.; ID.; ID.; COMPLIANCE THEREOF IS STRICTLY ENJOINED; RULE IN CASE OF NON-COMPLIANCE. — 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.; ID.; NON-COMPLIANCE OF WITNESS REQUIREMENT MAY BE PERMITTED IF GENUINE AND SUFFICIENT EFFORTS WERE EXERTED TO SECURE THE PRESENCE OF SUCH WITNESSES ALBEIT 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.

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 January 30, 2018 of the Court of Appeals (CA) in CA-G.R. CR-HC No. 08406, which affirmed the Decision[3] dated April 29, 2016 of the Regional Trial Court of Lipa City, Batangas, Branch 12 (RTC) in Criminal Case No. 0453-2011, finding accused-appellant Rey Barrion *y* Silva (Barrion) guilty beyond reasonable doubt of the crime of Illegal Sale of Dangerous Drugs, defined and penalized under Section 5, Article II of

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[1] See Notice of Appeal dated February 20, 2018; *rollo*, pp. 19-20.

[2] *Id*. at 2-18. Penned by Associate Justice Zenaida T. Galapate-Laguilles with Associate Justices Rosmari D. Carandang (now a member of this Court) and Jane Aurora C. Lantion, concurring.

[3] CA *rollo*, pp. 57-64. Penned by Judge Danilo S. Sandoval.

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 Barrion of the crime of Illegal Sale of Dangerous Drugs. The prosecution alleged that at about seven (7) o' clock in the evening of August 10, 2011, members of the Station Anti-Illegal Drugs – Special Operation Task Group[6] successfully implemented a buy-bust operation against Barrion, during which one (1) plastic sachet containing white crystalline substance was recovered from him. PO2 Dan Gonzales (PO2 Gonzales) then marked the seized item at the place of arrest, and thereafter, brought it to the police station along with Barrion. Thereat, PO2 Gonzales placed the seized item in a bigger plastic sachet and marked the same accordingly. The seized item was then inventoried[7] in the presence of Rodel Limbo (Limbo), a Department of Justice (DOJ) representative, and Teresita N. Reyes (Reyes), a barangay councilor.[8] Finally, the seized item was brought to the crime laboratory, where, upon examination,[9] the contents thereof tested positive for 0.04 gram of methamphetamine hydrochloride or *shabu*, a dangerous drug.[10]

For his part, Barrion denied the charges against him, claiming instead, that at around seven (7) o' clock in the evening of

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

[5] Dated August 11, 2011. Records, pp. 1-2.

[6] *Id*. at 5.

[7] See undated Inventory of Confiscated/Seized Items; *id*. at 140.

[8] *Rollo*, p. 4. See also TSN, January 22, 2013, p. 19.

[9] See Chemistry Report No. BD-198-2011 dated August 10, 2011; records, p. 144.

[10] See *rollo*, pp. 3-6. See also CA *rollo*, pp. 59-61.

August 10, 2011, he was already detained at the police headquarters, and thus, the testimony of the prosecution that he was apprehended at that time was not true. He likewise averred that at past four (4) o' clock in the afternoon of even date, he was onboard a tricycle when police officers blocked his way, pointed guns at him, ordered him to alight from the vehicle, put him in handcuffs, and asked him where he gets *shabu*. When he denied any knowledge about the matter, he was brought to the police station.[11]

In a Decision[12] dated April 29, 2016, the RTC found Barrion 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. It ruled that the prosecution was able to establish all the elements of the crime charged, as well as the identity and integrity of the *corpus delicti*. Finally, it gave credence to the positive identification of the police officers who enjoy the presumption of regularity in the performance of their official duties, and hence, should prevail over Barrion's defense of denial.[13] Aggrieved, Barrion appealed[14] to the CA.

In a Decision[15] dated January 30, 2018, the CA affirmed the RTC ruling. It held that all the elements of the crime charged were duly established, considering that Barrion was caught *in flagrante delicto* selling *shabu* during a buy-bust operation conducted by the police officers. Finally, it ruled that the prosecution was able to prove the integrity and evidentiary value of the seized item.[16]

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

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[11] See *rollo*, pp. 6-7. See also CA *rollo*, pp. 61-62.

[12] CA *rollo*, pp. 57-64.

[13] See *id*. at 63-64.

[14] See Notice of Appeal dated May 12, 2016; *id*. at 15.

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

[16] See *id*. at 10-17.

The Court's Ruling

The appeal is meritorious.

In cases for Illegal Sale and/or Illegal Possession of Dangerous Drugs under RA 9165,[17] it is essential that the identity of the dangerous drug be established with moral certainty, considering that the dangerous drug itself forms an integral part of the *corpus delicti* of the crime.[18] Failing to prove the integrity of the *corpus delicti* renders the evidence for the State insufficient to prove the guilt of the accused beyond reasonable doubt and hence, warrants an acquittal.[19]

To establish the identity of the dangerous drug with moral certainty, the prosecution must be able to account for each link of the chain of custody from the moment the drugs are seized up to their presentation in court as evidence of the crime.[20]

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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.

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."[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 [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

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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.

the establishment of the chain of custody and remove any suspicion of switching, planting, or contamination of evidence."[26]

As a general rule, compliance with the chain of custody procedure is strictly enjoined as the same has been regarded "not merely as a procedural technicality but as a matter of substantive law."[27] This is because "[t]he law has been crafted by Congress as safety precautions to address potential police abuses, especially considering that the penalty imposed may be life imprisonment."[28]

Nonetheless, the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible.[29] As such, the failure of the apprehending team to strictly comply with the same would not *ipso facto* render the seizure and custody over the items as void and invalid, provided that the prosecution satisfactorily proves that: (*a*) there is a justifiable ground for non-compliance; and (*b*) the integrity and evidentiary value of the seized items are properly preserved.[30] The foregoing is based on the saving clause found in Section 21 (a),[31] Article II of the Implementing Rules and Regulations (IRR) of RA 9165, which was later

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[26] See *People v. Bangalan*, G.R. No. 232249, September 3, 2018, citing *People v. Miranda*, *supra* note 17. See also *People v. Mendoza,* 736 Phil. 749, 764 (2014).

[27] See *People v. Miranda*, *id.* See also *People v. Macapundag*, G.R. No. 225965, March 13, 2017, 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[.]**"

adopted into the text of RA 10640.[32] It should, however, be emphasized that for the saving clause to apply, the prosecution must duly explain the reasons behind the procedural lapses,[33] and that the justifiable ground for non-compliance must be proven as a fact, because the Court cannot presume what these grounds are or that they even exist.[34]

Anent the witness requirement, non-compliance may be permitted if the prosecution proves that the apprehending officers exerted genuine and sufficient efforts to secure the presence of such witnesses, albeit they eventually failed to appear. While the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances.[35] Thus, mere statements of unavailability, absent actual serious attempts to contact the required witnesses, are unacceptable as justified grounds for non-compliance.[36] These considerations arise from the fact that police officers are ordinarily given sufficient time – beginning from the moment they have received the information about the activities of the accused until the time of his arrest – to prepare for a buy-bust operation and consequently, make the necessary arrangements beforehand, knowing fully well that they would have to strictly comply with the chain of custody rule.[37]

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

[33] *People v. Almorfe*, *supra* note 30.

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

[35] See *People v. Manansala*, *supra* note 17.

[36] See *People v. Gamboa*, *supra* note 19, citing *People v. Umipang*, *supra* note 19, at 1053.

[37] See *People v. Crispo*, *supra* note 17.

Notably, the Court, in *People v. Miranda*,[38] issued a definitive reminder to prosecutors when dealing with drugs cases. It implored that "[since] the [procedural] requirements are clearly set forth in the law, the State retains the positive duty to account for any lapses in the chain of custody of the drugs/items seized from the accused, regardless of whether or not the defense raises the same in the proceedings *a quo*; otherwise, it risks the possibility of having a conviction overturned on grounds that go into the evidence's integrity and evidentiary value, albeit the same are raised only for the first time on appeal, or even not raised, become apparent upon further review."[39]

In this case, there was a deviation from the witness requirement as the conduct of the inventory and photography was not witnessed by a media representative. This may be gleaned from the Inventory of Confiscated/Seized Items[40] which only shows the presence of Limbo, a DOJ representative, and Reyes, an elected public official, *i.e.*, a barangay councilor. Such finding is confirmed by the testimony of the team leader, SPO1[41] Emmanuel Angelo Umali (SPO1 Umali), to wit:

> [Atty. Ismael Macasaet]: Who prepared the inventory in relation to this case?
> [SPO1 Umali]: I, sir, as the team leader.
>
> Q: Was there any representative of the DOJ available at the police station when you arrived from the operation?
> A: Yes, sir.
>
> Q: When did you see the representative of the DOJ for the first time?
> A: When we were already in the police station, he arrived, sir.
>
> Q: You called him or somebody called him?
> A: Somebody called him, sir.

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[38] *Supra* note 17.

[39] See *id*.

[40] Records, p. 140.

[41] "PO3" in some parts of the records.

Q: How long after you arrived from the police station did the representative of the DOJ arrive?
A: More or less thirty (30) minutes, sir.

Q: How about the elected official? When did the elected official arrive at the police station? After your arrival from the operation?
A: He was with us, sir.

Q: There was no media representative who arrived?
A: None, sir.

Q: So you were not able to contact the media?
A: We called, sir.[42]

As earlier stated, it is incumbent upon the prosecution to account for these witnesses' absence by presenting a justifiable reason therefor or, at the very least, by showing that genuine and sufficient efforts were exerted by the apprehending officers to secure their presence. Here, while SPO1 Umali acknowledged the absence of a media representative during the conduct of inventory, he failed to offer any reasonable justification for the same. As already discussed, mere statements claiming that they tried to call the media representative, without, however, showing that they exerted earnest efforts to secure his presence, are insufficient to trigger the operation of the saving clause. 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 Barrion was compromised, which consequently warrants his acquittal.

WHEREFORE, the appeal is **GRANTED**. The Decision dated January 30, 2018 of the Court of Appeals in CA-G.R. CR-HC No. 08406 is hereby **REVERSED** and **SET ASIDE**. Accordingly, accused-appellant Rey Barrion *y* Silva 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.

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[42] TSN, January 27, 2014, pp. 17-18.

SO ORDERED.

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

EN BANC

[A.M. No. 18-11-09-SC. January 22, 2019]

RE: COMPLAINT-AFFIDAVIT OF ELVIRA N. ENALBES, REBECCA H. ANGELES AND ESTELITA B. OCAMPO AGAINST FORMER CHIEF JUSTICE TERESITA J. LEONARDO-DE CASTRO [RET.], RELATIVE TO G.R. NOS. 203063 AND 204743.

SYLLABUS

1. **LEGAL ETHICS; JUDGES; GROSS IGNORANCE OF THE LAW; TO HOLD A MAGISTRATE ADMINISTRATIVELY LIABLE FOR GROSS IGNORANCE OF THE LAW, IT IS NOT ENOUGH THAT HER ACTION WAS ERRONEOUS; IT MUST ALSO BE PROVEN THAT IT WAS DRIVEN BY BAD FAITH, DISHONESTY, OR ILL MOTIVE.—** Gross ignorance of the law is the failure of a magistrate to apply "basic rules and settled jurisprudence." It connotes a blatant disregard of clear and unambiguous provisions of law "because of bad faith, fraud, dishonesty[,] or corruption." x x x To hold a magistrate administratively liable for gross ignorance of the law, it is not enough that his or her action was erroneous; it must also be proven that it was driven by bad faith, dishonesty, or ill motive.

2. **POLITICAL LAW; JUDICIAL DEPARTMENT; SUPREME COURT; PERIOD WITHIN WHICH TO DECIDE OR**

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* Designated Additional Member per Special Order Nos. 2629 and 2630 dated December 18, 2018.

RESOLVE CASES; THE 24-MONTH PERIOD FOR DECIDING ON OR RESOLVING CASES IS A MERE DIRECTIVE TO ENSURE THE SUPREME COURT'S PROMPT RESOLUTION OF CASES, AND SHOULD NOT BE INTERPRETED AS AN INFLEXIBLE RULE.— Both the 1987 Constitution and the Internal Rules state that the 24- month period for deciding on or resolving a case is reckoned from the date of its submission for resolution. The 24-month period does not run immediately upon the filing of a petition before this Court, but only when the last pleading, brief, or memorandum has been submitted. x x x Article VIII, Section 15 of the 1987 Constitution provides the period within which courts must decide on or resolve cases or matters brought before it. A provision of similar import was written under the 1973 Constitution x x x. In *Marcelino v. Hon. Cruz, Jr., etc. et al.,* this Court had the opportunity to shed light on the proper interpretation of Article X, Sec. 11(1) of the 1973 Constitution. *Marcelino* involved a petition for prohibition and writ of habeas corpus filed against respondent Judge Fernando Cruz, Jr., praying that he be enjoined from promulgating a decision in Criminal Case No. C-5910, entitled *People of the Philippines v. Bernardino Marcelino.* x x x This Court, upon receiving the case, found that respondent Cruz did render a decision within the three (3)-month period prescribed under the 1973 Constitution. Nevertheless, this Court further continued that the constitutional provision was merely directory in nature x x x. The doctrine laid down in *Marcelino* was echoed in *De Roma v. Court of Appeals.* x x x. Being the court of last resort, this Court should be given an ample amount of time to deliberate on cases pending before it. Ineluctably, leeway must be given to magistrates for them to thoroughly review and reflect on the cases assigned to them. This Court notes that all matters brought before it involves rights which are legally demandable and enforceable. It would be at the height of injustice if cases were hastily decided on at the risk of erroneously dispensing justice. While the 24-month period provided under the 1987 Constitution is persuasive, it does not summarily bind this Court to the disposition of cases brought before it. It is a mere directive to ensure this Court's prompt resolution of cases, and should not be interpreted as an inflexible rule. Magistrates must be given discretion to defer the disposition of certain cases to make way for other equally important matters in this Court's agenda.

RESOLUTION

LEONEN, *J.*:

Courts are not unmindful of the right to speedy disposition of cases enshrined in the Constitution. Magistrates are obliged to render justice in the swiftest way possible to ensure that rights of litigants are protected. Nevertheless, they should not hesitate to step back, reflect, and reevaluate their position even if doing so means deferring the final disposition of the case. Indeed, justice does not equate with hastily giving one's due if it is found to be prejudicial. At the end of the day, the duty of the courts is to dispense justice in accordance with law.

This administrative matter originated from a Complaint-Affidavit[1] filed by complainants Elvira N. Enalbes, Rebecca H. Angeles, and Estelita B. Ocampo against former Chief Justice Teresita J. Leonardo-De Castro (Chief Justice De Castro), charging her with gross ignorance of the law, gross inefficiency, gross misconduct, gross dishonesty, and conduct prejudicial to the best interest of the service.[2]

In their Complaint-Affidavit, complainants state that on September 4, 2012, Spouses Eligio P. Mallari and Marcelina I. Mallari (the Mallari Spouses) filed before this Court a Petition for Mandamus and Prohibition with Prayer for Temporary Restraining Order.[3]

The Petition, docketed as G.R. No. 203063, was filed against: (1) the Court of Appeals First Division represented by then Presiding Justice Andres B. Reyes, Jr. (Presiding Justice Reyes),[4] Associate Justices Ramon M. Bato, Jr. and Rodil V. Zalameda; and (2) the Court of Appeals Special Former Fourth Division of Five represented by Presiding Justice Reyes, Associate Justices

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[1] *Rollo,* pp. 2-8.

[2] *Id*. at 7.

[3] *Id*. at 5.

[4] Now an Associate Justice of this Court.

Noel G. Tijam,[5] Soccoro B. Inting, Edwin D. Sorongon, and Agnes Reyes-Carpio.[6]

On January 25, 2013, the Mallari Spouses filed a Petition for Review on Certiorari before this Court, docketed as G.R. No. 204743, against the Philippine National Bank and the Court of Appeals Special Former Fourth Division of Five.[7]

Both Petitions were assigned to this Court's First Division and were raffled to then Chief Justice De Castro.[8]

Complainants aver that despite the lapse of more than five (5) years,[9] respondent failed to decide on both Petitions of Spouses Mallari.[10]

Complainants maintain that respondent's failure to promptly act on the Petitions resulted in a violation of the spouses' constitutional right to speedy disposition of their cases.[11]

Complainants further argue that respondent committed graft and corruption for giving the Philippine National Bank unwarranted benefits through manifest partiality, evident bad faith, or gross inexcusable negligence, causing undue injury to the Mallari Spouses.[12]

The sole issue for this Court's resolution is whether or not respondent, former Chief Justice Teresita J. Leonardo-De Castro, should be held administratively liable for gross ignorance of the law, gross inefficiency, gross misconduct, gross dishonesty, and conduct prejudicial to the best interest of the service.

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[5] Now a retired Associate Justice of this Court.

[6] *Rollo,* p. 5.

[7] *Id.* at 6.

[8] *Id.*

[9] *Id.* at 7.

[10] *Id.* at 6.

[11] *Id.* at 6.

[12] *Id.*

I

Gross ignorance of the law is the failure of a magistrate to apply "basic rules and settled jurisprudence."[13] It connotes a blatant disregard of clear and unambiguous provisions of law[14] "because of bad faith, fraud, dishonesty[,] or corruption."[15] It is a serious charge[16] that is punishable by the following:

RULE 140

Discipline of Judges of Regular and Special Courts and Justices of the Court of Appeals and the Sandiganbayan

. . . . . .

SECTION 11. Sanctions. — A. If the respondent is guilty of a serious charge, any of the following sanctions may be imposed:

1. Dismissal from the service, forfeiture of all or part of the benefits as the Court may determine, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations. Provided, however, that the forfeiture of benefits shall in no case include accrued leave credits;

2. Suspension from office without salary and other benefits for more than three (3) but not exceeding six (6) months[;] or

3. A fine of more than ₱20,000.00 but not exceeding ₱40,000.00.[17]

To hold a magistrate administratively liable for gross ignorance of the law, it is not enough that his or her action was

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[13] *Department of Justice v. Judge Mislang,* 791 Phil. 219, 227 (2016) [*Per Curiam*, *En Banc*].

[14] *Id*.

[15] *Re: Anonymous Letter dated Aug. 12, 2010, Complaining Against Judge Ofelia T. Pinto, RTC, Br. 60, Angeles City, Pampanga,* 696 Phil. 21, 28 (2012) [*Per Curiam*, *En Banc*].

[16] RULES OF COURT, Rule 140, Sec. 8(9).

[17] RULES OF COURT, Rule 140, Sec. 11(A).

erroneous; it must also be proven that it was driven by bad faith, dishonesty, or ill motive.[18]

Complainants' Complaint-Affidavit is predicated on respondent's failure to resolve the Mallari Spouses' Petitions for more than five (5) years. They insist that respondent's neglect to promptly decide on the Petitions resulted in a violation of the spouses' constitutional right to speedy disposition of their cases. Complainants rely on the constitutional provision requiring this Court to decide on cases within 24 months from their submission.[19]

Complainants' arguments lack merit.

Article VIII, Section 15 of the 1987 Constitution states:

ARTICLE VIII
Judicial Department

. . . . . .

SECTION 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved *within twenty-four months from date of submission for the Supreme Court,* and, unless reduced by the Supreme Court, twelve months for all lower collegiate courts, and three months for all other lower courts.

(2) *A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.* (Emphasis supplied)

In relation, Rule 13, Section 1 of the Internal Rules of the Supreme Court provides:

RULE 13
Decision-Making Process

SECTION 1. Period for Deciding or Resolving Cases. – The Court shall decide or resolve all cases within twenty-four months from the

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[18] *Department of Justice v. Judge Mislang,* 791 Phil. 219, 228 (2016) [*Per Curiam*, *En Banc*].

[19] *Rollo,* p. 6.

date of submission for resolution. A case shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum that the Court or its Rules require.

Both the 1987 Constitution and the Internal Rules state that the 24-month period for deciding on or resolving a case is reckoned from the date of its submission for resolution. The 24-month period does not run immediately upon the filing of a petition before this Court, but only when the last pleading, brief, or memorandum has been submitted.

II

Article VIII, Section 15 of the 1987 Constitution provides the period within which courts must decide on or resolve cases or matters brought before it.

A provision of similar import was written under the 1973 Constitution:

ARTICLE X
The Judiciary

. . . . . .

SECTION 11. (1) Upon the effectivity of this Constitution, the maximum period within which a case or matter shall be decided or resolved from the date of its submission, shall be eighteen months for the Supreme Court, and, unless reduced by the Supreme Court, twelve months for all inferior collegiate courts, and three months for all other inferior courts.

In *Marcelino v. Hon. Cruz, Jr., etc. et al.,*[20] this Court had the opportunity to shed light on the proper interpretation of Article X, Sec. 11(1) of the 1973 Constitution.

Marcelino involved a petition for prohibition and writ of habeas corpus filed against respondent Judge Fernando Cruz, Jr., praying that he be enjoined from promulgating a decision in Criminal Case No. C-5910, entitled *People of the Philippines*

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[20] 206 Phil. 47 (1983) [Per *J.* Escolin, Second Division].

v. Bernardino Marcelino. Petitioner Bernardino Marcelino argued that respondent Judge Cruz lost his jurisdiction on the case when he failed to render a decision within 90 days from the case's submission for resolution. This Court, upon receiving the case, found that respondent Cruz did render a decision within the three (3)-month period prescribed under the 1973 Constitution. Nevertheless, this Court further continued that the constitutional provision was merely directory in nature:

> The established rule is that *"constitutional provisions are to be construed as mandatory, unless by express provision or by necessary implication, a different intention is manifest.* "The difference between a mandatory and a directory provision is often determined on grounds of expediency, the reason being that less injury results to the general public by disregarding than by enforcing the letter of the law."
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> In *Trapp v. McCormick,* a case calling for the interpretation of a statute containing a limitation of thirty [30] days within which a decree may be entered without the consent of counsel, it was held that "the statutory provisions which may be thus departed from with impunity, without affecting the validity of statutory proceedings, are usually those which relate to the mode or time of doing that which is essential to effect the aim and purpose of the Legislature or some incident of the essential act." Thus, in said case, the statute under examination was construed merely to be directory.
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> On this view, authorities are one in saying that:
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> > *"Statutes requiring the rendition of judgment forthwith or immediately after the trial or verdict have been held by some courts to be merely directory so that non- compliance with them does not invalidate the judgment, on the theory that if the statute had intended such result it would clearly have indicated it.". . .*
>
> Such construction applies equally to the constitutional provision under consideration. In *Mikell v. School Dis. of Philadelphia,* it was ruled that "the legal distinction between directory and mandatory laws is applicable to fundamental as it is to statutory laws."
>
> . . . . . .
>
> As foreseen by Mr. Henry Campbell Black in his Construction and Interpretation of the Laws, the constitutional provision in question should be held merely as directory. "Thus, where the contrary

construction would lead to absurd, impossible or mischievous consequences, it should not be followed."[21] (Emphasis supplied, citations omitted)

The doctrine laid down in *Marcelino* was echoed in *De Roma v. Court of Appeals*.[22]

In *De Roma,* a procedural issue on the proper interpretation of Article X, Section 11(1) of the 1973 Constitution was raised. This Court reiterated that this constitutional provision was merely directory in nature:

> There is no need to dwell long on the other error assigned by the petitioner regarding the decision of the appealed case by the respondent court beyond the 12-month period prescribed by Article X, Section 11(1) of the 1973 Constitution. As we held in *Marcelino v. Cruz,* the said provision was merely directory and failure to decide on time would not deprive the corresponding courts of jurisdiction or render their decisions invalid.
>
> It is worth stressing that the aforementioned provision has now been reworded in Article VIII, Section 15, of the 1987 Constitution, which also impresses upon the courts of justice, indeed with greater urgency, the need for the speedy disposition of the cases that have been clogging their dockets these many years. Serious studies and efforts are now being taken by the Court to meet that need.[23] (Citation omitted)

Being the court of last resort, this Court should be given an ample amount of time to deliberate on cases pending before it.

Ineluctably, leeway must be given to magistrates for them to thoroughly review and reflect on the cases assigned to them. This Court notes that all matters brought before it involves rights which are legally demandable and enforceable. It would be at the height of injustice if cases were hastily decided on at the risk of erroneously dispensing justice.

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

[22] 236 Phil. 220 (1987) [Per *J*. Cruz, First Division].

[23] *Id*. at 224-225.

While the 24-month period provided under the 1987 Constitution is persuasive, it does not summarily bind this Court to the disposition of cases brought before it. It is a mere directive to ensure this Court's prompt resolution of cases, and should not be interpreted as an inflexible rule.

Magistrates must be given discretion to defer the disposition of certain cases to make way for other equally important matters in this Court's agenda.

In *Coscolluela v. Sandiganbayan, et al.,* this Court noted that "the right to speedy disposition of cases should be understood to be a relative or flexible concept such that a mere mathematical reckoning of the time involved would not be sufficient."[24]

As a final note, the prescribed time limit should not be ignored as to render nugatory the spirit which breathes life to the letter of the 1987 Constitution. Ultimately, courts must strike an objective and reasonable balance in disposing cases promptly, while maintaining judicious tenacity in interpreting and applying the law.

Accordingly, respondent's failure to promptly resolve the Mallari Spouses' Petitions does not constitute gross ignorance of the law warranting administrative liability.

Besides, on October 10, 2018, respondent has already vacated her office due to her mandatory retirement, rendering complainants' Administrative Complaint moot.

WHEREFORE, premises considered, the Administrative Complaint against respondent, former Chief Justice Teresita J. Leonardo-De Castro, for gross ignorance of the law, gross inefficiency, gross misconduct, gross dishonesty, and conduct prejudicial to the best interest of the service is **DISMISSED** as there is no showing of a prima facie case against her.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, and *Carandang, JJ.,* concur.

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[24] 714 Phil. 55, 61 (2013) [Per J. Perlas-Bernabe, Second Division].

EN BANC

[A.M. No. P-16-3505. January 22, 2019]
(Formerly OCA IPI No. 13-4134-P)

ZENMOND D. DUQUE, *complainant, vs.* **CESAR C. CALPO, Court Stenographer III, Regional Trial Court, Branch 16, Cavite City,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; MISCONDUCT, DEFINED; TO CONSTITUTE AN ADMINISTRATIVE OFFENSE, THE MISCONDUCT SHOULD RELATE TO OR BE CONNECTED WITH THE PERFORMANCE OF THE OFFICIAL FUNCTIONS AND DUTIES OF THE PUBLIC OFFICER.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer. It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, and not a mere error of judgment, or flagrant disregard of established rule, must be manifest in the former.

2. ID.; ID.; ID.; DISHONESTY; DEFINED.— [D]ishonesty means "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."

3. ID.; ID.; ID.; COURT PERSONNEL; GRAVE MISCONDUCT AND SERIOUS DISHONESTY; RECEIVING MONEY FROM A PARTY ON THE CONSIDERATION THAT HE CAN OBTAIN A FAVORABLE DECISION FROM THE COURT, FALSIFYING A COURT DECISION, AND FORGING THE SIGNATURE OF THE TRIAL COURT JUDGE, A CASE OF; PENALTY.— Respondent's actuations

clearly demonstrate an intent to violate the law or a persistent disregard of well-known rules. Respondent deceived complainant into believing he had the power to obtain an annulment order in complainant's favor. Receiving money from complainant, on the consideration that he can obtain a favorable decision from the court, falsifying a court decision, and forging the signature of the trial court judge, undeniably constitute grave misconduct and serious dishonesty. x x x Sec. 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, promulgated on November 8, 2011, classifies grave misconduct and serious dishonesty as grave offenses. Accordingly, the imposable penalty for grave misconduct and serious dishonesty is the extreme penalty of dismissal from service. Sec. 52(a) of the same Rules states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office and bar from taking civil service examinations.

4. ID.; ID.; ID.; ID.; THE PRINCIPLE THAT A PUBLIC SERVANT SHOULD EXHIBIT, AT ALL TIMES, THE HIGHEST DEGREE OF HONESTY AND INTEGRITY AND SHOULD BE MADE ACCOUNTABLE TO ALL THOSE WHOM HE SERVES, APPLIES FROM THE JUDGE TO THE LEAST AND LOWEST OF THE JUDICIARY'S EMPLOYEES AND PERSONNEL.— A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity and should be made accountable to all those whom he serves. The same principle applies from the judge to the least and lowest of the judiciary's employees and personnel. Unfortunately, respondent failed to exact the same integrity, propriety, decorum, and honesty. Without a doubt, therefore, respondent patently committed grave misconduct and dishonesty.

D E C I S I O N

***PER CURIAM*:**

This refers to the May 28, 2013 Complaint-Affidavit[1] filed by Zenmond D. Duque (*complainant*) against Cesar C. Calpo

[1] *Rollo*, pp. 1-5.

(*respondent*), Court Stenographer III, Regional Trial Court (*RTC*) of Cavite City, Cavite, Branch 16, before the Office of the Court Administrator (*OCA*) for malfeasance, grave misconduct, dishonesty, and conduct unbecoming of a public official in the judiciary.

Respondent filed a Comment,[2] dated September 6, 2013 on the complaint-affidavit. In his comment, respondent neither denied nor admitted receiving any amount from complainant and giving the latter a copy of any decision.

Considering the conflicting statements of the parties and seriousness of the charges, the Court referred the administrative complaint for investigation to the Executive Judge of the RTC of Cavite City, Cavite.[3]

In his June 14, 2016 Report,[4] the investigating judge, Executive Judge Agapito S. Lu, declared that after conducting hearings, he obtained the following information:

Complainant, a member of the Philippine Coast Guard, alleged that sometime in September 2010, he met respondent through a common friend. After opening up about his marital problems to respondent, the latter voluntarily offered his services to help complainant secure an annulment order from the court. As payment, complainant paid respondent the total amount of One hundred fifty thousand pesos (₱150,000.00) in three equal installments, evidenced by receipts duly signed by respondent.[5]

Sometime within the last week of October or first week of November 2010, respondent accompanied complainant to the office of a certain Dr. Macario S. Barinque in Mandaluyong City for a psychological examination. A few weeks later, complainant received a copy of the psychological examination results.[6]

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[2] *Id*. at 62-63.

[3] *Id*. at 81-82; Resolution dated July 7, 2014.

[4] *Id*. at 222-225.

[5] *Id*. at 6, 7 and 17.

[6] *Id*. at 8-16.

Months passed but there was no progress in the annulment case. A year later, sometime in November 2011, respondent gave a copy of the Decision[7] issued by the RTC of Dasmariñas City, Cavite, Branch 90, docketed as Civil Case No. DAS-815-11, penned by Executive Judge Perla V. Cabrera-Faller (*Judge Cabrera-Faller*), granting complainant an annulment of his marriage.

Suspicious of the veracity of the decision, complainant followed the advice of a lawyer and sought to verify its authenticity. To his dismay, complainant learned that there was no such case and that Judge Cabrera-Faller had not issued any such decision. He also learned that her signature therein was a forgery.

Complainant confronted respondent of his discovery, who begged complainant not to file any case against him and promised to return the money.

Despite several demands and time to comply, respondent failed to fulfill his promise. On April 10, 2013, complainant sent a demand letter requiring respondent to pay the amount within five (5) days from receipt thereof, otherwise, complainant would file the appropriate criminal and administrative cases. But the demand fell on deaf ears, hence, the present administrative complaint.

During the investigation, respondent admitted to receiving the amount of ₱150,000.00 from complainant. He explained that he used the money for the processing fee, filing fee, psychological examination fee, and lawyer's fee. However, respondent denied that he handed the subject decision to complainant.

After the hearings, the investigating judge determined that it was respondent who offered his services to complainant for the annulment of the latter's marriage for a fee of ₱150,000.00, which respondent did not deny. The investigating judge also resolved that respondent manufactured and falsified the decision

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[7] *Id.* at 18-29.

purportedly rendered by the RTC of Dasmariñas City, Cavite, Branch 90 and forged the signature of Judge Cabrera-Faller appearing thereon. Considering that the acts of respondent clearly constitute grave misconduct, the investigating judge recommended the dismissal of respondent from service and all of his benefits forfeited therefor.

The OCA Recommendation

In its October 28, 2016 Report and Recommendation,[8] the OCA concurred with the findings of the investigating judge and accordingly found respondent guilty of grave misconduct and recommended his dismissal from service, with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from re-employment in government service. The OCA subscribed to the findings of the investigating judge that respondent's act of receiving money from a litigant to facilitate the annulment of his marriage amounted to grave misconduct.

The OCA further explained that respondent, as a court stenographer, was not authorized to collect or receive any amount of money from any litigant. The act of collecting or receiving money from a litigant constituted grave misconduct in office.

The Court's Ruling

The Court adopts and accepts the findings and recommendation of the OCA.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by the public officer.[9] It is intentional wrongdoing or deliberate violation of a rule of law or standard of behavior and to constitute an administrative offense, the misconduct should relate to or be connected with the performance of the official

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[8] *Id*. at 229-231.

[9] *Judge Tolentino-Genilo v. Pineda*, A.M. No. P-17-3756, October 10, 2017.

functions and duties of a public officer.[10] In order to differentiate gross misconduct from simple misconduct, the elements of corruption, clear intent to violate the law, and not a mere error of judgment, or flagrant disregard of established rule, must be manifest in the former.[11]

On the other hand, dishonesty means "a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity, lack of honesty, probity or integrity in principle; lack of fairness and straightforwardness; disposition to defraud, deceive or betray."[12]

Respondent's actuations clearly demonstrate an intent to violate the law or a persistent disregard of well-known rules.[13] Respondent deceived complainant into believing he had the power to obtain an annulment order in complainant's favor. Receiving money from complainant, on the consideration that he can obtain a favorable decision from the court, falsifying a court decision, and forging the signature of the trial court judge, undeniably constitute grave misconduct and serious dishonesty.

A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity and should be made accountable to all those whom he serves.[14] The same principle applies from the judge to the least and lowest of the judiciary's employees and personnel.[15] Unfortunately, respondent failed to exact the same integrity, propriety, decorum, and honesty. Without a doubt, therefore, respondent patently committed grave misconduct and dishonesty.

Sec. 46, Rule 10 of the Revised Rules on Administrative Cases in the Civil Service, promulgated on November 8, 2011,

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[10] *Id*.

[11] *Id*.

[12] *Geronca v. Magalona*, 568 Phil. 564-570 (2008).

[13] *Gacad v. Judge Clapis, Jr.*, 691 Phil. 126, 140 (2012).

[14] *Judge Tolentino-Genilo v. Pineda*, *supra* note 9.

[15] *Id*.

classifies grave misconduct and serious dishonesty as grave offenses.[16] Accordingly, the imposable penalty for grave misconduct and serious dishonesty is the extreme penalty of dismissal from service. Sec. 52(a) of the same Rules states that the penalty of dismissal shall carry with it the cancellation of eligibility, forfeiture of retirement benefits, and perpetual disqualification from holding public office and bar from taking civil service examinations.[17]

WHEREFORE, respondent CESAR C. CALPO, Court Stenographer III, Regional Trial Court of Cavite City, Cavite, Branch 16, is found **GUILTY** of grave misconduct and serious dishonesty. He is hereby **DISMISSED** from service, with **FORFEITURE** of all benefits, except accrued leave credits, if any, and **PERPETUALLY DISQUALIFIED** from re-employment in any government instrumentality, including government-owned and controlled corporations, without prejudice to the filing of appropriate criminal and civil cases.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, and *Carandang, JJ.*, concur.

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[16] Revised Rules on Administrative Cases in the Civil Service, Rule 10, Sec. 46.

[17] Revised Rules on Administrative Cases in the Civil Service, Rule 10, Sec. 52(a).

EN BANC

[G.R. No. 213323. January 22, 2019]

TERESITA S. LAZARO, DENNIS S. LAZARO, MARIETA V. JARA, ANTONIO P. RELOVA, GILBERTO R. MONDEZ, PABLO V. DEL MUNDO, JR., and ALSANEO F. LAGOS, *petitioners, vs.* **COMMISSION ON AUDIT, REGIONAL DIRECTOR OF COA REGIONAL OFFICE NO. IV-A, and COA AUDIT TEAM LEADER, PROVINCE OF LAGUNA,** *respondents.*

[G.R. No. 213324. January 22, 2019]

EVELYN T. VILLANUEVA, Provincial Accountant of the Province of Laguna, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; REPUBLIC ACT NO. 9184 (GOVERNMENT PROCUREMENT REFORM ACT); IN COMPETITIVE BIDDING, REFERENCE TO BRAND NAMES IS PROHIBITED; CASE AT BAR.— What petitioners Governor Lazaro, et al. fail to mention is that *National Center for Mental Health Management* was decided in 1996, before Republic Act No. 9184 was enacted in 2003. Exceptions to the prohibition against reference to brand names in Republic Act No. 9184 could not have been laid out years before the statute's enactment. The law is patently clear, with no exceptions: "[r]eference to brand names shall not be allowed." Without basis to claim that it was proper to refer to brand names in their procurement, the claim that this case is an exception to the requirement of competitive bidding has no leg to stand on. Consequently, the transactions were properly disallowed.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF *QUANTUM MERUIT*; A PARTY IS ALLOWED TO RECOVER AS MUCH AS HE OR SHE REASONABLY DESERVES; NOT APPLICABLE WHEN

A CONTRACTOR HAS ALREADY BEEN PAID; CASE AT BAR.— *Royal Trust Construction, EPG Construction Co.*, and *Eslao* are not squarely applicable here. All three (3) cases involved the question of whether payment should be made to the contractor who had already provided the services covered by a disallowed transaction. They did not tackle the liability of public officials responsible for irregular transactions. Indeed, the principle of *quantum meruit*—that a party is allowed to recover as much as he or she reasonably deserves — is usually invoked with regard to paying a contractor for works rendered. Here, however, the contractors have already been paid, and the question to be resolved is whether the public officers responsible for the irregularity must reimburse the government for it.

3. ID.; ID.; ID.; MAY BE APPLIED WHEN CONSIDERING A PUBLIC OFFICER'S LIABILITY TO DETERMINE WHETHER THE CONTRACTOR HAD BEEN PAID BEYOND THE AMOUNT DESERVED BASED ON *QUANTUM MERUIT*, SUCH THAT THE PUBLIC OFFICER THERE WAS LIABLE ONLY FOR THE AMOUNT THAT WAS PAID; CASE AT BAR.— *Melchor* is more relevant than the rest here, as it pertained to the liability of a public officer for disallowed transactions. Nonetheless, it is still not entirely on all fours with this case. x x x Although this Court in *Melchor* recognized the possibility of applying the principle of *quantum meruit* when considering a public officer's liability, it must be stressed that it was not used to completely absolve this liability. Rather, the principle was used to determine whether the contractor had been paid beyond the amount deserved based on *quantum meruit*, such that the public officer there was liable only for the amount that was paid beyond the reasonable amount deserved by the contractor. Even more significant, before it applied the principle of *quantum meruit*, this Court had determined that the requirements for the validity of the main contract of ₱344,340.88 had already been met. This is not the case here.

4. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; ASSERTION OF LIMITED OR COMPLETE LACK OF LIABILITY BASED ON THE PRINCIPLE OF *QUANTUM MERUIT* AND GOOD FAITH MUST, IN GOOD DILIGENCE, BE ALLEGED AND SUPPORTED WITH

FACTUAL BASIS; CASE AT BAR.— [P]etitioners, in good diligence, should have alleged and supported their claims of good faith, which were based on their supposed reliance on expert advice. Petitioners fail to allege and support with good diligence their claims of good faith. Petitioners claim that they relied on the expertise of the Therapeutics Committees, which they allege to have recommended the chosen brand names. They claim that they were right to rely on the Therapeutics Committees, which are responsible for "determining the drugs to be procured by government hospitals." Under the Department of Health's Hospital Pharmacy Management Manual, the Pharmacy and Therapeutics Committee has the authority to recommend or assist in the formulation of policies on evaluation, selection, and therapeutic use of drugs in hospitals. Executive Order No. 49 issued by then President Fidel V. Ramos provides that the Therapeutics Committee shall be responsible for determining which products are to be procured by the respective government entities. To convince this Court of their good faith, petitioners should have sufficiently alleged facts that would show that there was no collusion between petitioners and the Therapeutics Committees to use the committee's role as a tool to circumvent the rules on procurement. x x x Petitioners Governor Lazaro, et al.'s submissions do not clearly allege and establish the sequence of events, such as when and how the Therapeutics Committees made the recommendations, and when and how petitioners responded to them. These circumstances are vital in establishing petitioners' frame of mind and good faith. x x x In asserting limited or complete lack of liability based on the principle of *quantum meruit* and good faith, petitioners, in good diligence, bear the burden to clearly allege and support the factual basis for their claims. It is not this Court's duty to construe their incomplete submissions and vague narrations to determine merit in their assertions. Petitioners did not fulfill their burden; thus, their claims must be rejected.

5. ID.; SPECIAL CIVIL ACTIONS; PETITION FOR *CERTIORARI* UNDER RULE 64 OF THE RULES OF COURT; GRAVE ABUSE OF DISCRETION; ESTABLISHED WHEN A PUBLIC OFFICER WAS HELD LIABLE FOR DISALLOWED TRANSACTIONS IN WHICH HE OR SHE DID NOT PARTICIPATE; CASE AT BAR.— Public officers should not be held liable for disallowed transactions in which they did not participate. Holding them

> liable without any proof of their participation in the transaction is grave abuse of discretion. Commission on Audit Circular No. 006-09 provides how the Commission on Audit should determine the liability of a public officer in relation to audit disallowances. x x x Since petitioner Villanueva's liability for the disallowed transactions is anchored on her position as Provincial Accountant, she should only be liable for the transactions that occurred after she was designated Officer-in-Charge of the Office of the Provincial Accountant. Finding her liable for reimbursements of transactions prior to this constitutes grave abuse of discretion. However, which of the disallowed transactions occurred before her designation is a question of fact that this Court has no evidentiary basis to determine. This Court is constrained to remand the case to the Commission on Audit to properly determine this matter.

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners in G.R. No. 213323.

Mariel A. Mailom-Llarena for petitioner in G.R. No. 213324.

The Solicitor General for public respondents.

D E C I S I O N

LEONEN, *J.*:

These are Petitions for Certiorari[1] under Rule 64 of the Rules of Court, assailing the August 17, 2011 Decision[2] and May 6, 2014 Resolution[3] of the Commission on Audit, which reversed

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[1] *Rollo* (G.R. No. 213323), pp. 3-27 and *rollo* (G.R. No. 213324), pp. 3-22.

[2] *Rollo* (G.R. No. 213324), pp. 23-32. The Decision was penned by Commissioner Ma. Gracia M. Pulido Tan and concurred in by Commissioners Juanito G. Espino, Jr. and Heidi L. Mendoza of the Commission on Audit, Quezon City.

[3] *Id*. at 33. The Notice of Resolution was signed by Commission Secretary and Director IV Nilda B. Plaras of the Commission on Audit, Quezon City.

the March 19, 2010 Decision[4] of the Commission on Audit Regional Office No. IV (Regional Office). In its Decision, the Regional Office reversed the Decision of the then Regional Cluster Director of the Commission on Audit, Regional Legal and Adjudication Office, which, in turn, disallowed the Provincial Government of Laguna's purchase of medicines, medical and dental supplies, and equipment (medical items) in the total amount of ₱118,039,493.46.[5]

As reported in a December 3, 2004 article of the Philippine Daily Inquirer, the Regional Director of the Regional Office created an audit team to conduct a preliminary fact-finding audit and investigation of irregularities in the purchase of medical items.[6]

The audit team issued two (2) Audit Observation Memoranda,[7] which revealed that in the 2004 and 2005 procurement of medical items: (1) no public bidding had been conducted; (2) purchase requests had made reference to brand names; and (3) there had been splitting of purchase requests and purchase orders.[8]

On December 27, 2006, the Regional Cluster Director issued a Notice of Disallowance,[9] which held liable for the 2004 and 2005 procurement of medical items worth ₱118,039,493.46 the following individuals: (1) Governor Teresita S. Lazaro (Governor Lazaro); (2) Officer-in-Charge Provincial Accountant Evelyn T. Villanueva (Villanueva); (3) Provincial Administrator and Bids and Awards Committee Chairman Dennis S. Lazaro (Dennis Lazaro); (4) Provincial Health Officer II Alsaneo F. Lagos

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[4] *Id*. at 77-82. The Decision was penned by Regional Director Leonardo L. Jamoralin of the Regional Office No. IV, Commission on Audit, Quezon City.

[5] *Id*. at 78.

[6] *Id*. at 23.

[7] *Id*. at 35-42.

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

[9] *Id*. at 43-44.

(Lagos); (5) Provincial Budget Officer and Bids and Awards Committee Vice Chairman Marieta V. Jara (Jara); (6) Provincial Attorney Antonio P. Relova (Relova); (7) Provincial Engineer Gilberto R. Mondez (Mondez); and (8) General Services Office Officer-in-Charge Pablo V. Del Mundo, Jr. (Del Mundo). Relova, Mondez, and Del Mundo are Bids and Awards Committee members.[10]

The Notice of Disallowance indicated that: (1) the medical items were purchased without public bidding; and (2) reference to brand names were made in the procurement documents to justify the resort to exclusive distributorship, contrary to Section 18 of Republic Act No. 9184.[11]

On April 30, 2007, Governor Lazaro filed a Motion for Reconsideration of the Notice of Disallowance. However, it was denied in the Regional Cluster Director's March 25, 2008 Decision.[12]

On May 27, 2008, Governor Lazaro and the rest of the persons held liable filed an Appeal Memorandum to the Notice of Disallowance.[13]

In his March 19, 2010 Decision, the Regional Office granted their appeal. It held:

> While this is the letter of the law, it bears emphasizing that no less than the Supreme Court admits of exceptions to the provisions of law above cited. In affirming the respect accorded to the exercise by administrative agencies of discretion whenever reference to brand names and the consequential resort to negotiated purchase are made, the Court, in the precedent-setting pronouncement in National Center for Mental Health (NCMH) vs. COA, G.R. No. 114864, December 6, 1996, 265 SCRA 390, declared in categorical manner that the judgment of the government agency concerned regarding the suitability

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

[11] *Id*. at 24.

[12] *Id*. at 25-26.

[13] *Id*. at 60-76.

of the product, given the nature of its services, should be accorded respect even if there could have been substitute items.

Equally decisive and of similar tenor is the implication of the Court's declaration in Baylon vs. Ombudsman and Sandiganbayan, G.R. No. 142738, December 14, 2001, wherein the reference to brand names, while supposedly prohibited under the above cited Section 18 of RA No. 9184, was allowed.[14]

In its August 17, 2011 Decision, the Commission on Audit, upon automatic review, disapproved the Regional Office March 19, 2010 Decision. In affirming the Notice of Disallowance, it held that the disallowance was proper, and that petitioners should be held liable for ₱118,039,493.46.[15]

On July 28, 2014, petitioners Governor Lazaro, Dennis Lazaro, Jara, Relova, Mondez, Del Mundo, and Lagos (petitioners Governor Lazaro, et al.) filed a Petition for Certiorari[16] before this Court, docketed as G.R. No. 213323. Petitioner Villanueva filed another Petition for Certiorari, which was docketed as G.R. No. 213324.[17]

In its August 5, 2014 Resolution, this Court consolidated the two (2) Petitions.[18]

On November 19, 2014, respondents Commission on Audit, the Regional Director of the Regional Office No. IV-A, and the Audit Team Leader of the Commission on Audit, Province of Laguna filed their Consolidated Comment.[19] Petitioners filed their Reply on February 9, 2015.[20] Petitioners Villanueva and Governor Lazaro, et al. filed their Memoranda on June 11, 2015[21]

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[14] *Id*. at 80-81.

[15] *Id*. at 31.

[16] *Rollo* (G.R. No. 213323), pp. 3-27.

[17] *Rollo* (G.R. No. 213324), pp. 3-22.

[18] *Id*. at 109.

[19] *Id*. at 114-137.

[20] *Id*. at 140.

[21] *Id*. at 169.

and June 26, 2015,[22] respectively. The Office of the Solicitor General adopted its Consolidated Comment as its Memorandum.[23]

In its July 12, 2016 Resolution, this Court denied petitioners' Application for Temporary Restraining Order and Writ of Preliminary Injunction dated April 8, 2016.[24]

Petitioner Villanueva points out that she did not participate in the transactions prior to July 5, 2005, and should not be held liable for them.[25]

Petitioners Governor Lazaro, et al. argue that they had factual basis for resorting to direct contracting on the basis of brand names because: (1) there are exceptions to the prohibition against referring to brand names under Republic Act No. 9184;[26] (2) the Therapeutics Committees of the Province of Laguna's district hospitals issued Certifications/Justifications recommending the brand names selected;[27] and (3) the Certificates of Exclusive Distributorship and Certificates of Product Registration proved that the suppliers selected "were the exclusive distributors"[28] of the procured medical items.[29]

Petitioners Governor Lazaro, et al. further insist that even if the contract was defective, a claim under the defective contract can still be satisfied under the principle of *quantum meruit*. They point out that in *Royal Trust Construction v. Commission on Audit*[30] and *EPG Construction Co. v. Hon. Vigilar*,[31] this

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[22] *Id*. at 198.

[23] *Id*. at 194.

[24] *Id*. at 353.

[25] *Id*. at 176-179.

[26] *Rollo* (G.R. No. 213323), p. 13.

[27] *Id*. at 10-11.

[28] *Id*. at 10.

[29] *Id*.

[30] G.R. No. 84202, November 22, 1988. Unsigned Resolution.

[31] 407 Phil. 53 (2001) [Per *J*. Buena, Second Division].

Court allowed the payment to the contractor despite perceived infirmities in the contract. The infirmities did not render the contract illegal.[32]

Respondents state that Section 18 of Republic Act No. 9184 expressly prohibits reference to brand names, without any exception or condition.[33] The Certifications/Justifications issued by the Therapeutics Committees were merely recommendatory, whereas the language of Republic Act No. 9184 is mandatory.[34] Further, the Therapeutics Committees did not refer to any clinical study to support their claims in the Certifications/Justifications.[35] They did not prove that there were no substitutes for the procured items that could have been obtained at terms more advantageous to the government.[36]

Respondents argue that the principle of *quantum meruit* does not apply here because petitioners patently violated the legal provisions on competitive public bidding. They insist that petitioner Villanueva is liable, for it is her duty, as Provincial Accountant, to confirm the completeness and propriety of the procurement documents. They further claim that she certified the documents supporting the disbursement vouchers even when they were not proper.[37]

The issues for this Court's resolution are:

First, whether or not the necessary conditions for direct contracting were met in the disallowed transactions;

Second, whether or not the principle of *quantum meruit* applies here; and

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[32] *Rollo* (G.R. No. 213323), pp. 14-15.

[33] *Rollo* (G.R. No. 213324), pp. 126-127. Respondents cite the Government Procurement Policy Board's Non-Policy Opinion No. NPM 020-2004.

[34] *Id*. at 128-129.

[35] *Id*. at 129.

[36] *Id*.

[37] *Id*. at 132-133.

Finally, whether or not petitioner Villanueva can be held liable for disallowed transactions in which she has not been shown to have participated.

This Court denies the Petition in G.R. No. 213323 and partially grants the Petition in G.R. No. 213324.

I

Petitioners failed to show that the Commission on Audit committed grave abuse of discretion in disallowing the expenditures covered by the Notice of Disallowance.

The Commission on Audit based its disallowance on: (1) the purchases being accomplished without public bidding, in violation of Section 10 of Republic Act No. 9184; and (2) reference to brand names being made to invoke an exception to the competitive bidding requirement, in violation of Section 18 of Republic Act No. 9184.[38]

Petitioners Governor Lazaro, *et al*. cite *National Center for Mental Health Management v. Commission on Audit*[39] to support their claims. They point out that this Court accorded respect to administrative agencies' exercise of discretion whenever reference to brand names and the consequential resort to negotiated purchases were made.[40] In that case, this Court laid exceptions to the prohibition against references to brand names under Republic Act No. 9184. Further, the Certifications/ Justifications of the Therapeutics Committees, which are responsible for determining the drugs to be procured by government hospitals, explained the choice of the brand names.[41]

Petitioners Governor Lazaro, et al. point out that in *National Center for Mental Health Management*, this Court found that while there could have been substitute items, the procuring

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[38] *Id*. at 35-42.

[39] 333 Phil. 222 (1996) [Per *J*. Vitug, *En Banc*].

[40] *Rollo* (G.R. No. 213324), p. 207.

[41] *Id*.

entity's judgment on the suitability of the brand of the items procured should be accorded respect.[42]

What petitioners Governor Lazaro, et al. fail to mention is that *National Center for Mental Health Management* was decided in 1996, before Republic Act No. 9184 was enacted in 2003. Exceptions to the prohibition against reference to brand names in Republic Act No. 9184 could not have been laid out years before the statute's enactment.

The law is patently clear, with no exceptions: "[r]eference to brand names shall not be allowed."[43] Without basis to claim that it was proper to refer to brand names in their procurement, the claim that this case is an exception to the requirement of competitive bidding has no leg to stand on. Consequently, the transactions were properly disallowed.

II

When asserting their limited or absence of liability based on the principles of *quantum meruit* and good faith, petitioners, in good diligence, must clearly allege and support the factual basis for their claims. It is not this Court's burden to construe petitioners' incomplete submissions and vague narrations to determine if their assertions have merit.

On the basis of *quantum meruit*, petitioners claim that even if the transactions were properly disallowed, they should not be required to reimburse the disallowed amounts. This is because all the medical items procured were delivered in good condition and distributed to the provincial and health centers. They were used by the intended beneficiaries of the health program. Petitioners cite *Royal Trust Construction*,[44] *EPG Construction Co.*,[45]

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[42] *Id*. at 207-208.

[43] Rep. Act No. 9184 (2003), Sec. 18.

[44] G.R. No. 84202, November 22, 1988. Unsigned Resolution.

[45] 407 Phil. 53 (2001) [Per *J*. Buena, Second Division].

Dr. Eslao v. The Commission on Audit,[46] and *Melchor v. Commission on Audit*[47] to support their position.

Royal Trust Construction, EPG Construction Co., and *Eslao* are not squarely applicable here. All three (3) cases involved the question of whether payment should be made to the contractor who had already provided the services covered by a disallowed transaction. They did not tackle the liability of public officials responsible for irregular transactions.

Indeed, the principle of *quantum meruit*—that a party is allowed to recover as much as he or she reasonably deserves[48]—is usually invoked with regard to paying a contractor for works rendered. Here, however, the contractors have already been paid, and the question to be resolved is whether the public officers responsible for the irregularity must reimburse the government for it.

Melchor is more relevant than the rest here, as it pertained to the liability of a public officer for disallowed transactions. Nonetheless, it is still not entirely on all fours with this case. *Melchor* involved two (2) amounts that were disallowed: (1) ₱344,340.88, when the Commission on Audit found that the legal requirements for the contract had not been met; and (2) an additional ₱172,003.26, supposedly for extra work on the same project, when the Commission on Audit found that there had been no supplemental agreement executed for this additional amount.

In *Melchor*, this Court reversed the disallowance for the amount of ₱344,340.88, because the requirements for the contract on the project had substantially been complied with as far as that amount was concerned. However, this Court determined it proper to declare the contract for extra works as void since there was no approval by the proper authority on the additional

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[46] 273 Phil. 97 (1991) [Per *J.* Gancayco, *En Banc*].

[47] 277 Phil. 801 (1991) [Per *J.* Gutierrez, Jr., *En Banc*].

[48] *Daraga Press, Inc. v. Commission on Audit*, 760 Phil. 391, 407 (2015) [Per *J.* Del Castillo, *En Banc*].

amount. Thus, disallowing the amount of ₱172,003.26 had basis. Despite the disallowance, this Court held that the petitioner's liability for the entire amount of ₱172,003.26 should not be considered automatic. This Court recognized that while the principle of *quantum meruit* is generally contemplated for unpaid contractors, it also applied to the public officer in that case. It directed the Commission on Audit to compute the value of the extra works under *quantum meruit*, and hold the public officer liable for the excess or improper payment for the extra works, if any.

Although this Court in *Melchor* recognized the possibility of applying the principle of *quantum meruit* when considering a public officer's liability, it must be stressed that it was not used to completely absolve this liability. Rather, the principle was used to determine whether the contractor had been paid beyond the amount deserved based on *quantum meruit*, such that the public officer there was liable only for the amount that was paid beyond the reasonable amount deserved by the contractor. Even more significant, before it applied the principle of *quantum meruit*, this Court had determined that the requirements for the validity of the main contract of ₱344,340.88 had already been met. This is not the case here.

Here, no part of the disallowed transaction could be deemed valid. Petitioners plainly violated the law requiring procurement to undergo competitive bidding. In doing so, they also violated the law prohibiting reference to brand names.

Moreover, even if the principle of *quantum meruit* could be applied here, petitioners fail to establish the factual basis for its application. In *Melchor*, to determine a public officer's liability based on *quantum meruit*, the amount of reasonable value of the procured items or services must first be established, so that the public officer is liable for only the excess paid beyond the reasonable value.

Here, petitioners were held liable for the disallowed purchase of medical items amounting to ₱118,039,493.46. They do not, however, provide any basis to determine what were purchased. Thus, there is no basis to determine the reasonable value for the items purchased.

This Court cannot accept the position that the entire ₱118,039,493.46 was the reasonable value for the items purchased.

Petitioners enumerated neither the items purchased without public bidding nor the suppliers for these items. Just to form an idea of what were purchased and their values, this Court had to rely on the available documents submitted.

Petitioners attached some Purchase Requests to the Petition.[49] The items and costs covered by these are summarized as follows:

Quantity	Unit of Issue	Item Description	Estimated Unit Cost	Estimated Cost
7	bxs	CEA OGA X-Ray film green sensitive 11x14 (100's)	₱18,500.00	₱185,000.00
10	bxs	CEA OGA X-Ray film green sensitive 14x17 (100's)	24,000.00	240,000.00
10	bxs	Fixer (manual)	3,500.00	35,000.00
10	bxs	Developer (manual)	3,500.00	35,000.00
5	bxs	Basic Trash Bag XL (green, black, yellow)	13,000.00	65,000.00
5	bxs	Basic Trash Bag XXL (green, black, yellow)	21,000.00	105,000.00[50]
10	bxs	Isosorbide 5mg. oral/sub tab. x 100's (NITROSORBON)	1,350.00	13,500.00
20	bxs	Cinnarizine tab. 25mg. x 100's	1,958.00	19,160.00
144	btls.	Pheylpropanolamine syrup 60 ml.	98.00	14,112.00
10	bxs.	Omeprazole 20mg. cap. x 100's	7,000.00	70,000.00
300	bxs.	ATS 1,500 iu	128.00	38,400.00
300	bxs.	ATS 3,000 iu	268.00	80,400.00
300	bxs.	ATS 5,000 iu	398.00	119,400.00[51]

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[49] *Rollo* (G.R. No. 213323), p. 7. The Purchase Requests were attached as Annexes G, G-1 to G-15 of the Petition.

[50] *Id*. at 136, Annex G.

[51] *Id*. at 137, Annex G-1.

8	bxs	Euromed Dextran 70[%] in D5W 500ml x 15's (glass)	14,500.00	116,000.00
3	bxs	Euromed Aminosyn 3.5% 500ml x 15's (glass)	11,500.00	34,500.00
5	bxs	Euromed D5W 250ml x 20's (glass)	3,100.00	15,500.00
30	bxs	Euromed D5NMK 11 x 8's	2,000.00	60,000.00
150	bxs	Euromed Plain NSS for Irrigation 11 x 12's	850.00	127,500.00
100	bxs	Euromed Euro-ion 500ml x 24's	1,600.00	160,000.00
10	bxs.	Euromed 20% Mannitol Injection 24's	6,000.00	60,000.00[52]
100	bxs.	Euro-ION 500ml x24's Euro-Med	1,600.00	160,000.00
250	bxs.	D5LR 1L x 12's Euro-Med	830.00	207,500.00
150	bxs.	PNSS 1L x12's Euro-Med	830.00	124,500.00
100	bxs.	PLR 1L x 12's Euro-Med	830.00	83,000.00
5	bxs.	PLR 500ml x24's Euro-Med (DrW) 500cc	1,600.00	8,000.00
5	bxs.	CMI Infusion set, adult, 300's	25,000.00	125,000.00
5	bxs.	Soluset, adult, pedia, 50's	30,000.00	150,000.00[53]
15	bxs	Glibenclamide 5mg tab x 100's	675.00	10,125.00
12	bxs	Erythromycin tab 500mg x 100's	2,160.00	25,920.00
10	bxs	Piracetam tab 400mg x 100's	1,290.00	12,900.00[54]
20	bxs	Erythromycin tab 500mg x 100's (ETRIOGAPE)	2,800.00	56,000.00
144	btls.	Erythromycin susp. 200mg/5ml (Etriogape)	198.00	28,512.00
144	btls.	Vit B Complex, Iron, Lysine syrup (APPETASON) 120ml	250.00	36,000.00
144	btls.	Multivitamins syrup 120ml (MULTI-GROW)	156.00	22,464.00
144	btls.	Ascorbic Acid syrup 100mg/5ml (VITACOR-C) 120ml	103.00	14,832.00

[52] *Id*. at 138, Annex G-2.

[53] *Id*. at 139, Annex G-3.

[54] *Id*. at 140, Annex G-4.

20	bxs	Diclofenac tab 50mg x 100's (VOREN)	900.00	18,000.00
144	btls.	Aluminum MgOH susp 200mg/100ml (MELMAG)	78.00	11,232.00
144	btls.	Carbocisteine 50mg/ml drops (CEASCOL)	59.75	8,604.00
20	bxs.	Salbutamol tab 2mg x 100's (ASMAR)	480.00	9,600.00
20	bxs.	Salbutamol neb 30's (HIVENT)	1,080.00	21,600.00
20	bxs.	Dicycloverine tab 10mg x 100's (SPASMO-DORCASAL)	258.00	5,160.00
20	bxs.	Furosemide tab 40mg x 100's (MARSEMIDE)	485.00	9,700.00
20	bxs.	Captopril tab 5mg (TENSORIL)	2,228.00	44,560.00
200	vls.	Cefuroxime 250mg vl (CEPHIN)	268.00	53,600.00
30	bxs.	Glibenclamide 5mg tab 100's (DEBTAN)	758.00	22,740.00[55]
120	vls.	Citiceline 500 mg.vls.	520.00	62,400.00
120	vls.	Citiceline 1 gm vls.	816.00	97,920.00[56]
10	bxs.	Nitroglycerin patch x 30's	1,908.00	19,080.00
50	bxs.	Clenidine amps.x5's	630.00	31,500.00
50	bxs.	Ipratrepium + Salbutamol UDV x 20's	936.00	46,800.00
5	bxs.	Insulin penfill x 5's	2,250.00	11,250.00
5	bxs.	Insulin penfill x 5's	2,250.00	11,250.00[57]
50	bxs.	Piracetam 1 gm/amps. X 12's	767.00	38,360.00
50	bxs.	Piracetam 3 gm/amps.	754.00	37,700.00
10	bxs.	Mesna amps. x 5's	641.00	6,410.00[58]
(illegible)	vls.	Cefuroxime 750 mg vls.	360.00	180,000.00
(illegible)	vls.	Amikacin Sulfate 50 mg/ml	204.00	40,800.00

[55] *Id*. at 141, Annex G-5.

[56] *Id*. at 142, Annex G-6.

[57] *Id*. at 143, Annex G-7.

[58] *Id*. at 144, Annex G-8.

(illegible)	vls.	Gentamicyn 80 mg/ml	33.00	16,500.00
(illegible)	vls.	Ampicillin 250mg vials	50.00	25,000.00
(illegible)	vls.	Tranexamic Acid 500 mg.vls.	180.00	36,000.00[59]
200	bxs.	Paracetamol 150mg./ml., 10's, vials	600.00	120,000.00[60]
500	amps.	Hyoscine amp. 20mg/ml	63.00	31,500.00
1,500	amps.	Tranexamic acid 500mg.	180.00	270,000.00[61]
2	doz.	Polyglactin 1-0, round ndle	7,800.00	15,600.00
2	doz.	Polyglactin 0, round ndle	7,800.00	15,600.00
2	doz.	Polyglactin 3-0, round ndle	7,800.00	15,600.00
1	doz.	Polyglactin 2-0, round ndle	7,800.00	7,800.00
2	doz.	Polyglactin 4-0, round ndle	7,800.00	15,600.00
2	doz.	Polyglactin 4-0, cutting ndle	9,950.00	19,900.00
2	doz.	Polyglactin 5-0, round ndle	16,000.00	32,000.00
1	doz.	Polyglactin 5-0, cutting ndle	9,950.00	9,950.00[62]
20	gals.	Povidone 10% antiseptic sol.	1,650.00	33,000.00
8	gals.	Stersol disinfecting sol w/ anti rust	7,800.00	62,400.00
5	gals.	Benzol surface disinfecting sol & deodorizer	3,420.00	17,100.00[63]
1000	amps.	Ars 3,000	132.00	132,000.00[64]
1000	amps.	Ars 1,500	66.00	66,000.00[65]
Total estimated costs (of the attached Purchase Requests)				**₱4,388,041.00**

[59] *Id*. at 145, Annex G-9.

[60] *Id*. at 146, Annex G-10.

[61] *Id*. at 147, Annex G-11.

[62] *Id*. at 148, Annex G-12.

[63] *Id*. at 149, Annex G-13.

[64] *Id*. at 150, Annex G-14.

[65] *Id*. at 151, Annex G-15.

The relationship between the attached Purchase Requests and the disallowances is unclear. The sum of total estimated costs in the attached Purchase Requests is about ₱4,388,041.00, which constitutes only a small fraction of the total disallowed transactions, ₱118,039,493.46. The Purchase Requests also refer to generic items such as basic trash bags.[66] Notably, some of them do not seem to refer to branded items. This Court notes that the July 18, 2006 Audit Observation Memorandum of the Commission on Audit Legal and Adjudication Cluster Region IV observed that "no public bidding in the procurement of medicines, medical supplies[,] and equipment was ever conducted for the year 2005."[67] It would appear that even the trash bags may have been purchased without public bidding.

This Court also notes the observation in the Regional Cluster Director's Decision on the types of drugs purchased and their suitable, less expensive substitutes:

> There remain suitable substitutes in the market which can be obtained at more advantageous prices to the government, a condition which must also be considered before resorting to direct contracting with companies claiming to be exclusive distributors/dealers. A case in point is the purchase of "Biogesic" brand of Paracetamol 500 mg. acquired by the agency at the price of ₱2.34 per piece. The market is flooded with many brands of paracetamol. Based on the Philhealth's Drug Price Reference Index (DPRI), a listing of prices of selected number of essential drugs developed to promote drug price transparency, rational and fair drug pricing, and rational use according to the DOH and Philhealth, such could be available at prices from ₱1 to ₱4. Another case is the purchase of Amoxicillin, 500 mg brand "Himox" which the agency purchased at ₱13.305 per capsule. Amoxicillin 500 mg can be purchased at the cost of range of ₱5 to ₱10 per capsule. Another case, is the purchase of Mefenamic acid, 500 mg. purchased by the Provincial Government of Laguna from an exclusive distributor at ₱14.29 per tablet which again according to DPRI could be acquired at the range of ₱5 to ₱7 per tablet. The claim therefore that the use of branded products is advantageous to

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[66] *Id*. at 136, Annex G.

[67] *Id*. at 158.

the government or did not result to any pecuniary loss to the government is of doubtful validity.[68]

This Court further notes the Commission on Audit's observation that some of the goods purchased were not sold by an exclusive dealer or manufacturer:

Items	Supplier
Medicines and Vitamins	
Vitamin A Cap. 200,000 IU cap./100's	Inah Medica Enterprises
Vitamin B complex+ Camp Benutrex	South East Star Enterprises
Multivitamin syrup 60ml Jalvin	Jaltam Trade
Amoxicillin 500mg cap Himox 100's	United Laboratories Inc.
Amoxicillin 250mg susp Himox 60 ml	United Laboratories Inc.
Ampicillin 500mg vls Ampicin	United Laboratories Inc.
Ampicillin 250 mg vls Ampicin	United Laboratories Inc.
Ampicillin 500 mg vls Amplivacil	Elin Pharmaceuticals Inc.
Paracetamol 500mg. tab. 500's Biogesic	United Laboratories Inc.
Paracetamol 250mg. syrup Biogesic	United Laboratories Inc.
Paracetamol 120mg. syrup Biogesic	United Laboratories Inc.
Carbocisteine 500mg cap. 100's Ceascol	Medlines Enterprises
Carbocisteine 100mg/60ml Fluralex	Medlines Enterprises
Cefalexin 500mg cap 50's Lexum	United Laboratories Inc.
Cefalexin 250mg susp. Lexum	United Laboratories Inc.
Cotrimoxazole 400mg tabs Jaltrax	Jaltam Trade
Cotrimoxazole 200mg sus Jaltrax	Jaltam Trade
Medical Supplies	
X-ray film 14x17x100's Kodak	Marben Commercial
X-ray film 11x14x100's Kodak	Marben Commercial
X-ray film 14x17, 100's Agfa	Careline Enterprises
X-ray film 11x14, 100's Agfa	Careline Enterprises
Dextrose 5% 0.9 Sodium Chloride 1000m	Vitacare Philippines Co.
Dextrose 5% in water 1000ml 12's	Vitacare Philippines Co.
Silkam 3/0 w/cutting needle DS24	Careline Enterprise
Silkam 2/0 w/cutting needle DS24	Careline Enterprise
Surgical Gloves size 6.5 Unimax	Innovators Trading
Surgical Gloves size 7 Unimax	Innovators Trading
Pop bandage Hospikast	South East Star Enterprises

[68] *Id*. at 178.

Medical Equipment	
Dialyzer CA-130 Baxter	Careline Enterprises
Oxygen regulator	MegaWealth Dist. Corp.[69]

These circumstances and observations show that many of the items purchased without bidding could have been purchased at a lower cost. Petitioners fail to address these. This Court finds no basis to conclude that the amount of ₱118,039,493.46 constitutes the reasonable value for the purchased goods.

Petitioners have not clearly alleged or substantiated any basis for any amount to constitute reasonable value for the purchased goods.

Likewise, petitioners, in good diligence, should have alleged and supported their claims of good faith, which were based on their supposed reliance on expert advice.

Petitioners fail to allege and support with good diligence their claims of good faith. Petitioners claim that they relied on the expertise of the Therapeutics Committees, which they allege to have recommended the chosen brand names. They claim that they were right to rely on the Therapeutics Committees, which are responsible for "determining the drugs to be procured by government hospitals."[70] Under the Department of Health's Hospital Pharmacy Management Manual, the Pharmacy and Therapeutics Committee has the authority to recommend or assist in the formulation of policies on evaluation, selection, and therapeutic use of drugs in hospitals.[71] Executive Order No. 49 issued by then President Fidel V. Ramos provides that the Therapeutics Committee shall be responsible for determining which products are to be procured by the respective government entities.[72]

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

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

[71] *Id*. at 11.

[72] *Id*. at 12.

To convince this Court of their good faith, petitioners should have sufficiently alleged facts that would show that there was no collusion between petitioners and the Therapeutics Committees to use the committee's role as a tool to circumvent the rules on procurement.

Petitioners Governor Lazaro, et al. claim:

> Before the TC made its recommendation, it made exhaustive researches and always consulted with the provincial doctors and health practitioners in the nine (9) provincial hospitals and health centers. Further, before petitioners made the final decision as to which medicines to purchase, they required the TC to justify its recommendations in writing. ...
>
> . . . . . .
>
> With this process, the PGL was assured that its annual health program, its Annual Procurement Plan (APP) for drugs and medicines, including its dental and medical supplies and equipment, and their acquisitions, squarely addressed the real needs of its constituents.[73]

In their Memorandum, petitioners Governor Lazaro, et al. reformulated their narration of events:

> The TC, following the foregoing criteria, issued Justifications which guided petitioners. Further, Certificates of Exclusive Distributorship and Certificates of Product Registration were submitted.
>
> *Supported by the foregoing, Purchase Requests were prepared*.[74] (Emphasis supplied, citations omitted)

To support their claims, petitioners Governor Lazaro, et al. supposedly attached copies of the Certifications/Justifications of the Therapeutics Committees of different district hospitals of the Provincial Government of Laguna.[75] A scrutiny of these documents reveals that half of the Annexes were merely Certifications signed by various companies, pertaining to

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[73] *Id*. at 6.

[74] *Rollo* (G.R. No. 213324), p. 201.

[75] *Rollo* (G.R. No. 213323), pp. 112-121, Annexes E to E-9 of the Petition.

Innovators Trading as their exclusive dealers. Annex E is a Letter signed by the Promotions Manager of Coloplast:

> Strengthening our presence in the Laguna, Batangas area, we are please[d] to inform you that as of 01 Aug. 2004, we have appointed Innovators Trading as our exclusive dealer for the ff. products:
>
> Comfeel Plus Ulcer Dressing 10 x 10 cm
> Comfeel Plus Ulcer Dressing 20 x 20 cm
> Comfeel Paste
> Comfeel Powder
> Purilon Gel
> Mc2002 Ostomy bags, all sizes
> Alterna Ostomy bags, all sizes
>
> Validity of this appointment will be effective 01 August 2004 to 31 December 2004.[76]

Annex E-1 is an August 15, 2005 Certification signed by a sales consultant of Berovan Marketing, Inc. on exclusive distributorship:

> This is to certify that INNOVATORS TRADING with business address at #23P. Gomez Street, San Pablo City has been appointed as the Exclusive Distributor of Berovan Marketing, Inc[.] for the Government Hospitals in Laguna.
>
> No other distributor could give a lower price other than our exclusive distributor.[77]

It should be noted that under this Certification, Innovators Trading was not described as Berovan Marketing, Inc.'s exclusive distributor in general, but rather, "appointed as the Exclusive Distributor"[78] for Laguna's government hospitals.

Annex E-2 is a January 30, 2004 Certification whose contents are practically identical to Annex E-1.[79]

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[76] *Id*. at 112.

[77] *Id*. at 113.

[78] *Id*.

[79] *Id*. at 114.

Annex E-3 is a March 4, 2004 Certification that reads:

> This is to certify that INNOVATORS TRADING, located at San Pablo, Laguna is an exclusive distributor of MICROBIO SPECIALISTS, INC., for the province of Batangas, Laguna[,] and Quezon. And that there is no dealer/sub-dealer that can offer [a] lower price than them.[80]

Annex E-4 is a February 16, 2005 Certification signed by the vice president of administration of Quest Diagnostic Systems, which reads:

> This is to certify that INNOVATORS TRADING of San Pablo City[,] Laguna is an EXCLUSIVE DISTRIBUTOR for Quest Diagnostics Systems' complete range of products in the Provincial Government Hospitals in the area of Batangas, Mindoro[,] and Laguna[.][81]

These Certifications were not issued by the Therapeutics Committees. Moreover, they do not give reasons for referring to brand names, and could not have formed the basis of petitioners' good faith or reliance on the Therapeutics Committees.

The rest of the Annexes alleged to have been issued by the Therapeutics Committees of various district hospitals, denominated as Justifications, are hardly more persuasive. Annexes E-5 to E-8 substantially and identically read:

> Based on our clinical experience, the drugs requested are effective and have less adverse reaction and these drugs are listed in our National Drug Formulary.
>
> We refrain from using other drugs not included in these requisition because we found out that these adverse effects prolong the length of stay of patient.
>
> Our rationale for selecting these drugs are based on the following:
>
> a. Where several comparable drugs are available for the same therapeutic indication[,] it is necessary to select one which provides the most favorable benefit/risk ratio.

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[80] *Id*. at 115.

[81] *Id*. at 116.

b. These are drugs which are thoroughly investigated and therefore the best understood with respect to its beneficial properties and limitation.

c. These drugs with most favorable pharmacokinetic properties, e.g. to improve compliance, minimize risk in various pathophysiological state.[82]

Only Annex-E9 varied in its contents, naming several drugs:

Based on our clinical experience[,] the drugs requested are effective and have less adverse reaction, and these drugs are listed in our National Drug Formulary.

We refrain from using other drugs not included in this requisition because we found out that these have effects and prolonging (*sic*) the length of stay of patients. The drugs listed in our requisition are:

1. 5/7/2004 - 10 bxs. D5% in 8.9 Sodium Chloride, 1000ml., 12's
2. 5/7/2004 -10 bxs. D5% in Water, 1000ml., 12's
3. 9/6/2004 - 12 bxs. Carbocisteine 500mg. cap., 100's, Ceascol
4. 9/6/2004 - 96 btls. Carbocisteine 100mg./60 ml., Fluralex
5. 6/3/2005 - 100 vls. Ampicillin 500 mg., vl., Ampicin
6. 6/7/2005 - 100 vls. Ampicillin 250mg., vl., Ampicin

Our rationale for selecting these drugs are based on the following:

a) Where several comparable drugs are available for the same therapeutic indication[,] it is necessary to select one which provides the most favorable benefit/risk ratio.

b) These drugs that are thoroughly investigated and therefore the best understood with [respect] to its beneficial properties and limitations.

c) These drugs with most favorable pharmacokinetic properties, e.g. to improve compliance, minimize risk in various pathophysiological state.

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[82] *Id*. at 117.

d) That no suitable substitutes of substantially the same quality are available at lower prices.[83]

Petitioners Governor Lazaro, et al.'s submissions do not clearly allege and establish the sequence of events, such as when and how the Therapeutics Committees made the recommendations, and when and how petitioners responded to them. These circumstances are vital in establishing petitioners' frame of mind and good faith.

Petitioners Governor Lazaro, et al. suggest that the Purchase Requests were prepared based on the Justifications by the Therapeutics Committees.[84] However, the Justifications are *undated*, and aside from Annex E-9, do not mention any particular supplies or drugs, which suggest that they may have been prepared after the Purchase Requests. The Justifications mention "drugs requested" and "requisition," but aside from Annex E-9, petitioners have not attached anything to show what drugs they were referring to. It is unclear what drugs requested were being justified in the Justifications.

Without any other attachment, this Court is inclined to surmise that the "drugs requested" and "requisition" mentioned in the Justifications pertained to the Purchase Requests. If so, then the Purchase Requests were prepared *before* the Justifications, not *following* the advice of the Therapeutics Committees.

Further, this Court notes the Commission on Audit's observations that: (1) the Therapeutics Committees did not refer to any clinical study to support the claims in the Certifications/Justifications;[85] and (2) these Certifications/Justifications were merely recommendatory, whereas the language of Republic Act No. 9184 is mandatory.[86]

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[83] *Id*. at 121.

[84] *Id*. at 599.

[85] *Rollo* (G.R. No. 213324), p. 129.

[86] *Id*.

In asserting limited or complete lack of liability based on the principle of *quantum meruit* and good faith, petitioners, in good diligence, bear the burden to clearly allege and support the factual basis for their claims. It is not this Court's duty to construe their incomplete submissions and vague narrations to determine merit in their assertions.

Petitioners did not fulfill their burden; thus, their claims must be rejected.

IV

The Commission on Audit based petitioner Villanueva's liability on her duties as Provincial Accountant:

> In response, it must be stressed that it is the duty of petitioner Villanueva, as Provincial Accountant, to certify or confirm not only the completeness but also the propriety of the documents relative to the subject procurement. Here, considering that the subject purchase amounts to millions of provincial funds, petitioner Villanueva should have exercised utmost diligence before she certified the completeness and propriety of the supporting documents of the disbursement vouchers.
>
> In certifying that the documents were complete and in order, when they were in fact not so, petitioner Villanueva failed to act with due care and diligence, knowing fully well that the approval of the disbursement vouchers for the release of public funds largely depends on her certification. Contrary to her claims, petitioner Villanueva failed to meticulously inspect all the documents submitted to her to ensure that the circumstances she was certifying were indeed true and correct.
>
> Indeed, petitioner Villanueva is liable for her failure to exercise due diligence in the performance of her duties as Provincial Accountant.[87]

However, petitioner Villanueva has repeatedly pointed out that she was designated as Officer-in-Charge of the Office of the Provincial Accountant only on July 5, 2005.[88] Prior to this,

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[87] *Id*. at 132-133.

[88] *Id*. at 176.

she was not a signatory to any document related to disbursements and purchases made by the Provincial Government of Laguna. She was an Accountant IV, responsible only for preparing financial reports and bank reconciliations.[89] It was her predecessor as Provincial Accountant, Azucena C. Gacias, who signed and certified the documents pertaining to the purchases in 2004.[90]

Despite petitioner Villanueva's repeated assertions, respondents ignored the material issue.

Public officers should not be held liable for disallowed transactions in which they did not participate. Holding them liable without any proof of their participation in the transaction is grave abuse of discretion.[91] Commission on Audit Circular No. 006-09[92] provides how the Commission on Audit should determine the liability of a public officer in relation to audit disallowances:

> SECTION 16. *Determination of Persons Responsible/Liable.*—
>
> 16.1 The liability of public officers and other persons for audit disallowances/charges shall be determined on the basis of (a) the nature of the disallowance/charge; (b) the duties and responsibilities or obligations of officers/employees concerned; (c) the extent of their participation in the disallowed/charged transaction; and (d) the amount of damage or loss to the government, thus:
>
> 16.1.1 Public officers who are custodians of government funds shall be liable for their failure to ensure that such funds are safely guarded against loss or damage; that they are expended, utilized, disposed of or transferred in accordance with law and regulations, and on the basis of prescribed documents and necessary records.

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[89] *Id*. at 177.

[90] *Id*.

[91] *Suarez v. Commission on Audit*, 355 Phil. 527 (1998) [Per *J*. Panganiban, *En Banc*).

[92] Prescribing the Use of the Rules and Regulations on Settlement of Accounts.

16.1.2 Public officers who certify as to the necessity, legality and availability of funds or adequacy of documents shall be liable according to their respective certifications.

16.1.3 Public officers who approve or authorize expenditures shall be liable for losses arising out of their negligence or failure to exercise the diligence of a good father of a family.

16.1.4 Public officers and other persons who confederated or conspired in a transaction which is disadvantageous or prejudicial to the government shall be held liable jointly and severally with those who benefited therefrom.

16.1.5 The payee of an expenditure shall be personally liable for a disallowance where the ground thereof is his failure to submit the required documents, and the Auditor is convinced that the disallowed transaction did not occur or has no basis in fact.

16.2 The liability for audit charges shall be measured by the individual participation and involvement of public officers whose duties require appraisal/assessment/collection of government revenues and receipts in the charged transaction.

16.3 The liability of persons determined to be liable under an ND/NC shall be solidary and the Commission may go against any person liable without prejudice to the latter's claim against the rest of the persons liable.[93]

Since petitioner Villanueva's liability for the disallowed transactions is anchored on her position as Provincial Accountant, she should only be liable for the transactions that occurred after she was designated Officer-in-Charge of the Office of the Provincial Accountant. Finding her liable for reimbursements of transactions prior to this constitutes grave abuse of discretion. However, which of the disallowed transactions occurred before her designation is a question of fact that this Court has no

[93] Commission on Audit Circular No. 006-09 (2009), Sec. 16.

evidentiary basis to determine. This Court is constrained to remand the case to the Commission on Audit to properly determine this matter.

WHEREFORE, the Petition in G.R. No. 213323 is **DENIED** and the Petition in G.R. No. 213324 is **PARTIALLY GRANTED**. The August 17, 2011 Decision and May 6, 2014 Resolution of the Commission on Audit are **AFFIRMED with MODIFICATION**. Petitioner Evelyn T. Villanueva is **NOT LIABLE** for the disallowed transactions that were completed prior to her designation as Officer-in-Charge of the Office of the Provincial Accountant. The cases are **REMANDED** to the Commission on Audit, which is directed to determine which of the disallowed transactions occurred prior to July 5, 2005, for which petitioner Villanueva is not liable.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Reyes, J. Jr., Hernando, and *Carandang, JJ.*, concur.

EN BANC

[G.R. No. 229780. January 22, 2019]

BALAYAN WATER DISTRICT (BWD), CONRADO S. LOPEZ and ROMEO D. PANTOJA, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; REPUBLIC ACT NO. 6758; CONSOLIDATION OF ALLOWANCES

AND COMPENSATION; ALL ALLOWANCES ARE DEEMED INCLUDED IN THE STANDARDIZED SALARY SAVE FOR THOSE SPECIFICALLY EXCLUDED.— Relevant to the resolution of the present disallowance is Section 12 of R.A. No. 6758. It provided that as a general rule, all allowances are deemed included in the standardized salary prescribed therein. However, Section 12 of R.A. No. 6758 enumerated specific non-integrated benefits, namely: "(a) Representation and Transportation Allowance (RATA); (b) Clothing and laundry allowances; (c) Subsistence allowance of marine officers and crew on board government vessels and hospital personnel; (d) Hazard pay; (e) Allowances of foreign service personnel stationed abroad; and (f) Such other additional compensation not otherwise specified herein as may be determined by the [Department of Budget and Management (DBM)]." In *Maritime Industry Authority v. Commission on Audit,* the Court explained that the legislative policy under Section 12 of R.A. No. 6758 is that all allowances not specifically excluded therein or subsequently identified by the DBM are deemed integrated in the standardized salary x x x. In *Philippine Health Insurance Corporation v. Commission on Audit,* the Court reiterated that it had been long settled that Section 12 of R.A. No. 6758 is self-executing in integrating allowances notwithstanding the absence of any DBM issuances x x x. Thus, the COA did not act with grave abuse of discretion in finding that the COLA back payments were without basis as the said allowance was already integrated in the salary received by BWD employees. There was no accrued COLA to speak of, which requires back payments because upon the effectivity of R.A. No. 6758, all allowances, save for those specifically excluded in Section 12, received by government employees were deemed included in the salaries they received. Considering that the COLA had been considered integrated into the basic salary of government employees, there is no basis for the redundant back payment of the said allowances. x x x COLA, not being one of the allowances specifically stated in Section 12 of R.A. No. 6758 as a non-integrated benefit, is integrated in the salaries of BWD employees by operation of law.

2. ID.; ID.; PUBLIC OFFICERS AND EMPLOYEES; DISALLOWANCE OF BENEFITS; GOOD FAITH CANNOT BE APPRECIATED IN FAVOR OF THE

RESPONSIBLE OFFICERS WHO HAVE KNOWLEDGE OF THE STRAIGHTFORWARD PROSCRIPTION ON THE DISBURSEMENT.— BWD's BOD authorized the release of the COLA back payments in its Resolution dated February 10, 2006. It is noteworthy that on October 26, 2005, the DBM had issued NB Circular No. 2005-502 x x x. [A]t the time the BWD passed a resolution for the release of COLA back payments, DBM NB Circular No. 2005-502 was valid and existing. Petitioners should not simply brush aside the said issuance as an obscure circular as it unequivocally and categorically prohibited the payment of COLA unless there is a law, or a ruling by this Court, allowing or authorizing the release of COLA. Good faith cannot be appreciated in favor of the responsible officers of BWD because at the time of the approval of the disallowed disbursement, there was a clear and straightforward proscription on the payment of COLA. DBM NB Circular No. 2005-502 should have put them on guard and be more circumspect in allowing the disbursement.

3. ID.; ID.; ID.; ID.; PASSIVE RECIPIENTS OF DISALLOWED DISBURSEMENT WHO ACTED IN GOOD FAITH ARE EXEMPT FROM REFUNDING THE DISALLOWED AMOUNT.— [G]ood faith should be appreciated in favor of BWD employees who merely received their COLA back payments. Passive recipients of disallowed disbursements who acted in good faith are exempt from refunding the disallowed amount. In *Silang v. Commission on Audit,* the Court explained that passive recipients are absolved from refunding as they had no participation in the disallowed disbursement x x x. In the same vein, BWD employees who had no hand in the approval or release of the COLA back payments are exempt from refunding the disallowed amount. They had acted in good faith as they were unaware of any irregularity in its disbursement, especially since it was made pursuant to the resolution passed by BWD's BOD. Passive recipients should not be faulted in unwittingly receiving allowances or benefits they assumed they were entitled to.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioners.
The Solicitor General for respondent.

D E C I S I O N

REYES, J. JR., *J.*:

Before this Court is a petition for *certiorari* under Rule 64 of the Revised Rules of Court seeking to reverse and set aside the December 27, 2016 Decision[1] of the Commission on Audit (COA) in Decision No. 2016-425, which affirmed the Notice of Disallowance (ND) Nos. 12-101-001(11) to 12-101-007(11), and Nos. 12-101-001(10) to 12-101-012(10).

Petitioner Balayan Water District (BWD) is a government entity organized and existing under Presidential Decree No. 198, as amended. On the other hand, petitioners Conrado S. Lopez and Romeo D. Pantoja are the General Manager (GM) of BWD and representative of BWD employee-recipients of the disallowed Cost of Living Allowance (COLA), respectively.[2]

Factual background

On February 10, 2006, BWD's Board of Directors (BOD) passed Resolution No. 16-06[3] granting the payment of COLA to BWD employees in an installment basis starting 2006. The amount to be paid was the accrued COLA from 1992 to 1999. On November 14, 2012, several NDs[4] were issued disallowing the payment of accrued COLA during calendar years 2010 and 2011. Aggrieved, petitioners appealed before the COA Regional Director, Regional Office No. IV-A (COA-RO).[5]

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[1] Concurred in by Chairperson Michael G. Aguinaldo, Commissioner Jose A. Fabia and Commissioner Isabel D. Agito; *rollo*, pp. 21-26.

[2] *Id*. at 4.

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

[4] Subject Notices of Disallowance not attached in the *rollo*.

[5] *Rollo,* p. 5.

COA-RO Decision

In its November 12, 2013 Decision,[6] the COA-RO denied petitioners' appeal and affirmed the NDs. It explained that water districts were never covered by Letter of Instruction (LOI) No. 97[7] which authorizes the payment of COLA to government-owned and controlled corporations (GOCC). In addition, the COA-RO expounded that in order for BWD employees to be entitled to COLA it must be shown that they were employed in the water district on or before July 1, 1989 and that they were already receiving the said allowance on such date, or prior thereto. The COA-RO ruled:

> WHEREFORE, the instant Appeal is hereby DENIED. Consequently, ND Nos. 12-101-001(11) to 007(11) (inclusive) as well as Nos. 12-101-001(10) to 012(10) (also inclusive) are hereby AFFIRMED.[8]

Unsatisfied, petitioners filed a petition for review[9] before the COA.

Assailed COA Decision

In its December 27, 2016 Decision, the COA affirmed the COA-RO Decision. It agreed that local water districts were excluded in LOI No. 97. The COA added that in order to be entitled to COLA during the period of ineffectivity of Department of Budget and Management (DBM) Corporate Compensation Circular (CCC) No. 10, it must be shown that the employees must have been receiving the said allowance prior to the effectivity of Republic Act (R.A.) No. 6758 on July 1, 1989. It elucidated that the ineffectivity of DBM CCC No. 10 did not affect the integration of the COLA to the standardized salary

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[6] Penned by Regional Director Nilda M. Blanco; *id*. at 49-53.

[7] Authorizing the Implementation of Standard Compensation and Position Classification Plans for the Infrastructure/Utilities Group of Government-Owned or Controlled Corporations.

[8] *Rollo,* p. 53.

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

rates because it fell under the general rule of integration under Section 12 of R.A. No. 6758 as clarified by the Court in *Gutierrez v. Department of Budget and Management.*[10] The COA decision read:

> WHEREFORE, premises considered, the Petition for Review of General Manager Conrado S. Lopez, et. al., Balayan Water District, Balayan, Batangas, of Commission on Audit Regional Office No. IV-A Decision No. 2013-36 dated November 12, 2013 is hereby DENIED for lack of merit. Accordingly, Notice of Disallowance Nos. 12-101-001 (11) to 12-101-001-007 (11), and Nos. 12-101-001 (10) to 12-101-012 (10), all dated November 14, 2012, on the payment to its employees of Cost of Living Allowance/Amelioration Allowance from 1993 to 1999 in the total amount of ₱427,621.88 is AFFIRMED.[11]

Hence, this present petition raising the following:

Issues

I

WHETHER COA GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION IN DENYING BWD EMPLOYEES' ENTITLEMENT TO ACCRUED COLA FOR THE PERIOD 1992-1999 BASED ON LETTER OF INSTRUCTION (LOI) 97; [and]

II

WHETHER COA GRAVELY ABUSED ITS DISCRETION TANTAMOUNT TO LACK OR EXCESS OF JURISDICTION WHEN IT FAILED TO APPRECIATE "GOOD FAITH" IN FAVOR OF PETITIONERS AS RECIPIENTS OF COLA/AA.[12]

Petitioners argued that BWD's BOD applied pertinent jurisprudence in issuing Board Resolution No. 16-06 allowing the grant of COLA accrued for the period of 1992-1999 to BWD employees. Further, they heavily relied on the pronouncements of the Court in *Metropolitan Naga Water District v. Commission*

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[10] 630 Phil. 1 (2010).

[11] *Rollo,* p. 26.

[12] *Id.* at 6.

on Audit (MNWD).[13] Petitioners highlighted that in *MNWD* the Court ruled: that local water districts are included in the provisions of LOI No. 97; and that there was no need to establish that the employees were already receiving COLA prior to the effectivity of R.A. No. 6758. Further, they posited that they should not be held liable to refund the disallowed amounts because of good faith.

In its Comment[14] dated July 3, 2017, the COA countered that the petitioners failed to prove that it acted with grave abuse of discretion in upholding the NDs issued against them. It pointed out that in *MNWD,* the Court ultimately upheld the disallowance of COLA to the employees therein. Further, the COA disagreed that petitioners acted with good faith because prior to the release of the COLA to the concerned BWD employees, the DBM had issued DBM National Budget (NB) Circular No. 2005-502. It stated that the said issuance holds heads of agencies and other responsible officials who had authorized the grant of COLA personally liable.

In their Reply[15] dated September 19, 2017, petitioners mainly reiterated the arguments they had raised in its petition for *certiorari.* They, however, also argued that good faith should be appreciated in their favor notwithstanding DBM NB Circular No. 2005-502 because the ruling in *MNWD* should apply in this case based on the principle of *stare decisis.*

The Court's Ruling

The petition is partly meritorious.

In their present petition, petitioners constantly cite the pronouncements of the Court in *MNWD.* They highlight that the said decision ruled that: local water districts are included in the coverage of LOI No. 97; the elements of incumbency and prior receipts are inapplicable in determining the propriety

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[13] G.R. No. 218072, March 8, 2016, 785 SCRA 624.

[14] *Rollo,* pp. 89-100.

[15] *Id*. at 119-127.

of COLA back payments; and that they should be absolved from refunding the disallowed amount on the basis of good faith.

Petitioners' myopic reading of the decision fails to impress. It is true that in *MNWD,* the Court clarified that LOI No. 97 covered local water districts and that the twin requirements of incumbency and prior receipts are relevant only in cases of non-integrated benefits. Nevertheless, the Court ultimately upheld the disallowance of COLA back payments in the above-mentioned case because the said allowance was already deemed integrated in the compensation of government employees.

Relevant to the resolution of the present disallowance is Section 12[16] of R.A. No. 6758. It provided that as a general rule, all allowances are deemed included in the standardized salary prescribed therein. However, Section 12 of R.A. No. 6758 enumerated specific non-integrated benefits, namely:

(a) Representation and Transportation Allowance (RATA)
(b) Clothing and laundry allowances;
(c) Subsistence allowance of marine officers and crew on board government vessels and hospital personnel;
(d) Hazard pay;
(e) Allowances of foreign service personnel stationed abroad; and
(f) Such other additional compensation not otherwise specified herein as may be determined by the [Department of Budget and Management (DBM)].

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[16] SEC. 12. *Consolidation of Allowances and Compensation.* – All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be deemed included in the standardized salary rates herein prescribed. Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989 not integrated into the standardized salary rates shall continue to be authorized. x x x

In *Maritime Industry Authority v. Commission on Audit,*[17] the Court explained that the legislative policy under Section 12 of R.A. No. 6758 is that all allowances not specifically excluded therein or subsequently identified by the DBM are deemed integrated in the standardized salary, to wit:

> The clear policy of Section 12 is "to standardize salary rates among government personnel and do away with multiple allowances and other incentive packages and the resulting differences in compensation among them." **Thus, the general rule is that all allowances are deemed included in the standardized salary.** However, there are allowances that may be given in addition to the standardized salary. These non-integrated allowances are specifically identified in Section 12, to wit:
>
> 1. representation and transportation allowances;
> 2. clothing and laundry allowances;
> 3. subsistence allowance of marine officers and crew on board government vessels;
> 4. subsistence allowance of hospital personnel;
> 5. hazard pay; and
> 6. allowances of foreign service personnel stationed abroad.
>
> In addition to the non-integrated allowances specified in Section 12, the Department of Budget and Management is delegated the authority to identify other allowances that may be given to government employees in addition to the standardized salary.
>
> **Action by the Department of Budget and Management is not required to implement Section 12 integrating allowances into the standardized salary. Rather, an issuance by the Department of Budget and Management is required only if additional non-integrated allowances will be identified.** Without this issuance from the Department of Budget and Management, the enumerated non-integrated allowances in Section 12 remain exclusive. (Emphasis and underscoring supplied)

In *Philippine Health Insurance Corporation v. Commission on Audit,*[18] the Court reiterated that it had been long settled

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[17] 750 Phil. 288, 314-315 (2015).

[18] 801 Phil. 427, 454-455 (2016).

that Section 12 of R.A. No. 6758 is self-executing in integrating allowances notwithstanding the absence of any DBM issuances, *viz:*

> **Time and again, the Court has ruled that Section 12 of the SSL is self-executing. This means that even without DBM action, the standardized salaries of government employees are already inclusive of all allowances, save for those expressly identified in said section.** It is only when additional non-integrated allowances will be identified that an issuance of the DBM is required. Thus, until and unless the DBM issues rules and regulations identifying those excluded benefits, the enumerated non-integrated allowances in Section 12 remain exclusive. When a grant of an allowance, therefore, is not among those excluded in the Section 12 enumeration or expressly excluded by law or DBM issuance, such allowance is deemed already given to its recipient in their basic salary. As a result, the unauthorized issuance and receipt of said allowance is tantamount to double compensation justifying COA disallowance.
>
> **Prescinding from the foregoing, the Court had consistently ruled that not being an enumerated exclusion, the COLA is deemed already incorporated in the standardized salary rates of government employees under the general rule of integration of the SSL. x x x** (Emphases supplied)

Thus, the COA did not act with grave abuse of discretion in finding that the COLA back payments were without basis as the said allowance was already integrated in the salary received by BWD employees. There was no accrued COLA to speak of, which requires back payments because upon the effectivity of R.A. No. 6758, all allowances, save for those specifically excluded in Section 12, received by government employees were deemed included in the salaries they received. Considering that the COLA had been considered integrated into the basic salary of government employees, there is no basis for the redundant back payment of the said allowances.[19]

The ineffectivity of DBM CCC No. 10, which included COLA as among the allowances integrated in the salary, had no effect

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[19] *Land Bank of the Philippines v. Naval, Jr.,* 731 Phil. 532, 557 (2014).

or consequence to the integration of the COLA into the salary because DBM issuances are necessary only to identify additional non-integrated benefits to those specifically mentioned in Section 12 of R.A. No. 6758. Integration of allowances took effect upon the passage ofR.A. No. 6758 and does not need further action from the DBM. In short, COLA, not being one of the allowances specifically stated in Section 12 of R.A. No. 6758 as a non- integrated benefit, is integrated in the salaries of BWD employees by operation of law.

Refund of disallowed amount excused on account of good faith.

Even assuming that the disallowance of the COLA back payments was appropriate, petitioners still believe that they should be absolved from refunding the amount on the basis of good faith. They argue that the concerned BWD officials acted in the honest belief that they were performing their duties in accordance with relevant rules and regulations, and jurisprudence — while BWD employees received the COLA back payments in the assumption that they were fully entitled thereto pursuant to the BWD Board Resolution. On the other hand, the COA countered that petitioners did not act in good faith as DBM NB Circular No. 2005-502 was existing at the time the COLA back payments were authorized. It noted that the said issuance expressly stated that agency heads and responsible officials who authorize the grant of COLA shall be personally held liable for such disbursement.

In *Zamboanga City Water District v. Commission on Audit,*[20] the Court defined good faith in relation to the disallowance of benefits as the 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,

[20] 779 Phil. 225, 247 (2016).

notice, or benefit or belief of facts which render transactions unconscientious."

Meanwhile, in *Development Bank of the Philippines v. Commission on Audit*,[21] the Court synthesized recent jurisprudence on COA disallowances to provide the requisites in appreciating good faith on the part of officers responsible for the disallowed disbursement, to wit: (1) they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursement illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement **or when there is no clear and unequivocal law or administrative order barring the same.**

Petitioners aver that similar to the responsible officers in *MNWD,* good faith should also be appreciated in favor of the officials who approved the COLA back payments to BWD employees applying the principle of *stare decisis*. Essentially, *stare decisis* means that principles of law set forth by the Court shall apply to future cases where the facts are substantially similar, regardless whether the parties and property are the same.[22] However, contrary to petitioners' belief, the present circumstances are not in all fours with those in *MNWD* to warrant its full application.

In the above-mentioned case, the COLA back payments were made pursuant to a Board Resolution passed by the BOD on August 20, 2002. On the other hand, BWD's BOD authorized the release of the COLA back payments in its Resolution dated February 10, 2006. It is noteworthy that on October 26, 2005, the DBM had issued NB Circular No. 2005-502, the pertinent provisions of which read:

> 1.0 This Circular is being issued as a clarification on the impact of the latest Supreme Court rulings on the integration of

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[21] G.R. No. 221706, March 13, 2018.

[22] *City of Baguio v. Masweng,* G.R. No. 195905, July 4, 2018.

allowances, including Cost of Living Allowance (COLA), of government employees under Republic Act (RA) No. 6758.

x x x x x x x x x

5.0 In view of the foregoing, payment of allowances and other benefits, such as COLA, which are already integrated in the basic salary, remains prohibited unless otherwise provided by law or ruled by the Supreme Court.

6.0 All agency heads and other responsible officials and employees found to have authorized the grant of COLA and other allowances and benefits already integrated in the basic salary shall be personally held liable for such payment, and shall be severely dealt with in accordance with applicable administrative and penal laws.

x x x x x x x x x

Thus, unlike in *MNWD,* at the time the BWD passed a resolution for the release of COLA back payments, DBM NB Circular No. 2005-502 was valid and existing. Petitioners should not simply brush aside the said issuance as an obscure circular as it unequivocally and categorically prohibited the payment of COLA unless there is a law, or a ruling by this Court, allowing or authorizing the release of COLA. Good faith cannot be appreciated in favor of the responsible officers of BWD because at the time of the approval of the disallowed disbursement, there was a clear and straightforward proscription on the payment of COLA. DBM NB Circular No. 2005-502 should have put them on guard and be more circumspect in allowing the disbursement.

Nevertheless, good faith should be appreciated in favor of BWD employees who merely received their COLA back payments. Passive recipients of disallowed disbursements who acted in good faith are exempt from refunding the disallowed amount.[23] In *Silang v. Commission on Audit,*[24] the Court explained

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[23] *National Transmission Corporation v. Commission on Audit,* 800 Phil. 618, 630 (2016).

[24] 769 Phil. 327, 346-348 (2015).

that passive recipients are absolved from refunding as they had no participation in the disallowed disbursement, to wit:

> Clearly, therefore, public officials who are directly responsible for, or participated in making the illegal expenditures, as well as those who actually received the amounts therefrom — in this case, the disallowed CNA Incentives — shall be solidarily liable for their reimbursement.
>
> By way of exception, however, passive recipients or payees of disallowed salaries, emoluments, benefits, and other allowances need not refund such disallowed amounts if they received the same in good faith. Stated otherwise, **government officials and employees who unwittingly received disallowed benefits or allowances are not liable for their reimbursement if there is no finding of bad faith.** x x x
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> x x x x x x x x x
>
> In this case, the majority of the petitioners are the LGU of Tayabas, Quezon's rank-and-file employees and *bona fide* members of UNGKAT (named-below) who received the 2008 and 2009 CNA Incentives on the honest belief that UNGKAT was fully clothed with the authority to represent them in the CNA negotiations. **As the records bear out, there was no indication that these rank-and-file employees, except the UNGKAT officers or members of its Board of Directors named below, had participated in any of the negotiations or were, in any manner, privy to the internal workings related to the approval of said incentives; hence, under such limitation, the reasonable conclusion is that they were mere passive recipients who cannot be charged with knowledge of any irregularity attending the disallowed disbursement.** Verily, good faith is anchored on an honest belief that one is legally entitled to the benefit, as said employees did so believe in this case. Therefore, said petitioners should not be held liable to refund what they had unwittingly received. (Emphasis supplied)

In the same vein, BWD employees who had no hand in the approval or release of the COLA back payments are exempt from refunding the disallowed amount. They had acted in good faith as they were unaware of any irregularity in its disbursement, especially since it was made pursuant to the resolution passed by BWD's BOD. Passive recipients should not be faulted in

unwittingly receiving allowances or benefits they assumed they were entitled to.

WHEREFORE, the December 27, 2016 Decision of the Commission on Audit in Decision No. 2016-425 is **AFFIRMED** with **MODIFICATION** in that the employees of the Balayan Water District who were mere passive recipients of the disallowed disbursement are absolved from refunding the amount they have received.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Gesmundo, Hernando, and *Carandang, JJ.,* concur.

EN BANC

[G.R. No. 230566. January 22, 2019]

SUBIC BAY METROPOLITAN AUTHORITY, *ET AL.*, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; GOVERNMENT AUDITING CODE OF THE PHILIPPINES (PD 1445) *VIS-À-VIS* RULE 22 OF THE RULES OF COURT; PERIOD TO APPEAL THE DECISION OF AN AUDITOR OF ANY GOVERNMENT AGENCY; WHERE THE LAST DAY OF THE 180-DAY PERIOD TO APPEAL UNDER PD 1445 FELL ON A SATURDAY, PETITIONERS MAY FILE THEIR PETITION ON THE NEXT WORKING DAY PURSUANT TO RULE 22 OF THE RULES OF COURT.— In this case, petitioners explained that they received the ND on April 9, 2012 and they had 180 days to appeal. Then, on August 31,

2012, they filed an appeal before the COA-Region III. On April 23, 2014, petitioner received the decision of the COA-Region III denying their appeal, thus, they still had 38 days, or until May 31, 2014, to file a petition for review before the COA. As May 31, 2014 fell on a Saturday, petitioners filed their petition on the next working day, or on June 2, 2014. Thus, petitioners claim that their petition before the COA was filed on time. On the other hand, the COA simply denied the petition because it was allegedly filed beyond the 180-day period. It did not give any explanation on its failure to consider the weekends in the counting of the period. Section 1, Rule 22 of the Rules of Court states that "[i]f the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day." Accordingly, the computation of time under the Rules of Court may be applicable under P.D. No. 1445 because its pertinent provisions may be applied by analogy or in a suppletory manner, in the interest of expeditious justice and whenever practical and convenient.

2. ID.; ID.; RELAXATION OF THE PROCEDURAL RULES TO SERVE THE ENDS OF JUSTICE.— [T]his Court has emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, the Court has recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice. In this case, petitioners resorted to the alternative method of procurement to acquire the most advantageous price and quality for the uniform of their employees. SBMA had a terrible experience in procuring their employees' uniform in the past, thus, they subsequently considered other viable options in good faith. Hence, the Court is of the view that the case of petitioners should be adjudicated on the merits in order to determine whether they may be held liable for the chosen procurement method.

3. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT PROCUREMENT ACT OF 2003 (RA 9184); PUBLIC BIDDING AS A METHOD OF GOVERNMENT PROCUREMENT, EXPLAINED.— Public bidding as a method of government procurement is governed

by the principles of transparency, competitiveness, simplicity and accountability. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.

4. ID.; ID.; ID.; RA 9184 *VIS-À-VIS* ITS AMENDED IMPLEMENTING RULES AND REGULATIONS (IRR); REQUISITES BEFORE A NEGOTIATED PROCUREMENT MAY BE AVAILED OF, NOT COMPLIED WITH IN CASE AT BAR.— The Court finds that petitioners failed to comply with the requisites of a negotiated procurement under the above-cited rules. As properly discussed by the COA, petitioners failed to prove that the existence of the circumstances under Section 53(b), IRR of R.A. No. 9184 are present to justify the negotiated procurement of specialized and field uniforms of SBMA employees. Indeed, petitioners did not establish that (1) there is imminent danger to life or property during a state of calamity; or (2) or that time is of the essence arising from natural or man-made calamities; or (3) other causes, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. Verily, there is no existing calamity or other cause where immediate action is necessary. Petitioners simply undertook the procurement of the uniforms because they were unsatisfied with the products of the previous supplier. Likewise, under Section 53(c), IRR of R.A. No. 9184, there is no take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws. Neither was there a need for immediate action necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. In other words, no take-over of contract materialized and the contract with its previous supplier, Topnotch Apparel, was neither rescinded nor terminated. The SBMA merely initiated a new procurement process for the acquisition of the uniforms of its employees because it was unsatisfied with the previous supplier and there was an appropriation for the said uniforms. Further, the additional requirements under Section 54 of the IRR were also not complied with because petitioners failed to post the procurement and the results of bidding and other related information in the PhilGEPs bulletin board.

5. ID.; ID.; ID.; ID.; FAILURE TO COMPLY WITH THE REQUISITES OF A VALID NEGOTIATED PROCUREMENT RESULTS IN AN IRREGULAR EXPENDITURE; GOOD FAITH AND TRANSPARENCY IS NOT SUFFICIENT TO SET ASIDE THE NECESSITY OF PUBLIC BIDDING; RECOURSE TO ALTERNATIVE MODES OF PROCUREMENT MUST BE BASED ON THE SPECIFIC PROVISIONS OF RA 9184 AND ITS IRR.— [T]he COA correctly argued that there was an irregular expenditure for the negotiated procurement because it was incurred without adhering to Sections 53 and 54 of the IRR of R.A. No. 9184. Under COA Circular No. 88-55-A, an irregular expenditure is an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law. It differs from an *illegal expenditure* since the latter pertains to expenses incurred in violation of the law, whereas an *irregular expenditure* is incurred in violation of applicable rules and regulations other than the law. Petitioners' bare assertion that they followed the requirements of the alternative modes of procurement based on good faith and transparency is not sufficient to set aside the necessity of a public bidding. Their previous experience regarding the poor quality of the uniforms provided by the winning bidder in the previous public bidding, no matter how terrible and unfortunate, is not a valid and legal ground to disregard and set aside the provisions of the law and its rules in the subsequent procurement of uniforms. Indeed, the exceptional recourse to any of the alternative methods of procurement must be justified based on the specific provisions of R.A. No. 9184 and its IRR.

6. ID.; ID.; ID.; AS LONG AS THE APPROPRIATION FOR THE UNIFORM ALLOWANCE STAYS IN THE COFFERS OF THE GOVERNMENT AGENCY AND WAS NOT DISBURSED TO ITS EMPLOYEES, IT REMAINS AS PUBLIC FUND; UNIFORM ALLOWANCE OF EMPLOYEES OF GOVERNMENT AGENCIES IS CONSIDERED AS PUBLIC FUNDS REGARDLESS OF SOURCE OF THE FUNDS.— [T]he appropriation for the uniform allowance of the SBMA employees is provided for by the SBMA. Further, the alleged trust fund for the uniform allowance is not owned or controlled by SBMA employees. The latter have no power to decide on how to spend the said uniform allowance; instead, only the department heads of the

SBMA have the discretion to utilize it. The employees do not have beneficial ownership over the uniform allowance; they are merely the end-users. Manifestly, as long as the appropriation for the uniform allowance stays in the coffers of SBMA and was not disbursed to its employees, it remains as public fund. Likewise, R.A. No. 9184 "[applies] to the Procurement of Infrastructure Projects, Goods and Consulting Services, **regardless of source of funds**, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or-controlled corporations and local government units." Thus, even though the uniform allowance of the SBMA employees were pooled in a trust fund, it is still considered as public funds and must comply with R.A. No. 9184 and its IRR.

7. ID.; ID.; ID.; REQUISITES BEFORE GOOD FAITH IN THE PROCUREMENT MAY ABSOLVE RESPONSIBLE OFFICERS FROM PERSONAL LIABILITY; PRESENT IN CASE AT BAR.— [I]n *DBP v. COA*, the Court ruled that good faith may be appreciated in favor of the responsible officers under the ND provided they comply with the following requisites: **(1) that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same**. In this case, the Court finds that petitioners exercised good faith. As to the first requisite, petitioners acted in good faith when they disbursed public funds to procure the uniforms of their employees. They merely wanted to address their problem regarding their previous procurement of uniforms because the lowest bidder considerably compromised the quality of the said uniforms. Also, SBMA has as many as twenty-six (26) different uniforms, thus, they resorted to a Uniform Committee to devise a procurement method specifically for the varied uniforms of their employees. Conspicuously, **the COA does not deny that petitioners still secured the most advantageous price for the government**. x x x While petitioners did not strictly follow the letter of the IRR of R.A. No. 9184, at the very least, they attempted in good faith to comply with the spirit and policy of R.A. No. 9184. As reflected in the petition, the department heads of the

SBMA, through the procedure laid down by the Uniform Committee, secured quotations from the SBMA accredited suppliers and they determined the lowest and most advantageous price and superior quality for the government. Again, there was no finding of overpricing or misapplication of funds. As to the second requisite, petitioners lacked knowledge of facts or circumstances which would render the disbursements illegal. Evidently, the legal issue in this case is novel. There is neither specific law nor jurisprudence that prohibits the pooling of the uniform allowance in a trust fund to procure the numerous and multifaceted uniforms of employees under strict supervision of the Uniform Committee. Manifestly, the COA cannot cite a definite law or regulation that prohibits such alternative method of procurement for employees' uniforms. The Court had to first analyze R.A. No. 9184 and dissect the applicable IRR provisions before it could conclude that the said procurement method is not permitted. Thus, petitioners cannot be faulted for improperly understanding the intricate application of the law in their devised procurement scheme.

8. ID.; ID.; ID.; ID.; WHILE THERE WAS IRREGULAR EXPENDITURE AS A RESULT OF PETITIONERS' FAILURE TO STRICTLY COMPLY WITH RA 9184, THEY MAY NOT BE HELD PERSONALLY LIABLE BASED ON THEIR EXERCISE OF GOOD FAITH.— [P]etitioners resorted to their chosen procurement method for the benefit of its employees – to ensure that they will receive the uniform with superior quality based on the budget provided by the government – and not for some selfish or ulterior motive. Evidently, while there may be irregular expenditure because petitioners did not strictly comply with the IRR of R.A. No. 9184, they may not be held personally liable under the ND based on their exercise of good faith. While the disbursement of funds for the procurement of the employees' uniforms must be disallowed because it particularly contravenes the provisions of IRR of R.A. No. 9184, the good faith exercised by petitioners exempts them from liability under the ND.

APPEARANCES OF COUNSEL

SBMA Legal Department for petitioners.
The Solicitor General for respondent.

D E C I S I O N

GESMUNDO, *J.*:

This is a petition for certiorari under Rule 64 of the Rules of Court seeking to annul and set aside the December 29, 2015 Decision[1] and the December 21, 2016 Resolution[2] of the Commission on Audit (*COA*) in Decision No. 2015-437. The COA affirmed the April 7, 2014 Decision[3] of the COA Regional Office No. III (*COA-Region III*) in COA RO3 Decision No. 2014-28. In turn, the COA-Region III affirmed the March 26, 2012 Notice of Disallowance[4] (*ND*) under Special Audit ND No. 2012-001(2011) regarding the payment in the amount of ₱2,420,603.99 for the procurement of special and field uniforms of the employees of the Subic Bay Metropolitan Authority (*SBMA*).

The Antecedents

In 2009, SBMA procured special and field uniforms for its employees through regular public bidding, and the winning bidder with the lowest price was Topnotch Apparel Corporation (*Topnotch Apparel*). However, SBMA claimed that the quality and craftsmanship of the uniforms of the employees were compromised due to the current procurement laws.[5]

Thus, in a memorandum dated December 10, 2009, Lolita S. Mallari, then Human Resource Management Officer of the SBMA, provided several recommendations to the SBMA Administrator and CEO regarding the acquisition of special and field uniforms for the SBMA employees under the supervision of a Uniform Committee, to wit:

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[1] *Rollo*, pp. 36-39; concurred in by Chairperson Michael G. Aguinaldo and Commissioner Jose A. Fabia.

[2] *Id*. at 40.

[3] *Id*. at 59-63; penned by Regional Director Ma. Mileguas M. Leyno.

[4] *Id*. at 99-101.

[5] *Id*. at 7.

II. Special Uniform/Field Uniform

Special Uniform refers to the uniform of employees performing special task, e.g. Nurses, medical technologies, law enforcers, [firefighters]. On the other hand, Field uniform refers to those worn by our ground and maintenance staff, and members of the green brigade.

After a series of meetings conducted by the Uniform Committee, it was agreed that departments/officer[s] with special or field uniforms will be allowed to procure their uniforms on their own following a set of guidelines or procedures, in the flowchart form, hereto attached as Annex A. For uniformity purposes, each department with special or field uniform will also be provided with a template contract.

To avoid a repeat of the problems that occurred in CY 2007, no uniform allowances shall be released to the department managers. The budget allocated for CY 2009 uniform shall, with the approval of the Administrator, be placed in a Trust Fund. Payment to the supplier will only be made upon delivery and acceptance of uniforms. Likewise, unlike in CY 2007, only department managers will be allowed to engage the services of, and execute agreements with [bona fide] suppliers.

III. Thus, in view of the foregoing, may we request for the Administrator's approval:

1. **To authorize, on exclusive basis, all managers of departments with special field uniforms, to handle and to be on top of the procurement of uniforms for their respective offices. This shall include the signing of contract.**

2. **To authorize the transfer of the budgeted funds for the uniform for CY 2009, to a Trust Fund Account.** Payment will be made directly to the suppliers after the special and field uniforms are delivered, certified completed and accepted in 2010 by the end-user's Department Head.[6] (emphases supplied)

Then SBMA Administrator and CEO Armand C. Arreza approved the recommendations and a Uniform Committee was constituted. Thereafter, the different department heads of SBMA solicited price quotations for special and field uniforms from

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[6] *Id*. at 66.

SBMA's accredited suppliers. The said department heads then conducted negotiations and contracts for the special and field uniforms, which were awarded to the supplier with the lowest quotation and who met their specification requirements. It was the Uniform Committee that provided for the *pro-forma* contracts and process flowchart for the acquisition of the said uniforms. After the delivery and acceptance of the uniforms, the winning contractors were paid out of the trust fund created for the uniforms.

Notice of Disallowance

On March 26, 2012, the Special Audit Team of the SBMA issued Special Audit ND No. 2012-001-(2011) against several SBMA officers, department heads and suppliers regarding the procurement of special and field uniforms of the SBMA employees. The Special Audit Team stated that the total disallowed amount was ₱2,420,603.99 because several requirements of R.A. No. 9184[7] and its Implementing Rules and Regulations (*IRR*) were violated, to wit:

1. The uniform requirements of the departments were not included in the 2010 and 2011 Annual Procurement Plans (APP).
2. Management failed to post the procurement and the results of bidding and related information in the PhilGEPs bulletin board.
3. The procurement process in each department was not conducted by a duly created Bids and Awards Committee.
4. Uniforms were procured through negotiated procurement without adhering to the set criteria, terms and conditions for the use of Alternative Methods of Procurement.

Absence of the above requirements/documents constituted irregular transactions as defined under COA Circular No. 85-55A and Section 162 of GAAM Volume I. Pursuant to Section 10 of COA Circular No. 2009-006 dated September 15, 2009, irregular disbursement may be disallowed in audit.[8]

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[7] Otherwise known as the Government Procurement Reform Act of 2003.

[8] *Id*. at 100.

Thus, the following SBMA officers and department heads, and suppliers were held liable under the ND:

Name	Position/ Designation	Nature of Participation in the Transaction
Ms. Lolita S. Mallari	Manager, HRM Department	Certified that expense/ charges to budget were necessary, lawful and incurred under her direct supervision. Executed contract with supplier in the amount of ₱100,332.00.
Capt. Dante A. Romano	Manager, Construction and Maintenance Department	Executed contract with supplier in the amount of ₱1,215,543.00
Gen. Orlando M. Maddela[,] Jr.	Manager, Law Enforcement Department	Executed contract with supplier in the amount of ₱435,032.00
Mr. Perfecto C. Pascual	Manager, Seaport Department	Executed contract with supplier in the amount of ₱140,580.99
Mr. Zharrex R. Santos	OIC-Manager, Airport Department	Executed contract with supplier in the amount of ₱71,736.00
Mr. Ranny D. Magno	Manager, Fire Department	Executed contract with supplier in the amount of ₱427,000.00
Ms. Armila Llamas	Manager, Public Relations Department	Executed contract with supplier in the amount of ₱30,380.00

Ms. Paulita R. Yee	OIC-DA for Finance	Approved the obligation of the expenditures/approved the release of payment
Mr. Armand C. Arreza	Administrator	Approved payment
Mr. Gregg M. Macatuno	General Manager, Baxley Tailor Shop	Received payment in the amount of ₱862,032.00
Mr. Gregorio V. Daya	General Manager, Commercio Enterprise	Received payment in the amount of ₱1,427,859.99
Mr. Rolando D. Mangente	Representative, Topnotch Apparel Corp.	Received payment in the amount of ₱100,332.00
Essential Tailor Shop	Supplier	Received payment in the amount of ₱30,380.00[9]

Aggrieved, SBMA and its officers, collectively referred as petitioners, filed an appeal before the COA-Region III.

The COA-Region III Ruling

In its decision dated April 7, 2014, the COA-Region III denied the appeal. It held that petitioners neither considered public bidding as the mode for procurement nor secured the recommendation of the Bids and Awards Committee (*BAC*) in resorting to the alternative method of negotiated procurement. The COA-Region III highlighted that the procurement of the uniforms did not comply with the requirements set forth by R.A. No. 9184 and its IRR. It also stated that disallowing the

[9] *Id*. at 100-101.

total amount may be drastic and harsh but it has no other option but to apply the law. The COA-Region III further opined that even though the uniform allowances were pooled in trust fund, these are still public funds. The *fallo* of the decision states:

> **WHEREFORE**, the foregoing premises considered, instant appeal is hereby **DENIED**. Accordingly, Special Audit Notice of Disallowance (ND) No. 2012-001-(2011) COA Regional Office No. 2011-133 dated March 26, 2012, disallowing ₱2,420,603.99 is hereby **AFFIRMED**.[10]

Undaunted, petitioners filed a petition for review before the COA.

The COA Ruling

In its decision dated December 29, 2015, the COA dismissed the petition because it was filed out of time. It observed that petitioners only had six (6) months or 180 days to file the petition before the COA. As the petition was filed beyond the 180-day period, the COA denied it outright. The dispositive portion of the COA decision reads:

> **WHEREFORE**, premises considered, the petition for review of former Administrator Armand C. Arreza, et al., Subic Bay Metropolitan Authority, Subic [Bay] Freeport Zone, Zambales, is hereby **DISMISSED** for having been filed out of time. Accordingly, COA RO3 Decision No. 2014-28 dated April 7, 2014, affirming Special Audit Notice of Disallowance No. 2012-001-(2011), Commission on Audit Regional Office No. 2011-133 dated March 26, 2012, in the amount of ₱2,420,603.99, is **FINAL AND EXECUTORY**.[11]

Petitioners filed a motion for reconsideration but it was dismissed by the COA in its resolution dated December 21, 2016.

Hence, this petition stating the following grounds:

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[10] *Id*. at 62-63.

[11] *Id*. at 38.

I.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR IN EXCESS OF JURISDICTION WHEN IT WHIMSICALLY AND CAPRICIOUSLY SACRIFICED SUBSTANTIVE JUSTICE IN FAVOR OF PROCEDURAL TECHNICALITIES WITH ITS DISMISSAL OF PETITIONERS['] PETITION FOR REVIEW WITHOUT CONSIDERING AT ALL WHETHER OR NOT PETITIONER[S'] ARGUMENTS DESERVE FULL CONSIDERATION ON THE MERITS.

II.

IN THE INTEREST OF SUBSTANTIVE JUSTICE, PETITIONERS' PETITION FOR REVIEW SHOULD HAVE BEEN [ACCEPTED] BY RESPONDENT COA CONSIDERING THAT THE ERRORS OF ITS RESIDENT AUDITORS ARE EVIDENT ON ITS FACE AND MORE SO AFTER AN EXAMINATION OF THE DOCUMENTS ON RECORD.

III.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN REQUIRING THE SUBJECT TRANSACTION TO FULLY COMPLY WITH R.A. 9184 WHEN THE FUNDS USED TO PROCURE THE UNIFORMS WERE PURELY PRIVATE FUNDS, SINCE THESE CONSTITUTED THE UNIFORM ALLOWANCES OF EACH OF THE SBMA'S FIELD EMPLOYEES.

IV.

RESPONDENT COA COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN WILLFULLY IGNORING THAT NOT ONLY WAS THE [SUBJECT] TRANSACTION ENTERED INTO IN UTMOST GOOD FAITH, BUT THAT IT WAS PURSUED FOR THE PERSONAL BENEFIT OF SBMA'S EMPLOYEES SO THAT THEY COULD GET THE BEST QUALITY AND VALUE FROM THEIR UNIFORM ALLOWANCE.[12]

Petitioners argue that the 180-day period to file the petition for review before the COA fell on May 31, 2014, a Saturday,

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[12] *Id*. at 11 & 14.

hence, it timely filed the petition on the next working day or June 2, 2014; that COA did not even consider the weekends in its computation of time; that on the substantial aspect, their petition has merit; and that they properly complied with the alternative method of procurement because it was approved by the head of the procuring authority and the procurement of the uniforms was justified by the conditions provided by R.A. No. 9184 to promote economy and efficiency.

They also assert that they resorted to the alternative modes of procurement because SBMA experienced, from their previous supplier, that regular bidding procedure compromises the quality of the uniforms of the employees; that the department heads followed the process flow provided by the Uniform Committee and the negotiation with the accredited SBMA suppliers were further subjected to control measures; that the creation of the Uniform Committee is patterned from R.A. No. 9184; and that the funds used for the uniforms were not public funds because these were kept in a trust fund on behalf of the employees, hence, private in character.

Petitioners also argue that they exercised good faith and transparency in procuring the uniforms of their employees; and that they still acquired the most advantageous price for the government based on R.A. No. 9184.

In its Comment,[13] the COA countered that when petitioners received the decision of the COA-Region III on April 23, 2014, they only had thirty-seven (37) days or until May 30, 2014, a Friday, to file the petition, hence, since the petition was filed on June 2, 2014, it was filed out of time; that the funds used in the procurement of the uniforms, even though pooled in a trust fund, were still public funds because the grant of clothing allowance was covered by the appropriations for the SBMA and regulated by the budget circulars of the Department of Budget and Management (*DBM*); that the necessity of public bidding cannot be dispensed with; that petitioners failed to

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[13] *Id*. at 129-149.

comply with the requirements of the alternative method of procurement, particularly, negotiated procurement, in purchasing the uniforms of their employees; and that petitioners were not in good faith.

In their Reply,[14] petitioners reiterated that their petition before the COA was filed on time and that the SBMA finances its operation with its own funds, hence, they may determine the procurement of uniforms for their employees.

The Court's Ruling

The Court finds the petition partially meritorious.

Timely petition; relaxation of procedural rules

Section 48 of Presidential Decree (*P.D.*) No. 1445,[15] states the period within which a party may appeal the decision of an auditor of any government agency, including a notice of disallowance, to wit:

> SECTION 48. *Appeal from decision of auditors.* — Any person aggrieved by the decision of an auditor of any government agency in the settlement of an account or claim may within **six months** from receipt of a copy of the decision appeal in writing to the Commission. (emphasis supplied)

In this case, petitioners explained that they received the ND on April 9, 2012 and they had 180 days to appeal. Then, on August 31, 2012, they filed an appeal before the COA-Region III. On April 23, 2014, petitioner received the decision of the COA-Region III denying their appeal, thus, they still had 38 days, or until May 31, 2014, to file a petition for review before the COA. As May 31, 2014 fell on a Saturday, petitioners filed their petition on the next working day, or on June 2, 2014. Thus, petitioners claim that their petition before the COA was filed on time.

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[14] *Id*. at 159-166.

[15] Otherwise known as the Government Auditing Code of the Philippines.

On the other hand, the COA simply denied the petition because it was allegedly filed beyond the 180-day period. It did not give any explanation on its failure to consider the weekends in the counting of the period. Section 1, Rule 22 of the Rules of Court states that "[i]f the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day." Accordingly, the computation of time under the Rules of Court may be applicable under P.D. No. 1445 because its pertinent provisions may be applied by analogy or in a suppletory manner, in the interest of expeditious justice and whenever practical and convenient.[16]

Even if the COA's argument — that when petitioners received the COA-Region III decision on April 23, 2014, they only had 37 days to file the petition, hence, the last day to file fell on May 30, 3014, a Friday – is given weight, the Court finds that genuine reasons exist to provide a liberal application of the procedural rules in this case.

Time and again, this Court has emphasized that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice. From time to time, however, the Court has recognized exceptions to the Rules, but only for the most compelling reasons where stubborn obedience to the Rules would defeat rather than serve the ends of justice.[17]

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[16] See *Pyro Copper Mining Corporation v. Mines Adjudication Board-DENR, et al.*, 611 Phil. 583, 603, 607 (2009); See Section 4, Rule 1 of the Rules of Court: In what case not applicable. — These Rules shall not apply to election cases, land registration, cadastral, naturalization and insolvency proceedings, and other cases not herein provided for, except by analogy or in a suppletory character and whenever practicable and convenient.

[17] *CMTC International Marketing Corp. v. Bhagis International Trading Corp.*, 700 Phil. 575, 581 (2012).

In this case, petitioners resorted to the alternative method of procurement to acquire the most advantageous price and quality for the uniform of their employees. SBMA had a terrible experience in procuring their employees' uniform in the past, thus, they subsequently considered other viable options in good faith. Hence, the Court is of the view that the case of petitioners should be adjudicated on the merits in order to determine whether they may be held liable for the chosen procurement method.

Requisites of negotiated procurement were not proven

Public bidding as a method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability.[18] By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition. Another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the execution of public contracts.[19]

Alternative methods of procurement, however, are allowed under R.A. No. 9184, which would enable dispensing with the requirement of open, public and competitive bidding, but only in highly exceptional cases and under the conditions set forth in Article XVI thereof,[20] to wit:

SECTION 48. Alternative Methods. — Subject to the prior approval of the Head of the Procuring Entity or his duly authorized representative, and whenever justified by the conditions provided in this Act, the Procuring Entity may, in order to promote economy and efficiency, resort to any of the following alternative methods of Procurement:

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[18] *Commission on Audit v. Link Worth International, Inc.*, 600 Phil. 547, 555 (2009).

[19] *Lagoc v. Malaga, et al.*, 738 Phil. 623, 630 (2014).

[20] *De Guzman v. Office of the Ombudsman, et al.*, G.R. No. 229256, November 22, 2017.

(a) *Limited Source Bidding, otherwise known as Selective Bidding* — a method of Procurement that involves direct invitation to bid by the Procuring Entity from a set of pre-selected suppliers or consultants with known experience and proven capability relative to the requirements of a particular contract;

(b) *Direct Contracting, otherwise known as Single Source Procurement* — a method of Procurement that does not require elaborate Bidding Documents because the supplier is simply asked to submit a price quotation or a pro-forma voice together with the conditions of sale, which offer may be accepted immediately or after some negotiations;

(c) *Repeat Order* — a method of Procurement that involves a direct Procurement of Goods from the previous winning bidder, whenever there is a need to replenish Goods procured under a contract previously awarded through Competitive Bidding;

(d) *Shopping* — a method of Procurement whereby the Procuring Entity simply requests for the submission of price quotations for readily available off-the-shelf Goods or ordinary/regular equipment to be procured directly from suppliers of known qualification; or

(e) *Negotiated Procurement* — a method of Procurement that may be resorted under the extraordinary circumstances provided for in Section 53 of this Act and other instances that shall be specified in the IRR, whereby the Procuring Entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant.

In all instances, the Procuring Entity shall ensure that the most advantageous price for the government is obtained.[21]

In this case, petitioners admit that they did not conduct public bidding to procure the uniforms of their employees. However, they argue that they properly used the alternative modes of procurement to obtain the uniforms with the most advantageous price for the government through negotiation with accredited SBMA suppliers subject to the control measures provided for by the uniform committee. They further assert that they

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[21] R.A. No. 9184, Article XVI.

negotiated with the accredited SBMA suppliers to obtain the uniforms with the most advantageous price for the government.

The Court is not convinced.

As public bidding is the general rule and alternative methods of procurement are mere exceptions, it was incumbent upon petitioners to prove the definite and particular alternative method of procurement they availed of under Section 48 of R.A. No. 9184. At best, petitioners assert that they resorted to the alternative mode of negotiated procurement to purchase the said uniforms.

In negotiated procurement, the procuring entity directly negotiates a contract with a technically, legally, and financially capable supplier, contractor or consultant.[22] Section 53 of the IRR of R.A. No. 9184 lays down the specific grounds when a negotiated procurement may be availed of; while Section 54 of the same IRR provides the additional requirements that must be complied with. In this case, the procurement refers to goods, specifically, uniforms and no public bidding was conducted, hence, the negotiated procurement would be justified under the following circumstances:

SECTION 53. *Negotiated Procurement.*

Negotiated Procurement is a method of *procurement of goods, infrastructure projects and consulting services*, whereby the procuring entity directly negotiates a contract with a technically, legally and financially capable supplier, contractor or consultant only in the following cases:

x x x x x x x x x

(b) In case of imminent danger to life or property during a state of calamity, or when time is of the essence arising from natural or man-made calamities or other causes where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. In the case of infrastructure projects, the procuring entity has the

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[22] *Office of the Ombudsman v. De Guzman*, G.R. No. 197886, October 4, 2017.

option to undertake the project through negotiated procurement or by administration or, in high security risk areas, through the AFP;

(c) Take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities;

x x x x x x x x x

SECTION 54. *Terms and Conditions for the Use of Alternative Methods.* —

x x x x x x x x x

d) For item (b) of Section 53 of the Act and this IRR-A, the negotiation shall be made with a previous supplier, contractor or consultant of good standing of the procuring entity concerned, or a supplier, contractor or consultant of good standing situated within the vicinity where the calamity or emergency occurred. *The award of contract shall be posted at the G-EPS website, website of the procuring entity, if any, and in conspicuous place within the premises of the procuring entity.*

e) For item (c) of Section 53 of the Act and this IRR-A, the contract may be negotiated starting with the second lowest calculated bidder for the project under consideration at the bidder's original bid price. If negotiation fails, then negotiation shall be done with the third lowest calculated bidder at his original price. If the negotiation fails again, a short list of at least three (3) eligible contractors shall be invited to submit their bids, and negotiation shall be made starting with the lowest bidder. Authority to negotiate contracts for projects under these exceptional cases shall be subject to prior approval by the heads of the procuring entities concerned, within their respective limits of approving authority.[23]

The Court finds that petitioners failed to comply with the requisites of a negotiated procurement under the above-cited rules. As properly discussed by the COA, petitioners failed to prove that the existence of the circumstances under

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[23] Amended Implementing Rules and Regulations of Republic Act No. 9184, August 3, 2009.

Section 53(b), IRR of R.A. No. 9184 are present to justify the negotiated procurement of specialized and field uniforms of SBMA employees.[24] Indeed, petitioners did not establish that (1) there is imminent danger to life or property during a state of calamity; or (2) or that time is of the essence arising from natural or man-made calamities; or (3) other causes, where immediate action is necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities.[25] Verily, there is no existing calamity or other cause where immediate action is necessary. Petitioners simply undertook the procurement of the uniforms because they were unsatisfied with the products of the previous supplier.

Likewise, under Section 53(c), IRR of R.A. No. 9184, there is no take-over of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws. Neither was there a need for immediate action necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. In other words, no take-over of contract materialized and the contract with its previous supplier, Topnotch Apparel, was neither rescinded nor terminated. The SBMA merely initiated a new procurement process for the acquisition of the uniforms of its employees because it was unsatisfied with the previous supplier and there was an appropriation for the said uniforms. Further, the additional requirements under Section 54 of the IRR were also not complied with because petitioners failed to post the procurement and the results of bidding and other related information in the PhilGEPs bulletin board.

Accordingly, the COA correctly argued that there was an irregular expenditure for the negotiated procurement because

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[24] *Rollo*, p. 145.

[25] *Supra* note 21, where it was explained that the phrase "other causes" is construed to mean a situation similar to a calamity, whether natural or man-made, where inaction could result in the loss of life, destruction of properties or infrastructures, or loss of vital public services and utilities.

it was incurred without adhering to Sections 53 and 54 of the IRR of R.A. No. 9184.[26] Under COA Circular No. 88-55-A, an irregular expenditure is an expenditure incurred without adhering to established rules, regulations, procedural guidelines, policies, principles or practices that have gained recognition in law. It differs from an *illegal expenditure* since the latter pertains to expenses incurred in violation of the law, whereas an *irregular expenditure* is incurred in violation of applicable rules and regulations other than the law.[27]

Petitioners' bare assertion that they followed the requirements of the alternative modes of procurement based on good faith and transparency[28] is not sufficient to set aside the necessity of a public bidding. Their previous experience regarding the poor quality of the uniforms provided by the winning bidder in the previous public bidding, no matter how terrible and unfortunate, is not a valid and legal ground to disregard and set aside the provisions of the law and its rules in the subsequent procurement of uniforms. Indeed, the exceptional recourse to any of the alternative methods of procurement must be justified based on the specific provisions of R.A. No. 9184 and its IRR.[29]

The trust fund is a public fund

Petitioners insist that the procurement of the employees' uniform was not an irregular expenditure because it was sourced from a trust fund pooled from the uniform allowance, which is private in nature.

The Court disagrees.

As discussed by the COA, under R.A. No. 9524, or the General Appropriations Act for Fiscal Year 2009, the appropriation for the uniform allowance of government employees specifically

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[26] *Rollo*, p. 145.

[27] *Id*. at 146.

[28] *Id*. at 16.

[29] COA Circular No. 88-55-A, 3.1 (1985).

states that it shall be provided for by the department, bureau, office, or agency concerned:

> SECTION 48. *Uniform or Clothing Allowance.* — **The appropriations provided for each department, bureau, office or agency** may be used for uniform or clothing allowance of employees at not more than Four Thousand Pesos (₱4,000.00) each per annum which may be given in cash or in kind, subject to the rules and regulations prescribed under Budget Circular Nos. 2003-8 and 2003-8A. In case of deficiency, or in the absence of appropriation for the purpose, the requirements may be charged against savings in the appropriations of agencies. (emphasis supplied)

Accordingly, the appropriation for the uniform allowance of the SBMA employees is provided for by the SBMA. Further, the alleged trust fund for the uniform allowance is not owned or controlled by SBMA employees. The latter have no power to decide on how to spend the said uniform allowance; instead, only the department heads of the SBMA have the discretion to utilize it. The employees do not have beneficial ownership over the uniform allowance; they are merely the end-users. Manifestly, as long as the appropriation for the uniform allowance stays in the coffers of SBMA and was not disbursed to its employees, it remains as public fund.

Likewise, R.A. No. 9184 "[applies] to the Procurement of Infrastructure Projects, Goods and Consulting Services, **regardless of source of funds**, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and local government units."[30] Thus,

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[30] R.A. No. 9184, Section 4. *Scope and Application*. — This Act shall apply to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or -controlled corporations and local government units, subject to the provisions of Commonwealth Act No. 138. Any treaty or international or executive agreement affecting the subject matter of this Act to which the Philippine government is signatory shall be observed.

even though the uniform allowance of the SBMA employees were pooled in a trust fund, it is still considered as public funds and must comply with R.A. No. 9184 and its IRR.

Petitioners exercised good faith

In their final argument, petitioners invoke good faith in the procurement of the special and field uniforms of their employees. The department heads meticulously followed the procedure provided by the Uniform Committee and they acquired the most advantageous price and quality for the uniform of their employees. Petitioners also allege that they simply used a different mode of procurement because they believed in good faith, based on their past experience, that public bidding compromised the quality of the complex and numerous uniforms for the SBMA employees. Thus, they should not be held personally liable under the ND.

The Court agrees.

Good faith is a 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 through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction unconscientious."[31]

In *Joson III v. COA*,[32] there was a ND issued against the petitioner, as head of the agency, because the required public bidding documents, such as the eligibility checklist using the pass/fail criteria, the net financial contracting capacity, and the technical eligibility documents, were missing. The Court reversed the ND and held that:

Assuming that petitioner Joson III committed a mistake in not ensuring that the eligibility documents were attached to the contract,

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[31] *Maritime Industry Authority v. COA*, 750 Phil. 288, 337 (2015), citing *Philippine Economic Zone Authority (PEZA) v. Commission on Audit, et al.*, 690 Phil. 104, 115 (2012).

[32] G.R. No. 223762, November 7, 2017.

it is settled that mistakes committed by a public officer are not actionable absent any clear showing that they were motivated by malice or gross negligence amounting to bad faith. In this case, there is no showing that petitioner Joson III was motivated by malice or gross negligence amounting to bad faith in failing to ensure that the eligibility documents of A.V.T. Construction were not attached to the contract. In fact, there was even no evidence that petitioner was aware that A.V.T. Construction was ineligible due to the absence of the pre-qualification or eligibility checklist using the "pass/fail" criteria, the NFCC and the Technical eligibility documents. **Good faith is always presumed. Here, the COA failed to overcome the presumption of good faith.**[33] (emphases supplied)

Recently, in *Development Bank of the Philippines v. Commission on Audit*[34] (*DBP v. COA*), the Court discussed the different rulings regarding the appreciation of the defense of good faith with respect to notices of disallowance, to wit:

> In *Zamboanga City Water District v. COA*, the Court held that approving officers could be absolved from refunding the disallowed amount if there was a showing of good faith, to wit:
>
> > Further, a thorough [reading] of Mendoza and the cases cited therein would lead to the conclusion that ZCWD officers who approved the increase of GM Bucoy's are also not obliged either to refund the same. In *de Jesus v. Commission on Audit*, the Court absolved the petitioner therein from refunding the disallowed amount on the basis of good faith, pursuant to *de Jesus* and the *Interim Board of Directors, Catbalogan Water District v. Commission on Audit*. In the latter case, the Court absolved the Board of Directors from refunding the allowances they received because at the time they were disbursed, no ruling from the Court prohibiting the same had been made. Applying the ruling in *Blaquera v. Alcala (Blaquera)*, the Court reasoned that the Board of Directors need not make a refund on the basis of good faith, because they had no knowledge that the payment was without a legal basis.

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[33] *Id*.

[34] G.R. No. 221706, March 13, 2018.

In *Blaquera*, the Court did not require government officials who approved the disallowed disbursements to refund the same on the basis of good faith, to wit:

> Untenable is petitioners' contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.
>
> Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.
>
> x x x x x x x x x
>
> Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received. Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients and the latter accepted the same with gratitude, confident that they richly deserve such benefits.

A careful reading of the above-cited jurisprudence shows that even approving officers may be excused from being personally liable to refund the amounts disallowed in a COA audit, provided that they had acted in good faith. Moreover, lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith. (citations and emphases omitted)

In *Mendoza v. COA*, the Court held that the lack of a similar ruling disallowing a certain expenditure is a basis of good faith. At the time that the disallowed disbursement was made, there was yet to be a jurisprudence or ruling that the benefits which may be received by members of the commission were limited to those enumerated under the law.

By the same token, in *SSS v. COA*, the Court pronounced that good faith may be appreciated because the approving officers did not have knowledge of any circumstance or information which would render the disallowed expenditure illegal or unconscientious. The Board members therein could also not be deemed grossly negligent as they believed they could disburse the said amounts on the basis of the provisions of the R.A. No. 8282 to create their own budget.

On the other hand, in *Silang v. COA*, the Court ordered the approving officers to refund the disbursed CNA incentives because they were found to be in bad faith as the disallowed incentives were negotiated by the collective bargaining representative in spite of non-accreditation with the CSC.

In *MWSS v. COA*, the Court affirmed the disallowance of the grant of mid-year financial, *bigay-pala* bonus, productivity bonus and year-end financial assistance to MWSS officials and employees. It also ruled therein that the MWSS Board members did not act in good faith and may be held liable for refund because they approved the said benefits even though these patently contravened R.A. No. 6758, which clearly and unequivocally stated that governing boards of the GOCCs can no longer fix compensation and allowances of their officials or employees.[35] (citations omitted)

Hence, in *DBP v. COA*, the Court ruled that good faith may be appreciated in favor of the responsible officers under the ND provided they comply with the following requisites: **(1) that they acted in good faith believing that they could disburse the disallowed amounts based on the provisions of the law; and (2) that they lacked knowledge of facts or circumstances which would render the disbursements illegal, such when there is no similar ruling by this Court prohibiting a particular disbursement or when there is no clear and unequivocal law or administrative order barring the same.**[36]

In this case, the Court finds that petitioners exercised good faith. As to the first requisite, petitioners acted in good faith

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[35] *Id*.

[36] *Id*.

when they disbursed public funds to procure the uniforms of their employees. They merely wanted to address their problem regarding their previous procurement of uniforms because the lowest bidder considerably compromised the quality of the said uniforms. Also, SBMA has as many as twenty-six (26) different uniforms, thus, they resorted to a Uniform Committee to devise a procurement method specifically for the varied uniforms of their employees.

Conspicuously, **the COA does not deny that petitioners still secured the most advantageous price for the government**. Likewise, there was neither allegation of overpricing nor poor quality of uniforms from the chosen method of procurement. Verily, the ND simply made the petitioners personally liable based on the rigid implementation of the law and rules, to wit:

> The amount of ₱2,420,603.99 was disallowed in audit because the procurements were consummated even without the following requirements under RA 9184 and its Revised Implementing Rules and Regulation (IRR):
>
> 1. The uniform requirements of the departments were not included in the 2010 and 2011 Annual Procurement Plans (APP).
> 2. Management failed to post the procurement and the results of bidding and related information in the PhilGEPs bulletin board.
> 3. The procurement process in each department was not conducted by a duly created Bids and Awards Committee.
> 4. Uniforms were procured through negotiated procurement without adhering to the set criteria, terms and conditions for the use of Alternative Methods of Procurement.
>
> Absence of the above requirements/documents constituted irregular transactions as defined under COA Circular No. 85-55 A and Section 162 of GAAM Volume I. Pursuant to Section 10 of COA Circular No. 2009-006 dated September 15, 2009, irregular disbursements may be disallowed in audit.[37]

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[37] *Rollo*, p. 100.

On the other hand, the COA-Region III echoed that the personal liability of petitioners was based on the stringent application of the law and rules, *viz*:

> Disallowing the total amount of the transaction may be drastic and harsh, but this Office has no other option but to apply what is stated in the law (*Dura lex sed lex*). It should be applied exactly the way the legislature has expressed itself clearly in the law. Indeed, "the law may be harsh, but it is still the law."[38]

Evidently, the COA failed to consider the jurisprudence regarding the application of good faith regarding the ND. While petitioners did not strictly follow the letter of the IRR of R.A. No. 9184, at the very least, they attempted in good faith to comply with the spirit and policy of R.A. No. 9184. As reflected in the petition, the department heads of the SBMA, through the procedure laid down by the Uniform Committee, secured quotations from the SBMA accredited suppliers and they determined the lowest and most advantageous price and superior quality for the government.[39] Again, there was no finding of overpricing or misapplication of funds.

As to the second requisite, petitioners lacked knowledge of facts or circumstances which would render the disbursements illegal. Evidently, the legal issue in this case is novel. There is neither specific law nor jurisprudence that prohibits the pooling of the uniform allowance in a trust fund to procure the numerous and multifaceted uniforms of employees under strict supervision of the Uniform Committee. Manifestly, the COA cannot cite a definite law or regulation that prohibits such alternative method of procurement for employees' uniforms. The Court had to first analyze R.A. No. 9184 and dissect the applicable IRR provisions before it could conclude that the said procurement method is not permitted. Thus, petitioners cannot be faulted for improperly understanding the intricate application of the law in their devised procurement scheme.

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[38] *Id*. at 62.

[39] *Id*. at 20-25.

Further, Lolita S. Mallari, then Human Resource Management Officer of the SBMA, sought the approval of the SBMA Administrator and CEO regarding the acquisition of special and field uniforms for the SBMA employees. Only after the *imprimatur* was given did the SBMA implement the creation of the Uniform Committee, absent any manifest defect in their chosen procedure.[40] To reiterate, good faith may be appreciated because the approving officers were without knowledge of any circumstance or information which would render the transaction illegal or unconscientious.[41]

Notably, petitioners resorted to their chosen procurement method for the benefit of its employees – to ensure that they will receive the uniform with superior quality based on the budget provided by the government – and not for some selfish or ulterior motive. Evidently, while there may be irregular expenditure because petitioners did not strictly comply with the IRR of R.A. No. 9184, they may not be held personally liable under the ND based on their exercise of good faith.

While the disbursement of funds for the procurement of the employees' uniforms must be disallowed because it particularly contravenes the provisions of IRR of R.A. No. 9184, the good faith exercised by petitioners exempts them from liability under the ND. The COA committed grave abuse of discretion when it did not properly appreciate the circumstance of good faith on petitioners' part.

In conclusion, it is unfair to penalize public officials based on overly stretched and strained interpretations of rules which were not that readily capable of being understood at the time such functionaries acted in good faith. If there is any ambiguity, which is actually clarified years later, then it should only be applied prospectively. A contrary rule would be counterproductive. It could result in paralysis, or lack of innovative ideas getting tried. In addition, it could dissuade

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[40] *Id*. at 66.

[41] *Supra* note 32.

others from joining the government. When government service becomes unattractive, it could only have adverse consequences for society.[42]

WHEREFORE, the petition is **PARTIALLY GRANTED**. The December 29, 2015 Decision and the December 21, 2016 Resolution of the Commission on Audit in Decision No. 2015-437 are **AFFIRMED** with **MODIFICATION** that the persons identified by the March 26, 2012 Notice of Disallowance under Special Audit ND No. 2012-001(2011) are not required to refund the disallowed amounts therein.

SO ORDERED.

Bersamin, C.J., Carpio, Peralta, del Castillo, Perlas-Bernabe, Leonen, Jardeleza, Caguioa, Reyes, A. Jr., Reyes, J. Jr., Hernando, and *Carandang, JJ.*, concur.

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[42] *Philippine Economic Zone Authority v. Commission on Audit, et al.*, 797 Phil. 117, 142 (2016).

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"the failure to implead an indispensable party is not a ground for the dismissal of an action; in such a case, the remedy is to implead the non-party claimed to be indispensable; parties may be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just; if the petitioner/plaintiff refuses to implead an indispensable party despite the order of the court, the latter may dismiss the complaint/petition for the petitioner's/plaintiff's failure to comply." (*Id*.)

AGENCY

Doctrine of apparent authority — Under this doctrine, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal; the principal's liability is limited only to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none was actually given; apparent authority is determined only by the acts of the principal and not by the acts of the agent. (Engineering Geoscience, Inc. *vs*. Phil. Savings Bank, G.R. No. 187262, Jan. 10, 2019) p. 490

ALIBI

Defense of — For the defense of alibi to prosper, it must be sufficiently convincing as to preclude any doubt on the physical impossibility of the presence of the accused at the *locus criminis* or its immediate vicinity at the time of the incident. (People *vs*. Batalla *y* Aquino, G.R. No. 234323, Jan. 7, 2019) p. 424

ALIBI AND DENIAL

Defense of — Alibi and denial are outweighed by positive identification that is categorical, consistent and untainted by any ill motive on the part of the eyewitness testifying on the matter. (People *vs*. Casemiro, G.R. No. 231122, Jan. 16, 2019) p. 838

Petition for review on certiorari to the Supreme Court under Rule 45 — As a general rule, a petition for review on *certiorari* under Rule 45 of the Rules of Court should cover only questions of law; the general rule admits of exceptions: (1) the conclusion is grounded on speculations, surmises or conjectures; (2) the inference is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion; (4) the judgment is based on misapprehension of facts; (5) the findings of fact are conflicting; (6) there is no citation of specific evidence on which the factual findings are based; (7) the findings of absence of facts are contradicted by the presence of evidence on record; (8) the findings of the Court of Appeals are contrary to those of the trial court; (9) the Court of Appeals manifestly overlooked certain relevant and undisputed facts that, if properly considered, would justify a different conclusion; (10) the findings of the Court of Appeals are beyond the issues of the case; and (11) such findings are contrary to the admissions of both parties. (Engineering Geoscience, Inc. *vs*. Phil. Savings Bank, G.R. No. 187262, Jan. 10, 2019) p. 490

— The Court specifically stated in its Notice that "no new issues may be raised by a party in his/its memorandum and the issues raised in his/its pleadings but not included in the memorandum shall be deemed waived or abandoned"; respondent's failure to abide with the Court's notice violates the principles of due process and fair play; in *De los Santos v. Lucenio*, the Court held "that belated allegations changed the theory of his case, which is not allowed under the Rules as it goes against the basic rules of fair play, justice, and due process." (Goldstar Rivermount, Inc. *vs*. Advent Capital and Finance Corp., G.R. No. 211204, Dec. 10, 2018) p. 62

— The first ground, "whether the CA committed serious and reversible error in affirming disability compensation on the basis of an unproven and unsubstantiated Collective Bargaining Agreement," raised by petitioners is factual in nature and is not a proper subject of a petition for review on *certiorari* under Rule 45 of the Rules of

to secure the presence of such witnesses, albeit they eventually failed to appear; while the earnestness of these efforts must be examined on a case-to-case basis, the overarching objective is for the Court to be convinced that the failure to comply was reasonable under the given circumstances. (People *vs*. Barrion *y* Silva, G.R. No. 240541, Jan. 21, 2019) p. 912

(People *vs*. Paming *y* Javier, G.R. No. 241091, Jan. 14, 2019) p. 668

(People *vs*. Arciaga, G.R. No. 239471, Jan. 14, 2019) p. 657

(People *vs*. Corral *y* Batalla, G.R. No. 233883, Jan. 7, 2019) p. 392

— 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; the Court has recognized that due to varying field conditions, strict compliance with the chain of custody procedure may not always be possible. (People *vs*. Paming *y* Javier, G.R. No. 241091, Jan. 14, 2019) p. 668

— 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; 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. (People *vs*. Arciaga, G.R. No. 239471, Jan. 14, 2019) p. 657

— 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 "the law has been

commitment order (or warrant of arrest) or dismiss the case outright for lack of probable cause in accordance with Sec. 5, Rule 112, Rules of Court; It must be noted that the above-mentioned guidelines are prospective in nature. (People *vs*. Malazo *y* Doria, G.R. No. 223713, Jan. 7, 2019) p. 363

— 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. (Loayon *y* Luis *vs*. People, G.R. No. 232940, Jan. 14, 2019) p. 605

— It must be emphasized that the prosecution must able to prove a justifiable ground in omitting certain requirements provided in Sec. 21 such as, but not limited to the following: 1) media representatives are not available at that time or that the police operatives had no time to alert the media due to the immediacy of the operation they were about to undertake, especially if it is done in more remote areas; 2) the police operatives, with the same reason, failed to find an available representative of the National Prosecution Service; 3) the police officers, due to time constraints brought about by the urgency of the operation to be undertaken and in order to comply with the provisions of Art. 125 of the Revised Penal Code in the timely delivery of prisoners, were not able to comply with all the requisites set forth in Sec. 21 of R.A. No. 9165. (People *vs*. Oliva *y* Jorjil, G.R. No. 234156, Jan. 7, 2019) p. 405

— 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; mere statements of unavailability, absent actual serious attempts to contact

admission into evidence; to establish a chain of custody sufficient to make evidence admissible, the proponent needs only to prove a rational basis from which to conclude that the evidence is what the party claims it to be; in a criminal case, the prosecution must offer sufficient evidence from which the trier of fact could reasonably believe that an item still is what the government claims it to be; as regards the prosecution of illegal drugs, the well-established US federal evidentiary rule is when the evidence is not readily identifiable and is susceptible to alteration by tampering or contamination; this evidentiary rule was adopted in *Mallillin v. People*. (People *vs*. O'Cochlain, G.R. No. 229071, Dec. 10, 2018) p. 150

— 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. (Loayon *y* Luis *vs*. People, G.R. No. 232940, Jan. 14, 2019) p. 605

(Fuentes *y* Garcia @ "Kanyod" *vs*. People, G.R. No. 228718, Jan. 7, 2019) p. 379

— The importance of the chain of custody rule which adheres to the principle that real evidence must be authenticated prior to its admission into evidence; this is in accordance with Sec. 21(1), Art. II of R.A. No. 9165, as amended by Sec. 1 of R.A. No. 10640; however, the original provision of Sec. 21(1) still applies to this case because the alleged crime was committed in 2008 prior to the amendment of the law in 2014. (People *vs*. Malazo *y* Doria, G.R. No. 223713, Jan. 7, 2019) p. 363

— The law further requires that the said inventory and photography be done in the presence of the accused or the person from whom the items were seized, or his representative or counsel, as well as certain required witnesses, namely: (a) if prior to the amendment of R.A. No. 9165 by R.A. No. 10640, "a representative from the

COURT OF APPEALS

Procedure — Under Sec. 8, Rule 124 of the Rules of Court, the CA is authorized to dismiss an appeal, whether upon motion of the appellee or *motu proprio*, once it is determined that the appellant, among others, jumps bail, *viz.*: Sec. 8. *Dismissal of appeal for abandonment or failure to prosecute.* — The Court of Appeals may, upon motion of the appellee or *motu proprio* and with notice to the appellant in either case, dismiss the appeal if the appellant fails to file his brief within the time prescribed by this Rule, except where the appellant is represented by a counsel *de* officio; the Court of Appeals may also, upon motion of the appellee or *motu proprio*, dismiss the appeal if the appellant escapes from prison or confinement, jumps bail or flees to a foreign country during the pendency of the appeal. (Usares *y* Sibay *vs*. People, G.R. No. 209047, Jan. 7, 2019) p. 339

COURT PERSONNEL

Duties — A public servant is expected to exhibit, at all times, the highest degree of honesty and integrity and should be made accountable to all those whom he serves; the same principle applies from the judge to the least and lowest of the judiciary's employees and personnel. (Duque *vs*. Calpo, A.M. No. P-16-3505 [Formerly OCA IPI No. 13-4134-P], Jan. 22, 2019) p. 933

— The Court reminds court personnel of the extreme burden and duty attached to their roles as officers of the Court, to wit: The Code of Conduct for Court Personnel stresses that employees of 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; no other office in the government service exacts a greater demand for moral righteousness and uprightness from an employee than in the Judiciary. (Rural Bank of Talisay (Cebu), Inc. *vs*. Gimeno, A.M. No. P-19-3911 [Formerly OCA IPI No. 13-4159-P], Jan. 15, 2019) p. 719

CRIMINAL PROCEDURE

Effect of appeal by any of several accused — An appeal taken by one or more of several accused shall not affect those who did not appeal, except insofar as the judgment of the appellate court is favorable and applicable to the latter. (Fuentes *y* Garcia @ "Kanyod" *vs*. People, G.R. No. 228718, Jan. 7, 2019) p. 379

DAMAGES

Attorney's fees — In labor cases, attorney's fees are awarded when there is unlawful withholding of wages or benefits due, forcing the employee to litigate. (Torillos *vs*. Eastgate Maritime Corp., G.R. No. 215904, Jan. 10, 2019) p. 512

Doctrine of last clear chance — The negligence of the plaintiff does not preclude a recovery for the negligence of the defendant where it appears that the defendant, by exercising reasonable care and prudence, might have avoided injurious consequences to the plaintiff notwithstanding the plaintiff's negligence; the doctrine necessarily assumes negligence on the part of the defendant and contributory negligence on the part of the plaintiff, and does not apply except upon that assumption. (Bank of the Phil. Islands *vs*. Sps. Quiaoit, G.R. No. 199562, Jan. 16, 2019) p. 757

Moral and exemplary damages — Moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injuries unjustly caused; petitioner has adequately established the factual basis for the award of moral damages when she testified that she felt shocked and horrified upon knowing of the foreclosure sale; exemplary damages are imposed by way of example for the public good, in addition to moral, temperate, liquidated or compensatory damages; attorney's fees, when allowed. (Sps. Loquellano *vs*. Hongkong and Shanghai Banking Corp., Ltd., G.R. No. 200553, Dec. 10, 2018) p. 1

is void from the very beginning. (*Id*.)

— If the disqualification or COC cancellation/denial case is not resolved before election day, the proceedings shall continue even after the election and the proclamation of the winner; in the meanwhile, the candidate may be voted for and be proclaimed if he or she wins, but the COMELEC's jurisdiction to deny due course and cancel his or her COC continues; this rule applies even if the candidate facing disqualification is voted for and receives the highest number of votes, and even if the candidate is proclaimed and has taken his oath of office; the only exception to this rule is in the case of congressional or senatorial candidates with unresolved disqualification or COC denial/cancellation cases after the elections. (*Id*.)

— Self-evident facts of unquestioned or unquestionable veracity and judicial confessions are bases equivalent to prior decisions against which the falsity of representation can be determined. (*Id*.)

— The COMELEC has the authority to examine the allegations of every pleading filed, obviously aware that its averments, rather than its title/caption, are the proper gauges in determining the true nature of the cases filed before it. (*Id*.)

EMPLOYMENT, TERMINATION OF

Loss of trust and confidence — To be a valid ground for dismissal, the loss of trust and confidence must be based on a willful breach and founded on clearly established facts; a breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently; loss of trust and confidence must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the

— The worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. (*Id*.)

Separation pay — To be considered a company practice, the giving of the benefits should have been done over a long period of time, and must be shown to have been consistent and deliberate; there is nothing reprehensible or illegal when the employer grants the employee a chance to resign and save face rather than smear the latter's employment record; this was not the case for petitioner; respondents did not make any commitment to petitioner that he would be paid after his voluntary resignation. (Del Rio *vs*. DPO Phils., Inc., G.R. No. 211525, Dec. 10, 2018) p. 75

Voluntarily resignation — An employee who voluntarily resigns from employment is not entitled to separation pay, except when it is stipulated in the employment contract or the CBA, or it is sanctioned by established employer practice or policy; the cited exceptions do not obtain in this case. (Del Rio *vs*. DPO Phils., Inc., G.R. No. 211525, Dec. 10, 2018) p. 75

ESTOPPEL

Doctrine — Estoppel is a doctrine that prevents a person from adopting an inconsistent position, attitude, or action if it will result in injury to another; one who, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, can no longer deny the existence of such fact as it will prejudice the latter; the doctrine is based upon the grounds of public policy, fair dealing, good faith and justice. (Sps. Loquellano *vs*. Hongkong and Shanghai Banking Corp., Ltd., G.R. No. 200553, Dec. 10, 2018) p. 1

— To prove evident premeditation, three requisites are needed to be proven: (a) the time when the offender determined to commit the crime; (b) an act manifestly indicating that the offender had clung to his determination; and (c) a sufficient interval of time between the determination and the execution of the crime to allow him to reflect upon the consequences of his act. (*Id.*)

FAMILY CODE

Proof of filiation — A baptismal certificate has evidentiary value to prove filiation only if considered alongside other evidence of filiation; because the putative parent has no hand in the preparation of a baptismal certificate, the same has scant evidentiary value if taken in isolation; while it may be considered a public document, "it can only serve as evidence of the administration of the sacrament on the date specified, but not the veracity of the entries with respect to the child's paternity." (Heirs of Paula C. Fabillar *vs.* Paller, G.R. No. 231459, Jan. 21, 2019) p. 868

— In the absence of the record of birth and admission of legitimate filiation, Art. 172 of the Family Code provides that filiation shall be proved by any other means allowed by the Rules of Court and special laws; such other proof of one's filiation may be a baptismal certificate, a judicial admission, a family Bible in which his name has been entered, common reputation respecting his pedigree, admission by silence, the testimonies of witnesses, and other kinds of proof admissible under Rule 130 of the Rules of Court; Art. 175 of the same Code also allows illegitimate children to establish their filiation in the same way and on the same evidence as that of legitimate children. (*Id.*)

GOVERNMENT AUDITING CODE OF THE PHILIPPINES (P.D. NO. 1445)

Application of — Sec. 1, Rule 22 of the Rules of Court states that "if the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the

law or administrative order barring the same. (Subic Bay Metropolitan Authority *vs*. Commission on Audit, G.R. No. 230566, Jan. 22, 2019) p. 982

— R.A. No. 9184 "applies to the Procurement of Infrastructure Projects, Goods and Consulting Services, regardless of source of funds, whether local or foreign, by all branches and instrumentalities of government, its departments, offices and agencies, including government-owned and/or-controlled corporations and local government units." (*Id*.)

— The exceptional recourse to any of the alternative methods of procurement must be justified based on the specific provisions of R.A. No. 9184 and its IRR. (*Id*.)

— Under Sec. 53(c), IRR of R.A. No. 9184, there is no takeover of contracts, which have been rescinded or terminated for causes provided for in the contract and existing laws; neither was there a need for immediate action necessary to prevent damage to or loss of life or property, or to restore vital public services, infrastructure facilities and other public utilities. (*Id*.)

— While there may be an irregular expenditure because petitioners did not strictly comply with the IRR of R.A. No. 9184, they may not be held personally liable under the ND based on their exercise of good faith; while the disbursement of funds for the procurement of the employees' uniforms must be disallowed because it particularly contravenes the provisions of IRR of R.A. No. 9184, the good faith exercised by petitioners exempts them from liability under the ND. (*Id*.)

Public bidding — A method of government procurement is governed by the principles of transparency, competitiveness, simplicity and accountability; by its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open competition; another self-evident purpose of public bidding is to avoid or preclude suspicion of favoritism and anomalies in the

proclamation, order, instruction, ordinance, or regulation is in question; (b) criminal cases in which the appealed decision imposes the death penalty or *reclusion perpetua*; (c) cases raising novel questions of law; (d) cases affecting ambassadors, other public ministers, and consuls; (e) cases involving decisions, resolutions, and orders of the Civil Service Commission, the Commission on Elections, and the Commission on Audit; (f) cases where the penalty recommended or imposed is the dismissal of a judge, the disbarment of a lawyer, the suspension of any of them for a period of more than one year, or a fine exceeding forty thousand pesos; (g) cases covered by the preceding paragraph and involving the reinstatement in the judiciary of a dismissed judge, the reinstatement of a lawyer in the roll of attorneys, or the lifting of a judge's suspension or a lawyer's suspension from the practice of law; (h) cases involving the discipline of a Member of the Court, or a Presiding Justice, or any Associate Justice of the collegial appellate courts; (i) cases where a doctrine or principle laid down by the Court *en banc* or by a Division may be modified or reversed; (j) cases involving conflicting decisions of two or more divisions; (k) cases where three votes in a Division cannot be obtained; (l) Division cases where the subject matter has a huge financial impact on businesses or affects the welfare of a community; (m) subject to Sec. 11 (b) of this rule, other division cases that, in the opinion of at least three Members of the Division who are voting and present, are appropriate for transfer to the Court *en banc*; (n) cases that the Court *en banc* deems of sufficient importance to merit its attention; and (o) all matters involving policy decisions in the administrative supervision of all courts and their personnel; not applicable to this case. (Sps. Chua *vs.* United Coconut Planters Bank, G.R. No. 215999, Dec. 17, 2018) p. 241

JUDGES

Gross ignorance of the law — The failure of a magistrate to apply basic rules and settled jurisprudence; it connotes a blatant disregard of clear and unambiguous provisions

the merits of the case had been rendered is forbidden except if there is some valid or just reason (such as a showing of graft and corrupt practice, or such as a valid ground not earlier apparent). (Sps. Chua *vs.* United Coconut Planters Bank, G.R. No. 215999, Dec. 17, 2018) p. 241

— Sec. 1, first paragraph, Rule 137 of the Rules of Court stipulates that a judge or judicial officer shall be mandatorily disqualified to sit in any of the instances enumerated therein, namely: where he, or his wife or child is pecuniarily interested as heir, legatee, creditor or otherwise; or where he is related to either party within the sixth degree of consanguinity or affinity; or where he is related to counsel within the fourth degree; or where he has been executor, administrator, guardian, trustee or counsel; or where he has presided in any inferior court, and his ruling or decision is the subject of review; the second paragraph of the rule concerns voluntary inhibition, and allows the judge, in the exercise of his sound discretion, to disqualify himself from sitting in a case "for just or valid reasons other than those mentioned above"; the exercise of discretion for this purpose is a matter of conscience for him, and is addressed primarily to his sense of fairness and justice; the grounds for the mandatory inhibition of the Members of the Court, which are analogous to those mentioned in Rule 137 of the Rules of Court, are embodied in Sec. 1, Rule 8 of the Internal Rules of the Supreme Court; the grounds for seeking the inhibition of the Members of the Court must be stated in the motion; yet, in now seeking the inhibition of all the Members of the Third Division who have ruled on the appeal, respondents neither advert to any of the grounds for mandatory inhibition nor point to the bias or partiality of said Members. (*Id.*)

Variance between the offense charged and that proved or established — Under Secs. 4 and 5 Rule 120 of the 1997 Rules of Court, when there is variance between the offense charged in the Information and that proved or established by the evidence, and the offense as charged necessarily

LAND REGISTRATION

Certificate of title — It is settled that in the case of two certificates of title purporting to include the same land, the earlier in date prevails. (Aquino *vs*. Estate of Tomas B. Aguirre, G.R. No. 232060, Jan. 14, 2019) p. 587

Reconstitution of title — Since the source of reconstitution is the owner's duplicate copy, there is no need to give notice to other parties; the service of notice of the petition for reconstitution filed under R.A. No. 26 to the occupants of the property, owners of the adjoining properties, and all persons who may have any interest in the property is not required if the petition is based on the owner's duplicate certificate of title or on that of the co-owner's, mortgagee's, or lessee's. (Aquino *vs*. Estate of Tomas B. Aguirre, G.R. No. 232060, Jan. 14, 2019) p. 587

LOCAL GOVERNMENT CODE

Three-term limit rule — The conversion of a municipality into a city does not constitute an interruption of the incumbent official's continuity of service; we held that to be considered as interruption of service, the law contemplates a rest period during which the local elective official steps down from office and ceases to exercise power or authority over the inhabitants of the territorial jurisdiction of a particular local government unit. (Halili *vs*. COMELEC, G.R. No. 231643, Jan. 15, 2019) p. 728

— The intention behind the three-term limit rule is not only to abrogate the "monopolization of political power" and prevent elected officials from breeding "proprietary interest in their position" but also to "enhance the people's freedom of choice." (*Id*.)

— There are two conditions which must concur for the application of the disqualification of a candidate based on violation of the three-term limit rule: (1) that the official concerned has been elected for three consecutive terms in the same local government post; and (2) that he has fully served three consecutive terms. (*Id*.)

faulted for not finding merit in petitioner's belated explanation; the CA should have also considered the *prima facie* merit of petitioner's case. (Aguilar *vs*. Benlot, G.R. No. 232806, Jan. 21, 2019) p. 885

PRELIMINARY INVESTIGATION

Probable cause — "Judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction considering that full discretionary authority has been delegated to the executive branch in the determination of probable cause during a preliminary investigation; courts are not empowered to substitute their judgment for that of the executive branch; it may, however, look into the question of whether such exercise has been made in grave abuse of discretion"; no grave abuse of discretion attended the DOJ Panel's Resolution finding probable cause to indict respondent for reckless imprudence. (People *vs*. Go, G.R. No. 210816, Dec. 10, 2018) p. 15

—— Probable cause refers to the existence of such facts and circumstances as would excite the belief, in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted; it does not mean "actual and positive cause" nor does it require absolute certainty; a finding of probable cause is merely based on opinion and reasonable belief that the act or omission complained of constitutes the offense charged; it is not a pronouncement of guilt. (*Id*.)

—— The Court concludes that the DOJ Panel's Resolution clearly supports a *prima facie* finding that reckless imprudence under Art. 365 of the RPC has been committed; when a party files a special civil action for *certiorari*, he or she must allege the acts constituting grave abuse of discretion; however, respondent's petition for *certiorari* before the CA merely identified the alleged errors of fact and law in the DOJ Panel's Resolution; the presence or absence of the elements of the crime is evidentiary in

— The doctrine of *res judicata* embodied in Sec. 47, Rule 39 of the Rules of Court x x x embraces two concepts of *res judicata*: (1) bar by prior judgment as enunciated in Rule 39, Sec. 47(b); 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; 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. (*Id.*)

— The test to determine whether the causes of action are identical is to ascertain whether the same evidence would support both actions, or whether there is an identity in the facts essential to the maintenance of the two actions; if the same facts or evidence would support both actions, then they are considered the same; and a judgment in the first case would be a bar to the subsequent action. (*Id.*)

RULES ON NOTARIAL PRACTICE (2004)

Notarization — Notarization by a notary public converts a private document into a public document making it admissible in evidence without further proof of its authenticity; notarial document is, by law, entitled to full faith and credit, and as such, notaries public are obligated to observe with utmost care the basic requirements in the performance of their duties; for these reasons, notarization is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. (Collantes *vs.* Atty. Mabuti, A.C. No. 9917, Jan. 14, 2019) p. 532

SEARCH WARRANT

Requirements for issuance –– A search warrant may be issued only if there is probable cause in connection with a specific offense alleged in an application based on the personal knowledge of the applicant and his witnesses; procedurally, the determination of probable cause is a personal task of the judge before whom the application for search warrant is filed, as he has to examine the applicant and his or her witnesses in the form of "searching questions and answers" in writing and under oath; *Oebanda, et al. v. People*, cited; the searching questions propounded to the applicant and the witnesses must depend on a large extent upon the discretion of the judge; it is axiomatic that the said examination must be probing and exhaustive and not merely routinary, general, peripheral or perfunctory. (People *vs*. Maderazo *y* Romero, G.R. No. 235348, Dec. 10, 2018) p. 223

–– It can easily be gleaned from the investigation that the applicant's and his witnesses' knowledge of the offense that allegedly has been committed and that the objects sought in connection with the offense are in the place sought to be searched was not based on their personal knowledge but merely based on Maderazo's alleged admission; the trial judge failed to make an independent assessment of the evidence adduced and the testimonies of the witnesses in order to support a finding of probable cause which warranted the issuance of a search warrant, for violation of R.A. No. 9165 and illegal possession of firearms; consequently, because the trial judge failed to conduct exhaustive probing and searching questions, the findings of the existence of probable cause becomes dubious. (*Id*.)

–– The core requisite before a warrant shall validly issue is the existence of a probable cause, meaning "the existence of such facts and circumstances which would lead a reasonably discreet and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place to be

searched"; when the law speaks of facts, the reference is to facts, data or information personally known to the applicant and the witnesses he may present; absent the element of personal knowledge by the applicant or his witnesses of the facts upon which the issuance of a search warrant may be justified, the warrant is deemed not based on probable cause and is a nullity, its issuance being, in legal contemplation, arbitrary; furthermore, testimony based on what is supposedly told to a witness, as in this case, being patent hearsay and, as a rule, of no evidentiary weight or probative value, whether objected to or not, would, alone, not suffice under the law on the existence of probable cause. (*Id.*)

SEARCHES AND SEIZURES

Airport administrative searches — Among others, the OTS has to enforce R.A. No. 6235 or the Anti-Hijacking Law; it provides that an airline passenger and his hand-carried luggage are subject to search for, and seizure of, prohibited materials or substances and that it is unlawful for any person, natural or juridical, to ship, load or carry in any passenger aircraft, operating as a public utility within the Philippines, any explosive, flammable, corrosive or poisonous substance or material; it is in the context of air safety-related justifications that routine airport security searches and seizures are considered as permissible under Sec. 2, Art. III of the Constitution; airport search is reasonable when limited in scope to the object of the Anti-Hijacking program, not the war on illegal drugs. (People *vs*. O'Cochlain, G.R. No. 229071, Dec. 10, 2018) p. 150

— An airport security search is considered as reasonable if: (1) the search is no more extensive or intensive than necessary, in light of current technology, to satisfy the administrative need that justifies it, that is to detect the presence of weapons or explosives; (2) the search is confined in good faith to that purpose; and (3) a potential passenger may avoid the search by choosing not to fly; *United States v. Aukai*, cited; currently, US courts are of

must be unequivocal, specific and intelligently given, and uncontaminated by any duress or coercion"; the question of whether a consent to a search was "voluntary" or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances; here, we have ruled that to constitute a waiver, it must first appear that the right exists; secondly, that the person involved had knowledge, actual or constructive, of the existence of such a right; and, lastly, that said person had an actual intention to relinquish the right; there is a valid warrantless search based on express consent. (People *vs*. O'Cochlain, G.R. No. 229071, Dec. 10, 2018) p. 150

SETTLEMENT OF ESTATE OF DECEASED PERSONS

Declaration of heirship — The need to institute a separate special proceeding for the determination of heirship may be dispensed with for the sake of practicality, as when the parties in the civil case had voluntarily submitted the issue to the trial court and already presented their evidence regarding the issue of heirship," and "the trial court had consequently rendered judgment upon the issues it defined during the pre-trial." (Heirs of Paula C. Fabillar *vs*. Paller, G.R. No. 231459, Jan. 21, 2019) p. 868

SHERIFFS

Duties — Sec. 14, Rule 39 of the Rules of Court mandates the sheriff to make a return on the writ of execution to the Clerk or Judge issuing the Writ; a sheriff is required: (1) to make a return and submit it to the court immediately upon satisfaction in part or in full of the judgment; and (2) if the judgment cannot be satisfied in full, to state why full satisfaction cannot be made; the sheriff is required to make a report every thirty (30) days in the proceedings being undertaken by him until the judgment is fully satisfied. (Ariñola *vs*. Almodiel, Jr., A.M. No. P-19-3925 [Formerly OCA IPI No. 16-4635-P], Jan. 7, 2019) p. 330

Liability of — Failure to comply with Sec. 14, Rule 39 constitutes simple neglect of duty, which is defined as the failure of

a qualifying circumstance; *People v. Tigle*, cited. (People *vs.* Magallano, Jr. *y* Flores, G.R. No. 220721, Dec. 10, 2018) p. 109

UNFAIR COMPETITION

Elements — Although we see a noticeable difference on how the trade name of respondent is being used in its products as compared to the trademark of petitioner, there could likely be confusion as to the origin of the products; a consumer might conclude that PAPER ONE products are manufactured by or are products of Paperone, Inc.; although respondent claims that its products are not the same as petitioner's, the goods of the parties are obviously related as they are both kinds of paper products. (Asia Pacific Resources Int'l. Holdings, Ltd. *vs.* Paperone, Inc., G.R. Nos. 213365-66, Dec. 10, 2018) p. 85

— It can easily be observed that both have the same spelling and are pronounced the same; although respondent has a different logo, it was always used together with its trade name; a careful scrutiny of the mark shows that the use of PAPERONE by respondent would likely cause confusion or deceive the ordinary purchaser, exercising ordinary care, into believing that the goods bearing the mark are products of one and the same enterprise. (*Id.*)

— Relative to the issue on confusion of marks and trade names, jurisprudence has noted two types of confusion, *viz.*: (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product; and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent. (*Id.*)

is not a ground to reverse a conviction"; the Court of Appeals held: As to the imputed inconsistencies in Pineda's testimony, they refer only to minor if not inconsequential or trivial matters which do not impair the credibility of Pineda; it even signifies that he was neither coached nor was lying on the witness stand; what commands greater importance is that there is no inconsistency in Pineda's complete and vivid narration as far as the principal occurrence and positive identification of accused-appellants as the victim's assailants. (People *vs*. Magallano, Jr. *y* Flores, G.R. No. 220721, Dec. 10, 2018) p. 109

— Trial courts have the advantage of personally scrutinizing the conduct and attitude of witnesses when giving their testimonies; thus, "assignment of values to the testimony of a witness is virtually left, almost entirely, to the trial court which has the opportunity to observe the demeanor of the witness on the stand"; due to their unique position, the trial courts' factual findings and appreciation of the witnesses' testimonies are given much respect, more so when their conclusions are affirmed by the Court of Appeals. (*Id*.)

Testimony of — The assessment of a trial court in matters pertaining to the credibility of witnesses, especially when already affirmed by an appellate court on appeal, are accorded great respect, if not binding significance, on further appeal to this Court; the rationale of this rule is the recognition of the trial court's unique and distinctive position to be able to observe, first hand, the demeanor, conduct and attitude of the witness whose credibility has been put in issue. (People *vs*. Bay-od, G.R. No. 238176, Jan. 14, 2019) p. 644

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